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CHAPTER 11

TAXES

794-1038
99-M - 388
101-M - 517

GENERAL PROVISIONS

794. Property subject to taxation—All real and personal property in this state, and all personal property of persons residing therein, including the property of corporations, banks, banking companies, and bankers, is taxable, except such as is by law exempt from taxation. (1508)

1. **General rules**—All property within the state and subject to its jurisdiction is taxable unless expressly exempted (24–251; 23–280; 72–200, 75+210. See Const. art. 9 § 3). The taxing power of the state has no extraterritorial force (56–24, 57+313. See 72–87, 91, 75+108). The state cannot tax property unless it has jurisdiction over the owner or the property (35–215, 28+256; 76–155, 78+962, 1117). Corporeal personal property is taxable wherever it has a fixed situs, regardless of the domicil of the owner (35–215, 28+256; 94–320, 102+721). If such property is within one state and its owner is domiciled in another it may be taxed in the former, although it is also taxed in the latter (56–24, 57+313. But see § 833). Incorporeal personal property is generally taxable where it is owned, that is, at the domicil of the creditor, but he may give it a business situs elsewhere (35–215, 28+256; 177 U. S. 133).

2. **Credits of non-residents in the hands of local agents**—If a non-resident owner of credits places them in the hands of an agent in this state for collection or renewal with a view of retaining the money and keeping it invested here indefinitely they are taxable here (35–215, 28+256; 80–277, 83+339; 177 U. S. 133. See 7–258, 198; 63–80, 65+138; 77–190, 79+829; 83–512, 86+775, 103+731); otherwise if the local agent is given no power of reinvestment or general control but merely receives money, loans it, and returns the papers to his principal (76–155, 78+962, 1117). It is immaterial that the principal is insolvent and his local business is being closed up (80–277, 83+339).

3. **Property of non-residents stored here**—Property of non-residents stored here for convenience in distribution to future purchasers is taxable here (56–24, 57+313. See § 817), but property shipped into the state and held in the cars on the track of the common carrier for the purpose of distribution to parties who have purchased prior to shipment, although consigned to the shipper for convenience, is not taxable here until after distribution (79–127, 81+752. See § 817).

4. **Property of non-residents consigned for sale here**—Property of non-residents consigned to agents for sale here is taxable here (14–252, 185; 7–258, 198. See § 817); otherwise if it is consigned merely for distribution to parties purchasing prior to the consignment (79–127, 81+752. See § 817).

5. **Property in transit**—Railroad tank cars owned by a non-resident corporation and in transit through the state held not taxable (94–320, 102+721).

6. **Federal property and agencies**—Federal property is not taxable by the state (30–372, 15+665; 42–312, 44+201; 21–472; 28–257, 9+761). Federal agencies such as national banks are not taxable except as authorized by Congress (23–280; 11–500, 378). Property in the Indian reservations is not taxable by the state (7–140, 84. See 15–369, 302).

7. **Interstate commerce**—Interstate commerce is not taxable by the state, but property of corporations employed in interstate commerce may be so taxed according to the proportionate share employed in the state (See 85–457, 89+66; 94–320, 102+721).

8. **Held taxable**—A debt arising from a contract for the sale of land (39–502, 40+835); a debt secured by a real estate mortgage although the real estate itself is taxed (24–251; 39–502, 40+835); a mortgage held by a mutual building association, the stock of the association not being taxed (45–154, 47+540); things in action (80–277, 83+339); riparian rights (26–229, 2+839); wheat held by a corporation for the benefit of its members and unexpended money in its hands (30–429, 16+151); the separate interests of tenants in common of personal property (39–502, 40+835); funds from the sale of lands conveyed by the state to a private corporation in aid of internal improvements though secured by a bond to the state (32–516, 21+738); bees in hives and domesticated (Ops. Atty. Genl. 1894 No. 207); abstract books (Ops. Atty. Genl. 1894 No. 209); contracts for sale of land by foreign railroad corporation doing business in this state (103+731).

795. Property exempt—All property described in this section, to the extent herein limited, shall be exempt from taxation, to wit:

795
07 - 328

1. All public schoolhouses, academies, colleges, universities, and seminaries of learning, with the books and furniture therein, and the grounds attached to

such buildings, and necessary for their proper occupancy, use, and enjoyment, and not leased or otherwise used with a view to profit.

2. All houses used exclusively for public worship, and the lot or parts of lots upon which such houses are erected.

3. All lands used exclusively for public burying grounds or cemeteries.

4. All public property, real or personal, used exclusively for any public purpose.

5. All buildings belonging to institutions of purely public charity, including orphan asylums, homes for the indigent, and public hospitals, together with the land actually occupied by such institutions, not leased or otherwise used with a view to profit, and all moneys and credits belonging exclusively, and appropriated solely to sustaining, such institutions.

6. All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe-keeping thereof, and for the meeting of fire companies, whether belonging to any town, or to any fire company organized therein.

7. All public libraries and libraries owned by corporations other than those for pecuniary profit, and real and personal property belonging to or connected with the same.

8. All armories, drill halls, and other buildings and grounds used exclusively for the benefit of any company, regiment, or incorporated military organization.

9. All property belonging to incorporated camp or grove meeting associations, Sunday school assemblies, Young Men's Christian Associations, societies for religious instruction or worship, expressly dedicated and necessary for their proper occupancy, use, and enjoyment, and not leased or otherwise used with a view to profit.

10. All property belonging to, and used exclusively for the purposes of, any state, district, or county agricultural society or industrial exposition incorporated under the laws of this state.

07 795(11) - 345

11. The buildings and other property exclusively used by beneficiary associations or fraternal beneficiary associations in carrying on their business, and all dues, assessments, and other payments, and the accumulations thereof, held by such associations for the payment of death, sick, or disability benefits, and the reserve, emergency, and other mortuary funds of such associations.

12. The uniforms, arms, and equipments, and, in addition thereto, other personal property of each member of the national guard to an amount not exceeding two hundred dollars in value.

13. The personal property of each individual liable to assessment and taxation under the provisions of this chapter, of which he is the actual and bona fide owner, to an amount not exceeding one hundred dollars in value: Provided, that each person shall list all his personal property for taxation, and the county auditor shall deduct the amount of the exemption authorized by this section from the total amount of his assessment, and levy taxes upon the remainder.

The property mentioned in subds. 3, 8, 10 hereof shall be exempt, also, from special assessments. (1512, 1513, 2946; '97 c. 118 ss. 98, 99; '99 c. 216; '03 cc. 276, 296)

1. **None except authorized by constitution**—The legislature has no authority to exempt persons or property from taxation, directly or indirectly, except as authorized by the constitution. And the same limitation rests on municipalities (20–396, 347; 39–110, 38+803; 63–80, 65+138; 74–197, 77+40; 77–433, 80+626; 40–232, 41+948; 79–175, 81+839; 90–180, 95+764; 69–170, 71+931). See 46–316, 48+1119 (territorial charter).

2. **Strict construction**—Constitutional and statutory provisions exempting property from taxation are to be strictly construed (12–395, 280; 43–344, 45+615; 45–154, 47+540; 45–229, 47+783; 62–183, 64+379; 73–343, 76+204; 90–92, 95+882). But this rule is not applicable to the construction of statutes providing for a commuted system of taxation and exempting property, not from taxation altogether, but from the general mode of taxation (23–469; 73–417, 76+217. But see 23–217; 39–25, 38+635; 64–101, 66+206; 73–417, 431, 76+217; 84–459, 87+1131).

3. **Special assessments**—Statutes exempting property from taxation do not exempt

from special assessments (73–343, 76+204; 87–165, 91+484), unless so expressly stated (23–469; 36–529, 32+781; 21–526; 68–242, 71+27).

4. **Held exempt**—Funds of seminaries of learning (90–92, 95+882); seminaries of learning although owned by private individuals and conducted for profit, including the books and furniture (52–144, 53+1133); residences of professors on a college campus (51–437, 53+704); public hospitals, with adjoining lots (27–460, 8+595); parochial school with playground attached (27–503, 8+761); public square (17–265, 243); public alley (35–314, 29+126); cemeteries (85–498, 89+872; 93–191, 101+161. See 36–529, 32+781; Ops. Atty. Genl. 1898 No. 137); property of Hamline University wherever situated (46–316, 48+1119); riparian rights of charitable and educational institutions (81–422, 84+302); a light and water plant owned and operated by a municipality (Ops. Atty. Genl. 1900 No. 232).

5. **Held not exempt**—A parsonage or rectory belonging to a church although used in part for religious services (12–395, 280; 27–503, 8+761; 45–229, 47+783); a market-house owned by a private individual (62–183, 64+379); property leased to an educational institution (43–344, 45+615); acre property of college near campus but not devoted to college purposes (51–437, 53+704); public land pre-empted and final receipts issued (42–312, 44+201; 30–372, 15+665); public land conveyed to private corporation by state and proceeds of sales thereof (32–516, 21+738); logs cut by a railroad from its exempt lands (39–25, 38+635); property of a Young Men's Christian Association (Ops. Atty. Genl. 1896 No. 155); a farm owned by a hospital (104+551).

6. **Effect of assessing exempt property**—An assessment of exempt property is a nullity. The owner is not required to take any affirmative action to prevent or correct it (72–409, 75+723; 35–314, 29+126. See §§ 896, 914, 919, 940).

796. Real property defined—Real property, for the purposes of taxation, shall be construed to include the land itself, and all buildings, structures, and improvements or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all mines, minerals, quarries, fossils, and trees on or under the same. (1509)

796
07 - 328

See 1905 c. 161

Held real property: riparian rights (26–229, 2+839; 81–422, 84+302); right to cut timber (56–288, 57+796); elevators on right of way of railroad company and owned by the company (38–531, 38+619), but not if owned by others (69–131, 72+60, overruling 60–522, 63+101. See § 825); and easements (See 31–354, 17+954; 42–398, 45+958). Statutory definition inapplicable to Sp. Laws 1874 c. 1 (31–354, 17+954). Assessment of real property as personal property illegal (26–229, 2+839).

797. Personal property defined—Personal property, for the purposes of taxation, shall be construed to include:

1. All goods, chattels, moneys, and effects.
2. All ships, boats, and vessels belonging to inhabitants of this state, whether at home or abroad, and all capital invested therein.
3. All improvements made by others upon lands the fee of which is still vested in the United States, and all improvements, including elevators and other structures, upon lands the title to which is still vested in any railroad company or other corporation whose property is not subject to the same mode and rule of taxation as other property.
4. All stock of nurserymen, growing or otherwise.
5. All gas, electric, and water mains, pipes, conduits, subways, poles, and wires located in any road, street, or alley, and all tracks, roads, and bridges of street railway, plank road, gravel road, turnpike, and bridge companies, together with the poles and wires of such companies erected or laid in connection therewith.
6. Credits of every kind over and above debts owed by the creditor.
7. The income of every annuity, unless the capital of the annuity be taxed within this state.
8. All public stocks and securities.
9. All personal estate of moneyed corporations, whether the owners thereof reside in or out of the state.
10. All shares in foreign corporations owned by residents of this state.
11. All shares in banks organized under the laws of the United States or of this state. (1510, 1518, 1519)

798. Other definitions—In the construction of this chapter, the following rules shall be observed, unless such construction would be inconsistent with the manifest intention of the legislature, or repugnant to the context:

798
07 - 328

1. "Money" or "moneys" shall mean gold and silver coin, treasury notes,

bank notes, and other forms of currency in common use, and every deposit which any person owning the same, or holding in trust and residing in this state, is entitled to withdraw in money on demand.

2. "Credits" shall mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

3. "Tract," "lot," "parcel," and "piece or parcel" of land shall each mean any contiguous quantity of land in the possession of, owned by, or recorded as the property of, the same claimant, person, or company.

4. "Town" or "district" shall mean town, village, city, or ward, as the case may be.

5. "True and full value" shall mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment; being the price which could be obtained therefor at private sale, and not at forced or auction sale.

6. "Person" shall include firm, company, or corporation.

7. "Merchant" shall include every person who owns, or has in his possession or subject to his control, with authority to sell the same, any goods, merchandise, or other personal property within the state, purchased within or without the state with a view to sale at an advanced price or profit, or which has been consigned to him from any place out of the state for sale within the state.

8. "Manufacturer" shall include every person who purchases, receives, or holds personal property of any description for the purpose of adding to its value by any process of manufacturing, refining, rectifying, or by the combination of different materials, with a view of making gain or profit thereby. (1511, 1528, 1529)

1. **Held credits**—Claims secured by a real estate mortgage (24–251; 35–215, 28+256; 39–502, 40+835. But mortgages are not taxable as such, Ops. Atty. Genl. 1894 No. 205); claims arising on a contract for the sale of land (39–502, 40+835); book accounts and money loaned (15–295, 226); notes, bills receivable, and things in action generally (See 80–277, 83+339).

2. **Separate tract**—Where several government subdivisions of land or village lots *owned by the same person adjoin and are so connected together and occupied as to* constitute one tract in fact they may ordinarily be treated as one tract for the purpose of assessment and sale (32–7, 19+83; 38–27, 35+666; 39–317, 40+70). A tract may be divided by a contract to convey (44–464, 47+55). A railroad right of way through a tract does not divide it into two tracts (50–204, 52+523; 91–63, 97+413). Acre property within city limits may be treated, for the purposes of special assessment, as if divided into lots (72–87, 75+108). There is no authority for assessing undivided portions of tracts (66–425, 69+326).

799. Abbreviations—In all proceedings under this chapter, it shall be sufficient to designate the ranges, townships, sections, or parts of a section, blocks, lots, or parts of lots, and dollars and cents, by initial letters, abbreviations, and figures; but the abbreviation "do" or the character (″), commonly known as "ditto marks," shall not be used, except as to the name of owner, addition, or subdivision. ('02 c. 2 s. 73)

Ditto marks are authorized to a limited extent (64–139, 66+262; Ops. Atty. Genl. 1900 No. 220). An improper but not misleading insertion of ditto marks (51–289, 53+635), or periods (85–518, 89+853), is not fatal. Abbreviations must be according to common usage (26–212, 2+495). It is not necessary to insert periods after abbreviations (51–289, 53+635). A fraction of a government subdivision cannot be described by an integer (26–212, 2+495; 47–99, 49+387; 38–384, 37+799; 59–70, 60+809), nor by a fractional number unless it is clear of what larger subdivision it is a fraction (38–384, 37+799; 80–441, 83+382).

800. Legality presumed—No assessment of property for the purposes of taxation, and no general or special tax authorized by law, levied upon any property by any officer or board authorized to make and levy the same, shall be held invalid for want of any matter of form in any proceeding which does not affect the merits of the case, and which does not prejudice the rights of the party objecting thereto. All such assessments and levies shall be presumed to be legal until the contrary is affirmatively shown; and no sale of

real estate for the non-payment of taxes thereon shall be rendered invalid by showing that any certificate, return, affidavit, or other paper required to be made and filed in any office is not found in such office, but, until the contrary is shown, the presumption shall be in all cases that such paper was properly made and filed. ('02 c. 2 s. 74)

The levy and assessment are presumed valid until the contrary is affirmatively shown (94–320, 102+721).

801

09 - - 96
103-M - 485
115-NW 647

801. State auditor—Supervisory powers—The state auditor shall prescribe the form of all blanks and books required under this chapter. He shall hear and determine all matters of grievance relating to taxation on account of excessive valuation of property or for other cause, when submitted to him with a statement of facts in the case, and favorable recommendation of the county board and auditor of the county in which the property is situated. He shall keep a record of all cases so referred, and of all decisions rendered; and, upon deciding any case, he shall forward a certified copy of such decision to the county auditor, who shall file the same and correct his books accordingly. He shall decide all questions that may arise in reference to the true construction of this chapter in accordance with the advice and opinion of the attorney general, and such decision shall have force and effect until annulled by the judgment of a court of competent jurisdiction. (1652)

Abatement of taxes by state auditor (66–304, 69+25; 77–190, 79+829; 80–277, 83+339).

LISTING AND ASSESSMENT

802. With reference to May 1—All real property subject to taxation shall be listed and assessed every even-numbered year with reference to its value on May 1 preceding the assessment, and all real property becoming taxable any intervening year shall be listed and assessed with reference to its value on May 1 of that year. Personal property shall be listed and assessed annually with reference to its value on May 1, and, if acquired on that day, shall be listed by or for the person acquiring it. (1514; '03 c. 138)

40–137, 41+942; 80–17, 82+1090; 79–131, 81+763.

803. Omitted property—Uncollected taxes—If any real or personal property be omitted in the assessment of any year or years, and the property thereby escape taxation, when such omission is discovered the county auditor shall enter such property on the assessment and tax books for the year or years omitted; and he shall assess the property, and extend against the same on the tax list for the current year all arrearage of taxes properly accruing against it, including therein, in the case of personal property taxes, interest thereon at the rate of seven per cent. per annum from the time such taxes would have become delinquent, when the omission was caused by the failure of the owner to list the same. If any tax on any property liable to taxation is prevented from being collected for any year or years by reason of any erroneous proceedings or other cause, the amount of such tax which such property should have paid shall be added to the tax on such property for the current year. (1631)

1. **Liability for taxes unaffected by omission**—For the purposes of taxation the hand of the state is always on all property within its jurisdiction (62–18, 63+1117). Every piece of property not exempted owes to the state its proportionate share of the amount necessary to be raised by taxation for the expenses of government. Although for any cause the proportionate share for any one year may not be enforced, or even ascertained, the debt remains and it may be ascertained and enforced in any subsequent year; and the owner cannot object to any particular mode adopted by the state for ascertaining such share and enforcing payment of it unless such mode operates unequally (31–256, 17+473). The taxing power, when acting within its legitimate sphere, is one which knows no stopping place until it has accomplished the purpose for which it exists, namely, the actual enforcement and collection from every lawful object of taxation of its proportionate share of the public burdens, and, if prevented by any obstacles, it may return again and again until, the way being clear, the tax is collected (40–512, 41+465, 42+473).

2. **Statute constitutional**—The statute as it appears in G. S. 1894 § 1631 was held constitutional except as to penalties and interest (40–512, 41+465, 42+473, Affirmed, 159 U. S. 526. See 68–353, 71+265; 72–519, 75+718. Affirmed, 176 U. S. 550).

3. **Statute retroactive—Construed liberally**—62–518, 65+80.

4. **Taxes assessed but not placed on delinquent list**—Taxes for several years, regularly assessed and delinquent, but omitted from the delinquent list filed with the clerk, may be included in such list for any subsequent year (38–397, 37+949). Such omitted taxes bear interest at twelve per cent. (See § 961).

5. **Lands omitted from tax books altogether**—Lands not taxed in any year or years because it was supposed that they were not taxable may be placed on the tax lists under this statute (33–537, 24+313).

6. **Balance due on undervalued property**—The last clause of the statute authorizes the collection of the balance due on undervalued property (68–353, 364, 71+265).

7. **Effect of death of owner of personal property**—Personal property in the hands of heirs or personal representatives cannot be assessed under this statute for taxes which should have been assessed against the decedent (90–120, 95+1115).

8. **Assessment as of what time**—The auditor must assess the property not as of the time of the assessment but as of the time when it ought to have been originally placed on the tax lists. He must adopt such means for ascertaining such value as are reasonably within his reach and exercise his best judgment thereon (40–512, 41+465, 42+473).

9. **Interest**—The provision of G. S. 1894 § 1631 authorizing interest on omitted taxes from the time they would have been delinquent if placed on the lists was unconstitutional (40–512, 41+465, 42+473. See § 961).

10. **Penalties**—Penalties cannot be collected for the non-payment of taxes not placed on the tax lists and which the owner had no opportunity to pay (40–512, 41+465, 42+473; 39–380, 40+166); otherwise if he had such opportunity (75–448, 78+14. See 91–527, 99+42).

11. **Statute of limitations**—The state cannot collect omitted taxes against which the statute of limitations has run (40–512, 41+465, 42+473; 51–201, 53+629; 57–203, 58+990; 59–424, 61+458; 75–448, 78+14. See 38–397, 37+949; 39–380, 40+166; 42–181, 43+1152). The statute begins to run from the expiration of the time allowed for the filing of the delinquent list with the clerk (75–448, 78+14). Where proceedings are judicially determined to be void the right to institute new proceedings is not barred by the lapse of time between the institution of the original proceedings and the judicial determination of their invalidity (70–286, 73+164. See 79–131, 81+763). Under the present law there is no limitation on the time within which the state may enforce taxes on omitted property (See § 980).

804
05 - 61
07 - 328

804. Assessment books—Real property list—Mortgages—Meeting of assessors—The county auditor shall annually provide at the expense of the county the necessary assessment books and blanks for and to correspond with each assessment district. He shall enter in the real property assessment books complete lists of all lands subject to taxation, describing each tract and lot or part of lot and block, showing the number of acres in each tract, and stating opposite each description the name of the owner, if known to him, and, if unknown, so stating. The lists of real property becoming subject to assessment and taxation every odd-numbered year may be appended to the personal property assessment books. There shall be appended to each personal property assessment book a list of all mortgages or other real estate securities held, owned, or controlled by the residents of the town or district; showing the names of the owners or agents, alphabetically arranged, and the amount due on each instrument. The register of deeds shall make out such lists according to the records of his office, and deliver them to the county auditor on or before the last Thursday of April in each year, and the expense of such lists shall be paid by the county, on allowance by the county board. The assessment books and blanks shall be ready for delivery on the last Thursday of April in each year, and the assessors shall meet on that day at the office of the county auditor for the purpose of receiving the same, and for conference with him in reference to the performance of their duties. (1537; '03 c. 246)

See 1905 c. 86

1. **List of real property**—Real property must be listed and assessed in distinct tracts or parcels (See § 798), but assessing two tracts as one is not a ground for collateral attack on the judgment; the objection must be raised prior to judgment (81–66, 83+485. See 91–63, 97+413). There is no authority for listing and assessing undivided portions of a tract (66–425, 69+326). The real estate assessment book must show, among other things, the name of the owner, if known, and if unknown, so stated opposite each tract or lot (62–246, 64+568).

2. **Assessment books and blanks**—57–397, 59+484; 64–318, 67+64.

805. Bond and oath of assessors—Every person elected or appointed to the office of assessor, at or before the time of receiving the assessment books,

shall file with the county auditor his bond to the state, to be approved by the auditor, in the penal sum of five hundred dollars, conditioned for the diligent, faithful, and impartial performance of the duties enjoined on him by law. Failure to give bond or to take the oath within the time prescribed shall be deemed a refusal to serve. (1538)

Applicable to city assessors appointed under special charters (64-318, 67+64).

806. Deputy assessors—Any assessor who deems it necessary to enable him to complete the listing and valuation of the property of his town or district within the time prescribed, with the approbation of the county auditor, may appoint a well-qualified citizen of his town or district to act as his assistant or deputy, and may assign to him such portion of his district as he thinks proper. Each assistant so appointed, after giving bond and taking the required oath, shall perform, under the direction of the assessor, all the duties imposed upon assessors by this chapter. (1539)

807. County supervisor of assessments—When deemed best, any county board may appoint a resident voter of the county as a supervisor of assessments, who, before entering upon the duties of his office, shall give bond and make oath substantially as required of an assessor. He shall have general supervision of assessments made in the county under the direction of the board, and perform any services appertaining thereto which the board may require. He shall personally examine such tracts of real estate as the board may designate, and give an accurate topographical description of each government subdivision thereof, and estimate and set down what he believes to be the true value in money of each tract examined. He shall make report in writing to the board, and, if such report be found correct, they shall make and enter in their record book and file with the auditor an order approving it. Such report shall be used as a guide and basis for making further assessments, and the value of the lands described therein as fixed by the supervisor shall be taken by the town assessors to be the true value of all such lands as they do not personally examine. The county board of equalization shall consult such report and estimate when equalizing the real estate assessment. If the supervisor deems it necessary in order to enable him to complete his examination, he may, with the approval of the board, employ one or more assistants, who shall give like bond and make like oath. When the board believe that from any cause any lands have become more or less valuable since they were examined by the supervisor, they may order him to re-examine such lands and make report, and the proceedings thereon and the effect thereof shall be the same as hereinbefore provided. The board shall fix the compensation of the supervisor and of his assistants, payable out of the general revenue fund of the county, and may annul any such appointment at pleasure. ('95 c. 294) 09 - 807 - 217

808. Assessor's duties—The assessor shall perform his duties during May and June of each year, except in cases otherwise provided, and in the manner following: He shall actually view, when practicable, and determine the true and full value of each tract or lot of real property listed for taxation, and shall enter the value thereof, including the value of all improvements and structures thereon, opposite each description. He shall make an alphabetical list of the names of all persons in his town or district liable to an assessment of personal property, and shall call at the office or place of business or residence of each person required by this chapter to list property, and shall list his name, and shall require each person to make and deliver a correct list and statement of such property, according to the prescribed form, which shall be subscribed and sworn to by the person listing; and the assessor shall thereupon determine the value of the property in such statement, and enter the same in his assessment books, opposite the name of the person assessed, with the name and postoffice address of the person listing the property, and, if he reside in a city, the street and number, or other brief description, of his residence or place of business. If any property is listed or assessed on or after the fourth Monday of June, and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time. (1541, 1542)

1. **Assessments, when and how made**—The assessor should perform his duties during the months of May and June and it is the intention of the law that he should complete them before the fourth Monday in June when the town board meets, but he has authority to make an assessment on his own motion until he returns his books to the county auditor on or before the first Monday in July. After that he has no authority over the assessment books or to perform any official act whatever unless notified by the auditor of an omission. In that event he is required to ascertain the value of the omitted property and make the necessary alteration in the assessment books (43–328, 45+606). He must actually view each tract of land and determine its true and full value (57–397, 59+484). Real property must be described in the assessment books with reasonable certainty (See § 905; 12–395, 280). An assessment and payment under an imperfect description has been sustained as against a sale under a corrected description made by the auditor (33–366, 23+543).

2. **Listing of personal property by owner**—If the taxpayer furnishes the assessor with a list he cannot subsequently impeach it (73–70, 75+754; 56–24, 57+313; 44–12, 46+143). He cannot object that he was not notified of an assessment or called upon by the assessor or not required to make a list. It is enough that he may show at the hearing on the citation that his property was not properly assessed (56–24, 57+313; 103+731). The assessor should not accept an unverified list, but if he does, the taxpayer cannot object (73–70, 75+754). The list of the taxpayer, though verified, is not conclusive on the assessor. The latter may disregard the list and make an assessment on the best information he can obtain (73–70, 75+754; 15–295, 226; 76–423, 79+543). And he may do this any time before he returns his books to the auditor (43–328, 45+606). When a list is made out it is the duty of the lister to return it to the assessor who in turn delivers it to the auditor in whose office it is filed as a public record (73–70, 75+754). If the taxpayer makes a list he cannot object that the board of equalization follows his classification in raising an assessment (44–12, 46+143).

809. To state number of school district—When assessing personal property the assessor shall designate the number of the school district in which each person assessed is liable for tax, by writing the number of the district opposite each assessment in a column provided for that purpose in the assessment book. When the personal property of any person is assessable in several school districts, the amount in each shall be assessed separately, and the name of the owner placed opposite each amount. (1545)

810. Valuation of property—All property shall be assessed at its true and full value in money. In determining such value, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the said property would sell at auction or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money. In assessing any tract or lot of real property, the value of the land exclusive of structures and improvements shall be determined, and also the value of all structures and improvements thereon, and the aggregate value of the property, including all structures and improvements, excluding the value of crops growing upon cultivated land. In valuing real property upon which there is a mine or quarry, the same shall be valued at such price as such property, including the mine or quarry, would sell for at a fair, voluntary sale, for cash. Taxable leasehold estates shall be valued at such a price as they would bring at a fair, voluntary sale for cash. Money, whether in possession or on deposit, shall be entered in the statement at the full amount thereof. Every credit for a sum certain, payable either in money, property of any kind, labor, or services, shall be valued at the full price of the same so payable; if for a specific article, or for a specified number or quantity of any article of property, or for a certain amount of labor, or for services of any kind, it shall be valued at the current price of such property, or for such labor or services, at the place where payable. (1536)

810
103-M - 421
115-NW 645

It is a constitutional (Const. art. 9 § 3) and statutory requirement that all property shall be assessed at its true and full value in money. The term "true and full value" means the usual selling price at the time of the assessment, being the price that could be obtained therefor at private sale, and not at forced or auction sale (See § 798 subd. 5). On application for judgment a taxpayer cannot object that all the property in the district was taxed at less than its full value if his own property is assessed in the same way (69–170, 71+931). Things in action are to be listed at their true value. If a note, for example, is wholly worthless, it is not to be listed at all; if it is of some value, but less than its face, it is to be listed at what it is worth (80–277, 83+339). Assessors are

presumed to act fairly and exercise an honest judgment and their valuation is conclusive on the courts so long as they keep within the bounds of reason (47–512, 517, 50+536; 80–277, 83+339). They are presumed to have assessed property at its full cash value (85–524, 89+850). In assessing property they exercise a quasi judicial function and they are exempt from civil liability however erroneous their judgment or improper their motives (53–62, 54+938).

811. Duties of assessors in odd-numbered years as to real property—In every odd-numbered year, at the time of assessing personal property, the assessor shall also assess all real property that may have become subject to taxation since the last previous assessment, and all buildings or other structures of any kind, whether completed or in process of construction, of over one hundred dollars in value, the value of which has not been previously added to or included in the valuation of the land on which they have been erected. He shall make return thereof to the county auditor, with his return of personal property, showing the tract or lot on which each structure has been erected, and the true value added thereto by such erection. In case of the destruction by fire, flood, or otherwise, of any building or structure, over one hundred dollars in value, which has been erected previous to the last valuation of the land on which it stood, or the value of which has been added to any former valuation, the assessor shall determine, as nearly as practicable, how much less such land would sell for at private sale in consequence of such destruction, and make return thereof to the auditor. (1540)

Presumption that assessor discharged his duties (12–395, 280).

812. Assessment of exempt property—At the time of taking the assessment of real property in every even-numbered year, the assessor shall enter in a separate list each description of property exempt by law, and value and assess it in the same manner as other property; designating in each case to whom such property belongs, and for what purpose used. (1640)

813. Lessees and equitable owners—Property held under a lease for a term of three or more years, or under a contract for the purchase thereof, when the property belongs to the state, or to any religious, scientific, or benevolent society or institution, incorporated or unincorporated, or to any railroad company or other corporation whose property is not taxed in the same manner as other property, or when the property is school or other state lands, shall be considered, for all purposes of taxation, as the property of the person so holding the same. (1535)

814. Assessor may enter dwellings, etc.—Any officer authorized by law to assess property for taxation may, when necessary to the proper performance of his duties, enter any dwelling house, building, or structure, and view the same and the property therein. ('02 c. 2 s. 84)

815. Neglect by auditor or assessor—Penalty—Every county auditor and every town or district assessor who in any case refuses or knowingly neglects to perform any duty enjoined on him by this chapter, or who consents to or connives at any evasion of its provisions whereby any proceeding required by this chapter is prevented or hindered, or whereby any property required to be listed for taxation is unlawfully exempted, or entered on the tax list at less than its true value, shall, for every such neglect, refusal, consent, or connivance, forfeit and pay to the state not less than two hundred dollars nor more than one thousand dollars, to be recovered in any court of competent jurisdiction. (1641)

LISTING PERSONAL PROPERTY

816
101-M - 195

816. By whom listed—Personal property shall be listed in the manner following:

1. Every person of full age and sound mind, being a resident of this state, shall list all his moneys, credits, bonds, shares of stock of joint stock or other companies or corporations (when the property of such company or corporation is not assessed in this state), moneys loaned or invested, annuities, franchises, royalties, and other personal property.

2. He shall also list separately, and in the name of his principal, all moneys and other personal property invested, loaned, or otherwise controlled by him

as the agent or attorney, or on account of, any other person, company, or corporation, and all moneys deposited subject to his order, check, or draft, and credits due from or owing by any person, company or corporation.

3. The property of a minor child or insane person shall be listed by his guardian, or by the person having such property in charge.

4. The property of a person for whose benefit it is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator.

5. The property of a corporation whose assets are in the hands of a receiver, by such receiver.

6. The property of a body politic or corporate, by the proper agent or officer thereof.

7. The property of a firm or company, by a partner or agent thereof.

8. The property of manufacturers and others in the hands of an agent, by such agent in the name of his principal, as merchandise. (1515)

Under subd. 2 a local agent of a non-resident must list credits of his principal (35–215, 28+256; 76–155, 78+962, 1117. See § 794 note 2). Under subd. 4 a trustee must list the property of his cestui que trust (77–190, 79+829) and an executor or administrator of the property of the estate (See 63–61, 65+119). Under subd. 5 receivers must list the corporate assets (69–131, 72+60. See § 832). When there are several owners not partners each should list his own interest (39–502, 40+835). The listing of property by an agent without authority is not binding on the principal (86–301, 90+772). Property of a partnership should be listed and assessed against the individuals composing the firm as doing business under the firm name (Ops. Atty. Genl. 1898 No. 152).

817. Merchant to list—Consignee need not, when—Every merchant required to list his property shall state also the value of his property pertaining to his business as a merchant. No consignee shall be required to list for taxation any property the product of this state, nor the value of any property consigned to him from any other place for the sole purpose of being stored or forwarded, if he has no interest in such property, and derives no profit from its sale. (1528)

See note to § 794.

818. Manufacturer to list—Every manufacturer required to list his property shall state also the value of all articles purchased, received, or otherwise held for the purpose of being used in whole or in part in any process of manufacturing, combining, rectifying, or refining. Every manufacturer and person owning a manufacturing establishment of any kind shall list, as part of his manufacturer's stock, the value of all engines, machinery, tools, and implements used or designed to be used in any such process, except such fixtures as have been considered real property. (1529)

819. Lists to be verified—Every person required to list property for taxation shall make out and deliver to the assessor, upon blanks furnished by him, a verified statement of all personal property owned by him on May 1 of the current year. He shall also make separate statements in like manner of all personal property in his possession or under his control which by this chapter he is required to list for taxation as agent or attorney, guardian, parent, trustee, executor, administrator, receiver, accounting officer, partner, factor, or in any other capacity; but no person shall be required to include in his statement any share of the capital stock of any company or corporation which it is required to list and return as its capital and property for taxation in this state. (1523)

820. Personalty—Where listed—Except as otherwise in this chapter provided, personal property shall be listed and assessed in the county, town, or district where the owner, agent, or trustee resides. (1516; '02 c. 4)

As a general rule the situs of personal property for the purpose of taxation, unless otherwise provided by statute, is at the domicil or place of residence of the owner except when it has a definite and fixed situs elsewhere for purposes of business (47–552, 50+615; 39–502, 40+835; 60–522, 63+101; 82–34, 84+636; 86–301, 90+772). An exception to the general rule that personal property is to be listed where the owner resides should be somewhat strictly construed (60–522, 63+101). For many purposes the domicil of the owner is deemed the situs of his personal property. This, however, is only a fiction, from motives of convenience, and is not of universal application, but yields to the actual situs of the property when justice requires that it should.

Thus, corporeal personal property is conceded to be taxable at the place where it is actually situated. A credit, which cannot be regarded as situated in a place merely because the debtor resides there, must usually be considered as having its situs where it is owned—at the domicil of the creditor. The creditor, however, may give it a business situs elsewhere; as where he places it in the hands of an agent for collection or renewal, with a view to reloaning the money and keeping it invested as a permanent business (35–215, 28+256; 177 U. S. 133). Property held by a trustee is to be listed where the trustee resides (69–131, 72+60; 77–190, 79+829). But a receivership does not change the situs of property for purposes of taxation (69–131, 72+60. See § 832). Property in the hands of an agent for business purposes is to be listed where the agent resides (35–215, 28+256; 76–155, 78+962, 1117; 77–190, 79+829). The money of a private banker invested in the banking business is taxable in the county where the business is carried on although he resides elsewhere (Ops. Atty. Genl. 1894 No. 195). Credits secured by a real estate mortgage are ordinarily taxable in the county where the creditor resides and not where the land is situated. Mortgages are not taxable as such (Ops. Atty. Genl. 1894 No. 205).

821. Capital stock and franchises—The capital stock and franchises of corporations and persons, except as otherwise provided, shall be listed and taxed in the county, town, or district where the principal office or place of business of such corporation or person is located in this state; if there be no such office or place of business, then at the place in this state where such corporation or person transacts business. (1516; '02 c. 4)

Except as otherwise provided the personal property of corporations having a principal office in this state is taxable where such office is situated (60–522, 63+101). The principal office or place of business of a corporation is the place where the governing power of the corporation is exercised, where the plans for the conduct of its business operations are formed and the manner of their execution directed, where the meetings of its directors and stockholders are held, its officers elected and its corporate seal kept (49–450, 52+44). The statute refers only to "capital stock and franchises," but this is deemed to include all forms of personal property (Ops. Atty. Genl. 1894 No. 204). Where an elevator company with its principal place of business in Hennepin county had an elevator in Clay county it was held, prior to 1897 c. 220, that wheat in such elevator was properly taxed in Hennepin county although it was temporarily "stored" in Clay county, but not held for sale there (60–522, 63+101).

822. Merchants and manufacturers—The personal property pertaining to the business of a merchant or of a manufacturer shall be listed in the town or district where his business is carried on: Provided, that logs and timber cut from lands within, and designed to be transported out of, this state shall be assessed and taxed in the taxing district where found on May 1; and all taxes thereon shall be paid into the different funds of the county of the taxing district and of the state as other taxes are paid, and such taxes shall be a lien upon such logs and timber, which shall not be removed beyond the borders of this state until all such taxes are paid in full. (1516; '02 c. 4) 822 101-M - 191

The personal property pertaining to the business of a merchant or manufacturer must be listed in the town or district where his business is carried on (47–552, 50+615; 72–409, 75+723; 86–301, 90+772). The statute defines a merchant (§ 798; 60–522, 63+101) and a manufacturer (§ 798; 64–556, 67+1144), within the meaning of this rule. The place where the business of a merchant is carried on is the place where he keeps his stock for sale and not where he purchases it. The mere fact that goods are temporarily stored where they are bought is immaterial if they are not kept there for sale (60–522, 63+101). Under the statute a merchant or manufacturer having distinct places of business in different counties of the state with property pertaining thereto located in each, may be taxed in each county in which such business is so conducted (64–556, 67+1144; 47–552, 50+615; 82–34, 84+636). The statute applies to non-residents as well as to residents and is intended to secure definiteness and certainty with respect to the place of taxation of personal property and is for the benefit of state and property owner alike (86–301, 90+772).

823. Farm property of non-resident—When the owner of live stock or other personal property connected with a farm does not reside thereon, the same shall be listed and assessed in the town or district where the farm is situated: Provided that, if the farm is situated in several towns or districts, it shall be listed and assessed in the town or district in which the principal place of business of such farm is located. (1520)

824. Grain in elevators—Grain in an elevator on a railroad right of way or elsewhere shall be listed and assessed in the assessment district where the elevator is situated. ('97 c. 220) 824 09 - 466 101-M - 195

Held otherwise prior to 1897 c. 220 (60–522, 63+101).

