GENERAL STATUTES

OF

MINNESOTA

1913

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FRANCIS B. TIFFANY

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1966. Same—Proceeds, how used—The money realized upon the sale of such bonds shall be placed in the town treasury, and devoted as far as may be necessary to the purpose named in the aforementioned resolution or petition, and the residue thereof, after the cost and expense of building such roads and bridges shall have been paid and discharged, shall be paid into the road and bridge fund of such town. ('05 c. 64 § 7)

1967. Same—Tax levy—Sinking fund—Said board of supervisors and their successors are hereby authorized, on or before the first day of October next after the date on said bonds, and in each and every year thereafter on or before the first day of October until the payment of said bonds and interests is fully provided for, to levy and in due form certify to the auditor of the county in which such town is situated, a tax upon the taxable property of said town equal to the amount of principal and interest maturing next after such levy, and in the discretion of said board of supervisors such further sum as it shall deem expedient, not exceeding fifteen per cent of such maturing bonds and interest, which taxes shall be payable in money and shall constitute a fund for the payment of said bonds or interest thereon. ('05 c. 64 § 8)

POWER OF SCHOOL DISTRICTS TO ISSUE BONDS FOR CERTAIN PURPOSES

The following act has not been included: 1913 c. 73, authorizing any special school district created under special act passed prior to January 1, 1867, the boundaries of which are coterminous with any city of the fourth class, to issue $10,000 bonds to pay current indebtedness and certain expenses, etc., until July 1, 1914.

1968. Bonds of district—Amending G. S. 1894, § 3688—The trustees or board of education of any school district in this state, whether such district be organized by or under any special law of this state, or otherwise, are hereby authorized and fully empowered to issue the orders or bonds of their respective districts, with coupons, in such amounts and at such periods as they may be directed by a vote of a majority in favor thereof of the legal voters present and voting at any annual meeting, or at any special meeting, called for the purpose, of the district; said orders or bonds to be payable in such amounts and at such times, not exceeding fifteen years, as the legal voters thereof at such meeting shall determine, with interest not to exceed seven per cent per annum; which orders or bonds and coupons shall be signed by the directors and countersigned by the clerk of said district, or by the president of (the) board of education and the clerk of the board of education. (G. S. 1894 § 3688, amended '05 c. 272 § 1)

G. S. 1894 § 3688, was 1877 c. 74 subc. 2 § 8, as amended by 1881 c. 41 § 4, 1885 c. 80, and 1887 c. 21, all of which were repealed by §§ 9440, 9443, 9446, 9447. So far as 1905 c. 272, is inconsistent with the Revised Laws, it is to be construed, by virtue of § 9398, as amendatory or supplementary.

Curative—See 1913 c. 176, legalizing bonds issued by any independent school district for expenses incurred and orders issued in connection with erecting a high school building, etc., under 1905 c. 272.

CHAPTER 11

TAXES

GENERAL PROVISIONS

1969. 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. (794)

1. General rules—All property within the state and subject to its jurisdiction is taxable unless expressly exempted (23–280; 24–251; 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, 42 L. R. A. 639). 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 § 2011).

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, 20 Sup. Ct. 585, 44 L. Ed. 701). Constitutionality of taxation of shares in foreign corporation (107–319, 119+1058).

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, 20 Sup. Ct. 585, 44 L. Ed. 701; see 7–258, 198; 63–80, 65+138; 77–190, 79+829; 83–512, 86+775; 95–43, 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 § 1995), 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 § 1995).

4. Property of non-residents consigned for sale here—Property of non-residents consigned to agents for sale here is taxable here (7–258, 198; 14–252, 185; see § 1995); otherwise if it is consigned merely for distribution to parties purchasing prior to the consignment (79–127, 81+752; see § 1995).

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 (21–472; 28–257, 9+761; 30–372, 15+665; 42–312, 44+201). Federal agencies such as national banks are not taxable except as authorized by Congress (11–500, 378; 23–280). Property in the Indian reservations is not taxable by the state (7–140, 84; see 15–369, 302). Where legal title remains in United States, land is taxable by state only after consideration paid and perfect equitable title vested in purchaser (100–355, 111+276).

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).

State's power to measure legitimate property tax by receipts which in part come from interstate commerce (223 U. S. 335, 32 Sup. Ct. 211, 56 L. Ed. 459).

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, 10 L. R. A. 752); 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. Gen. 1894 No. 207); abstract books (Ops. Atty. Gen. 1894 No. 209); contracts for sale of land by foreign railroad corporation doing business in this state (95–43, 103+731).

9. Banks, bankers, etc.—Under §§ 6326–6329, all institutions using the name of "bank" must be incorporated (Ops. Atty. Gen. 1910 Nos. 31, 32; 1911–12 Nos. 19, 21).

1970. **Property exempt**—All property described in this section to the extent herein limited shall be exempt from taxation, to-wit:

1. All public burying grounds.
2. All public schoolhouses.
3. All public hospitals.
4. All academies, colleges, and universities, and all seminaries of learning.
5. All churches, church property and houses of worship.
6. Institutions of purely public charity.
7. All public property exclusively used for any public purpose.
8. Personal property of every head of a family liable to assessment and taxation of the value of $100. The county auditor shall deduct such exemption from the total valuation of such property as equalized by the tax commission assessed to such person, and extend his levy of taxes upon the remainder only. (R. L. § 795, amended '13 c. 259 § 1)

1913 c. 259 § 2, repeals inconsistent acts, etc.

See following section and §§ 6286, 6323, 6539, 6710, subd. 7.

As to money and credits, see § 2317.

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; 40–232, 41+948, 2 L. R. A. 701; 63–80, 65+138; 69–170, 71+931; 74–197, 77+40; 77–433, 80+626; 79–175, 81+839; 90–180, 95+764). 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, 10 L.

R. A. 752; 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 (21–526; 23–469; 36–529, 32+781; 68–242, 71+27).

4. Held exempt—Prior to 1913, 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, 18 L. R. A. 278); public hospitals, with adjoining lots (27–460, 8+595, 38 Am. Rep. 298); 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. Gen. 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. Gen. 1900 No. 232).

Property set apart for purely public charity, subject to charge to secure conditional annuity (108–114, 121+390).

5. Held not exempt—Prior to 1913, 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, 11 L. R. A. 175); a markethouse owned by a private individual (62–183, 64+379, 29 L. R. A. 777); 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, 18 L. R. A. 278); public land pre-empted and final receipts issued (30–372, 15+665; 42–312, 44+201); 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. Gen. 1896 No. 155); a farm owned by a hospital (95–489, 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 §§ 2084, 2103, 2108, 2132.

1971. **Certain bonds and certificates of indebtedness exempt**—That bonds and certificates of indebtedness hereafter issued by the state of Minnesota, or by any county, city or village of said state, or any township, or any common or independent school district of said state, or any governmental board of said state, or any county, city or village thereof, shall hereafter be exempt from taxation, provided that nothing herein contained shall be construed as exempting such bonds from the payment of a tax thereon, as provided for by chapter 288, Laws 1905 [2271–2298], when any of such bonds constitute in whole or in part any inheritance or bequest, taken or received by any person or persons or corporation. ('11 c. 242 § 1)

See preceding section.

1972. **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. (796)

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 § 2003); 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).

Duty of tenant under lease, silent as to payment of taxes (113–376, 129+763, 32 L. R. A. [N. S.] 368, Ann. Cas. 1912A, 274).

1973. **Mineral, gas, coal, oil, etc.**—That whenever any mineral, gas, coal, oil, or other similar interests in real estate are owned separately and apart from and independently of the rights and interests owned in the surface of such real estate, such mineral, gas, coal, oil or other similar interests may be assessed and taxed separately from such surface rights and interests in said real estate and may be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes. ('05 c. 161 § 1)

1974. **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. (797)

Cited (114–95, 130+445).

Subd. 7—Cited (108–114, 121+390).

Subd. 10—Constitutional (107–319, 119+1058).

1975. 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:

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. (798)

See § 2316.

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. Gen. 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). Cited (117–159, 134+643).

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, 42 L. R. A. 639). There is no authority for assessing undivided portions of tracts (66–425, 69+326).

1976. **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. (799)

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; 38–384, 37+799, 8 Am. St. Rep. 675; 47–99, 49+387; 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, 8 Am. St. Rep. 675; 80–441, 83+382).

1977. **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. (800)

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

Cited (117-499, 136+299).

1978. **Supervisory powers of tax commission**—The Minnesota tax commission shall prescribe the form of all blanks and books required under this chapter. It shall hear and determine all matters of grievance relating to taxation. It shall have power to grant such reduction or abatement of assessed valuations or taxes and of any costs, penalties or interest thereon as it may deem just and equitable, and to order the refundment in whole or in part of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid. Provided, however, that application therefor shall be submitted to it with a statement of facts in the case and the favorable recommendation of the county board or of the board of abatement of any city where any such board exists, and the county auditor of the county wherein such tax was levied or paid. Except that in the case of gross earnings taxes, the application in the premises may be made directly to the tax commission and without the favorable action of the county board and county auditor. But no reduction, abatement or refundment of any special assessments made or levied by any municipality for local improvements shall be made unless it is also approved by the board of review or similar taxing authority of such municipality. The commission may refer any question that may arise in reference to the true construction of this chapter to the attorney general, and his decision thereon shall be in force and effect until annulled by the judgment of a court of competent jurisdiction. Upon deciding such case submitted to it the commission shall forward to the county auditor a copy of the order by it made therein. (R. L. § 801, amended '09 c. 96 § 1; '11 c. 339 § 1)

103–485, 115+647.

See §§ 2343, 2344.

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

G. S. 1894 § 1652 cited (96–392, 105+276).

LISTING AND ASSESSMENT

1979. 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. (802)

40–137, 41+942; 79–131, 81+763; 80–17, 82+1090; 96–392, 105+276.

1980. 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. (803)

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).

Cited (107–319, 119+1058).

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, 16 Sup. Ct. 83, 40 L. Ed. 247; see 68–353, 71+265; 72–519, 75+718, affirmed 176 U. S. 550, 20 Sup. Ct. 485, 44 L. Ed. 583).

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 § 2155).

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 § 2155).

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 (39–380, 40+166; 40–512, 41+465, 42+473); 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 § 2187).

1981. **Assessment books—Real property list—Mortgages—Meeting of assessors**—The county auditor shall annually provide the necessary assessment books and blanks at the expense of the county, for and to correspond with each assessment district. He shall make out, in the real property assessment book, complete lists of all lands or lots subject to taxation, showing the names of the owners, if to him known, and, if unknown, so stated opposite each tract or lot, the number of acres, and the lots or parts of lots or blocks, included in each description of property. The list of real property becoming subject to assessment and taxation every odd numbered year may be appended to the personal property assessment book. There shall be appended to each personal assessment book a list of all mortgages or other real estate securities held, owned or controlled by the residents of the town or district on which the mortgage registry tax has not been paid, showing the names of the owners or agents, alphabetically arranged, and the amount due on each separate instrument. It is hereby made the duty of the register of deeds to 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 expenses of such lists shall be paid by the county, on allowance by the county commissioners. The assessment books and blanks shall be in readiness for delivery to the assessors on the last Thursday of April of each year, and the assessors shall meet on that day at the office of the county auditor for the purpose of receiving such books and blanks, and for conference with the auditor in reference to the performance of their duties. ('05 c. 86, amended '13 c. 503 § 1)

This supersedes R. L. § 804.

1. List of real property—Real property must be listed and assessed in distinct tracts or parcels (see § 1975), 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.

1982. **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. (805)

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

1983. **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. (806)

1984. **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. (807)

1985. **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. (808)

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 § 2094; 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).

Cited (113–376, 129+963, 32 L. R. A. [N. S.] 368, Ann. Cas. 1912A, 274).

2. Listing of personal property by owner—If the taxpayer furnishes the assessor with a list he cannot subsequently impeach it (44–12, 46+143; 56–24, 57+313; 73–70, 75+754). 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; 95–43, 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 (15–295, 226; 73–70, 75+754; 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).

1986. **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 as-

sessment 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. (809)

1987. **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. (810)

This section, except the second sentence thereof, is superseded by 1913 c. 483 [§ 1988]. As to the constitutionality of the exclusion of "the value of crops growing upon cultivated land," as attempting to make an exemption, quære. Money and credits are assessable under 1911 c. 285 [§ 2316 et seq.], and real estate mortgages under 1907 c. 328 as amended [§ 2301 et seq.], since both of these classes of property have what may be called "lieu tax" imposed on them, and they do not go into the general assessment lists. Ops. Atty. Gen. Aug. 9, 1913.

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 § 1975 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, 39 Am. St. Rep. 575).

That property of defendant was assessed at approximately its full value, though other personal property, in accordance with the direction of the state auditor, was assessed at 50 per cent., was no objection to the tax. In order that a tax should conform to the requirement of assessment at its full value in money, the revenue system contemplates original assessment by assessor, correction by auditor, and equalization by various boards (103–419, 115+645, 1039).

Cited (113–376, 129+763, 32 L. R. A. [N. S.] 368, Ann. Cas. 1912A, 274).

1988. **Classification of property—What percentages of full and true value to be assessed**—All real and personal property subject to a general property tax and not subject to any gross earnings or other lieu tax is hereby classified for purposes of taxation as follows:

Class 1. Iron ore whether mined or unmined shall constitute class one (1) and shall be valued and assessed at fifty (50) per cent of its true and full value. If unmined it shall be assessed with and as a part of the real estate in which it is located, but at the rate aforesaid. The real estate in which iron ore is located, other than the ore, shall be classified and assessed in accordance with the provisions of classes three (3) and four (4) as the case may be. In assessing any tract or lot of real estate in which iron ore is known to exist the assessable value of the ore exclusive of the land in

which it is located, and the assessable value of the land exclusive of the ore shall be determined and set down separately and the aggregate of the two shall be assessed against the tract or lot.

Class 2. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence, shall constitute class two (2) and shall be valued and assessed at twenty-five (25) per cent of the full and true value thereof.

Class 3. Live stock, poultry, all agricultural products, stocks of merchandise of all sorts together with the furniture and fixtures used therewith, manufacturers' materials and manufactured articles, all tools, implements and machinery whether fixtures or otherwise, and all unplatted real estate, except as provided by class one (1) hereof, shall constitute class three (3) and shall be valued and assessed at thirty-three and one-third (33⅓) per cent of the true and full value thereof.

Class 4. All property not included in the three preceding classes shall constitute class four (4) and shall be valued and assessed at forty (40) per cent of the full and true value thereof. ('13 c. 483 § 1)

Section 2 repeals all inconsistent acts, etc. See preceding section and note.
By section 3 the act takes effect January 1, 1914.

1989. **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. (811)

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

1990. **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. (812)

1991. **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. (813)

1992. **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. (814)

1993. **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. (815)

LISTING PERSONAL PROPERTY

1994. **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. (816)

As to money and credits, see § 2317.

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 § 1969 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 § 2010). 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. Gen. 1898 No. 152).

If agent fails to list separately and in name of principal, there is no provision authorizing assessor to assess the property as that of agent in his name (101–192, 112+68, 1142).

1995. **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. (817)

See note to § 1969.

1996. **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. (818)

1997. **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, par-

ent, 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. (819)

1998. 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. (820)

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 (39–502, 40+835; 47–552, 50+615; 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, 20 Sup. Ct. 585, 44 L. Ed. 701). 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 § 2010). 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. Gen. 1894 No. 195). Credits secured by a real estate mortgage held ordinarily taxable in the county where the creditor resides and not where the land is situated. Mortgages held not taxable as such (Ops. Atty. Gen. 1894 No. 205).

1999. 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. (821)

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. Gen. 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).

The personal property of logging railroad companies, not common carriers, having no income, and hence not subject to the gross earnings tax, but being operated by incorporated lumber companies, was taxable in the county in which the corporations maintained their principal place of business, though actually kept and used in another county (97–286, 106+309).

See note under § 2004.

Cited (114–95, 130+445).

2000. 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. (822)

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 (§ 1975; 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 immate-

rial 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 (47–552, 50+615; 64–556, 67+1144; 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).

Logs cut, banked, and boomed on ice of navigable lake, with intention of exporting them from state, do not become articles of interstate commerce in transit until delivered to carrier for exportation, nor do they cease to be part of general mass of property in state while any substantial part of delivery to carrier remains to be done (101–186, 112+214, 13 L. R. A. [N. S.] 800).

Property belonging to corporation doing business in C. county held assessable for taxation therein, though manufactured and stored in S. county, where manufacturer had no place of business (108–316, 122+165).

Cited (136+1033).

2001. **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. (823)

2002. **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. (824)

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

2003. **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." (825)

2004. **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. (826)

Logging railroad companies, not common carriers, operated by incorporated lumber companies, were not "transportation companies" (97–286, 106+309).

See note under § 1999.

2005. **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. (827)

2006. **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. (828)

76–96, 78+1032, 57 L. R. A. 63.

2007. **Street railroad companies, etc.**—The personal property of street railroad, street railway, plank road, gravel road, turnpike, or bridge companies shall be listed in the county, town, city, village or district where such property is situated, and where said personal property is situated in different counties, towns, cities, villages or districts, such part of said personal property situated in such county, town, city, village or district, shall be listed and assessed by the Minnesota tax commission in the taxing district where the same is situated, without regard to where the principal or any other place of business of such company is located. (R. L. § 829, as amended '13 c. 25 § 1)

1913 c. 25 § 2, repeals inconsistent acts, etc.

31–354, 17+954; 76–96, 78+1032, 57 L. R. A. 63.

2008. **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. (830)

69–131, 72+60.

2009. **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. (831)

2010. **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. (832)

69–131, 72+60.

2011. **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. (833)

2012. **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 Minnesota tax commission; and when determined in either case shall be as binding as if fixed hereby. (R. L. § 834, amended '11 c. 223 § 1)

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).

If the controversy is as to place in same county, exclusive remedy is by application to county board (111–295, 126+901).

2. Appeal to state auditor—1911 c. 223, substituted the commission for the state auditor. If a controversy arose as to the proper place of listing and assessing personal property as between different counties or places in different counties an appeal lay 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; 60–522, 63+101; 66–304, 69+25; 86–301, 90+772), 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).

G. S. 1894 § 1522 cited (97–286, 106+309).

2013. **Forms for listing—Assessor to value**—The Minnesota tax commission shall prepare suitable forms for the listing of personal property each year. It may arrange and classify the items of such property in such groups and classes, and from time to time change and separate or consolidate the same as it may deem advisable for securing more accurate information concerning and the more perfect listing and valuation of such property. The assessor shall determine and fix the true and full value of all items of personal property included in any such list and enter the same opposite such items respectively, and the same shall be assessed for purposes of taxation according to law, so that when completed such statement shall truly and distinctly set forth the full and true value and also the assessed valuation for taxation of such personal property as required by law. (R. L. § 835, amended '09 c. 266 § 1)

1909 c. 266 § 2 repeals inconsistent acts, etc.

Under prior law—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 resident 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 § 1997). Stock in national banks out of this state need not be listed under subd. 24 (see § 2017). 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, 57 L. R. A. 63). 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, 57 L. R. A. 63; contra under Laws 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, 57 L. R. A. 63). Subd. 14 cited (96–13, 104+567).

Under § 2016, providing for taxation of savings banks, and [R. L.] § 835 [since amended, see § 2013], the tax on the surplus is a property tax, and not a tax upon the franchise to exist as a corporation (114–95, 130+445).

R. L. § 836, is repealed (see 117–159, 134+643, cited under § 2316).

2014. 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. (837)

STATEMENTS BY CORPORATIONS, ETC.

2015. 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 corporations 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 [R. L.] § 835, subd. 23 [since amended, see § 2013]. 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. (838)

The verified statement required by this section is in addition to the verified list required by [R. L.] § 835 [since amended, see § 2013]. 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. [R. L.] § 835 [since amended, see § 2013] and § 2015 are to be construed together (76–96, 78+1032, 57 L. R. A. 63; see 96–13, 104+567, 571). No part of the capital stock listed under § 2015 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 § 2015 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, 10 L. R. A. 752; see Ops. Atty. Gen. 1900, Nos. 5, 14). Building and loan associations are to be assessed under § 2015 (Ops. Atty. Gen. 1900, No. 5), the special laws for their assessment having been declared unconstitutional (63–80, 65+138). The provision of G. S. 1894, § 1550, 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, 57 L. R. A. 63). Inapplicable to railroad companies (95–43, 103+731).

Cited (103–419, 115+645, 1039).

2016. **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 [R. L.] § 835, subd. 19 [since amended, see § 2013]. 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 [R. L.] § 835 [since amended, see § 2013]. (839)

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. Gen. 1894 No. 195). Deposits are assessable against the depositors, not against the bank (Ops. Atty. Gen. 1900 No. 5).

The tax upon the surplus of a savings bank is a property tax, and not a tax upon the franchise to exist as a corporation (114–95, 130+445).

2017. **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. (840)

See following section.

In determining the value of shares the assessor should always take into consideration undivided profits (Ops. Atty. Gen. 1894 No. 196). The owner of shares in a bank is entitled to the statutory exemption of one hundred dollars (Ops. Atty. Gen. 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. Gen. 1900 Nos. 4, 5). The real and personal property of banks is to be listed and assessed under § 2013 precisely as the like property of individuals (Ops. Atty. Gen. 1894 No. 199: 1900 No. 4). A bank is not entitled to deductions from credits (Ops. Atty. Gen. 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).

2018. **Same**—The stock of every bank and mortgage loan company in this state, organized under the laws of this state or of the United States, shall be assessed and taxed in the town, city or village where such bank or mortgage loan company is located, whether the stockholders of such bank 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 the bank or mortgage loan company for assessment, in the same manner as the general property of the bank or mortgage loan company is listed. To aid the assessor in determining the value of such shares of stock, the accounting officer of every such bank or mortgage loan company shall furnish to the assessor a sworn statement showing the amount and number of the shares of the capital stock, the amount of its surplus or reserve fund and 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 the law requiring all property to be assessed at its true and full value. The shares of capital stock of corporate banks not located in this state, held in the state, shall not be required to be listed under this chapter, but shall be listed by and assessed to the owner of such stock. ('78 c. 1 § 24, amended '05 c. 60 § 1)

1878 c. 1 §§ 24, 26, were G. S. 1894 §§ 1532, 1534. 1878 c. 1 was repealed by § 9441; the provisions of sections 24 and 26 thereof being incorporated in §§ 2017, 2020. So far as the provisions of 1905 c. 60, differ from said §§ 2017, 2020, this act is to be construed, by virtue of § 9398, as amendatory or supplementary.

2019. **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. (841)

2020. **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. (842)

See § 2018.

2021. **Same**—To secure the payment of taxes on mortgage loan company and bank stock or banking capital, every bank and mortgage loan company shall, before declaring any dividend, deduct from the annual earnings of the bank such amount as may be necessary to pay any taxes levied upon the shares of the stock, and such bank or mortgage loan company or officers thereof shall pay the taxes,

and shall be authorized to charge the amount of such taxes paid to the expense account of such bank or mortgage loan company. ('78 c. 1 § 26, amended '05 c. 60 § 1)

See note under § 2018.

DUTIES OF ASSESSORS ON FAILURE TO LIST

2022. **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. (843)

2023. **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. (844)

2024. **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. (845)

See note to § 2025.

2025. **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. (846)

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

2026. **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 § 2027, 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 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. (847)

As to the board of review in certain villages, see § 1249.

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).

2027. 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 § 2026. 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. (848)

2028. 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. (849)

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

2029. 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.

(850)

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).

2030. Auditor's certificate to assessor—Upon the return of the assessment books, as provided for in section eight hundred and fifty of the Revised Laws of Minnesota, one thousand nine hundred and five [2029], the county auditor shall examine such assessment books, and if found in proper form, shall issue his certificate to the assessor, setting forth the fact that such books are conformable to the provisions of said section. ('07 c. 87 § 1)

A complaint, defective for failing to state obtaining and filing of certificate, may not be objected to for the first time on appeal (115–500, 133+159).

