

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the
Legislature, both new and amendatory, and notes showing repeals,
together with annotations from the various courts, state
and federal, construing the constitution, statutes,
charters and court rules of Minnesota



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A bank cannot pledge a customer's notes to secure public deposits. Op. Atty. Gen., June 11, 1931.

There is no statute regarding depositories which is applicable to the City of Marshall. Op. Atty. Gen., June 18, 1931.

§1973-6. Depositories—Bank delinquent in payment of taxes on stock shares.

This statute is still in force. Op. Atty. Gen., May 29, 1930.

§1973-8. Certain banks may be depositories.—In every case where a bank which is eligible under the provisions of General Laws 1927, Chapter 381 [Mason's Minn. St., 1927, §1973-6], merges or consolidates with another bank under the charter of either, such consolidated bank shall, so long as all taxes levied and assessed against its shares under the laws of this state subsequent to such consolidation are paid as required by law, be

eligible to receive deposits of public moneys under said act. (Act Apr. 19, 1929, c. 262.)

§1973-9. Treasurer to be reimbursed for losses.—Where the treasurer of any town, village or city of the fourth class has or shall hereafter reimburse such town, village or city for loss of funds of the town, village or city on deposit in any bank which has or may become insolvent, such town, village or city shall reimburse said treasurer for the money so paid when a majority of the electors voting thereon at the annual town meeting or at any regular or special village or city election vote so to do; provided, that the notice of such annual meeting or election shall specify that such matter will be considered thereat. (Laws 1931, c. 35, as amended by act Apr. 20, 1931, c. 279.)

Supersedes Laws 1929, c. 133, limited to town treasurers.

CHAPTER 11

Taxes

Laws 1929, c. 38, creates a bank tax commission to study question of national bank taxation and to report at next session of legislature. Laws 1931, c. 275, continues the commission to the end of the 1933 session.

Laws 1931, c. 303, authorizes the tax commission to compromise taxes assessed against shareholders of national banks. See, also, Res. No. 8, Laws 1931, p. 627.

GENERAL PROVISIONS

§1974. Property subject to taxation.

1. General rules.

City of Mankato could not enact an ordinance requiring one starting a new mercantile business to post a bond conditioned that if the concern does not stay in business for more than one year, the amount thereof should be forfeited to the City in liquidation of personal property taxes, license, etc. Op. Atty. Gen., Mar. 27, 1931.

§1975. Property exempt.

Farm lands acquired by state through foreclosure of mortgages are not subject to taxation. State, Appeal of, 234M691. See Dun. Dig. 9151a.

The courts cannot acquire jurisdiction in proceedings to enforce taxes over state property. State, Appeal of, 234NW691. See Dun. Dig. 9151a.

In the absence of express law so declaring, property of the state is not subject to taxation. State, Appeal of, 234NW691. See Dun. Dig. 9151a.

Where city acquired land for airport pursuant to condemnation proceedings on Dec. 26, 1929, it was subject to 1929 levy of taxes which was spread on the books prior to that date. Op. Atty. Gen., Mar. 4, 1931.

A municipal golf course purchased by a city on Jan. 3, 1931, is exempt from taxation for 1931 and subsequent years, assuming that it is without unreasonable delay devoted to the purpose for which purchased. Op. Atty. Gen., Mar. 4, 1931.

Land owned and used by Boy Scouts is not exempt from taxation. Op. Atty. Gen., Aug. 11, 1930.

Property of Young Men's Christian Association used for boys' camp is not exempt from taxation. Op. Atty. Gen., Aug. 11, 1930.

Property purchased by an institution under a contract for a deed is not exempt from taxation. Op. Atty. Gen., July 20, 1931.

§1977. Real property.

Taxes on real estate are enforceable only against the land and cannot be enforced against the land owner personally. 172M567, 216NW 250.

§1978. Mineral, gas, coal, oil, etc.

Interests or estates in lands may be segregated and taxed separately. 172M263, 271, 273, 215NW71, 180, 181.

§1979. Personal property.

Pipe lines of companies transporting gasoline, running through the property of others under an easement, are personal property and should be taxed as such. Op. Atty. Gen., May 26, 1931.

§1980. Other definitions.

174M509, 219NW872.

§1983. Powers of tax commission.

There can be no refundment of a tax paid under this act except by application to the tax commission under §1983. Op. Atty. Gen., April 28, 1930.

Where state lands were sold and school or swamp land certificates issued, and lands were placed on tax list and then sold for delinquent taxes, and petitioners purchased at the tax judgment sale or took assignments from the estate, and original purchaser of lands failed to live up to the terms of his contract, petitioners were not entitled to a refund. Op. Atty. Gen., Feb. 2, 1931.

State tax commission has authority to order a refundment of any excess of interest paid on a ditch assessment if approved by the county board. Op. Atty. Gen., July 2, 1931.

LISTING AND ASSESSMENT

§1984. Time.

Hogs purchased and acquired by a packing plant on May 1st shall be included in the personal property tax return, and not only those held over from the evening of April 30th. Op. Atty. Gen., July 15, 1931.