825. Elevators, etc., on railroad—All elevators and warehouses, with the machinery and fixtures therein, situated upon the land of any railroad company, which are not in good faith owned, operated, and exclusively controlled by such company, shall be listed and assessed as personal property in the town or district where situated, in the name of the owner, if known, and, if not known, as "owner unknown." ('76 c. 4)

826. Express companies, etc.—The personal property of express, stage, and transportation companies, except as otherwise provided by law, shall be listed and assessed in the county, town, or district where the same is usually kept. (1517)

827. Steamboats, etc.—All persons, companies, and corporations in this state owning steamboats, sailing vessels, wharfboats, barges, and other water craft not employed in the navigation of international waters, shall list the same for assessment in the county, town, or district in which the same may belong, or be enrolled, registered, or licensed, or kept when not enrolled, registered, or licensed. (1517)

828. Gas and water companies—The personal property of gas and water companies shall be listed and assessed in the town or district where the principal works are located. (1518)

76-96, 78+1032.

829. Street railroad companies, etc.—The personal property of street railroad, plank road, gravel road, turnpike, or bridge companies, shall be listed and assessed in the county, town, or district where the principal place of business is located. (1519)

31-354, 17+954; 76-96, 78+1032.

830
05 - 288
97-M - 11
106-NW 93

830. Estates of decedents—The personal property of the estate of a deceased person shall be listed and assessed at the place of listing at the time of his death.

69-131, 72+60.

831. Persons under guardianship—The personal property of a minor under guardianship shall be listed and assessed where the guardian resides; and of every other person under guardianship, where the ward resides.

832. Assignees and receivers—Personal property in the hands of an assignee or receiver shall be listed and assessed at the place of listing before his appointment.

69-131, 72+60.

833. Property moved between May and July—The owner of personal property, removing from one county, town, or district to another between May 1 and July 1, shall be assessed in either in which he is first called upon by the assessor. A person moving into this state from another state between said dates shall list the property owned by him on May 1 of such year in the county, town, or district in which he resides, unless he shall make it appear to the assessor that he is held for tax of the current year on the property in another state. (1521)

834. Where listed in case of doubt—In case of doubt as to the proper place of listing personal property, or where it cannot be listed as in this chapter provided, if between places in the same county, the place for listing and assessing shall be determined by the county board of equalization; and, if between different counties, or places in different counties, by the state auditor; and, when determined in either case, shall be as binding as if fixed hereby. (1522)

1. **Appeal to county board**—No notice of application to the board is required. Its decision is final, or at least not subject to collateral attack (82-34, 84+636).

2. **Appeal to state auditor**—If a controversy arises as to the proper place of listing and assessing personal property as between different counties or places in different counties an appeal lies to the state auditor (47-552, 50+615; 60-522, 63+101). This remedy is exclusive and if the taxpayer fails to resort to it he cannot maintain an action for the recovery of taxes paid (47-552, 50+615; 66-304, 69+25; 86-301, 90+772; 60-522, 63+101), or set up the defence by answer on application for judgment (77-190, 79+829), or obtain an injunction (72-409, 75+723; 86-301, 90+772). The decision of the auditor is not subject to collateral attack (82-34, 84+636; 86-301, 90+772), but it may be reviewed

by the supreme court on a writ of certiorari (86-301, 90+772). The application to the auditor must be made on notice to the interested county officials (66-304, 69+25). The taxpayer must act promptly (77-190, 79+829).

835. Assessor to value—Items of list—The assessor shall determine and fix the true and full value of all items of personal property included in such statement, and enter the same opposite such items, respectively, so that, when completed, such statement shall truly and distinctly set forth: 09 835 - - 266

1. The number of horses, mules, and asses one year old, the number two years old, and the number three years old and over, and the value thereof.
2. The number of cattle one year old, the number two years old, the number of cows, the number of working oxen, and the number of all other cattle three years old and over, and the value thereof.
3. The number of sheep of all ages, and the value thereof.
4. The number of hogs of all ages, and the value thereof.
5. The number of wagons, carriages, bicycles, sleighs, or other vehicles, of whatever kind, and the value thereof.
6. The number of sewing and knitting machines, and the value thereof.
7. The number of watches and clocks, and the value thereof.
8. The number of melodeons and organs, and the value thereof.
9. The number of pianofortes, and the value thereof.
10. The value of household and office furniture.
11. The value of agricultural tools, implements, and machinery.
12. The value of gold and silver plate and plated ware.
13. The value of diamonds and jewelry.
14. The value and description of every annuity, royalty, and patent right.
15. The value of every steamboat, sailing vessel, wharfboat, barge, or other water craft.
16. The value of goods, merchandise, and other personal property pertaining to the business of the person listing as a merchant.
17. The value of materials and manufactured articles which such person is required to list as a manufacturer.
18. The value of manufacturers' tools, implements, and machinery, including engines and boilers.
19. The amount of moneys of banks (other than those whose capital is represented by shares of stock), bankers, brokers, or stockjobbers.
20. The amount of credits of banks (other than those whose capital is represented by shares of stock), bankers, brokers, or stockjobbers.
21. The amount of moneys other than of banks, bankers, brokers, or stockjobbers.
22. The amount of credits other than of banks, bankers, brokers, or stockjobbers.
23. The amount and value of bonds and stocks other than bank stock.
24. The amount and value of shares of bank stock.
25. The amount and value of shares of capital stock of companies and associations not incorporated under the laws of this state.
26. The value of stock and furniture of saloons and eating houses, including billiard tables, bagatelle tables, or other similar tables.
27. The value of all elevators, warehouses, and improvements on land the title of which is vested in any railroad company.
28. The value of all improvements on land the fee of which is still vested in the United States.
29. The number of dogs over six months of age, and the value thereof.
30. The value of all other articles of personal property not included in the preceding items. (1524; '95 c. 76)

All materials and manufactured articles in the hands of the manufacturer such as the product of lumber and flour mills, woolen and knitting mills and boot and shoe factories, and the like, should be listed under subd. 17. The same products in the hands of the wholesale or retail dealers, other than the manufacturer, should be listed as goods and merchandise under subd. 16. The stock of all incorporated banks, whether state or national, is to be listed under subd. 24. The bonds and stocks of private banks and brokers is to be listed under subd. 23, and their money under subd. 19 (Instructions, State Auditor, Oct. 1, 1903). Credits of non-residents held by resi-

dent agents for permanent investment in this state are to be listed under subd. 22 (35–215, 28+256; 80–277, 83+339). Elevators on the right of way of a railroad company but owned by others are to be listed under subd. 27 (69–131, 72+60, overruling 60–522, 63+101. See 38–531, 38+619). A debt due on a contract for the sale of land is a credit to be listed under subd. 22 (39–502, 40+835). When a corporation is required to list its stock the individual holder need not list it under subd. 23 (See § 819). Stock in national banks out of this state need not be listed under subd. 24 (See § 840). When in doubt as to the proper item under which to list property it is customary for the assessor to list it under subd. 30 (See 44–12, 46+143; 76–96, 78+1032). It has been suggested, obiter, that subd. 30 is adequate for the taxation of foreign corporations "as a system" (104+567). A mistake of the assessor in placing property under the wrong subdivision is immaterial in the absence of a showing of prejudice (See 44–12, 46+143; 76–96, 78+1032. Contra under 1860 c. 1 §§ 18–21, 15–412, 333). It is improper to list wheat under "household goods" (15–412, 333). An owner listing his property cannot object that the board of equalization follows his classification in raising an assessment (44–12, 46+143). An error of the auditor in applying a raise ordered by the board is immaterial in the absence of a showing of prejudice (76–96, 78+1032). Subd. 14 cited (104+567).

836. Deductions for credits—A person required to list credits for himself or any other person, company, or corporation may deduct from the gross amount thereof the amount of all bona fide debts from himself or from such other person, company, or corporation; but no obligation given to any mutual insurance company, and no unpaid subscription to a religious, scientific, or charitable institution or society, and no subscription to or instalment payable on the capital stock of any company, incorporated or unincorporated, shall be considered a debt, within the meaning of this section. No such deduction shall be allowed unless the person claiming the same at the time of listing the credits make affidavit, which shall state the names and residences of the persons to whom the debts on account of which the deduction is claimed are owing; that the debts are bona fide debts, founded on actual consideration, believed when received to be adequate, and are not obligations given to a mutual insurance company, or subscriptions to a religious, scientific, or charitable institution, or subscriptions to or instalments payable on the capital stock of any incorporated or unincorporated company. Any person knowingly making a false statement in any such affidavit shall be liable, in addition to the penalties for perjury, to all damages sustained by the state, county, or other municipality, to be recovered by action in the name of the state. This section shall not apply to any bank, banker, or company or corporation exercising banking powers or privileges, or authorize deductions from any other item than credits: Provided, that grain to the amount of three hundred dollars in value held for sale by the producer may be included with credits. (1526, 1527)

Held constitutional (64–292, 67+68; 80–277, 83+339; 103+731). A claim for deductions can only be made when listing credits with the assessor (77–190, 79+829; 80–277, 83+339; 73–70, 75+754. See 103+731). The claim should be made in the exact manner and upon the production of the precise evidence required by the statute (77–190, 79+829). A corporation is bound by the omission of its officer to claim a deduction at the time of making out the list of the corporation (73–70, 75+754). When several persons own a credit in common each is entitled to have his indebtedness deducted from his share (39–502, 40+835). The statute is not applicable to banks (Ops. Atty. Genl. 1900 No. 5).

837. Lists may be destroyed—The county auditor may destroy any list or statement of personal property on file in his office after the expiration of six years from the date when the taxes levied thereon have been paid or become delinquent: Provided that, if any proceeding has been begun to enforce payment of such taxes, such list or statement shall not be destroyed before the expiration of one year from the return of an execution unsatisfied, or the termination of the proceeding. ('01 c. 149)

STATEMENTS BY CORPORATIONS, ETC.

838
103-M - 423

838. Corporations, companies, and associations generally—The president, secretary, or principal accounting officer of every company and association, incorporated or unincorporated, except railroad, insurance, telegraph, telephone, express, freight line, and sleeping car companies, and banking corpora-

tions whose taxation is specifically provided for in this chapter, when listing personal property, shall also make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

1. The name and location of the company or association.
2. The amount of capital stock authorized, and the number of shares into which it is divided.
3. The amount of capital stock paid up.
4. The market value, or, if they have no market value, then the actual value, of the shares of stock.
5. The value of its real property, if any.
6. The value of its personal property.
7. The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

The aggregate amount of the fifth and sixth items shall be deducted from the total amount of the fourth item, and the remainder, if any, shall be listed as "bonds or stocks," under § 835, subd. 23. The real and personal property of each company or association shall be listed and assessed the same as that of private persons. If the proper officer shall fail or refuse to make such statement, the assessor shall make such statement from the best information he can obtain. Mortgages of building associations, which are represented in their stock and assessed as stock, shall not be assessed as mortgages. They shall list their real estate and all personal property as provided in this section. (1530)

The verified statement required by this section is in addition to the verified list required by § 835. The method of taxing corporations and stock companies in this state, except when they are taxed under special laws on their gross earnings, is to list and assess all their tangible property, real and personal, the same as the like property of other persons and to list and assess their capital stock at its actual or market value less the value of its tangible real and personal property otherwise specifically listed and assessed. Sections 835 and 838 are to be construed together (76–96, 78+1032. See 104+567, 571). No part of the capital stock listed under § 838 is taxable as such where the value of the company's real property, or personal property, or both, exceeds the market value of its capital stock (76–423, 79+543). The assessor may refuse to accept an unverified statement but if he does the company cannot object. When the statement is made out it is the duty of the officer of the company to return it to the assessor who in turn delivers it to the auditor in whose office it is kept as a public record (73–70, 75+754). The statements returned by corporations are not conclusive on the assessor (76–423, 79+543. See 15–295, 226). The latter part of § 838 relating to mortgages refers to those held by building associations only (76–423, 79+543). Such mortgages are taxable if the association is not taxed (45–154, 47+540. See Ops. Atty. Genl. 1900, Nos. 5, 14). Building and loan associations are to be assessed under § 838 (Ops. Atty. Genl. 1900, No. 5), the special laws for their assessment having been declared unconstitutional (63–80, 65+138). The provision of G. S. 1894 § 1530 for deducting the total amount of the indebtedness of a corporation or association from the value of its stock was unconstitutional (76–96, 78+1032). Inapplicable to railroad companies (103+731).

839. Private bankers, brokers, and banks without stock—The accounting officer of every bank whose capital is not represented by shares of stock, and every private banker, broker, and stockjobber, when listing personal property, shall also make out and deliver to the assessor a sworn statement showing:

1. The amount of money on hand or in transit.
2. The amount of funds in the hands of other banks, brokers, or others subject to draft.
3. The amount of checks or cash items not included in either of the preceding items.
4. The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid.
5. The amount of bonds and stock of every kind (except United States bonds), and shares of capital stock of joint stock or other companies or corporations held as an investment, or in any way representing assets.

6. All other property appertaining to said business, other than real estate, which shall be listed and assessed as other real estate under this chapter.

7. The amount of all deposits made with them by other persons.

8. The amount of all accounts payable, other than current deposit accounts.

The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third, and fourth items, and the remainder, if any, shall be listed as money, under § 835, subd. 19. The amount of the fifth item shall be listed as bonds and stock under said section, and the sixth item shall be listed the same as other similar personal property is listed under this chapter, except that, in case of savings banks organized under the general laws of this state, the amount of the seventh and eighth items shall be deducted from the aggregate amount of the first, second, third, fourth, fifth, and sixth items, and the remainder, if any, shall be listed as credits, according to the provisions of § 835. (1531)

The provisions of this section are so far exclusive that other sections are not applicable unless made so by express reference or necessary implication (23–280). The money invested in a private bank is to be taxed where the bank is situated although the owner lives in another county (Ops. Atty. Genl. 1894, No. 195). Deposits are assessable against the depositors, not against the bank (Ops. Atty. Genl. 1900, No. 5).

840. Incorporated banks—The stockholders of every bank or mortgage loan company in this state, organized under the laws of this state or of the United States, shall be assessed and taxed on the value of their shares of stock therein, in the county, town, district, city, or village where such bank or mortgage loan company is located, whether such stockholders reside in such place or not, and shall be assessed in the name of the bank or mortgage loan company. The cashier or other officer of the bank or mortgage loan company shall list all shares of stock of the bank or mortgage loan company for assessment, in the same manner as the general property of the bank is listed. To aid the assessor in determining the value of such shares of stock, the accounting officer of every such bank shall furnish a sworn statement to the assessor, showing the amount and number of the shares of capital stock, the amount of its surplus or reserve fund, and the amount of its legally authorized investments in real estate, which shall be assessed and taxed as other real estate under this chapter. The assessor shall deduct the amount of investments in real estate from the aggregate amount of such capital and surplus fund, and the remainder shall be taken as a basis for the valuation of such shares in the hands of the stockholders, subject to the provisions of law requiring all property to be assessed at its true and full value. The shares of capital stock of national banks not located in this state, held in this state, shall not be required to be listed under this chapter. (1532)

See 1905 c. 60

In determining the value of shares the assessor should always take into consideration undivided profits (Ops. Atty. Genl. 1894, No. 196). The owner of shares in a bank is entitled to the statutory exemption of one hundred dollars (Ops. Atty. Genl. 1898, No. 138). Deposits are assessable against the depositors, not against the bank, and it is immaterial that the money deposited has been loaned by the bank (Ops. Atty. Genl. 1900 Nos. 4, 5). The real and personal property of banks is to be listed and assessed under § 835 precisely as the like property of individuals (Ops. Atty. Genl. 1894, No. 199: 1900, No. 4). A bank is not entitled to deductions from credits (Ops. Atty. Genl. 1900, No. 5). The state can only tax the shares of stock in a national bank in accordance with the act of Congress permitting it (11–500, 378). Under 1874 c. 1 § 30 no provision was made for deducting the value of real estate held by a bank as under the present law. But it was held that such property was not taxable as such. The provisions of this section are so far exclusive that other sections are not applicable unless made so by express reference or necessary implication (23–280).

841. Banks—List of stockholders—In every bank and banking office there shall be kept at all times a full and correct list of the names and residences of the stockholders or owners or parties interested therein, showing the number of shares, and the amount held, owned, or controlled by each party in interest, which list shall be subject to the inspection of the officers authorized to assess property for taxation, and the accounting officer of each bank or banking institution shall furnish to the assessor a duplicate copy of such list,

verified by oath, which shall be returned and filed with the county auditor. (1533)

842. Taxes on bank stock a lien—To secure the payment of taxes on mortgage loan company, bank stock or banking capital, every bank or mortgage loan company shall retain so much of any dividends belonging to such stockholder or owners as shall be necessary to pay any taxes levied upon their shares of stock or interest, respectively, and such bank or mortgage loan company, or officers thereof, shall pay the taxes and shall be authorized to charge payment of such taxes to the expense account of such bank. (1534)

See 1905 c. 60

DUTIES OF ASSESSORS ON FAILURE TO LIST

843. Examination under oath—Whenever the assessor shall be of opinion that the person listing property for himself, or for any other person, company, or corporation, has not made a full, fair, and complete list thereof, he may examine such person under oath in regard to the amount of the property he is required to list; and, if such person shall refuse to make full discovery under oath, the assessor may list the property of such person or his principal according to his best judgment and information. (1525)

844. Owner absent or sick—If any person required to list property be sick or absent when the assessor calls for a list thereof, the assessor shall leave at the office or usual place of residence or business of such person a written or printed notice requiring such person to make out and leave at a place, and on or before a day named therein, the statement or list required by this chapter. The date of leaving such notice, and the name of the person so required to list, shall be noted by the assessor in his assessment book. (1543)

845. Owner refusing to list—Oaths—When any person whose duty it is to list shall refuse or neglect to list personal property when called on by the assessor, or to take and subscribe the required oath in regard to the truth of his statement, or any part thereof, the assessor shall enter opposite the name of such person in an appropriate column, the words "Refused to list," or "Refused to swear," as the case may be; and when any person whose duty it is to list is absent, or unable from sickness to list, the assessor shall enter opposite the name of such person, in an appropriate column, the word "Absent" or "Sick." The assessor may administer oaths to all persons who by this chapter are required to swear, or whom he may require to testify, and he may examine upon oath any person whom he may suppose to have knowledge of the amount or value of the personal property of any person refusing to list or to verify his list of personal property. (1544)

See note to § 846.

846. Failure to obtain list—In case of failure to obtain a statement of personal property, the assessor shall ascertain the amount and value of such property, and assess the same at such amount as he believes to be the true value thereof. When requested, he shall sign and deliver to the person assessed a copy of the statement showing the valuation of the property so listed. (1546)

It is not a condition precedent to the right of the assessor to list that he first call on the owner and require him to list (56–24, 57+313). The statute embraces all cases of refusal, neglect or omission, fraudulent or otherwise. The authority of the assessor to list is not affected by his failure to enter on his return "refused to list," "refused to swear," or "absent," or "sick" (15–295, 226; 39–502, 40+835). In listing property the assessor must describe it with reasonable certainty (15–295, 226). He may assume that the interests of tenants in common are equal (39–502, 40+835).

REVIEW AND CORRECTION OF ASSESSMENTS

847. Board of review—Duties—Complaints—The town board of each town, the assessor, clerk, and president of each village, and the assessor clerk, and mayor of each city, except in cities whose charters provide for a board of equalization, and except as provided in § 848, shall be a board of review. Such board shall meet on the fourth Monday of June at the office of the clerk to review the assessment of property in such town or district, and they shall immediately proceed to examine and see that all taxable property

07 847 248

in their town or district has been properly placed upon the list, and duly valued by the assessor. In case any property, real or personal, shall have been omitted, said board shall place it upon the list with its true value, and they shall correct the assessment so that each tract or lot of real property, and each article, parcel, or class of personal property, shall be entered on the assessment list at its true and full value; but no assessment of the property of any person shall be raised until he has been duly notified of the intent of the board so to do. On the application of any person feeling aggrieved, they shall review the assessment, and correct it as shall appear to them just. Any two of said officers may act at such meeting, and may adjourn from day to day until they shall finish the hearing of all cases presented. The assessor shall attend, with his assessment books and papers, and note all changes and additions made by the board, and correct his work accordingly. All complaints of individuals, residents of the town or district, in reference to the assessment of personal property, shall be heard and decided by the town board; but the complaints of non-residents in reference to the assessment of any property, real or personal, and of others in reference to any assessment made after the meeting of such board, shall be heard and determined by the county board of equalization. (1547, 1548)

It is the intention of the law that the assessor should complete his work before the meeting of the board and submit it to their review. If he has omitted property either real or personal, it is the duty of the board to list and assess it (43–328, 45+606). The jurisdiction of the board is not limited to property within their district but extends to all the personal property of persons residing therein wherever it may be situated, and they do not lose jurisdiction by listing and assessing property of a resident which he has given a situs elsewhere for purposes of business. Their action in such cases may be erroneous but it is not void and it is valid until set aside in an appropriate proceeding. They are required to examine the assessor's list returned to them and see that all property taxable in their town or district has been properly placed on the list and duly valued by the assessor; and they must themselves list and assess any property omitted by the assessor and raise or lower his assessments to the end of securing uniform and equal assessment of all property within the district (47–552, 50+615). But they cannot raise the assessment of any person's property without notice to him. The limitation of the time within which the board shall act is merely directory. If, in raising an assessment, the board follows the classification in the list made by the owner he cannot object (44–12, 46+143). Every taxpayer has a right to appear before the board for the purpose not only of correcting errors in the assessment of his own property, but also of correcting omissions of the property of others from the tax lists or its undervaluation (71–283, 73+970). The board has no jurisdiction to determine a controversy as to which of two places in the county is the proper one in which to list property (82–34, 84+636), and a writ of certiorari will not lie to review the action of a board in refusing an application for the abatement of an assessment where the essence of the controversy is in which of two towns in the county property should be listed (84–374, 87+925).

848. Board of review in certain cities—In cities of the fourth class (except those whose charters provide for a board of equalization), which adopt the provisions of this section, the mayor, clerk, and aldermen shall be a board of review. Such board shall meet on the fourth Monday in June at the rooms where meetings of the common council are usually held, and shall perform the same duties and have the same powers as the board of review provided for in § 847. A majority of said officers shall constitute a quorum. The mayor and aldermen shall receive as compensation for such services three dollars for each day of actual service, for not more than three days in each year. Any city of the class mentioned may avail itself of the provisions of this section by resolution of its council accepting the provisions hereof, which resolution shall be adopted by a four-fifths vote of all the members of such council, and approved by the mayor. ('99 c. 116)

849. Notice of meeting—The assessor shall give at least ten days' posted notice of the time and place of the meeting of the board of review; but the failure to give such notice or hold such meeting shall not vitiate any assessment, except as to the excess over the true and full value of the property. (1548)

If a party appears before the board in response to a notice he cannot subsequently object to its sufficiency (44–12, 46+143).

850 07 - 87

850. Assessor's return to auditor—The assessor shall foot each column in his assessment books, and make in each book, under proper headings, a tabular statement showing the footings of the several columns upon each page. He shall also foot the total amounts of the several columns under the respective headings. On or before the first Monday of July he shall return to the county auditor his assessment books, and deliver therewith the lists and statements of all persons assessed, all of which shall be preserved in the office of the auditor. Such return shall be verified by his affidavit, substantially in the following form:

State of Minnesota, } ss.
County of..... }

I, ..., assessor of ....., do solemnly swear that the book to which this is attached contains a correct and full list of all the real property (or personal property, as the case may be) subject to taxation in ....., so far as I have been able to ascertain the same, and that the assessed value set down in the proper column, opposite the several kinds and descriptions of property, is in each case the true and full value of such property, to the best of my knowledge and belief (where the assessment has been corrected by the town board, "except as corrected by the town board"), and that the footings of the several columns in said book, and the tabular statement returned herewith, are correct, as I verily believe.

.....,
Assessor.

Subscribed and sworn to before me this ..... day of ....., 19....

.....,
Auditor of ..... County.
(1549)

On or before the first Monday in July the assessor is required to make his return to the county auditor (73–70, 75+754) and when he does so the property on his lists is "assessed" although the taxes are not (57–397, 59+484; 87–489, 92+336), and his authority terminates except to make corrections under the direction of the county auditor (43–328, 45+606. See 44–12, 46+143). The return made by the assessor is his official return of the value of the property listed (14–252, 185). The presumption is that the return is correct. It is an official record that can only be changed by authority of law (15–295, 226), and is prima facie evidence of the validity of the assessment (15–295, 226. See 12–395, 280). Failure of auditor to sign jurat to return not fatal. Sufficiency of assessor's list considered (94–397, 103+11).

851. List by person sick or absent—If any person required to list property for taxation is prevented by sickness or absence from giving to the assessor such statement, such person or his agent having charge of such property may, at any time before the extension of taxes thereon by the county auditor, make and deliver a statement of the same as required by this chapter to the auditor, who shall make an entry thereof, and correct the corresponding items in the return made by the assessor, as the case may require; but no such statement shall be received from any person who refused or neglected to make oath to his statement when required by the assessor; nor from any person, unless he makes and files therewith an affidavit that he was absent from his town or district without design to avoid the listing of his property, or was prevented by sickness from giving to the assessor the required statement when called on for that purpose. (1550)

852. Correction of books—Omitted property—The county auditor shall carefully examine the assessment books returned to him, and, if any property has been omitted, he shall enter the same upon the proper list, and forthwith notify the assessor making such omission, who shall immediately ascertain the value thereof and correct his original return. In case of the inability or neglect of the assessor to perform this duty, the auditor shall ascertain the value of such property and make the necessary corrections. ('02 c. 2 s. 81)

It is to be observed that this section has reference only to omitted property (See 43–328, 45+606; 77–190, 79+829), but under § 853 the auditor has authority to raise or lower the assessments of the assessor under certain conditions. Any taxpayer may compel the auditor to enter upon the assessment books for taxation property which has been unlawfully omitted (62–183, 64+379; 71–283, 73+970). The auditor cannot

assess omitted property by merely placing it on the tax list, but must enter it in the assessment book or roll in his office with its value and the name of the owner (87–489, 92+336). The auditor has no authority to cancel taxes assessed on personal property (Ops. Atty. Genl. 1894, No. 221). The authority of the auditor to correct the assessment lists continues until final settlement with the treasurer (Ops. Atty. Genl. 1894, No. 189). The presumption is that the auditor has discharged his duties under this section (12–395, 280). Where the assessor and the auditor made an assessment of the same land under different descriptions a payment by the owner under the assessment of the assessor was held a defence to a sale under the assessment of the auditor (33–366, 23+543).

853
103-M - 424

853. Correcting false lists and returns—If the auditor has reason to believe or is informed that any person has given to the assessor a false statement of his personal property, or that the assessor has not returned the full amount of all property required to be listed in his town or district, or has omitted or made an erroneous return of any property subject to taxation, he shall proceed, at any time before the final settlement with the county treasurer, to correct the return of the assessor, and to charge the owners of such property on the tax lists with the proper amount of taxes. For such purpose he may issue compulsory process, and require the attendance of any person whom he may suppose to have a knowledge of the property or its value, and may examine such person on oath in relation to such statement or return. In all such cases, before making the entry on the tax list, he shall notify the person required to list, that he may have an opportunity to show that his statement or the return of the assessor is correct; and he shall file in his office a statement of the facts or evidence upon which he made such corrections. In no case shall the auditor reduce the amount returned by the assessor without the written consent of the state auditor, on a statement of the case submitted by the county auditor or the party aggrieved. (1630)

See note to § 852.

854
07 - 408

854. Property omitted or undervalued—Governor to appoint examiner—Whenever it shall be made to appear to the governor by verified complaint, or by the finding of a court or of the legislature, or any committee thereof, that any considerable amount of property in any county has been improperly omitted from the tax lists and assessment roll of such county for any year, or, if assessed, that the same has been grossly undervalued by the assessor or other county officials, whether or not such assessment has been reviewed by the county board of equalization, he shall appoint, in writing, some competent citizen of the state, not a resident of such county, as examiner, to ascertain the character, location, value, and ownership of the real and personal property in such county so omitted or undervalued, who, before entering upon his duties, shall take an oath faithfully to perform such duties. Such person shall forthwith examine the subject, and prepare a report in duplicate, attaching thereto a list showing the character, location, ownership, and valuation of all such property, with the year or years for which the same, or any part thereof, has been omitted or undervalued. Such list shall also show opposite each piece or parcel of land or item of personal property undervalued the amount of the assessment, and the actual and true value thereof at the time the same should have been assessed, and the difference between the assessed and actual value thereof as so found. On or before January 1 in the year in which any such assessment is to be made, he shall file one duplicate report and list with the auditor of such county, and the other with the state auditor. Such lists shall be verified substantially as follows:

I, ..., do solemnly swear that I have personally examined the real and personal property in the foregoing list described, and that the same is a correct and full list of all the real and personal property subject to taxation in said county, and omitted from taxation for the years therein stated, or, if assessed for said years, grossly undervalued, so far as I have been able to ascertain the same, and that the character, location, ownership, and valuation thereof as set down in the proper column, opposite the several kinds and pieces of property, are just and true, to the best of my knowledge and belief. (1632)

Held constitutional (68–353, 71+265; 72–519, 75+718. Affirmed, 176 U. S. 550). The attorney general has advised the governor to restrict the application of the statute to

extraordinary cases and not to apply it to an old and thickly settled county. It was designed to correct the assessment of pine lands in the northern part of the state (Ops. Atty. Genl. 1894, No. 187).

855
07 - 408

855. Examiner may appoint deputies—Such examiner, when necessary to enable him properly to perform his duties within the time prescribed by law, with the approval of the governor, may appoint one or more well-qualified citizens of the state as deputies to assist him in the performance of his duties. Such deputies shall perform such duties as shall be assigned them by the examiner, first taking an oath faithfully to perform such duties. (1635)

856
07 - 408

856. Compensation, how paid—Such examiner shall receive for his services three dollars, and each of his deputies two dollars, for every day in which they are necessarily employed in the performance of their duties, and their necessary expenses. Upon the approval of the governor, such compensation and expenses shall be paid out of the general fund in the state treasury. The respective counties shall reimburse the state therefor two years after the same are incurred. The state auditor shall notify the auditor of such county of the amount thereof, whereupon such county auditor shall levy a tax on the taxable property in his county sufficient to pay the same, and, when collected, the proceeds thereof shall be forthwith paid into the state treasury in the same manner as other state taxes. (1636, 1637)

857
07 - 408

857. Taxes to be lien, when—The taxes upon all property named in such examiner's list, and found to have been omitted from or undervalued in the tax list for any year, shall be a lien upon all the real property owned in such county by any person named in such duplicate list as the owner thereof, from the time when such list shall be filed with the county auditor until the same are paid, and may be satisfied out of the sale of any property in such county owned by any person so assessed. (1634)

858
07 - 408

858. Duties of auditor and assessors—Upon the receipt of any such examiner's list, the county auditor shall enter the property therein described in the real and personal property assessment books, and, upon receiving such books from the auditor, the assessor shall assess the property so entered at its true value as shown by such list, a copy of which shall be furnished to him with the assessment books of his district. He shall also make the necessary corrections in any assessment theretofore made so as to make the same correspond with the true value of the property as returned in such list, and correct his returns accordingly. The auditor shall proceed thereon as provided by §§ 803, 853. Whenever the auditor shall find from any such list that any property has been omitted from or undervalued in the lists of any prior year or years, he shall forthwith enter the same on the assessment and tax books for the year or years in which the same was omitted or undervalued, and shall assess such omitted and undervalued property at the valuation and amounts so shown, and extend the arrearages of taxes on such property accruing against the same upon the tax list for the current year, and collect the same as other taxes. Any assessor or county auditor who shall neglect to perform any duty required by this section shall be guilty of a misdemeanor, and, in addition to the usual penalty, shall be liable on his official bond for all taxes on any and all property named in such examiner's list. (1633, 1638)

EQUALIZATION OF ASSESSMENTS

859
07 - 248

859. County board of equalization—The county commissioners, or a majority of them, with the county auditor, or, if he cannot be present, the deputy county auditor, or, if there be no such deputy, the clerk of the district court, shall form a board for the equalization of the assessment of the property of the county. The board shall meet annually, on the third Monday in July, at the office of the auditor; and, each member having taken an oath fairly and impartially to perform his duties as such, they shall examine and compare the returns of the assessment of property of the several towns or districts, and equalize the same, so that each tract or lot of real property, and each article or class of personal property, shall be entered on the assessment list at its true and full value, subject to the following rules:

1. *Real property—When to be raised*—They shall raise the valuation of each tract or lot of real property which, in their opinion, is returned below its true and full value, to such sum as they believe to be the true and full value thereof; first giving notice of their intention so to do to the person in whose name it is assessed, if a resident of the county, which notice shall fix a time and place when and where a hearing will be had.

2. *When to be reduced*—They shall reduce the valuation of each tract or lot which, in their opinion, is returned above its true and full value, to such sum as they believe to be the true and full value thereof.

3. *Personal property—When to be raised*—They shall raise the valuation of each class of personal property which, in their opinion, is returned below its true and full value, to such sum as they believe to be the true and full value thereof; and they shall raise the aggregate value of the personal property of individuals, firms, or corporations, whenever they believe that such aggregate valuation, as returned, is less than the true value of the taxable personal property possessed by such individuals, firms, or corporations, to such sum as they believe was the true and full value thereof; first giving notice to such persons of their intention so to do, which notice shall fix a time and place when and where a hearing will be had.

859(4)
07 - 460

4. *When to be reduced*—They shall, upon complaint of any party aggrieved, being a non-resident of the town or district in which his property is assessed, reduce the valuation of each class of personal property enumerated in § 835, which, in their opinion, is returned above its true and full value, to such sum as they believe to be the true and full value thereof; and, upon like complaint, they shall reduce the aggregate valuation of the personal property of such individual, who, in their opinion, has been assessed at too large a sum, to such sum as they believe was the true and full value of his personal property.

5. *Aggregate not to be reduced*—They shall not reduce the aggregate value of the real property or the aggregate value of the personal property of their county below the aggregate value thereof as returned by the assessors, with the additions made thereto by the auditor as in this chapter hereinbefore required; but they may raise the aggregate valuation of such real property, and of each class of personal property of said county, or of any town or district thereof, whenever they believe the same is below the true and full value of said property, or class of property, to such aggregate amount as they believe to be the true and full value thereof. (1552; '01 c. 298)

The authority of the board is purely statutory and any material departure from the statutory requirements vitiates its action. The board has no authority to make an original assessment or listing of property. It cannot place omitted property on the tax books. Its duties are restricted to the review and equalization of assessments already made (85–405, 89+173; Ops. Atty. Genl. 1894, No. 188; 1904, No. 112). It has no authority to abate or cancel taxes or to strike property from the tax books (57–212, 58+864; 66–304, 69+25. See Ops. Atty. Genl. 1898, No. 141; 1904, No. 112). It may raise the valuation of real property in the aggregate without specifying on what particular class or item the raise is based. For example, if the assessor of a certain township has greatly undervalued the property of his district so that it is not valued on the same basis as other property in the county, the board may raise his entire assessment by a certain per centum (Ops. Atty. Genl. 1898, No. 136). It may raise the assessment of all "tracts" of farm lands lying in a given area, but a resolution that the valuation of "broad acres" in a given area shall be raised is ineffectual because the term is unknown in our taxing system (Ops. Atty. Genl. 1894, No. 192). It may consider separately lands and the improvements thereon and is not required to raise or lower by an equal rate the value of both lands and improvements (Ops. Atty. Genl. 1904, No. 118). It may increase an assessment on its own knowledge and without the introduction of evidence or an examination of the property (76–96, 78+1032). Under the statute of 1856 the failure of the board to examine and equalize the assessment rolls rendered the assessment void (7–267, 207), but the rule is now otherwise, at least, in the absence of a showing of prejudice (50–204, 52+523). Whether on application for judgment a taxpayer can interpose the defence that his land is unfairly, unequally or partially assessed without having first made application for relief to the board of equalization is an open question (71–283, 73+970). Notice of application by a taxpayer to the board for relief is not necessary (82–34, 84+636). Any taxpayer may appear before the board for the purpose not only of correcting errors in the assessment of his own property, but also of correcting omissions of the property of others

from the tax lists, or its undervaluation (71–283, 73+970). After the adjournment of the board the county commissioners have no authority to reduce an assessment and they have no authority to do so at any time except when sitting as a board of equalization (66–304, 69+25). The county commissioners have no authority over the assessment or equalization of taxes. The board of equalization, though composed in part of county commissioners, acts independently, and is governed in the performance of its duties by the provisions of the statutes relating to the specific subject, and is in no measure affected or controlled by the statutes prescribing the duties of county commissioners. The term "county board" in G. S. 1894 § 1522 means the county board of equalization and not the board of county commissioners (82–34, 84+636).

860. Length of session—Record—The county board of equalization may continue in session and adjourn from time to time during four weeks, commencing on the said third Monday of July; but after final adjournment the board shall not change the assessed valuation of the property of any person, or reduce the aggregate amount of the assessed valuation of the taxable property of the county. The auditor shall keep an accurate record of the proceedings and orders of said board, which record shall be published in the same manner as other proceedings of county commissioners, and a copy of such published record shall be transmitted to the state auditor, with the abstract of assessment in this chapter hereinafter required. (1552)

Under 1874 c. 1 § 69, the board could not adjourn from time to time (22–356), but it may under the present law (43–328, 45+606). The proceedings of the board can only be proved by the official record kept by the auditor and this cannot be impeached collaterally by oral evidence (85–405, 89+173). The record need not show that the commissioners qualified by taking an oath. After the final adjournment of the board no one has authority to alter its records (22–356).

861. Compensation of board—The county commissioners, while performing their duties as members of the board of equalization, shall each receive three dollars per day, and ten cents for each mile necessarily traveled in attending the meetings of such board, while going and returning; but no commissioner, while acting on such board, shall receive pay for more than ten days, or mileage for more than one session: Provided, that this section shall not apply to counties which have more than one hundred and fifty thousand inhabitants. (1553)

862. Corrected lists—Abstract to state auditor—The county auditor shall calculate the changes of the assessment lists determined by the county board of equalization, and make corrections accordingly in the real or personal lists, or both, as the case may be. He shall make duplicate abstracts of the same, one of which he shall file in his office, and one he shall forward to the state auditor on or before the fourth Monday of August. (1554)

863. State board of equalization—Duties—The governor, the state auditor, and the attorney general, with one qualified elector, not a member of any county board of equalization, from each judicial district, to be appointed by the governor with the advice and consent of the senate, shall constitute the state board of equalization. The members from the odd-numbered districts shall be appointed every even-numbered year, and those from the even-numbered districts shall be appointed every odd-numbered year, and their term of office shall be two years. The governor shall fill all vacancies in said board. He shall be ex-officio president of the board, and the auditor shall act as secretary. The board may adjourn from day to day, and may employ necessary clerical assistance. The members shall receive the same per diem and mileage as may be allowed by law to members of the legislature. The board shall meet annually on the first Tuesday of September, at the office of the state auditor, and each member, having taken the prescribed oath, shall examine and compare the returns of the assessment of the property in the several counties, and equalize the same, so that all the taxable property in the state shall be assessed at its true and full value, subject to the following rules:

863
07 - 408

1. They shall add to the aggregate valuation of the real property of every county, which they believe to be valued below its true and full value in money, such per cent. as will bring the same to its true and full value in money.