2031. Same—Assessor to file certificate—Compensation—The assessor shall file such certificate with the town clerk of his town, and no compensation shall be allowed such assessor, by the town board, for his services until the provisions of this act shall have been complied with. ('07 c. 87 § 2)

2032. Borough board of equalization—Review of assessments—Powers and duties—Certificate—The borough council of every borough in this state shall constitute and be a borough board of equalization and shall be sworn according to law as such board and meet in the council room of the borough on the first Monday of July of every year, for the purpose of reviewing the assessment of real and personal property within and for said borough, as the same is assessed and returned by the borough assessor, and shall alter, revise, amend and equalize said assessment as it deems just and proper. A majority of such board shall constitute a quorum to transact business. Such board of equalization is vested with and shall perform all the powers and duties which are or may be vested in or imposed upon either town or county boards of equalization under the general laws of the state so far as applicable, but shall not be restricted by any limitations in respect to reducing aggregate sums of real or personal property as returned by the assessor, and may raise the valuation of any real estate without notice to the owner. Said board of equalization may sit from day to day or adjourn from time to time as it may deem proper, until it shall have completed the equalization of said assessment. It shall complete such equalization on or before the third Monday of July of each year, and shall have power to employ such clerk or clerks as may be necessary to complete the same within said time, and said assessment when so equalized shall be subject to review only by the state board of equalization. Every person aggrieved by an assessment shall have the right to appear before such board and present his grievance for its consideration. When the assessment roll shall have been revised by the board of equalization and the proper corrections made therein, and on or before the third Monday of July, the same shall be returned to the county auditor of the county in which the borough is situated. After such equalization, the borough clerk shall attach to the assessment roll a certificate, duly signed by him, and attested by the borough seal, which may be substantially in the following form:

"I hereby certify that the assessments in the assessment roll to which this certificate is attached have been equalized by the board of equalization of the borough of ..... (here insert the name of borough) and appear therein as so equalized by such board. .....
Borough Clerk."

And such equalization shall require no further authentication. ('07 c. 248 § 1)

Section 2 repeals inconsistent acts, etc.

2033. 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. (851)

2034. 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. (852)

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 § 2035 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, 29 L. R. A. 777; 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. Gen. 1894, No. 221). The authority of the auditor to correct the assessment lists continues until final settlement with the treasurer (Ops. Atty. Gen. 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).

2035. 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. (853)

See note to § 2034.

Cited (103–419, 115+645, 1039).

2036. 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. (854)

Held constitutional (68–353, 71+265; 72–519, 75+718, affirmed 176 U. S. 550, 20 Sup. Ct. 485, 44 L. Ed. 583). 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. Gen. 1894, No. 187).

2037. 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. (855)

2038. 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. (856)

2039. 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. (857)

2040. 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 §§ 1980, 2035. 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. (858)

EQUALIZATION OF ASSESSMENTS

2041. 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.

4. When to be reduced—They shall reduce the valuation of each class of personal property enumerated in [R. L.] § 835 [since amended, see § 2013], 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 complaint of any party aggrieved, being a nonresident of the town or district in which his property is assessed, they shall reduce the aggregate valuation of the personal property of such individual, or of any class of personal property for which he is assessed, which in their opinion has been assessed as too large a sum, to such sum as they believe was the true and full value of his personal property or such class.

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 here-

inbefore 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. (859)

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. Gen. 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. Gen. 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. Gen. 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. Gen. 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. Gen. 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, 57 L. R. A. 63). 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).

The action of the city and state boards of equalization is designed to secure a just demand on the part of the city to be collected by proceedings judicial in their nature. The provisions with reference thereto, and especially with reference to notice of meetings, are directory, and not mandatory (103–419, 115+645, 1039).

Subd. 2. To render available as a defense in proceedings to obtain judgment for taxes for the succeeding year, the claim that the valuation was unfair and unequal because subsequent to the original assessment and prior to the 1st of May the following year timber had been removed, reducing the value of the land, it must appear, the original assessment being fair, that the facts were presented to the board and application made for a readjustment of the assessment. The board would have power and it would be its duty to hear and act on such application (96–392, 105+276).

Subd. 3. The Minneapolis board, which is vested with the powers of county boards of equalization, has power to amend the assessment roll by adding taxable property not included in the assessor's list (103–419, 115+645, 1039).

2042. **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. (860)

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).

2043. **Compensation of board**—The county commissioners, while performing their duties as members of the board of equalization, shall each re-

ceive 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. (861)

2044. 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. (862)

2045. 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:

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 cor-

porations 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. (863)

See §§ 2344, 2348, and notes thereunder.

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. Gen. 1896, No. 163). The board equalizes real estate assessments only in even-numbered years (Ops. Atty. Gen. 1894, No. 191).

See 96–392, 105+276, cited under § 2041.

2046. 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 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. (864)

2047. 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. (865)

LEVY AND EXTENSION

2048. 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. (866)

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 §§ 2084, 2104 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 § 2132). A levy is presumed legal until the contrary is affirmatively shown (see § 1977). The citation and delinquent list are prima facie evidence of a valid levy (see §§ 2084, 2108), and so is the tax list certified by the auditor (§ 2060).

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 (35–215, 28+256; 61–233, 63+628).

2049. 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 textbooks 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. (867)

35–215, 28+256.

2050. 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. (868)

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).

2051. 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. (869)

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).

2052. 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. (870)

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 (14–248, 181; 35–215, 28+256; 63–61, 65+119). 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).

2053. 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. (871)

The provisions of R. L. 1905 c. 14, are included in chapter 14 hereof.

See § 2054.

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

The reasonable cost of repairing a courthouse is not unlawful, though the amount, added to other items of current expense, exceeds the statutory limitation of the taxing power of the county (101–97, 111+956).

2054. Same—There shall be levied annually on each dollar of taxable property in the state (other than such as is by law otherwise taxed) as assessed and entered on the tax list for the several purposes enumerated, taxes at the rate specified as follows: For state purposes, such amount as may be levied by the legislature; for county purposes, such amount as may be levied by the county commissioners, the rate of which 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 counties having a taxable valuation of less than one million dollars, the rate of such tax shall not exceed one per cent in any county. For township purposes, such sum as may [be] voted at any legal town meeting, the rate of which shall not exceed two mills in any township 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 township having a taxable valuation of less than one hundred thousand dollars, and the rate of such tax last mentioned shall not exceed one-half of one per cent in any township. In addition to the foregoing, in each township such sum as may be voted at the annual town meeting for road and bridge purposes and for the support of the poor, respectively, in and for said township; provided, that the rate of taxation in any town for road and bridge purposes shall not exceed ten mills per dollar, and the tax for poor purposes shall not exceed five mills per dollar. For school district purposes, in addition to the general tax of one mill, such sum as may be voted at any legal meeting of the qualified voters of the district, the rate of which shall not exceed fifteen mills, for the support of the school, or one per cent for the erection of a school house. Provided, that the aforesaid limitation shall not be construed as prohibiting assessments on property adjacent to local improvements made in any city or incorporated town or village, for the purpose of paying the cost thereof and the damages occasioned thereby; and that nothing in this section shall be construed to prevent the county commissioners, town (ship) supervisors or corporate authorities of any city, town, village or school district from levying any tax which by any special law they may be authorized to levy. (G. S. 1894 § 1558, amended '99 c. 117; '07 c. 404 § 1)

Historical—G. S. 1894 § 1558, as amended by 1899 c. 117, was amended, as above set forth, by section 1 of "an act to amend chapter sixty-nine of the General Laws of the state of Minnesota, for the year 1905, in relation to the rate of taxes for road and bridge purposes in any township of this state," approved April 24, 1907.

G. S. 1894 § 1558 was 1878 c. 1 § 49. 1878 c. 1 and 1899 c. 117 were repealed by §§ 9441, 9453; the provisions of said amended § 1558 being incorporated in the preceding section. G. S. 1894 § 1558, as amended by 1899 c. 117 was amended by 1905 c. 69, referred to in the title of the present act.

See section following.

2055. Rate of levy in certain counties—The county board of any county having a taxable valuation of less than two million five hundred thousand dollars and more than one million dollars, may levy, for county purposes, such amount in excess of existing limitations as may be necessary to defray

ordinary county expenses, but the total rate for county purposes shall not exceed eight mills. ('09 c. 462 § 1)

2056. **Limitations of preceding section**—Section 2053 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. (872)

2057. **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. (873)

2058. **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. (874)

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

2059. **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. (875)

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 (14–248, 181; 14–252, 185). 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 (4–104, 64; 14–252, 185; 14–548, 418; 23–231; 35–215, 28+256; 87–489, 92+336). 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).

2060. **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.

(876)

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).

2061. **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. (877)

75–456, 78+115.

COLLECTION BY TREASURER

2062. **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. (878)

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 (75–448, 78+14; 85–524, 89+850). 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).

2063. **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. (879)

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, 90 Am. Dec. 278; 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).

2064. **Treasurer to collect local assessments**—That any county treasurer in this state, now empowered by law to collect local assessments made or levied by any city or village in this state, is hereby required to collect all assessments for local improvements made or levied and certified to him by any

such city or village against any specific tract or parcel of land, at the same time that he collects any taxes which have been or may be levied against the same tract or parcel of land under the general laws of this state. ('11 c. 266 § 1)

2065. **Same—Repeal**—All acts and parts of acts and all provisions of the charter of any such city or village inconsistent herewith are hereby repealed. ('11 c. 266 § 2)

2066. **Notice of rates**—On receiving the tax list from the auditor, the treasurer shall, if directed by the county board, give three weeks published notice in a newspaper specifying the rates of taxation for all general purposes and the amounts raised for each specific purpose, and shall cause to be printed on the back of all tax receipts and tax statements a tabulated statement of said rates of taxation and amounts. If so directed by the county board, he shall visit places in the county as he deems expedient for the purpose of receiving taxes, and the county board is authorized to pay the expenses of such visits and of preparing duplicate tax lists. (R. L. § 880, amended '13 c. 551 § 1)

2067. **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. (881)

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 duplicate 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).

G. S. 1894 § 1565 cited (98–467, 108+932).

2068. **Undivided interest—Payment and receipt**—Any person holding an undivided interest in any property in this state listed for taxation including mortgagees, lessees, and others, who by law or contract are required or entitled to pay taxes to protect any right, title, interest, claim or lien held by them in, to or upon undivided interests in land, may pay the taxes on such undivided interest and on such payment the county treasurer shall give his receipt for the amount so paid and specify the interest so paid on, and enter on his tax list the name of person who paid such taxes and the interest paid and report to the auditor the payment of such taxes upon such undivided interests. And thereupon such undivided interests shall be exempt from proceedings to enforce the collection of the same tax against other undivided interests, upon which such tax has not been paid and the collection of such tax upon the undivided interests upon which the taxes have not been paid shall be proceeded with in the same manner as to such undivided interests as though it were a separate description. ('13 c. 505 § 1)

2069. **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. (882)

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

2070. **Settlement between auditor and treasurer**—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 thirty days after each settlement send an abstract of 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. (R. L. § 883, amended '11 c. 225 § 1)

2071. **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. (884)

2072. **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. (885)

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

Sufficiency of complaint in an action by county against treasurer and bondsmen (101–294, 112+276).

2073. **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. (886)

79–201, 81+912.

2074. **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. (887)

See following section.

2075. **Same**—All penalties and interest accruing upon any tax levied by special assessment or otherwise, for local purposes, on real estate in any incorporated city, borough or village shall be apportioned to the general revenue fund of the city, borough or village where the real estate is situated, and 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 school districts of the county in the manner provided for the distribution of other school funds by section 3763 of the General Statutes of 1894 as amended by chapter 49 of the General Laws of 1897. ('02 c. 2 § 51, amended '03 c. 324 § 1; '05 c. 239 § 1)

1902 c. 2, and 1903 c. 324, were repealed by §§ 9455, 9456; the provisions of 1902 c. 2 § 51, as amended being incorporated in the preceding section. So far as the above section differs from that section, it is to be construed, by virtue of § 9398, as amendatory or supplementary.

Cited (117–484, 136+304).

DELINQUENT PERSONAL PROPERTY TAXES

2076. **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. (888)

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

2077. **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 defense 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. (889)

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 (47–552, 50+615; 69–131, 72+60; 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 (76–423, 79+543). The form of the answer is the

same as an answer in proceedings for the collection of delinquent real estate taxes (see § 2104). 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 § 2084).

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 § 2081).

The list establishes a prima facie case (102–50, 112+863).

Cited (102–50, 112+863).

2078. **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. (890)

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).

2079. **Payment under protest**—Sections 2076–2078 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. (891)

86–301, 90+772.

Right of recovery for taxes paid under protest (98–404, 108+857, 109+237, 116 Am. St. Rep. 377).

See note under § 2192.

Cited (103–419, 115+645, 1039).

2080. **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 pro-

ceedings of such board, and published in full, as a part of such proceedings. (892)

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. Gen. 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. Gen. 1898, No. 25).

2081. **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. (893)

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 96–13, 104+567; 96–174, 104+835). The levy and assessment are presumed valid until the contrary is affirmatively shown (see § 1977; 94–320, 102+721).

Cited 103–419, 115+645, 1039.

As to sheriff's fees for service, see note under § 2086.

2082. **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. (894)

63–61, 65+119.

2083. **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. (895)

2084. **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. (896)

1. Defences admissible by answer or on citation—That the taxes have been paid (§ 2084); that the property is exempt (§ 2084; 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 § 1969); that the valuation of the assessor is grossly excessive (80–277, 83+339; see 96–13, 104+567); that the law on which the proceedings are based is unconstitutional (see 65–525, 68+105, 33 L. R. A. 435); that the person assessed was not the owner (30–429, 16+151; 69–131, 72+60; 92–283, 100+6; see 96–174, 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).

Where defendant was owner of stock, never listed or assessed, the omitted stock was properly excluded in determining the amount of judgment (107–319, 119+1058).

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 (56–24, 57+313; 73–70, 75+754); or that the property was not listed in the right county (77–190, 79+829; 82–34, 84+636; 86–301, 90+772; see 83–169, 85+1135); or that he is entitled to a deduction from credits on account of indebtedness (73–70, 75+754; 77–190, 79+829; 80–277, 83+339).

That absolute equality is not attained is no defence to collection of a tax admittedly less than on the basis of actual value (103–419, 115+645, 1039).

In the absence of evidence, the presumption becomes conclusive (111–295, 126+901).

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).

Burden is on defendant, not only to show errors in proceedings culminating in levy of taxes, but also to show that such errors resulted to his prejudice and that such taxes were unfairly or unequally assessed. Irregularities in keeping records of proceedings of state board of equalization did not constitute defence (102–50, 112+863).

Failure of city and state boards of equalization to give notice of meetings is no defence, unless it is shown to have resulted prejudicially, as in an unfair or unequal assessment (103–419, 115+645, 1039).

2085. **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. (897)

94–72, 101+943.

2086. **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. (898)

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 (44–67, 46+145; 71–18, 73+520; 71–481,

73+1085; 76-368, 79+166, 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).

Sheriff of Ramsey county is entitled to such fees only as prescribed by this chapter. That he has erroneously charged fee for serving citation, which is included in judgment, does not entitle him to recover amount from county (101-516, 112+874).

2087. 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. (899)

44-383, 46+678.

2088. 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 property 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 § 2067. (900)

2089. 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. (901)

2090. Interest—Whenever a judgment has heretofore been entered and docketed, or shall hereafter be entered and docketed for the recovery of taxes, except in the case of real estate tax judgments provided for in section 919, R. L. 1905 [2108], the same shall bear interest until paid at the rate of six per cent per annum. ('09 c. 448 § 1)

2091. 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. (902)

DELINQUENT REAL ESTATE TAXES

2092. 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. (903)

See note to § 2093.

2093. **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. (904)

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 § 2103; 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 (§ 2062; 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 (§ 2093; 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 § 2103). 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 (22–178; 27–109, 6+454).

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 (19–67, 45; 38–90, 35+580; 76–257, 79+302; 90–120, 95+1115). Accordingly the proceedings for the collection of delinquent real estate taxes are in rem (22–178; 35–1, 25+457, 30+826; 47–326, 50+233). 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 (35–1, 25+457, 30+826; 62–18, 63+1117).

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 (35–1, 25+457, 30+826; 40–512, 41+465, 42+473; 159 U. S. 526, 16 Sup. Ct. 83, 40 L. Ed. 247).

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 11–321, 225; 31–256, 17+473; 45–66, 47+453).

LIABILITY OF TREASURER

In an action by a county against a treasurer and his bondsmen, the complaint stated a cause of action with respect to his failure to collect penalties. The omission of the auditor to furnish statement including penalties was matter of affirmative defense (101–294, 112+276).

2094. **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 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, }
County of..... } ss.

....., 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....

(905)

Taxes delinquent prior to year 1914—See 1913 c. 543, "An act to enforce payment of real estate taxes which have become and are delinquent for each and all of the fifteen years next prior to the year 1914."

THE DELINQUENT LIST GENERALLY

1. Auditor prepares list—During the month of January the auditor prepares the list from the records in his office (§§ 2093, 2094; 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 (31–256, 17+473; 38–397, 37+949).

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 (§ 2094). 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).

The exception of parcels bid in by the state and not assigned or redeemed was introduced in view of the decision in 79–343, 82+645 (99–138, 108+860). See, also, 117–484, 136+304.

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 (§ 2103; 31–373, 17+961, 18+96; 31–385, 18+98; 32–367, 20+357; 34–304, 25+605; see 95–123, 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 31–385, 18+98; 74–496, 77+301; 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).

The test of sufficiency is whether the statement would inform a man of ordinary intelligence with reasonable certainty of the amount (96–467, 105+416).

A statement of the amount of taxes, in which the dollars were separated from the cents by the usual ledger line, was sufficient (99–387, 109+821).

5. Mistake in name of owner—A mistake in the name of the owner is not jurisdictional (§ 2121).

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" (§ 2103). 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 (§ 2108; 31–256, 17+473).

8. Verification—The verification is not a jurisdictional prerequisite (22–178; 44–56, 46+319; 85–374, 88+971). 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 (38–62, 35+566; 44–173, 46+341; 44–207, 46+328; 45–502, 48+325; 47–326, 50+233; 64–409, 67+219; 81–66, 83+485; 85–518, 89+853; 93–471, 101+653; 95–309, 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, 8 Am. St. Rep. 675). 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 (44–173, 46+341; 85–374, 88+971; 85–518, 89+853; see 93–471, 101+653). A description must be construed as a whole (44–173, 46+341; 85–518, 89+853; 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; 44–173, 46+341; 45–502, 48+325; 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 § 1976).

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 (§ 2095). To be sufficient, however, there must be no real uncertainty as to the heading or crossline to which the particular description is related (37–132, 33+697; 43–69, 44+887; 44–173, 46+341; 47–326, 50+233; 64–409, 67+219; 85–518, 89+853; 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 § 2095).

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, 8 Am. St. Rep. 675; 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; 72–517, 75+710; 81–66, 83+485; 91–63, 97+413). Evidence that the description is according to common repute is admissible (31–385, 18+98; 34–67, 24+342; 44–173, 46+341; 45–502, 48+325; 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 (59–70, 60+809; 89–24, 93+515). 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, 8 Am. St. Rep. 675). 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 § 1976.

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); "SW ¼ " " SW ¼" (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, 8 Am. St. Rep. 675); "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, 88 Am. Dec. 56).

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 (31–373, 17+961, 18+96; 35–1, 25+457, 30+826; 40–512, 41+465, 42+473; 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; 95–123, 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; 39–92, 38+805; 75–448, 78+14; 85–374, 88+971).

24. Date of filing—Under the present law the list is filed on or before February 1 (§ 2094). 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.

2095. 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. (906)

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

sion 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 (22–552, 25–131; 35–1, 15, 25+457, 30+826; 51–401, 53+714).

2096. **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. (907)

2097. **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 section 2096, 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 counties now or hereafter having a population of 75,000 or more, the board shall designate a daily paper of general circulation throughout such county; provided that if no such daily paper submits a bid at the rate herein provided, the board may designate a weekly paper of general circulation throughout said county. 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. 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 the 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 newspaper 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. (R. L. § 908, amended '11 c. 5 § 1)

1911 c. 5 § 2, provides that the act shall apply to taxes becoming delinquent on the first Monday in January, 1911. Section 3 repeals inconsistent acts, etc.

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; 117–499, 136+299).

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 § 1977).

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).

Under G. S. 1894, § 1581, the designation might be made at an adjourned meeting (106–32, 119+391).

4. When board must act—The board must act within the time prescribed. The statutory requirement in this regard is mandatory (30–68, 14+263; 63–53, 65+128, 348). 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 (36–366, 31+692; 38–384, 37+799, 8 Am. St. Rep. 675; 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).

Certified copy of resolution recommending acceptance of bid of Minneapolis Tribune, and that contract be awarded to "them," held sufficient (106–32, 119+391).

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 (§ 2097). 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 (32–367, 20+357; 49–119, 51+656).

7. Errors or omissions—Errors or omissions in matters of form connected with the designation of the newspaper are not jurisdictional (§ 2103).

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 (§ 1977). 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 § 2104, 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).

2098. 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. (909)

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 (23–394; 40–512, 41+465, 42+473; 68–353, 71+265; 72–519, 75+718; 159 U. S. 526, 16 Sup. Ct. 83, 40 L. Ed. 247; 176 U. S. 550, 20 Sup. Ct. 485, 44 L. Ed. 583). It is not until the last publication that the court is deemed to have acquired jurisdiction (§ 2103; 25–131; 26–215, 2+693).

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 (§ 2103).

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 § 2132). It is presumed that the publication was in a competent newspaper (see 33–394, 23+554; 45–502, 48+325).

Where record sets forth manner in which service of summons or other jurisdictional notice

was made, and such service is ineffectual to confer jurisdiction, it will not be presumed that valid service was made in some other way (97–83, 105+558).

2099. **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. (910)

2100. **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. (911)

2101. **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. (912)

2102. **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 published was the usual and regular day of the issuance and publication of said paper.

.....

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

(913)

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; 44–56, 46+319; 64–139, 66+262). The affidavit need not be published (64–139, 66+262). The filing of the affidavit will be presumed (see § 1977). A statutory form of affidavit was first prescribed by 1902 c. 2 § 13. Sufficiency of affidavits (44–56, 46+319; 44–207, 46+328; 44–490, 47+154). Omission of notary's seal renders affidavit inoperative (97–83, 105+558).

2103. **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. (914)

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; 95–123, 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).

The judgment itself determines and defines character of lien (99–138, 108+860).

G. S. 1894, § 1582, cited (98–404, 108+857, 109+237).

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 (§ 2105; 93–233, 101+68). A tax certificate is prima facie evidence that the judgment was duly entered (§ 2132).

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 § 1977), or of proof of the designation of a newspaper for such publication (see 40–508, 42+481 and § 1977), 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 (§ 2132).

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

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, 33 L. R. A. 435; 81–486, 84+6; 95–322, 104+140. But see 75–59, 77+548); that the taxes were paid prior to judgment (§ 2103; 35–1, 25+457, 30+826, overruled by statute); that the land was exempt (§ 2103; 27–109, 6+454; 30–372, 15+665; 35–314, 29+126; 72–472, 75+708 overruled by statute); that the delinquent list was not properly filed with the clerk (§ 2094, note 23); that the published delinquent list was insufficient, as for example, in the statement of the amount due (§ 2094, note 4), or in the description of the land (§ 2094, notes 9–21); that the newspaper in which the notice and list were published was not properly designated (§ 2097, note 1); that a certified copy of the resolution designating the newspaper was not filed with the clerk (§ 2097, note 6); that the resolution designating the newspaper for publication was not properly certified (§ 2097, note 6); that the notice was insufficient, as, for example, in the statement of the time to answer (§ 2095); that the list and notice were not published as required by the statute (§ 2098, note 1); that the judgment covers land not included in the delinquent list (§ 2105, note 5); that the judgment does not conform to the statute, as for example, in not being dated (§ 2105, note 4), in not being properly signed by the clerk (§ 2105, note 8), in not properly describing the land (§ 2094, notes 9–21), or in not properly stating the amount due (§ 2105, note 7).

Failure to designate the newspaper was not cured or remedied by 1902 c. 2 § 12; 117–499, 136+299.

See 109–510, 124+244.