§1985. Omitted property.

Statement of the taxes due on omitted property in a gross sum for a number of years in the published delinquent tax list was not a jurisdictional defect; but interest and penalties should not be added to the amount where the

taxpayer was deprived of opportunity to pay the taxes. Op. Atty. Gen., June 12, 1930.

§1988. Deputy assessors.

Under this section a city operating under a special charter may appoint a deputy assessor, and fix his compensation at an amount not exceeding that of the assessor; and a provision in such charter that no law of the state shall be considered as repealing any of its provisions does not prevent that result. Op. Atty. Gen., Feb. 25, 1930.

Deputy or assistant assessor is a village officer or employee, and his compensation may be fixed by the body empowered to fix the compensation of the assessor. Op. Atty. Gen., June 20, 1931.

§1990. Assessor's duties.

174M509, 219NW872.

1. Assessments, when and how made.

It is the duty of an assessor to perform work which arises after his books have been sent in, though there is no provision for compensation therefor. Op. Atty. Gen., Feb. 6, 1930.

§1992. Valuation of property.

Valuation for taxation of certain unimproved lands as reduced by the court, held sustained by evidence. 175M478, 221NW725.

In determining the true and full value of real property for assessment purposes, the ordinary market value must control. In re Potlach Timber Co., 160 Minn. 209, 199NW968, followed. State v. Russel-Miller Milling Co., 235NW22. See Dun. Dig. 9210(39).

Overcapacity of a packing plant and consequent increased expense of operation are proper elements for consideration in arriving at the full and true value of such plant for taxation. State ex rel., City of So. St. Paul v. McNiven, et al., 237NW410. See Dun. Dig. 9210.

Cubic foot method of valuation of buildings is a general rule which must, in particular cases, be modified where it appears that its strict application reaches a result grossly in excess of the actual sale value of the property. Op. Atty. Gen., April 28, 1931.

Values of small mills have become much less and will remain so permanently and this should be taken into consideration by the assessor. Op. Atty. Gen., April 28, 1931.

§1992-1. Assessment of real property.—It shall be the duty of every assessor and board, in determining the value of lands for the purpose of taxation and in fixing the assessed value thereof, to consider and give due weight to every element and factor affecting the market value thereof, including its location with reference to roads and streets and the location of roads or streets thereon or over the same, and to take into consideration a reduction in the acreage of each tract or lot sufficient to cover the amount of land actually used for any improved public highway and the reduction in area of land caused thereby. (As amended Apr. 20, 1931, c. 224, §1.)

§1993. Classification of property.

172M263, 271, 273, 215NW71, 180, 181; notes under §1978.

174M509, 219NW872.

§1996. Lessees and equitable owners.

Upon railroad company contracting to sell land, it becomes subject to taxation as other real estate is taxed, and the amount of such taxes should be determined by assessment of the land at its full value as other land is assessed. Op. Atty. Gen., June 17, 1931.

LISTING PERSONAL PROPERTY

§2003. Personalty—Where listed.

An aeroplane is taxable as personal property

at the place of the residence of the owner, unless he is a merchant or a manufacturer thereof. Op. Atty. Gen., Mar. 30, 1931.

Pipe lines of companies transporting gasoline, running through the property of others under an easement, are personal property and should be taxed as such. Op. Atty. Gen., May 26, 1931.

§2005. Merchants and manufacturers.

If a person is engaged in the manufacture of aeroplanes, the plane would be taxable where the manufacturing business is carried on. Op. Atty. Gen., Mar. 30, 1931.

If aeroplanes are kept for sale by a person who would come within the definition of a merchant, they would be taxable at the place where such business is conducted. Op. Atty. Gen., Mar. 30, 1931.

§2009. Express companies, etc.

Companies transporting gasoline through pipe lines are "transportation companies" as used in this section, and its pipe lines and other personal property should be assessed in the taxing district where it is actually located, or where it is kept, regardless of the principal place of business of the company or the corporation. Op. Atty. Gen., May 26, 1931.

STATEMENTS BY CORPORATIONS, ETC.

§2026-1. Assessment of bank and mortgage loan company stocks, etc.

The First Bank Stock Corporation and the Northwest Bancorporation are not "banks" or "mortgage loan companies" within statutes providing method for taxation of banks. Op. Atty. Gen., Aug. 29, 1930.

§2029-5. Same—Apportionment of taxes.

The First Bank Stock Corporation and the Northwest Bancorporation are not "banks" or "mortgage loan companies" within statutes providing method for taxation of banks. Op. Atty. Gen., Aug. 29, 1930.

REVIEW AND CORRECTION OF ASSESSMENTS

§2034. Board of review.

174M509, 219NW872.

§2037. Assessor's return to auditor.

174M509, 219NW872.

EQUALIZATION OF ASSESSMENTS

§2049. County board of equalization.

174M509, 219NW872.