2. They shall deduct from the aggregate valuation of the real property of every county, which they believe to be valued above its true and full value

in money, such per cent. as will reduce the same to its true and full value in money.

3. If they believe that the valuation of the real property of any town or district in any county, or of the real property of any county not in towns, villages, or cities, should be raised or reduced without raising or reducing the other real property of such county, or without raising or reducing it in the same ratio, they may add to or take from the valuation of any one or more of such towns, villages, or cities, or of the property not in towns, villages, or cities, such per cent. as they believe will raise or reduce the same to its true and full value in money.

4. They shall add to the aggregate valuation of any class of personal property of any county, town, village, or city, which they believe to be valued below the true and full value thereof, such per cent. as will raise the same to its true and full value in money.

5. They shall take from the aggregate valuation of any class of personal property in any county, town, village, or city, which they believe to be valued above the true and full value thereof, such per cent. as will reduce the same to its true and full value in money.

6. They shall not reduce the aggregate valuation of all the property of the state as returned by the several county auditors more than one per cent. on the whole valuation thereof.

7. When, in their opinion, it would be of assistance in equalizing values, the board may require any county auditor to furnish statements showing assessments of real and personal property of any individuals, firms, or corporations within the county. The board shall consider and equalize such assessments, and may increase the assessment of individuals, firms, or corporations above the amount returned by the county board of equalization, when it shall appear to be undervalued, first giving notice to such persons of their intention so to do, which notice shall fix a time and place of hearing. But the state board shall not decrease any such assessment below the valuation placed by the county board. (1555; '97 c. 134)

The board is a statutory tribunal of limited jurisdiction, having the powers expressly conferred by statute. It can exercise its jurisdiction only within the limits of the law which prescribes its duties and restricts its authority. It may increase or reduce the aggregate valuation of real property in a county, treating such county as an entirety, or it may equalize by adding to or deducting from valuations, as between towns, villages and cities in the same county, or as between real property within these political subdivisions and that without, in the same county; but in so doing it must, except when acting under subd. 7, treat alike all real property situated within any of these subdivisions. It has no power, except under subd. 7, to distinguish between different kinds or classes of real property in a district, town or county, or to add to or deduct from the aggregate valuation of one kind or class, without raising or reducing the valuation of another. For example, platted and unplatted land cannot be treated differently (73–337, 76+53). Objection to irregularity in this regard must be taken by answer (76–257, 79+302; 76–379, 79+303; 80–190, 83+29). But as regards personal property the board has full authority to raise or lower valuations of particular classes (Ops. Atty. Genl. 1896, No. 163). The board equalizes real estate assessments only in even-numbered years (Ops. Atty. Genl. 1894, No. 191).

864. Record—Abstract to county auditors—Duty of auditors—The secretary shall keep a record of the proceedings of the board, which shall be published in the annual report of the state auditor, and upon final adjournment he shall transmit to each county auditor an abstract of such proceedings, specifying the per cent. added to or deducted from the valuation of the real property of each of the several towns, villages, and cities, and of the real property not in towns, villages, or cities, in case an equal per cent. has not been added to or deducted from each; and specifying also the per cent. added to or deducted from the several classes of personal property in each of the towns, villages, and cities; and specifying also the amounts added to the assessments of individuals, firms, or corporations. The county auditor shall add to or deduct from each tract or lot of real property in his county the required per cent. on the valuation thereof, as it stood after equalization by the county board, adding in each case any fractional sum of fifty cents or more, and deducting in each case any fractional sum of less than fifty cents, so that no

864
07 - 408

valuation of any separate tract or lot shall contain a fraction of a dollar; and shall also add to or deduct from the several classes of personal property in his county the required per cent. on the valuation thereof, as it stood after equalization by the county board, adding or deducting in manner aforesaid any fractional sum, so that no valuation of any separate class of personal property shall contain a fraction of a dollar; and shall also add to the assessments of individuals, firms, and corporations, as they stood after equalization by the county board, the required amounts. (1556; '97 c. 134)

865. Abstract of realty assessment roll to town clerks—On or before the first Tuesday of March in each odd-numbered year, the county auditor shall make out and transmit to each town clerk in his county a certified copy or abstract of the real estate assessment roll of such town, as equalized by the county and state boards of equalization. (1666; '95, c. 12)

LEVY AND EXTENSION

866-867
09 - - 477

866. Levy in specific amounts—All taxes shall be levied or voted in specific amounts, and the rates per cent. shall be determined from the amount of property as equalized by the state board of equalization each year, except such general taxes as may be definitely fixed by law. (1557)

1. **Definition of levy**—The term "levy" is used in different senses in the law of taxation. It sometimes refers to the legislative act, either state or local, determining that a tax shall be raised for a specified object and fixing the amount or rate. It sometimes refers to the ministerial or executive acts of extending taxes on the tax books and collecting them (14–252, 185; 71–283, 73+970; 77–453, 462, 80+620).

2. **Valid levy essential to valid tax**—A valid levy is essential to a valid tax. That a levy is illegal is a complete defence on application for judgment (See §§ 896, 915 note 12). Prior to 1874 when proceedings for the collection of delinquent real estate taxes were in pais an illegal levy rendered all subsequent proceedings absolutely void and a sale thereon was subject to collateral attack (27–92, 6+445. See 31–256, 17+473). Under the present system one of the very objects of the judgment is to determine the validity of the levy and it is conclusive as to such validity. In other words, a judgment for real estate taxes cannot be collaterally attacked for illegality, error, irregularity or omission in the levy. A tax certificate is prima facie evidence of the validity of the levy (See § 940). A levy is presumed legal until the contrary is affirmatively shown (See § 800). The citation and delinquent list are prima facie evidence of a valid levy (See §§ 896, 919), and so is the tax list certified by the auditor (§ 876).

3. **Levy in specific amounts**—All taxes must be levied or voted in specific amounts and the rate per centum determined from the amount of the property as equalized by the state board of equalization each year (61–233, 63+628; 35–215, 28+256).

867
05 - 306
07 - 464
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09 - - 27

867. State tax—The state tax shall be levied by the legislature, and the rate of such tax shall be certified by the state auditor to each county auditor on or before October 1 annually. He shall also notify each county auditor of the amount due the state from his county on account of school text-books furnished such county, and each county auditor so notified shall levy a tax sufficient to meet such indebtedness, which tax shall be levied and collected and paid into the state treasury in the same manner as other state taxes. (1557)

35–215, 28+256.

868
09 - - 462

868. County taxes—Except as otherwise provided in the case of counties having a population of more than one hundred and fifty thousand, the county taxes shall be levied by the county board at its meeting in July of each year, and shall be based upon an itemized statement of the county expenses for the ensuing year, which statement shall be included in the published proceedings of such board; and no greater levy of county taxes shall be made upon the taxable property of any county than will be equal to the amount of such expenses, with an excess of five per cent. of the same. (1557)

The county taxes are levied by the county board at its annual meeting in July (61–233, 63+628; 71–283, 73+970; 74–498, 77+286. See 22–356). The record of this levy is in the auditor's office and is consequently not certified to him (35–215, 28+256).

869
07 - 179

869. City, village, town, and school district taxes—The taxes voted by cities, villages, towns, and school districts shall be certified by the proper authorities to the county auditor, on or before October 10 in each year. (1557)

The taxes voted by cities, villages, townships and school districts are required to be certified by the proper officers to the county auditor on or before October 10 of each year (35–215, 28+256; 61–233, 63+628; 71–283, 73+970; 63–61, 65+119; 77–453, 462, 80+620;

79-201, 81+912; 14-248, 181; 88-346, 93+126), but the requirement as to time is merely directory (75-456, 78+115). The county board has nothing to do with the levying of school taxes (71-283, 73+970). The state, county, city, village, township and school district, is each an independent taxing district for its particular purposes. Each levies its own taxes but uses the county officials for their collection (71-283, 73+970; 79-201, 81+912; 38-186, 36+454; 40-360, 42+79).

870
07 - 179

870. Auditor to fix rate—The rate per cent. of all taxes, except the state tax and taxes the rate of which may be fixed by law, shall be calculated and fixed by the county auditor according to the limitations in this chapter hereinafter prescribed: Provided, that if any county, city, town, or school district shall return a greater amount than the prescribed rates will raise, then the auditor shall extend only such amount of tax as the limited rate will produce. (1557)

From the amounts certified to him under the preceding sections the auditor calculates the rates and completes the levy by making out the tax lists (35-215, 28+256; 63-61, 65+119; 14-248, 181). In fixing the rates the auditor must be governed by the statutory restrictions on the amount which municipalities can expend annually and if any municipality returns a greater amount than the prescribed rates will raise the auditor can only extend such amount of tax as the prescribed rate will produce (38-186, 36+454).

871
05 - 306
07 - 179
07 - 404

871. Rate of levy—There shall be levied annually on each dollar of taxable property, except such as is by law otherwise taxable, as assessed and entered on the tax lists, for the several purposes enumerated, taxes at the rates specified as follows:

1. For state purposes, such amount as may be levied by the legislature.

2. For county purposes, such amount as may be levied by the county board, the rate of which tax for general revenue purposes shall not exceed five mills in any county having a taxable valuation of one million dollars or more, and the amount of which shall not exceed five thousand dollars in any county having a taxable valuation less than one million dollars, and the rate of which shall not exceed one per cent. in any county.

3. For town purposes, such sum as may be voted at any legal town meeting, the rate of which tax shall not exceed, exclusive of such sums as may be voted at the annual town meeting for road and bridge purposes and for the support of the poor, two mills in any town having a taxable valuation of one hundred thousand dollars or more, and the amount of which shall not exceed one hundred and fifty dollars in any town having a taxable valuation less than one hundred thousand dollars, and the rate of which shall not exceed one-half of one per cent. in any town. The rate of tax for road and bridge purposes in any town shall not exceed five mills per dollar, and the tax for poor purposes shall not exceed two mills.

4. For school district purposes, such amounts as are provided in chapter 14. (1558; '99 c. 117) **See 1905 c. 69**

See 57-434, 59+488; 27-64, 6+411; 14-252, 185; 22-356; 14-548, 418.

872
05 - 69
07 - 179
07 - 404

872. Limitations of preceding section—Section 871 shall not be construed as prohibiting assessments on property adjacent to local improvements made in any city, town, or village for the purpose of paying the cost thereof, and the damages occasioned thereby, and nothing in said section shall be construed as preventing the proper authorities of any county, city, town, village, or school district from levying any tax authorized by special law. (1558)

873. Excessive levy—Injunction—Whenever any county board shall levy taxes for any purpose in excess of the amount allowed by law, any taxpayer thereby affected, for himself and all other interested taxpayers in the county, may bring an action against the treasurer, the auditor, and the board thereof, to enjoin the collection of said taxes, and for an order requiring the defendants, or either of them, to correct the levy, and for such other order as may be proper for the correction and adjustment of such taxes and levy, notwithstanding that such taxpayers have a speedy and adequate remedy in the ordinary course of law. When so corrected and adjusted, the taxes may be collected as other taxes. ('03 c. 153)

874. Contracts in excess void—Liability of officers—It shall be unlawful for the authorities of any county, town, city, village, or school district, unless

expressly authorized by law, to contract any debt or incur any pecuniary liability for the payment of either the principal or the interest of which during the current or any subsequent years it shall be necessary to levy a rate of taxes higher than the maximum prescribed by law. Every such contract shall be null and void in regard to any obligation thereby sought to be imposed upon such corporation; but every officer, agent, or member thereof who participates in or authorizes the making of such contract shall be individually liable for its performance. Every such officer or agent who is present when such contract is made or authorized shall be deemed to participate in or authorize the making thereof, as the case may be, unless he enter or cause to be entered his dissent therefrom in the records of such corporation. (1639)

27–64, 6+411; 10–340, 268; 57–434, 59+488; 83–119, 85+933; 89–477, 95+310.

875
07 - 408

875. Tax lists made by auditor—The county auditor shall make out the tax lists according to the prescribed form, and to correspond with the assessment districts. The rate per cent. necessary to raise the required amount of the various taxes shall be calculated on the assessed valuation of property as determined by the state board of equalization; but, in calculating such rates, no rate shall be used resulting in a fraction other than a decimal fraction, or less than one-tenth of a mill; and, in extending any tax, whenever it amounts to the fractional part of a cent, it shall be made one cent. The tax lists shall also be made out to correspond with the assessment books in reference to ownership and description of property, with columns for the valuation and for the various items of tax included in the total amount of all taxes set down opposite each description; and opposite each description which has been sold for taxes, and which is subject to redemption, but not redeemed, shall be placed the words "Sold for taxes." The amount of all special taxes shall be entered in the proper columns, but the general taxes may be shown by entering the rate per cent. of each tax at the head of the proper columns, without extending the same, in which case a schedule of the rates per cent. of such taxes shall be made on the first page of each tax list. If the auditor shall fail to enter on any such list before its delivery to the treasurer any tax levied, such tax may be subsequently entered. (1559; '02 c. 2 s. 87)

The auditor is required to prepare the tax lists (63–61, 65+119). He must determine the specific amount due on each tract of real property and against each person on account of personal property and set the same down on the lists opposite the tract or name of person. This is sometimes called "extending" the tax. Until it is done there is no tax in existence (14–252, 185; 14–248, 181). The lists are made up from the returns of the various assessors in the county as modified by the auditor or board of equalization (15–295, 226). As they are copies or duplicates of the assessment lists with the taxes added they are frequently termed tax duplicates (14–252, 185; 35–215, 28+256; 87–489, 92+336; 23–231; 4–104, 64; 14–548, 418). The auditor is required to place all special taxes in a proper column (63–497, 65+935), but this provision is merely directory (50–204, 52+523). He is given from October 10 until the first Monday in January following to complete the lists (63–61, 65+119; 75–456, 78+115). He is presumed to have done his duty in the preparation and delivery of the list but this presumption does not extend to the validity of the prior proceedings. In other words, the list is not prima facie evidence of the validity of the levy and assessment of the taxes thereon in the absence of the statutory certificate. The auditor has no authority to make out and issue a tax list except upon a prior levy and assessment (23–231). Merely entering a description of real property, with the name of the owner and the amount of the tax, on a list does not constitute an assessment (87–489, 92+336).

876. Certificate to lists—The auditor shall make in each tax book or list a certificate in the following form:

I, A. B., auditor of ..... county, and state of Minnesota, do hereby certify that the following is a correct list of the taxes levied on the real and personal property in the (town or district, as the case may be) of ..... for the year 19..... Witness my hand and official seal this ..... day of ....., 19....

.....,
County Auditor.

(1561)

The tax list, duly certified as required by the statute, is prima facie evidence of the due levy and assessment of the taxes thereon (35–215, 28+256). Without the certificate it is only evidence of its own existence and of the facts recited (23–231).

877. Abstract to state auditor—On or before January 1 in each year the county auditor shall make and transmit to the state auditor, in such form as may be prescribed, a complete abstract of the tax lists of the county, showing the number of acres of land assessed; its value, including the structures thereon; the value of town and city lots, including structures; the total value of all taxable personal property in the several assessment districts; the aggregate amount of all taxable property in the county, and the total amount of taxes levied therein for state, county, town, and all other purposes for that year. (1560)

75–456, 78+115.

COLLECTION BY TREASURER

878. Lists to treasurer—On or before the first Monday in January in each year, the county auditor shall deliver the lists of the several districts of the county to the county treasurer, taking therefor his receipt, showing the total amount of taxes due upon the lists. Such lists shall be authority for the treasurer to receive and collect taxes therein levied. (1562)

The auditor is required to deliver the tax lists to the treasurer on or before the first Monday in January of each year (63–61, 65+119; 75–456, 78+115). The treasurer has no authority to receive or collect taxes before the tax lists are so delivered to him (63–61, 65+119), and taxes are not due until such delivery (85–524, 89+850; 75–448, 78+14). Lists without the statutory certificate attached are sufficient authority for the treasurer to collect the taxes thereon (35–215, 28+256). The lists in the hands of the treasurer are presumptively as made out by the auditor (50–204, 52+523). Under G. S. 1866 c. 11 § 75 the treasurer was authorized to collect taxes on the delinquent list without the duplicate (14–548, 418).

879
07 - 328

879. Treasurer to be collector—The county treasurer shall be the receiver and collector of all the taxes extended upon the tax lists of the county, whether levied for state, county, city, town, school, poor, bridge, road, or other purposes, and also of all fines, forfeitures, or penalties received by any person or officer for the use of the county. He shall proceed to collect the same according to law, and place the same when collected to the credit of the proper funds. But this section shall not apply to fines and penalties accruing to municipal corporations for the violation of their ordinances which are recoverable before a city justice. (1563)

The county treasurer is the receiver and collector of all taxes whether levied by state, county, city, village, township or school district (See 4–104, 64; 83–512, 86+775). As such he acts as agent pro hac vice of the state and of the municipalities of his county (12–41, 16; 40–360, 42+79; 71–283, 73+970; 79–201, 81+912; 83–512, 86+775). Special assessments are generally collected by the county treasurer in the same way as general taxes (See 88–346, 93+126).

880
07 - 400

880. Notice of rates—On receiving the tax lists from the auditor, the treasurer shall, if directed by the county board, give three weeks' published notice specifying the rates of taxation for all general purposes, and the amounts raised for each specific purpose. (1564)

881. Tax receipts—Duplicates—Upon the payment of any tax, the treasurer shall give to the person paying a receipt therefor, showing the name of the person, the amount and date of payment, the land, lot, or other property on which the tax was levied, according to its description on the tax list or in some other sufficient manner, and the year or years for which the tax was levied. If for current taxes on real estate, the receipt shall have written or stamped across its face, "Taxes for" (giving the year in figures), or, "First half of taxes for" (giving the year in figures), or, "Last half of taxes for" (giving the year in figures), as the case may be. If land has been sold for taxes either to a purchaser or to the state, and the time for redemption from such sale has not expired, the receipt for such taxes shall have written or stamped across the face, "Sold for taxes." The treasurer shall make duplicates of all receipts, and shall return all such duplicates at the end of each month to the county auditor, who shall file and preserve them in his office, charging the treasurer with the amount thereof. (1565; '02 c. 2 s. 87)

A tax receipt is prima facie evidence of payment even as to third parties (27–60, 6+403; 66–179, 68+837), but not of the prior proceedings (40–508, 42+481). The dupli-

cate stub receipts are evidence of the receipt of taxes by the treasurer though not returned by him to the auditor (29–78, 11+233). A receipt including the words "Exc. Oakland" is not evidence of the payment of taxes on lots in Oakland addition in the absence of explanatory evidence. A receipt "in full for redemption from all delinquent taxes" for specified years is no evidence of the payment of taxes for years not specified (34–26, 24+296). A certificate of the town clerk of the payment of a road tax is not evidence of the assessment of the tax (63–454, 65+926).

882. Orders received for taxes—The treasurer shall receive in payment of taxes orders on the several funds for which taxes may be levied, to the amount of the tax for such fund, without regard to priority of the numbers of such orders, except when otherwise provided by law, and he shall write or stamp across the face of all such orders the date of their receipt, and the name of the person from whom received. (1566)

Although the treasurer is required to receive certain orders in payment for taxes he is still chargeable on account thereof as with the receipt of money (29–78, 11+233). Orders on county funds are within the statute (83–512, 86+775).

ACCOUNTING AND DISTRIBUTION OF FUNDS

883. Settlement between treasurer and auditor—On the last day of February, May, and October of each year, the county treasurer shall make full settlement with the county auditor of his receipts and collections for all purposes, from the date of the last settlement up to and including each day mentioned, and the auditor shall within twenty days after each settlement send an abstract of the same to the state auditor, in such form as the state auditor may prescribe. At each settlement the treasurer shall make complete returns of his collections on the current tax list, showing the amount collected on account of the several funds included in said list. (1575)

883
07 - 328

884. Apportionment and distribution of funds—On the last day of February, May, and October in each year, the county auditor and county treasurer shall make distribution of all undistributed funds remaining in the treasury, apportioning the same as provided by law, and placing the same to the credit of the state, town, city, village, or school district, and each county fund. Within twenty days after such distribution is completed the county auditor shall make report thereof to the state auditor, in such form as the state auditor may prescribe. The county auditor shall issue his warrant for the payment of any moneys remaining in the county treasury to the credit of the state, town, city, village, or school district on application of the persons entitled to receive the same. ('02 c. 2 s. 75)

884
07 - 328

885. When treasurer shall pay funds—Immediately after each settlement in February, May, and October, the county treasurer shall pay over to the treasurer of state, or of any town, city, village, or school district, on the warrant of the county auditor, all moneys received by him arising from taxes levied and collected belonging to the state, or to such municipal corporation, or other body, and deliver up all orders and other evidences of indebtedness of such corporation or other body, taking triplicate receipts therefor. He shall file one of said receipts with the county auditor, and shall return one by mail on the day of its reception to the clerk of the town, city, village, or school district to which such payment was made, who shall preserve the same in his office. (1577; '97 c. 100)

885
07 - 328

79–201, 81+912; 28–197, 9+681; 83–512, 86+775; 88–346, 93+126.

886. Auditor to keep accounts—The county auditor shall keep accounts with the state, the county, and each of the funds of such county, and each town, city, village, and school district, and with the county treasurer, making daily entries of the charges and credits to the treasurer; and, immediately after each distribution of taxes, he shall credit the collections to the proper funds. He shall give a warrant on the county treasurer for the amount due any town, city, village, or school district, upon application of its treasurer, and upon the filing of a certificate of its clerk that the person applying is such treasurer, duly elected or appointed, and has given bond according to law; and he shall charge such body with the amount of the warrant. ('02 c. 2 s. 76)

79–201, 81+912.

887. Distribution of interest, penalties, and costs—All penalties accruing upon any tax levied by special assessment against any particular tract, block, or lot in any city, village, or organized township shall be apportioned to the general revenue fund of the city, village, or town where the land lies. All other penalties, costs, and interest collected on real estate taxes shall be apportioned one half to the county revenue fund, and the other half to the school districts of the county in the manner provided for the distribution of other school funds. ('02 c. 2 s. 51; '03 c. 324)

See 1905 c. 239

DELINQUENT PERSONAL PROPERTY TAXES

888
09 - - 307

888. When delinquent—Penalty—All unpaid personal property taxes shall be deemed delinquent on March 1 next after they become due, and thereupon a penalty of ten per cent. shall attach and be charged upon all such taxes. (1567)

Taxes become due on the first Monday in January next after the assessment (63–61, 65+119).

889
103-M - 422

889. Treasurer to file delinquent list in court—Answer—Trial—On the fifth secular day of April of each year the county treasurer shall make a list of all personal property taxes remaining delinquent April 1, and shall immediately certify to and file the same with the clerk of the district court of his county, and upon such filing the list shall be prima facie evidence that all the provisions of law in relation to the assessment and levy of such taxes have been complied with. On or before the tenth secular day next thereafter, any person whose name is embraced in such list may file with the clerk an answer, verified as pleadings in civil actions, setting forth his defence or objection to the tax or penalty against him. The answer need not be in any particular form, but shall clearly refer to the tax or penalty intended, and set forth in concise language the facts constituting his defence or objection to such tax or penalty. The issues raised by such answer shall stand for trial at any term of court in such county in session when the time to file answers shall expire, or at the next general or special term appointed to be held in such county; and, if no such term be appointed to be held within thirty days thereafter, then the same shall be brought to trial at any general term appointed to be held within the judicial district, upon ten days' notice. The county attorney of the county within which such taxes are levied, or, if there be none, of the county within which such proceedings are instituted, shall prosecute the same. At the term at which such proceedings come on for trial, they shall take precedence of all other business before the court. The court shall without delay and summarily hear and determine the objections or defences made by the answers, and at the same term direct judgment accordingly, and in the trial shall disregard all technicalities and matters of form not affecting the substantial merits. If the taxes and penalties shall be sustained, the judgment shall include costs, (1567; '97 c. 79; '99 c. 246)

1. **Proceedings in personam**—Personal property taxes are assessed against the person and not against the property. It is true the person is taxed on account of the property and the value of the property determines the amount of the tax, but the liability is purely personal. If the tax is assessed against A it cannot be collected from B although the latter is the party against whom it ought to have been assessed (69–131, 72+60; 47–552, 50–615; 72–409, 75+723; 90–120, 95+1115). Consequently the proceedings for the collection of delinquent personal property taxes are in personam. The distress warrant issues against all the personal property of the person assessed; not exclusively or specifically against the property on which the tax is based (See 61–219, 63+630).

2. **Filing the delinquent list**—The filing of the list is a ministerial act. Under 1897 c. 79 § 1 it was permissible to file it within a reasonable time after the first day of April (76–423, 79+543).

3. **The answer**—Up to the time of the filing of an answer the proceedings are ministerial and then they become judicial. The purpose of the amendment of 1897 c. 79 was to permit a party to prevent the issuance of a distraining warrant, for prior to that time a delinquent could not be heard in a judicial proceeding until he was cited to appear after a warrant had been returned by the sheriff as uncollectible (76–42? 79+543). The form of the answer is the same as an answer in proceedings for the col-

lection of delinquent real estate taxes (See § 915). The defences which may be interposed by answer are apparently the same as those which may be interposed on the hearing of a citation (See § 896).

4. **The trial**—The provision as to the time of hearing is directory (92–283, 100+6). The burden of proof is on the taxpayer to show the invalidity of the tax (See § 893).

890. Distress and sale—Upon the fifteenth secular day of April next after the filing of such list the said clerk shall issue his warrants to the sheriff of the county as to all the taxes and penalties embraced in the list, except those to which answer has been filed, directing him to proceed to collect the same. If such taxes are not paid upon demand, the sheriff shall distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the same, with the said penalty of ten per cent. and all accruing costs, together with twenty-five cents from each delinquent, as compensation to said clerk. Immediately after making distress, the sheriff shall give at least ten days' posted notice in the town or district where the property is taken, stating that the property, or so much thereof as will be sufficient to pay the taxes for which it is distrained, with penalty and costs of distress and sale, will be sold at public vendue at a place and time therein designated, which time shall not be less than ten days after such taking. If such taxes and penalties and accrued costs are not paid before the day designated, the sheriff or his deputy shall proceed to sell the property pursuant to the notice. (1567; '97 c. 79; '99 c. 246)

The provision authorizing a distress warrant is constitutional. The warrant is the warrant of the clerk and not of the court and need not be under seal. Formal defects are immaterial. If regular on its face the warrant protects the officer executing it in a reasonable manner (61–219, 63+630). See 40–512, 41+465, 42+473; 72–519, 75+718). It will be presumed that the officer made demand before seizure (61–219, 63+630. See 11–321, 225). Under G. S. 1866 c. 11 § 75 the treasurer had authority to collect taxes by distress on the delinquent list as well as on the duplicate (14–548, 418).

891. Payment under protest—Sections 888–890 shall not deprive any taxpayer of the right to pay under protest any tax claimed to be unjust or illegal, and to bring an action for the recovery of the same in any case where such remedy is now allowed by law. ('99 c. 246)

86–301, 90+772.

892. Sheriff to file list of uncollected taxes—Uncollectible taxes—If the sheriff is unable, for want of goods and chattels whereon to levy, to collect by a distress or otherwise the taxes, or any part thereof, assessed upon the personal property of any persons, he shall file with the clerk of the court on June 1 following a list of such taxes, with an affidavit of himself, or of the deputy sheriff intrusted with the collection thereof, stating that he has made diligent search and inquiry for goods and chattels from which to collect such taxes, and is unable to collect the same. He shall note on the margin of such list the place to which any delinquent taxpayer may have removed, with the date of his removal, if he is able to ascertain the fact. At the time of filing said list he shall also return all the warrants with indorsements thereon showing his doings in the premises, and the clerk shall file and preserve the same. On or before June 10 thereafter, the clerk shall deliver such list and affidavit to the county treasurer, who shall, by comparison of such list with the tax duplicates in his office, ascertain whether or not all personal property taxes reported by him to the clerk as delinquent, except those included in such list, have been paid into the treasurer's office, and shall attach to such list his certificate, stating whether or not all taxes reported by him to the clerk as delinquent and not included in such list have been received by him, and stating the items of such taxes, if any, as have been received. The treasurer shall deliver such list and affidavit, with his certificate attached, to the county board, at their first session thereafter, which shall cancel such taxes as they are satisfied cannot be collected. A copy of the tax list so revised, and also a separate list of the taxes so canceled, shall be included in the records of the proceedings of such board, and published in full, as a part of such proceedings. (1568; '95 c. 14)

The county board has no authority to cancel taxes except in strict pursuance of this section (57–212, 58+864; 66–304, 69+25. See Ops. Atty. Genl. 1898, No. 141). The

provision requiring the sheriff to file a list of uncollected taxes on June 1 is directory as to time (44–383, 46+678). In publishing the revised list the names of deceased persons cannot be omitted (Ops. Atty. Genl. 1898, No. 25).

893
103-M - 422
893-896
102-M - 51
112-NW 863

893. Citation to delinquents—Service—Default judgment—Within ten days after the adjournment of the county board, the auditor shall file a copy of such revised list with the clerk of the district court, and within ten days thereafter the clerk shall issue a citation to each delinquent named in the list, stating the amount of tax and penalty, and requiring such delinquent to appear on the first day of the next general term of the district court in the county, appointed to be held at a time not less than thirty days after the issuance of such citation, and show cause, if any there be, why he should not pay said tax and penalty. The citation shall be delivered for service to the sheriff of the county where such person may at the time reside or be. If such person, after service of the citation, fails to pay such tax, penalty, and costs to the sheriff before the first day of the term, or on said day to show cause as aforesaid, the court shall direct judgment against him for the amount of such tax, penalty, and costs. When the sheriff is unable to serve the citation, he shall return the same to the clerk, with his return thereto to that effect, and thereupon, or if the court decides that the service of such citation made or attempted to be made, or the issuance thereof by the clerk, was illegal, the clerk shall issue another like citation, requiring such delinquent to appear on the first day of the next general term to be held in the county, and show cause as aforesaid, and, if he fails to pay or to show cause, the court shall direct judgment as aforesaid. Whenever the sheriff has been unable to serve any such citation theretofore issued in any year or years, or whenever the court decides that the service of any such citation theretofore made or attempted to be made, or the issuance thereof by the clerk, was illegal, the clerk shall issue another like citation requiring such delinquent to appear, as in the case last provided, and with like effect: Provided, that all citations other than the first shall be issued only on the request of the county attorney. (1569)

The proceeding instituted by a citation to show cause is in the nature of a personal action. A personal tax assessed against a corporation cannot be collected in such a proceeding against the receiver of the corporation personally (69–131, 72+60). The burden of proof is on the taxpayer to show the invalidity of the tax (15–295, 226; 56–24, 57+313; 94–320, 102+721. See 104+567; 104+835). The levy and assessment are presumed valid until the contrary is affirmatively shown (See § 800; 94–320, 102+721).

894. Citation to distributees—When the person against whom such tax is assessed has died, and his estate has been administered and assigned, or where an executor or administrator, or an assignee for the benefit of creditors, or any other person acting in the capacity of trustee, against whom such tax is assessed, has been discharged from his trust by a court of competent jurisdiction before the total amount of such tax has been ascertained and levied, a citation shall issue to the persons to whom the trust estate or the residue of the estate has been assigned, except that no citation shall issue to creditors in assignments for benefit of creditors. (1569)

63–61, 65+119.

895. Citation to non-resident—When the person to whom a citation issues is not a resident of the state, so that personal service thereof cannot be made, the citation may be served by publication thereof and by attachment, as provided by law in a civil action against non-resident defendants, upon affidavit of the county attorney, but no bond on such attachment or on entry of judgment shall be required. (1569)

896. Citation prima facie evidence—Defences—The citation shall be prima facie evidence that all the provisions of law in relation to the assessment and levy of taxes have been complied with. No omission of any of the things by law provided in relation to such assessment and levy, or of anything required by any officer to be done prior to the issuance of such citation, shall be a defence or objection to such taxes, unless it be also made to appear to the court that such omission has resulted to the prejudice of the party objecting, and that such taxes have been unfairly or unequally assessed;

and in such case, but no other, the court may reduce the amount of such taxes, and give judgment accordingly. It shall, however, always be a defence to such taxes that the same have been paid, or that the property upon which the same were assessed was not subject to taxation. (1569)

1. Defences admissible by answer or on citation—That the taxes have been paid (§ 896); that the property is exempt (§ 896; 86–301, 90+772); that the levy was illegal (22–356); that the listing was illegal (15–412, 333); that the assessment was illegal (39–502, 40+835); that the assessment was prejudicially irregular (56–24, 57+313); that the property has no situs in this state (76–155, 78+962. See § 794); that the valuation of the assessor is grossly excessive (80–277, 83+339. See 104+567); that the law on which the proceedings are based is unconstitutional (See 65–525, 68+105); that the person assessed was not the owner (69–131, 72+60; 30–429, 16+151; 92–283, 100+6. See 104+835); that there was prejudicial error in the action of the county board of equalization (44–12, 46+143); that the property assessed is not personal property (26–229, 2+839).

2. Defences inadmissible by answer or on citation—A party cannot by answer or on citation raise the objection that his statement to the assessor was incorrect (73–70, 75+754; 56–24, 57+313); or that the property was not listed in the right county (82–34, 84+636; 77–190, 79+829; 86–301, 90+772. See 83–169, 85+1135); or that he is entitled to a deduction from credits on account of indebtedness (77–190, 79+829; 80–277, 83+339; 73–70, 75+754).

3. Formal defects—No irregularity or omission in matters of form in prior proceedings is a defence unless it is also made to appear to the court that such irregularity or omission has resulted in prejudice to the party objecting and that the taxes have been unfairly or unequally assessed, and in such case, but in no other, the court may reduce the amount of such taxes and give judgment accordingly (44–12, 46+143; 44–383, 46+678; 56–24, 57+313. See 83–169, 85+1135). But no such showing is necessary to let in a defence based on an irregularity or omission of substance—violations of mandatory requirements (22–356; 39–502, 40+835).

897. Clerk's fees—Execution—The clerk shall receive as fees for issuing such citation and perfecting the judgment one dollar and fifty cents in cases not contested, and in contested cases such fees as are allowed by law in civil actions, and for each citation issued in cases where the sheriff shall fail, after diligent inquiry, to find the defendant, twenty-five cents. All such fees and costs shall be entered, taxed, and made part of the judgment. Execution shall be issued upon the judgment at the request of the county attorney, and shall state that the judgment was obtained for delinquent personal property taxes, and no property shall be exempt from seizure thereon, and such execution may be renewed and reissued in the same manner as provided by law in case of executions upon judgments in civil actions. (1570)

94–72, 101+943.

898. Sheriff's fees—The sheriff or his deputy shall be allowed the same fees for collecting such taxes, and for making distress and sale of goods and chattels for the payment of taxes, as are allowed by law to constables for making levy and sale of property on execution; traveling fees to be computed from the county seat to the place of making distress, unless such distress is made by his deputy, in which case the same shall be computed from the residence of such deputy. Such fees shall be added to the tax, and collected by the sheriff. (1574)

This section includes taxes collected on either a warrant or execution. The sheriff is not entitled to fees on executions returned by him unsatisfied (94–72, 101+943). He is not entitled to fees for making a return of no property found (71–18, 73+520; 71–481, 73+1085; 76–368, 79+166; 44–67, 46+145 overruled), or for an attempted service on persons not found (76–368, 79+166). He has no lien on funds in his hands for his fees (See 83–512, 522, 86+775).

899. Neglect of sheriff—Penalty—If the sheriff shall refuse or neglect to collect any tax assessed upon personal property where the same is collectible, or to file the delinquent tax list and affidavit as herein provided, he shall be held liable for the whole amount of such taxes uncollected, and the same shall be deducted from any bills presented by him to and allowed by the county board, and applied to the several funds for which they were levied. (1571)

44–383, 46+678.

900. Removal of delinquent—Duty of auditor—Collection—Within thirty days after June 1 in each year, the county auditor shall make out and forward to the clerk of the court of any county to which any delinquent personal prop-

erty taxpayer may have removed a statement of such delinquent taxes, specifying the value of the property on which such taxes were levied and the amount of the taxes, to which he shall add an amount equal to twenty-five per cent. on the taxes levied if such delinquent taxpayer left the county in which the taxes were levied after the day upon which they became due, but not otherwise. On receipt of such statement or account, the clerk shall issue his warrant to the sheriff of his county, who shall immediately proceed to collect the same of the person so charged with said taxes and per cent., together with a clerk's fee of twenty-five cents for each warrant so issued. The sheriff shall deliver such warrant, with his doings thereunder, to the clerk, together with the amount of his collections thereon. The clerk shall remit all taxes thus collected to the treasurer of the county to which they belong, and at the same time shall return the original statement to the auditor of such county, certifying the amount of such collections, and, if any taxes remain unpaid, the reason why they could not be collected. The auditor shall charge the treasurer to whom such remittance is made with the amount thereof, and cancel said taxes from the list. Receipts shall be issued to the sheriff for delinquent taxes collected by him and payment shall be made in the manner provided in § 881. (1572, 1573)

901
09 - - 448

901. Docketing judgment—Lien—Every judgment for personal property taxes shall be docketed, and thereafter shall become a lien upon the real property of the debtor in the county within which the judgment was rendered, to the same extent as other judgments for the recovery of money, and may be docketed in other counties in like manner and with like effect.

902. Satisfaction of judgment—Upon payment to the county treasurer of any personal property tax for which judgment has been obtained, the treasurer shall deliver a certificate of such fact to the clerk, who shall file the same, and satisfy the judgment upon the margin of the record thereof, stating the date of payment and number of receipt given therefor, and shall note the satisfaction upon the docket. (1574)

DELINQUENT REAL ESTATE TAXES

903
07 - 82

903
09 - - 307

903. Penalty—Payment in instalments—On June 1 of each year a penalty of ten per cent. shall accrue and thereafter be charged upon all unpaid taxes on real estate on the current lists in the hands of the county treasurer, and any county treasurer who shall make out and deliver or countersign any receipt for such taxes without including such penalty therein shall be liable to the county for the amount of such penalty: Provided that, when the taxes charged against any tract or lot exceed one dollar, one-half thereof may be paid prior to June 1, whereupon no penalty shall attach to the one-half so paid; and thereupon the remaining one-half may be paid at any time prior to November 1 following, whereupon no penalty shall attach to such remaining one-half. ('02 c. 2 s. 1)

See note to § 904.

904
07 82

904. When delinquent—Penalty—On the first Monday in January of each year the county treasurer shall return the tax lists in his hands to the county auditor, who shall compare the same with the statements receipted for by the treasurer on file in the auditor's office, and each tract or lot of real property against which the taxes, or any part thereof, remain unpaid, shall be deemed delinquent, and thereupon an additional penalty of five per cent. on the amount of the original tax remaining unpaid shall immediately accrue and thereafter be charged upon all such delinquent taxes; and any auditor who shall make out and deliver any statement of delinquent taxes without including therein the penalties imposed by this section, and any treasurer who shall receive payment of such taxes without including in such payment all items as shown on the auditor's statement, shall be liable to the county for the amount of any items omitted. ('02 c. 2 s. 2)

DELINQUENCY OF REAL ESTATE TAXES

1. What constitutes delinquency—To constitute a legal delinquent tax on land three things are necessary: first, that the land is subject to taxation; second, that a tax authorized by law has been levied on it in the manner provided by law; third, that the tax remains unpaid after the time appointed by law for its payment (35–1, 25+457, 30+826; 93–382, 101+603. See as to delinquency under Sp. Laws 1864 c. 18 § 1, 11–321, 225).