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 (35–1, 25+457, 30+826; 75–59, 77+548; 76–257, 79+302), error, irregularity or omission in the assessment or levy of the taxes (§ 2103; 71–66, 73+649; 81–66, 83+485; see 75–59, 77+548), or in any other proceedings prior to filing the list (§ 2103; 22–178; 27–109, 6+454; 76–257, 79+302); failure to file affidavit of publication of delinquent list and notice (§ 2102); failure to verify delinquent list (§ 2094, note 8); stating amount of taxes for several years in gross (§ 2094, note 4); error in name of owner (§§ 2103, 2121); 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 (§ 2105, note 2); entry of judgment by clerk without order of court (54–219, 55+1123); premature entry of judgment (§ 2105, note 9); treating two tracts as one (66–425, 69+326); entering judgment on right-hand page of judgment book (§ 2105, note 3); error in amount of taxes (§ 2094, note 4; § 2103); including taxes for certain years without authority (§ 2094, note 4); publication of delinquent list at wrong time (§ 2098, note 2); failure of the auditor to attach his certificate to each sheet of the delinquent list (§ 2094, note 8); unauthorized raise of valuation by state board of equalization (§ 2045); 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 (§ 2103).

2104. **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. (915)

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 "disregard all technicalities and matters of form not affecting the substantial merits" (§ 2106; 75–456, 472, 78+115). The answer is customarily entitled in the form given under § 2105.

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 33–164, 22+295; 56–24, 57+313; 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 (31–373, 17+961, 18+96; 34–304, 25+605; 62–518, 65+80; 71–66, 73+649; 75–59, 77+548) except such as go to the jurisdiction of the court (see § 2103), and among the latter are to be considered the defences of payment and exemption (see § 2103). 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 § 2103). This statement is subject to the qualification that a party in default may have the judgment opened for cause (§ 2111).

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 27–109, 6+454; 31–256, 17+473; 35–1, 25+457, 30+826; 40–512, 41+465, 42+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 (40–512, 41+465, 42+473; 47–512, 50+536).

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 (§ 2104).

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 (40–512, 41+465, 42+473; 47–512, 50+536; 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" (§ 2108). 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 (47–512, 50+536; 75–456, 78+115; 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 applica-

tion 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).

To render available as a defence the claim that the valuation was unfair and unequal by reason of the fact that after the original assessment and prior to May 1 timber had been cut and removed, reducing the value of the land, it must appear, the original assessment being fair and in accordance with the true value of the land, that the facts showing the reduction were presented to the board of equalization and application made for readjustment of the assessment. Whether such application would be required, if the assessment were fraudulently excessive, quære (96–392, 105+276).

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 (§ 2108; 35–1, 25+457, 30+826). But this provision relates only to matters of form (22–356; 40–512, 519, 41+465, 42+473; 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).

Failure of board of equalization to give notice is no defence, unless it be shown to have resulted prejudicially (103–419, 115+645, 1039).

12. List of admissible defences—It may be objected by answer that the taxes have been paid (§ 2108; 31–256, 17+473; 35–1, 25+457, 30+826); that the land is exempt (§ 2108: 27–109, 6+454); that the levy was illegal (22–356; 31–256, 17+473; 40–512, 41+465, 42+473; 61–233, 63+628; 75–59, 77+548); 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 (57–203, 58+990; 65–525, 68+105, 33 L. R. A. 435); 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).

2105. 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. (916)

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). See (109–510, 124+244; 139+288).

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 (§ 2094, 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 31–385, 18+98; 39–92, 38+805). 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 (26–201, 2+497; 32–70, 19+344) 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 (38–471, 38+361; 64–396, 67+213; 69–474, 72+706).

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 (§ 2154). 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 (§ 2155). 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 (§ 2107).

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 (§ 2093, 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 (§ 2188; 79–131, 81+763; 79–343, 82+645). Prior to 1902 c. 2 § 83, the lien expired in ten years (§ 2188). The judgment is not a lien on the other property of the owner (§ 2093, note 7).

2106. **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. (917)

See note to § 2104.

2107. **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. (918)

See note to § 2105.

2108. **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. (919)

See notes under §§ 2103 and 2104, notes 8–13.

This section applies to the installment of a ditch lien sought to be included pursuant to the drainage laws (111–255, 126+1074; 112–493, 128+823; 119–14, 137+419).

2109. **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 or-

ders made in the proceedings, and all affidavits and other papers filed in the course thereof. (920)

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; § 1977). Papers improperly in the roll are not admissible to explain the judgment (see 25–93).

2110. **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. (921)

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).

2111. **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. (922)

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 (§ 2111; 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).

2112. **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. (923)

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 (§ 2122). 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 (38–335, 37+583; 40–384, 42+387; 57–203, 58+990; 70–286, 73+164). 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 (§ 2125).

2113. 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. (924)

2114. 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. (925)

2115. 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. (926)

TAX SALES

2116. 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, pen-

alties, 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. (927)

If by reason of the auditor's failure to give the prescribed notice the purchaser fails to obtain a valid title, he can have no recovery against the former therefor (119–168, 137+816).

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, 89 Am. St. Rep. 561; see 9–212, 197; 25–93; 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 25–93; 72–105, 75+115, 71 Am. St. Rep. 465; 85–344, 88+989, 89 Am. St. Rep. 561). 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 (31–373, 17+961, 18+96; 80–339, 83+189; 85–344, 88+989, 89 Am. St. Rep. 561; see 9–212, 197; 9–314, 297). A certificate of sale or assignment is prima facie evidence of due posting (§ 2132; 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 § 1977). The failure to post cannot be remedied by a curative act (85–344, 88+989, 89 Am. St. Rep. 561).

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, 89 Am. St. Rep. 561; 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 (§ 2132; 71–66, 73+649; 80–339, 83+189). Failure to publish cannot be remedied by a curative act (85–344, 88+989, 89 Am. St. Rep. 561).

2117. **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. (928)

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 (§ 2132; 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; 85–344, 88+989, 89 Am. St. Rep. 561; 85–524, 89+850).

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 (§ 2117; 62–518, 65+80; see § 2105, 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 (§ 2117). He was formerly required to issue a certificate of sale to the state in such cases (see § 2118, 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 (§ 2122). 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 (§ 2132; 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 (§ 2132; 38–27, 35+666; 71–66, 73+649; 80–339, 83+189).

2118. **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. (929)

Cited (112–450, 128+678; 115–333, 132+273).

See § 2132.

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, 5 Am. St. Rep. 810; 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 (§ 2122). Under 1874 c. 1 § 124, such a certificate was required and was an essential muniment of title for subsequent purchasers from the state (39–410, 40+365; 40–100, 41+545; 40–541, 42+538). This provision was repealed by 1878 c. 1 § 120.

5. Extrinsic evidence—Extrinsic evidence of the date of execution is admissible (37–415, 35+4; 47–326, 50+233). 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 (40–541, 42+538; 44–56, 46+319; 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 §§ 2125, 2138). He may redeem from a subsequent sale for taxes (50–491, 52+970. See § 2137). 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 (26–145, 1+832; 27–92, 6+445; 30–350, 15+375; 32–479, 21+721; 50–491, 52+970). He has a right to refundment from the county in case his certificate is found void for certain reasons (§ 2157). He has a lien on the land for reimbursement if his certificate is found void in certain cases (§ 2134). He has a right to reimbursement if the land is redeemed from the sale (§ 2138). 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; 72–148, 75+118; 79–343, 82+645; 84–53, 86+875; see 80–119, 82+1114). He has no estate in the land (10–59, 41, 88 Am. Dec. 56; 15–245, 190; 37–157, 33+326; 26–145, 1+832 contains a misstatement in this regard) and no right to the possession (32–479, 21+721; 37–157, 33+326). His interest is a lien within the meaning of the statute to determine adverse claims (10–59, 41, 88 Am. Dec. 56; 15–245, 190). His rights are subject to be cut off by a sale of the land for subsequent taxes (30–350, 15+375; 50–491, 52+970). 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 (§§ 2118, 2126; 50–491, 52+970; 79–343, 82+645; 81–254, 83+991). 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 (§ 2157) or a lien on the land for reimbursement (§ 2134). 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 § 8070). 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).

11. Prior taxes—A title based on a later sale on an earlier tax lien may prevail over a title based on an earlier sale under a later lien. The purchaser of a certificate under G. S. 1894; c. 11, may be required to protect his interest, not only as against subsequent, but against prior taxes. G. S. 1894, §§ 1610, 1631, 1697, authorized state to enforce lien of tax delinquent and unpaid subsequently to a prior sale on a later lien (80–119, 82+1114, followed and extended). The holder of a valid state assignment certificate, based on sale for taxes of 1896 made in 1898, which was properly perfected by service of notice to eliminate the right of redemption, acquires title upon expiration of the time of redemption, subject to being divested by a title based on prior taxes for 1892, resulting in a void judgment in 1894, on which a forfeited sale was made in 1900 under 1899 c. 322 (98–404, 108+857, 109+237, 116 Am. St. Rep. 377).

Where lands have been sold for taxes, and the purchaser perfects his title thereunder, the state cannot impeach such title by a resale of the land for taxes due and unpaid for prior years (following 79–343, 82+645; distinguished as not being a refundment case, from 80–119, 82+1114; 98–341, 108+301; 98–404, 108+857, 109+237, 116 Am. St. Rep. 377; 99–141, 108+860).

A sale pursuant to 1899 c. 322, does not change the date of the lien of the state for the prior delinquent taxes, where they and the judgments therefor are valid (98–404, 108+857, 109+237, 116 Am. St. Rep. 377, distinguished; 102–202, 113+2).

Where lands have been sold for taxes, the state cannot impeach the title by a resale of the land for taxes due and unpaid for prior years (99–138, 108+860, followed and applied). Where the state undertakes to tack taxes anterior to plaintiff's tax title to a subsequent forfeited sale, the objection should be interposed by answer (106–32, 119+391).

—— **Change in procedure**—The rule that rights of parties in tax proceedings are to be determined by the law in force at time of the tax sale and issuance of the certificate does not prevent the legislature from making changes in the manner of enforcing the lien which do not substantially impair obligations of the contract (105–422, 117+780, 21 L. R. A. [N. S.] 157).

See note under § 2150.

2119. **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. (930)

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, 1 Am. St. Rep. 635), 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 (28–276, 9+806, 41 Am. Rep. 281; 42–398, 45+958). Thus it is held that a mortgagor cannot acquire a tax title as against the mortgagee (28–276, 9+806, 41 Am. Rep. 281; 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 (35–518, 29+314; 37–420, 34+896); 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 25–222, 33 Am. Rep. 458; 26–20, 1+257); a life tenant as against a reversioner (28–13, 8+830; 40–450, 42+352; 65–124, 67+657, 32 L. R. A. 756, 60 Am. St. Rep. 444); 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 (95–309, 104+290).

G. S. 1894, § 1599, cited (98–404, 108+857; 109+237, 116 Am. St. Rep. 377; 102–202, 113+2).

2120. **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. (931)

See note to § 2119.

2121. **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. (932)

47–326, 50+233; 64–309, 67+72; 81–66, 83+485. See 96–174, 104+835.

2122. **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. (933)

See note under § 2112.

2123. **Record of assignment of certificate or deed on sale for taxes or special assessments**—The assignee or transferee of a certificate or deed issued upon the sale of land for general taxes or for special assessments for local improvements, shall present the instrument of transfer and a copy thereof to the official custodian of the record of such sale. Such officer shall thereupon certify such copy to be correct and shall file the same in his office and note such transfer upon the record. All such instruments heretofore executed, together with a like copy shall be presented in like manner to such officer within one year from the passage of this act, whereupon such officer shall make a record of such assignment or transfer in the manner above set forth. The record as herein provided of any such instrument shall be taken and deemed notice to parties. Provided, that the recording in the office of the register of deeds of any such assignment or any quitclaim deed transferring any interest in such land shall have the same force and effect as the record above provided. ('09 c. 340 § 1)

2124. **Same—Effect of failure to record**—Every such assignment or transfer not so recorded shall be void:

First. As against any subsequent purchaser for a valuable consideration who has caused a record of the transfer to him to be made in the manner above provided, before the recording of the prior transfer.

Second. As against any party claiming under a judgment or decree of a court of competent jurisdiction heretofore entered or hereafter to be entered in an action in which the party appearing to be the owner or holder of such certificate or deed as shown by the record in the office of such official custodian, was made a party and was bound by the judgment or decree. ('09 c. 340 § 2)

2125. **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. (934)

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

2126. **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:

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. (935)

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 (§ 2120). 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. (§ 2126; 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 § 2118, note 5).

7. Assignment—It may be assigned in the same way as a certificate of sale (§ 2118, note 8).

8. Indorsement by auditor—It cannot be recorded until indorsed by the auditor as provided by statute (§ 2135).

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 (§ 2118, notes 9, 10).

11. Several parcels—On purchase of the state's interest in several parcels, they may all be included in one certificate, construing G. S. 1894 § 1601 (99–46, 108+290).

12. Time of assignment—An auditor can execute a certificate for lands sold at regular delinquent tax sale after more than three years have elapsed from the date of the sale, and

before proceedings to sell under §§ 2127, 2128, have been initiated in any one year (105–69, 117+417).

Cited (112–450, 128+678; 115–333, 132+273).

See 98–404, 108+857, 109+237, 116 Am. St. Rep. 377.

2127. **Unredeemed lands—Forfeited sale**—All parcels of land bid in for the state, and not assigned to purchasers or redeemed within three (3) years from the date of the tax sale at which they are offered, shall be disposed of as provided in this section [2127] and section 937 [2128]. In June of each year the county auditor shall prepare and transmit to the state auditor a list of all such lands in his county then remaining unredeemed, together with a list of all taxes, penalties, interest and costs charged thereon. Such sale shall take place at the county seat on the second Monday of August of each year and shall continue from day to day until completed, and the county auditor shall publish a notice once each week for three successive weeks in such county of the time and place when said lands will be offered for sale. (R. L. § 936, amended '07 c. 430; '13 c. 74 § 1)

Cited (110–324, 125+273).

G. S. 1894 § 1616, cited (98–404, 108+857, 109+237, 116 Am. St. Rep. 377).

See note under § 2126.

What law governs—Lands were sold for delinquent taxes of 1896 to 1905, in November, 1906, at forfeited tax sale, for an amount less than authorized by law and not authorized by the state auditor. After the right of redemption had been eliminated by notice, a governor's deed was executed. Held, that the sale and subsequent proceedings were governed by R. L. §§ 936–940 [2127–2129, 2131, 2132], and not by 1902 c. 2 (107–350, 120+298).

Notice of sale—Section 2127 is a revision and restatement of 1902 c. 2 § 52, and reference to lands forfeited under § 2127 in the notice for a forfeited sale is in legal effect a reference to lands forfeited under 1902 c. 2 § 52 (106–32, 119+391).

Redemption—Under R. L. §§ 936–940 [2127–2129, 2131, 2132], lands bid in to the state and not assigned to purchasers within three years held subject to redemption, and on such redemption the person redeeming must pay the full consideration of the sale, but is entitled to a return from the state of the surplus above the amount due it (106–32, 119+391).

Deed under prior laws—A tax deed to land bid in for the state at a sale in 1901, which was executed in 1904 to a purchaser, by the county auditor in accordance with G. S. 1894 §§ 1616, 1617, is not void because it failed to conform with 1902 c. 2 §§ 53, 54 (99–387, 109+821).

2128. **Conduct of sale**—Such sale shall be conducted by the county auditor in such manner as shall be directed by the state 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 county board and approved by the Minnesota tax commission shall be less than such aggregate, in which case the value so fixed and approved shall be the minimum price for which such property may be sold. Provided that all parcels bid in for the state for taxes for the year 1907 or prior years may be disposed of for one-half of the total taxes as originally assessed.

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 and place of the sale. The auditor and treasurer of the county shall attend such sale, the former to make a record of all sales thereat, and the latter to receive all moneys paid on account thereof. (R. L. § 937, amended '07 c. 430 § 2; '11 c. 30; '13 c. 333 § 1)

Cited (110–324, 125+273; 112–450, 128+678; 115–333, 132+273).

Payment of current due taxes was mandatory, when a deed was executed under G. S. 1894, §§ 1616, 1617, and, when omitted, such deed was void. 1903 c. 360, being an act to legalize such deeds where the current taxes were not included in the amount of the price, held unconstitutional (98–4, 107+557).

Where bids were made just before close of the day of sale, and the full consideration was paid the day following, there was a compliance with the requirement that the purchaser shall pay "forthwith." The absence of the treasurer at the time a bid was made was at most an irregularity, not involving the sale (106–32, 119+391).

See note under § 2126.

2129. **Purchaser to receive deed**—Any person, or his heirs or assigns, receiving the certificate described in § 2128, 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 § 2148; and until the expiration of such time for redemp-

tion the land described in said certificate shall be subject to redemption in the manner provided in § 2138; 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. (938)

Cited (110–324, 125+273).

Under §§ 2129 and 2132, a tax deed to lands forfeited to the state held valid, though the sale was for less than authorized by law or the state auditor (107–350, 120+298).

The deed, when valid on its face, is prima facie evidence of title in the grantee (115–333, 132+273).

Lands forfeited for nonredemption from a tax sale in 1901 might be sold by the auditor, and, when the notice of expiration of redemption has been served, the governor's deed and certificate of sale constitute evidence of title, subject only to the defenses specified in §§ 2129-2132 (107–350, 120+298; 112–126, 127+474).

See following section.

2130. Same—How and when—Any person, or his heirs or assigns, receiving the certificate described in the preceding section shall be entitled to a deed from the state, and 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 [t]hereto, conveying the lands therein described, and every such deed shall vest the grantee with complete title to such lands, subject to the defenses that the tract or parcel was exempt from taxation, or that the taxes had been paid for which such tract or parcel was sold at the said tax sale. 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 other deeds, and shall be evidence in like manner. But any one having any interest in any such tract or parcel of land shall have the right to redeem said land as provided in title four of this chapter, and no such tax deed shall be issued, nor shall the full period of redemption expire until sixty days shall have elapsed after the filing of proof of service of notice made in the same manner as provided in sections forty-seven and forty-eight of this chapter. ('02 c. 2 § 55, amended '05 c. 211 § 1)

1905 c. 211 § 2, repeals inconsistent acts, etc.

1902 c. 2, was repealed by § 9455; the provisions of section 55 thereof in part being incorporated in the preceding section. So far as the above section differs from that section, it is to be construed, by virtue of § 9398, as amendatory or supplementary.

2131. 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. (939)

2132. Certificates and deeds as evidence—Grounds for setting aside—Evidence of payment—County and state, when parties—The certificates and deeds issued pursuant to sections 2118, 2126, 2128 and 2129, 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 had 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 or deed 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 or deed; 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. (R. L. § 940, amended '11 c. 245 § 1)

See note under § 2129.

Form of certificate prescribed by attorney general for forfeited tax sale held valid (106–32, 119+391).

CERTIFICATE AS EVIDENCE

1. Certificates of sale and assignment of same effect—See § 2132.

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+538; 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 (55–202, 56+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 (33–271, 22+614; 35–408, 29+121; 36–456, 32+174; 37–157, 33+326; 37–415, 35+4; 38–433, 38+106; 39–431, 40+565; 77–88, 79+652). 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 (85–524, 89+850, 88–495, 93+898). It is not necessary to prove that there has been no redemption (31–385, 18+98; see § 2132), or that the judgment remains unsatisfied (see 33–394, 23+554, and § 2132). 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" (§ 2132). 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 § 2118, 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 (§ 2132; 38–471, 38+361; 59–70, 60+809; 78–102, 80+861; § 2103, 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 (§ 2132; see § 2117, note 1); that the sale was fraudulent (§ 2117, 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 (§ 2103, 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 § 2103, 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 (§ 2103, note 1). A sale cannot be set aside for misrecitals in the certificate of sale (§ 2132), or for error in the name of the owner (§ 2121), 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 (§ 2132; 85–374, 88+971; see § 2117, note 1).

2133. **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. (941)

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 (§ 2133). 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, 8 Am. St. Rep. 675; 49–119, 51+656; 54–235, 55+927; 97–83, 105+558), 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; 108–217, 121+909). 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, 57 L. R. A. 297, 89 Am. St. Rep. 571).

2134. **Invalid certificate—State's lien passes, when**—If any certificate issued pursuant to §§ 2118, 2126, 2128, 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 §

2171, 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. (942)

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; 38–482, 38+489; 55–202, 56+824; 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).

Not applicable to certificate under judgment rendered prior to the passage of such law, or to case where certificate has not been declared invalid (118–266, 136+880).

2135. 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. (943)

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).

2136. 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 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. (944)

Cited (105–69, 117+417).

G. S. 1894 § 1606, cited (98–404, 108+857, 109+237, 116 Am. St. Rep. 377).

REDEMPTION FROM TAX SALES

2137. 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. (945)

Cited (105–69, 117+417).

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

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; 33–434, 23+848; 36–456, 32+174; 73–34, 75+736; 81–463, 84+329). It is a vested property right which cannot be impaired by subsequent legislation (26–145, 1+832; 32–479, 21+721; 81–463, 84+329), 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 (§ 2148) 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 (§ 2152). 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 (§ 2137; 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 (§ 2140). 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).

2138. **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 become delinquent.

2. If the right of the state has been assigned pursuant to section 2126, 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, interests, 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 date of such payment.

Provided, that if the right of the state has been assigned pursuant to section 2126, or if such parcel was sold to a purchaser and the certificate of such assignment or purchase shall be presented to the auditor by the owner thereof for cancellation, the auditor shall cancel such certificate and mark opposite the description of the piece or parcel, described in such certificate upon the judgment book, and tax list for the year or years covered by said certificate, the words, "Redeemed by cancellation of certificate." (R. L. § 946, amended '09 c. 339 § 1)

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 (§ 2151).

Where the purchaser again purchases it at a sale for subsequent taxes, the owner, on redeeming from the first sale, need not also pay the amount which would be necessary to redeem from the later sale (102–202, 113+2).

Cited (106–32, 119+391).

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 (§ 2151).

Where a sale had been adjudged void, the state's lien for such taxes, interest, penalties, and costs became revived, but did not accrue and become delinquent, within G. S. 1894 § 1602 subd. 2, until the state had taken steps to enforce its lien by including it in the taxes of the current year, or as provided by law (99–287, 109+251).

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 (§ 2107). 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).

2139. 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, 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. (947)

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).

2140. 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. (948)

27–97, 6+452; 85–473, 89+848.

2141. 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. (949)

62–246, 64+568.

2142. **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. (950)

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

G. S. 1894 § 1605, did not necessarily remove the inhibition against assertion of an adverse tax title by one co-tenant against another (98–189, 108+843, 116 Am. St. Rep. 358, 8 Ann. Cas. 984).

2143. **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. (951)

2144. **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. (952)

2145. **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. (953)

2146. **Auditor to determine proportion**—When a partial redemption is asked for pursuant to § 2144 or § 2145, 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. (954)

2147. **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. (955).

2148. **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:

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.

(956)

Cited (105–69, 117+417).

1. To what sales applicable—By § 2129, and 1905 cc. 211, 270 [§§ 2130, 2149], the statute is extended so that it is now applicable to all sales whether made to private individuals or to the state (see 112–126, 127+474, 128+676). 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, 72 Am. St. Rep. 594) and under 1899 c. 322 (81–463, 84+329; 86–181, 90+375; 95–309, 104+290).

2. What law governs—The law of the date of sale held to govern (32–479, 21+721; 33–271, 22+614; 59–35, 39, 60+813; 73–1, 75+760, 72 Am. St. Rep. 594; 73–34, 75+736; 81–463, 84+329; 86–294, 90+530; 90–440, 97+136; 92–218, 99+800; 99–387, 109+821; 105–102, 117+249. See 112–372, 128+288).

But where lands were sold for the delinquent taxes of 1886–1905, in November, 1906, at forfeited tax sale, for less than authorized by law and not authorized by the state auditor, and, after elimination of the right of redemption by notice, a governor's deed was executed, it was held that the sale and subsequent proceedings under it were governed by R. L. §§ 936–940 [2127–2129, 2131, 2132], and not by 1902 c. 2 (107–350, 120+298; see, also, 106–32, 119+391).