LEVY AND EXTENSION

§2057-2. Limit of tax levy in certain counties.—In all counties in this state now or hereafter having property of an assessed valuation of not less than \$175,000,000, exclusive of moneys and credits and having 96% or more of the assessed valuation of all property for taxation exclusive of moneys and credits in said counties now or hereafter located within the limits of incorporated cities, the County Board may levy a tax of not to exceed two and three-fifths mills on the dollar of the taxable valuation of such county, exclusive of moneys and credits, for the County Road and Bridge Fund, which said two and three-fifths mills shall not include interest, sinking fund, and redemption charges on all county road and bridge bonds outstanding. (Act Mar. 30, 1929, c. 115, §1.)

§2057-3. County Board to fix levy.—The County Board at its July meeting may include in its annual tax levy an amount not to ex-

ceed two and three-fifths mills on the dollar of the taxable valuation of such counties for the County Road and Bridge Fund, exclusive of interest and redemption charges on all road and bridge bonds outstanding which said amount may be in addition to the amount permitted by law to be levied for other county purposes. (Act Mar. 30, 1929, c. 115, §2.)

§2058. City, village, town, and school taxes.

Injunction does not lie against a municipality and its officers to restrain enforcement of special assessments after they are certified to county auditor. 176M76, 222NW518.

§2058-1. Salaries of members of board of estimate and taxation.—That the salary and compensation of each member of the Board of Estimate and Taxation in each city in Minnesota now or hereafter having over 50,000 inhabitants, whose salary and compensation as an officer or employee of the city is less than \$2500.00 per annum, be and is hereby fixed at and shall be \$10.00 per day for each day of attendance at the meetings of the board, provided that the total amount of such compensation shall not exceed \$500.00 in any one year, and provided that the combined salary of such member as an officer or employee of the city and as member of the Board or Estimate and Taxation shall not exceed \$2500.00 in any one year. (Act Apr. 15, 1931, c. 162, §1.)

§2060. Rate of levy.

Maximum levy for road and bridge purposes is governed by §2573, and not §2060 or §2067. Op. Atty. Gen., Nov. 19, 1929.

Moneys and credits should be excluded in calculating the amount of tax which may be levied. Op. Atty. Gen., Feb. 6, 1930, July 3, 1930.

County board may not levy at a rate which will actually produce \$40,000.00 (after making allowances for delinquencies), but merely at a rate which when applied to the last assessed valuable would equal \$40,000.00. Op. Atty. Gen., Mar. 11, 1931.

Money received from insurance on old courthouse building, burned, may be set aside for a building fund in the general revenue fund, and this will have no bearing upon the county's right to levy five mills for general revenue purposes. Op. Atty. Gen., July 13, 1931.

§2060-1. Rate of tax levy in counties, etc.

Levy for tuberculin test under §5416 is not subject to the seven mill limit. Op. Atty. Gen., May 31, 1930.

§2060-2. Rate of tax levy in towns.

Op. Atty. Gen., Nov. 21, 1929; note under §1006.

§2061. Tax levy for general purposes limited.—The total amount of taxes levied in the year 1921 and in each year thereafter, by or for any city or village, for any and all general and special purposes whatsoever, exclusive of taxes levied for special assessments for local improvements on property specially benefited thereby, shall not exceed one hundred dollars per capita of the population of such city or village; provided that in the years 1930 and 1931 such total levy shall not exceed eighty dollars per capita of the population of such city or village, in the year 1932 such total levy shall not exceed seventy-five dollars per capita of the population of such city or village, and in the year 1933 and in each year thereafter such total levy shall

not exceed seventy dollars per capita of the population of such city or village.

Provided that if prior to the calendar year 1929 any such city or village has incurred by proper authority a valid indebtedness, including bonds, in excess of its cash on hand, plus any amount in any sinking fund, such city or village, within, but not above, the limits now permitted by law, in addition to the foregoing, may levy sufficient amounts to pay and discharge such excess indebtedness, bonds and interest thereon; but any such additional sums so levied shall be separately levied, and, when collected, shall be paid into a separate fund and used only for the purpose of paying such excess indebtedness, bonds and interest thereon; provided further, that nothing in this section, as amended, shall be construed to affect or limit levies heretofore or hereafter made pursuant to Section 3 [Mason's Minn. St., 1927, §2063] of the original act for the retirement of indebtedness incurred prior to April 21, 1921, within the limits then permitted by law. (As amended Apr. 16, 1929, c. 206, §1.)

Laws 1929, cc. 208, 303, relating to certain villages, are valid. 227M41, 227NW202.

§2062. Tax levy for schools limited.

Tax limit herein applies to school district organized under Laws 1903, c. 289. Op. Atty. Gen., Nov. 18, 1929.

§2066-1. Issue of municipal warrants limited.—That from and after January 1, 1930, no city or village in the State of Minnesota wherein the tax levied in the year 1928 exceeded \$100.00 per capita of the population, as defined by Chapter 417, General Laws 1921 [§2061, herein, and §§2062 to 2066, Mason's Minn. St., 1927], shall draw any order or warrant on any fund until there is sufficient money in such fund to pay the same, together with all orders previously issued against said fund. (Act Apr. 16, 1929, c. 208, §1.)