2. How far jurisdictional—Delinquency is so far jurisdictional that a judgment may be collaterally attacked by evidence that the taxes were not in fact delinquent at the time of its entry. (See § 914; 35–1, 25+457, 30+826, overruled by statute).

3. When real estate taxes become due—Real estate taxes become due on the first Monday in January next after their assessment when the auditor delivers the tax lists to the treasurer (§ 878; 75–448, 78+14; 85–524, 89+850).

4. When real estate taxes become delinquent—Real estate taxes become delinquent on the first Monday in January next after they become due (§ 904; 75–448, 78+14; 76–257, 79+302; 85–524, 89+850). Formerly they became delinquent the first day of June (See 31–256, 17+473; 62–518, 65+80).

5. Penalties for non-payment—Penalties for the non-payment of taxes cannot be imposed where the owner has had no opportunity to pay them (39–380, 40+166; 40–512, 41+465, 42+473). They may be imposed on omitted property if the owner has had a prior opportunity to pay the taxes (75–448, 78+14). They are imposed for the non-payment of special assessments in the same manner as for the non-payment of general taxes (63–497, 65+935. See 88–346, 93+126). They may be collected in the same manner and in the same proceeding as the taxes (11–480, 358).

PROCEEDINGS FOR COLLECTION OF DELINQUENT REAL ESTATE TAXES

6. How far judicial—Proceedings for the collection of delinquent real estate taxes are not in pais as in most states, and in this state prior to 1874, but a judicial proceeding in the nature of an action in court, in which the owner, or any person having any interest in the land, may interpose an answer setting forth any objection or defence to the taxes or penalties or any part thereof. Upon the trial of the issues raised by such objections or defence the court may sustain the taxes, or sustain the objections or defence, in whole or in part, and render judgment accordingly. The judgment thus rendered is final and conclusive, except upon the questions whether the taxes had been paid before judgment or whether the land was subject to taxation (76–257, 79+302. See § 914). But the collection of taxes is still essentially an administrative proceeding. The nature of the proceedings is not changed by the mere fact that at certain steps in their progress the assistance of a court is invoked. It is entirely competent for the legislature to provide that tax proceedings shall be conducted from start to finish by administrative officers. Judicial assistance is invoked as a matter of expediency, because, with its assistance, the rights of parties and the interests of the public can be best protected and conserved (62–18, 63+1117). The proceeding is an action, but it is not an ordinary action (27–109, 6+454; 22–178).

7. A proceeding in rem—Constructive seizure sufficient—Real estate taxes are assessed against the land and not against the owner. They create no personal liability and they are not a lien on the other land of the owner (76–257, 79+302; 38–90, 35+580; 19–67, 45; 90–120, 95+1115). Accordingly the proceedings for the collection of delinquent real estate taxes are in rem (35–1, 25+457, 30+826; 47–326, 50+233; 22–178). But no actual seizure of the res is necessary; constructive seizure is sufficient. For the purposes of taxation the hand of the state is always on all property within its jurisdiction. No seizure of the property is required other than such constructive seizure as may be involved in the institution of proceedings against the property in the manner provided by statute (62–18, 63+1117; 35–1, 25+457, 30+826).

8. Constitutional right to notice—Constructive notice—At some stage of tax proceedings where the tax is based on a valuation of property, the owner has a constitutional right to notice and an opportunity to be heard on the validity and amount of the tax. But constructive notice is sufficient and the notice of judgment provided by our statute satisfies this constitutional requirement (40–512, 41+465, 42+473; 35–1, 25+457, 30+826; 159 U. S. 526).

9. Decisions in other states inapplicable—Decisions relating to tax sales in other states where the proceedings are in pais are seldom of any value as precedents in this state where the proceedings are judicial (71–66, 73+649; 76–257, 79+302). And the decisions of our own supreme court upon sales prior to 1874 must be considered with reference to the fact that prior to 1874 tax proceedings in this state were in pais (See 45–66, 47+453; 31–256, 17+473; 11–321, 225).

905. Delinquent list—Filing—Effect—On or before February 1 in each year the county auditor shall file with the clerk of the district court of the county a list of the delinquent taxes upon real estate within his county, which list shall contain a description of each parcel of land on which such

905
99-M - 138
108-NW 860

905
99-M - 141

taxes shall be so delinquent, except such parcels as shall have theretofore been bid in by the state and not assigned by it or redeemed, with the name of the owner, if known, and, if unknown, so stated, appearing on the delinquent list, and the total amount of taxes and penalties, with the years for which the same are delinquent, set opposite such description, and shall verify such list by his affidavit. The filing of such list shall have the effect of filing a complaint in an action by the county against each parcel of land therein described, to enforce payment of the taxes and penalties therein appearing against it, and shall be deemed the institution of such action, and the same shall operate as notice of the pendency thereof. Such affidavit shall be substantially in the following form:

State of Minnesota, } ss.
County of..... }

....., being by me first duly sworn, deposes and says that he is the county auditor of the county of .....; that he has examined the foregoing list, and knows the contents thereof; and that the same is a correct list of taxes delinquent for the year (or years therein appearing) upon real estate in said county.

.....

Subscribed and sworn to before me this ..... day of ....., 19....

('02 c. 2 s. 3)

THE DELINQUENT LIST GENERALLY

1. **Auditor prepares list**—During the month of January the auditor prepares the list from the records in his office (§§ 904, 905; 75–448, 78+14).

2. **What taxes included**—Ordinarily the list filed in any year includes only the taxes becoming delinquent in that year. Inserting taxes delinquent in prior years is exceptional and can only be done when authorized by statute (38–397, 37+949; 31–256, 17+473).

3. **Lands bid in for state not included**—Under the present law lands bid in for the state at tax sales and not assigned or redeemed are not placed on the list (§ 905). Formerly it was optional with the state to place such lands on the list and resell them (72–148, 75+118; 78–244, 80+973; 79–343, 82+645).

4. **Statement of amount due**—A statement of the amount due, at least in the published list, is jurisdictional (39–92, 38+805); but an error in the statement or an unauthorized inclusion of taxes for certain years is not jurisdictional and is waived if objection is not taken by answer (§ 914; 31–373, 17+961, 18+96; 31–385, 18+98; 32–367, 20+357; 34–304, 25+605. See 103+893). The statement of the amount due need not be so definite and certain in the published list as in the judgment and is sufficient if it would inform a man of ordinary intelligence with reasonable certainty (38–62, 35+566; 39–92, 38+805). It is sufficient to state the amount in a column with a space between the numerals representing dollars and cents if there is a dollar-mark at the head of the column (38–62, 35+566. See 74–496, 77+301; 31–385, 18+98; 93–471, 101+653). The placing of two figures opposite the description of a tract in a column headed merely "Amt." but without any dollar or other mark, or anything else to indicate what the figures were intended to represent, is insufficient (39–92, 38+805); otherwise (prior to the statutory form) if there are more than two figures with a space between the numerals representing dollars and cents (44–173, 46+341). Under 1881 c. 135 it was sufficient to state the amount due for several years in gross (54–235, 55+927), and under the general law such a statement is a mere irregularity which is waived if objection is not made by answer (62–518, 65+80).

5. **Mistake in name of owner**—A mistake in the name of the owner is not jurisdictional (§ 932).

6. **Errors, irregularities or omissions not fatal**—It is provided by statute that the jurisdiction of the court "shall not be affected by any error in making the list filed with the clerk" (§ 914). The term "error" as here used relates to matters of form (22–178; 44–56, 46+319; 62–518, 65+80; 85–374, 88+971).

7. **List as evidence**—The list is prima facie evidence that all the provisions of law in relation to the assessment and levy of the taxes thereon have been complied with (§ 919; 31–256, 17+473).

8. **Verification**—The verification is not a jurisdictional prerequisite (22–178; 85–374, 88+971; 44–56, 46+319). It need not be published (44–173, 46+341). When the list is made up of several sheets a single verification attached to the last sheet is sufficient (54–235, 55+927).

DESCRIPTION OF THE REAL ESTATE

9. **General test of sufficiency**—The test of sufficiency is whether a man of ordinary intelligence would identify the land described with reasonable certainty (85–518, 89+853; 38–62, 35+566; 44–173, 46+341; 44–207, 46+328; 45–502, 48+325; 47–326, 50+233;

81–66, 83+485; 64–409, 67+219; 93–471, 101+653; 104+290). The land must be described with sufficient certainty to enable all parties who are invited to buy to identify the property and know what is being sold (89–24, 93+515). The purpose of the description being to point out the property distinctly any description which does this in such a way as to leave the public no room for mistake as to what property is intended is sufficient (31–385, 18+98; 91–63, 97+413). A description in tax proceedings is always construed with strictness and one which is in fact erroneous and calculated to mislead is insufficient (38–384, 37+799). But while certainty is required the test is not whether some person might be misled, but whether a person of ordinary intelligence might reasonably be misled (85–374, 88+971; 85–518, 89+853; 44–173, 46+341. See 93–471, 101+653). A description must be construed as a whole (85–518, 89+853; 44–173, 46+341; 93–471, 101+653). A construction which would lead to an impossible description of a single tract is to be avoided (85–374, 88+971). The language used must be according to common usage (26–212, 2+495). A mistake in a part of a description is not fatal if the remainder is sufficient in itself (91–63, 97+413).

10. Description according to common repute—A description according to common repute is sufficient (31–385, 18+98; 34–67, 24+342; 45–502, 48+325; 44–173, 46+341; 47–237, 49+865; 81–66, 83+485). Whether a description is according to common repute is a question of fact (34–67, 24+342).

11. Description according to plats—A description according to a recorded plat is sufficient (44–173, 46+341; 44–207, 46+328; 81–66, 83+485; 85–518, 89+853), unless the plat itself fails to describe the land with reasonable certainty (32–440, 21+550. See 72–472, 75+708).

12. Description according to government survey—A description according to government survey is of unquestioned sufficiency (See 47–326, 50+233). But a fraction of a government subdivision cannot be described by an integer, nor by a fractional number unless it is clear of what larger subdivision it is a fraction (See § 799).

13. Description with aid of tabular forms—It is universal practice to describe property with the aid of tabular forms with separate columns, headlines and crosslines. This practice has been sanctioned by the supreme court (47–326, 50+233) and is now a statutory requirement (§ 906). To be sufficient, however, there must be no real uncertainty as to the heading or crossline to which the particular description is related (43–69, 44+887; 47–326, 50+233; 37–132, 33+697; 44–173, 46+341; 85–518, 89+853; 64–409, 67+219; 93–471, 101+653). A description not under the technically proper heading has been sustained (93–471, 101+653). A description of a subdivision of a section cannot be placed under the heading "Lot or Block" (37–132, 33+697; 52–157, 53+1139. See 85–374, 88+971). Prior to 1895 c. 77 it was permissible to describe a section or lot in a column under the general headings "Sec. or Lot" and "Township or Block" (29–135, 12+352; 44–173, 46+341; 45–502, 48+325; 47–327, 50+233; 85–374, 88+971). Such alternative headings are no longer permissible (See § 906).

14. Greater exactness required than in private deeds—A description which would be sufficient as between parties to a private deed is not always sufficient in tax proceedings because in the former case the intent of the parties may be inferred from the surrounding circumstances while in the latter there is no intent (38–384, 37+799; 75–429, 78+10; 89–24, 93+515).

15. What extrinsic evidence admissible—Extrinsic evidence to identify property which is the subject of tax proceedings is admissible, as it is for the purpose of identifying the subject of legal proceedings in general (31–385, 18+98; 81–66, 83+485; 72–517, 75+710; 91–63, 97+413). Evidence that the description is according to common repute is admissible (31–385, 18+98; 34–67, 24+342; 45–502, 48+325; 44–173, 46+341; 47–237, 49+865; 81–66, 83+485). While evidence of extrinsic facts is admissible to identify the premises, an inherently insufficient description cannot be made sufficient by proof of facts tending to show what it was intended to include (89–24, 93+515; 59–70, 60+809). A description cannot be explained by experts or local usage (26–212, 2+495). Words or marks cannot be inserted or implied to effect a separation of terms which on their face constitute but a single description (38–384, 37+799). If there is a variance between a description in tax proceedings and the record description evidence that the two refer to the same land must be free from reasonable doubt (31–385, 18+98). The judgment roll is admissible (25–93). Descriptions are frequently held insufficient which would have been upheld if proper extrinsic evidence had been introduced (See 72–517, 75+710).

16. Amendment of description unauthorized—An insufficient description cannot be rendered sufficient by amendment (59–70, 60+809).

17. Variance in description—If there is a material variance in description between the published list and the judgment the latter is void (36–338, 31+175). A tax deed which does not purport to convey the land described in the judgment on which it is based is void (25–93. See 29–271, 13+125).

18. At different stages of proceedings—It seems that greater certainty is required in a description in a judgment than in the delinquent list (38–62, 35+556; 93–471, 101+653), but the same certainty is required in the list filed and the list published (93–471, 101+653).

19. Use of abbreviations—See § 799.

20. Descriptions held sufficient—"Second ward, town of St. Anthony"—a common designation—recorded plat, "Town of St. Anthony"—range omitted (44–173, 46+341); county and state omitted in description of a city lot (44–207, 46+328); headline, "Hoyt's Outlots"—a common designation—not named in recorded plat (45–502, 48+325); township and range stated in headlines or cross-lines instead of opposite each description (47–326, 50+233); "Lot 1 in Auditor's Subdivision No. 32"—a common designation—plat made by auditor under G. S. 1894 § 1626 (81–66, 83+485); "lot four" or "lot five" (as the case may be) "in Scribner and Crittenden's subdivision of lots eight and thirteen, of Smith and Lott's addition of outlots to St. Paul"—a common designation but not literally following the recorded plat (31–385, 18+98); "Bottineau's addition"—a common designation for "Northrop's addition to St. Anthony" (34–67, 24+342); "S ½ of lots 9 & 10, block 49, Shakopee city" (12–395, 280); "S 60 rods W ½ SE ¼" (29–135, 12+352); "SW¼ " " SW¼ (51–289, 53+635); "lot 1, block 5, in Bazille & Roberts' addition to (or in) St. Paul"—land in Bazille & Roberts' addition to West St. Paul in the city of St. Paul (77–343, 79+1040); SW ¼ of NW ¼ lot 2 & 3" of a named section, town and range—held a sufficient description of SW ¼ of NW ¼ and lots 2 and 3 of the section (85–518, 89+853); "lot 8, block 4, of Penniman's Addition" without naming the state, county or city, but stating that the land was sold pursuant to a tax judgment of the district court of Hennepin county and evidence being introduced that there was no other addition or subdivision of land in Hennepin county platted or known by any name embracing the word "Penniman" except "Penniman's Addition to Minneapolis" (47–237, 49+865); cross-line held to break connection with preceding headings—use of symbols—reference to plat (85–518, 89+853); under the heading "Addition" the words "St. Anthony Park North," and then to the right in another column, and under the words "Lot" and "Block," figures indicating the proper lots and block (64–409, 67+219); "the easterly 146 feet of that part of" certain government sections, "except Prior avenue, being in St. Paul, Minnesota" (68–242, 71+27); "NE ¼, N. W. ¼ section 1, township 29, range 24, exc. R. R. and Strs"—wrong range (91–63, 97+413); *a description under a heading not technically proper but not misleading* (93–471, 101+653).

21. Descriptions held insufficient—"S.[2] N. E.[4] & N. W.[4] S. E.[4]" (26–212, 2+495; 47–99, 49+387); "S. E. 4, N. E. 4 and N. E. 4 S. E. 4" (59–70, 60+809); "½ S W N W" (80–441, 83+382); "N ½ NE ¼ SE ¼ NE ¼ NE ¼ of NW ¼ 23, 114, 30, 160"—the figures "23," "114," "30," "160" being under columns headed so as to indicate that they referred to section, township, range and number of acres (38–384, 37+799); "lot No. 2 of subdivision of N. W. ¼ of N. W. ¼, section 24, township 130, range 42"—plat made under G. S. 1894 § 1626 (32–440, 25+550); description by numerals in columns *without any heading to the columns to indicate what they referred to* (30–433, 15+873); uncertainty as to whether numbers in columns referred to lots or sections—cross-line held not to separate descriptions (37–132, 33+697; 52–157, 53+1139); town and range omitted—cross-line insufficient (43–69, 44+887); "front 31 ft. of rear 82½ feet, lots 6 and 7, block 187, in the town of Minneapolis" (75–429, 78+10); "Nininger's Addition," without stating to what city, and no evidence introduced to identify it (72–517, 75+710); "Lot" used in the heading to a column in place of "Sec." (52–157, 53+1139); "that strip of land lying within the north and south lines of block 111, West St. Paul Proper, produced to State Street, in the city of St. Paul" (89–24, 93+515); "two-thirds of block four Bass' Outlots" (11–78, 45); omission of city and county in description of city lots (10–59, 41).

FILING THE LIST

22. Effect of as commencement of action—The filing of the list is the institution of an action against each tract of land described in it. The list is a complaint against each tract and tenders an issue as to the validity of the taxes appearing on it as effectually as though it contained formal allegations of every fact necessary to make such taxes valid (35–1, 25+457, 30+826; 40–512, 41+465, 42+473; 31–373, 17+961, 18+96; 62–518, 65+80; 73–65, 75+752; 93–471, 101+653). The only mode in which the state can assert a right to tax lands, so that the claim of right can be judicially determined, is by the filing of the list. That is equivalent to the commencement of an action for the determination of such claim of right in which the county appears as plaintiff, asserting the rightfulness of the tax as set out in the list, and all persons interested in the land appear as defendants. It is the policy of the statute that every objection to the enforcement of the taxes appearing on the list shall be litigated in the proceeding commenced by the filing of the list and that the judgment entered therein shall be final and conclusive of every fact which might or ought to have been litigated except the facts of payment and exemption (27–109, 6+454; 75–448, 78+14; 103+893). The list and notice are in the nature of a summons (39–92, 38+805). *The cause of action accrues and the statute of* limitations begins to run from the date of filing (75–448, 78+14).

23. Jurisdictional—The filing of the list is a jurisdictional prerequisite of a valid judgment (93–471, 101+653. See 22–178; 85–374, 88+971; 39–92, 38+805; 75–448, 78+14).

24. Date of filing—Under the present law the list is filed on or before February 1 (§ 905). Formerly it was filed on or before June 15 (G. S. 1878 c. 11 § 70) and later on or before January 20 (1885 c. 2 § 16; G. S. 1894 § 1579). Acts relating to the time of

filing are to be construed with reference to the last day upon which the list may be filed (75–512, 78+16).

25. What constitutes filing—85–374, 88+971.

906. Copy of list and notice—Within five days after the filing of such list, the clerk shall return a copy thereof to the auditor, with a notice prepared and signed by him, and attached thereto, which may be substantially in the following form:

State of Minnesota, } ss. District Court,
County of ..... } .....Judicial District.

The state of Minnesota, to all persons, companies, or corporations who have or claim any estate, right, title, or interest in, claim to, or lien upon, any of the several parcels of land described in the list hereto attached:

The list of taxes and penalties on real property for the county of ..... remaining delinquent on the first Monday in January, 19...., has been filed in the office of the clerk of the district court of said county, of which that hereto attached is a copy. Therefore you, and each of you, are hereby required to file in the office of said clerk, on or before the twentieth day after the publication of this notice and list, your answer in writing, setting forth any objection or defence you may have to the taxes, or any part thereof, upon any parcel of land described in said list, in, to, or on which you have or claim any estate, right, title, interest, claim, or lien, and, in default thereof, judgment will be entered against such parcel of land for the taxes on said list appearing against it, and for all penalties, interest, and costs.

(Signed) .....,
Clerk of the District of the County of .....
(Here insert list.)

The list referred to in said notice shall be substantially in the following form:

List of real property for the county of ....., on which taxes remain delinquent on the first Monday in January, 19....:

Name of Owner.	Town of (Fairfield), Township (Forty), Range (Twenty), Subdivision of Section.	Section.	Total Tax and Penalty. $ cts.
John Jones,	S. E. ¼ of S. W. ¼.....	10	2.20
James Smith,	Und. half of S. E. ¼.....	20	4.40
Amos Brown,	beg. at.....; thence in N. E. dirc. 40 rods to..... ....; thence in E. dirc. 10 rods to..... .....; thence in S. W. dirc. 40 rods to .....; thence 10 rods N. to place of beg. .....:	21	3.15

As to platted property, the form of heading shall conform to circumstances and be substantially in the following form:

Name of Owner.	(City or Village of Smithtown.) (Brown's Addition, or Subdivision.) Lot.	Block.	Total Tax and Penalty. $ cts.
John Jones	15	9	2.20
James Smith,	12	9	1.20
Amos Brown,	4	10	4.40

The names, descriptions, and figures employed in parentheses in the above forms are merely for purposes of illustration.

The name of the town, township, range, city, or village, and addition or subdivision, as the case may be, shall be repeated at the head of each column of the printed lists as brought forward from the preceding column. ('02 c. 2 s. 4)

Notice of judgment—The notice must conform substantially to the statutory form. "May" in the statute means "shall" (See 35–185, 28+222; 25–131; 25–93). But an error

or omission which could not reasonably mislead a person of ordinary intelligence is not fatal (88–495, 93+898). An error as to the time in which to answer is fatal (25–131; 40–189, 41+1031). Where, under the old law, March 20 fell on Sunday, it was held proper to state in the notice that answer should be filed on or before March 21 (73–65, 75+752). The list and notice are in the nature of a summons (39–92, 38+805). It is not necessary that the original of the notice should be kept on file in the clerk's office (44–56, 46+319). The notice is attached to and made a part of the list (45–502, 48+325). It is immaterial whether the notice precedes or follows the list (44–173, 46+341). Objection to the sufficiency of the notice must be taken by a special appearance (51–401, 53+714; 35–1, 15, 25+457, 30+826; 22–552, 25–131).

907. Bids for publication—Prior to the day on which the county board designates a newspaper for the publication of the notice and list, any publisher or proprietor of a legal newspaper, as defined by law, may file with the county auditor an offer to publish such notice and list in such paper, stating the rate at which he will make such publication, which shall not exceed fifteen cents for each description. The board may, in its discretion, receive offers presented to it at any time prior to the time when designation is made. ('02 c. 2 ss. 5, 6)

908. Designation of newspaper—At their annual meeting in January, and prior to the designation, the county board shall open, examine, and consider all offers for publication filed or presented as provided in § 907, and shall thereupon award the publication of the notice and list to the publisher or proprietor of the newspaper whose offer is found to be the lowest, and does not exceed fifteen cents for each description. The board may reject any offer, if, in its judgment, the public interest so require, and may thereupon designate a paper without regard to any rejected offer. In any county in which there is no legal newspaper, the board shall designate any such newspaper printed in the judicial district in which the county is situated, and circulating in the county. In counties now or hereafter having a population of seventy-five thousand or more, the board shall designate a daily paper of general circulation throughout such county. Every such designation shall be by resolution, which shall be substantially in the following form:

Resolved, that ..... (here state the name of the newspaper) be, and the same is hereby, designated by the county board of the county of ..... as the newspaper in which the notice and list of real estate remaining delinquent on the first Monday of January, 19...., shall be published.

A copy of the resolution, certified by the auditor, shall be filed with the clerk of the district court. If, for any reason, the board fail to designate a newspaper, or the proprietor of the paper designated fail to give the required bond, the auditor shall thereupon designate the same in writing, and immediately file such writing in his office, and a certified copy thereof with such clerk. ('02 c. 2 s. 7)

1. **Jurisdictional**—A proper designation is jurisdictional and a publication in a newspaper other than the one designated is a nullity (26–215, 2+693; 32–367, 20+357; 36–366, 31+692; 40–508, 42+481. See 47–99, 49+387).

2. **Evidence to show want of designation**—Evidence dehors the record is admissible to show the want of a proper designation (40–508, 42+481). Such want is sufficiently proved by evidence that there is no record on file in the office of the county auditor or clerk of court of any such designation (40–508, 42+481. But see § 800).

3. **Object of designation**—The object of the designation is not merely to determine how the notice and list should be served, but the resolution itself is intended as notice to the owner so that by examining it he may be able to ascertain with certainty in what newspaper to look to see whether any proceedings have been commenced against his land (36–366; 31+692; 43–493, 45+1098; 46–540, 49+325; 63–53, 65+128, 348).

4. **When board must act**—The board must act within the time prescribed. The statutory requirement in this regard is mandatory (63–53, 65+128, 348; 30–68, 14+263). It may act at an adjourned meeting (51–289, 53+635). The meeting of the commissioners of Hennepin county held on the first Monday in January under Sp. Laws 1877 c. 205 is the proper meeting for this purpose (47–237, 49+865).

5. **Sufficiency of designation**—The resolution must designate the newspaper by name and it is insufficient merely to designate the editor or owner (26–215, 2+693; 30–68, 14+263; 36–366, 31+692). An error in the name of the newspaper which would not mislead a person of ordinary intelligence is not fatal (38–384, 37+799; 36–366, 31+692; 46–540, 49+325; 47–237, 49+865). Prior to the existence of a statutory form it was held

that a resolution was sufficient which designated the paper in which the "list" should be published without referring to the notice (45–502, 48+325). Resolutions ambiguous as to the year of the list to be published have been upheld (31–373, 17+961, 18+96; 47–237, 49+865).

6. **Filing certified copy of resolution**—A proper filing is jurisdictional (43–493, 45+1098; 63–205, 65+268; 93–233, 101+68). To certify means to testify to a thing in writing. A copy of a resolution merely attested held insufficient (93–233, 101+68). The filing of an instrument consists, not in the indorsement or certificate of the officer, but in its being delivered to and accepted by him for the purpose of being placed and kept in his office as a permanent record or file. It is therefore the fact of filing and not the clerk's certificate of the fact, that, in this case, constitutes the jurisdictional prerequisite to the publication of the delinquent list. If the clerk makes a mistake in his indorsement as to the date of the filing, it is a mere clerical error and amendable, even though it may be as to a matter going to the jurisdiction of the court to render a judgment, but, so long as this certificate stands it is the best and highest evidence of the fact, as well as date, of filing, and parol evidence is inadmissible merely for the purpose of contradicting it, but is admissible for the purpose of having it corrected (63–205, 65+268). It is only a copy of the resolution that need be filed; it is not necessary to file a copy of the proceedings showing the vote by which it was passed and the validity of its passage (47–237, 49+865). The certificate need not state that the copy has been compared with the original (59–82, 60+845). Under the present law, if the auditor makes a designation he is required to file a copy in the office of the clerk (§ 908). Formerly there was a defect in the law in this regard (43–493, 45+1098). A party cannot question the filing on appeal in the absence of a finding in the lower court (49–119, 51+656; 32–367, 20+357).

7. **Errors or omissions**—Errors or omissions in matters of form connected with the designation of the newspaper are not jurisdictional (§ 914).

8. **Presumptions**—When the auditor designates the newspaper the presumption is that the paper designated has the required qualifications (33–394, 23+554). But it has been held that a proper designation cannot be supplied by intendment or presumption (26–215, 2+693). A proper filing of the resolution is presumed (§ 800). Where a resolution is found in the judgment roll it is presumed that it is the one filed by the auditor (93–233, 101+68).

9. **Objection, how taken**—Objection to the sufficiency of the designation must be taken by a special appearance (22–552. See § 915 Note 4).

10. **Contract for publishing list—Lowest bidder**—The letting of a contract for publishing and the designation should concur and be in effect one act. There can be no valid contract based on an invalid designation (30–68, 14+263). Under 1874 c. 1 § 136 it was the duty of the board to award the contract to the lowest bidder having certain qualifications. Where all bids were the same it was held permissible for the board to award the contract to one of the bidders (45–502, 48+325).

909. Publication of notice and list—The county auditor shall cause the notice and list of delinquent real property to be published once in each of two consecutive weeks in the newspaper designated, the first publication of which shall be made on or before February 20 immediately following the filing of such list with the clerk. The auditor shall deliver such list to the publisher of the paper designated, at least twelve days before the date upon which the list shall be published for the first time. ('02 c. 2 s. 8)

1. **Jurisdictional—Statute must be strictly followed**—The publication of the notice and list in strict conformity to the statute is jurisdictional (25–131; 26–215, 2+693; 36–338, 31+175; 36–366, 31+692; 39–92, 38+805; 44–56, 46+319; 64–139, 66+262). The publication operates as a constructive service of the notice and list on the party whose property is to be affected by the proceeding, and, to be effectual for any purpose, the mode of making it pointed out by the statute must be strictly complied with (26–215, 2+693; 36–366, 31+692; 43–493, 45+1098). This constructive service satisfies the constitutional requirement of due process of law (40–512, 41+465, 42+473; 23–394; 68–353, 71+265; 72–519, 75+718; 159 U. S. 526; 176 U. S. 550). It is not until the last publication that the court is deemed to have acquired jurisdiction (§ 914; 26–215, 2+693; 25–131).

2. **Period of publication**—The requirement as to the date of publication is directory, but as to the length of publication mandatory (31–373, 17+961, 18+96. See 33–394, 23+554).

3. **Published list must conform to list filed**—A material departure between the list filed and the list published is fatal (39–92, 38+805; 43–69, 44+887).

4. **Formal errors or omissions**—Merely formal errors in the publication of the notice and list are not jurisdictional (§ 914).

5. **Presumptions**—A tax judgment is presumed to be valid and is therefore presumptive evidence that the list and notice were duly published (64–139, 66+262). A tax certificate is prima facie evidence of due publication (See § 940). It is presumed that the publication was in a competent newspaper (See 33–394, 23+554; 45–502, 48+325).

910. Publication corrected—Republication—Immediately after preparing his forms for printing such notice and list, and at least five days before the first day for the publication thereof, every such publisher shall furnish proof of the proposed publication to the county auditor for correction. When such copy has been corrected by the auditor, he shall return the same to the printer, who shall publish it as corrected. On the first day on which such notice and list are published, the publisher shall mail a copy of the paper containing the same to the auditor. If during the publication of said notice and list, or within ten days after the last publication thereof, the auditor shall discover that such publication is invalid, he shall forthwith direct the publisher to republish the same as corrected for an additional period of two weeks. If such republication is necessary by reason of the neglect of the publisher, he shall receive no further compensation therefor; otherwise he shall be entitled to the same compensation as allowed by law for the original publication. ('02 c. 2 s. 9)

911. Publisher's bond—Within ten days after the designation of the newspaper in which the said notice and list are to be published, the owner or manager thereof shall execute to the state a bond, with sufficient sureties, in the sum of not less than two thousand dollars, the amount whereof shall be fixed by the county board at the session in which such newspaper is designated, the form and sureties to be approved by the county auditor, conditioned that he will publish said notice and list in such paper in strict compliance with law; that he will pay to the county all expenses and losses incurred by it from his neglect or refusal so to publish the same; that he will comply with all lawful directions of the county auditor with respect thereto; and that he will, when directed by such auditor, republish such notice and list without further expense to the county when the original publication thereof, by reason of his own fault, is insufficient. ('02 c. 2 s. 10)

912. Certificate before payment—Before such publisher shall be entitled to the fees for publishing such notice and list, he shall obtain from the county attorney and file with the county auditor a certificate that the publication was made according to law; and any auditor paying for such publication without such certificate being filed shall be liable to the county for the amount so paid. If there be no county attorney, or if upon application he refuse to give such certificate, the publisher may apply to the attorney general, on five days' notice to the county auditor and to the county attorney, if any, of such application; and, on filing with the auditor the certificate of the attorney general that such publication was made according to law, such auditor shall issue a warrant for the payment of such fees. ('02 c. 2 s. 11)

913. Affidavit of publication—The owner, publisher, manager, or foreman in the printing office of the newspaper in which such notice and list have been published shall forthwith make and file with the clerk an affidavit of such publication, stating the days on which such publication was made, and shall also file with the clerk three copies of each number of the paper and supplement, if any, in which the notice and list have appeared. The publication may be made in such newspaper, or partly therein and partly in a supplement issued therewith. Such affidavit shall be substantially in the following form:

State of Minnesota, } ss.
County of ..... }

....., being first duly sworn, deposes and says that he is the ..... (here state whether affiant is owner, publisher, manager, or foreman) of ..... (here state name of newspaper), in which was printed the notice and list of real estate remaining delinquent in ..... county on the first Monday of January, 19....; that the said notice and list were duly printed and published in said newspaper on each of the following days: On ..... (day of week), the ..... day of ....., 19...., and ..... (day of week), the ..... day of ....., 19....; that each of the said days on which said notice and list were so pub-

lished was the usual and regular day of the issuance and publication of said paper.

.....

Subscribed and sworn to before me this ..... day of ....., 19....

('02 c. 2 s. 13)

The filing of an affidavit is not jurisdictional. It is the fact of publication and not the proof thereof which is essential and the latter may be supplied at any time (22–178; 64–139, 66+262; 44–56, 46+319). The affidavit need not be published (64–139, 66+262). The filing of the affidavit will be presumed (See § 800). A statutory form of affidavit was first prescribed by 1902 c. 2 § 13. Sufficiency of affidavits (44–490, 47+154; 44–56, 46+319; 44–207, 46+328).

914. What defects jurisdictional—When the last publication shall have been made, the notice shall be deemed to have been served, and the court to have acquired full and complete jurisdiction to enforce against each parcel of land in said published list described the taxes, accrued penalties, and costs upon it then delinquent, so as to bind every estate, right, title, interest, claim, or lien, in law or equity, in, to, or upon such parcel of land, of every person, company, or corporation. Such jurisdiction shall not be affected by any error in making the list filed with the clerk, nor by any error, irregularity, or omission in the assessment or levy of the taxes, or in any other proceedings, prior to filing the said list; nor by any mistake in copying the list for publication, or in publishing the list, or in the designation of the newspaper wherein such list is published; nor by reason of the failure of the publisher to give the bond required; nor by reason of the taxes having been charged in any other name than that of the rightful owner; nor by any mistake in the amount of tax in such published list appearing against any piece or parcel of land therein described: Provided, that any judgment rendered in such proceedings shall be void upon satisfactory proof made at any time that such real estate was exempt from taxation, or that such taxes were paid before judgment was rendered. ('02 c. 2 s. 12)

99-M 914 - 140

CONCLUSIVENESS OF THE JUDGMENT

1. **General statement**—If the court acquires jurisdiction the judgment is final and conclusive, except that it may always be shown that the taxes were paid prior to judgment, or that the land was exempt (76–257, 79+302; 103+893). In other words, a tax judgment is not subject to collateral attack except for jurisdictional defects and for payment or exemption. The judgment is thus conclusive, not only as between the state and the owner of the land, but as to all parties, whenever or however the question may arise (22–178). It is conclusive as to the legality of the tax, the legality of the levy and assessment (27–109, 6+454; 35–1, 25+457, 30+826; 75–59, 77+548; 76–257, 79+302. See under law prior to 1874, 11–321, 225), and the amount due (31–373, 17+961, 18+96)—in other words, it is conclusive of everything essential to the right to sell the land for the amount specified (22–178; 27–109, 6+454; 35–1, 25+457, 30+826), barring the statutory exceptions as to payment and exemption (See Note 6, infra).

2. **General presumption in favor of**—Every tax judgment is presumed regular and valid when not invalid on its face (29–135, 12+352; 33–394, 23+554; 34–67, 24+342; 64–139, 66+262). It enjoys the same presumption of regularity and validity as a judgment of the district court in an ordinary civil action except as to payment and exemption (§ 916; 93–233, 101+68). A tax certificate is prima facie evidence that the judgment was duly entered (§ 940).

3. **Presumption of jurisdiction**—The court is presumed to have jurisdiction to render the judgment (33–394, 23+554; 64–139, 66+262). It is not overcome by the mere absence from the record of proof of publication of the delinquent list and notice (64–139, 66+262. See § 800), or of proof of the designation of a newspaper for such publication (See 40–508, 42+481 and § 800), or by the omission in the judgment of the statutory recitals of default (33–394, 23+554; 34–67, 24+342). A tax certificate is prima facie evidence that the judgment was duly entered and that the court had jurisdiction (§ 940).

4. **Evidence to show want of jurisdiction**—Want of jurisdiction may be proved by any competent evidence dehors the record (40–508, 42+481; 26–215, 2+693; 35–1, 25+457, 30+826; 64–139, 66+262; 36–366, 31+692; 33–394, 23+554).

5. **Collateral attack—General statement**—A tax judgment like any other judgment, may always be attacked collaterally for want of jurisdiction in the court over the subject matter. The principle is the same in all cases. In ordinary civil actions the district court has a general common law jurisdiction, so that it is very rare that the objection of want of jurisdiction over the subject matter is raised. On the other hand, in tax proceedings the jurisdiction of the court is special and statutory. It acts only by virtue of a statutory power which must be strictly followed. It has no authority by

virtue of its common law powers or general jurisdiction to entertain the proceedings. If it acquires any jurisdiction in a particular case, it is solely by virtue of the existence of the particular facts and conditions upon which its exercise is made to depend by the statutes conferring it; and, if these are wanting, the proceedings are coram non judice, and it is competent at any time to show such want of jurisdiction for the purpose of impeaching the judgment and sale thereon (26–215, 2+693; 39–92, 38+805). But a tax judgment is no more subject to collateral attack for mere error or irregularity than any other judgment (See Note 7, infra). In other words, it can only be attacked collaterally for jurisdictional defects and on the two statutory grounds of payment and exemption (See Note 6, infra).

6. Collateral attack—List of grounds for—A tax judgment may be collaterally attacked on any of the following grounds: that the statute on which it is based is unconstitutional (65–525, 68+105; 81–486, 84+6; 104+140. But see 75–59, 77+548); that the taxes were paid prior to judgment (§ 914; 35–1, 25+457, 30+826, overruled by statute); that the land was exempt (§ 914; 35–314, 29+126; 30–372, 15+665; 72–472, 75+708; 27–109, 6+454 overruled by statute); that the delinquent list was not properly filed with the clerk (§ 905 Note 23); that the published delinquent list was insufficient, as for example, in the statement of the amount due (§ 905 Note 4), or in the description of the land (§ 905 Notes 9–21); that the newspaper in which the notice and list were published was not properly designated (§ 908 Note 1); that a certified copy of the resolution designating the newspaper was not filed with the clerk (§ 908 Note 6); that the resolution designating the newspaper for publication was not properly certified (§ 908 Note 6); that the notice was insufficient, as, for example, in the statement of the time to answer (§ 906); that the list and notice were not published as required by the statute (§ 909 Note 1); that the judgment covers land not included in the delinquent list (§ 916 Note 5); that the judgment does not conform to the statute, as for example, in not being dated (§ 916 Note 4), in not being properly signed by the clerk (§ 916 Note 8), in not properly describing the land (§ 905 Notes 9–21), or in not properly stating the amount due (§ 916 Note 7).