And where lands were bid in by the state at a tax sale in 1901, under G. S. 1894, and were sold by the state at forfeited sale in 1907, it was held that the notice was governed by R. L. § 956 [2148], and that the requirement of § 2148, that the notice shall state that the amount required to redeem and shall include interest as provided by law to the day redemption is made, is constitutional, and not an infringement upon the vested property rights of the owner, whose lands had been bid in for the state at a tax sale held in 1901, and sold as forfeited lands in 1907, since the right of redemption was preserved, though in a more

restricted sense, and the legislation was favorable, and not adverse, to the owner (112–126, 128+676).

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 (59–35, 60+813; 61–118, 63+168; 73–1, 75+760, 72 Am. St. Rep. 594; 73–34, 75+736; 73–65, 75+752; 82–200, 84+733; 87–489, 92+336; 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).

The form prescribed by 1902 c. 2 § 47, must in all substantial respects be followed. A notice which omitted to state (1) the year in which the taxes upon which the sale was founded were delinquent and (2) the rate of interest necessary to be paid on the amount required to redeem, the same being contained in the statutory form, held void (105–102, 117+249).

6. When may be served—Notice cannot be served until at least three years after the sale (§ 2148; 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, 71 Am. St. Rep. 465). 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).

A notice is not void because containing recitals not required (116–105, 133+399).

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: 43–3, 44+668; 70–16, 72+807; 71–66, 73+649; 77–8, 79+582; 84–105, 86+781; 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, 72 Am. St. Rep. 594; see 77–394, 80+205, 777; 92–210, 99+799), but a mistake of a few cents is not (41–20, 42+543; 43–3, 44+668; 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; 106–386, 119+406; 112–126, 127+474). 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).

The purchaser or assignee need not insert in the notice the amount of the state's lien arising from a prior tax sale, which has been adjudged void (99–287, 109+251).

Where land is sold, and the purchaser again purchases it at a sale for subsequent taxes, it is not necessary to include the amount which would be necessary to redeem from the second sale in a notice of the expiration of the time for redemption from the first (102–202, 113+2).

A notice was not insufficient because it stated that the amount required to redeem was a named sum, "with interest on said sum at 12 per cent. [since a named date], exclusive of costs to accrue upon redemption" (106–386, 119+406).

A notice under 1902 c. 2 § 47, giving the amount as the amount of principal and interest

computed to date of notice and interest on that sum from the date of notice to the date of redemption held void (110–44, 124+452).

A notice which fails to state that the amount required to redeem shall include interest, as provided by law, to the day such redemption is made, as required by R. L. 1905, § 956 [2148], is void (105–102, 117+249; 112–126, 128+676).

A notice stating that the sale was held November 16, 1906, and that the amount required to redeem should draw interest at 12 per cent. per annum from November 14, 1909, was void (115–333, 132+273; see, also, 116–105, 133+399).

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, c. 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, 74 Am. St. Rep. 462; 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, 71 Am. St. Rep. 465); "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, 72 Am. St. Rep. 594; 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, upon whom served, and return of service—The notice must be directed to and served upon the person in whose name the land is assessed at the date of the notice (39–431, 40+565; 41–20, 42+543; 41–344, 43+71; 44–207, 46+328; 47–237, 49+865; 47–535, 50+610; 57–397, 59+484; 70–16, 72+807; 72–148, 75+118; 87–489, 92+336; 88–495, 93+898), 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).

That the notice was directed to Hans C. Hanson, while the notice as published was directed to Hans C. Hansen, was a mere irregularity (99–387, 109+821).

In an action by the record owner to quiet title to land on which defendant had a tax title, failure to serve notice of expiration of redemption on plaintiff, who, through another, was in actual possession, avoided the notice (106–123, 118+360).

A notice was not invalidated because there was no proof that the auditor delivered it to the holder of the certificate, or that he ever delivered it to the sheriff for service (106–386, 119+406).

That the return was improperly dated did not deprive the notice of its statutory effect (99–387, 109+821).

Sufficiency of return (106–386, 119+406).

Notice held to be properly issued, served, returned, and filed (112–126, 128+676).

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).

Lands assessed to "A. et al." are in legal effect assessed to A. and other parties unknown, and when the sheriff receives a notice in which the lands appear to be so assessed, if the lands are vacant and unoccupied, he may serve it on such unknown owners by publication (97–187, 106+255).

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, 71 Am. St. Rep. 465).

18. Request of certificate holder—It was said that 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).

But a notice held not invalidated because it did not appear that the holder of the certificate presented it, under G. S. 1894 § 1654, in order that the notice might issue (106–386, 119+406).

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.

2149. **Expiration of redemption—Notice**—The time for redemption from any tax sale, whether made to the state or to a private person, shall not expire until notice of expiration of redemption as provided in section 47, chapter 2, Laws of 1902, shall have been given. ('05 c. 270 § 1)

The provisions of 1902 c. 2 § 47 were incorporated in R. L. § 956 [2148].

2150. **Notice not to issue after six years from sale—Certificates, when void**—No notice of the expiration of the time of redemption upon any certificate of tax judgment sale issued to an actual purchaser, or upon any state assignment certificate issued under the provisions of section 1601 of the General Statutes of 1894, [2126] shall issue or be served under the provisions of section 1654 of the General Statutes of 1894, [2148] or any other law in force at the time of the passage of this act, after the expiration of six years from the date of the tax judgment sale described in any such certificate; nor shall any such certificate be recorded in the office of any register of deeds after the expiration of seven years from the date of such sale. All such certificates upon which such notice of expiration of redemption shall not be issued and served, and such certificate recorded in the office of the proper register of deeds within the times limited by this act, shall be void and of no force or effect for any purpose whatever. ('05 c. 271 § 1)

Cited (108–217, 121+909).

1905 c. 271, is constitutional (105–422, 117+780).

Not void as impairing obligation of contract between holder of certificate and state, and certificates on which notices were not served prior to the time said law went into effect constitute no lien on the land (118–266, 136+880).

The requirement of record within six years has no application to titles perfected prior to passage of the act (109–49, 122+871).

The act has no application, and failure to comply with it does not affect the right of re-

fundment, where the tax certificate is held invalid for defects appearing upon its face or in the anterior proceedings (112–372, 128+288).

There is no distinction between a certificate on which no notice has been served and a certificate on which a fatally defective notice has been served (Cf 110–79, 124+632; 118–266, 136+880).

2151. **Fees for notice**—For serving such notice the sheriff shall receive that same fees as for the service of summons in a civil action in the district court, except that where more than one notice is served upon one person or corporation at the same time and place the sheriff shall be entitled to charge but one mileage. 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. (R. L. § 957, amended '07 c. 85)

2152. **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. (958)

See § 2148, note 7.

2153. **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. (959)

2154. **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 interest at the rate of twelve per cent. per annum until redemption, or until the right of the state is assigned pursuant to § 2126; 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. (960)

Cited (107–52, 119+427, 16 Ann. Cas. 470).

See § 2105, note 10.

2155. **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. (961)

Cited (107–52, 119+427, 16 Ann. Cas. 470).

See § 2105, note 10.

2156. **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. (962)

REFUNDMENT

2157. 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. (963)

See note under § 2160.

2158. 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 Minnesota tax commission endorsed thereon. Before such certificate is made the applicant shall present to the county auditor proofs of such exemption. (R. L. § 964, amended '09 c. 160 § 1)

2159. 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 § 2157, 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. (965)

Where a tax judgment had been adjudged void, failure to make the county party in mandamus to compel the auditor to deliver warrants for payment of the amount of the tax certificates was fatal (101–539, 111+1134).

Right to refundment controlled by law in force at time of sale (112–372, 128+288).

Refundment under prior laws (98–341, 108+301; 99–287, 109+251; 99–68, 108+888; 115–6, 131+792, Ann. Cas. 1912D, 669; 118–266, 136+880).

See note under § 2160.

2160. 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. (966)

Refers to refundments provided for in § 2157, and does not purport to place limitation on time after tax sale within which refundment may be had under law providing for refundment after tax sale is held void because of irregularity in sale (115–6, 131+792, Ann. Cas. 1912D, 669).

2161. 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. (967)

35–124, 27+497.

2162. **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. (968)

2163. **Taxes paid by mistake on railroad lands**—That whenever it shall be made to appear to the board of county commissioners of any county that any person has heretofore by mistake paid taxes on real estate of which he believed at the time of such payment that he was the owner of, which real estate he never owned any right, title or interest therein, and which real estate had never been sold to any person by such railroad company, but was at the time of the assessment and payment of such taxes owned by a railroad company and exempt from taxation, and that such person paid said taxes in good faith believing that he was the owner of such real estate, the said county commissioners shall certify the facts to the state auditor and the latter officer shall, if he is satisfied upon consultation with the attorney general that the facts stated by the petitioner requesting reimbursement are true, authorize the refunding to the person who has paid such taxes the full amount so paid, together with interest thereon from the date of such payment, and thereafter the county auditor shall draw an order for the sum so authorized to be refunded on the county treasurer of said county, to be countersigned and paid as other county orders; the several funds, state, county, town, city and village, school and other shall be charged with their several proportions of the amount so refunded. ('05 c. 308 § 1)

2164. **Excess taxes under Laws 1889 c. 322**—Whenever it shall be brought to the attention of the state auditor that any tract of land sold for taxes pursuant to the provisions of chapter 322 of the General Laws of the state of Minnesota for the year 1889 was sold for an amount in excess of the taxes, penalties and costs lawfully due thereon at the time of said sale and such excess shall have been paid into the state treasurer and application and demand shall be made upon the state auditor for the payment of such excess, the state auditor shall investigate such application and if he shall find the facts therein stated to be true and that such excess was paid into the state treasury and that the applicant for such excess was the owner of such lands at the time of such tax sale, or his assign, the state auditor shall thereupon draw his warrant upon the treasurer in favor of the person entitled thereto for the amount of such excess; provided that before such warrant shall be so drawn the state auditor shall require the applicant to furnish him satisfactory evidence of the applicant's right to such excess. ('11 c. 338 § 1)

ACTIONS INVOLVING TAX TITLES

2165. **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. (969)

Does not apply to sales made before passage of law (102–352, 113+903).

Applies only where in an action or proceeding in court a tax judgment or sale is adjudged void (118–266, 136+880).

If the tax title is found defective for insufficiency of notice of expiration of redemption, the court should determine amount and validity of plaintiff's lien for taxes paid (110–79, 124+632).

Cited (112–450, 128+678; 115–6, 131+792, Ann. Cas. 1912D, 669).

2166. **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. (970)

2167. **Redemption from sale**—The owner or any person interested in any parcel of land sold pursuant to §§ 2165, 2166, 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. (971)

2168. **Action to quiet title**—Any person holding a tax certificate issued under §§ 2118, 2126, or 2128, 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 §§ 2165–2167 relating to the sales therein provided for, and to redemptions therefrom shall be applicable to sales authorized by this section. (972)

Action to quiet title by purchaser at tax sale of vacant and unoccupied land is maintainable under this section, or under § 8060 (110–79, 124+632).

After adjudication in an action to determine adverse claims that the notice of expiration redemption had not been served, the amount which the purchaser from the state at a forfeited sale may recover is the amount paid, with interest, and subsequent taxes paid by him, and not the amount of taxes, interest, penalties, and costs charged against the land at the time of the purchase (112–450, 128+678).

2169. **Minors, etc.—Dismissal**—If any defendant in any action mentioned in §§ 2165–2168 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. (973)

2170. **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. (974)

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

MISCELLANEOUS PROVISIONS

2171. **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. (975)

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; 79–131, 81+763; 79–343, 82+645; 80–17, 82+1090; 81–511, 84+344; 96–119, 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, 33 L. R. A. 435; 70–286, 73+164; 78–102, 80+861; 79–131, 81+763; 79–362, 82+686). It is never lost except by payment of the taxes or some express provision of law. Its persistency is its most notable characteristic (see 34–304, 25+605; 72–148, 75+118; 79–362, 82+686; 80–17, 82+1090).

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 purchaser at the annual delinquent sale or to one who takes a state assignment (15–245, 190; 39–470, 40+575; 72–148, 75+118; 79–343, 82+645; 84–53, 86+875. But see 80–119, 82+1114). A purchaser who pays subsequent taxes acquires the lien of the state therefor (72–148, 75+118; 75–17, 77+436; 84–53, 86+875). 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 (§ 2134) 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—19–67, 45; 38–90, 35+580; 76–257, 79+302; 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 (96–119, 104+678).

10. Payment by landlord—Under a lease silent as to payment of taxes, if the landlord is compelled to pay to save his property, he may recover from the tenant (113–376, 129+763, 32 L. R. A. [N. S.] 368, Ann. Cas. 1912A, 274).

2172. **Assessments for local improvements in cities—Priority of liens**—That all assessments upon real property for local improvements made or levied by the proper authorities of any city in the state of Minnesota, shall be a paramount lien upon the land upon which they are imposed from the date of the warrant issued for the collection thereof, or from such other date as by the charter of any such city such assessments become a lien upon said land, and of equal rank with the lien of the state for taxes which have been or may be levied upon said property under the general laws of the state; and that the general rules of law as to priority of tax liens shall apply equally to the liens of such assessments and to such liens for general taxes, with the same force and effect as though all of the liens aforesaid and all of the taxes and assessments aforesaid, were of the same general character and imposed for the same purpose and by the same authority, without regard to the priority in point of time of the attaching of either of said liens, and a sale or perfecting title under either shall not bar or extinguish the other. ('11 c. 120 § 1)

By virtue of § 2174, 1905 c. 200, which was similar in scope, but applicable only to cities of the first class, was repealed.

As to cities of the first class, see §§ 2175–2179.

Cited (116–44, 133+74).

UNDER 1905, C. 200

1905 c. 200, does not contain contradictory propositions. The Legislature intended to make the lien under city assessments and state taxes equal, and to abolish priority between them. The act is constitutional, so far as its title and classification of cities by population are concerned (110–324, 125+273).

The act was retrospective as well as prospective in its application to assessments, and placed all assessment liens not held by purchasers at the date of its passage, prior or subsequent to state tax liens, on a parity with the latter (116–44, 133+74).

The act applies to assessments and general tax liens accruing the same year. General tax or assessment liens levied in a particular year are superior to similar liens of prior years. Where title under a state tax lien is perfected by an individual, and title under a local assessment lien is perfected by the municipality levying the assessment, both titles being perfected in separate and independent proceedings, and the liens being of equal rank, the parties become by operation of law joint owners of the property (139+293).

2173. **Same—Applicable to cities under home rule charters**—This act shall be applicable to any such city existing under a charter framed and adopted under section 36 of article 4 of the state constitution. ('11 c. 120 § 2)

2174. **Same—Provisions repealed**—All acts or parts of acts and all provisions of the charter of any such city inconsistent herewith are hereby repealed. ('11 c. 120 § 3)

2175. **Assessments for local improvements in cities of first class—Priority of liens—When bid in by municipality**—All assessments for local improvements made or levied by the proper authorities of any municipality in the state of Minnesota now or hereafter having a population of over fifty thousand inhabitants, and bid in by any such municipality on or subsequent to the first day of January, 1908, or which may hereafter be made or levied and bid in by any such municipality, shall be of equal rank with the lien of the state for general taxes which have been or may hereafter be levied upon said property under the general laws of the state, so long as said liens for local improvements or the said liens for general taxes continue to be held and owned by the state or any such municipality respectively, and all titles derived from or based upon either class of liens shall maintain the same status between themselves so long as they remain the property of the state or any such municipality respectively. ('13 c. 202 § 1)

As to cities generally, see §§ 2172–2174.

2176. **Same—When liens for taxes or improvements purchased by any person**—Any person who purchases liens imposed for general taxes under the general laws of the state shall take, acquire and hold the same subject to any assessment liens held or owned by any such municipality on or subsequent to the first day of January, 1908, or which are hereafter made or levied, and held or owned by any such municipality, and in like manner any person who purchases liens for local improvements now or hereafter levied by any such municipality of the state shall acquire and hold the same subject to the tax liens now held and owned by the state of Minnesota or which are hereafter made or levied so long as such liens are held by the state. ('13 c. 202 § 2)

2177. **Same—Prior rights**—Nothing in this act contained shall in any manner impair or affect the rights of private persons existing when this act takes effect. ('13 c. 202 § 3)

2178. **Same—When liens assigned**—After said liens for local improvements and said liens for general taxes have both been assigned by the state and any such municipality respectively, the general rules of law regulating the priority of tax and assessment liens shall prevail between them. ('13 c. 202 § 4)

2179. **Same—To what cities applicable**—This act shall also apply to cities having home-rule charters adopted pursuant to section 36, article 4 of the constitution of the state of Minnesota, and now or hereafter having a population of over fifty thousand inhabitants. ('13 c. 202 § 5)

2180. **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. (976)

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, 20 Sup. Ct. 585, 44 L. Ed. 701; Ops. Atty. Gen. 1898 No. 152).

2181. **Interest on unpaid taxes**—Whenever any sum becomes due to the state of Minnesota as a tax of any kind whatsoever, and shall remain unpaid for a period of thirty days, it shall draw interest at the rate of 12 per cent per annum from the expiration of said period of thirty days, said interest to be paid and collected with and in like manner as the principal sum. ('07 c. 82 § 1)

In the absence of statute, delinquent personal property taxes do not bear interest (107–52, 119+427, 16 Ann. Cas. 470).

The state may provide that taxes which have become delinquent shall bear interest from time of delinquency (111–21, 126+403).

2182. **Same—Taxes now due**—Any and all sums now due to the state as taxes and remaining unpaid for thirty days after the passage hereof, shall draw interest thereafter as provided in section 1 [2181] hereof. ('07 c. 82 § 2)

2183. **Same—Not to apply to certain taxes**—This act shall not apply to any sum or sums due or to become due to the state as taxes upon which interest or penalties are imposed after they become due or delinquent by any law now in force in this state. ('07 c. 82 § 3)

2184. **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. (977)

2185. **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. (978)

2186. **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. (979)

2187. **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. (980)

This section abrogated the statute of limitations as to the right of the state to enforce the assessment and collection of taxes upon all property within the state subject to taxation, including the property of express companies, and applies to gross earnings taxes. The section is not a mere re-enactment of 1902 c. 2 § 82, which by the title of the act concerned only real estate (114–346, 131+489, 37 L. R. A. [N. S.] 1127).

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).

1902 c. 2 § 82 applied to taxes delinquent at its passage, as to which the limitation had not then run. The state was not estopped to enforce collection of taxes by the fact that, when appellants purchased the land upon which they were assessed, there was an erroneous entry on the list in the auditor's office that the taxes had been paid, nor by the fact that the auditor indorsed on their deed a statement that the taxes were paid (104–408, 116+826).

2188. **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. (981)

Prior to 1902 c. 2 § 83 a tax judgment outlawed in ten years (57–203, 58+990; 65–525, 68+105, 33 L. R. A. 435; 70–286, 73+164; 78–102, 80+861; 79–131, 81+763; 79–362, 82+686).

2189. **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. (982)

2190. **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: 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. (983)

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 (8–334, 294; 8–461, 410; 20–268, 239; 46–164, 47+970, 48+783; 47–221, 49+691; 62–327, 64+906; 69–223, 72+106. 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 (§ 8172. 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 (§ 2161). The statute is constitutional and retroactive (35–124, 27+497).

2191. 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. (984)

19–67, 45; 51–349, 53+713; 113–376, 129+963, 32 L. R. A. (N. S.) 368, Ann. Cas. 1912A, 274.

2192. 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 sheriff's or referees' certificates of sale on execution or foreclosure of a lien or mortgage, decrees and judgments, receiver's receipts, patents, 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. (R. L. § 985, amended '13 c. 371 § 1)

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; 98–404, 108+857, 109+116, 116 Am. St. Rep. 377. 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, 4 L. R. A. 300; 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).

2193. **Treasurer's certificate**—Before the auditor shall indorse his certificate upon any instrument as prescribed in § 2192, 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." (986)

2194. **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 §§ 2192, 2193. The treasurer shall receive payment of such fractional part of the taxes due on such parcel. (987)

2195. **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. (988)

2196. **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. (989)

2197. **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. (990)

2198. **Mortgages, etc.—Register to file list, etc.**—It is hereby made the duty of the register of deeds of each county in this state to make out a list of all mortgages or other real estate securities held, owned or controlled by the residents of his county, showing the names of the owners or agents, alphabetically arranged, and the amount due on each separate instrument. He shall make out such list according to the records of his office and deliver it to the county auditor on or before the last Thursday of April in each year,

but such lists shall not include the mortgages or other real estate securities held or owned by any national or state bank or banks nor the mortgages or other real estate securities upon which the registration tax provided by chapter three hundred twenty-eight (328) of the General Laws of 1907 [2301-2309] shall have been paid. ('05 c. 61 § 1, amended '13 c. 220 § 1)

1913 c. 220 § 2, repeals inconsistent acts, etc.

2199. Same—Expenses, how paid—The expenses of preparing such list in each county shall be paid by the county on allowance by the county commissioners. ('05 c. 61 § 2)

2200. 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 owner thereof, upon notice being given by the county auditor which notice shall be served upon such owner personally or by registered mail, shall have such land platted into lots, a survey being made when necessary, and the plat recorded, and a duplicate filed with the county auditor. If the owner fail so to do within thirty days after such notice 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, and a duplicate thereof shall be filed in his office. 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. (R. L. § 991, amended '11 c. 32 § 1)

2201. 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 cancellation 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. (992)

46-137, 139, 41+942.

2202. 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. (993)

What constitutes a sale or transfer (21–315; 21–339; 21–344; 21–472; 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).

2203. **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 § 2202. (994)

2204. **Taxability in litigation—Tax rate, how fixed**—When the taxability of any of the lands mentioned in §§ 2202, 2203, 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. (995)

2205. **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. (996)

2206. **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. (997)

22–356.

2207. **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 pro-

vided; but the state shall not be liable for the payment of any part of the principal or interest of any such bonds. (998)

2208. **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. (999)

2209. **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. (1000)

2210. **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. (1001)

Ops. Atty. Gen. 1894 No. 221.

2211. **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. (1002)

2212. **Auditor to furnish statement of tax liens, etc.**—The county auditor, upon written application of any person, shall make search of the records of his office, and ascertain the existence of all tax liens, and tax sales as to any lands described in said application, and shall certify the result of such search under his hand and the seal of his office, giving the description of the land and all tax liens and tax sales shown by such records, and the amount thereof, the year of tax covered by such lien, and the date of tax sale and the name of the purchaser at such tax sale. ('07 c. 431 § 1)

2213. **Same—Compensation—Not to apply to certain counties**—For such service, the county auditor shall receive a compensation of 25 cents for each lot or tract of land described in said certificate, which compensation shall be in addition to any compensation allowed him by law. Any number of contiguous tracts of land not exceeding one section, assessed as broad acres, or adjoining lots in the same block, in the city or village, shall be considered as one lot or parcel within the meaning of this section, provided, that the provisions of this act shall not apply to counties having a population of more than two hundred thousand. ('07 c. 431 § 2)

COMPANIES PAYING GROSS EARNINGS TAX

2214. **Annual statement—Report of gross earnings**—On or before February 1st of each year, every company, joint stock association, co-partnership,

corporation or individual, required by law to pay taxes to the state on a gross earnings basis shall make and furnish an itemized statement to the Minnesota tax commission, and a duplicate to the public examiner, in such form as the public examiner, with the approval of the tax commission, shall prescribe, containing a true and just report of the gross earnings for and during the year ending Dec. 31st preceding, verified by the president, secretary, treasurer, individual owner, or chief agent of such company in this state; provided, that railroad companies shall make semiannual reports as provided in chapter 9 of the General Laws of the Special Session of 1912 [2226–2230].