Is not invalid as special law. 178M337, 227NW41.

§2066-2. Board not to create indebtedness.—Whenever the expense and obligations incurred chargeable to any particular fund of such city or village in any calendar year are sufficient to absorb 85 per cent of the entire amount of the tax levy payable in that year, including such amount as may remain in the fund from the levy of any prior year or years, no officer, board or official body of such city or village shall have the power and no power shall exist to create any additional indebtedness (save as the remaining 15 per cent of said tax levy is collected) which shall be a charge against that particular fund, or shall be in any manner a valid claim against such city or village, but such additional indebtedness attempted to be created shall be a personal claim against the officer or members of the municipal board or body voting for or attempting to create the same. (Act Apr. 16, 1929, c. 208, §2.)

This section was intended to go into effect at once and govern the obligations and expenditures of a village during the calendar year of 1929, and any expenditures incurred during that year must not exceed the sum that could be paid out of the 1928 tax levy received by the village during 1929, and any indebtedness in ex-

cess of such sums was invalid. Op. Atty. Gen., Aug. 23, 1930.

§2066-3. Tax receipts to be used for paying indebtedness—Exceptions.—That all moneys received from taxes levied in the year 1928 and payable in the year 1929 in any such city or village shall be placed in a separate fund or funds and used only for the purpose of paying obligations incurred during the calendar year 1929 and interest thereon, and for payment of bonds and interest thereon which shall mature and become due in said year; that the amount which any such city or village shall have the right to levy pursuant to Chapter 417, General Laws 1921, as amended [§2061 herein, and §§2062 to 2066 Mason's Minn. St., 1927], over and above the amounts therein authorized to be levied for any and all general and specific purposes, for the purpose of paying indebtedness existing on January 1, 1929, as defined in said Chapter 417, General Laws 1921, as amended, shall be used for the purpose of paying such indebtedness and the interest accruing thereon, and the remaining part of such levy shall be paid into a separate fund or funds and used only for the purpose of paying obligations incurred against or payable from such fund or funds in the year immediately succeeding the making of such levy, and any balance remaining at the end of any such year may be used in later years in addition to the taxes levied for such year or years, provided that if any such city or village have any bonds issued for indebtedness incurred subsequent to April 21, 1921, and prior to the year 1929, which mature and become payable in the year 1930, such bonds and interest and interest payments on other bonds so issued shall be paid from taxes levied in the year 1929. (Act Apr. 16, 1929, c. 208, §3.)

§2066-4. May sell certificates of indebtedness.—At any time after the annual tax levy has been certified to the county auditor and not earlier than October 10, in any year, the governing body of such city or village may, by resolution issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes so levied for any fund named in said tax levy for the purpose of raising money for any such fund, but no certificate shall be issued for any of said separate funds exceeding 50 per cent of the amount named in said tax levy, as spread by the county auditor, to be collected for the use and benefit of said fund, and no certificate shall be issued to become due and payable later than December 31 of the year succeeding the year in which said tax levy, certified to the county auditor as aforesaid, was made, and said certificates shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than six per cent per annum; each certificate shall state upon its face for which fund the proceeds of said certificates shall be used, the total amount of said certificates so issued, and the whole amount embraced in said tax levy for that particular purpose. They shall be numbered consecutively and be in the denominations of \$100.00 or a multiple thereof and may have interest coupons attached and shall be otherwise of such form and terms and may be made payable at such place as will best aid

in their negotiation, and the proceeds of the tax assessed and collected, as aforesaid, on account of said fund, and the faith and credit of such city or village shall be irrevocably pledged for the redemption of the certificates so issued. Such certificates shall be paid from the moneys derived from the levy for the year against which such certificates were issued. The money derived from the sale of said certificates shall be credited to such fund or funds for the calendar year immediately succeeding the making of such levy. No certificates for any year shall be issued until all certificates for prior years have been paid, except that any money derived from the sale of certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year, nor shall any certificate be extended. (Act Apr. 16, 1929, c. 208, §4.)

§2066-5. Bonds may be issued to fund indebtedness.—For the purpose only of paying and discharging its valid indebtedness (except bonds) which existed January 1, 1929, and interest thereon until paid, such city or village may issue its bonds in the manner now provided by law, except that such bonds may be issued on a vote of the council thereof without a vote of the electors; provided that if any moneys received from taxes levied in 1928 and payable in 1929 or income from local sources received since January 1, 1929, have been used prior to the passage of this act for the retirement of indebtedness existing January 1, 1929, such bond issue may include the amount of such payments for the purpose of reimbursing the funds from which such moneys were so paid. (Act Apr. 16, 1929, c. 208, §5.)

§2066-6. This act shall take effect and be in force from and after its passage and all acts and parts of acts inconsistent herewith are hereby repealed and declared of no effect insofar as they may be inconsistent with this act. (Act Apr. 16, 1929, c. 208, §6.)