7. Collateral attack—List of defects not grounds for—A tax judgment cannot be collaterally attacked on any of the following grounds: illegality of tax or of its levy or assessment (75–59, 77+548; 35–1, 25+457, 30+826; 76–257, 79+302), error, irregularity or omission in the assessment or levy of the taxes (§ 914; 71–66, 73+649; 81–66, 83+485. See 75–59, 77+548), or in any other proceedings prior to filing the list (§ 914; 27–109, 6+454; 76–257, 79+302; 22–178); failure to file affidavit of publication of delinquent list and notice (§ 913); failure to verify delinquent list (§ 905 Note 8); stating amount of taxes for several years in gross (§ 905 Note 4); error in name of owner (§§ 914, 932); erroneous entries in judgment after its rendition (64–396, 67+213); omission in default judgment of recitals of no answer and that twenty days have elapsed since publication (§ 916 Note 2); entry of judgment by clerk without order of court (54–219, 55+1123); premature entry of judgment (§ 916 Note 9); treating two tracts as one (66–425, 69+326); entering judgment on right-hand page of judgment book (§ 916 Note 3); error in amount of taxes (§ 905 Note 4; § 914); including taxes for certain years without authority (§ 905 Note 4); publication of delinquent list at wrong time (§ 909 Note 2); failure of the auditor to attach his certificate to each sheet of the delinquent list (§ 905 Note 8); unauthorized raise of valuation by state board of equalization (§ 863); mistake in copying list for publication; mistake in publishing list; mistake in designation of newspaper for publication of list and notice; failure of publisher to give bond (§ 914).

915. Who may answer—Form—Any person having any estate, right, title or interest in, or lien upon, any parcel of land embraced in said list as published, within twenty days after the last publication of said notice may file with the clerk an answer, verified as a pleading in a civil action, setting forth his defence or objection to the tax or penalty against such parcel of land. Such answer need not be in any particular form, but shall clearly refer to the parcel of land intended, and set forth in concise language the facts constituting the defence or objection to such tax or penalty; and, if the list shall embrace the taxes for two or more years, the defence or objection may be to the taxes or penalty for one or more of such years. The answer may embrace his defence or objection to any number of parcels of land in or upon which he has any estate, right, title, interest, or lien. No reply shall be necessary, but at the trial the allegations of the answer shall be deemed to be denied. ('02 c. 2 s. 14)

1. Form of answer—Verification—The answer should refer specifically to the tax or penalty to which objection is made (35–1, 11, 25+457, 30+826) and the objection should be specific. The strict rules of pleading in an ordinary action do not apply (See 47–406, 50+476; 51–401, 53+714). The provision as to time of trial is directory (62–518, 65+80. See 92–283, 100+6). A verification may be added at the trial by amendment with leave of court (79–362, 82+686). In the trial the court is required to "disre-

gard all technicalities and matters of form not affecting the substantal merits" (§ 917; 75–456, 472, 78+115). The answer is customarily entitled in the form given under § 916.

2. Demurrer—The statute does not seem to contemplate a demurrer to the answer. The better practice is for the county to raise objection to the sufficiency of the answer by motion for judgment on the trial but a demurrer is sometimes interposed and it has been held that, if the answer contains several defences, any one of which is good, a general demurrer is properly overruled (22–552).

3. Who may appear and answer—Mortgagees are within the statute (75–59, 77+548; 75–221, 77+829).

4. Waiver by general appearance—Special appearance—When a party appears generally and interposes an answer to the merits he waives all objections to the prior proceedings designed to give him notice (51–401, 53+714), but not as to other jurisdictional prerequisites (35–1, 15, 25+457, 30+826). Accordingly, if a party wishes to object to the sufficiency of the notice of judgment or of any of the proceedings relating thereto he must appear specially for that purpose (22–552; 25–131). Proper practice requires objections to the notice and objections to the merits to be presented in separate papers. Objection to the sufficiency of the notice is not waived by answering to the merits after such objection has been overruled (25–131).

5. Burden of proof—Ordinarily the state makes out a prima facie case by simply introducing the delinquent list, which is prima facie evidence that all the provisions of law in relation to the assessment and levy of the taxes appearing thereon have been complied with. But the cases in which taxes delinquent in prior years are required to be entered on the list being exceptional, and the authority to enter them depending upon exceptional circumstances, such authority must be shown by the state as part of its case (31–256, 17+473). A party interposing a defence has the burden of proving the facts on which it is based (See 56–24, 57+313; 33–164, 22+295; 94–320, 102+721), and as there is a strong presumption in favor of the legality and regularity of the proceedings he must prove such facts affirmatively and unequivocally (See 80–293, 83+183).

6. No right to jury trial—Under the law of 1874 it was held that a taxpayer had a constitutional right to a jury trial of the issues of payment and exemption (22–178). The decision was based on the ground that the judgment was final as to payment and exemption. Since the amendment of the law in this regard there is probably no right to a jury trial. There is no right to a jury trial on application for redemption under G. S. 1878, c. 11 § 92 as amended by 1889 c. 185 (60–164, 62+261).

7. Waiver of defences by failure to answer—By failing to answer a party waives all objections which might have been interposed by answer (62–518, 65+80; 75–59, 77+548; 71–66, 73+649; 31–373, 17+961, 18+96; 34–304, 25+605) except such as go to the jurisdiction of the court (See § 914), and among the latter are to be considered the defences of payment and exemption (See § 914). It is the intent of the law that every objection to the enforcement of taxes appearing on the list filed should be litigated and the judgment thereon be final and conclusive inter omnes, except against the objection of payment or exemption, if the court acquires jurisdiction (22–356. See § 914). This statement is subject to the qualification that a party in default may have the judgment opened for cause (§ 922).

8. General statement as to defences admissible—It may be stated generally that any objection to the validity of the taxes or any part of them, including their levy and assessment, or to the validity of any of the proceedings prior to application for judgment, may be interposed on such application by answer or motion based on a special appearance (See 35–1, 25+457, 30+826; 40–512, 41+465, 42+473; 27–109, 6+454; 31–256, 17+473), except where it is the intent of the law that the objection should be raised at a prior stage of the proceedings (71–283, 73+970; 75–456, 78+115; 77–190, 79+829). The statutory enumeration of defences is not exclusive (47–512, 50+536; 40–512, 41+465, 42+473).

9. Partial defences—A partial defence is admissible (22–552; 40–512, 41+465, 42+473. See 11–321, 225) and it is expressly provided that if the list shall embrace the taxes for two or more years, the defence or objection may be to the taxes or penalty for one or more years (§ 915).

10. Defence of unfair, unequal, partial or excessive assessment—The objection that taxes have been partially, unfairly or unequally assessed may be set up by answer and without regard to whether there have been prejudicial irregularities or omissions in the prior proceedings (47–512, 50+536; 40–512, 41+465, 42+473; 71–66, 73+649). Objection may be made that the land "has been assessed and taxed at a valuation greater than its real and actual value" (§ 919). The operation of this remarkable provision will probably be limited by the courts as far as possible (See 47–512, 50+536). Independently of this provision, it is no defence that an assessment is too large, unless it is so palpably excessive as to make it certain that the assessor failed to exercise an honest judgment or acted on a demonstrable mistake of fact (75–456, 78+115; 47–512, 50+536. See 68–353, 71+265). It may always be shown that the requirement of a bona fide assessment has been intentionally disregarded by the assessor or that the error is so gross that it cannot be accounted for on any ground of mere misjudgment of value, but must have resulted, if not from fraud, from a demonstrable mistake of fact (47–512, 50+536; 56–24, 57+313; 80–277, 83+339; 104+567. See 68–353, 71+265). The partiality, unfairness, or inequality in an assessment which may be interposed as a defence is only a partiality,

unfairness, or inequality in the assessment of the objector's land as compared with the general average assessment of other land in the same district, the correction of which will result in equality among all taxpayers of the district. If an assessment is impartial, equal and fair compared with the average valuation of other lands in the same taxing district, the fact that certain tracts in such district have been intentionally and wilfully omitted from the tax lists, or intentionally and wilfully undervalued, is no defence, either partial or total, which may be set up by answer (71–283, 73+970; 75–456, 78+115). A party cannot object to a valuation which, however erroneous it may be, charges him only with a just proportion of the tax. It is not a defence which may be interposed by answer that all property in the district, including that of the objector, was systematically assessed at one-third of its value in contravention of the constitution (69–170, 71+931). Whether an application to the board of equalization for an abatement is a condition precedent to the right to set up the defence of inequality, unfairness or partiality of assessment by answer is an open question (71–283, 287, 73+970).

11. When prejudice must be shown—The statute excludes certain defences except on a showing of prejudice and partiality, unfairness or inequality in the assessment (§ 919; 35–1, 25+457, 30+826). But this provision relates only to matters of form (40–512, 519, 41+465, 42+473; 22–356; 47–512, 50+536; 61–233, 63+628). Its meaning is "that no mere omission of statutory requirements shall constitute a defence, unless it be shown that it resulted to the prejudice of the party objecting, and that the taxes against which he seeks to defend have been partially, unfairly or unequally assessed, in which case, but not otherwise, the court may reduce the amount of taxes upon such piece or parcel of land, and give judgment accordingly" (47–512, 50+536). This provision was not intended to destroy other important safeguards found in the revenue laws. It was intended to prevent the success of technical defences, and also to prevent the success of meritorious defences to any greater extent than their merits demand (61–233, 63+628). It is not applicable to the objection that there was no valid levy (22–356; 40–512, 41+465, 42+473; 61–233, 63+628); or that the taxes were partially, unfairly or unequally assessed (47–512, 50+536. See 61–233, 63+628). It is applicable to formal defects in the assessment or levy (22–356; 31–256, 17+473; 40–512, 41+465, 42+473; 50–204, 52+523); to the certification of the amount of a school district levy (75–456, 78+115); probably to a statement of several years' taxes in gross (62–518, 65+80); and to formal defects in the delinquent list (85–374, 88+971).

12. List of admissible defences—It may be objected by answer that the taxes have been paid (§ 919; 35–1, 25+457, 30+826; 31–256, 17+473); that the land is exempt (§ 919; 27–109, 6+454); that the levy was illegal (22–356; 31–256, 17+473; 75–59, 77+548; 40–512, 41+465, 42+473; 61–233, 63+628); that the assessment was illegal (31–256, 17+473; 71–66, 73+649; 81–66, 83+485); that the assessment was partial, unfair or unequal (See Note 10, supra); that the land was assessed at a valuation greater than its real and actual value, at least, if there were prejudicial errors or omissions in the prior proceedings (See Note 10, supra); that there was prejudicial error or omission in the proceedings prior to filing the list, coupled with partiality, unfairness or inequality in the assessment (31–256, 17+473; 40–512, 41+465, 42+473; 68–353, 71+265); that the county commissioners failed to remit a portion of the taxes on the list as required by 1875 c. 10 (22–552); that there is a mistake in the amount of the taxes (31–373, 17+961, 18+96); that taxes for certain years are included without authority (31–373, 17+961, 18+96; 34–304, 25+605); that the state board of equalization illegally raised the assessment (76–257, 79+302); that the taxes are barred by the statute of limitations (65–525, 68+105; 57–203, 58+990); that the law under which the proceedings are had is unconstitutional (40–512, 41+465, 42+473; 61–465, 63+1103; 68–353, 71+265); that interest and penalties were unlawfully added (40–512, 524, 41+465, 42+473); that the property is personal and not real (See 26–229, 2+839).

13. List of inadmissible defences—It cannot be objected by answer that an omission or irregularity has occurred in any of the prior proceedings designed to give the party notice (See Note 4, supra); that all the property in the taxing district was assessed at less than its actual value (69–170, 71+931); that certain tracts in the same taxing district were intentionally and wilfully omitted or undervalued, if the objector's land was not improperly assessed (71–283, 73+970; 75–456, 78+115); that the objector is entitled to deductions from credits on account of indebtedness (77–190, 79+829); that the funds raised by the tax are to be used for an illegal purpose (69–170, 71+931); that the county organization is illegal (66–32, 68+323. See 61–465, 63+1103).

916. Judgment when no answer—Form—Entry—Upon the expiration of twenty days from the publication of the notice and list, the affidavit of publication being filed, the clerk shall enter judgment against each and every such parcel as to which no answer has been filed, which judgment shall include all such parcels, and shall be substantially in the following form:

State of Minnesota, } ss. District Court.
County of ..... } ..... Judicial District.

In the matter of the proceedings to enforce payment of the taxes on real estate remaining delinquent on the first Monday in January, 19...., for the county of ....., state of Minnesota.

A list of taxes on real property, delinquent on the first Monday in January, 19...., for said county of ....., having been duly filed in the office of the clerk of this court, and the notice and list required by law having been duly published as required by law, and more than twenty days having elapsed since the last publication of said notice and list, and no answer having been filed by any person, company, or corporation to the taxes upon any of the parcels of land hereinafter described, it is hereby adjudged that each parcel of land hereinafter described is liable for taxes, penalties, and costs to the amount set opposite the same, as follows, to wit:

Description. Amount.

And the amount of taxes, penalties, and cost to which, as hereinbefore stated, each of said parcels of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or equity, of every person, company, or corporation whatsoever; and it is adjudged that, unless the amount to which each of said parcels is liable be paid, each of said parcels be sold, as provided by law, to satisfy the amount to which it is liable.

Dated this ..... day of ....., 19....

....,

Clerk of the district court, county of .....

Such judgment shall be entered by the clerk in a book to be kept by him, to be called the "Real Estate Tax Judgment Book," and shall be signed by the clerk. The judgment shall be written out on the left-hand pages of such book, leaving the right-hand pages blank for the entries in this chapter hereinafter provided; and the same presumption in favor of the regularity and validity of the said judgment shall be deemed to exist as in respect to judgments in civil actions in said court, except where taxes have been paid before the entry of judgment, or where the land is exempt from taxation, in which cases such judgment shall be prima facie evidence only of its regularity and validity. ('02 c. 2 s. 15)

1. **Statutory form must be followed**—It is sufficient if the statutory form is followed substantially (64–409, 67+219). Recitals on the truth or falsity of which the judgment does not depend for its validity are not matters of substance (33–394, 23+554).

2. **Recitals as to default**—The omission in a default judgment of the statutory recitals that no answer has been filed and that more than twenty days have elapsed since the last publication of the list and notice is not fatal (33–394, 23+554; 34–67, 24+342).

3. **Entries only on left-hand page**—The provision that the judgment shall be entered only on the left-hand page is directory (78–244, 80+973, 81+213).

4. **Date**—Under a former statute a provision requiring the judgment to be dated was held mandatory (72–251, 75+107). That the date was entered after the rendition of judgment is not a ground for collateral attack (64–396, 67+213).

5. **Must follow delinquent list**—A judgment charging land not described in the delinquent list is void (36–338, 31+175).

6. **Description of land**—The land must be described so that a man of ordinary intelligence can identify it with reasonable certainty (§ 905, Notes 9–21).

7. **Statement of amount due**—The amount due on each tract must be stated with a definiteness and certainty susceptible of no reasonable doubt (26–201, 2+497; 38–62, 35+566). When the amount is only expressed in numerals, without indicating in any way what they represent—whether dollars or cents—the judgment is void (26–201, 2+497. See 39–92, 38+805; 31–385, 18+98). But it is sufficient to state the amount in a column headed "Total amount of judgment," with a perpendicular line (32–70, 19+344) or decimal point (32–70, 19+344; 26–201, 2+497) to separate the numerals representing dollars and cents. Greater certainty is required in the judgment than in the delinquent list (38–62, 35+566; 93–471, 101+653).

8. **Continuity of entry—Signature of clerk**—Where a judgment covers more than one page it is not necessary for the clerk to sign each page, although there is a printed blank for that purpose, but it is sufficient if he signs the last page, provided the preceding pages are so continuous that there is no reasonable doubt that they were intended as a single judgment (69–474, 72+706; 64–396, 67+213; 38–471, 38+361).

9. **Premature entry**—A default judgment prematurely entered is not void or subject to collateral attack, but may be set aside on proper application (44–173, 46+341).

10. **Interest**—Under the present law there does not seem to be any provision for interest on a tax judgment. Instead, interest runs on the amount for which the land is sold or bid in for the state (§ 960). When taxes are levied and assessed and become delinquent but are not placed on the proper delinquent list they bear interest from the second Monday in May of the year in which they become delinquent (§ 961). A tax

judgment does not include interest on the taxes for which it is rendered (62–518, 65+80; 87–243, 91+890), except for omitted taxes as stated above and except when an answer is interposed and overruled, in which case it includes interest at one per cent. per month from and after the expiration of the twenty days named in the published notice up to the date of entry, unless the court directs otherwise (§ 918).

11. **Amendment**—A judgment cannot be amended so as to validate a void sale had thereon (26–201, 2+497). If a description of the land is insufficient the judgment is void and cannot be validated by an amendment, at least, after a sale thereon (59–70, 60+809).

12. **In rem**—The judgment is in rem. It creates no personal liability and is not a lien on the other property of the owner (§ 904 Note 7).

13. **Effect as a lien**—The judgment operates as a perpetual lien, until paid, on the particular tract, cutting off all prior liens whether private or public (§ 981; 79–343, 82+645; 79–131, 81+763). Prior to 1902 c. 2 § 83 the lien expired in ten years (§ 981). The judgment is not a lien on the other property of the owner (§ 904 Note 7).

917. Proceedings on answer—If answers be filed within the time hereinbefore prescribed, the issues raised thereby shall stand for trial at any general term of the court in the county where such proceedings are pending in session when the time to file answers shall expire, or, if the court be not then in session, then at the next general or special term appointed to be held in said county; and, if no such term be appointed to be held within thirty days thereafter, then the same shall be brought to trial at any general term appointed to be held within the judicial district, upon ten days' notice. The county attorney of the county in which said 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 proceedings come on for trial, they shall take precedence of all other business before the court. The court shall without delay and summarily hear and determine the objections or defences made by the answers, and shall direct judgment accordingly, and in the trial thereof shall disregard all technicalities and matters of form not affecting the substantial merits. ('02 c. 2 s. 16)

See note to § 915.

918. Proceedings after hearing—Judgment—If, after hearing, the court sustain the taxes and penalties, in whole or in part, against any parcel of land, judgment shall be rendered against the same for the amount as to which such taxes and penalties shall be sustained, with costs and disbursements, and interest at one per cent. per month from and after the expiration of the twenty days named in the published notice, unless the court otherwise direct. The judgment may be substantially in the form prescribed in cases where no answer is filed, except that, in addition, it shall state that it was rendered after answer and trial; and after the description of each parcel shall be stated the name of the person answering as to the same. If the court sustain the defence or objection as to any parcel, the judgment shall discharge such parcel from the taxes in such list charged against it, or from such portion of such taxes as to which the defence or objection is sustained, and from all penalties. If such defence or objection is not sustained for the entire amount of taxes charged against any parcel, judgment shall be rendered against the same for the amount as to which the defence or objection is not sustained. The court may, in its discretion, award disbursements for or against either party. ('02 c. 2 s. 17)

See note to § 916.

919
103-M - 423

919. Application for judgment—Defences—If all provisions of law in relation to assessment and levy of taxes have been complied with, of which the list so filed with the clerk shall be prima facie evidence, judgment shall be rendered for such taxes and the penalties and costs. But no omission of any of the things by law provided in relation to such assessment and levy, or of anything required by any officer to be done prior to the filing of the list with the clerk, shall be a defence or objection to the taxes appearing upon any parcel of land, unless it be also made to appear to the court that such omission has resulted to the prejudice of the party objecting, and that the taxes thereon have been partially, unfairly, or unequally assessed, or that such parcel has been assessed and taxed at a valuation greater than its real and

actual value, in which case, but no other, the court may reduce the amount of taxes thereon, and give judgment accordingly. It shall always be a defence, when made to appear by answer and proofs, that the taxes have been paid, or that the property was not subject to taxation. ('02 c. 2 s. 18)

See § 915 Notes 8-13.

920. Papers filed by clerk—The clerk shall attach together and file the list, notice, affidavit of publication, one copy of the newspaper and supplement, if any, in which the notice and list were published, all answers, all orders made in the proceedings, and all affidavits and other papers filed in the course thereof. ('02 c. 2 s. 20)

The object of the statute is to preserve a judgment roll as in ordinary civil actions. It is not necessary that the roll should contain the original notice attached by the clerk to the copy of the delinquent list to be published (44-56, 46+319). Recitals in the judgment as to the filing of the delinquent list are not overcome by a notation by the clerk on the margin of the judgment roll (85-374, 88+971). Omissions in the roll are not fatal to the judgment (See 25-93; § 800). Papers improperly in the roll are not admissible to explain the judgment (See 25-93).

921. Appeal to supreme court—The orders and judgment of the district court shall be subject to review by the supreme court as in other civil actions. As soon as the appeal is decided the clerk of the supreme court shall enter the proper order, and forthwith transmit a certified copy thereof to the clerk of the district court: Provided, that such appeal shall not prevent the entry of judgment in the district court, or the sale of any parcel of land pursuant to such judgment, unless at the time of taking the appeal there be filed with the clerk of the district court a bond, with sureties, in an amount to be approved by the judge thereof, conditioned for the payment of the amount for which such judgment shall be rendered, and the penalties and costs allowed by law, if the decision of the district court shall be affirmed. ('02 c. 2 s. 19)

An appeal lies from a tax judgment as from a judgment in an ordinary civil action. There is now no law authorizing the certifying of tax cases of any kind to the supreme court (89-121, 94+168; 92-1, 98+1023; 93-177, 100+889). Notice of appeal should be served on the county auditor (23-299). On appeal in tax cases the findings of the trial court have the same force as in ordinary civil actions and will not be reversed unless manifestly contrary to the evidence (94-320, 102+721).

922. Opening judgment—The court wherein any tax judgment is entered may, in its discretion, and for good cause shown by any person interested, open such judgment at any time before the expiration of the period of redemption, and may allow any defence to be interposed that might have been interposed before entry of judgment, and may at any time, upon satisfactory proof, vacate and set aside such judgment on the ground that the tax in question was paid before judgment was rendered, or that the land in question was not subject to taxation. Application to open such judgment may be summary, upon such notice to the purchaser and county auditor as the court may direct; and, if a defence is allowed to be interposed, the case shall proceed in all respects as in defended cases. ('02 c. 2 s. 19)

1. **Opening default**—The application is addressed to the discretion of the trial court and its action will rarely be reversed on appeal (23-295; 28-360, 10+21; 76-257, 79+302). The application must be made promptly on learning of the judgment (28-360, 10+21. See 23-394; 54-219, 55+1123; 70-489, 73+405). It is proper to open a judgment to let in the defence of exemption (§ 922; 27-109, 6+454. See 25-295), or that the assessment was illegal (71-66, 73+649). An order granting (27-109, 6+454) or denying (25-295; 28-360, 10+21) an application is appealable. Notice of appeal must be served on the county attorney and should also be served on the auditor (23-299). Great liberality is shown in opening judgments between individuals to enable the owner to defend against a tax title (70-489, 73+405).

2. **Vacating and setting aside**—A default judgment prematurely entered may be vacated on motion (44+173, 46+341).

923. Copy of judgment to auditor—When any real estate tax judgment is entered, the clerk shall forthwith deliver to the county auditor, in a book to be provided by the auditor, a certified copy of such judgment, which shall be written on the left-hand pages of such book, leaving the right-hand pages blank. ('02 c. 2 s. 21)

The certified copy of the judgment to be entered in the copy judgment book is designed for the convenience of the auditor in making any certificates that it may be his

duty to make, and also that there may be kept in his office a record of the sales and subsequent acts affecting the same. It is not essential to the authority of the auditor to sell (33–394, 23+554). The requirement that the judgment shall be entered only on the left-hand page is directory. It was not intended for the protection of the taxpayer, but merely to promote an orderly and convenient style of keeping the tax judgment books, so that there might be ample room on the right-hand pages for making subsequent entries (78–244, 80+973, 81+213). The auditor is required immediately after the annual delinquent sale to make a record of the sales in the copy judgment book (§ 933). Where there is a discrepancy as to the date of sale between the certificate of sale issued by the auditor and the entry made by him in the copy judgment book, in the absence of any other evidence as to which is correct, the certificate controls; at least, when no question is involved as to when the right of redemption expires (47–326, 50+233). When land is bid in for the state at the annual delinquent sale the state acquires no title which it can subsequently convey unless the auditor makes an entry in the copy judgment book to the effect that the land was bid in for the state (40–384, 42+387; 57–203, 58+990; 70–286, 73+164; 38–335, 37+583). When the holder of a certificate pays subsequent taxes the auditor is required to make an entry of the fact in the copy judgment book (§ 934).

924. Clerk's fees—For all services in tax proceedings, except oaths to witnesses on trial, the clerk shall receive fifteen cents for each description, including the entry to be made by him on the right-hand page of the real estate tax judgment book, which sum, with the amount per description paid for reimbursement of the county for publication of the notice and list, shall be included in the amount charged to each description in the judgment. For each oath administered to a witness on the trial, he shall receive fifteen cents, which sum shall be included in any amount charged by the judgment against the parcel with respect to which the oath was administered. Such fees shall be paid to him by the county in which the taxes are levied. This section shall not relate to or affect the fees of any clerk of the district court of any county where such fees are now fixed by special law. (1608)

925
102-M - 206

925. Payment before judgment—Before sale—Before sale any person may pay the amount adjudged against any parcel of land. If payment is made before entry of judgment, and the delinquent list has been filed with the clerk, the county auditor shall immediately certify such payment to the clerk, who shall note the same on such delinquent list; and all proceedings pending against such parcel shall thereupon be discontinued. If payment is made after judgment is entered and before sale, the auditor shall certify such payment to the clerk, who, upon production of such certificate and the payment of a fee of ten cents, shall enter on the right-hand page of the real estate tax judgment book, and opposite the description of such parcel, satisfaction of the judgment against the same. The auditor shall make proper entries in his books of all payments made under this section. ('02 c. 2 s. 22)

926. Taxes delinquent prior to 1906—By what law governed—All proceedings for the enforcement of taxes charged against any parcel of land and becoming delinquent in the year 1906 shall, prior to and including the entry of judgment against such parcel, be governed by the law in force at and prior to the time when the Revised Laws take effect.

TAX SALES

927. Annual sale—Notice—Parcel omitted—On the second Monday in May in each year the county auditor shall sell all parcels of land against which judgment has been entered and remains unsatisfied for the taxes of the preceding year or years. Before making such sale he shall give ten days' posted notice thereof, one notice to be posted in the office of the clerk of the court where the judgment has been entered, one in the office of the county treasurer, and one at some conspicuous place at the county seat; and two weeks' published notice, the first publication to be at least fifteen days before the day of sale. If answer has been filed, or if a republication of the notice and list of delinquent taxes has been made, and judgment has been entered, the auditor shall sell the lands charged with taxes in such judgment within thirty days thereafter, first giving the required notice by posting and publication. The notice may be substantially in the following form:

TAX JUDGMENT SALE

Pursuant to a real estate tax judgment of the district court of the county of ....., state of Minnesota, entered the ..... day of ....., 19...., in proceedings for enforcing payment of taxes and penalties upon real estate in the county of ..... remaining delinquent on the first Monday in January, 19...., and of the statutes in such case made and provided, I shall on ....., the ..... day of ....., 19:..., at 10 o'clock a. m., at ....., in the (town or city) of ..... and county of ....., sell the lands which are charged with taxes, penalties, and costs in said judgment, and on which taxes shall not have been previously paid.

....,
Auditor of ..... County.

At the time and place appointed in such notice the auditor shall commence the sale of such lands, and proceed with the sale thereof from day to day for six consecutive days, or until the whole shall be sold. If, for any reason, any parcel against which a judgment has been entered be omitted from the tax judgment sale or sales of the year in which the same was entered, such judgment shall bear interest at one per cent. per month from the date thereof, and the auditor may include such parcel in the next annual tax judgment sale. ('02 c. 2 s. 23)

1. **Jurisdictional—Strict compliance with statute necessary**—The notice is a jurisdictional prerequisite to the right to sell and the statutory requirements must be observed with scrupulous exactness (85–344, 88+989. See 25–93; 9–212, 197; 47–313, 50+237).

2. **Contents**—The statutory form must be followed in substance. The year in which the taxes became delinquent must be stated, but not necessarily the year of the entry of judgment and sale, if the month and day are given, and the year may be inferred from the other dates (84–105, 86+781). It seems that a notice is sufficiently certain if read in the light of a knowledge of the law (84–105, 86+781), but this is rather novel doctrine (See 72–105, 75+115; 25–93; 85–344, 88+989). The place of sale in the city should be stated (See 9–212, 197). A notice that the sale will take place "at the courthouse" is sufficient, at least, in the absence of any evidence of prejudice (88–247, 92+974). Where the auditor signed the notice and added after his name, "County Auditor," without stating of what county, the notice was held sufficient (84–105, 86+781).

3. **Posting**—A posting of the notice in strict compliance with the statute is a jurisdictional prerequisite to the right to sell (80–339, 83+189; 31–373, 17+961, 18+96; 85–344, 88+989. See 9–212, 197; 9–314, 297). A certificate of sale or assignment is prima facie evidence of due posting (§ 940; 71–66, 73+649; 80–339, 83+189). There is no statutory provision for filing proof of posting, but it is common and correct practice for the auditor to file in his office an affidavit (71–66, 73+649). Evidence to overcome the presumption of the posting must be clear and strong, and it is not enough merely to show that there is no affidavit of posting on file (71–66, 73+649; 85–374, 88+971. See § 800). The failure to post cannot be remedied by a curative act (85–344, 88+989).

4. **Publication**—A publication of the notice in strict compliance with the statute is a jurisdictional prerequisite to the right to sell (31–373, 17+961, 18+96; 80–339, 83+189; 85–344, 88+989. See 9–212, 197). Under 1874 c. 1 § 122 the notice might be published within twenty days after the entry of judgment (29–264, 13+45; 31–385, 18+98). A certificate of sale or assignment is prima facie evidence of due publication (§ 940; 71–66, 73+649; 80–339, 83+189). Failure to publish cannot be remedied by a curative act (85–344, 88+989).

928. Public vendue—Procedure—The auditor shall sell at public vendue each parcel of land separately, in the order described in the judgment, and by the description therein; but, if the sum bid for any parcel shall not be paid on the day of the sale thereof, he shall again offer the same for sale. In offering the lands for sale, he shall state the amount for which each parcel is to be sold, and shall then sell the same to the person who shall offer to pay the amount for which the same is to be sold, at the lowest annual rate of interest on such amount: Provided, that no bid shall be accepted when the proposed rate of interest exceeds twelve per cent. per annum, and all bids for any fractional part of one per cent. shall be a decimal part thereof, and not less than one-tenth of one per cent. If no bidder shall bid an amount equal to

that for which the parcel is to be sold, at a rate of interest not exceeding twelve per cent. per annum, then the auditor shall bid in the same for the state at such amount. The county treasurer shall attend the sale, and receive all moneys paid thereon. ('02 c. 2 s. 24)

1. **Conduct of generally**—The provisions of the statute are merely directory (85–374, 88+971). The only statutory ground upon which a sale may be held invalid on account of irregularity in its conduct is that the land was not sold to the person making the best offer in accordance with the statute (§ 940; 85–374, 88+971). But this no doubt involves by necessary implication a public rather than a private sale (38–482, 38+487), a sale at the time (9–212, 197; 9–314, 297; 27–259, 6+781; 38–482, 38+489) and place (88–247, 92+974) advertised, for cash (37–415, 35+4), and for the statutory amount (See 64–409, 67+219; 85–524, 89+850). A sale of separate tracts in gross has been held invalid (93–233, 101+68). The authority of the auditor to make the sale is purely statutory (64–409, 67+219; 85–524, 89+850; 85–344, 88+989).

2. **Order of offering tracts—Tracts sold separately**—A sale of several tracts in gross is void (93–233, 101+68). If several tracts are described in the judgment as a single tract, the auditor must follow the judgment and sell them as one tract (91–63, 97+413; 93–233, 101+68. See 10–67, 49; 32–7, 19+83; 34–26, 24+296). But a sale cannot be set aside merely because the statutory order of sale was not observed (85–374, 88+971). Under 1874 c. 1 § 123 the auditor was required to offer each tract to the bidder who would pay the amount for which it was to be sold for the shortest term of years (40–541, 42+538). This provision was repealed by 1875 c. 5 § 28 (85–374, 88+971).

3. **Amount for which sold**—The amount for which the land is sold is the amount charged in the judgment, not including interest thereon (§ 928; 62–518, 65+80. See § 916 Note 10). A trifling error in the amount is not fatal (77–394, 80+205, 777).

4. **Bidding in for state**—When no one makes a bid which the auditor is authorized to accept he is required to bid in the land for the state (§ 928). He was formerly required to issue a certificate of sale to the state in such cases (See § 929 Note 4), but now he simply makes an entry in the copy judgment book to the effect that the land was bid in for the state (§ 933). Unless this entry is made the state acquires no title which it can convey (38–335, 37+583; 40–384, 42+387; 57–203, 58+990; 70–286, 73+164). A certificate of assignment is prima facie evidence that such entry was duly made (§ 940; 40–384, 42+387). The effect of bidding in for the state is not to pay the taxes. The taxes remain delinquent until actually paid to the county treasurer either by the land owner, the purchaser at a tax sale or by an assignee of the state (93–382, 101+603).

5. **Combination to prevent competition**—A combination to prevent competition is not to be inferred from the mere fact of a joint purchase (37–25, 33+116).

6. **Caveat emptor**—The rule of caveat emptor applies to a tax sale. A purchaser is not a bona fide purchaser without notice but takes subject to all defects in the prior proceeding (35–124, 27+497).

7. **If judgment void sale void**—The sale rests on the judgment. If the judgment is void the sale is void (38–471, 38+361; 59–70, 60+809; 78–102, 80+861).

8. **Certificate prima facie evidence of valid sale**—A certificate of sale or assignment regular on its face is prima facie evidence that all the requirements of the law with respect to the sale were complied with (§ 940; 71–66, 73+649; 80–339, 83+189; 38–27, 35+666).

929
09 - - 340
99-M - 140
105-M - 71

929. Certificate of sale—Form—Effect—Record—The auditor shall execute to the purchaser of each parcel a certificate which may be substantially in the following form:

I, ..., auditor of the county of ....., state of Minnesota, do hereby certify that at the sale of lands pursuant to the real estate tax judgment entered in the district court in the county of ....., on the ..... day of ....., 19...., in proceedings to enforce the payment of taxes delinquent on real estate for the years ....., for the county of ....., which sale was held at ....., in said county of ....., on the ..... day of ....., 19...., the following described parcel of land, situate in said county of ....., state of Minnesota, to wit: (insert description) was offered for sale to the bidder who should offer to pay the amount for which the same was to be sold, at the lowest annual rate of interest on such amount; and at said sale I did sell the said parcel of land to ..... for the sum of ..... dollars, with interest at ..... per cent. per annum on such amount, that being the sum for which the same was to be sold, and such rate of interest being the lowest rate per cent. per annum bid on such sum; and, he having paid said sum, I do therefore, in consideration thereof, and pursuant to the statute in such case made and provided, convey the said parcel of land, in fee simple, to said

....., his heirs and assigns, forever, subject to redemption as provided by law.

Witness my hand and official seal this ..... day of ....., 19.....

.....,
County Auditor.

If the land shall not be redeemed as in this chapter provided, such certificate shall pass to the purchaser an estate therein in fee simple without any other act or deed whatever. Such certificate may be recorded, after the time for redemption shall have expired, as other deeds of real estate, and with like effect. If any purchaser at such sale shall purchase more than one parcel, the auditor shall issue to him a certificate for each parcel so purchased. ('02 c. 2 s. 25)

CERTIFICATE OF SALE

1. **An official deed**—A certificate is an official deed within the occupying claimant's act (37–157, 33+326).

2. **Contents**—The statute must be followed in substance. "May" in the statute means "must" (35–185, 28+222). All the facts of the sale required by the statutory form must be stated (35–185, 28+222; 40–541, 42+538). The date of sale must be stated (35–185, 28+222), but it is sufficient if it appears by fair inference (38–27, 35+666). The middle name or initial of the purchaser need not be given (31–385, 18+98). If there is a discrepancy as to date of sale between the certificate and the entry in the copy judgment book the certificate controls, at least when no question is involved as to when the right of redemption expires (47–326, 50+233). Surplusage does not vitiate (33–394, 23+554). Under 1874 c. 1 § 123 the certificate had to recite that each tract was first offered to the bidder who would pay the amount for which it was to be sold for the shortest term of years (40–541, 42+538).

3. **When issued**—It must be issued within a reasonable time after the sale (36–355, 31+351; 37–11, 33+35; 40–188, 41+970; 68–313, 71+381).

4. **Upon sale to the state**—No certificate is now issued when the land is bid in for the state, but the auditor merely makes an entry in the copy judgment book (§ 933). Under 1874 c. 1 § 124 such a certificate was required and was an essential muniment of title for subsequent purchasers from the state (40–100, 41+545; 40–541, 42+538; 39–410, 40+365). This provision was repealed by 1878 c. 1 § 120.

5. **Extrinsic evidence**—Extrinsic evidence of the date of execution is admissible (47–326, 50+233; 37–415, 35+4). An omission of an essential fact cannot be supplied by oral evidence (40–541, 42+538).

6. **Secondary evidence of when lost**—Secondary evidence of the contents of a lost certificate is admissible (40–100, 41+545), the proper foundation being laid (39–410, 40+365). A certificate thus proved has the same force as evidence as an ordinary certificate (47–535, 50+610).

7. **Second certificate when first defective**—If an original certificate is defective the auditor conducting the sale may, within a reasonable time, execute a second certificate to obviate the defect (44–56, 46+319; 40–541, 42+538; 68–313, 71+381).

8. **Assignment**—That a certificate may be assigned is unquestioned although not expressly authorized by statute. The assignee succeeds to the rights and burdens of his assignor (80–119, 82+1114. See 54–219, 55+1123). The certificate is not commercial paper and an assignment in blank does not authorize the holder to write a contract over it contrary to the agreement of the parties (52–451, 55+46). The rights of a certificate holder may be transferred by a quit claim deed (35–418, 29+59).

RIGHTS OF CERTIFICATE HOLDER

9. **Before expiration of redemption period**—There is no technical term to define the interest of a certificate holder prior to the expiration of the redemption period. He has a statutory interest in the land covered by the certificate—certain statutory rights (50–491, 52+970) and only statutory rights (15–245, 190; 27–92, 6+445). He may pay subsequent delinquent taxes and be reimbursed if his title fails (50–491, 52+970. See §§ 934, 946). He may redeem from a subsequent sale for taxes (50–491, 52+970. See § 945). He has a contract with the state, the terms of which are to be found in the law at the time of the sale, which cannot be impaired by subsequent legislation (30–350, 15+375; 32–479, 21+721; 50–491, 52+970; 27–92, 6+445; 26–145, 1+832). He has a right to refundment from the county in case his certificate is found void for certain reasons (§ 963). He has a lien on the land for reimbursement if his certificate is found void in certain cases (§ 942). He has a right to reimbursement if the land is redeemed from the sale (§ 946). He has a right to assign his interest (See Note 8 supra). He has an assurance from the state that it will not impair his title by a sale of the land for taxes due prior to the sale to him (79–343, 82+645. See 80–119, 82+1114). In a sense he succeeds to the rights of the state, but not fully, for he cannot enforce his rights in the same manner as the state (15–245, 190; 39–470, 40+575; 84–53, 86+875; 79–343, 82+645; 72–148, 75+118. See 80–119, 82+1114). He has no estate in the land (10–59, 41; 15–245, 190; 37–157, 33+326; 26–145, 1+832 contains a misstatement in this regard) and no right

to the possession (37–157, 33+326; 32–479, 21+721). His interest is a lien within the meaning of the statute to determine adverse claims (10–59, 41; 15–245, 190). His rights are subject to be cut off by a sale of the land for subsequent taxes (50–491, 52+970; 30–350, 15+375). He is not a bona fide purchaser without notice but takes subject to all defects in the prior proceedings (35–124, 27+497).