Such gross earnings shall be computed in accordance with the method prescribed by law. ('13 c. 487 § 1)

2215. Same—Duties of tax commission and auditor—The Minnesota tax commission shall keep a permanent file of such gross earnings reports, inspect and verify each report and assess the earnings as shown thereon with the amount of taxes due, and certify the amount of such earnings and taxes to the state auditor, who thereupon shall make his draft on such company, joint stock association, co-partnership, corporation, or individual, for the amount of taxes due as thus certified, and place said draft in the hands of the state treasurer for collection. ('13 c. 487 § 2)

2216. Same—Failure to pay—Penalty—If any such company, joint stock association, co-partnership, corporation, or individual, shall fail to pay such tax or gross earnings percentage by March 1st (or, if a railway company subject to semi-annual payment by March 1, and September 1, respectively, or provided by law), a penalty of ten per cent thereof shall immediately accrue, and thereafter one per cent for each month after the same becomes delinquent March 1st or September 1st, while such tax remains unpaid; provided, that any sum or sums due the state from such gross earnings taxes at the time of the passage of this act, or from penalties heretofore accruing, shall bear an interest penalty of one per cent per month from the date hereof until paid. ('13 c. 487 § 3)

2217. Same—Failure to report—Duties of commission, public examiner and auditor—Assessment, etc.—If any such company, joint stock association, co-partnership, corporation, or individual fails to make and file such gross earnings report, the Minnesota tax commission shall notify such company of such neglect or default, and if such default continue for thirty days after service of such notice, the tax commission shall notify the public examiner of such default, who shall examine the records of such company and report to the tax commission, for official entry in its books, his findings of such company's taxable earnings. Thereupon the tax commission, upon the basis of such findings and such other evidence as the commission may possess, shall fix the amount of such gross earnings and assess the tax thereon and the accruing penalties, making official entry thereof and certify the amount thereof, together with the penalty, to the state auditor who shall proceed as in section 2 [2215] hereof. Such entry shall stand in place of the report required by law to be made by such company, joint stock association, co-partnership, corporation, or individual, and the same or a certified copy thereof, shall, in all the courts of the state, for all purposes, be prima facie evidence of the correctness and validity of such gross earnings and of such tax and penalties, and the liability of such company therefor. ('13 c. 487 § 4)

2218. Same—Lien of delinquent tax—Power of attorney general—Such delinquent and unpaid tax and penalties, assessed and certified by the Minnesota tax commission, as provided in sections 3 and 4 [2216, 2217] hereof, shall be a lien upon all and singular, the property, estate and effects of any such company, joint stock association, co-partnership, corporation, or individual, and shall take precedence of all demands and judgments against the same; and the certificate of the Minnesota tax commission that said tax and penalties are due and unpaid, and the unpaid draft of the state auditor issued in pursuance thereof, shall be sufficient warrant for the attorney-general to institute proceedings for the collection of said tax and penalties by sale of such property or otherwise. ('13 c. 487 § 5)

2219. Same—Uniform system of accounting—The public examiner, with the approval of the tax commission, shall have authority and power to prescribe for such companies, joint stock associations, co-partnerships, corporations, or individuals a system of gross earnings accounts, that shall be uniform for each class of companies, and he shall supervise the method of keeping such accounts; provided, that such system shall conform as nearly as practicable with that prescribed for such companies by the United States government. ('13 c. 487 § 6)

2220. Same—Evasions and violations—Duties of examiner, governor, commission and attorney general—Any evasions and violations of the gross earnings tax laws, which the public examiner may discover as a result of his examination of the books, records and taxation reports of such companies, shall be reported by him to the governor, and a transcript shall be filed and a detailed report thereof containing a summary of all errors and omissions of taxable gross earnings shall be filed by the examiner with the Minnesota tax commission forthwith, and the tax commission shall proceed as under section 4 [2217] hereof to assess omitted earnings for additional taxes and penalties and report to the attorney general such violations of law, and the attorney general shall institute such proceedings as may be required to secure compliance with the law and the recovery of public revenue. ('13 c. 487 § 7)

2221. Same—Records—Three-fold classification—It shall be the duty of the public examiner, the tax commission, state auditor and state treasurer to keep a complete and properly itemized record of the transactions of their respective departments with reference to the assessment, collection and verification of gross earnings taxes and penalties, and such record and likewise the forms used by the several departments in certifying such earnings, taxes and penalties shall bear a three-fold classification, namely, as they pertain to current year taxes, to delinquent tax payment, and to errors and omissions, respectively, as provided in sections 2, 3 and 7 [2215, 2216, and 2220] hereof; and it shall be the duty of the public examiner, at least twice in each year, to compare the gross earnings records of each of said departments and verify the collection of such taxes and penalties. ('13 c. 487 § 8)

2222. Same—Repeal—Chapter 504 of the General Laws of 1909, sections 1009 and 1020 of the Revised Laws 1905, and all other acts and parts of acts inconsistent herewith, are hereby repealed. ('13 c. 487 § 9)

See §§ 2223-2225.

2223. Records, etc., to be kept for six years—That every person, company, joint stock association, co-partnership, or corporation, required by law to pay taxes to the state upon a gross earnings basis, shall keep as a permanent file, and in such a manner as to make them easily accessible at all times for inspection by a properly accredited representative of the public examiner's department, or the railroad and warehouse commission, all books, records, documents, papers and statistics relating to such gross earnings, for at least six years subsequent to the date that such gross earnings tax returns have been rendered to the state. ('09 c. 258 § 1)

Section 4 repeals inconsistent acts, etc.

See §§ 2214-2222.

2224. Same—What may be destroyed—Any detached papers subordinant to statements of gross earnings, or reports compiled in the accounting department, the full details of which are included in other statements or reports on file in as perfect a form, and which have been passed upon in a general examination by the special examiners or representatives of the state, but which have not reached the time limit prescribed in section 1 [2223], may, upon the recommendations of such special examiner or representatives, and written approval of the public examiner, be destroyed. ('09 c. 258 § 2)

2225. Same—Violation a gross misdemeanor—Any person who shall wilfully violate the provisions of this act, shall be deemed guilty of a gross misdemeanor. ('09 c. 258 § 3)

RAILROAD COMPANIES

2226. Gross earnings tax—Return of earnings—When payable—Every railroad company owning or operating any line of railroad situated within,

or partly within this state, shall, during the year 1913, and annually thereafter, pay into the treasury of this state, in lieu of all taxes and assessments, upon all property within this state, owned or operated for railway purposes, by such company, including equipment, appurtenances, appendages and franchises thereof, a sum of money equal to five per cent of the gross earnings derived from the operation of such line of railway within this state.

On or before August 15, 1913, and annually thereafter, each such railroad company shall make, according to law, a true and just return of all such gross earnings for the six months ending June 30th next preceding, and the said tax of five per centum thereon shall become due and be payable to the state of Minnesota in manner provided by law, on September 1st, next thereafter.

On or before February 15, 1914, and annually thereafter, each such railroad company shall make, according to law, a true and just return of all such gross earnings for the six months ending December 31st next preceding, and said tax of five per centum thereon shall become due and payable to the state of Minnesota in manner provided by law, on March 1st next thereafter; and the payment of such sums at the times hereinbefore set forth shall be in full and in lieu of all other taxes and assessments upon the property and franchises so taxed; provided nothing in this act shall be construed as modifying any agreement entered into between any municipality within the state and any railroad company relating to the payment of local taxes or assessments.

The lands acquired by public grant shall be and remain exempt from taxation until sold or contracted to be sold or conveyed as provided in the respective acts whereby such grants were made or recognized. ('12 c. 9 § 1)

By section 6 the act was to be submitted to the people at the general election for 1912, and it was so ratified. See Proclamation 1913 p. 4.

See § 2231 and note.

1903 c. 253—Was legally submitted to voters, and was constitutional (102–26, 112+897; 102–506, 112+899).

Held valid as to defendant, which had paid 3 per cent. tax, and as to its lines and branches. The statute impairs no contractual or other vested right and is not repugnant to state or federal constitution (106–303, 119+202).

Followed and applied (106–290, 119+211).

Applied to company which when the act was ratified was paying 2 per cent. on gross earnings, pursuant to Sp. Laws 1873 c. 111 (102–26, 112+897). Followed (102–506, 112+899). See, also, 106–303, 119+202; 106–290, 119+211.

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; 35–1, 25+457, 30+826; 56–156, 57+464; 73–417, 76+217; 85–149, 88+430).

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 (23–469; 33–534, 24+196; 33–537, 24+313; 38–163, 36+109; 73–417, 76+217).

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 (56–156, 57+464; 72–200, 75+210; 77–433, 80+626).

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, 57 L. R. A. 63). See § 2231 and note.

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, 21 Sup. Ct. 73, 45 L. Ed. 162, 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 com-

panies (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; 39–112, 38+925; 68–242, 71+27; 91–238, 97+879. 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, 12 Sup. Ct. 281, 35 L. Ed. 1014); 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 (21–315; 21–339; 21–344; 21–472; 28–257, 9+761; 34–182, 25+57; 34–195, 25+453; 38–397, 37+949; 39–580, 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 (35–222, 28+245; 36–246, 30+816; 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; 35–222, 28+245; 38–115, 35+725; 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, 6 L. R. A. 234).

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).

The gross earnings under Sp. Laws 1873 c. 111 (G. S. 1894 § 1667) are not limited to earnings from operation of trains, but include all earnings received while performing work incidental to, or connected with, the business of transportation, and which may reasonably be considered within the scope of the corporate powers. Rule applied (106–176, 118+679, 118+1007, 16 Ann. Cas. 426).

1903 c. 253 cited (107–390, 120+534).

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 (21–526; 23–469; 68–242, 71+27).

The right of way of a company, paying a gross earnings tax by Sp. Laws 1873 c. 111 is exempt from assessments for construction of a public ditch (99–454, 109+993).

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).

2227. **Same—"Gross earnings" defined**—The term "the gross earnings derived from the operation of such line of railway within this state," as used in section 1 [2226] of this act is hereby declared and shall be construed to mean, all earnings on business beginning and ending within the state, and a proportion, based upon the proportion of the mileage within the state to the entire mileage over which such business is done, of earnings on all interstate business passing through, into or out of the state. ('12 c. 9 § 2)

2228. **Same—Application of acts—Repeal**—All acts and parts of acts not inconsistent herewith, regulating the payment, collection, time of payment, enforcement or reports involving the amount of taxes upon the gross earnings of railroad companies within this state or providing penalties for the nonpayment of such taxes, are hereby made applicable to this act so far as may be, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed. ('12 c. 9 § 3)

R. L. §§ 1003, 1005–1007, appear to be superseded. See §§ 2231–2236.

2229. **Same—Collection by civil action**—Upon failure to pay the amount of such taxes legally due, upon the respective dates hereinbefore set forth, collection thereof may be enforced in addition to existing remedies in a civil action brought in the name of the state of Minnesota in the district court of any county. ('12 c. 9 § 4)

2230. **Same—Contesting validity of act**—Before any railroad company shall be heard to contest or continue to contest the validity of this act or any part thereof, such railroad company shall as a condition precedent thereto, pay into the treasury of the state of Minnesota the amount of taxes due or payable from such railroad company under the existing tax laws of this state. ('12 c. 9 § 5)

2231. **Railroad companies defined**—All companies operating railroads or railways in the state of Minnesota, except street railways, shall be deemed railroad companies within the meaning of section 1003, Revised Laws of 1905, and chapter 253, General Laws 1903. ('09 c. 454 § 1)

Historical—Section 7 repeals inconsistent acts and parts of acts.

R. L. § 1003 was as follows: "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." 1903 c. 253 (superseded by §§ 2226–2230 provided for a 4 per cent. gross earnings tax on railroads.

Ordinary commercial railroads, street railways, and interurban railways distinguished. A street railway is subject to local taxation, though operated in connection with an interurban railway by a company which operates such interurban railway over its own right of way between cities. The taxes on all property of such company used for operation of such interurban line, wherever situated, are paid by the gross earnings tax, and such property is not subject to local taxation (114–70, 130+71).

2232. **Same—Taxes, how apportioned**—All taxes paid into the state treasury by such railroad companies as defined in section 1 [2231] of this act which are not ordinary commercial steam railroads, shall be apportioned and distributed as hereinafter provided. ('09 c. 454 § 2)

2233. **Same—Annual report—Duty of tax commission—Amount of earnings contributed by cities, etc., how determined**—Each such railroad company, that is, those not operating an ordinary commercial steam railroad, at the same time that it reports its gross earnings and income, shall report to the Minnesota tax commission the approximate amount of its gross earnings and income derived from the business contributed to such railway by each city, village, town and taxing district in or through which it operates its line, and such commission from such reports and from all evidence, information and statistics obtainable shall ascertain and determine as nearly as may be the amount of the gross earnings of each line of such railways contributed by or derived from each city, village, town and taxing district in or through which such railway is operated for the calendar year preceding the time of making the report of such gross earnings as required by law. In determining the amount of all gross earnings contributed by or derived from the property and operation of such railways in each such city, village, town or taxing district said tax commission may, among other things, con-

sider the relative use of such railway property in each such city, village, town or taxing district in connection with the entire use of the property of such railway for operating the same, and for all other purposes and also what the proportion of such business arising in each such city, village, town or taxing district is to the entire business of such railway company. The total gross earnings of such railway shall be entered upon the records of such tax commission opposite to the name of each city, village, town or taxing district within which any such railway is operated or any property owned or operated for or in connection with such railway, and there shall also be entered opposite the name of each such municipality the amount of gross earnings which such commission shall ascertain and determine was contributed to the total gross earnings by or derived from the property and use of such railway in such city, village, town or taxing district as above ascertained, and also the amount of the taxes to be paid by such railway company, by reason of the proportion of gross earnings and income derived from each such city, village, town or taxing district. ('09 c. 454 § 3)

2234. **Same—Tax commission to apportion to each city, etc.**—The said tax commission, as soon as it shall have apportioned such taxes among the several cities, villages, towns and taxing districts contributing to the gross earnings and income of each such railway company, shall make its order apportioning to each city, village or town as aforesaid the proportionate amount of taxes paid by such railway, on account of the business derived from or contributed by each such city, village, town or taxing district. ('09 c. 454 § 4)

2235. **Same—Apportionment, how certified—Duties of county and state auditors—Taxes, how apportioned**—The Minnesota tax commission shall make and certify a statement in triplicate of such apportionment and division of the gross earnings and taxes of each such railroad company and file one of such statements with the state auditor, one with the state treasurer and one with the county auditor of each county in which any such railway line or property thereof used for railroad purposes is situated. Each such county auditor shall thereupon report to the state auditor what the per cent of the state tax in each such city, village, town or taxing district is to the entire taxes of such city, village, town or taxing district. The state auditor shall deduct from the total amount apportioned to each such city, village or town the amount due the state as indicated by such statement, and shall draw his warrant upon the state treasury for the balance of the amount of such taxes due to each county and to each of the cities, villages, towns and taxing districts of such county in favor of the treasurer of such county, and shall transmit the same to each county treasurer and shall advise the county auditor of each such county of the payment thereof. Thereupon the county auditor of each such county shall apportion, distribute and give due credit for such money so transmitted to the treasurer, and the county treasurer of each such county shall pay the same to the several taxing districts as they may be entitled thereto, and, in case the same is applicable to several funds, to the particular fund to which the real estate taxes of such taxing district are apportioned and divided. The taxes on the property of each such railroad company so received shall in all cases be apportioned and divided the same as if paid as a tax upon real estate situated in the respective taxing districts in which such railway line or the property thereof used for railway purposes is situated. ('09 c. 454 § 5)

2236. **Same—Street railways—Commercial steam railroads**—Nothing herein contained shall in any manner modify or amend any existing law so far as it applies to the taxation of street railways or ordinary commercial steam railroads, nor in any manner affect or change the apportionment of any of the taxes upon the gross earnings of such ordinary commercial steam railroads. ('09 c. 454 § 6)

2237. **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. (1004)

As to R. L. §§ 1005–1007, see § 2228.

2238. **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. (1008)

R. L. § 1009 repealed, see § 2222.

2239. **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. (1010)

2240. **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. (1011)

EXPRESS COMPANIES

2241. **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. (1012)

Carriage of shipments from a point in the state to another point in the state does not constitute interstate commerce, even where shipments are forwarded over a line of railroad partly outside the state. A proportionate part of the earnings from such shipments, based on the mileage within the state, constitutes part of the gross earnings, upon which the state may assess taxes. Receipts from the sale of money orders within, whether redeemed within or without the state, should be included. The gross earnings tax provided by R. L. §§ 1013–1019

[2242–2248] is not a tax on earnings, or the companies, or their right to engage in business, but is a tax on their property within the state. Those sections do not violate the state or federal Constitution (114–346, 131+489, 37 L. R. A. [N. S.] 1127, affirmed 223 U. S. 335, 32 Sup. Ct. 211, 56 L. Ed. 459).

2242. **Annual statement**—Annually on or before February 1st of each year every such express company shall make and furnish to the Minnesota tax commission, with a duplicate to the public examiner, an itemized statement, in such form as the public examiner, with the approval of the Minnesota tax commission may prescribe, containing a true and just return of the gross earnings, for and during the year ending December 31st preceding, 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 post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager.
5. The name and post-office 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 and during the year mentioned 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 as defined in subdivision 6, after deducting the amounts paid for transportation of freight as defined in subdivision 7. (R. L. § 1013, amended '13 c. 454 § 1)

1913 c. 454 § 3, provides that the act shall be applicable to such earnings for the year 1913 and all subsequent years.

See §§ 2214–2222.

See note under § 2241.

2243. **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 post-office 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 § 2242 as the auditor may require, but the statement of gross receipts, and the deduction therefrom, defined in § 2242 subds. 6, 7, shall include only those of his agency. (1014)

See note under § 2242.

2244. **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 § 2242 subd. 7, from its entire receipts for business done in this state, as defined in § 2242 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. (1015)

See notes under §§ 2241, 2242.

2245. **Failure of company to report**—If any company required to file a statement under § 2242 omits to file the same on or before February 1, such company shall be subject to a penalty of five hundred dollars, and an addi-

tional 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. (1016)

See note under § 2242.

2246. **Failure of agent**—If any local agent required to file a statement under § 2242 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. (1017)

See note under § 2242.

2247. **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. (1018)

See note under § 2242.

Power of auditor to exact information from companies (81–87, 83+465, 50 L. R. A. 667, 83 Am. St. Rep. 366).

2248. **Gross earnings tax**—Every such express company shall be assessed a tax equal to eight per cent of its gross earnings as defined in subdivision 6 of section ten hundred thirteen (1013), Revised Laws of Nineteen Hundred and Five (1905) [2242], after deducting payments to railroads for the transportation of freight as defined in subdivision 7 of said section, and the same shall become due and payable to the state of Minnesota on March 1st thereafter; and the payment of such sum at said time shall be in full and in lieu of all taxes and assessments upon its property. (R. L. § 1019, amended '13 c. 454 § 2)

See note under § 2242. R. L. § 1020 repealed, see § 2222.

2249. **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. (1021)

See note under § 2242.

FREIGHT LINE COMPANIES

2250. **Freight line company defined**—That any person or persons, joint stock association or corporation, wherever organized or incorporated, engaged in the business of operating cars, or engaged in the business of furnishing or leasing cars, not otherwise listed for taxation in Minnesota, for the transportation of freight, (whether such cars be owned by such company or any other person or company), over any railway line or lines, in whole or in part, within this state, such line or lines not being owned, leased or operated by such company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture or refrigerator car, or by some other name, shall be deemed a freight line company. ('11 c. 377 § 1)

This act appears to supersede R. L. §§ 1022–1027, and 1907 c. 250, as amended by 1909 c. 97, and by 1909 c. 473.

See §§ 2214–2222.

Prior laws—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).

2251. **Situs defined**—For the purpose of taxation all cars used exclusively within the state or used partially within and without the state, are hereby declared to have a situs in the state, the value of such property for the purpose of taxation is to be determined as provided by sections three and four [2252, 2253] of this act. ('11 c. 377 § 2)

2252. **Annual statement of gross earnings**—Every freight line company, as hereinbefore defined (1) shall, annually between the first day of January and the first day of February, under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent or chief officer of such association or corporation, if an association or corporation, make and file with the state auditor of this state a statement showing the total gross earnings received from all sources by such freight line companies within this state, for the year ending December thirty-first (31st) next preceding. ('11 c. 377 § 3)

See §§ 2214–2222.

2253. **Gross earnings defined**—The term "the total gross earnings received from all sources from the operation of such freight car lines within this state," as used in section three (3) of this act is hereby declared and shall be construed to mean all earnings on business beginning and ending within the state, and a proportion, based upon the proportion of mileage over which such business is done, of earnings on all interstate business passing through, or into or out of the state. ('11 c. 377 § 4)

2254. **Percentage payable in lieu of all taxes—Duty of auditor**—It shall be the duty of the state auditor on or before the fifteenth (15th) day of February of each year to make his draft on such freight line company as hereinbefore defined, for a sum in the nature of a tax at six per centum upon the gross earnings of such freight line company for the year ending the last day of December next preceding, as reported to the state auditor, and place the said draft in the hands of the state treasurer for collection; which shall be in lieu of all taxes upon all property of any freight line company so paying the same. All taxes collected by the state treasurer under the provisions of this act shall be paid into the state treasury and be credited to general revenue fund. ('11 c. 377 § 5)

See § 2215.

2255. **Penalty for non-payment—Distress and sale**—If any freight line company fails or refuses to pay said tax within thirty (30) days after a demand therefor shall have been made by the state treasurer, he shall thereupon add to the tax due a penalty of ten (10) per cent thereon for each subsequent month in which the tax remain unpaid; and if such taxes are not paid within sixty (60) days after demand therefor by the state treasurer he shall distrain sufficient goods and chattels belonging to such company charged with such taxes to be found within the state of Minnesota sufficient to pay the same, together with the penalty accrued thereon. The state treasurer shall immediately proceed to advertise in two (2) newspapers printed in the county of Ramsey, stating the time and place where the property will be sold, and if the taxes for which such property is distrained and the penalties accruing thereon are not paid before the time appointed for such sale, which shall not be less than ten (10) days after the taking of such property, the state treasurer or his deputy shall proceed to sell such property at such public vendue or so much thereof as will be sufficient to pay such taxes and penalties and the costs of such distress and sale. ('11 c. 377 § 6)

See §§ 2216–2218.

SLEEPING CAR COMPANIES

2256. **Sleeping car company defined**—That every person, company, joint stock association or corporation, wherever organized or incorporated, owning, operating, renting, or leasing to other companies sleeping cars, tourist cars, drawing-room cars or parlor cars which are used on railroads within this state, and for which an extra fare is charged in addition to the railroad fare for transportation, shall be deemed a sleeping car company. ('13 c. 480 § 1)

By section 6 the act takes effect January 1, 1914.

This act appears to supersede R. L. §§ 1028–1030, and 1907 c. 453.

See §§ 2214–2222.

2257. Annual statement—Gross earnings tax—Annually on or before February 1st of each year, every such sleeping car company shall make and furnish to the Minnesota tax commission, with a duplicate to the public examiner, an itemized statement, in such form as the public examiner, with the approval of the Minnesota tax commission, may prescribe, containing a true and just return of the gross earnings from owning, operating, renting or leasing such cars for and during the year ending December 31st preceding, 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; and upon such gross earnings such sleeping car company shall pay into the state treasurer of this state, in lieu of all taxes and assessments upon all taxable property, of said company within this state, a sum of money equal to five per cent of the gross earnings derived from the owning, operating, renting or leasing of such sleeping cars, tourist cars, drawing-room cars or parlor cars, and such amounts shall become due and be payable to the state of Minnesota, on March 1st next thereafter. ('13 c. 480 § 2)

See § 2214.

2258. Gross earnings defined—The term "gross earnings derived from the ownership, operation, renting or leasing of cars by such sleeping car company within this state," as used in section 2 [2257] of this act, is hereby declared and construed to mean, all earnings on business beginning and ending within the state, and a proportion based upon the proportion of the mileage within the state to the entire mileage over which such business is done, of earnings on all interstate business passing through, into or out of the state. ('13 c. 480 § 3)

2259. Application of acts—Repeal—All acts and parts of acts not inconsistent herewith, regulating the payment, collection, time of payment, enforcement or reports involving the amount of taxes upon the gross earnings of sleeping car companies within this state or providing penalties for the non-payment of such taxes, are hereby made applicable to this act so far as may be, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed. ('13 c. 480 § 4)

See note under § 2256.

2260. Collection by civil action—Upon failure to pay the amount of such taxes legally due, upon the respective date hereinbefore set forth, collection thereof may be enforced in addition to existing remedies, in a civil action brought in the name of the state of Minnesota in the district court of any county. ('13 c. 480 § 5)

See note under § 2256.

TELEGRAPH AND TELEPHONE COMPANIES

2261. 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. (1031)

1891 c. 8 held constitutional (96–13, 104–567. See also 111–21, 124–380).

2262. 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. (1032)

See §§ 2214–2222.