Laws 1931, c. 270, authorizes counties with assessed valuation of \$10,000,000 to \$12,000,000, and population of 25,000 to 30,000, and land area less than 625,000, to levy in excess of limitations to retire obligations against ditch fund.

§2067. Same.

Maximum levy for road and bridge purposes is governed by §2573, and not §2060 or §2067. Op. Atty. Gen., Nov. 19, 1929.

§2068-3. Certain cities may issue bonds to pay outstanding indebtedness.—The governing body of any city of the fourth class now or hereafter organized and operating under a Home Rule Charter adopted pursuant to Section 36, Article 4, of the Constitution of this State, and which said Charter provides that the annual tax levy upon all the property in said city shall not exceed 20 mills, may, notwithstanding said maximum of annual tax levy, levy not to exceed ten mills annually in addition to said 20 mills for the purpose of creating a fund with which to retire outstanding bonds of any such city prior to July 1, 1929, or any refundment of such bonds. All moneys derived from any such additional levy shall be used only for the purpose of retiring such bonds of any such city. (As amended Apr. 23, 1929, c. 292.)

§2070. Contracts in excess void—Liability of officers.

173M350, 217NW371.

Cited to the point that Laws 1927, c. 147, is valid. 171M312, 213NW914.

Contracts for grading roads are void if overdrafts on road and bridge fund would require levy of prohibited tax. Op. Atty. Gen., May 6, 1929.

§2073. Abstract to state auditor.

174M509, 219NW872.

§2073-1. Publication of Personal Property tax lists, etc.

That part of the current personal property tax list which pertains to personal property within the city of St. Cloud must be published in a St. Cloud newspaper, though such newspaper is located in another county. Op. Atty. Gen., Jan. 15, 1930.

County board has no authority to contract for printing under this section. Op. Atty. Gen., June 3, 1930.

COLLECTION BY TREASURER

§2075. Treasurer to be collector.

Error of county treasurer in crediting taxes on wrong land cannot defeat the payment of such taxes, and the records may be corrected. Op. Atty. Gen., June 10, 1931.

§2080. Undivided interest—Payment and receipt.

June 1, 1931; note under Laws 1931, c. 129, §1. Op. Atty. Gen., June 1, 1931.

ACCOUNTING AND DISTRIBUTION OF FUNDS

§2082. Settlement between auditor and treasurer.

Where May 31st falls on Sunday, settlement may be made as of June 1st. Op. Atty. Gen., April 23, 1931.

§2086. Distribution of interest, penalties and costs.

City of Mankato is entitled to a distribution of all penalties and interest accruing upon special assessments for local purposes on real estate in that city, which penalties and interest were collected by the county treasurer. Op. Atty. Gen., June 30, 1931.

§2087. Collected costs to be credited to county revenue fund.

County cannot deduct expenses of collecting tax before distribution to state, city school district and county. Op. Atty. Gen., Sept. 28, 1929.

Op. Atty. Gen., June 30, 1931; note under §2086.

DELINQUENT PERSONAL PROPERTY TAXES

§2089. Treasurer to file delinquent list in court.—Answer—Trial.

County cannot turn over uncollected personal property taxes to a collection agency or private attorney on a salary or commission basis. Op. Atty. Gen., Aug. 20, 1929.

§2098. Sheriff's fees.

Sheriff who has collected personal property tax under §2029 may add thereto, mileage at the rate of ten cents per mile, as Laws 1931, c. 331, ante, §§254-47, 254-48, does not limit amount which any public officer may charge to an individual as fees or mileage. Op. Atty. Gen., June 8, 1931.

§2101. Docketing judgment.

Personal property tax judgments may not be assigned or sold. Op. Atty. Gen., Mar. 11, 1931.

DELINQUENT REAL ESTATE TAXES

§2104. Penalties on real estate taxes.—On June 1 of each year a penalty of four 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 thereafter on the first day of each month, up to and including October 1 following, an additional penalty of one per cent for each month shall accrue and be charged on all such unpaid taxes. When the taxes against any tract or lot exceed one dollar, one-half thereof may be paid prior to June 1st, and if so paid no penalty shall attach; the remaining one-half shall be paid at any time prior to November 1st following without penalty, but if not so paid then a penalty of eight per cent shall accrue thereon. If one-half such taxes shall not be paid prior to June 1st the same may be paid at any time prior to November 1st with accrued penalties to the date of payment added, and thereupon no penalty shall attach to the remaining one-half until November 1 following. Where the taxes delinquent after November 1 against any tract or parcel exceeds \$100.00, the same may be paid in installments of not less than 25 per cent thereof, together with all accrued penalties and costs, up to the time of the next tax judgment sale, and after such payment, penalties, interest and costs shall accrue only on the sum remaining unpaid. Any county treasurer who shall make out and deliver or countersign any receipt for any such taxes without including all of the foregoing penalties therein, shall be liable to the county for the amount of such penalties. (As amended Apr. 24, 1931, c. 316, §1.)