10. After expiration of redemption period—If no redemption is made within the time allowed by law the certificate holder has an absolute title in fee simple, free from all liens public or private attaching prior to the sale (§§ 929, 935; 79–343, 82+645; 81–254, 83+991; 50–491, 52+970). He has a right to the possession (37–157, 33+326. See 39–470, 40+575). If his title is found void he has a right to refundment from the county (§ 963) or a lien on the land for reimbursement (§ 942). The state cannot impair his title by a sale of the land for prior taxes (79–343, 82+458. See 80–119, 82+1114). If his certificate is regular on its face he cannot be dispossessed until reimbursed for taxes and improvements (See § 4434). He gets an entirely new title—an independent grant from the state which bars all other titles or equities, whether of record or otherwise (39–35, 38+757). If the owner is the holder of a certificate he may rely on his original title or on his tax title or on both (33–49, 21+861; 42–398, 45+958; 64–273, 66+976). The title acquired is perfect without a judgment confirming it and the holder is under no obligation at any time to bring an action to protect his title (81–254, 83+991). If the certificate holder goes into possession his rights are not like those of a mortgagee in possession (39–470, 40+575).

930-931
102-M - 207

930. Who may purchase—Owner—All persons, except as provided in § 931, may become purchasers at such sale. If the owner purchase, the sale shall have the effect to pass to him, subject to redemption as in this chapter provided, every right, title, and interest of any and every person, company, or corporation, free from any claim, lien, or incumbrance, except such right, title, interest, lien, or incumbrance as such owner may be legally or equitably bound to protect against such sale, or the taxes for which such sale was made. ('02 c. 2 s. 26)

An owner (33–49, 21+861; 42–398, 45+958; 64–273, 66+976); a national bank (54–219, 55+1123); a second mortgagee (72–484, 75+713, 77+36; 74–345, 77+214. See 74–484, 77+539); a creditor of a mortgagor (36–59, 29+887), may purchase. But it may be stated as a general proposition that whenever a party holds such a relation to the land or its owner, whether by express contract or implication of law arising on such relation, that it is his duty to pay the taxes, he cannot allow the land to be sold for taxes, become the purchaser, and thus build up a title on his own neglect of duty (42–398, 45+958; 28–276, 9+806). Thus it is held that a mortgagor cannot acquire a tax title as against the mortgagee (28–276, 9+806; 64–273, 66+976. See 94–513, 103+561); a grantee of a mortgagor as against the mortgagee (58–176, 59+942; 64–273, 66+976; 67–303, 69+1078); one who has assumed a mortgage as against the mortgagee (37–420, 34+896; 35–518, 29+314); a grantee as against a grantor (38–342, 37+794); one tenant in common as against the other (36–42, 29+675; 45–174, 14+654; 66–425, 69+326; 74–484, 77+539. See 26–20, 1+257; 25–222); a life tenant as against a reversioner (28–13, 8+830; 40–450, 42+352; 65–124, 67+657); one mortgagee against another (74–484, 77+539. See 72–484, 75+713, 77+36; 74–345, 77+214). A mortgagee may acquire a tax title as against the mortgagor if he is under no obligation to pay the taxes (47–237, 49+865). A wife may acquire a tax title to property held by her husband under lease from a third party (104+290).

931. Who may not purchase or take assignment—No county auditor, county treasurer, clerk of the district court, or deputy or clerk of such officer, may become a purchaser at such sale, or procure an assignment of the right acquired by the state in lands bid in for it at such sale, as hereinafter in this chapter provided, either in his own behalf, or as agent or attorney for any other person, except that such officer, deputy, or clerk may purchase lands owned by him, or on which he has a lien, or procure such assignment of the state's right in such lands. ('02 c. 2 ss. 26, 29)

See note to § 930.

932. Wrong name of owner—No such sale shall be affected or deemed invalid on account of the use of another name than that of the true owner in describing the ownership of the parcel of land sold in any tax proceeding. ('02 c. 2 s. 32)

47–326, 50+233; 64–309, 67+72; 81–66, 83+485. See 104+835.

933. Entries in judgment books after sale—Immediately after such sale the auditor shall set out in the copy judgment book what disposition was made at such sale of each parcel of land; if sold to an actual purchaser, to whom

and for what amount, and for what rate of interest; and, if bid in for the state, then so stating. He shall thereupon deliver such book to the clerk of the court, who shall forthwith enter on the right-hand page of the real estate tax judgment book, opposite the description of each parcel sold, the words, "Satisfied by sale," and opposite each parcel bid in for the state, the words, "Bid in for the state;" and he shall thereupon redeliver said copy judgment book to the auditor. Upon any assignment or redemption the auditor shall make a note thereon in the copy judgment book, opposite the parcel assigned or redeemed. ('02 c. 2 s. 27)

See note to § 923.

934. Taxes on land sold—Payment by purchaser or assignee—The taxes for subsequent years shall be levied on property so sold or bid in for the state in the same manner as if the sale had not been made. The purchaser or assignee of the state may pay the amount of such taxes at any time after they become delinquent, and upon such payment the amount thereof, together with interest at the rate of twelve per cent. per annum from the date of payment, shall be added to and be a part of the money necessary to be paid for redemption from sale. Any such purchaser or assignee paying such taxes shall, at the time of the payment thereof, present to the county auditor his tax certificate; and the auditor shall thereupon enter the fact of such payment, and the amount thereof, with the year or years for which payment is made, on his copy of the tax judgment book, opposite the parcel embraced in such certificate. ('02 c. 2 s. 28)

934
05 - 264

Right of certificate holder to pay taxes (50-491, 52+970).

935. Lands bid in for state—Assignment—Certificate—At any time after any parcel of land has been bid in for the state, the same not having been redeemed, the county auditor shall assign and convey the same, and all the right of the state therein acquired at such sale, to any person who shall pay the amount for which the same was bid in, with interest at the rate of twelve per cent. per annum, and the amount of all subsequent delinquent taxes, penalties, costs, and interest at said rate upon the same from the time when such taxes became delinquent. He shall execute to such person a certificate for such parcel, which may be substantially in the following form:

935
99-M - 46
99-M - 140
105-M - 69
105-M - 424

935-937
117-NW 417

I, ..., auditor of the county of ....., state of Minnesota, do hereby certify that at the sale of lands pursuant to the real estate tax judgment entered in the district court in the county of ..... on the ..... day of ....., 19...., in proceedings to enforce the payment of taxes delinquent upon real estate for the years ..... for the county of ....., which sale was held at ....., in said county of ....., on the ..... day of ....., 19...., the following described parcel of land, situate in said county of ....., state of Minnesota, to wit: (insert description) was duly offered for sale; and, no one bidding upon such offer an amount equal to that for which said parcel was subject to be sold, the same was then bid in for the state at such amount, being the sum of ..... dollars; and the same still remaining unredeemed, and on this day ..... having paid into the treasury of said county the amount for which the same was so bid in, and all subsequent delinquent taxes, penalties, costs, and interest, amounting in all to ..... dollars, therefore, in consideration thereof, and pursuant to the statute in such case made and provided, I do hereby assign and convey the said parcel of land in fee simple, with all the right, title, and interest of said state acquired therein at said sale, to the said ....., his heirs and assigns, forever, subject to redemption as provided by law.

Witness my hand and official seal this ..... day of ....., 19....

[Seal]

....., County Auditor.

If the land shall not be redeemed as in this chapter provided, such certificate shall pass to the purchaser or assignee an estate therein in fee simple, without any other act or deed whatever. Such certificate or conveyance may

be recorded, after the time for redemption shall have expired, as other deeds of real estate, and with like effect. ('02 c. 2 s. 29)

CERTIFICATE OF ASSIGNMENT

1. **An official deed**—It is an official deed within the occupying claimant's act and should be executed by the auditor in his official capacity and sealed with his official seal (29–264, 13+45; 55–202, 56+824).

2. **Contents**—It need not recite that the purchaser has paid all subsequent delinquent taxes, penalties, costs and interest (55–202, 56+824).

3. **Who may take**—The statute defines who may not take an assignment (§ 931). It is immaterial to the state who pays the amount so that it comes into the treasury (26–145, 1+832). No one but the federal government can question the right of a national bank to take an assignment (54–219, 55+1123).

4. **Purchaser must pay subsequent delinquent taxes**—The purchaser must pay all taxes which have become delinquent since the land was bid in for the state and the penalties and costs with interest thereon at twelve per cent. (§ 935; 72–148, 75+118; 75–17, 77+436; 85–518, 89+853). It is not necessary that the certificate should state that the purchaser has paid such taxes (55–202, 56+824). He is not required to pay subsequent taxes due and unpaid but not delinquent (91–63, 97+413). A person subsequently redeeming must pay interest on the interest paid by the assignee (72–148, 75+118; 75–17, 77+436).

5. **Authority of auditor limited by statute**—The authority of the auditor is strictly limited by the statute. He has no authority to make contracts for future purchases or to sell on credit for the whole or any part of the purchase price (37–415, 35+4).

6. **Extrinsic evidence**—Extrinsic evidence is admissible to prove when the certificate was delivered to the purchaser and when he paid the purchase money into the county treasury (37–415, 35+4. See § 929 Note 5).

7. **Assignment**—It may be assigned in the same way as a certificate of sale (§ 929 Note 8).

8. **Indorsement by auditor**—It cannot be recorded until indorsed by the auditor as provided by statute (§ 943).

9. **Judgment void certificate void**—29–271, 13+125.

10. **Rights of certificate holder**—The rights of a holder of a state assignment are the same as those of a holder of a certificate of sale (§ 929 Notes 9, 10).

936
07 - 430
936
105-M - 69

936. Unredeemed lands—Forfeited sale—All parcels of land bid in for the state, and not assigned to purchasers or redeemed within three years from the date of the tax sale at which they are offered, shall become the absolute property of the state and be disposed of as provided in this section and § 937. In July of each year, the county auditor shall prepare and transmit to the state auditor a list of all such lands in his county as to which it appears from the records of his office that the right of redemption has expired. The state auditor shall annually give one week's published notice in such county of the day or days upon which he will offer for sale, at the county seat, all parcels of land so forfeited. ('02 c. 2 ss. 52, 53)

937
07 - 430
937
105-M - 69

937. Conduct of sale—Such sale shall be conducted by the state auditor, or, if he so directs, by his deputy, or by the county auditor. Each parcel shall be sold to the highest cash bidder therefor; but not for a less sum than the aggregate taxes, penalties, interest and costs charged against it, unless the cash value thereof, fairly determined by the state auditor, shall be less than such aggregate. The purchaser shall forthwith pay the amount of his bid to the county treasurer, and the officer conducting the sale shall give to him a certificate, in a form prescribed by the attorney general, in which shall be set forth the name of the purchaser, a description of the land sold, the price paid and the date of sale. The auditor and treasurer of the county shall attend the sale, the former to make a record of all sales thereat and the latter to receive all moneys paid on account thereof. ('02 c. 2 ss. 54, 57)

938. Purchaser to receive deed—Any person, or his heirs or assigns, receiving the certificate described in § 937, shall be entitled to a deed from the state sixty days after the service of a notice of expiration of time from redemption and filing proof of such service, which notice shall be substantially as provided in § 956; and until the expiration of such time for redemption the land described in said certificate shall be subject to redemption in the manner provided in § 946; and upon the expiration of such redemption period, upon presentation of such certificate to the governor, he shall be authorized to execute a deed in the name of the state to the person entitled thereto, conveying the lands

therein described; and every such deed shall vest the grantee with complete title to such lands, subject to the defences that the tract or parcel was exempt from taxation, or that the taxes, for which such tract or parcel was sold at said tax sale, had been paid. Such deed may be recorded as other deeds of real estate, and the record thereof shall have the same force and effect in all respects as the record of such deeds, and shall be evidence in like manner. ('02 c. 2 s. 55) See 1905 c. 211

939. Proceeds of sale, how distributed—The proceeds of any parcel of land so sold, to the amount of taxes, penalties, interest, and cost charged thereon, shall be distributed as provided by law for the distribution of the like sums upon sales for delinquent taxes. The portion thereof due to the state shall be paid to the state treasurer upon the draft of the state auditor, and the excess, if any, above the taxes, penalties, interest, and costs charged upon the land, shall be included in such draft and be paid in like manner for the benefit of the state. If any parcel be sold for less than the amount charged thereon, the state taxes shall first be paid and the remainder, if any, distributed pro rata to the several funds for which the taxes were levied. ('02 c. 2 ss. 56, 57)

940. Certificate as evidence—Grounds for setting aside—Evidence of payment—County and state, when parties—The certificates issued pursuant to §§ 929, 935, 937, or the record thereof, shall be prima facie evidence that the parcel described therein was subject to taxation for the year or years therein stated; that such parcel was listed and assessed at the time and in the manner required by law; that the taxes were levied according to law; that the judgment pursuant to which the sale was made was duly entered, and that the court had jurisdiction to enter the same; that all requirements of law with respect to the sale had been complied with; that such parcel has not been redeemed from the sale; and of title in the grantee therein after the time for redemption has expired: Provided, that when any such certificate embraces university, school, or other state lands, the title whereof is in the state, no other or greater interest shall be held to be thereby conveyed than that acquired under the certificate of the state auditor. No sale shall be set aside or held invalid by reason of any misrecitals in such certificate; nor unless the party objecting to the same prove either that the taxes were paid before judgment was rendered, or that such parcel was exempt from taxation, or that the court rendering the judgment pursuant to which the sale was made had not jurisdiction to render the same, or that after the judgment and before the sale such judgment had been satisfied, or that notice of sale as required by this chapter was not given, or that such parcel was not offered at such sale to the bidder who would pay the amount for which the parcel was to be sold at the lowest rate of interest, as provided in this chapter: Provided, that every judgment rendered against any parcel for a tax which was paid before the entry thereof, or when the land was exempt from taxation, shall be void, and all sales made under any such judgment or under a judgment which has been paid shall be void, and no title or interest in any parcel sold under such judgment shall pass or be conveyed to any purchaser at such sale. In any action brought to set aside or cancel such sale, or in which the validity of such sale may arise, the tax receipt, or the treasurer's duplicate thereof, or other record of the payment of such tax in the office of the county auditor or county treasurer, shall be prima facie evidence of such payment; but such payment shall not be established by parol testimony only. In such action, the county in which the land is situated, or the state, if either claim any interest in the land sold under such judgment, may be made a party defendant, in which case the county attorney shall appear on behalf of such county or state, or both. ('02 c. 2 s. 30)

CERTIFICATE AS EVIDENCE

1. **Certificates of sale and assignment of same effect**—See § 940.

2. **Must be regular on face**—To have any force as evidence either of title or regularity the certificate must be regular on its face; that is, it must conform to the statute and disclose no invalidity in the proceedings (35–185, 28+222; 40–541, 42+535; 32–7, 19+83; 39–317, 40+70; 38–27, 35+666). Resort to extrinsic evidence cannot be had for the purpose of determining whether the certificate is regular on its face (32–XX, 23+824).

3. Of title—Preliminary proof necessary—To make a certificate prima facie evidence of title it is necessary to make preliminary proof that the period of redemption has expired (35–408, 29+121; 38–433, 38+106; 39–431, 40+565; 36–456, 32+174; 33–271, 22+614; 37–157, 33+326; 77–88, 79+652; 37–415, 35+4). This should be done by introducing in evidence the notice of expiration of redemption, the assessment roll for the proper year to show that the notice was addressed to and served upon the person in whose name the land was assessed at the time of service, the officer's return or affidavit of service, and the affidavit of publication, if any (35–408, 29+121; 39–431, 40+565). The auditor's certificate of no redemption is insufficient for such purpose (38–433, 38+106). Strict proof must be made that the notice was served on the person in whose name the land was assessed at the time of the service. There is no presumption that land continues to be assessed in the name of the same person and the court will take judicial notice that land is assessed every even-numbered year. There is no presumption that the auditor inserted the right name in the notice (88–495, 93+898; 85–524, 89+850). It is not necessary to prove that there has been no redemption (31–385, 18+98. See § 940), or that the judgment remains unsatisfied (See 33–394, 23+554; and § 940). It is probably unnecessary to prove the judgment on which the sale was made. The statute provides that the certificate shall be prima facie evidence "that the judgment pursuant to which the sale was made was duly entered, and that the court had jurisdiction to enter the same" (§ 940). Formerly it was necessary to prove a prior valid judgment authorizing the sale (31–307, 17+856; 36–366, 31+692), and of course this is still necessary in proving title under sales prior to the present law. Under 1874 c. 1 § 124 a certificate was issued to the state when the land was bid in for the state at a tax sale. A person taking a state assignment was required to introduce in evidence this certificate as a muniment of his title and his own certificate was not prima facie evidence of title without such preliminary proof (See § 929 Note 4).

4. Of regularity—Prior to 1902 c. 2 § 30 the certificate was evidence of regularity only as to the sale and not as to the proceedings prior to the sale (G. S. 1894 § 1594; 31–307, 17+856; 71–66, 73+649). Oral evidence is always admissible to rebut the presumption (80–339, 83+189).

5. Lost certificate—The fact that a certificate is lost and its contents are proved by secondary evidence does not affect its force as prima facie evidence of title or regularity (47–535, 50+610).

6. When more than one issued—That two certificates are issued on the same sale does not affect their force as evidence (44–56, 46+319).

SETTING ASIDE SALES

7. For what sales may be set aside—The sale may be set aside on any of the following grounds: that the judgment was void for want of jurisdiction in the court or any other defect (§ 940; 38–471, 38+361; 59–70, 60+809; 78–102, 80+861; § 914 Notes 1–7); that the taxes were paid before judgment was rendered; that the land was exempt from taxation; that the judgment was satisfied before sale; that the notice of sale was insufficient; that the notice of sale was not duly published; that the notice of sale was not duly posted; that at the sale the land was not offered and sold as required by the statute (§ 940. See § 928 Note 1); that the sale was fraudulent (§ 928 Note 5); that several tracts were sold in gross (93–233, 101+68).

8. For what sales cannot be set aside—The primary object of the judgment is to determine the right to sell and it is conclusive of every fact essential to the right to sell except the fact of delinquency and the fact of non-exemption (§ 914 Note 1). Hence a sale cannot be set aside for defects in the proceedings prior to judgment except defects going to the jurisdiction of the court, including payment and exemption. In other words, a sale may be set aside on any ground on which the judgment may be attacked collaterally and it may not be set aside on any ground on which the judgment cannot be attacked collaterally. These grounds are enumerated elsewhere (See § 914 Notes 6, 7). In an early case it was said that where land is sold for taxes any portion of which is illegal the sale is void (11–321, 225). This is obviously not the law under our present system, the legality of the tax being determined by the judgment (§ 914 Note 1). A sale cannot be set aside for misrecitals in the certificate of sale (§ 940), or for error in the name of the owner (§ 932), or for any irregularity in the conduct of the sale, except that the land was not sold to the person making the best offer in accordance with the statute (§ 940; 85–374, 88+971. See § 928 Note 1).

941. Action to set aside—Limitation—No sale shall be set aside or held invalid unless the action in which the validity of the sale is called in question be brought, or the defence alleging its invalidity be interposed, within three years after expiration of the time for redemption, except that an action to set aside or cancel such sale on the ground that the parcel was exempt or that the tax was paid before judgment or sale may be commenced, or a defence alleging the invalidity of the sale on such ground may be interposed, at any time. ('02 c. 2 s. 30)

1. History of legislation—The tax law of 1874 provided that "no sale shall be set aside or held invalid * * * unless the action in which the validity of the sale shall

be called in question be brought, or the defence alleging its invalidity be interposed within three years of the date of the sale" (1874 c. 1 § 125). In 1875 this was amended by changing the limitation to five years from the date of sale (1875 c. 5 § 30; 27–449, 8+166; 29–135, 12+352) and the law so remained until 1878 when it was changed back to three years (1878 c. 1 § 85; 27–449, 8+166). The three year limitation remained in force until 1887 when all limitation was repealed, at least all limitation as to an action to set aside a sale or "to test the validity of the tax sale and tax judgment" (1887 cc. 60, 127; 72–251, 75+107; 77–394, 80+205, 777). In 1897 the law was amended so as to revive, probably, the limitation of three years as to defences (1897 c. 266. See 81–215, 83+983). The law so remained until 1902 when the old limitation of three years was revived and the law is now exactly as it was in 1874 (§ 941). These various enactments were not retroactive (27–449, 8+166).

2. **Actions to set aside sales—Three year limitation**—The statute does not run if the judgment is void (31–307, 17+856; 36–338, 31+175; 36–366, 31+692; 37–132, 33+697; 38–384, 37+799; 49–119, 51+656; 54–235, 55+927), or if the certificate is void on its face (27–259, 6+781; 32–7, 19+83; 40–541, 42+538; 82–273, 84+1009). Hence the statute is of little value as a protection to tax titles (See dissenting opinion 31–307, 17+856). To set the statute running there must be a sale in fact (54–235, 55+927), and there must be such a sale as the statute contemplates (38–482, 38+489). The statute applies to a particular remedy and not to the land (77–394, 80+205, 777; 81–215, 83+983. See Note 4 infra). If a complaint in an action to set aside a sale shows on its face that the statute has run it is demurrable notwithstanding the fact that the judgment is void (77–394, 80+205, 777; 81–215, 83+983.

3. **What law governs**—It is the general rule that the statute in force at the date of the sale governs (27–449, 8+166; 29–135, 12+352; 77–394, 80+205, 777). But the legislature may revive a cause of action barred by such statute (31–360, 17+957; 60–455, 62+618), or repeal the statute before the limitation has run (25–457).

4. **Owner in possession never forced to bring action**—The legislature has no authority to pass a law compelling an owner in the full enjoyment of his rights—in possession actually or constructively—to bring an action within a certain time to contest an outstanding tax title or be forever barred from contesting it in any form of action (11–480, 358; 35–449, 29+64; 36–338, 31+175; 40–506, 42+479; 45–66, 47+453; 45–376, 48+3; 74–134, 76+1017). But it may enact a law depriving him of a particular remedy as against such title unless he takes affirmative action within a certain time (13–451, 419; 31–360, 17+957; 54–235, 55+927; 77–394, 80+205, 777; 81–215, 83+983; 85–437, 89+175).

942. Invalid certificate—State's lien passes, when—If any certificate issued pursuant to §§ 929, 935, 937, to an actual purchaser prove to be invalid for any other cause than that the land described therein was not subject to taxation, or that the taxes had been paid prior to the sale, or that the assessment or levy was void, the lien of the state on the parcel of land sold, as provided in § 975, shall be transferred, without any act whatever, to, and vested in, the holder of such certificate, his personal representatives, heirs, or assigns. Such holder, or his personal representatives, heirs, or assigns, may collect out of the property covered by such lien, by sale thereof by foreclosure, or other proper action or proceeding, the amount of taxes, penalties, and interest due thereon at the time of such sale, with interest thereon at the rate of twelve per cent. per annum, together with the amount of all subsequent taxes paid, with interest thereon at said rate, and the costs and expenses of such action. ('02 c. 2 s. 31)

Except as expressly authorized by statute the purchaser at the annual delinquent sale or of a state assignment has no lien on the land for the purchase money or for subsequent taxes paid by him which he may enforce in case his title fails (27–92, 6+445; 55–202, 56+824; 38–482, 38+489; 84–53, 86+875). The present statute was borrowed from Indiana (Report, Tax Commission, 1902, p. 31). A similar lien was given by 1860 c. 1 § 99 (27–449, 8+166); by 1862 c. 4 § 8 (15–479, 394); by G. S. 1866 c. 11 § 142 (23–231; 27–92, 6+445); by 1874 c. 1 § 138 (40–508, 42+481); and by 1874 c. 2 § 28 (55–202, 56+824. See 39–470, 40+575).

943. Indorsement before record—Before any certificate of sale or of assignment provided for in this chapter shall be recorded, the holder thereof shall present the same to the county auditor, who shall indorse thereon his certificate that the property therein described remains unredeemed, and that the period of redemption has expired; and no such certificate shall be recorded unless such indorsement is made. ('02 c. 2 s. 33)

This indorsement is not necessary to make the certificate prima facie evidence (31–385, 18+98). It is insufficient in itself to prove that notice of expiration of redemption has been served (38–433, 38+106).

944. Land bid in for state—Rents attached—When any parcel of land is bid in for the state, until its right be assigned or the land be redeemed, the

105-M[944] - 71

sale shall not operate as a payment of the amount for which the same is sold, but at any time after such sale the county auditor may make and file with the clerk where the judgment is entered an affidavit stating the date of the sale, the amount for which such parcel was bid in for the state, that its right has not been assigned, that there has been no redemption, and that the land is rented in whole or in part, and produces rent, and giving the names of the persons paying rent. Upon presentation of such affidavit, the judge or court commissioner for the county shall indorse thereon an order directing an attachment to issue to attach the rents of such land. The clerk shall thereupon issue a writ directing the sheriff to attach the rents accruing for such land from any person, and to collect therefrom the amount for which the same was bid in for the state, stating such amount and the date of sale, with interest accruing thereon, and his fees, and one dollar for the costs of the affidavit and attachment. The sheriff shall serve such writ by serving a copy thereof on each tenant or person in possession of such land paying rent therefor, or for any part thereof, and such service shall operate as an attachment of all rents accruing thereafter from the person served. The sheriff shall receive such rents as they become due, and may bring suit in his own name to collect the same, and shall pay into the county treasury the amount collected. No payment of rents by any person so served after such service, or prior thereto for the purpose of defeating such attachment, shall be valid against such attachment. The clerk shall be allowed for issuing the writ, including the filing of the affidavit, order of allowance, writ, and return, fifty cents, to be paid to him by the county in which the taxes are levied: Provided, that in counties whose population exceeds one hundred and fifty thousand such fees shall be paid into the county treasury to the use of the county. The sheriff shall be allowed for serving the writ and collecting the money the same fees as are allowed by law upon an execution in a civil action, and, if he brings suit, such additional compensation as the court may allow, not exceeding one-half of the fees allowed by law for like services in ordinary cases. (1606, 1608)

REDEMPTION FROM TAX SALES

945
105-M - 73

945. By whom—When—Any person claiming an interest in any parcel of land sold for taxes at a tax sale, or bid in by the state at any such sale, and held or assigned by it subsequent to such sale, may redeem the same within the time and in the manner in this chapter provided. ('02 c. 2 s. 34)

1. Statutory—There is no right of redemption except as expressly authorized by statute (28–358, 10+22).

945 (2)
99-M - 287

2. Governed by law at time of sale—A vested right—The right of redemption is governed by the law in force at the time of sale (32–479, 21+721; 73–34, 75+736; 36–456, 32+174; 81–463, 84+329; 33–434, 23+848). It is a vested property right which cannot be impaired by subsequent legislation (32–479, 21+721; 81–463, 84+329; 26–145, 1+832), except that it may be extended as against the state and its assignees (36–456, 32+174).

3. When may be made—Redemption may in all cases be made any time within three years from the sale (§ 956) and at any time thereafter within sixty days after notice of the expiration of the redemption period has been served and proof of service filed (§ 958). The redemption period begins to run from the time when the land is sold to a purchaser at the annual delinquent sale or bid in for the state (73–65, 75+752). Under G. S. 1894 § 1616 redemption could be made of land bid in for the state at any time prior to an assignment (83–496, 86+610).

4. Statutes construed liberally—32–479, 21+721; 33–434, 23+848.

5. Who may redeem—Any person "claiming" an interest in the land may redeem (§ 945. See 85–473, 89+848). There is no provision except as to minors and others under disability for determining whether the claim is well founded or not (§ 948). The auditor has no authority to pass on the validity of the claim. He must accept the redemption money as a matter of course and as a mere ministerial act. A stranger to the land cannot defeat a tax title by redeeming, but that is a matter for private litigation between the parties. The state is not concerned (26–145, 1+832). Mandamus will lie to compel an auditor to allow a redemption (62–246, 64+568; 75–512, 78+16). Mortgagees may redeem (75–221, 77+829).

09 946 - 339

946. Amount payable—Any person redeeming any parcel of land shall pay into the treasury of the county, for the use of the funds or person thereto entitled:

1. If such parcel was bid in for the state, and its right has not been assigned, the amount for which the same was bid in, with interest at twelve per cent. per annum from the date of sale, and the amount of all delinquent taxes, penalties, costs, and interest thereon at said rate from and after the time when such taxes became delinquent.

2. If the right of the state has been assigned pursuant to § 935, the amount paid by the assignee, with interest at twelve per cent. per annum from the day when so paid, and all unpaid delinquent taxes, interest, costs, and penalties accruing subsequently to such assignment; and if the assignee has paid any delinquent taxes, penalties, costs, or interest accruing subsequently to the assignment, the amount so paid by him, with interest at twelve per cent. per annum from the day of such payment.

3. If such parcel was sold to a purchaser, the amount paid by such purchaser, with interest at the rate for which such parcel was sold, and all unpaid delinquent taxes, interest, costs, and penalties accruing subsequently to such sale; and if the purchaser has paid any delinquent taxes, penalties, costs, or interest accruing subsequently to the sale, the amount so paid by him, with interest at the rate of twelve per cent. per annum from the day of such payment. ('02 c. 2 s. 35)

1. When land sold to private purchaser at annual delinquent sale—The amount required to redeem when the land is sold to an actual purchaser at the annual delinquent sale is the total of the following amounts:

1. The amount paid by such purchaser, with interest thereon at the rate for which the land was sold.

2. All unpaid delinquent taxes, interest, costs and penalties accruing subsequent to the sale (86–181, 90+375; 89–27, 93+707; 93–382, 101+603).

3. The amount paid by the purchaser for any delinquent taxes (not including taxes due but not delinquent, 34–475, 26+603), penalties, costs, or interest accruing subsequent to the sale, with interest at twelve per cent. from the day of such payment.

4. The amount of the fees on the service of notice of expiration of redemption (§ 957).

2. When land bid in for state and subsequently assigned—The amount required to redeem when land is bid in for the state at the annual delinquent sale and subsequently assigned is the total of the following amounts:

1. The amount paid for the assignment, with interest thereon at twelve per cent. from the date of the assignment (89–27, 93+707).

2. All unpaid delinquent taxes, interest, costs and penalties accruing subsequent to the assignment (89–27, 93+707; 93–382, 101+603).

3. The amount paid by the assignee for any delinquent taxes, penalties, costs or interest accruing subsequent to the assignment, with interest thereon at twelve per cent. from the day of payment (71–66, 73+649; 89–27, 93+707), including interest on the interest paid by the assignee (72–148, 75+118; 75–17, 77+436).

4. The amount of the fees on the service of notice of expiration of redemption (§ 957).

3. What are delinquent taxes—Delinquent taxes mean all taxes that are overdue and unpaid in fact. They do not lose their identity as such from the fact that the land against which they are assessed is regularly sold at a tax sale, and, for want of a purchaser, bid in for the state. They remain delinquent until actually paid to the county treasurer either by the landowner, the purchaser at a tax sale, or by an assignee of the state (93–382, 101+603).

4. Interest—Interest does not run on delinquent taxes prior to a sale therefor (62–518, 65+80), except where an answer is interposed (§ 918). When redemption is made the auditor should compute the interest from the date of the notice to the date of redemption and add it to the amount in the notice and also add the amount of all delinquent taxes, interest and penalties, if any, which have accrued subsequent to the date of the notice (89–27, 93+707).

947. Auditor's certificate—Treasurer's receipt—Duty of auditor—The county auditor shall certify to the amount due on such redemption, and, on payment of the same to the county treasurer, he shall make duplicate receipts for the certified amount, describing the property redeemed, one of which shall be filed with the auditor. Such receipts shall be governed by the provisions of this chapter regulating the payment of current taxes, and such payment shall have the effect to annul the sale. If the amount certified by the auditor and received in payment for redemption be less than that required by law, it shall not invalidate the redemption, but the auditor shall be liable for the deficiency to the person entitled thereto. On redemption being made, the auditor shall enter upon the copy of the tax judgment book,

07 947 - 431

opposite the description of the parcel redeemed, the word "Redeemed," and shall mail a notice, with postage prepaid, addressed to the person holding the certificate of sale or assignment for which said redemption is made, at his last known postoffice address, stating that said redemption has been made, and that the amount thereof is in the county treasury, subject to his disposal. (1602; '95 c. 87; '02 c. 2 s. 36)

A redemptioner may rely on the certificate as to the amount due and the payment of such amount effects a redemption although the auditor fails to include all that the law required (33-434, 23+848. See 54-264, 55+1125; 87-243, 91+890; 92-210, 99+799).

105-M 948 - 433

948. Redemption by minors, etc.—Minors, insane persons, idiots, or persons in captivity or in any country with which the United States is at war, having an estate in or lien on lands sold for taxes, of record in the office of the register of deeds of the county where said lands lie before the expiration of three years from the date of such sale, may redeem the same within one year after such disability shall cease; but in such case the right to redeem must be established in a suit for that purpose brought against the party holding the title under the sale. ('02 c. 2 s. 37)

27-97, 6+452; 85-473, 89+848.

949. Redemption when owner dies—When the owner of lands sold for taxes dies after such sale and before the expiration of the period of redemption, his executor or administrator, or any person interested in his estate as heir, devisee, legatee, or creditor, may redeem from such sale at any time within three years and six months from the date thereof. If such redemption be made by an executor or administrator, he shall at the time thereof produce to the auditor his letters testamentary or of administration. If made by any other person, he shall make and file with the auditor an affidavit stating under what right or claim such redemption is made. The auditor shall make and deliver to the person making such redemption a certificate containing the name of the person redeeming, a statement of the claim or right upon which such redemption was made, the amount paid to redeem, a description of the lands redeemed, the date of the sale, and the year in which the taxes for which such sale was made were levied, which certificate shall have the effect to annul such sale, and may be recorded as other deeds of real estate, and with the like effect. If such redemption be made by a creditor, the amount paid to effect such redemption, with interest thereon at the rate of seven per cent. per annum, shall constitute a valid claim against the estate of the deceased. ('02 c. 2 ss. 38-40)

62-246, 64+568.

950. Undivided part—Any person claiming an undivided part of any parcel of land sold for taxes may redeem the same on paying such proportion of the amount required for redemption as the part so claimed by him bears to the whole. ('02 c. 2 s. 41)

Under former statutes (10-67, 49; 28-358, 10+22; 60-164, 62+261; 64-309, 67+72; 66-425, 69+326).

951. Undivided share—Any person claiming an undivided share in any parcel of land out of which an undivided part has been sold for taxes may redeem his undivided share by paying such proportion of the amount required for redemption as the undivided share claimed by him bears to such undivided part. ('02 c. 2 s. 42)

952. Specific part—Any person claiming a specific part of any parcel of land sold for taxes may redeem his specific part by paying such proportion of the amount required for redemption as the value of such specific part bears to the whole. ('02 c. 2 s. 43)

953. Specific part of undivided part—Any person claiming a specific part of any parcel of land out of which an undivided part has been sold for taxes charged on the whole parcel may redeem his specific part by paying such proportion of the amount required for redemption as the value of such specific part bears to the value of the whole of such parcel. ('02 c. 2 s. 44)

954. Auditor to determine proportion—When a partial redemption is asked for pursuant to § 952 or § 953, the county auditor, after notice to all parties interested, shall determine the proportion to be paid by the person applying to redeem, and his decision shall be final thereon. Such notice shall be given by delivering a copy of the notice to the party to be notified, or, if he cannot be found in the county, by leaving a copy thereof at his residence or usual place of business therein; but if he have no such residence or place of business, and cannot be found in the county, of which facts, or either of them, the affidavit of the person appointed by the auditor to give such notice shall be evidence, the auditor shall give two weeks' published notice thereof; the last publication to be not less than ten days prior to the day fixed by the auditor for the determination of such matter. The auditor shall not be required to proceed under this section until the applicant pay to him such sum as shall be reasonably sufficient to reimburse him for expenses necessarily to be incurred by him in giving or publishing said notice. ('02 c. 2 s. 45)

955. Land held jointly—When the land of any person is sold for taxes assessed conjointly on such land and the land of another person, and such other person shall not pay his due proportion, the person whose land is sold may redeem the same by paying the amount required to redeem; and he may recover from such other person whose land was assessed with his a just proportion of the redemption money so paid, with interest from the time of such redemption. Such just proportion and interest shall be a lien upon the land of such other person so sold, and, after expiration of the time allowed for redemption, may be collected out of such land by sale thereof by foreclosure or other proper action or proceeding: Provided, that the same shall not be a lien until the person paying the same, his agent or attorney, shall make and file for record with the register of deeds of the county where the land lies an affidavit, stating the amount paid by him for which such other person is liable, and that he claims a lien therefor. ('02 c. 2 s. 46)

956. Notice of expiration of redemption—Every person holding a tax certificate, after expiration of three years after the date of the tax sale under which the same was issued, may present such certificate to the county auditor; and thereupon the auditor shall prepare, under his hand and official seal, a notice, directed to the person in whose name such lands are assessed, specifying the description thereof, the amount for which the same were sold, the amount required to redeem the same, exclusive of the costs to accrue upon such notice, and the time when the redemption period will expire. If, at the time when any tax certificate is so presented, such lands are assessed in the name of the holder of the certificate, such notice shall be directed also to the person in whose name title in fee of such land appears of record in the office of the register of deeds. The auditor shall deliver such notice to the party applying therefor, who shall deliver it to the sheriff of the proper county for service. Within twenty days after its receipt by him, the sheriff shall serve such notice upon the persons to whom it is directed, if to be found in his county, in the manner prescribed for serving a summons in a civil action, and, if not so found, then upon the person in possession of the land, and make return thereof to the auditor. If the persons to whom the notice is directed cannot be found in the county, and there is no one in possession of the land, of each of which facts the return of the sheriff so specifying shall be prima facie evidence, the service shall be made by three weeks' published notice, proof of which publication shall be filed with the auditor. The notice herein provided for shall be sufficient if substantially in the following form:

956
05 - 270
05 - 271

956
99-M - 387
102-M - 204
105 M - 72
105-M - 424

NOTICE OF EXPIRATION OF REDEMPTION

Office of the County Auditor.
County of ....., State of Minnesota.
To .....:

You are hereby notified that at a tax judgment sale held on the ..... day of May, 19...., the following described parcel of land, situated in the

county of ..... and state of Minnesota, to wit: (here insert description) was sold for the sum of ..... dollars; that the amount required to redeem said parcel, exclusive of the costs to accrue upon this notice, is the sum of ..... dollars, and interest as provided by law to the day such redemption is made; and that the tax certificate issued upon said sale has been presented to me by the holder thereof, and the time for redemption of said parcel from said sale will expire sixty days after the service of this notice and proof thereof has been filed in my office.