2263. 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. (1033)

See §§ 2344, 2348, and notes thereunder.

Overvaluation as a defense; evidence (111–21, 124+380).

2264. 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. (1034)

2265. 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. (1035)

1897 c. 314 was authorized, and valid under the amendment of Const. art. 9 § 17 (84–459, 87+1131, followed; 104–270, 116+835).

Findings that real estate was not necessarily used in the conduct of defendant's business as a telephone company sustained by evidence (96–389, 104+1086).

Proportionate part of earnings of telephone companies in interstate business held part of its "gross earnings," subject to tax under 1897 c. 314. Certain receipts held not part of gross earnings (107–390, 120+534).

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).

2266. 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. (1036)

See §§ 2214–2222.

2267. **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. (1037)

See §§ 2214–2222.

TRUST COMPANIES

2268. **Gross earnings tax—Companies receiving deposits subject to check**—On or before March 1 of each year every trust company organized under the laws of this state shall pay into the county treasury of the county where its principal place of business is located five (5) per cent of its gross earnings for the preceding calendar year, which amount shall be in lieu of all taxes and assessments upon the capital stock and the personal property of such trust company; provided, however, that if any such company shall receive deposits subject to check other than trust deposits, that then such company shall be assessed in the same manner as incorporated banks are assessed, and shall pay taxes in the same manner as such banks. ('13 c. 529 § 1)

See §§ 2214–2222.

2269. **Tax apportioned and distributed**—All taxes paid to county treasuries under the provisions of this act shall be apportioned and distributed in the same manner as the general property tax is apportioned and distributed. ('13 c. 529 § 2)

VESSELS NAVIGATING INTERNATIONAL WATERS

2270. **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. (1038)

INHERITANCES, DEVISES, BEQUESTS AND GIFTS

2271. **Taxation on inheritances, etc.**—A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporation within the state, for strictly county, town or municipal purposes, in the following cases:

(1) When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death.

(3) When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(4) Such tax shall be imposed when any such person or corporation become beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after the passage of this act.

(5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a

transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. ('05 c. 288 § 1, amended '11 c. 372 § 1)

Section 3 of the amendatory act provides: "This act shall take effect and be in force from and after July 1, 1911, provided, however, that the provisions of this act shall apply only to legacies, inheritances, devises and transfers received from persons who shall die subsequent to the passage of this act; all gifts, legacies, inheritances and devises heretofore or hereafter received from any person who shall have died prior to the passage of this amendatory act shall be taxed and shall be subject to the provisions of sections 1 and 2 of chapter 288, Laws 1905, to the same extent and in the same manner as though this amendatory act had not been passed." 1911 c. 372 was approved April 20, 1911.

Decisions before 1911, c. 372—1905 c. 288 does not violate Const. art. 9 § 1 (97–11, 106+93, 6 L. R. A. (N. S.) 732, 7 Ann. Cas. 1056). Non-constitutional provisions defining jurisdiction of probate courts (112–279, 128+18).

See note under § 2272.

A. organized a corporation and conveyed to it practically all his property in return for all the stock except four shares. His wife joined in the conveyance in consideration of his agreeing to transfer to her one-third of such stock and to transfer the remainder to their four children on their agreement to lease it to A. for life; and she agreed to transfer her stock to the children on a similar agreement on their part. The transaction was completed in 1903, while an inheritance tax law, since declared unconstitutional, was on the statute books. Held that the transfers must be considered as made when no inheritance law was in existence; that 1905 c. 288 did not apply; that the children became legal owners of the stock; that the leases vested in A. a life estate, with reversion to the children; and that the stock was not inherited by them, and an inheritance tax could not be collected thereon (102–268, 113+888).

Cited (100–192, 110+865).

2272. **Tax, how computed—Rates—Exemptions**—The tax so imposed shall be computed upon the true and full value in money of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

Section 2a. When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified and shall not exceed in value fifteen thousand dollars the tax hereby imposed shall be:

(1) Where the person entitled to any beneficial interest in such property shall be the wife, or lineal issue, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the husband, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one and one-half per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is here-

inbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property; and where such body politic or corporate is a public hospital, academy, college, university, seminary of learning, church or institution of purely public charity within this state, at the rate of two per centum of the clear value of such interest in such property.

Section 2b. The foregoing rates in section 2a are for convenience termed the primary rates.

When the amount of the clear value of such property or interest exceed fifteen thousand dollars, the rates of tax upon such excess shall be as follows:

(1) Upon all in excess of fifteen thousand dollars and up to thirty thousand dollars one and one-half times the primary rates.

(2) Upon all in excess of thirty thousand dollars and up to fifty thousand dollars, two times the primary rates.

(3) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two and one-half times the primary rates.

(4) Upon all in excess of one hundred thousand dollars, three times the primary rates.

Section 2c. The following exemptions from the tax are hereby allowed:

(1) All property transferred to municipal corporations within the state for strictly county, town or municipal purposes, shall be exempt.

(2) Property of the clear value of ten thousand dollars transferred to the widow of the decedent (or husband of the decedent, each of the lineal issue of the decedent, or any child adopted as such in conformity with the laws of this state, or any child to whom the decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child) shall be exempt.

(3) Property of the clear value of three thousand dollars transferred to each of the lineal ancestors of the decedent shall be exempt.

(4) Property of the clear value of one thousand dollars transferred to each of the persons described in the third subdivision of section two a (2a) shall be exempt.

(5) Property of the clear value of two hundred and fifty dollars transferred to each of the persons described in the fourth subdivision of section two a (2a) shall be exempt.

(6) Property of the clear value of one hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of section two a (2a) shall be exempt, provided, however, that property of the clear value of two thousand five hundred dollars transferred to a public hospital, academy, college, university, seminary of learning, church or institution of purely public charity, within this state, shall be exempt. ('05 c. 288 § 2, amended '11 c. 372 § 2; '13 c. 455 § 1)

Decisions before 1911, c. 372—This section lays a tax on all inheritances and devises in excess of an exemption of $10,000, and the ambiguous use of "excess" does not render the act inoperative. So construed, this section does not discriminate arbitrarily between persons of the same class (97–11, 106+93, 6 L. R. A. [N. S.] 732, 7 Ann. Cas. 1056).

Taxes must be computed in all cases upon the true value of the inheritance above an exemption of $10,000; when such valuation is less than $50,000 the tax rate thereon is 1½ per cent.; when $50,000, or over, and less than $100,000, the rate is 3 per cent.; and when $100,000, or over, the rate is 5 per cent. (111–297, 126+1070. See also 112–279, 128+18).

Where the estate descends to two or more legatees or devisees in equal shares, an exemption to each should be allowed (101–485, 112+878).

Where property is committed to a trustee for a definite period, the compensation of the trustee fixed by the will is not a proper item to deduct from the valuation of the estate (101–485, 112+878).

2273. **To take effect on death—When payable—Value of future or limited estate, etc.**—All taxes imposed by this act shall take effect at and upon the death of the person from whom the transfer is made and shall be due and payable at the expiration of one year from such death, except as otherwise provided in this act.

The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computations shall be five per centum per annum.

When any transfer is made in trust for any person or persons or corporation or corporations, and the right of the beneficiaries of said trust to receive the property embraced in said trust is susceptible of present valuation, then and in such case the tax thereon shall be paid at the same time and in the same manner, and in like amount, that would be the case if the beneficiaries of such trust received the same directly from the decedent or the persons from whom the property is transferred.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferee are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of overpayment shall be made in the manner provided by section 21c; (section 9 [2294] of this act.)

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property, or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgment, defeat or diminution of said estate or property, or interest therein, as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section 21c; (section 9 [2294] of this act.)

Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

The tax on any devise, bequest, legacy, gift or transfer limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof cannot be ascertained as provided for by the provisions of this act at or before the time when

the taxes become due and payable as hereinbefore provided, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. ('05 c. 288 § 3, amended '11 c. 209 § 1)

Before 1911, c. 209—A will gave the residue of the estate to trustees, to invest and to pay semiannually the net income to B. while the estate should remain in their hands, and to pay the corpus to him in four installments, when he should attain the age of 25, 30, 35, and 40 years, respectively. In the event of B.'s death before he should have received the whole or any part of the estate, the will gave the balance remaining in the hands of the trustees to other legatees. Held, that a tax on a legacy which vests only upon the happening of some uncertain future event, so that the true value thereof cannot be presently ascertained, accrues and becomes payable only when the beneficiary is entitled to the possession or enjoyment thereof. The transfer of the residue of the estate to the trustees was not taxable, but a tax would be payable from time to time on the income and on the corpus as B. should become entitled to them or any part thereof (100–192, 110+865. See also 101–485, 112+478).

See note under § 2271.

The tax becomes due and payable when the beneficiary enters into actual possession and enjoyment of any portion of the bequest which exceeds in value the statutory exemption. The court, when assigning an estate to trustees for the beneficial use of another, may not find what taxes will accrue in the future (112–279, 128+18).

2274. **Duties of administrator, etc.**—Any administrator, executor or trustee having in charge or in trust any property for distribution embraced in or belonging to any inheritance, devise, bequest, legacy or gift, subject to the tax thereon as imposed by this act, shall deduct the tax therefrom, and within thirty days thereafter he shall pay over the same to the county treasurer as herein provided. If such property be not in money, he shall collect the tax on such inheritance, devise, bequest, legacy or gift upon the appraised value thereof, from the person entitled thereto. He shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy or gift, subject to tax under this act, to any person until he shall have collected the tax thereon. ('05 c. 288 § 4)

Cited (100–192, 110+865).

2275. **Tax, to whom payable—Receipts—How disposed of**—The tax imposed by this act upon inheritances, devises, bequests or legacies shall be paid to the treasurer of the county in which the probate court having jurisdiction, as herein provided, is located; and the tax so imposed upon gifts shall be payable to the state treasurer, and the treasurer to whom the tax is paid shall give the executor, administrator, trustee or person paying such tax, duplicate receipts therefor, one of which shall be immediately transmitted to the state auditor, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof; and where such tax is paid to the county treasurer he shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts. No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in the settlement of which a tax may become due under the provisions of this act, until he shall produce a receipt, so sealed and countersigned by the state auditor, or a certified copy of the same. All taxes paid into the county treasury under the provisions of this act shall immediately be paid into the state treasury upon the warrant of the state auditor and shall belong to and be a part of the revenue fund of the state. ('05 c. 288 § 5)

2276. **Tax to be lien—Personal liability**—Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred and the administrators, executors and trustees of every estate embracing such property shall be personally liable for such tax, until its payment, to the extent of the value of such property. ('05 c. 288 § 6)

Cited (100–192, 110+865).

2277. **Interest**—If such tax is not paid within one year from the accruing thereof, interest shall be charged and collected thereon at the rate of seven per centum per annum from the time the tax is due, unless, by reason of claims upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined as herein provided; in such case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which seven per centum shall be charged. ('05 c. 288 § 7)

2278. **Power of sale**—Every executor, administrator or trustee shall have full power to sell so much of the property embraced in any inheritance, devise, bequest or legacy as will enable him to pay the tax imposed by this act, in the same manner as he might be entitled by law to do for the payment of the debts of a testator or intestate. ('05 c. 288 § 8)

2279. **Legacy charged on property—Money legacy for limited period**—If any bequest or legacy shall be charged upon or payable out of any property, the heir or devisee shall deduct such tax therefrom and pay such tax to the administrator, executor or trustee, and the tax shall remain a lien or charge on such property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the bequest or legacy might be enforced, or by the county attorney under section 20 [2290] of this act. If any bequest or legacy shall be given in money to any person for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment, if the case requires, of the sum to be paid into his hands by such legatee or beneficiary, and for such further order relative thereto, as the case may require. ('05 c. 288 § 9)

2280. **Tax erroneously paid—Refundment**—When any tax imposed by this act shall have been erroneously paid, wholly or in part, the person paying the same shall be entitled to a refundment of the amount so erroneously paid, and the auditor of state shall, upon satisfactory proofs presented to him of the facts relating thereto, draw his warrant upon the state treasurer for the amount thereof, in favor of the person entitled thereto; provided, however, that all applications for such refunding of erroneous taxes shall be made within three years from the payment thereof. ('05 c. 288 § 10)

2281. **Transfer by foreign executors, etc.—Personal property of nonresident decedent—Proceedings before attorney general—Shares of stock—Appeal—Where law of domicile exempts transfers of personal property of residents of Minnesota**—Sub-division 1. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on the transfer thereof, and no such assignment or transfer shall be valid until such tax is paid.

If any nonresident of this state dies owning personal property in this state, such property may be transferred or assigned by the personal representative of, or trustee for the decedent, only after such representative or trustee shall have procured a certificate from the attorney general consenting to the transfer of such property. Such consent shall be issued by the attorney general only in case there is no tax due hereunder; or in case there is a tax, when the same shall have been paid.

Any personal representative, trustee, heir or legatee of a non-resident decedent desiring to transfer property having its situs in this state may make application to the attorney general for the determination of whether there is any tax due to the state on account of the transfer of the decedent's property and such applicant shall furnish to the attorney general therewith an affidavit setting forth a description of all property owned by the decedent at the time of his death and having its situs in the state of Minnesota, the value of such property at the time of said decedent's death; also when required by the attorney general, a description of and statement of the true value of all the property owned by the decedent at the time of his death and having its situs outside the state of Minnesota, and also a schedule or state-

ment of the valid claims against the estate of the decedent, including the expenses of his last sickness and funeral and the expenses of administering his estate. Such person shall also, on request of the attorney general, furnish to the latter a certified copy of the last will of the decedent in case he died testate, or an affidavit setting forth the names, ages and residences of the heirs at law of the decedent in case he died intestate and the proportion of the entire estate of such decedent inherited by each of said persons, and the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. Such affidavits shall be subscribed and sworn to by the personal representative of the decedent or some other person having knowledge of the facts therein set forth.

The statements in any such affidavits as to value or otherwise shall not be binding on the attorney general in case he believes the same to be untrue. From the information so furnished to him and such other information as he may have with reference thereto, the attorney general shall, with reasonable expedition, determine the amount of tax, if any, due to the state under the provisions of this act and notify the person making the application of the amount thereof claimed to be due. On payment of the tax so determined to be due or in case there is no tax due to the state, the attorney general shall issue a consent to the transfer of the property so owned by the decedent.

No corporation organized under the laws of the state of Minnesota shall transfer on its books any shares of its capital stock standing in the name of a nonresident decedent, or in trust for a nonresident decedent, without the consent of the attorney general first procured as hereinbefore provided for. Any corporation violating the provisions of this section shall be liable to the state for the amount of any tax due to the state on a transfer of any such shares of stock, and in addition thereto a penalty equal to ten per cent of the amount of such tax; to be recovered in a civil action in the name of and for the benefit of the state.

Any person aggrieved by the determination of the attorney general in any matter hereinbefore provided for, may, within twenty days thereafter appeal to the district court of Hennepin county, or Ramsey county, Minnesota, by filing with the attorney general a notice in writing setting forth his objections to such determination and that he appeals therefrom and thereupon within ten days thereafter the attorney general shall transmit the original papers and records which have been filed with him in relation to such application for consent, to the clerk of the district court to which the appeal shall have been taken, and thereupon said court shall acquire jurisdiction of such application and proceeding. Upon eight days notice given to the attorney general by the appellant, the matter may be brought on for hearing and determination by such court either in term time or vacation, at a general or special term of said court, or at chambers as may be directed by order of the court. The said court may determine any and all questions of law and fact necessary to the enforcement of the provisions of this act according to its intent and purpose, and may by order direct the correction, amendment or modification or [of] any determination made by the attorney general.

On such hearing either party may introduce the testimony of witnesses and other evidence in the same manner and subject to the same rules which govern in civil actions. When necessary, the court may adjourn or continue its hearings from time to time, to enable the parties to secure the attendance of witnesses or the taking of depositions. Depositions may be taken and used in such proceedings in the same manner as is now provided by law for the taking of depositions in civil actions.

The attorney general and any person aggrieved by the order of the district court may appeal to the supreme court from any such order made by said courts, within the time and in the manner now provided by law for the taking of appeals from orders in civil actions. ('05 c. 288 § 11, amended '11 c. 209 § 2; '13 c. 565 § 1)

1913 c. 565 § 1 repealed sub-division 2 of 1905 c. 288 § 1, as amended by 1911 c. 209.

2282. **Transfer of assets to representative—Powers of county treasurer—Notice—Personal liability**—No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the county treasurer, personally or by representative, to examine said securities at the time of such delivery or transfer. If upon such examination the county treasurer or his said representatives shall for any cause deem it advisable that such securities or assets should not be immediately delivered or transferred, he may forthwith notify in writing such company, bank, institution or person to defer delivery or transfer thereof for a period not to exceed ten days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery or transfer until the time stated in such notice or until the revocation thereof within such ten days. Failure to serve the notice first above mentioned, or to allow such examination, or to defer the delivery of such securities or assets for the time stated in the second of said notices, shall render said safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon the said security or assets, pursuant to the provisions of this act. ('05 c. 288 § 12)

2283. **Application for letters testamentary, etc.—Notice—Determination of value of inheritance, etc.**—Upon the presentation of any petition to any probate court of this state for letters testamentary or of administration, or for ancillary letters, testamentary or of administration, the probate court shall cause a copy of the citation or order for the hearing of such petition to be served upon the county treasurer of his county not less than ten days prior to such hearing. The court shall thereupon, as soon as practicable after the granting of any such letters, proceed to ascertain and determine the value of every inheritance, devise, bequest or legacy embraced in or payable out of the estate in which such letters are granted and the taxes due thereon. The county treasurers of the several counties, and the attorney general, shall have the same rights to apply for letters of administration as are conferred upon creditors by law. ('05 c. 288 § 13, amended '11 c. 209 § 3)

2284. **Appraisers**—The probate court may, in any matter mentioned in the preceding section, either upon its own motion or upon the application of any interested party, including county treasurers and the attorney general, and as often as and when occasion requires, appoint one or more impartial and disinterested persons as appraisers to appraise the true and full value of the property embraced in any inheritance, devise, bequest, or legacy, subject to the payment of any tax imposed by this act. ('05 c. 288 § 14, amended '11 c. 209 § 4)

See §§ 2299, 2300.

2285. **Inheritance, etc., how appraised**—Every inheritance, devise, bequest, legacy, transfer or gift upon which a tax is imposed under this act shall be appraised at its full and true value immediately upon the death of decedent, or as soon thereafter as may be practicable; provided, however, that when such devise, bequest, legacy, transfer or gift shall be of such a nature that its true and full value cannot be ascertained, as herein provided, at such time, it shall be appraised in like manner at the time such value first becomes ascertainable. ('05 c. 288 § 15, amended '11 c. 209 § 5)

Cited and applied (100–192, 110–865).

See note under § 2273.

The tax must be computed upon the value, at the time of decedent's death, of the right to receive the amount actually paid on the date of its payment (112–279, 128–18).

2286. **Notice of appraisal—Powers and duties of appraisers—Compensation and fees**—The appraisers appointed under the provisions of this act shall forthwith give notice by mail to all persons known to have a claim or interest in the inheritance, devise, bequest, legacy or gift to be appraised, including the county treasurer, attorney general, and such persons as the

probate court may by order direct, of the time and place when they will make such appraisal. They shall at such time and place appraise the same at its full and true value, as herein prescribed, and for that purpose the probate court appointing said appraisers is authorized and empowered to issue subpœnas and compel the attendance of witnesses before such appraisers at the place fixed by the appraisers as the place where they will meet to hear such testimony and make such appraisal. Such appraisers may administer oaths or affirmations to such witnesses and require them to testify concerning any and all property owned by the decedent and the true value thereof and any disposition thereof which may have been made by the decedent during his life time or otherwise. The appraisers shall make a report in writing, setting forth their appraisal of the property embraced in each legacy, inheritance, devise or transfer, including any transfer made in contemplation of death, with the testimony of the witnesses examined and such other facts in relation to the property and its appraisal as may be requested by the attorney general, or directed by the order of the probate court. Such report shall be in writing and one copy thereof shall be filed in the probate court and the others shall be mailed to the attorney general at his office in the city of St. Paul, Minnesota.

Every appraiser shall be entitled to compensation at the rate of $3.00 per day, and in extraordinary cases such additional sum per day, not exceeding $7.00 altogether as may be allowed by the probate judge, for each day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses, and such witnesses and the officer or person serving any such subpœna shall be entitled to the same fees as are allowed witnesses or sheriffs for similar services in courts of record. The compensation and fees claimed by any person for services performed under this act shall be approved by the judge of probate who shall certify the amount thereof, to the state auditor, who shall examine the same, and, if found correct, he shall draw his warrant upon the state treasury for the amount thereof in favor of the person entitled thereto.

Such warrants shall be paid out of the moneys appropriated for the payment of the expenses of inheritance tax collections. ('05 c. 288 § 16, amended '11 c. 209 § 6)

2287. Report—Powers of court—The report of the appraisers shall be filed with the probate court, and from such report and other proof relating to any such estate before the probate court the court shall forthwith, as of course, determine the true and full value of all such estate and the amount of tax to which the same are liable; or the probate court may so determine the full and true value of all such estates and the amount of tax to which the same are liable without appointing appraisers. ('05 c. 288 § 17)

2288. Notice upon determination—Additional clerical assistance—The probate court shall immediately give notice, upon the determination of the value of any inheritance, devise, bequest, legacy, transfer or gift which is taxable under this act, and the tax to which it is liable, to all parties known to be interested therein, including the state auditor, attorney general and the county treasurer.

Such notice shall be given by serving a copy on the attorney of all persons who may have appeared by attorney, and as to persons who have not so appeared, by mail, where the addresses of the persons to be notified are known or can be ascertained, otherwise such notice shall be given by publishing said notice once in a qualified newspaper. The expense of such publication shall be certified and paid by the state treasurer in the same manner as hereinbefore provided for the payment of the fees and expenses of appraisers.

Accompanying such notice given the attorney general shall be a copy of the order determining such tax, and also a full report showing such other matters in connection therewith as may be required by the attorney general upon such forms as may be furnished by him to said court or as may be particularly requested. The county board may allow the county treasurer and the judge of probate to employ such additional clerical assistance for all or part of the time as may be necessary to properly perform the addi-

tional duties imposed upon such officers by the inheritance tax law. ('05 c. 288 § 18, amended '11 c. 209 § 7; '13 c. 574 § 1)

2289. **Objections—Notice and hearing—Reassessment—Bill of particulars—General inventory and appraisal**—Within thirty days after the service of the notice of the assessment and determination by the probate court of any tax imposed by this act, the attorney general, county treasurer, or any person interested therein, may file with said court objections thereto, in writing, and praying for a reassessment and redetermination of such tax. Upon any objection being so filed the probate court shall appoint a time for the hearing thereof and cause notice of such hearing to be given to the attorney general, county treasurer and all parties interested at least ten days before the hearing thereof. Such notice shall be served in the manner provided for in section 18 as amended by section 7 [2288] of this act.

At the time appointed in such notice the court shall proceed to hear such objections and any evidence which may be offered in support thereof or opposition thereto; and if, after such hearing, said court shall be of the opinion that a reassessment or redetermination of such tax should be made, it shall, by order, set aside the assessment and determination theretofore made and order a reassessment in the same manner as if no assessment had been made, or the said court may, without ordering a resubmission to appraisers, set aside the assessment and determination theretofore made and fix and determine the value of the property embraced in any legacy, inheritance, devise or transfer and fix and determine the amount of the tax thereon in accordance with the appraisal theretofore filed, so far as the same is not in dispute, and in accordance with the evidence introduced by the respective parties in interest as to any items of the appraisers' report which may have been objected to by any party interested, including the attorney general and the personal representatives of the decedent.

In any case where objections are filed by the attorney general as hereinbefore provided for, he shall, within ten days before the time set by the court for the hearing thereof, file with the clerk of the court a bill of particulars setting forth the items in any such report objected to and as to which he proposes to offer testimony; he shall also mail a copy thereof, within said time, to the personal representative of the decedent or the attorney or attorneys for the latter. In case objections are filed by any other person, he or she shall likewise file such a bill of particulars with the court and serve a copy thereof upon the attorney general within ten days after the filing of the objections.