Where May 30th is a holiday and May 31st falls on Sunday, first half of taxes may be paid on June 1st, without penalty. Op. Atty. Gen., April 23, 1931.

Amount collected under Section 2204 may be applied upon delinquent taxes even though not sufficient to discharge in full, any one year's taxes. Op. Atty. Gen., May 16, 1931.

In the event the first half of the taxes was not paid prior to June 1st, the 5% penalty under the old law and the 4% penalty under the new law attached only. Op. Atty. Gen., June 1st, 1931.

§2104-1. Penalties and interest in certain cases.—The County Auditor and Treasurer of each county in this state are hereby authorized and directed to certify and accept, in part or in full payment and discharge of all real estate taxes and assessments of every kind on any parcel of land which became delinquent prior to the year 1928 and which are held by the state, an amount equal to such taxes and assessments as originally assessed and taxed, without penalty or interest at any time before January 1st, 1930, but no such part payment shall be accepted for less than one year's taxes at any one time; nor shall payment of the amount of a judgment for delinquent taxes, nor of the amount for which a parcel was bid in for the state pursuant thereto, be accepted unless all subsequent delinquent taxes for 1925 and prior years on the parcel are also paid; and, if all prior delinquent

taxes and assessments held by the state have been paid or discharged, they may within such period accept in payment and discharge of taxes and assessments for 1926, 1927 and 1928 the amounts thereof as originally assessed and taxed, without penalty or interest; provided, further, the authority granted to the County Auditor and Treasurer by this act to waive penalties and interest shall not exist before July 1, 1929, and, if before that date the County Board as to general taxes or ditch or road liens, or the governing body of the town or municipality interested, as to other special assessments, shall have adopted a resolution, and filed a certified copy thereof with the County Auditor, fixing a minimum amount of such accrued interest and penalties which shall be accepted, the terms of such resolution shall control with respect thereto. (Laws 1929, c. 117, as amended by Act Apr. 27, 1929, c. 415, §4.)

When taxes payable for 1926, 1927 and 1928 without interest or penalties. 178M404, 227NW209.

This section continued only until and including Dec. 31, 1929, and thereafter it was of no effect. Op. Atty. Gen., Aug. 16, 1929.

§2105. 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 received 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 three 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. (As amended Apr. 24, 1931, c. 316, §2.)

§2105-1. Rate of interest on delinquent taxes.—The rate of interest on delinquent real estate taxes levied in the year 1930 and subsequent years in hereby fixed at ten per cent per annum. All provisions of law providing for the calculation of interest at any different rate on delinquent taxes in any notice or proceeding in connection with the payment, collection, sale, or assignment of delinquent taxes, or the redemption from such sale or assignment are hereby amended to correspond herewith. Provided, that in calculating such interest for any fractional part of a year it shall be calculated on the basis of five-sixths of one per cent for any month or major fraction thereof. (Act Apr. 24, 1931, c. 315.)

This statute applies to taxes levied in 1930, which become due and payable in 1931, and which will become delinquent in 1932, and has no reference for taxes for 1929. Op. Atty. Gen., May 8, 1931.

No interest is charged except for a major fraction of a month. Op. Atty. Gen., May 8, 1931.

Provisions as to ten per cent interest on delinquent real estate taxes applies to taxes levied in 1930, which become due and payable in 1931, and which become delinquent in 1932, and do not apply to taxes for 1929, which became payable in 1930. Op. Atty. Gen., May 8, 1931.

§2106. Delinquent list—Filing—Effect.

174M431, 219NW545; notes under §§2128, 2129, 2177.

§2108. Bids for publication.

The notice provided for herein need not be published in the official newspaper. Op. Atty. Gen., Feb. 13, 1930.

Contract for printing tax list must be special and not confused with contract to do general county printing. Op. Atty. Gen., June 3, 1930.

§2118. Proceedings on answer.

Town may not employ attorney to appear in proceeding to enforce payment of delinquent real estate taxes wherein taxpayers are seeking reduction of valuations. Op. Atty. Gen., Oct. 1, 1930.

§2120. Application for judgment.

In proceedings to enforce the payment of taxes delinquent upon real estate, only the defenses specified in the statute can be interposed against assessments for the construction of ditches. 175M206, 220NW608.

Claims that the construction of roads, bridges, and culverts was improperly included in the drainage project, that unauthorized changes and extensions were made in the ditch, that benefited lands were not assessed, that contracts were let without advertising for bids, and that the work was not performed as required by the contract, must be asserted in the drainage proceedings and cannot be interposed as a defense to proceedings to collect assessments. 175M206, 220NW608.

TAX SALES

§2127. Mode of sale.

Effect of Laws 1929, c. 415, post, §§2138, 2139, 2139-2, ante, §2104-1, determined. Op. Atty. Gen., July 20, 1929.

§2128. Public vendue.

6. Caveat emptor—The doctrine of caveat emptor applies to purchasers at tax sales. 174M431, 219NW545.

§2129. Certificate of sale.