Witness my hand and official seal this ..... day of ..... 19....

.....,

Auditor of ..... County, Minnesota.

See 1905 cc. 270, 271 ('02 c. 2 s. 47)

1. To what sales applicable—By § 938 and 1905 cc. 211, 270, the statute is extended so that it is now applicable to all sales whether made to private individuals or to the state. Under 1902 c. 2 §§ 52, 55 it was apparently not applicable to the state or to sales made by the state after forfeiture. Prior to 1902 it was applicable to all sales as at the present time (See Note 19, infra). Held applicable to forfeited sales under 1893 c. 150 (73–1, 75+760) and under 1899 c. 322 (81–463, 84+329; 86–181, 90+375; 104+290).

2. A vested right—Law of date of sale governs—73–34, 75+736; 59–35, 39, 60+813; 73–1, 75+760; 81–463, 84+329; 86–294, 90+530; 32–479, 21+721; 33–271, 22+614; 90–440, 97+136; 92–218, 99+800.

3. Liberally construed—Not retroactive—The statute is remedial in its nature and must be construed liberally in the interest of the owner (32–479, 21+721). It is not retroactive (26–145, 1+832).

4. Object—The object of the notice is to apprise the owner in a definite and timely manner that his land has been sold for taxes and that he must redeem from the sale within a certain time or lose his property (32–479, 21+721; 92–218, 99+800. See 41–20, 42+543).

5. Statute mandatory—Must be followed strictly—The statutory requirement of notice is mandatory and must be followed with strictness (87–489, 92+336; 82–200, 84+733; 73–34, 75+736; 73–65, 75+752; 73–1, 75+760; 61–118, 63+168; 59–35, 60+813; 92–210, 99+799; 92–218, 99+800). This rule has been carried to the extreme (92–218, 99+800). Still, the doctrine of de minimis applies (41–20, 42+543; 92–218, 99+800).

6. When may be served—Notice cannot be served until at least three years after the sale (§ 956; 73–65, 75+752), but prior to 1905 c. 271 it could be served at any time thereafter (See 65–347, 68+47; 77–343, 79+1040).

7. Effect of statute in extending redemption period—The effect of the statute is to make the lapse of the right of redemption depend on the service of notice and the filing of proof thereof and to extend the period of redemption indefinitely until such service and filing of proof and for sixty days thereafter (26–145, 1+832; 32–479, 21+721; 33–271, 22+614; 35–408, 29+121; 41–344, 43+71; 59–35, 60+813). Any person who is interested in the land as owner or lienholder is entitled to the benefit of such extension whether the land is assessed in his name or not (41–344, 43+71).

8. Sufficiency of generally—A notice must conform to the statute in substance (47–497, 50+689). The statute requires a notice sufficient on its face; not one that can be upheld only by reason of some legal fiction, or one that can be understood only by reference to the statute (72–105, 75+115). A reference to the statute is nugatory (62–246, 64+568), but it does not vitiate a notice otherwise sufficient (71–66, 73+649; 90–440, 97+136). A notice must be valid when issued by the auditor and its validity cannot be made to depend on the act of the officer in filing or omitting to file the proof of service on the day service is made (73–34, 75+736). A mistake in the date of judgment or sale is fatal (57–397, 59+484; 73–65, 75+752), and so is a mistake as to the amount for which the land was sold (92–210, 99+799). It need not state in whose name the property is assessed (44–207, 46+328. See 1902 c. 2 § 47). The fact that error in the notice is apparently beneficial to the redemptioner is immaterial (92–210, 99+799).

9. Statement of amount required to redeem—Prior to 1892 c. 2 § 47 it was held that the amount must be stated in gross as of the date of the notice, interest being calculated up to the date of notice and included in the total amount (89–27, 93+707; 92–218, 99+800. But see: 84–105, 86+781; 77–8, 79+582; 43–3, 44+668; 71–66, 73+649; 70–16, 72+807; 85–374, 88+971; 90–440, 97+136). Delinquent taxes which the redemptioner must pay must be included in the total amount and it is insufficient to state in general terms that delinquent taxes must be paid (89–27, 93+706; 93–382, 101+603). The expression "delinquent taxes" in this connection means all taxes that are overdue and unpaid in fact. Delinquent taxes do not lose their identity as such, from the fact that the land against which they are assessed is regularly sold at a tax sale, and, for want of a purchaser, bid in for the state. They remain delinquent until actually paid to the county treasurer, either by the landowner, the purchaser at a tax sale or by an assignee of the state. A notice which fails to include the amount for which the land was thus bid in for the state is defective (93–382, 101+603). Great exactness is required in the statement of the amount necessary to be paid. A mistake of a single dollar is fatal (73–1, 75+760,

See 77–394, 80+205, 777; 92–210, 99+799), but a mistake of a few cents is not (43–3, 44+668; 41–20, 42+543. See 92–218, 99+800). Prior to 1892 c. 2 § 47 it was an open question whether it was necessary to state the rate of interest (43–3, 44+668). The statute providing that interest shall be paid to the time of redemption enters into the transaction and makes the amount required to redeem definite and certain (89–27, 93+707; 92–218, 99+800). If the correct amount is stated the addition of the words "and delinquent taxes" may be regarded as surplusage if in fact there are no such taxes or no showing that there are (90–440, 97+136). When the land is bid in for the state and subsequently assigned the gross amount paid by the assignee is "the amount sold for" to be inserted in the notice (44–207, 46+328; 71–66, 73+649). In such cases the assignment is the sale from which redemption is made (71–66, 73+649).

10. Statement of time to redeem—Notices held sufficient—Under G. S. 1894 § 1654: "that the time of redemption from said sale allowed by law will expire sixty days after service of this notice and proof thereof has been filed" (73–65, 75+752); "that the period within which said land can be redeemed will expire when sixty days shall have elapsed after due service of this notice upon you, and after due proof of such service shall be filed in the office of the auditor of said St. Louis county" (83–69, 85+907); "the time within which said land can be redeemed from said assignment will expire sixty days after service of this notice and proof thereof has been filed in the manner prescribed by § 37, of ch. 6, General Laws of Minnesota for the year 1877 and amendments thereto" (71–66, 73+649); "that the time for redemption of such piece and parcel of land will expire sixty days after the service of this notice and the due filing of proof thereof and of the sheriff's fees therefor in the office of the county auditor of said Ramsey county, Minnesota" (85–518, 89+853). Under G. S. 1878 c. 11 § 121: "that the time for redemption from said sale will expire sixty days after service of this notice" (42–155, 43+907; 59–35, 60+813); "sixty days after service of this notice in the manner prescribed in section 37 c. 6 G. L. 1877, and amendments thereto" (90–440, 97+136).

11. Statement of time to redeem—Notices held insufficient—Under G. S. 1894 § 1654: "sixty days after service of this notice in the manner prescribed by section 37, c. 6, Gen. Laws Minn. 1877 and amendments thereto" (62–246, 64+568. See 90–440, 97+136); "the time of redemption from said sale allowed by law will expire sixty days after service of this notice" (59–35, 60+813. See 90–440, 97+136); "that the time allowed by law for redemption from said sale will have expired after sixty days have elapsed after service of this notice has been made, and proof thereof, and of the sheriff's fees, has been filed in this office" (75–248, 77+957; 82–200, 84+733); "that the time of redemption from said sale allowed by law will expire on the 7th day of May, 1891, or sixty days after service of this notice" (72–105, 75+115); "on the 9th day of September, 1888, or within sixty days after the service of this notice" (61–118, 63+168); a notice fixing the time at ninety instead of sixty days after the service of notice and the filing of proof thereof (73–1, 75+760; 75–1, 77+414). Under G. S. 1878 c. 11 § 121: "sixty days after the service of this notice and proof thereof has been filed" (73–34, 75+736).

12. To whom directed and upon whom served—The notice must be directed to and served upon the person in whose name the land is assessed at the date of the notice (41–20, 42+543; 41–344, 43+71; 44–207, 46+328; 47–535, 50+610; 57–397, 59+484; 70–16, 72+807; 72–148, 75+118; 87–489, 92+336; 88–495, 93+898; 47–237, 49+865; 39–431, 40+565), and this is so even though such person is the holder of the tax certificate (41–344, 43+71; 44–207, 46+328; 47–535, 50+610). The notice is not served upon the "owner" as such. Ownership is often difficult of ascertainment and others besides the owner are entitled to redeem. The legislature has adopted the prescribed mode of service as the one best adapted, in its judgment, to reach, in the great majority of cases, the persons entitled to redeem (41–20, 42+543; 41–344, 43+71). It is not necessary to serve an assignee of an insolvent owner (83–427, 86+432). It is not necessary to state in whose name the property is assessed (44–207, 46+328. See 1902 c. 2 § 47). If the notice is directed and served on the proper person it is immaterial that it is also directed to others (44–207, 46+328; 70–16, 72+807). Property is assessed within the meaning of the statute when the assessor returns the assessment books to the county auditor (57–397, 59+484; 87–489, 92+336). The burden rests on a party seeking to establish a tax title to prove, without the aid of presumptions, that at the last assessment prior to the date of the notice the land was assessed in the name of the person to whom the notice is addressed and on whom it was served. There is no presumption that the auditor has discharged his duty and inserted in the notice the name of the proper person or that the land continues to be assessed in the name of the same person from year to year (88–495, 93+898). The court must take judicial notice that land is assessed every even-numbered year (85–524, 89+850; 88–495, 93+898). There must be a valid assessment to sustain a notice (87–489, 92+336). If it is stated in the assessment book that the owner is unknown the notice should be addressed to the "unknown owner" (62–246, 64+568), or to "unknown" (64–139, 66+262).

13. Publication—Notice must be published although the land is assessed in the name of "unknown," if the land is vacant. The requirement of publication is not affected by G. S. 1894 § 1662 extending the time of redemption in case of death (62–246, 64+568). The return of the officer is not conclusive and it is not exclusive evidence that the land is vacant or that the person named in the notice cannot be

found in the county. The return of the deputy sheriff is sufficient and it may be in the form of a certificate or an affidavit (47–237, 49+865). A trifling variance between the original and published notice is not fatal (44–207, 46+328). Proof of publication of a notice is inadmissible without preliminary proof that it was addressed and served on the person in whom the property was assessed at the time of the notice (39–431, 40+565). Publication and proof thereof held sufficient (85–374, 88+971).

14. May include several tracts—70–16, 72+807.

15. When certificate lost or destroyed—If the certificate is lost or destroyed or for any reason not procurable the auditor may prepare the notice from other sources of information (47–497, 50+689).

16. Effect of insufficient notice—New notice—An insufficient notice does not destroy the lien of the certificate holder and in any judgment to be rendered on account of the insufficiency of the notice the lien should be saved (73–34, 75+736). Prior to 1905 c. 271 a new and corrected notice might be served at any time (65–347, 68+47; 77–343, 79+1040).

17. Misnomer—A variance between the assessment roll and the notice as to the name of the party is immaterial if the proper party is personally served (70–16, 72+807). When the service is by publication the name on the assessment roll must probably be copied literally in the notice (70–16, 72+807; 72–105, 75+115).

18. Auditor acts only at request of certificate holder—Inasmuch as no one but the purchaser or the person holding his right can put a limit to the time for redemption it is probably necessary that he should call on the auditor to give the notice. The auditor should not act on his own motion (47–497, 50+689).

19. History of legislation—The requirement of a notice was first introduced by 1877 c. 6 § 37 (32–479, 21+721; 33–271, 22+614; 37–415, 35+4), which went into effect March 6, 1877 (37–415, 35+4). An attempt was made to repeal this act in 1881, but the repealing act was held unconstitutional on the ground that its subject was not expressed in the title (35–257, 28+241). It was held that the original act did not apply to the state or to an assignee of the state after forfeiture (36–456, 32+174; 78–83, 80+850. See 26–145, 1+832). Thereupon, in 1889, the legislature amended the act by extending the requirement to assignees of the state after forfeiture (1889 c. 198. See 78–83, 80+850), and the amendatory act was held constitutional (52–307, 54+95). It had already been held that the original act applied to assignees of the state prior to forfeiture as well as to purchasers at the annual delinquent sale (35–408, 29+121; 36–456, 32+174). The state was not required to serve notice until 1893 c. 58 § 4.

957
07 - 85

957. Fees for notice—For serving such notice the sheriff shall receive the same fees as for the service of summons in a civil action in the district court. Such fees and the printer's fees for publishing such notice shall be paid in the first instance by the holder of the tax certificate, and repaid by the party offering to redeem such land before a certificate of redemption shall issue. ('02 c. 2 s. 48)

958. Redemption, when expires—No transfer of the lands described in such certificate to the certificate holder shall be made on the books of the county auditor, and no certificate shall be entitled to record, nor shall the full period of redemption expire, until sixty days shall have elapsed after the service of such notice, and proof thereof has been filed. ('02 c. 2 s. 48)

See § 956 Note 7.

959. Fraud in the service—When any notice of expiration of redemption is served upon the person named therein, and it shall be made to appear that such person was at the time of the service not the real owner of the lands described in such notice, and had no interest therein for more than two years prior to such service, although the lands were assessed in his name, and that such person fraudulently caused or permitted such service to be made upon him personally, and thereby prevented the service of such notice upon the occupant of said lands, or upon the real owner thereof, and thereby prevented the service of such notice by publication, then such notice and the service thereof shall be void, and the right of redemption shall continue in the owner of such lands as if no service had been made: Provided, that the action in which such claim is made or defence interposed shall be brought within two years after such attempted service. ('03 c. 318)

960
07 - 82

960. Interest on purchase money—The amount for which any parcel is sold to a purchaser shall bear interest at the rate of twelve per cent. per annum from the date of sale until redemption, unless sold with interest at a less rate, in which case it shall bear interest until redemption at the same rate. The amount for which any parcel is bid in for the state shall bear in-

960
102-M - 354
113-NW 904

terest at the rate of twelve per cent. per annum until redemption, or until the right of the state is assigned pursuant to § 935; and, if so assigned, the amount paid by the assignee shall bear interest from the date of assignment until redemption at the same rate. The amount paid by any purchaser or assignee of the state for taxes, penalties, costs, and interest accruing subsequently to the sale or assignment shall bear interest at the rate of twelve per cent. per annum until redemption. ('02 c. 2 s. 49)

See § 916 Note 10.

961. Interest when land not in list—When any parcel of land upon which taxes are delinquent is omitted for any year from the list filed by the auditor with the clerk of the district court, such delinquent taxes shall bear interest at the rate of twelve per cent. per annum from the second Monday of May in the year in which the taxes became delinquent. ('02 c. 2 s. 50)

07 961 - 82

See § 916 Note 10.

962. Redemption money to purchaser, etc.—Lost certificate—Whenever the owner of any tax certificate is entitled to any money paid into the county treasury for redemption from any tax sale, the county auditor may draw his warrant upon the county treasurer in favor of such person for the amount to which he is so entitled. All moneys so paid shall be charged to the proper funds: Provided, that if such certificate, or any assignment thereof, has been lost or destroyed, the auditor shall not give such warrant until the person entitled to such money make and file with the auditor an affidavit that he is the owner of such certificate, and that the same or such assignment is lost or destroyed; and, if the amount of such redemption money shall exceed five dollars, the affiant shall give a bond, with surety, approved by the auditor, in double the amount of such redemption money, payable to the treasurer, conditioned that if such certificate or assignment is produced to the auditor by any other person entitled to such redemption money as owner thereof, and a warrant demanded for such money, the affiant shall, on demand, refund the same to the treasurer. ('02 c. 2 s. 77; '03 c. 116)

REFUNDMENT

963 105-M - 429

963-966 99-M - 288

963-968 09 - - 491

963. On sale or assignment, when allowed—Refundment of moneys paid by the purchaser of a parcel of land at a tax sale, or upon assignment of any such parcel bid in for the state at such sale, shall be allowed only when it shall be made to appear:

1. That such parcel was exempt from taxation.
2. That the taxes for which the parcel was sold had been paid before sale.
3. That the assessment of the property or the levy of the tax is void. ('02 c. 2 s. 58)

964 09 - - 160

964. In case of exemption—When any such parcel of land shall have been sold to a purchaser or bid in for the state, and at the time the taxes were levied the land was exempt from taxation, the money paid on such sale, or on an assignment by the state, with interest thereon at the rate of seven per cent. per annum, shall be refunded to such purchaser or assignee, or his assigns or legal representatives. Such refundment shall be made only upon the certificate of the county auditor that the parcel was exempt from taxation at the date of the levy of the taxes, with the approval of the state auditor indorsed thereon. Before such certificate is made, the applicant shall present to the county auditor proofs of such exemption. ('02 c. 2 s. 59)

965 101-M - 539

965. On judgment—County to be party—When any tax sale is declared void by judgment of court, the judgment shall state for what reason the sale is annulled; and, when any sale has been or shall be so set aside for any of the grounds stated in § 963, the money paid by such purchaser, or by the assignee of the state, with interest at the rate of seven per cent. per annum from the date of such payment, shall be returned to the purchaser or assignee, or the party holding his right, out of the county treasury. In all judicial proceedings for refundment, the county wherein said tax proceedings were had

upon which said refundment is asked shall be made a party defendant. ('03 c. 2 s. 60; '03 c. 231)

966
07 - 183

966. Limitation on right—No refundment shall be allowed unless the right thereto has been determined, or the application therefor has been made, and the certificate and approval obtained, within eight years from the date of the tax sale on account of which such refundment is claimed; and no interest shall be allowed on any refundment beyond a period of six months after the right thereto has been determined. ('02 c. 2 s. 61)

967. Void taxes paid by mortgagee, etc.—When money is paid for taxes on land by a person who holds a mortgage thereon, or who in good faith believes himself to be the owner thereof under a mortgage foreclosure afterward declared void, and in an action for the foreclosure or reforeclosure of such mortgage it is adjudged that the assessment of the property or the levy of the taxes was void, the money so paid, with interest from the date of such payment at the rate of seven per cent. per annum, shall be refunded to such person, his executors, administrators, or assigns. Such refundment shall be made on the presentation to the county auditor of a certified copy of the final judgment declaring said assessment or levy void, and such land shall thereafter become subject to reassessment for such taxes. (1620–1622)

35–124, 27+497.

968
99-M - 288

968. Taxes paid twice—Warrants—When it is made to appear to the county auditor that the taxes upon any parcel of land have been twice paid to the county treasurer, and in all cases when any tax purchaser or other person is entitled under this chapter to refundment, the auditor may draw his warrant upon the county treasurer in favor of the person entitled to any such moneys for the amount to which he is so entitled. All moneys so paid shall be charged to the proper funds. ('02 c. 2 ss. 59, 77; '03 c. 116)

ACTIONS INVOLVING TAX TITLES

969
102-M - 352
113-NW 903

969. Tax judgment or sale set aside—Purchaser's lien—Sale to satisfy—When in any action or proceeding in court any tax judgment or tax sale shall be adjudged void for any cause occurring after the levy of the taxes embraced in such judgment or sale, except in cases where such taxes have been paid, or the land is exempt from taxation, the court shall require proper evidence, showing the amount paid at the tax sale of the parcel in controversy by the holder of the tax certificate, or his assignors, and of all subsequent taxes, penalties, interest, and costs, if any, paid by him or them, and shall determine and adjudge the amount of taxes and penalties to which said real estate was subject at the time of the entry of such tax judgment, and all subsequent taxes, penalties, interest, and costs, if any, paid thereon by the holder of the tax certificate, or his assignors, and shall adjudge a lien against such land in favor of such holder for the amount of such taxes, penalties, interest, and costs, with interest thereon at the rate of twelve per cent. per annum from and after the date of such judgment, sale, or payment, and shall also adjudge that the land so subject to such lien be sold by the sheriff under such judgment to satisfy such lien and the costs of judgment and sale, in the same manner and with like effect as in the case of the sale of land on execution. In case the tax judgment or tax sale be declared void by reason of the invalidity of the assessment or levy of the taxes embraced therein, and the holder of the tax certificate, or his assignors, have paid any subsequent taxes, penalties, interest, or costs, the court shall determine the amount thereof, and shall adjudge a lien therefor, and a sale under such judgment, as in this section provided. ('02 c. 2 s. 62)

970. Who may purchase—Certificate—The holder of any tax certificate issued upon such tax judgment or tax sale may appear at any such sheriff's sale and purchase the land embraced therein, and the sheriff shall immediately thereafter execute and deliver to the purchaser a certificate of sale, which shall within twenty days thereafter be recorded with the register of deeds. Such certificate shall contain:

1. A description of the judgment under which such sale was made.
2. A description of the real property sold.
3. The price paid.
4. The date of sale and the name of the purchaser.
5. The time allowed by law for redemption. ('02 c. 2 s. 62)

971. Redemption from sale—The owner or any person interested in any parcel of land sold pursuant to §§ 969, 970, may redeem the same at any time within one year thereafter by paying to the purchaser or the clerk of the district court for him the amount for which the same was sold, with interest thereon at the rate of twelve per cent. per annum from the date of sale; and the purchaser or the clerk shall execute to such redemptioner a certificate of such redemption. If there be no redemption within the time aforesaid, title to such land shall thereupon vest absolutely in the purchaser. ('02 c. 2 s. 63)

972. Action to quiet title—Any person holding a tax certificate issued under §§ 929, 935, or 937, at any time after the expiration of the period of redemption from the tax sale on which such certificate was issued, may commence an action in the district court of the county where the land embraced in such certificate lies, to quiet his title thereto, without taking possession of such land; and any person who claims or appears of record to have any interest in or lien upon the same, or any part thereof, may be made defendant. At the time of the commencement of such action the plaintiff shall file a notice of the pendency of the action with the register of deeds as provided by law. If it shall appear that the plaintiff's title is invalid for any cause other than one which renders the taxes embraced in such certificate void, the court shall not dismiss such action, but shall ascertain the amount due the plaintiff for all taxes, interest, penalties, and costs embraced in such certificate, and of all subsequent taxes, penalties, interest, and costs paid by him or his assignors, with interest thereon at the rate of twelve per cent. per annum from the date of such certificate or payment, and shall adjudge the same to be a lien against such land in favor of such holder, and direct a sale thereof to satisfy such judgment and costs of sale. All the provisions of §§ 969–971 relating to the sales therein provided for, and to redemptions therefrom, shall be applicable to sales authorized by this section. ('02 c. 2 s. 64)

973. Minors, etc.—Dismissal—If any defendant in any action mentioned in §§ 969–972 was the owner of record of any of the lands involved in any such action during the period of three years next after the sale thereof for non-payment of taxes, and was a minor, an insane person, an idiot, or person in captivity or in any country with which the United States was at war, and the period of redemption from such sale by such person has not expired, the court shall dismiss such action as to such person. ('02 c. 2 s. 66)

974. Plaintiff to pay taxes in action to set aside—In any action or proceeding brought to vacate or set aside any tax judgment or tax certificate, or to remove a cloud upon any title created by any tax certificate, or to determine an adverse claim based upon any such certificate when land has been sold to an actual purchaser, or the right of the state has been assigned pursuant to the provisions of this chapter, the plaintiff shall at the commencement of such action or proceeding, except when the only claim made in the complaint is that the taxes for which the certificate was issued had been paid before sale, or that the land described therein was exempt, pay into court, for the benefit of the holder of such certificate or assignment, the amount for which such land was sold or assigned, and the amount of all subsequent taxes, penalties, and costs, if any, paid by him or his assignors, with interest on all such amounts at the rate of twelve per cent. per annum from the time of such sale or payment. If the judgment be in favor of the plaintiff, the court shall direct the payment of the money so paid in to the holder of such certificate or assignment; if in favor of the defendant, it shall direct the return of such money to the plaintiff. ('02 c. 2 s. 65)

72–517, 75+710; 77–88, 79+652; 84–53, 86+875.

MISCELLANEOUS PROVISIONS

975
105-M - 429

975. Lien of real estate taxes—The taxes assessed upon real property shall be a perpetual lien thereon, and on all structures and standing timber thereon and on all minerals therein, from and including May 1 in the year in which they are levied, until they are paid; but, as between grantor and grantee, such lien shall not attach until the first Monday of January of the year next thereafter. ('02 c. 2 s. 69; '03 c. 396)

1. **Statutory**—It does not arise by implication from the power to tax. It owes its inception, continued existence and duration to the statute (79–131, 81+763. See 75–221, 77+829).

2. **When attaches**—It is competent for the legislature to fix the date when the lien shall attach (80–17, 82+1090). Except as between grantor and grantee the lien attaches May 1 in the year the taxes are levied (33–534, 24+196; 79–343, 82+645; 79–131, 81+763; 80–17, 82+1090; 81–511, 84+344; 104+678. Under 1862 c. 4 § 8, 15–479, 394). The ownership on May 1 determines the liability for that year and if land is taxable at that time the lien then attaches and is not divested by a subsequent sale to a corporation which has commuted to the state by a payment of a percentage of its gross earnings in lieu of all other taxes (80–17, 82+1090).

3. **Duration of**—Under the present law the lien continues indefinitely until the taxes are paid. Prior to 1902 c. 2 §§ 69, 82 the lien expired in six years (40–512, 41+465, 42+473; 51–201, 53+629; 57–203, 58+990; 59–424, 61+458; 75–448, 78+14) unless it passed into judgment and then it expired in ten years (57–203, 58+990; 65–525, 68+105; 78–102, 80+861; 79–131, 81+763; 79–362, 82+686; 70–286, 73+164). It is never lost except by payment of the taxes or some express provision of law. Its persistency is its most notable characteristic (See 72–148, 75+118; 79–362, 82+686; 80–17, 82+1090; 34–304, 25+605).

4. **Transformation of—Effect of judgment**—The original lien attaching May 1 continues until the last publication of the notice and list. It then operates through the judicial proceedings and is finally merged in the judgment. But the lien is essentially the same despite these transformations (79–131, 81+763. See 79–362, 82+686).

5. **Priority among liens**—Tax liens take precedence in the reverse order of their attachment. The last lien cuts off all prior liens. The state is not exempt from this rule (34–304, 25+605; 79–343, 82+645. See 80–119, 82+1114).

6. **Conflict of liens**—The lien of the state for general taxes is superior to the lien of municipalities for special assessments (84–141, 86+755; 91–395, 98+101. See 81–511, 84+344; 1905 c. 200). It is superior to all private liens of whatever nature (See 79–343, 82+645).

7. **Passes to purchaser when**—The lien of the state passes, in a certain sense, to a purchaser at the annual delinquent sale or to one who takes a state assignment (15–245, 190; 39–470, 40+575; 84–53, 86+875; 79–343, 82+645; 72–148, 75+118. But see 80–119, 82+1114). A purchaser who pays subsequent taxes acquires the lien of the state therefor (84–53, 86+875; 72–148, 75+118; 75–17, 77+436). When the state sells land under a tax lien for less than the amount of the tax due it does not retain a lien for the balance which may be subsequently enforced (83–496, 86+610). Except as expressly provided by statute (§ 942) the lien of the state does not pass to the purchaser at a void sale (38–482, 38+489). A purchaser from the state takes free from the lien of a city for prior special assessments (91–395, 98+101).

8. **Limited to particular tract**—76–257, 79+302; 38–90, 35+580; 19–67, 45; 90–120, 95+1115.

9. **Torrens system**—The lien of the state for taxes renders it a necessary party in proceedings under the Torrens system (104+678).

976. Lien of personal property taxes—The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed from and after the time the tax books are received by the county treasurer. (1623)

It is questionable whether this lien attaches as against bona fide purchasers. Without referring to this statute the supreme court has said that the state has no lien on personal property assessed for taxes and that such property may be disposed of by the owner without regard to its assessment (90–120, 95+1115. See 69–131, 72+60; 177 U. S. 133; Ops. Atty. Genl. 1898 No. 152).

977. Structures, etc., not to be removed—Injunction—No structures, standing timber, or minerals on which a lien for taxes has attached shall be removed from any tract of land until all the taxes assessed against such tract and due and payable shall have been fully paid and discharged. When the state auditor has reason to believe that any such structure, timber, or minerals will be removed from such tract before such taxes shall have been paid,

he may direct the county attorney to bring suit in the name of the state to enjoin any and all persons from removing such structure, timber, or minerals therefrom until such taxes are paid. No bond shall be required of the plaintiff in such suit. ('02 c. 2 s. 78)

978. Structures, etc.—Seizure and sale—Any structure, timber, or minerals removed from any tract of land subject to a lien for taxes as provided in this chapter, or so much thereof as may be necessary, may be seized by the state auditor, or by any person authorized by him in writing, and sold in the manner provided for the sale of personal property in satisfaction of taxes. All moneys received from such sale in excess of the amount necessary to satisfy such taxes and the costs and expenses of seizure and sale shall be returned to the owner of such structure, timber, or minerals, if known, and, if unknown, shall be deposited in the county treasury subject to the right of the owner. ('02 c. 2 s. 79)

979. Penalty for removal—Any person who shall remove or attempt to remove any structure, timber, or minerals from any tract of land subject to a lien for taxes, as in this chapter provided, after such taxes become due and payable, and before the same have been fully paid and discharged, shall be guilty of a gross misdemeanor. ('02 c. 2 s. 80)

980. Right to assess and collect—No limitation—The right to assess property omitted in any year, or to reassess taxes upon property prevented from being collected in any year, either as authorized and directed by this chapter or otherwise, shall not be defeated by reason of any limitation contained in any statute of this state; but, except as otherwise provided in this chapter, there shall be no limitation of time upon the right of the state to provide for and enforce the assessment and collection of taxes upon all property subject to taxation. ('02 c. 2 s. 82)

07 980 328

Prior to 1902 c. 2 § 82 there was a limitation of six years (40–512, 41+465, 42+473; 51–201, 53+629; 57–203, 58+990; 59–424, 61+457; 75–448, 78+14). But it was held that the limitation did not begin to run until the expiration of the time allowed for the filing of the delinquent list with the clerk (75–448, 78+14), and that where the proceedings were judicially determined to be void the right to institute new proceedings was not barred by the lapse of time between the institution of the original proceedings and the judicial determination of their invalidity (70–286, 73+164. See 79–131, 81+763).

981. Real estate tax judgment—No limitation—Every tax judgment entered under this chapter shall be a lien, and shall operate to continue the lien of the taxes embraced therein, upon the parcel of land covered or intended to be covered thereby, until such judgment and taxes are paid in full, anything in any other statute of this state to the contrary notwithstanding. ('02 c. 2 s. 83)

Prior to 1902 c. 2 § 83 a tax judgment outlawed in ten years (57–203, 58+990; 65–525, 68+105; 78–102, 80+861; 79–131, 81+763; 79–362, 82+686; 70–286, 73+164).

982. Expenses of reassessment—Whenever a reassessment is made pursuant to law, the expenses thereof shall be audited and allowed by the board by which such reassessment was ordered, and paid out of the county treasury upon the warrant of the county auditor. If the aggregate valuation of taxable property as determined by such reassessment shall be ten per cent. or more in excess of the aggregate valuation thereof as fixed by the original assessment, the compensation so paid by the county to the officers by whom such reassessment is made shall be charged to the county, city, or town in which such reassessment is made, and be deducted by the county auditor from the next moneys coming into the county treasury apportionable to such county, city, or town. ('02 c. 2 s. 85)

983. Taxes paid by mortgagees, etc.—Any person who has a lien, by mortgage or otherwise, upon any land upon which the taxes have not been paid, may pay such taxes before or after the same become delinquent, and the interest, penalty, and costs, if any, thereon; and the money so paid shall be an additional lien on such land, and, with the interest thereon at the rate specified in the mortgage or other instrument, shall be collectible with, as a part of, and in the same manner as the amount secured by the original lien:

07 983 328

Provided, that no interest shall accrue on the taxes so paid by such mortgagee prior to June 1 of the year in which such taxes became due and payable. ('02 c. 2 s. 67)

A mortgagee or other lienholder may pay taxes due on the land covered by his lien and recover the amount in the proceedings for the foreclosure of his lien (69–223, 72+106; 46–164, 47+970, 48+783; 47–221, 49+691; 62–327, 64+906; 8–334, 294; 8–461, 410; 20–268, 239. See 74–341, 77+233; 76–112, 78+978). Such payment does not create a personal liability against the mortgagor (8–334, 294; 8–461, 410; 19–67, 45; 20–268, 239). Taxes paid subsequent to the foreclosure of the mortgage by a sale of the premises cannot be deducted from the proceeds of the sale as against the mortgagor (65–537, 68+109; 69–223, 72+106. See 23–337). If the mortgagee is the purchaser at the foreclosure sale he may pay current taxes after the sale and include the amount so paid in the amount required to redeem (§ 4501. See 90–169, 95+1114; 91–517, 98+650. Prior to statute there was no obligation, 20–268, 239. See 65–315, 67+1004). If the mortgage debt is outlawed the claim for taxes paid falls with it (45–167, 47+653). Provision is made by statute for a refundment from the county of taxes paid by a mortgagee when the foreclosure and taxes are declared void by judgment of court (§ 967). The statute is constitutional and retroactive (35–124, 27+497).

984. Taxes paid by occupant, etc.—When any tax on land is paid by or collected from any occupant or tenant, or any other person, which, by agreement or otherwise, ought to have been paid by the owner, lessor, or other party in interest, such occupant, tenant, or other person may recover by action the amount which such owner, lessor, or party in interest ought to have paid, with interest thereon at the rate of twelve per cent. per annum, or he may retain the same from any rent due or accruing from him to such owner or lessor for land on which such tax is so paid. Any such person making such payment may file with the register of deeds of the proper county a notice stating the amount and date of such payment, and whether paid as occupant, tenant, or otherwise, with a description of the land against which the taxes were charged; and the same shall thereupon be a lien upon such land in favor of the person paying the same until the same is paid. The register shall record such notice in his book of "Miscellaneous Records." Upon the payment of any such lien, the person filing such notice shall satisfy the same of record. ('02 c. 2 s. 68)

19–67, 45; 51–349, 53+713.

985
07 - 328

985. Deeds, etc.—Payment before transfer and record—Auditor's certificate—Penalty, etc.—When a deed or other instrument conveying land, or a plat of any town site or addition thereto, is presented to the county auditor for transfer, he shall ascertain from his records if there be taxes due upon the land described therein, or if it has been sold for taxes. If there are taxes due, he shall certify to the same; and upon payment of such taxes, and of any other taxes that may be in the hands of the county treasurer for collection, or in case no taxes are due, he shall transfer the land upon the books of his office, and note upon the instrument, over his official signature, the words, "Taxes paid and transfer entered," or, if the land described has been sold or assigned to an actual purchaser for taxes, the words, "Paid by sale of land described within;" and, unless such statement is made upon such instrument, the register of deeds shall refuse to receive or record the same: Provided, that sheriffs' or referees' certificates of sale on execution or foreclosure of a lien or mortgage, decrees and judgments, and copies of town or village plats, in case the original plat filed in the office of the register of deeds has been lost or destroyed, may be recorded without such certificate. A violation of this section by the register shall be a gross misdemeanor, and, in addition to the punishment therefor, he shall be liable to the grantee of any instrument so recorded for the amount of any damages sustained. ('02 c. 2 s. 70)

Constitutional (26–521, 6+337). A "conveyance" within the meaning of the statute includes "any instrument by which the title to real estate may be affected in law or equity; except wills, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands." It is immaterial whether the person presenting the deed is the owner in whole or in part or at all. The statute operates on the land and not on the ownership. If a deed covers several tracts the auditor must refuse his certificate if taxes are due on any one of them (66–219, 68+1068). The certificate of the auditor is not conclusive on the state (31–256, 17+473). A payment

of taxes in order to secure the recording of a deed is generally held to be involuntary and an action will lie to recover them if illegal (41-25, 42+548. See 15-35, 18). Mandamus will lie to compel an auditor to issue his certificate in a proper case (Cases supra and 38-90, 35+580). It will not lie to compel a county treasurer to certify that all taxes are paid when taxes remain unpaid although they are illegal (41-25, 42+548; 92-397, 100+105). The auditor must be guided by the records of his office. The registration of title under the Torrens system does not enlarge the authority or duty of the auditor (92-397, 100+105). A mortgage or other mere lien is probably not within the statute (See 66-219, 68+1068).

986
07 - 328

986. Treasurer's certificate—Before the auditor shall indorse his certificate upon any instrument as prescribed in § 985, the same shall be presented to the county treasurer, and, if it appears by his records that the current taxes assessed against the lands therein described have been paid, he shall note over his official signature the words, "Taxes for the year.....on the lands described within paid." ('95 c. 285; '97 c. 163)

987
07 - 328

987. Transfer of undivided interest—Upon presentation of a deed or other instrument conveying an undivided part of a parcel of land, and upon payment of an equivalent proportional part of the taxes due thereon, the auditor and treasurer shall indorse their respective certificates thereon as prescribed in §§ 985, 986. The treasurer shall receive payment of such fractional part of the taxes due on such parcel. ('97 c. 163)

988
07 - 328

988. Deed to correct title—Record without payment—When a deed purporting to convey or quitclaim any parcel of land, the record title to which appears to be in two or more persons, is presented to the county attorney, accompanied by an abstract of title to such land, he shall examine such deed and abstract, upon tender of a fee of five dollars therefor. If he finds that such deed is given for the purpose of correcting a defect in the title, or on account of a technical error in a prior conveyance, he shall so certify upon the deed; and thereupon the register of deeds shall record it, if otherwise entitled to record, notwithstanding that there are unpaid taxes or assessments upon such land. ('97 c. 344)

989
07 - 328

989. Transfer of specific part—When any part less than the whole of any parcel of land as charged in the tax lists is conveyed, the auditor shall transfer the same whenever the seller and purchaser agree, in a writing signed by them, or personally appear before the auditor and agree, upon the amount of the assessed valuation to be transferred therewith; but, if the seller and purchaser do not so agree, the auditor shall make such division of the assessed valuation as may appear to him just. If the auditor is satisfied that the proportion of the valuation so agreed to be transferred is greater than the proportional value of the land to be transferred therewith, and that such agreement was made by collusion of the parties, and with a view fraudulently to evade payment of taxes assessed on the entire parcel, he may refuse to make such transfer; and, when any such transfer has already been procured by fraudulent agreement, he shall cancel the same, and the land so transferred shall be charged with taxes in the same manner as though said transfer had not been made. ('02 c. 2 s. 71)

990. Mortgages foreclosed, etc.—Register to file list—Fees—On February 1 of each year the register of deeds shall make out from his records and file with the county auditor a list of all sheriffs' or referees' certificates of sale on execution or foreclosure of mortgages, upon which the period of redemption has expired during the preceding year, and judgments or decrees of the district or probate courts made during the preceding year affecting or transferring title to real estate. The auditor shall thereupon make the proper entries upon his transfer records and tax lists to conform with the list so filed. The register shall receive from the county for such list twenty-five cents for each such certificate of sale or judgment or decree. ('02 c. 2 s. 70)

991. Irregular tracts to be platted—Where any tract or lot of land is divided into parcels of irregular shape, which cannot be described except by metes and bounds, the owners thereof, upon request of the county auditor, shall have such land platted into lots, a survey being made when necessary, and the plat recorded. If the owners fail so to do within thirty days after

such request, the county surveyor, upon request of the auditor, shall make such plat from the records of the register of deeds, if practicable, but, if not practicable, shall make and certify the necessary survey and plat, which the auditor shall file for record with the register. The description of the property in accordance with such recorded plats shall be valid. When the owners fail to comply with this section, the costs of surveying, platting, and recording shall be paid by the county upon allowance by the county board, and the amount thereof shall be added to the next tax upon such lots, and, when collected, shall be credited to the county revenue fund. ('02 c. 2 s. 72)

992. Public and railroad lands becoming taxable—Lands reverting, etc.—On April 1 in each year the state auditor shall obtain lists of all government and railroad lands becoming taxable, and he shall compile therefrom, and from the records of sales of state lands, complete lists of all such lands; and on or before April 15 in each year he shall certify the same for taxation to the auditors of the counties in which such lands lie. At the same time he shall obtain lists of lands reverting to the railroad companies each year by reason of the forfeiture of contracts, and certify the same to the county auditors for the cancelation of taxes. The railroad companies shall report such sales and forfeitures to the state auditor April 1 in each year, and at other times when required by him. All forfeited lands not so reported shall be held for all taxes accruing thereon. (1643)

40–137, 139, 41+942.