Before any inheritance tax appraisers are appointed, the court shall require the general inventory and general appraisal to be filed, and in all estates so appraised at over $10,000 and in all other estates where any part of such estate may be subject to an inheritance tax, the court shall furnish the county treasurer and the attorney general with a copy of such general inventory and appraisal, and shall not determine the tax due, nor appoint inheritance tax appraisers until thirty days thereafter. A copy of the will of decedent, if any is probated, and also a copy of the initial petition in said estate shall accompany such copies of the general inventory and appraisal. ('05 c. 288 § 19, amended '11 c. 209 § 8; '13 c. 574 § 2)

2290. **Nonpayment of tax—Duties of county officers—Hearing in probate court—Action by state—Property omitted**—If the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act after the refusal or neglect of the persons liable therefor to pay the same, he shall notify, in writing, the county attorney of his county, of such failure or neglect, and such county attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the probate court for a citation, citing the persons liable to pay such tax to appear before the court on a day specified, not more than three months from the date of such citation, and show cause why the tax should not be paid. The judge of the probate court, upon such application, and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner and proof

thereof, and the hearing and determination thereon, shall conform as near as may be to the provisions of the probate code of this state, and whenever it shall appear that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of this act in said probate court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, and it shall be the duty of the county attorney of the proper county to sue for in the name of the state and enforce the collection of such tax, and all taxes so collected shall be forthwith paid into the county treasury. It shall be the duty of said county attorney to appear for and represent the county treasurer on the hearing of such citation.

Any property which for any cause is omitted from an appraisement or inventory, so that its value is not taken into consideration in the determination of the inheritance taxes, may be subsequently taxed against the person receiving the same, or any part thereof, to the same effect as if included in the original appraisal and determination, except that any representative of an estate discharged from his trust in the meantime shall not be liable for the payment of such tax. When any property has been thus omitted in the determination of an inheritance tax, such taxes thereon may be determined and recovered in a civil action brought by the attorney general in the name of the state in any court of general jurisdiction, or may be prosecuted to collection by citation and subsequent proceedings in the probate court wherein the estate was administered. ('05 c. 288 § 20, amended '13 c. 574 § 3)

2291. **Record book—Entries—Forms—Reports by probate judge and register**—The auditor of state shall furnish to each probate court a book which shall be a public record, and in which shall be entered by the judge of said court the name of every decedent upon whose estate an application has been made for the issue of letters of administration, or letters testamentary or ancillary letters, the date and place of death of such decedent, names and places of residence and relationship to decedent of the heirs at law of such decedent, the estimated value of the property of such decedent, names and places of residence and relationship to decedent of the heirs at law of such decedent, the names and places of residence of the legatees, devisees, and other beneficiaries in any will of any such decedent, the amount of each legacy, and the estimated value of any property devised therein and to whom devised.

These entries shall be made from data contained in the papers filed on such application or in any proceeding relating to the estate of the decedent.

The judge of probate shall also enter in such book the amount of the property of any such decedent, as shown by the inventory thereof, when made and filed in his office, and the returns made by any appraisers appointed by him under this act, and the value of all inheritances, devises, bequests, legacies and gifts inherited from such decedent, or given by such decedent in his will or otherwise as fixed by the probate court, and the tax assessed thereon, and the amounts of any receipts for payment thereof filed with him.

The state auditor shall also furnish forms for the reports to be made by such judge of probate, which shall correspond with the entries to be made in such book.

Each judge of probate, on determining a tax, shall immediately make a report to the state auditor upon the forms furnished by the state auditor containing all of the data and matters required to be entered in such book.

The register of deeds of each county shall, on the first day of January and July of each year, make reports in duplicate to the auditor of state and attorney general, containing a statement of any conveyance filed or recorded in his office of any property which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of the vendor or vendee, and the description of the property transferred, as shown by such instrument. Such county official shall also furnish to either of said state officials, upon request, all information specifically requested as to any instruments of record in his office. ('05 c. 288 § 21, amended '13 c. 565 § 2)

2292. **Where estate of nonresident not probated—Agreement by attorney general to compound tax—Consent to assignment or delivery of property—** The attorney general, by and with the consent and approval of the state auditor, in case of the estate of a nonresident decedent whose estate has not been probated in this state, and the consent and approval of the probate judge in the case of any estate probated in this state, expressed in writing, is hereby authorized and empowered to enter into an agreement with the trustees of any estate in which remainders or expectant estates are of such a nature or so disposed and circumstanced that the taxes are not presently payable or where the interests of the legatees or devisees are or were not ascertainable under the provisions of this chapter, at the time fixed for the appraisal and determination of the tax on estates and interests transferred in fee, and to thereby compound the tax upon such transfers upon such terms as are deemed equitable and expedient; to grant a discharge to said trustees on account thereof upon payment of the taxes provided for in such composition agreement; provided, however, that no such composition shall be conclusive in favor of said trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible, rights of future enjoyment or of such as would possess such rights in the event of the immediate termination of any particular estate, unless they consent thereto either personally or by duly authorized attorney, when competent, or by guardian or committee. Composition agreements made, affected and entered into under the provisions of this section shall be executed in triplicate, and one copy thereof filed in the probate court of the county in which the tax is to be paid, one copy in the office of the attorney general and one copy shall be delivered to the persons paying the tax thereunder.

The attorney general shall not consent to the assignment or delivery of any property embraced in any legacy, devise or transfer from a nonresident decedent to a nonresident trustee thereof under the provisions of section 11, as amended by section 2 [2281] of this act, where the property embraced in such legacy, devise or transfer is so circumstanced and disposed of that the tax thereon cannot be presently ascertained, but is so circumstanced and disposed of as to authorize him to enter into a composition agreement with reference to the tax on any estate or interest therein as herein provided, until the tax on the transfer of any such estate or interest shall have been compounded and the tax paid as hereinbefore provided for; or in lieu thereof the trustee or other person to whom the possession of such property is delivered shall have made, executed and delivered to the attorney general, a bond to the state of Minnesota in an amount equal to the amount of tax which in any contingency may become due and owing to the state on account of the transfer of such property, such bond to be approved by the attorney general and conditioned for the payment to the state of Minnesota of any tax which may accrue to the state under this act on the subsequent transfer or delivery of the possession of such property to any person beneficially entitled thereto. The provisions of sections 4523, 4524 and 4525, Revised Laws 1905 [8231, 8232, 8235] shall apply to the execution of said bond and the qualification of the surety or sureties thereon.

No property having its situs in this state embraced in any legacy or devise bequeathed or devised to a non-resident trustee and circumstanced or disposed of as last hereinbefore described, shall be decreed and distributed by any court of this state to such nonresident trustee until he shall have compounded and paid the tax as provided for in this section; or in lieu thereof given a bond to the state as provided for in this section with reference to transfers of property owned by nonresident decedents. ('05 c. 288 amended '11 c. 209 § 9)

2293. **Powers of attorney general—Citation to persons having knowledge, etc.—Production of books, etc.—Penalty for refusal—Fees—** The attorney general is hereby authorized and empowered to issue a citation to any person whom he may believe or have reason to believe has any knowledge or information concerning any property which he believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due

to the state under the provisions of this act, and by such citation require such person to appear before him at a time and place to be designated in such citation and testify under oath as to any fact or information within his knowledge touching the quantity, value and description of any such property and its ownership and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the attorney general, any books, records, accounts or documents in the possession of or under the control of any person so cited. The attorney general shall also have power to inspect and examine the books, records and accounts of any person, firm or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by him for the proper enforcement of this act and the collection of the full amount of the tax which may be due to the state hereunder. Any and all information acquired by the attorney general under and by virtue of the means and methods provided for by this section shall be deemed and held by him as confidential and shall not be disclosed by him except so far as the same may be necessary for the enforcement and collection of the inheritance tax provided for by this act.

Refusal of any person to attend before the attorney general in obedience to any such citation, or to testify, or produce any books, accounts, records or documents in his possession or under his control and submit the same to inspection of the attorney general when so required, may, upon application of the attorney general, be punished by any district court in the same manner as if the proceedings were pending in such court.

Witnesses so cited before the attorney general, and any sheriff or other officer serving such citation shall receive the same fees as are allowed in civil actions; to be paid by the attorney general out of the funds appropriated for the enforcement of this act. ('05 c. 288, amended '11 c. 209 § 9)

2294. Refundment of tax—Duties of attorney general, auditor and treasurer—Appeal—Whenever, under the provisions of section 3 of this act, as amended, any person or corporation shall be entitled to a return of any part of a tax previously paid, he shall make application to the attorney general for a determination of the amount which he is entitled to have returned, and on such application shall furnish the attorney general with affidavits and other evidence showing the facts which entitle him to such return and the amount he is entitled to have returned. The attorney general shall thereupon determine the amount, if any, which the applicant is entitled to have returned, and shall certify his findings in regard thereto to the state auditor who shall thereupon issue his warrant on the state treasurer for the amount so certified by the attorney general and deliver such warrant to the persons entitled to the refund.

It shall be the duty of the state treasurer to pay such warrants out of any funds in the state treasury not otherwise appropriated. The moneys necessary to pay such warrants are hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

Any person aggrieved by the determination of the attorney general may appeal to the district court in the manner and with the same effect as is provided for in section 11 as amended by section 2 [2281] of this act. ('05 c. 288, amended '11 c. 209 § 9)

2295. Payments to be made to counties—Duties of auditor and treasurer— On or before the first of November in each year the state auditor shall compute the amount of inheritance tax which has been paid in to the state treasury by the county treasurers of the several counties of this state, from estates of residents thereof, during the preceding fiscal year ending July 31st, and thereupon draw his warrant on the state treasurer in favor of each county from which any tax shall have been received during the fiscal year ending July 31st next preceding, for ten per cent of the amount of the inheritance tax money so received from each such county respectively, less ten per cent of any tax which has been returned under the provisions of the last preceding section and which was originally paid to the county treasurer of any such county, and transmit the same to the county auditor of each county, to be

placed to the credit of the county revenue fund; provided, however, that the provisions of this section shall apply only to such moneys as shall be received as a tax on transfers from persons who shall die subsequent to the passage of this amendatory act.

It shall be the duty of the state treasurer to pay such warrants out of any funds in the state treasury not otherwise appropriated. The moneys necessary to pay such warrants are hereby appropriated out of any moneys in the state treasury not otherwise appropriated. ('05 c. 288, amended '11 c. 209 § 9)

2296. **Attorney general's seal**—The attorney general shall provide himself with a seal whereon shall be inscribed the words:

"Attorney General, State of Minnesota, Inheritance Tax."

All his formal official acts done and performed under the provisions of this act shall be authenticated with such seal. ('05 c. 288, amended '11 c. 209 § 9)

2297. **Assistant attorney general in charge of tax matters to be designated—Powers and duties**—The attorney general is hereby authorized to designate one of his assistants as "Assistant Attorney General in Charge of Inheritance Tax Matters." Such designation shall be in writing and filed in the office of the secretary of state and shall continue in force until revoked by the attorney general. The assistant so designated, so long as such designation remains unrevoked, shall have and may exercise all the rights, powers and privileges conferred on the attorney general by the provisions of this act and all the duties and obligations hereby imposed upon the attorney general are likewise imposed upon the assistant so designated. ('05 c. 288, amended '11 c. 209 § 9)

2298. **Acts repealed**—All acts and parts of acts of this state relating to the taxation of inheritances, devises, bequests, legacies and gifts, so far as the same are inconsistent with the provisions of this act, are hereby repealed. ('05 c. 288 § 22)

2299. **Failure to serve notice of application for letters, etc.—Curative**—In all probate proceedings in any of the probate courts in this state where a general inventory of the property belonging to the estate of a deceased person, has heretofore been duly made and filed, and the regular and due appraisal of the property in or belonging to such estate has heretofore been actually made and the appraisers' certificate thereof, duly filed in the proper probate office, and the total value of such property as thus appraised is given as less than ten thousand dollars, all such probate proceedings and all interlocutory and final decrees made therein, and the records of any such decrees, are hereby declared legal and valid and such proceedings, decrees and records shall have full force and effect as evidence in all the courts of this state, as against the objection that no copy of the citation or order for hearing on the petition for letters testamentary, or of administration, or ancillary letters, was served upon the county treasurer of the county in which such proceedings were had, prior to the time of such hearing. ('07 c. 444 § 1)

See § 2283.

2300. **Same—Pending proceedings**—This act shall not affect or apply to any action or proceeding now pending in any of the courts of this state other than probate courts. ('07 c. 444 § 2)

MORTGAGES ON REAL PROPERTY

2301. **Mortgage defined**—The words "real property," "real estate" and "land," as used in this act, in addition to the definitions thereof contained in the Revised Laws 1905, shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws; and the word "mortgage," as so used, shall mean any instrument creating or evidencing a lien of any kind on such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed, for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price. No instrument relating to real estate shall be valid as security for any debt, unless the fact that it is so intended and the amount of

such debt are expressed therein. But a mortgage given to correct a misdescription of the mortgaged property, or to include additional security for the same indebtedness, shall not be subject to the tax imposed by this act; nor shall a mortgage securing the same and other indebtedness, additional to that upon which such tax has been paid, be taxable hereunder, except for such added sum. ('07 c. 328 § 1)

1907 c. 328 is constitutional. It provides for a proper classification of the subjects of taxation and for a uniform tax on subjects of the class (104–179, 116+572).

The act which requires savings banks to pay a registry tax on mortgages owned by them, without exempting them from taxation otherwise, is not class legislation, nor in conflict with Const. U. S. art. 14 § 1 and Const. Minn. art. 9 § 1 (114–95, 130+445).

The subject of taxation is the security—the lien—and not the debt secured (104–179, 116+572).

The act constitutes all mortgages on real estate a class for taxation, and a mortgage given to secure an indebtedness of $50 or less is taxable (117–192, 134+728).

The tax must be paid on the filing for record of an agreement for an extension or renewal of the mortgage (104–179, 116+572).

Where parties to an absolute deed and contract intended to secure payment of a debt were ignorant of the existence of this statute, equity will afford relief by reforming the deed, so as to express their intention, on payment of the tax (112–412, 128+455).

A mortgage on which the tax has not been paid, though erroneously recorded, furnishes no basis for redemption by the mortgagee from foreclosure of a prior mortgage (119–193, 137+973).

Failure to pay the tax does not make the mortgage a nullity, but upon its existence the statute superimposes a state of dormancy whereby its enforcement is held in abeyance until the performance of the statutory conditions; and hence where the tax had not been paid at the time of the service of a notice to terminate an executory contract of sale of land, such notice was inoperative, and derived no vitality from the subsequent payment of the tax (140+132).

Cited (139+485).

2302. **Tax on record or registration—Rates**—A tax of fifteen cents is hereby imposed upon each hundred dollars, or fraction thereof, of the principal debt or obligation which is, or in any contingency may be, secured by any mortgage of real property situate within the state executed and delivered after the passage and approval hereof and recorded or registered hereafter; provided that any such mortgage heretofore executed and delivered shall not be recorded or registered without payment of the tax originally stipulated in section two (2) hereof as originally enacted; provided further that if any such mortgage shall describe any real estate situate outside of this state, such tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the real estate therein described situate in this state bears to the value of the whole of the real estate described therein, as such value shall be determined by the state auditor upon application of the mortgagee; and provided further that if the maturity of the said debt secured by the said mortgage, as therein stipulated, shall be fixed at a date more than five years after the date of said mortgage, then and in that case, the tax to be paid thereon shall be at the rate of twenty-five cents on each hundred dollars or fraction thereof. ('07 c. 328 § 2, amended '13 c. 163 § 1)

The amended act was approved April 23, 1907; the amendatory act, April 2, 1913.

2303. **Exemption from other taxes—Certain mortgages not included**—All mortgages upon which such tax has been paid, with the debts or obligations secured thereby and the papers evidencing the same, shall be exempt from all other taxes; but nothing herein shall exempt such property from the operation of the laws relating to the taxation of gifts and inheritances, or those governing the taxation of banks, savings banks, or trust companies; provided, that this act shall not apply to mortgages taken in good faith by persons or corporations whose personal property is expressly exempted from taxation by law, or is taxed upon the basis of gross earnings, or other methods of commutation in lieu of all other taxes. ('07 c. 328 § 3)

A foreign insurance company, which has paid the 2 per cent. tax required by R. L. § 1625 [3302], is not exempt (104–179, 116+572. See 114–95, 130+445).

2304. **Mortgages to secure obligations to be issued—Statement**—If a mortgage is made to a mortgagee in trust, to secure the payment of bonds or other obligations to be issued thereafter, a statement may be incorporated therein of the amount of such obligations already issued or to be issued forthwith, and the tax to be paid on filing such mortgage for record or reg-

istration shall be computed upon the amount so stated. Such statement shall be binding and conclusive upon all persons claiming through or under the mortgage, and no such obligation issued in excess of the aggregate so fixed shall be valid for any purpose unless the additional tax thereon be paid and the receipt of the proper county treasurer therefor be endorsed thereon. ('07 c. 328 § 4)

2305. **Tax, how payable—Receipts—Exemption, how determined—Lands in more than one county**—The tax imposed by this act shall be paid to the treasurer of the county in which the mortgaged land or some part thereof is situated, at or before the time of filing the mortgage for record or registration. The treasurer shall endorse his receipt on the mortgage, countersigned by the county auditor, who shall charge the amount to the treasurer, and such receipt shall be recorded with the mortgage, and such receipt of the record thereof shall be conclusive proof that the tax has been paid to the amount therein stated, and shall authorize any register of deeds to record the mortgage. Its form in substance shall be "registration tax hereon of .....dollars paid." If the mortgages be exempt from taxation the endorsement shall be "exempt from registration tax," to be signed in either case by the treasurer as such, and in case of payment to be countersigned by the auditor. In case the treasurer shall be unable to determine whether a claim of exemption should be allowed the tax shall be paid to the clerk of the district court of the county to abide the order of such court made upon motion of the county attorney, or of the claimant upon notice as required by the court. When any such mortgage covers real property situate in more than one county in this state the whole of such tax shall be paid to the county treasurer of the county where the mortgage is first presented for record or registration, and the payment shall be receipted and countersigned as above provided, and such tax shall be divided and paid over by the county treasurer receiving the same on or before the tenth day of each month after receipt thereof to the county or counties entitled thereto in the ratio which the assessed value of the real property covered by the mortgage in each county bears to the assessed value of all the property described in the mortgage. In making such division and payment the county treasurer shall send therewith a statement giving the description of the property described in the mortgage and the assessed value of the part thereof situate in each county. And for the purpose aforesaid the county treasurer of any county may require the county treasurer of any other county to certify to him the assessed valuation of any tract of land in any such mortgage. ('07 c. 328 § 5)

2306. **Lands not subject to direct tax**—When any real estate situate in this state and described in any such mortgage is not taxed by direct tax upon the assessed valuation thereof, then the tax herein provided shall be paid to the state treasurer and credited to the general revenue fund. The receipt thereof shall be endorsed upon the mortgage by the state treasurer and countersigned by the state auditor, who shall charge the treasurer therewith, and thereupon such mortgage shall be recorded or registered, as to such real estate in any office in this state, and thereupon such mortgage may be recorded or registered, but as to all real property described in any mortgage taxed upon an assessed valuation the registry tax shall be paid as provided in section 5 [2305] hereof. ('07 c. 328 § 6)

2307. **Prepayment of tax—Evidence—Notice**—No such mortgage, no papers relating to its foreclosure nor any assignment or satisfaction thereof shall be recorded or registered after the passage of this act unless said tax shall have been paid; nor shall any such document or any record thereof, be received in evidence, in any court, or have any validity as notice or otherwise. ('07 c. 328 § 7, amended '13 c. 163 § 2)

See note under § 2302.
112–412, 128–455; 139–485.

2308. **Mortgages recorded, etc., prior to passage of act**—All mortgages of real estate recorded or registered prior to the passage of this act shall be taxable as provided by law under the provisions of law relating thereto prior to the enactment hereof, provided, that the holder of any such mortgage

may pay to the treasurer of the proper county, or the state treasurer, or both, the tax therein prescribed upon the amount of the debt secured by such mortgage at the time of such payment as stated by the affidavit of the owner of such mortgage, to be filed with the county treasurer, and have the treasurer's receipt countersigned by the auditor endorsed thereon. The register of deeds or secretary of state, as the case may be, on presentation of such receipt, shall note on the margin of the mortgage record the date and amount of such payment. Thereafter such mortgage debt shall not be otherwise taxable. ('07 c. 328 § 8, amended '13 c. 163 § 3)

See note under § 2302.

2309. **Taxes how divided, etc.**—All taxes paid to the county treasurers under the provisions of this act shall be apportioned one-sixth to the revenue fund of the state of Minnesota, one-sixth to the county revenue fund, and the balance shall be divided equally between the school district and the city, village or town in which the real estate described in the mortgage is situated. ('07 c. 328 § 9, amended '13 c. 352 § 1)

2310. **Certain mortgages, etc., recorded without payment of tax legalized**—All mortgages upon real estate securing the payment of $50.00 or less which have heretofore been recorded in the office of the register of deeds of the proper county in this state and concerning which all requirements of law in relation to the record thereof have been complied with, except that no registration tax has been paid thereon together with all assignments and satisfactions thereof heretofore recorded are hereby legalized and made valid for all purposes in like manner and with the same effect as if such registration tax had in fact been paid prior to the record of such mortgages. ('13 c. 370 § 1)

2311. **Same—Certain foreclosures legalized**—If any such mortgage has heretofore been foreclosed by advertisement, and if all the requirements of law in relation to such foreclosure have been observed, except that the registration tax upon such mortgage was not paid prior to the record thereof, the foreclosure of such mortgage and the record of all affidavits and certificates pertaining thereto are hereby legalized and made valid for all purposes in the same manner and with the same effect as if the registration tax had in fact been paid upon such mortgage prior to the record thereof. ('13 c. 370 § 2)

2312. **Same—Evidence**—All such mortgages and all such assignments and satisfactions thereof, and all such certificates and affidavits pertaining to the foreclosure of the same by advertisement may, together with the record thereof be read in evidence in any court of this state and shall be received as prima facie evidence of the contents of such original instruments. ('13 c. 370 § 3)

2313. **Same—Pending actions**—This act shall not affect any action at law or in equity now pending in any of the courts of this state. ('13 c. 370 § 4)

2314. **Certain foreclosures, etc., of contracts legalized, etc.**—That in all cases where a contract for the purchase or sale of real estate has been foreclosed or cancelled or attempted to be foreclosed or cancelled, and such foreclosure or cancellation is defective by reason of the fact that prior thereto no mortgage registration tax has been paid on said contract, such foreclosure or cancellation and all proceedings in connection therewith and the record thereof, if any shall have been made, are hereby legalized and made as valid and effectual to all intents and purposes and of the same force and effect in all respects, for the purpose of notice, evidence, validity, foreclosure, cancellation or otherwise as if such mortgage registration tax had been paid prior to the time of the commencement of any such proceedings. Provided the mortgage registration tax on said contract be paid in full within six months after the passage of this act. ('13 c. 301 § 1)

2315. **Same—Rights, when barred**—Any person, persons, co-partnership or corporation, as vendee, holding any contract for the purchase or sale of real estate, which said contract has heretofore been foreclosed or cancelled or attempted to be foreclosed or cancelled, and the mortgage registration tax was not paid, said person, persons, co-partnership or corporation shall have thirty days from and after the passage of this act to assert any rights they

may have under and by virtue of said contract, or be forever barred from asserting same. ('13 c. 301 § 2)

The act was approved April 15, 1913.

MONEY AND CREDITS

2316. Definition—Tax rate—"Money" and "credits" as the same are defined in section 798 "Revised Laws of 1905" [1975] are hereby exempted from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof.

But nothing in this act shall apply to money or credits belonging to incorporated bank situated in this state, nor to any indebtedness on which tax is paid under chapter 328, General Laws of 1907 [2301–2309]. ('11 c. 285 § 1)

1911 c. 285 held not violative of Const. art. 9 § 1 (117–159, 134+643).

The act held a complete revision of prior statutes on the subject, and designed as the exclusive guide upon that subject, save as provisions of the general tax laws are therein referred to and called to its aid, and to repeal by implication R. L. § 836 which provides for the deduction of debts from credits listed for taxation (117–159, 134+643).

A mortgage not within the statute (117–192, 134+728).