11. Prior taxes—Lands bid in by the state and not assigned by it or redeemed are not to be placed on the delinquent tax list for subsequent taxes, and certificates obtained at later sale are invalid. 174M431, 219NW545.

§2130. Who may purchase.

Purchase by mortgagor, through third person, to defeat lien of mortgage. 180M480, 231NW224.

§2131. Who may not purchase or take assignment.

After purchasing taxes for 1925, and prior years, at forfeited tax sale, the same person may take an assignment from the county auditor of the taxes for later years under the regular assignment statute, in which case he would have two separate and distinct tax titles. Op. Atty. Gen., Sept. 5, 1930.

§2136. Payment of subsequent taxes.—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 the annual May sale following the date they become delinquent. Any such purchaser or assignee paying such taxes shall, if he be the owner of

a prior certificate of sale notify the county auditor prior to the annual May sale that he is the owner of a tax certificate and such notice shall contain a description of the property for which such certificate was issued together with the year of sale, thereupon the county auditor shall issue the said certificate or a certificate for said taxes in the same form as now provided by section 2129, Mason's Minnesota Statutes of 1927, such certificate shall bear interest at the rate provided by section 2128, Mason's Minnesota Statutes 1927, and acts amendatory thereof unless said prior certificate bears a lower rate of interest, in that case such lower rate shall apply provided, however that if there shall have been any parcel redemption under sections 2158, 2159, and 2160 of this chapter, or otherwise, then he shall pay the delinquent taxes on the unredeemed portion of the land described in his tax certificate, and such tax certificate after such parcel redemption, shall be applicable to such unredeemed portion of the land therein described only, in all respects as if a portion of the land unredeemed from had been all of the land described in said certificate at the time of its issuance, and all proceedings thereafter had as to notice of expiration of redemption and otherwise, shall be as to said certificate so modified by the elimination therefrom of the portion of the land redeemed from as aforesaid. (As amended Apr. 25, 1931, c. 412.)

When taxes for 1926, 1927 and 1928 are payable without interest or penalties under Laws 1929, c. 415, §4, ante §2104-1. 178M404, 227NW 209.

§2137. Lands bid in for state.

2. Contents.

Tax title held void for failure to include in state assignment certificate and notice of amount required to redeem of correct amount of delinquent taxes subsequent to those covered by the certificate on which the notice was issued. Warroad Co-op Creamery Co. v. H., 233NW824. See Dunn. Dig. 9391(16).

4. Purchaser must pay subsequent delinquent taxes—

When taxes for 1926, 1927 and 1928 are payable without interest or penalties under Laws 1929, c. 415, §4. 178M404, 227NW209.

10. Cancellation of assignment.

Where one paid by check to the county treasurer for a state assignment certificate of taxes against property on Saturday and on Tuesday county treasurer presented the check to the bank which had been closed that morning, the county auditor could cancel the assignment upon petition to the tax commission. Op. Atty. Gen., May 22, 1931.

§2138. Unredeemed lands.—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 and section 2139. Such sale shall commence at the county seat on the second Monday of August of each year and shall continue from day to day until and including the 31st day of December of such year when it shall be 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 sale will commence. Provided, that at no such sale hereafter held shall the rights of the state acquired at delinquent tax sales in the

year 1928 and subsequent years, nor the liens for subsequent delinquent taxes attaching thereto, be disposed of. (As amended by Laws 1929, c. 415, §1, as further amended Apr. 9, 1931, c. 129, §3.)

The title of Laws 1929, c. 415, complies with Const., Art. 4, §27. 178M244, 226NW842.

Effect of Laws 1929, c. 415, determined. Op. Atty. Gen., July 20, 1929.

A sale made under this section as amended by Laws 1929, c. 415, after the second Monday in December is illegal, and the remedy of the purchaser is under §2148, possibly by a suit in equity, or by application to the state tax commission. Op. Atty. Gen., June 30, 1930.

Under this section as amended by Laws 1929, c. 415, §1, the holder of a certificate for taxes for 1925, or prior years, may pay the taxes for 1926 and subsequent years after they become delinquent and tack them to the certificate in the usual manner. Op. Atty. Gen., Sept. 5, 1930.

At 1930-forfeited tax sale, only taxes for the year 1925 and previous years should be sold under Laws 1929, c. 415, §1, amending this section. Op. Atty. Gen., Sept. 5, 1930.

The provisions of section 1 (f) and section 2 are the latest expression of the legislative intent and are controlling over the last sentence in this section if there is any conflict between them. Op. Atty. Gen., May 27, 1931.

§2139. Unredeemed lands—conduct of sale.

—Subd. (a). Such sale shall be conducted by the county auditor. Each parcel shall be sold to the highest cash bidder therefor but not for a less sum than the aggregate taxes, penalties, interest and costs charged against it, unless the cash value thereof fairly determined by the 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 so sold. The rights of the purchaser at such sale shall be subject to the rights of any purchaser and of the state or its assignee by virtue of any delinquent tax sale held in 1928 or any subsequent year, and of any subsequent delinquent taxes attaching thereto or required to be paid in case of redemption therefrom.