993. Railroad lands—When become taxable—Rights acquired at tax sale—Whenever any railroad company owning lands granted to it to aid in the building of its road, and exempted by law from taxation until leased, contracted, or sold by such company, sells, assigns, transfers, or disposes of any estate, right, title, or interest therein or thereto, such right, title, estate, or interest shall become taxable, and be assessed and taxed, and such taxes shall be enforced, as in the case of other real property. In such assessment, and in the proceedings to collect and enforce such taxes, it shall be sufficient to refer to the owners of such estate, right, title, or interest as "unknown." The purchaser at any such tax sale, or from the state if bid in for the state, or his successor in interest, shall acquire and be subrogated to all the right, title, estate, or interest of the person holding the same under or from such company, subject to the right of redemption, as in other cases, and may do every act or thing which such person might do in order to be entitled to a perfect title or deed of such lands from such company. Upon production to such company of the tax certificate, in case there has been no redemption from such tax sale, such purchaser or his successor in interest may make any payment of principal or interest due or to become due to such company as assignee of such person. If the person entitled to redeem from such tax sale fails so to do within the time allowed by law, and at the same time to pay to the county treasurer, for the use of the holder of such tax certificate, the amount of all payments of principal and interest by him or any prior holder made to such company on account of such lands, with interest thereon from the time of such payments at the rate of twelve per cent. per annum, then, upon filing with such company a certificate of the county auditor showing that no such redemption has been made, the holder of such tax certificate shall be entitled to receive from such company such deed or contract as the person whose right, title, estate, or interest was so sold at such tax sale originally received from such company, or would then be entitled to receive from it, with like effect, and in lieu thereof. (1644, 1647)

What constitutes a sale or transfer (56–288, 57+796; 21–472; 21–315; 21–339; 21–344; 28–257, 9+761; 34–182, 25+57; 34–195, 25+453; 38–397, 37+949; 39–380, 40+166; 40–360, 42+79; 41–452, 43+326; 42–295, 44+70).

994. When stock, etc., represents lands—When any special stock or land stock, or any writing or instrument whatever, is or has been issued by any railroad company with the intention of granting, transferring, or securing to the person to whom the same is issued any right, title, interest, or estate in or to any lands held by such company, the right, title, interest, or estate so

granted, transferred, or secured shall be subject to taxation as provided in § 993. (1645)

995. Taxability in litigation—Tax rate, how fixed—When the taxability of any of the lands mentioned in §§ 993, 994, or of any interests therein, is in litigation, the proper officers of any county or subdivision of the state in which such lands lie, in fixing the tax rate, may fix such rate as will raise the amount required on other property as if such lands or interests were not taxable for such year; but such lands and interests shall be assessed and taxed as other property. (1648)

996. Company to report transfers—Forfeitures—Every railroad company which issues any stock, contract, or writing granting, transferring, or securing to any person any estate, right, title, or interest in or to any such lands shall within the time required by law report the same to the state auditor, and any failure so to report shall operate as a forfeiture of its corporate franchises and privileges, and the attorney general shall thereupon proceed against such company to have its charter and franchises declared forfeited. (1649)

997. Registry of municipal bonds—Fees—When any county, city, village, or town has incurred or shall incur a debt under the provisions of any law to aid in the construction of a railroad, upon the issuance of bonds in payment of such debt the clerk or other proper officer of such county, city, village, or town shall register such bonds in a book kept for that purpose, showing the date, amount, number, maturity, and rate of interest of each bond, and for what railroad issued, and shall immediately transmit a copy of such registration to the state auditor, who shall enter the same in a book kept for that purpose. Each such officer shall receive from the holder of the bond a fee of fifty cents for such registration. (1692)

22-356.

998. Tax to pay interest—The state auditor shall annually ascertain the amount of interest for the current year due and accrued and to accrue upon such registered bonds, and shall certify such amount to the auditor of the proper county at the same time with other taxes to be levied for that year. From the basis of the valuation of property in the county, city, village, or town by which such bonds were issued, the county auditor shall estimate and determine the rate per cent. on such valuation requisite to meet and satisfy the amount of interest due and to become due for that year, with the ordinary cost to the state of collection and disbursement of the same. The amount so certified by the state auditor, and the cost of collecting the same, shall thereupon be deemed added to and a part of the per cent. or amount which is or may be levied as provided by law for purposes of state revenue, and shall be so treated by all officers or authorities in determining levies, and making estimates, duplicates, and books for the collection of taxes, and such tax shall be collected with the state revenue, and all laws relating to the collection of state revenue shall apply thereto, except as herein otherwise provided; but the state shall not be liable for the payment of any part of the principal or interest of any such bonds. (1694, 1695)

999. Coupons—Payment—The county treasurer shall pay the taxes so collected upon the warrant of the county auditor, issued to the persons presenting coupons therefor, if authorized to receive the same. The auditor shall cancel each coupon so redeemed, and transmit the same to the county, city, village, or town by which it was issued; and the proper officer thereof shall return his receipt for the amount of the coupons so transmitted, which receipt the auditor shall file in his office as his authority for auditing the claim and issuing said warrant. (1696)

1000. Counties having bonded debt—Sinking Fund—Tax—The county board of any county having a bonded indebtedness may by resolution create a sinking fund, to be known as the "Bonded Debt Sinking Fund," for the purpose of paying such indebtedness when it becomes due. Such funds shall be raised by taxation, and at the time of creating the same the board shall by resolution determine the amount to be raised therefor the first year,

and the amount to be so raised for each following year shall be determined at its first meeting in January in such year. Such tax shall be levied by the county auditor in addition to all other taxes authorized by law, and shall be extended on the tax lists and collected as other county taxes. ('03 c. 381)

See 1905 c. 202

1001. Governor may suspend or remove—The governor may remove from office any officer charged with duties under this chapter when it is made to appear to him by competent evidence that such officer has been guilty of malfeasance or nonfeasance in the performance of his official duties; first giving to such officer a copy of the charges against him, and an opportunity to be heard in his defence. He may suspend any such officer against whom such charges have been preferred pending his investigation thereof, when, in his opinion, the public interest may require. The provisions of law applicable to the removal from office of a county auditor in force at the time when such charges are preferred shall apply to and govern removals from office under this section. ('02 c. 2 s. 86)

Ops. Atty. Genl. 1894 No. 221.

1002. Actions against officers—Expense of county—When a civil action is commenced against a county treasurer, county auditor, or person holding any town or district office, for performing or attempting to perform any duty authorized or directed by statute for the collection of the public revenue, such officer may, in the discretion of the court, by an order entered in the minutes thereof, be allowed reasonable counsel fees and other expenses for defending such action, and the amount of any damage and costs adjudged against him, to be paid from the county revenue fund. (1642)

RAILROAD COMPANIES

1003
09 - - 30
09 - - 258
118-NW 679
118-NW 1007

1003. Gross earnings tax—Railroad companies shall pay a percentage of their gross earnings, in lieu of other taxes, in accordance with the provisions of Laws 1903 c. 253. (1669)

1003-1004
09 - - 454

1. **Historical policy of state**—It has been the policy of this state from its foundation to tax all railroads on a basis of a percentage of their gross earnings (14–297, 224; 73–417, 76+217; 85–149, 88+430; 56–156, 57+464; 35–1, 25+457, 30+826).

2. **Commuted system not an exemption**—The taxation of railroads on a basis of a percentage of their gross earnings is not an exemption from all taxation but merely an exemption from the ordinary mode of assessment (73–417, 76+217; 23–469; 33–534, 24+196; 33–537, 24+313; 38–163, 36+109).

3. **Thing taxed not changed by system**—The commuted system does not change the subject of the tax. The tax is still imposed on the property of the railroad company and not on the company itself (85–149, 88+430).

4. **System unconstitutional prior to 1871**—Prior to the constitutional amendment of 1871 the state legislature had no authority to adopt a commuted system, but the statutes providing for such a system were validated by that amendment. The legislature has no authority to adopt a commuted system except in accordance with the amendment (72–200, 75+210; 77–433, 80+626; 56–156, 57+464).

5. **System applicable to all railroads**—The system applies to all commercial railroads regardless of their length (54–34, 55+816). It does not apply to street railways (76–96, 78+1032).

6. **Exemptions under territorial charters contracts**—14–297, 224.

7. **Exemptions under state charters prior to 1871 contracts**—The exemptions from ordinary taxation granted to railroads by the legislature after the adoption of the constitution but prior to the amendment of 1871 were unconstitutional, but they were validated by that amendment and are contracts which cannot be impaired by subsequent legislation (179 U. S. 223, overruling 72–200, 75+210; 77–433, 80+626).

8. **State constitution not applicable to territorial charters**—14–297, 224; 21–315; 23–469; 36–467, 31+942.

9. **Exemption appurtenant to road**—The exemption from ordinary taxation granted to railroad companies under territorial charters was not simply a personal privilege conferred on the original companies, but was appurtenant to the line of road and existed in favor of any company, which, in consideration of the land grant, assumed the construction and maintenance of the line to which it was applicable. This immunity was in no wise affected by change of ownership and exists today in those companies which are operating those lines no matter by what method of transfer they have succeeded to the rights and immunities of the original companies (14–297, 224; 21–315; 23–217; 23–469; 26–294, 3+701; 30–311, 15+307; 32–294, 20+234; 33–534, 24+196; 33–537,

24+313; 36–467, 31+942; 73–417, 76+217; 82–158, 84+794). And this immunity is not limited to the lands embraced in the original grant but includes lands subsequently granted (73–417, 76+217).

10. Liability for percentage of gross earnings appurtenant to road—The immunity from ordinary taxation and the obligation to pay a percentage of gross earnings are reciprocal and appurtenant to the road (30–311, 15+307; 36–207, 30+663; 73–417, 76+217). Companies operating a fraction of such roads are liable to pay a percentage of their gross earnings on such fraction (23–217; 32–294, 20+234).

11. Land must be devoted to railroad purposes—The exemption of railroad property from ordinary taxation is based on the assumption that it will be held and used for the purposes for which the corporation was created and through such use yield to the corporation an income, and to the state a percentage of the same, in lieu of direct taxation. It is accordingly held that property of railroad companies not used for railroad purposes is taxable in the ordinary way where the charter does not expressly provide for an exemption of all property. This rule has been applied to lands which have ceased to be used for railroad purposes and are either rented to individuals or allowed to remain vacant (33–537, 24+313; 91–238, 97+879); to lands held for railroad purposes in the indefinite future (33–537, 24+313; 91–238, 97+879; 39–112, 38+925; 68–242, 71+27. See 84–459, 87+1131); to large tracts of timber lands affording timber for railroad ties and lumber for railroad purposes (38–163, 36+109; 142 U. S. 282); to logs cut from exempt railroad land (39–25, 38+635); to the Lafayette Hotel at Minnetonka (42–238, 44+63); to a wharf at Duluth built on railroad land and leased to a private company (45–510, 48+334). Where substantially all of a tract is used for railroad purposes small fragments of the tract not in such use are nevertheless exempt (68–242, 71+27). The land of companies which have accepted the provisions of G. S. 1894 §§ 1667, 1668 is subject to ordinary taxation if not devoted to railroad use (33–537, 24+313; 91–238, 97+879).

12. Effect of sale of exempted land—It is generally provided in land grant charters that the exemption from taxation shall cease upon a sale of the lands. What constitutes a sale within the meaning of these provisions depends, not upon the form of the instrument of conveyance but upon its practical operation and effect. If the company parts with all its beneficial interest in the land the retention of the naked legal title does not prevent the transaction from being a sale (21–472; 21–315; 21–339; 21–344; 28–257, 9+761; 34–182, 25+57; 34–195, 25+453; 38–397, 37+949; 39–380, 40+166; 40–360, 42+79; 41–452, 43+326; 42–295, 44+70; 56–288, 57+796). A transfer to another company which continues the operation of the road is not a sale within the meaning of these provisions (See Note 9 supra). If a company transfers its franchises to another company but retains all or a portion of its lands the lands become subject to taxation unless the legislature ratifies the transaction in such a way as to preserve the exemption (36–246, 30+816; 35–222, 28+245; 82–158, 84+794).

13. May 1 determines taxability—Exempt land sold before May 1 is taxable for the then current year; otherwise if sold after May 1 (40–137, 41+942). Non-exempt land purchased by a railroad company after May 1 is taxable in the ordinary way (80–17, 82+1090, overruling 33–534, 24+196.)

14. Exemption a franchise—Lost by nonuser—36–246, 30+816. See 21–339; 38–115, 35+725; 35–222, 28+245; 82–158, 84+794.

15. Applicable to granted lands—56–156, 57+464.

16. Railroad lands reserved and sold by state not exempt—42–451, 44+982.

17. Indemnity lands—Indemnity lands are not taxable by the state until they are pointed out and ascertained and the selection approved by the secretary of the interior (75–448, 78+14).

18. Land-grant lands earned but not patented—28–257, 9+761.

19. Riparian rights—Riparian rights incidental to exempt railroad lands are exempt (81–422, 84+302).

20. Union station—A company operating a union station for several railroads is not liable to pay a percentage on its gross earnings where the railroads using the station own all the stock of the company and pay a percentage on their gross earnings (42–142, 43+840).

21. What included in gross earnings—Gross earnings include only earnings from the operation of the railroad. They do not include compensation from one company for the right to run its trains over the tracks of another (30–311, 15+307. See 32–294, 20+234). They do not include earnings from portions of the road outside the state (32–294, 20+234).

22. Merger—The purchase of a railroad subject to the one per cent. tax by a company subject to the three per cent. tax does not operate as a merger, nor entitle the state to take into account the earnings of the former in estimating the gross earnings of the latter (85–149, 88+430).

23. Exemption from special assessments—Whether a railroad is exempt from special assessments depends on its charter and the use to which it is putting the land (68–242, 71+27; 21–526; 23–469).

24. Railroad elevators—38–531, 38+619.

25. Graduation of percentage—Graduation of percentage under Sp. Laws 1873 c.

111 is to be made with reference to the completion of the first thirty miles of the particular line or branch (23-217; 36-207, 30+663).

1004. State treasurer, collector—Deputies—The state treasurer shall be the collector of all taxes due from railroad corporations which pay a percentage of gross earnings in lieu of other taxes. He may appoint one or more deputies to assist him in such collection, and may take such bond and security from such deputies as he deems necessary for his indemnity, and shall in all cases be liable and accountable for their proceedings and misconduct. Such deputies shall in no case be entitled to receive from the state any fee, charge, or salary. (1671, 1672)

1005
09 - - 504

1005. Return to commission—Election to pay semiannually—On or before February 1 in each year, every railroad corporation owning or operating a railroad in the state shall make to the railroad and warehouse commission a true and just return of all the gross earnings of its road or roads within the state for and during the year ending December 31 preceding, verified by the officer making the same: Provided, that any railroad company may elect to pay its taxes semiannually on August 1 and February 1 for the preceding six months of each year, commencing January 1 and July 1, respectively, and in such case such return shall be made on or before January 20, for the six months ending December 31 preceding, and on or before July 20, for the six months ending June 30 preceding. (1676, 1678)

1006
09 - - 454

1006. Commission to certify—Duty of auditor—The railroad and warehouse commission shall certify such returns of gross earnings, with a statement of the per cent. and amount of taxes due thereon, to the state auditor, who shall then make his draft on such railroad corporation for the amount of taxes due, and place the same in the hands of the state treasurer for collection. (1679)

1007. Failure to return—Penalty—Treasurer to fix tax—If any railroad company fail to make return of its gross earnings, and the whole thereof, at the time and in the manner in this chapter provided, the railroad and warehouse commission shall notify the treasurer or accounting officer of such company of such neglect or default; and, if the same continues for thirty days after service of such notice, such company shall be subject to a penalty in an amount equal to twenty-five per cent. of the tax imposed upon such company, to be added to and collected with such tax; and, if such company fail within thirty days after such notice to make such return, the state treasurer shall fix the amount of such gross earnings and tax, together with such penalty, upon the best evidence he can obtain, and enter the amount of such gross earnings, tax, and penalty in the books of his office. Such entry shall stand in the place of the report required by law to be made by such company, and shall, in all the courts of the state, for all purposes, be conclusive evidence of the facts therein stated. The certificate of the treasurer that any such tax or percentage of gross earnings is unpaid and due from any railroad company; and of the amount thereof, and of such penalty, shall be sufficient warrant for the collection, by sale or otherwise, of such tax or percentage of gross earnings, or any part thereof. (1676)

1008. Distraint—Sale—Fees—At any time after March 1 of each year, when any such tax or percentage of gross earnings is due from any railroad or railway corporation or company, the treasurer or his deputy shall distrain sufficient goods, chattels, or other movable property, if found within the state, to pay such taxes or percentage and the costs that may accrue, and shall immediately advertise the same in three newspapers published in the state, stating the time when and the place where such property will be sold; and if the taxes for which such property is distrained and the costs which accrue thereon are not paid before the day appointed for such sale, which shall not be sooner than three weeks from the taking of such property, the treasurer or his deputy shall sell such property at public vendue, or so much thereof as shall be sufficient to pay such taxes and the costs of such distress and sale and penalty, as in this chapter hereinafter provided. The treasurer and his deputies shall be allowed the same fees, costs, and disbursements

for making such distress and sale as are allowed by law to sheriffs for making levy and sale of property on execution, traveling fees to be computed from the state capital to the place of making the distress; but they shall receive no fees or costs from the state for making such distress or sale. (1673, 1677)

1009
07 - 82

1009. Penalty for non-payment—If any such corporation or company fail to pay such taxes or percentage by March 1, when the same become due, such corporation or company may pay the same to such treasurer at any time before property shall have been distrained: Provided, that in such case there shall be paid the additional sum of five per cent. upon such taxes or percentage as a penalty. (1674)

1010. Steam engines, etc., distrained—Removal, etc.—Penalty—All steam engines and cars of every kind shall be deemed chattels and movable property for the purpose of the enforcement of such taxes. When any steam engine or car is levied on, the treasurer or his deputy making such distress or levy may move the same upon and over any road, track, or side track within the state, and to any town or city therein. The treasurer or his deputy making such levy may seize and take immediate and exclusive possession of any side track, roundhouse or engine house, depot or warehouse, or building of the corporation or company in default, and move any property so distrained or levied on upon or into the same, and maintain such possession so long as, in the opinion of the treasurer, may be necessary for the collection of such taxes. Every person who, without authority from the treasurer or his deputy, interferes with or molests the property so levied upon, or such side track or building upon or in which the same shall be placed, shall be deemed guilty of a felony, and be punished by imprisonment in the state prison for not less than one year, nor more than seven years. (1675)

1011. Lands sold to be returned—On or before April 1 of each year, every railroad company which has received lands from the state or the United States to aid it in the building of its road shall make to the railroad and warehouse commission a full and complete return of all lands sold or contracted to be sold during the year ending December 31 preceding, verified by the land commissioner or other proper officer of such company. All trustees or other persons to whom any such lands have been conveyed, or by whom such lands are held in trust or otherwise, shall be subject to this section. (1680)

EXPRESS COMPANIES

1012-1038
09 - - 258

1012. Definition—Every person, company, joint-stock association, or corporation, wherever organized or incorporated, engaged in the business of conveying to, from, or through this state, or any part thereof, money, packages, gold, silver plate, or other articles, by express, shall be deemed to be an express company. ('97 c. 309 s. 1)

1013
09 - - 500

1013. Annual statement—Annually between January 1 and February 1, every such express company doing business in this state shall make and file with the state auditor a statement in such form as he may prescribe, verified by the person constituting such company, if a person, or by its president, secretary, treasurer, superintendent, or chief officer in this state, if an association or corporation, containing the following facts:

1. The name of the company.
2. The nature of the company, whether a person or persons, or association or corporation, and under the laws of what state or country organized.
3. The location of its principal office.
4. The name and postoffice address of the president, secretary, auditor, treasurer, and superintendent or general manager.
5. The name and postoffice address of the chief officer or managing agent of the company in this state.
6. The entire receipts, including all sums earned or charged, whether actually received or not, for business done within this state, including its

proportion of gross receipts for business done by such company within this state in connection with other companies.

7. A statement of the amount actually paid by such express company for the year then next preceding December 31 to the railroads within this state for the transportation of its freight within this state, showing the amount paid to each railroad company.

8. The entire receipts of the company for business done within this state, as defined in subd. 6, after deducting the amounts paid for transportation of freight, as in subd. 7.

On application the auditor shall furnish blanks for making such statements. ('97 c. 309 s. 2)

Earnings from interstate business are not returnable (Ops. Atty. Genl. 1904 No. 114).

1014. Local agent to make statement, when—If any such company shall fail or refuse to make such report on or before February 1, the auditor shall notify its local agent of such default, by letter mailed and addressed to such agent at his postoffice address, inclosing a form of return to be made out by him; and thereupon it shall be the duty of each such agent within this state, on or before March 1, to make out and file with the auditor his verified statement, containing such of the facts prescribed in § 1013 as the auditor may require, but the statement of gross receipts, and the deduction therefrom, defined in § 1013 subds. 6, 7, shall include only those of his agency. ('97 c. 309 s. 3)

1015. Auditor to determine gross receipts—The auditor shall annually, between March 1 and April 1, ascertain and determine the gross receipts of every such company by deducting the sums annually paid by it for transportation of freight, as defined in § 1013 subd. 7, from its entire receipts for business done in this state, as defined in § 1013 subd. 6. In case of the failure or refusal of any company or its agents to make the statement required by law, the auditor shall inform himself as best he may on the matters necessary to be known in order to discharge his duty under this section. At any time before March 1 in each year, or before the gross receipts have been determined as hereinbefore provided, any company or person interested may, on written application, appear before the auditor and be heard in the matter. ('97 c. 309 s. 4)

1016. Failure of company to report—If any company required to file a statement under § 1013 omits to file the same on or before February 1, such company shall be subject to a penalty of five hundred dollars, and an additional penalty of one hundred dollars for each day's omission to file the same after February 1, to be recovered by action in the name of the state, and paid into the state treasury to the credit of the general revenue fund. On request of the auditor, the attorney general shall institute such action against any company so delinquent in any county in which such company does business, or in the county of Ramsey. ('97 c. 309 s. 5)

1017. Failure of agent—If any local agent required to file a statement under § 1013 fails to do so on or before March 1, he shall be guilty of a misdemeanor, and punished by fine of not less than twenty-five dollars. Each day's failure after March 1 to file such statement shall constitute a new offence. ('97 c. 309 s. 5)

1018. Power of auditor—Failure to answer—The auditor may require the president, secretary, treasurer, receiver, superintendent, or managing agent or other officer or employee or agent of an express company to attend before him and bring for the inspection of the auditor any books or papers of such company in his possession or custody or under his control, and to testify under oath touching any matter relating to the organization or business of such company. Any such officer, employee, or agent who shall refuse to attend before the auditor when so required, or shall refuse to bring with him and submit for such inspection any such books or papers, or shall refuse to answer any question put to him by the auditor touching the organization or business of such company, shall be guilty of a gross misdemeanor,

and punished by fine of not more than five hundred dollars, or by imprisonment in the county jail not more than thirty days, or by both. ('97 c. 309 s. 5)

Power of auditor to exact information from companies (81–87, 83+465).

1019. Collection—On or before March 15, annually, the auditor shall assess upon each company a tax of six per cent. upon its gross receipts for business done between points within this state for the preceding calendar year, as determined by the auditor, which shall be in lieu of all taxes upon its property, and shall deliver to the state treasurer for collection a draft upon the company for such sum. Such tax, when collected, shall be credited to the general revenue fund. ('97 c. 309 s. 6; '99 c. 317; '01 c. 124)

1020. Penalty for non-payment—If any such company shall fail to pay such tax within sixty days after demand of the state treasurer, he shall add thereto a penalty of ten per cent. thereof, and thereafter one per cent. thereof for each subsequent month in which such tax remains unpaid ('97 c. 309 s. 6; '99 c. 317; '01 c. 124)

1020
07 - 82

1021. Distraint—If such default shall continue for sixty days after demand, the treasurer shall distrain enough of the personal property of such company to satisfy such tax and penalty, and shall sell the same if not paid before sale, or so much thereof as may be necessary to pay such tax, penalty, and cost of distress, publication, and sale, at public vendue, upon not less than ten days' published notice in two legal newspapers of Ramsey county. ('97 c. 309 s. 6; '99 c. 317; '01 c. 124)

FREIGHT LINE COMPANIES

1022. Definition—Every person, company, joint-stock association or corporation, wherever organized or incorporated, engaged in the business of operating cars, not otherwise listed for taxation in this state, for the transportation of freight, whether such freight be owned by him or it, or by any other person or company, over any railroad line in whole or in part within this state, and not owned, leased, or operated by him or it, by whatever name or term such cars be designated, shall be deemed a freight line company. ('03 c. 376 s. 1)

1022
07 - 250

Tank cars passing through the state and owned by a foreign corporation held not taxable (94–320, 102+721). 1897 c. 160 providing for the taxation of freight line companies held unconstitutional (85–457, 89+66).

1023. Annual statement—Annually in July every such company shall make and file with the state auditor a statement, in such form as he may prescribe, verified by the person constituting such company, if a person, or by its president, secretary, treasurer, superintendent, or chief officer in this state, if an association or corporation, containing the facts existing on July 1 with reference to the business of the company, as follows:

1023
07 - 250
1023
09 - - 97
09 - - 504

1. The name of the company.
2. The nature of the company, whether a person, agent, trustee, lessee, receiver, mortgagee in possession, or other person, or a joint-stock company, partnership, association, or corporation; and, if an association, partnership, or corporation, when and where organized or incorporated.
3. The location of its principal office.
4. The name and postoffice address of the person, or of its president, secretary, auditor, treasurer, superintendent, or general manager.
5. The name and postoffice address of its chief officer or managing agent in this state.
6. Its capital stock: (a) Authorized; (b) issued.
7. The number of shares of stock: (a) Outstanding; (b) not issued; (c) treasury.
8. The par and market value, or, if there be no market value, the actual value, of its shares of stock.
9. A statement of the situation and value of its real estate in this state.
10. The actual cash value of its personal property, including moneys and credits, in this state.

11. The total cash value of all its real estate situated outside of this state.

12. The total value of all its personal property, including moneys and credits, situated outside of this state.

13. The total number of miles of railroad over which the cars of such company were run during such year, and separately the number of miles over which such cars were run in this state, so as to show the total wheelage of such cars, and the wheelage in this state.

14. Such other facts or information as such company may deem material upon the question of the taxable value of its property within this state.

On application, the auditor shall furnish blanks for making such statements. ('03 c. 376 ss. 2, 9)

1024
07 - 250

1024. State board of equalization to assess—Procedure—Rules—The state board of equalization, as now or hereafter existing, shall be a board of appraisement and assessment of the property of freight line companies. At the annual meeting of such board the auditor shall lay before it the statements returned under § 1023 and all statements made by him for such companies, and the board shall assess the property of such companies representing their capital or property owned or used in this state. The auditor shall give notice by registered letter to the person or officer of such company verifying such statement of the time and place when such company may appear before the board and be heard in respect to the assessment to be made upon its property. After hearing any testimony and arguments which such company may offer, the board shall determine the true value in money of the entire property of such company in this state, according to the following rules:

1. It shall find and determine the actual value in money of the entire amount of the capital stock of such company, and from the amount so determined shall deduct the actual value of its real estate outside the state, and the remainder shall be taken as the actual value of the capital stock of such company.

2. It shall then divide such amount by the total number of miles of railroad over which the cars of such company were run, in order to obtain the value per mile, and shall then multiply such value so obtained by the total number of miles of railroad over which the cars of such company were run in this state; and the result shall be taken as the actual cash value of the property of such company within this state, and subject to assessment and taxation therein. ('03 c. 376 ss. 3, 4)

1025
07 - 250
07 - 453

1025. Failure to report—Assessment—If any such company shall fail to make the statement required by law, the auditor shall make a statement for it upon the best information he may be able to obtain, and shall lay the same before said board at such meeting. He shall notify such company of his action by registered letter, and it may appear and be heard as in other cases. When the assessment is made, the board shall add thereto ten per cent. thereof as a penalty for the failure of such company to make such statement. ('03 c. 376 s. 7)

1026
07 - 250
07 - 453

1026. Report to auditor—Tax rate—On or before the first Monday in October such board shall report to the auditor the amounts fixed by it as the value of the property of such companies in this state, and shall file with him the statements and other papers before it. The rate of tax to be levied upon such assessment shall be the average rate of taxation in the state for all purposes, state and local, as shown by the abstracts of the tax lists of the various counties on file with the auditor for the year in which such assessment is made; such rate to be fixed by the auditor. ('03 c. 376 s. 5)

1027
07 - 82
07 - 250
07 - 453

1027
09 - - 473

1027. Collection—Tax in lieu of other taxes—In February following such assessment, the auditor shall make his draft upon each such company for the amount of tax so found to be due, which draft shall state the amount of the assessment, the rate of tax levy, and the amount of the tax, and shall deliver it to the state treasurer for collection. Such taxes shall be paid into the state treasury, and credited to the general revenue fund, and shall be in lieu of all other personal taxes of every nature against such company. If any

such company fail to pay the tax levied, the attorney general shall proceed by action in the name of the state to collect the same, with a penalty of ten per cent. on the amount of the tax, and costs of action. ('03 c. 376 ss. 6, 7)

SLEEPING CAR COMPANIES

1028
07 - 453

1028. Definition—Every person, company, joint-stock association, or corporation, wherever organized or incorporated, owning sleeping, drawing-room, or parlor cars, which are used by railroads within this state, and in which an extra fare is charged in addition to the railroad fare for transportation, shall be deemed a sleeping car company. ('97 c. 159 s. 1)

1029
07 - 453
09 - - 504

1029. Annual report—Tax—Annually on or before May 1 every such sleeping car company shall make to the state auditor a report of its gross receipts during the preceding calendar year for fares between points within this state—that is, beginning at a point within this state, and terminating at another point within this state—which report shall be verified by some proper officer or agent of such company, having official knowledge of the facts. At the time of making such report, such company shall pay to the state treasurer a tax of three per cent. upon such gross receipts, which shall be in lieu of all other taxes. ('97 c. 159 s. 2)

1030
07 - 82
07 - 453

1030. Failure to report—Assessment—If any such company fails to make the report and pay the tax required by § 1029, the auditor shall within thirty days after May 1 estimate the gross receipts of such company, and calculate the tax thereon, and add to such tax a penalty of ten per cent. thereof, and notify such company by registered letter of the amount of such tax and penalty; and, if such tax and penalty are not paid within thirty days thereafter, he shall proceed to collect the same in the manner provided for the collection of other delinquent taxes: Provided, that if within such thirty days such company shall make such report, and pay such tax of three per cent. upon such gross receipts, with a penalty of ten per cent. of such tax, the auditor shall accept such report, and the treasurer shall give his receipt in full therefor. ('97 c. 159 s. 3)

TELEGRAPH AND TELEPHONE COMPANIES

1031. Definition—Every person, company, joint-stock association, or corporation, wherever organized or incorporated, owning or operating any telegraph or telephone line within this state, shall be deemed a telegraph or telephone company, as the case may be.

1032
09 - - 504

1032. Telegraph companies—Annual statement—Annually on or before the first Monday of July every such telegraph company, the rate and manner of taxation of which for any purpose has not been prescribed by special charter granting such franchise, or by laws providing for taxation of gross earnings of railroads, shall make and file with the state auditor a statement in such form as he may prescribe, verified by the person constituting such company, if a person, or by its president, secretary, treasurer, superintendent or chief officer in this state, if an association or corporation, containing the following facts:

1. The total number of miles owned, operated, or leased within this state, with a separate showing of the number leased.
2. The total number of telegraph stations on each separate line, and the total number of telegraph instruments in use therein, with the total number of stations mentioned.
3. The total number of miles in each separate line or division thereof, with the number of separate wires thereon, and the counties through which the same are carried.
4. The average number of telegraph poles per mile used in the construction and maintenance of said lines. (1682, 1683)

1033. State board of equalization to assess—Rate—Upon receipt of such statement, the auditor shall lay it before the state board of equalization at its annual meeting. The board shall assess such telegraph lines at the true cash

value thereof, and shall also determine the rate of tax to be levied and collected upon such assessment, which shall not exceed the average rate of taxes, general, municipal, and local, levied throughout the state. Such tax shall be in lieu of all other taxes, state and local, and shall be payable into the state treasury. In case of the failure of any such company to make such statement, the board shall assess the line of such company notwithstanding, adding thirty per cent. of the assessable value thereof as a penalty. (1684, 1685, 1687)

1034
07 - 82

1034. Collection—Action—Distress—Such taxes shall become due and payable on January 1 following the levy thereof, and, if not paid as herein provided, the state treasurer shall collect the same. He may, in his discretion, forthwith commence an action to collect such taxes, to be prosecuted by the attorney general in the name of the state, in any county in which such company does business, and the service of the summons upon any such company may be made by delivering a copy to any officer or general or local agent thereof in the same manner as a summons in a civil action. The treasurer may, in lieu of bringing such action, distrain enough of the personal property of such company to pay such tax and the costs which may accrue, and, if not paid before sale, shall sell the same, or so much as shall be necessary to pay such tax and costs of distress, publication, and sale, at public vendue, upon not less than three weeks' published notice in three legal newspapers in the county where such distress is made: Provided, that any such company whose property has been distrained, at any time before such sale, may give to the state a bond in double the amount of the tax distrained for, with sureties to be approved by a judge of the supreme court, or of the district court of the county wherein such distress was made, conditioned that, if an action be brought within ninety days thereafter, such company shall pay the judgment which may be recovered therein on account of such tax; and, upon delivery of such bond to the treasurer, such distress shall be released. The warrant of the auditor for such tax shall be prima facie evidence of the authority of the board or officers charged with such levy and collection, the lawfulness and regularity of all their proceedings in such levy, the fairness and equality of such cash valuation and assessment, of the rate of taxation, and of the amount of the tax so levied, and that the amount of such tax as it appears in the warrant is due and payable. (1686; '01 c. 180)

1035
07 - 82

1035. Telephone companies—Gross earnings tax—Every telephone company shall pay into the state treasury on January 1 in each year three per cent. of its gross earnings derived from business within this state, which shall be in lieu of all other taxes and assessments whatever upon such company and its capital stock. ('97 c. 314 s. 1)

Real estate owned by telephone company and used in its business held exempt from ordinary taxation (84–459, 87+1131). Real estate purchased by telephone company after May 1 held not exempt (80–17, 82+1090).

1036. Report—Examination—For the purpose of ascertaining such gross earnings, such company shall keep an accurate account of all such earnings, and on or before December 15 in each year shall furnish an abstract thereof to the state treasurer. Such abstract shall be verified by the person constituting such company, if a person, or by its president or treasurer, if an association or corporation; and, for the purpose of ascertaining its correctness, the governor or any other person authorized by him may examine under oath such person or the officers of any such company. ('97 c. 314 s. 2)

1037. Tax a lien—Such tax shall be a lien upon, all and singular, the property, estate, and effects of any such telephone company, and shall take precedence of all demands and judgments against it. ('97 c. 314 s. 2)

VESSELS NAVIGATING INTERNATIONAL WATERS

1038
09 - - 504

1038. Tonnage tax—Distribution—The owner of any steam vessel, barge, boat, or other water craft, owned within or hailing from any port of this state, and employed in the navigation of international waters, annually on or before July 1, may file with the state auditor a verified statement containing the name, name of owner, port of hail, and registered tonnage of such craft,

and thereupon may pay into the state treasury a sum equal to three cents per net ton of such registered tonnage, and the treasurer shall issue his receipt therefor. Such payment shall be received in lieu of other taxes on such craft, state or municipal, for the year in which such payment is made. On or before December 1 following, such treasurer shall pay one-half of such sum to the treasurer of the county wherein the port of hail of such craft is located. ('95 c. 224)

CHAPTER 12

MILITARY CODE

MILITIA

1039-1153
09 - - 493

1039. How constituted—Exemptions—All able-bodied male residents of the state between the ages of eighteen and forty-five years shall constitute the militia thereof, and be required to perform military duty in case of war, invasion, rebellion, or riot, except:

1. Those in the army or navy of the United States, or exempted from military duty by the laws thereof.

2. Ministers of the gospel, whose credentials as such, or a copy thereof, have been filed with the clerk of the district court in the county of their residence.

3. Indians not taxed, insane persons, and persons who have been convicted of an infamous crime, all of whom are excluded. ('97 c. 118 ss. 2, 3)

1040. Enrolment by census takers—Whenever a state census is taken, each enumerator, in addition to his other duties, shall designate upon his returns all persons enumerated by him who are subject to military duty under this chapter. As soon as the returns are complete, the superintendent of the census shall make and certify to the adjutant general lists of the names, alphabetically arranged and consecutively numbered, of all persons so designated in each town, village, and city, arranged by counties, and showing the age, occupation, and address of each person. And he shall accompany such lists with a table showing the number of enumerated militiamen in each town, village, city, and county. The adjutant general shall prescribe blanks therefor. ('97 c. 118 s. 5)

1041. Enrolment by assessors—Whenever the governor shall so direct by his proclamation issued in an even-numbered year, and at least thirty days before the day the assessment books are required by law to be delivered to the assessors, such assessors shall make, at the time of the assessment, and upon blanks prescribed by the adjutant general, duplicate lists of the names, alphabetically arranged and consecutively numbered, of all militiamen living in their respective districts, with the age, occupation, and postoffice address of each. One of said lists shall be filed with the county auditor, and one with the clerk of the town, village, or city in which the assessor resides; and no compensation shall be allowed for any services of an assessor until he has filed with such clerk an affidavit showing full compliance on his part with the foregoing requirements. ('97 c. 118 s. 4)

1042. Auditor to correct lists, furnish copies, etc.—Each auditor shall add to the list so filed with him the names of all militiamen omitted, and erase the names of those shown to be improperly enrolled, giving notice of such changes to the proper clerks. On or before October 1 in such year, he shall transmit to the adjutant general a certified copy of the rolls so filed and corrected. In addition thereto, or in lieu thereof, the adjutant may require of the auditor a statement showing the numbers so enrolled in each town, village, and city of his county. ('97 c. 118 s. 4)