2317. How listed—All "money" and all "credits" taxable under this act shall be listed in the manner provided in section 816 "Revised Laws of 1905" [1994], but such listing shall be upon a separate blank from that upon which other personal property is listed. ('11 c. 285 § 2)

2318. Notice by assessor—List—Before making an assessment of "money" and "credits" under this act the assessor shall give seasonable notice to the inhabitants of his district in the manner prescribed in section 808 "Revised Laws of 1905" [1985]. He shall require each individual, co-partnership, company, association or corporation in his district to bring in before a date therein specified and not later than the first day of July a true list of all their "moneys" and "credits" taxable under this act. ('11 c. 285 § 3)

2319. Tax commission to prepare instructions—Form of return—Blanks—The Minnesota tax commission shall annually prepare instructions for bringing in the lists required by the preceding section. They shall prepare and distribute through the county auditors to the assessors a form for the returns which the tax payers are required to make by this act, and this form shall be printed on a separate sheet, and shall be entirely distinct from the forms prepared for the returns of other classes of property. This form shall require the tax payer to make a return of the total amount of his "money" and "credits" taxable under this act.

The Minnesota tax commission shall cause to be printed and shall furnish assessors blank lists for the return of property taxable under this act, and the assessor shall distribute a blank list to every person liable to taxation. ('11 c. 285 § 4)

2320. List to be under oath—Inspection—Penalty for unauthorized disclosure—The assessor shall in all cases require a person bringing in a list to make oath that it is as nearly correct as he is able to make it and this oath shall be attached to and be a part of such list.

Such list shall be open to the inspection of the assessor, county auditor, their deputies and clerks, the board of review, the board of equalization, their clerks, the Minnesota tax commission and its assistants and clerks, but the details of the lists made by tax payers shall be disclosed to no other person except by order of court, and any assessor or other person who shall disclose such details shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars. The lists shall be delivered by the assessor to the county auditor and by him preserved. ('11 c. 285 § 5)

2321. When to be received as true—The assessors shall receive as true except as to valuation, the list brought in by each person, unless on being thereto required by the assessor he refuses to answer on oath all reasonable and necessary inquiries as to the nature and amount of his property taxable under the provisions of this act. ('11 c. 285 § 6)

2322. Failure to list—Assessor to estimate—Penalty—The assessor shall ascertain as nearly as possible the particulars of the personal estate subject

to taxation under this act of any person who has not brought in such list, and shall estimate its just value according to his best information and belief. He shall also add thereto fifty per cent of the estimated value of such property as a penalty; and such estimate, with the penalty of fifty per cent, shall be entered in the valuation books, and shall be conclusive upon any person who has not seasonably brought in a list of his estate unless he can show reasonable excuse for the omission. ('11 c. 285 § 7)

2323. **Estimate, how made—Error**—In making such estimate the assessor shall specify the amount of "money" and "credits" separately and shall enter the same upon the books furnished under the provisions of section 10 [2325] of this act. An error or overestimate, or either, shall not be taken into account in determining whether a person is entitled to abatement, but only the aggregate amount of such estimate. ('11 c. 285 § 8)

2324. **What amount assessable—Change of domicile—Duties of assessors**—After property taxable under the provisions of this act has been legally assessed to any inhabitant of the state of Minnesota, including any executor, administrator, or trustee, an amount not less than that last assessed by the assessor of such district in respect of such property shall be deemed to be the sum assessable, until a true list of such property is brought in to the assessor in accordance with the provisions of section 3 [2318], of this act. When a person liable to be taxed for personal property included within the provisions of this act changes his domicile, the assessor of the district to which he removes shall assess him for an amount not less than that for which he was assessed in the district from which he removed, until he files the list required by section 3 [2318] of this act. The duties of assessors under this section shall be the same as prescribed in section 858, Revised Laws of 1905 [2040], and whoever neglects to perform any duty imposed upon him by this section shall be guilty of a misdemeanor. ('11 c. 285 § 9)

2325. **Property to be listed in separate book, etc.—What shall be shown—Duties of assessor and auditor**—Property taxable under this act shall not be included in the valuation list which assessors are required to make under the provisions of section 835, Revised Laws 1905 [2013], but shall be listed in a separate book or in a supplement to the regular assessment book which the county auditor shall provide for each assessor on or before the first day of May each year, and that the valuation of property included in this act shall not be added to the valuation in section 492 [823] and section 527 [873], and acts amendatory thereof, for the purpose of fixing salaries or clerk hire as therein provided, except in counties having an area of more than five hundred (500) square miles and an assessed valuation of more than nine million dollars, under the provisions of section 835, Revised Laws of 1905 [2013].

This book supplement, shall show the total amount of "money" and of "credits" assessed to each tax payer under the provisions of this act, and shall not disclose further details of his assessment. It shall contain also a summary showing the number of individuals, firms, associations, trustees, etc., assessed for such property and the total amount of "money" and "credits" taxable under the provisions of this act. When making the return to the county auditor provided for by section 850, Revised Laws of 1905 [2029], the assessor shall file this valuation book, or supplement, together with the summary of the same and the listing blanks filled out by each tax payer assessed under the provisions of this act.

The county auditor, when compiling the returns required by section 862, Revised Laws of 1905 [2044], shall include, under a separate heading the aggregate assessment in each district of property assessed under the provisions of this act. ('11 c. 285 § 10, amended '13 c. 576 § 1)

2326. **Review and equalization**—The assessment under this act shall be reviewed and equalized the same as the assessment of other personal property is reviewed and equalized. ('11 c. 285 § 11)

2327. **Auditor to compute taxes—List—Collection**—The county auditor of each county shall compute the taxes under this act each year against each individual, co-partnership, company, association or corporation and he may include such tax on the personal property tax list with the other per-

sonal property tax levied against such individual, copartnership, company, association or corporation where the assessment is made.

The tax levied under this act shall be collected by the county treasurer, or sheriff, the same as other personal property taxes are collected. ('11 c. 285 § 12)

2328. **Apportionment of receipts**—All taxes paid to the county treasurer under the provisions of this act shall be apportioned, one-sixth to the revenue fund of the state of Minnesota, one-sixth to the county revenue fund, one-third to the city village or town and one-third to the school district in which the property is assessed. ('11 c. 285 § 13)

GRAIN IN ELEVATORS

2329. **Person operating elevator to list**—Every person, firm or corporation operating a grain elevator or warehouse in this state shall at the time by law provided for the listing of personal property for taxation furnish to the assessor of the assessment district wherein such elevator or warehouse is situate a full and true list or statement of all grain, specifying the respective amounts and different kinds thereof received in or handled by such elevator or warehouse for and during the year immediately preceding March 1st of such year in which such list or statement is so to be made. ('09 c. 466 § 1)

Section 5 repeals inconsistent acts.

2330. **Amount of tax**—Every such person, firm or corporation shall in lieu of all other taxes upon such grain pay thereon one-fourth of one mill per bushel upon all wheat and flax and one-eighth of one mill per bushel upon all other grain received in or handled by such elevator or warehouse during such preceding year. ('09 c. 466 § 2)

2331. **How levied, paid and distributed**—Such tax shall be levied, paid and collected, and distributed in the same manner as other taxes on personal property are levied, paid, collected and distributed in the county wherein such elevator or warehouse is situated. ('09 c. 466 § 3)

2332. **Refusal to list—Assessment**—If any such person, firm or corporation fails or refuses to so make such list or statement at the time above provided, the assessor shall deliver a statement in writing showing such failure or refusal to the county board of equalization of such county and thereupon the said county board of equalization shall place upon the assessment rolls such amount of such grain as to them may seem just and proper. ('09 c. 466 § 4)

MINNESOTA TAX COMMISSION

2333. **Commission created**—There is hereby created a commission, to be designated and known as the Minnesota tax commission. ('07 c. 408 § 1)

Section 18 repeals inconsistent acts, etc.

Section 17 made an annual appropriation. See §§ 48, 49.

2334. **How appointed**—The said Minnesota tax commission shall be composed of three members, who shall be appointed by the governor by and with the advice and consent of the senate. The three persons first composing said commission shall be appointed within ten (10) days after the passage of this act and before the adjournment of the present legislature, if practicable. ('07 c. 408 § 2)

2335. **Terms of commissioners—Removal**—Of such three persons composing said commission, one shall be appointed and designated for a term ending Jan. 31st, 1909; one for a term ending Jan. 31st, 1911, and one for a term ending Jan. 31st, 1913, each of said periods and terms of office to begin upon the qualification of the person appointed therefor. Upon the expiration of the terms of the three commissioners first to be appointed as aforesaid, each succeeding commissioner shall be appointed and hold office for the term of six years, except in the case of a vacancy as hereinafter provided, and each commissioner shall hold office until his successor shall have been appointed and qualified. The governor shall have power to remove a commissioner for inefficiency, neglect of duty or malfeasance in office, but, before removal, the commissioner shall be furnished with a copy of the

charges against him, and have an opportunity to be heard in defense. ('07 c. 408 § 3)

2336. **Subsequent appointments—Vacancies**—After the appointment of said first three commissioners, or except when appointed to fill a vacancy, each commissioner shall be appointed on or before the last Monday in January next preceding the commencement of the term for which he shall be appointed. In case of a vacancy it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. Said appointment to be confirmed by the senate. If such appointment is made when the legislature is not in session, the appointee shall hold office until the first Monday in February during the next succeeding session of the legislature, when, if such appointment is not confirmed, the office shall become vacant, and on or before the last Monday in February in the same month, the governor by and with the advice and consent of the senate shall appoint a suitable person to fill such vacancy for the remainder of such term. ('07 c. 408 § 4)

2337. **Qualifications—To be nonpartisan**—The persons appointed to be members of such commission shall be such as are known to possess knowledge of and training in the subject of taxation and taxing laws, and skilled in matters pertaining thereto. So far as practicable, they shall be nonpartisan and shall be so selected that the commission will not be composed of more than two persons who are members of or affiliated with the same political party or organization. No person appointed a member of said commission shall hold any other office under the laws of this state, nor any office under the government of the United States or any other state. Each commissioner and each employé shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, engage in any occupation or business interfering with or inconsistent with his duties as such commissioner or employ, or serve on or under any committee of any political party or take part either directly or indirectly, in any political campaign in the interest of any political party or organization or candidate for office. ('07 c. 408 § 5)

2338. **Oath**—Each commissioner and employé shall, within thirty (30) days after notice of his appointment, and before entering upon the discharge of his duties, take, subscribe and file with the secretary of state the oath of office prescribed by the constitution of this state. ('07 c. 408 § 6)

2339. **Chairman—Salaries**—The member of said commission whose term of office expires Jan. 31st, 1909, shall be chairman of said commission during his term of office, and thereafter the member who has the shortest term of service shall be chairman during the remainder of his term. Each of the members of the said commission shall receive an annual salary of four thousand five hundred ($4,500) dollars in equal monthly installments in the same manner that other state salaries are paid. ('07 c. 408 § 7)

See § 294.

2340. **Quorum—Sessions**—The commission first appointed under this act, after having duly qualified, shall, without delay, meet at the capitol in St. Paul. A majority of said commission shall constitute a quorum for the transaction of the business and the performance of the duties of said commission. The said commission shall be in continuous session and open for the transaction of business every day, except Sundays and legal holidays, and the sessions of said commission shall stand and be deemed to be adjourned from day to day without formal entry thereof on its records. The commission may hold session in conducting investigation at any other place than the capitol when deemed necessary to facilitate and render more thorough the performance of its duties. ('07 c. 408 § 8)

2341. **Secretary and other employés—Salary and expenses—Duty of Secretary—Rules**—Said commission may appoint a secretary at a salary not to exceed twenty-four hundred dollars per annum, and such other experts, assistants and clerks, one of whom shall be stenographer, as may be necessary. Provided, however, that the total expense for such experts, assistants and clerks, exclusive of said secretary, shall not exceed six thousand dollars

per annum. And provided, further, that if it becomes necessary to employ experts, assistants and clerks beyond such as can be obtained for said sum of six thousand dollars, then said commission may, with the approval and consent of the governor, attorney general and state auditor, employ such additional assistants as may be necessary. The secretary of the commission shall keep full and correct minutes of all the testimony taken, hearings had and the proceedings of said commission, and shall perform such other duties as may be required by said commission. The said commission shall have power to make all necessary or needful rules consistent with the laws of this state for the orderly and successful performance of its duties and for conducting hearings and other proceedings before it. ('07 c. 408 § 9)

As to salary, see § 294.

2342. **Office supplies, etc.—Traveling expenses**—The commission shall be provided with suitable and necessary office furniture, supplies, stationery, books, periodicals, newspapers, maps and financial and commercial reports and all necessary expenses therefor shall be audited and paid as other expenses are audited and paid. The actual necessary expenses of the commission and its secretary, clerks and such experts and assistants as may be employed by said commission while traveling on the business of the commission shall be paid by the state, such expenditures to be sworn to by the party who incurred the expense and approved by the chairman of the commission or a majority thereof. ('07 c. 408 § 10)

2343. **Powers and duties**—It shall be the duty of the commission and it shall have power and authority:

(1) To have and exercise general supervision over the administration of the assessment and taxation laws of the state, over assessors, town, county and city boards of review and equalization and all other assessing officers in the performance of their duties to the end that all assessments of property be made relatively just and equal in compliance with the laws of the state.

(2) To confer with, advise and give the necessary instructions and directions to local assessors throughout the state as to their duties under the laws of the state, and to that end call meetings of local assessors of each county, to be held at the county seat of such county for the purpose of receiving necessary instruction from the commission as to the laws governing the assessment and taxation of all classes of property.

(3) To direct proceedings, action and prosecutions to be instituted to enforce the laws relating to the liability and punishment of public officers and officers and agents of corporations for failure or negligence to comply with the provisions of the laws of this state governing returns of assessment and taxation of property, and to cause complaints to be made against local assessors, members of board of equalization, members of boards of review or any other assessing or taxing officer, to the proper authority, for their removal from office for misconduct or negligence of duty. To require county attorneys to assist in the commencement of prosecutions in actions or proceedings for removal, forfeiture and punishment for violation of the laws of the state in respect to the assessment and taxation of property in their respective districts or counties.

(4) To require town, city, village, county and other public officers to report information as to the assessment of property, collection of taxes received from licenses and other sources, and such other information as may be needful in the work of the commission, in such form and upon such blanks as the commission may prescribe.

(5) To require individuals, co-partnerships, companies, associations and corporations to furnish information concerning their capital, funded or other debt, current assets and liabilities, earnings, operating expenses, taxes as well as all other statements now required by law for taxation purposes.

(6) To summon witnesses to appear and give testimony, and to produce books, records, papers and documents relating to any tax matter which the commission may have authority to investigate or determine.

(7) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken, upon notice to the interested party, if any, in like manner that depositions of witnesses are taken in civil action

in the district court in any matter which the commission may have authority to investigate or determine.

(8) One or more members of the commission shall officially visit at least one-half the counties of the state annually, and shall visit every county in the state at least once in two years and inquire into the methods of assessment and taxation and ascertain whether the assessors faithfully discharge their duties, particularly as to their compliance with this act requiring the assessment of all property not exempt from taxation.

(9) To investigate the tax laws of other states and countries and to formulate and submit to the legislature of the state such legislation as said commission may deem expedient to prevent evasions of assessment and taxing laws, and to secure just and equal taxation and improvement in the system of assessment and taxation in this state.

(10) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws in regard thereto, and the progress of the work of the commission, and to furnish the governor, from time to time, such assistance and information as he may require relating to tax matters.

(11) To transmit to the governor on or before the third Monday in December of each even numbered year, and to each member of the legislature on or before Jan. 1st, of each odd numbered year, the report of the commission for the preceding years, showing all the taxable property in the state and the value of the same, in tabulated form.

(12) To exercise and perform such further powers and duties as may be required or imposed upon the commission by law. ('07 c. 408 § 11)

Cited (103–485, 115+647).

2344. To have powers of state board of equalization—Meetings—Other powers and duties—The said Minnesota tax commission shall have and exercise all the rights, powers and authority by law vested in the state board of equalization, which said board of equalization is hereby continued, with full power and authority to review, modify and revise, all of the acts and proceedings of said commission in so far as they relate to the equalization and valuation of property assessed for taxation, as prescribed by section 863, Revised Laws of 1905 [2045], which state board of equalization shall meet on the second Tuesday in September of each year during its existence. The said Minnesota tax commission shall also have the following powers and duties:

(1) To require the auditor of each county in the state to file with the tax commission, on or before the fourth Monday in August each year, complete abstracts of all real and personal property in the county as equalized by the county board of equalization and itemized by assessment districts, said abstracts to be accompanied by a printed or typewritten copy of the proceedings of said county board of equalization, and it shall be the duty of the county auditor to so report to the tax commission.

(2) To appoint a special assessor and deputies under him and cause to be made in any year a reassessment of all or any real and personal property or either in any assessment district, when in the judgment of said commission such reassessment is desirable or necessary to the end that any and all property in such district shall be assessed equitably as compared with like property in the county wherein such district is situated.

(3) To require county auditor to carefully place upon the assessment rolls, omitted property which may be discovered to have for any reason escaped assessment and taxation in previous years.

(4) To receive complaints and to carefully examine into all cases where it is alleged that property subject to taxation has not been assessed or has been fraudulently or for any reason improperly or unequally assessed, or the law in any manner evaded or violated, and to cause to be instituted such proceedings as will remedy improper or negligent administration of the taxing of the state.

(5) To raise or lower the assessed valuation of any real or personal property, including the power to raise or lower the assessed valuation of the real or personal property of any individual, co-partnership, company, associa-

tion or corporation; provided, that before any such assessment against the property of any individual, co-partnership, company, association or corporation is so raised, notice of the intention of the commission to raise such assessed valuation and of the time and place at which a hearing thereon will be held shall be given to such person by mail addressed to him at his place of residence as the same appears upon the assessment book, at least five days before the day of such hearing. ('07 c. 408 § 12, amended '09 c. 294 §§ 1, 5)

1909 c. 294 § 6 repealed inconsistent acts, etc. Previously amended by 1909 c. 159 § 1. See note under § 2348.

Duties in general—The duties formerly imposed on the state auditor by R. L. § 801, in the matter of grievances, are imposed on the commission (103–485, 115+647).

The favorable recommendation of the county board and auditor is a condition precedent to favorable action by the commission on application for abatement of taxes on the ground of excessive valuation. The requirement of approval by the auditor applies to taxes lowered by the St. Paul board of abatement (103–485, 115+647).

2345. **Record of proceedings changing assessed valuation—Duty of county auditor**—A record of all proceedings of the Minnesota tax commission affecting any change in the assessed valuation of any property, as revised by the state board of equalization, shall be kept by the secretary of the commission and a copy thereof duly certified shall be mailed to the county auditor of each county wherein such property is situated. Which record shall specify the amounts or amount, or both, 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, also the per cent or amount of both, added to or deducted from the several classes of personal property in each of the towns, villages and cities, and also the amount added to or deducted from the assessments of individuals, co-partnerships, associations or corporations. The county auditor shall add to or deduct from such tract or lot or portion thereof, of any real property in his county the required per cent or amount, or both, on the valuation thereof as it stood after equalized by the county board, adding in each case a fractional sum of fifty cents or more, and deducting in each case any fractional sum of less than fifty cents, so that no valuation of any separate tract or lot shall contain any 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 or amount, or both, on the valuation thereof as it stood after equalized 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 or deduct from assessments of individuals, co-partnerships, associations or corporations, as they stood after equalization by the county board, the required amounts to agree with the assessments as returned by the Minnesota tax commission. ('07 c. 408 § 13)

2346. **County auditor to calculate tax rate**—The county auditor shall calculate the rate per cent necessary to raise the required amount of the various taxes on the assessed valuation of all property as returned by the Minnesota tax commission. ('07 c. 408 § 14)

2347. **Witnesses, how sworn—Failure to testify or produce**—Oaths to witnesses in any matter under the investigation or consideration of the commission may be administered by the secretary of the commission or any member thereof. In case any witness shall fail to obey any summons or appear before said commission, or shall refuse to testify or answer any material questions or to produce records, books, papers or documents when required so to do, such failure or refusal shall be reported to the attorney general, who shall thereupon proceed in the proper court to compel obedience to any summons or order of the commission, or to punish witnesses for any such neglect or refusal. ('07 c. 408 § 15)

2348. **Property omitted or undervalued—Reassessment**—Whenever it shall be made to appear to the Minnesota tax commission by verified complaint or by the finding of a court or of the legislature or either body of the same, or any committee thereof, that any considerable amount of property has been improperly omitted from the tax list or assessment roll of any district or county for any year, or, if assessed, that the same has been under-

valued or overvalued, as compared with like property in the same county or in the state so that the assessment for such year in such district or county is grossly unfair and inequitable, whether or not the same has been equalized by the county board of equalization or the tax commission, the said commission shall examine into the facts in said matter and if satisfied therefrom that it would be for the best interests of the state that a reassessment of such property be made, they shall appoint a special assessor and such deputy assessors as may be necessary and cause a reassessment to be made of all or any of the real and personal property or either in any such district or county as they may deem best to the end that all property in such district or county shall be assessed equitably as compared with like property in such district and county. ('07 c. 408 § 16, amended '09 c. 294 § 2)

Historical—By 1907 c. 408 § 16 it was provided that the terms of office of the state board of equalization should end January 31, 1909, and that thereupon such board should cease to exist and be discontinued, and all the powers and duties vested in such board should devolve upon and be exercised by the commission.

The above section supersedes 1909 c. 159 § 3.

2349. Qualification of assessors—Reassessment, how made—Grievances—Appeals—Such special assessors and deputies shall be citizens of the state of Minnesota but need not be residents of the county or district wherein such reassessment is so made. Every special assessor and deputy appointed under the provisions of this act shall subscribe and file with said commission his oath to faithfully and fairly perform the duties of his office. Such special assessor assisted by his deputies shall thereupon proceed to carefully examine and reassess the property so to be reassessed, and shall prepare duplicate lists of such reassessment in such form as the commission may prescribe, showing the property or person so reassessed, the amount of the original assessment thereof made in such year, and opposite the same the reassessment so made by such special assessor. He shall file both copies of such list with the said commission. The said commission shall thereupon examine, equalize and correct such reassessment so as to substantially conform with the assessment of like property throughout the state; and shall transmit to the county auditor of the county wherein such reassessment was so made one copy of such reassessment by them so corrected and equalized. Such list shall for all purposes supersede and be in place of the original assessment made for such year upon such property, and the county auditor upon receipt thereof shall extend and levy against said property so reassessed the taxes thereon for such year according to such reassessment in the same manner as though such list was the original assessment list of such property. Any person feeling himself aggrieved by an assessment so made against him or upon any property at that time owned by him may appeal therefrom to the district court of the county in which such assessment is made. To render such appeal effective for any purpose, the appellant shall file a notice of such appeal with the county auditor of such county within thirty days after the making of such assessment, which notice shall specify the ground upon which such appeal was taken and no other or different service shall be required to perfect such appeal. Upon the filing of such notice the county auditor shall make and file in the office of the clerk of such district court a certified copy of such notice and of the particular assessment appealed from, and shall also notify the county attorney of such county of the pendency of such appeal. Thereupon the said district court shall be deemed to have acquired jurisdiction of such matter and shall proceed to hear and determine same in like manner as other tax matters are tried and determined in the district courts of this state. The county attorney of said county shall appear for and defend the interests of the state in such matter. ('09 c. 294 § 3)

2350. Compensation of special assessors—The compensation of each special assessor and of his deputies appointed under the provisions of this act and his expenses as such shall be fixed and determined by the Minnesota tax commission and by them certified to the state auditor and 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, where-

upon such county auditor shall levy a tax upon the taxable property in the assessment district or districts wherein such reassessment was made 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. ('09 c. 294 § 4)

CHAPTER 12

MILITARY CODE

MILITIA

2351. 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. (1039)

2352. 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. (1040)

2353. 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. (1041)

2354. 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. (1042)

2355. Information required—Penalties—Every householder shall disclose, upon the application of assessors and enumerators authorized to make such enrolment, the names of all militiamen residing in his house; and every person, upon like application, shall give his name, age, and address. Every person who shall wilfully refuse such information, or give false answers to the proper inquiries of any such enrolling officer, and every enrolling officer