Subd. (b). Provided that at such sale to be commenced on the second Monday of August, 1931, if there be no bidders for same for the amounts as hereinbefore authorized, any such parcels coming within the following classifications may be disposed of for cash only, for not less than the following amounts: (1) all parcels bid in for the state for taxes for the year 1920 or prior years, for one-fifth of the total taxes remaining unpaid for 1925 and prior years, as originally assessed; (2) all parcels, not in such first class, but bid in for the state for taxes for the year 1922 or prior years, for one-third of the total taxes remaining unpaid for 1925 and prior years, as originally assessed; and (3) all parcels, not in such first or second class, but bid in for the state for taxes for the year 1925 or prior years, for one-half of the total taxes remaining unpaid for 1925 and prior years, as originally assessed.

Subd. (c). Provided, further, that where any parcel subject to sale under the provisions of this section and Sections 2138 and 2140, contains as a part of said tax the full amount or a portion of the lien for the construction of any county or judicial ditch, or the full amount or a portion of any special

assessment for local improvements levied under municipal authority the county board, in case of such ditch lien, or the governing body of the municipality, in case of such special assessment, may, by ordinance or resolution, determine and fix the minimum amount of such ditch lien or assessment to be included in addition to the amounts hereinbefore provided as the minimum for which any such parcel may be sold; provided that the resolution of the county board shall be adopted, or a copy of such resolution or ordinance of the municipality describing each tract and fixing each such minimum amount shall be served upon the county auditor at least thirty (30) days before the date of sale; provided, further, that if such resolution of the county board be not adopted, or if such governing body of any such municipality fails to cause to be certified to said county auditor, at least thirty (30) days before such date of sale, the minimum amount of such assessment to be included with the other taxes on any parcel, said county auditor shall include such ditch lien or special assessment with the other taxes on said parcel, to be sold on the same basis as the other taxes thereon. Provided, the minimum amounts of ditch liens or assessments to be so included in the sale of lands within the Red Lake Game Preserve shall be the full amounts of such ditch liens and assessments.

Subd. (d). 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 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. The proceeds of the sale of any parcel of land at any such sale, for whatever amount sold, shall be distributed among the taxing districts interested in the taxes and assessments on said parcel at the date of such sale, in the proportions of their respective interests; provided that the provisions of this section as to the amount of any ditch lien or special assessment which shall be included in the minimum cash amount for which any parcel may be sold shall also fix the amount applicable to such ditch lien or special assessment in the distribution of the proceeds of such sale.

Subd. (e). Provided, by resolution of the county board, adopted at least thirty days before the commencement of the sale, any parcel of land which, since the accrual of the unpaid taxes and assessments thereon, has produced a yield or income or had an actual use, of value exceeding the amount of such taxes and assessments, as originally extended, may be excluded from the sale.

Subd. (f). Any purchaser at such sale may, within ten days following his purchase, discharge the taxes and assessments against such parcel for 1926 and subsequent years, if delinquent and held by the state, or secure an assignment thereof, upon the payment of a fractional part of the taxes for such years,

as originally assessed, equal to the fractional part of the taxes for the years prior to 1926 against such property required to be paid by such purchaser at such sale, and by paying the same proportion of the ditch liens or special assessments against such property collectible with the taxes for 1926 and subsequent years that he was required to pay at such forfeited sale for ditch liens or special assessments collectible with the taxes for 1925 or prior years. (As amended by Laws 1929, c. 415, §2, which is further amended Apr. 9, 1931, c. 129, §1.)

Laws 1931, c. 325, validates sales made at improper place between second Monday in August, 1929, and Dec. 31st of that year.

226NW633.

When taxes for 1926, 1927 and 1928 are payable without interest or penalties under Laws 1929, c. 415. 178M404, 227NW209.

Discount rate fixed by Laws 1929, c. 415 amending this section applies only to the 1929 sale, and it is only where there has been a valuation less than total amount of the taxes that a sale can be made for less than the total amount due. Op. Atty. Gen., July 2, 1930.

Effect of Laws 1929, c. 415, amending this section. Op. Atty. Gen., July 20, 1929.

The discount rates established by Act 1929, c. 415, §2, at the 1929 forfeited tax sale were not available to a purchaser at the 1930 forfeited tax sale. Op. Atty. Gen., Sept. 6, 1930.

In determining amounts of ditch liens within Red Lake Game Preserve, interest should be calculated at six per cent, in view of section 6840-50. Op. Atty. Gen., June 15, 1931.

The only discretion the county board has is to limit the discount rate so far as ditch liens are concerned and owner of property may purchase 1925 taxes at forfeited tax sale and pay 1926 to 1929 taxes at the same discount rates. Op. Atty. Gen., July 18, 1931.

Where A and B each own an undivided one-half interest in land and A paid taxes on his share up to 1927 and B only paid his taxes up to 1918, A, on acquiring B's interest prior to sale of delinquent land, can purchase the taxes against B's interest for 1925 and prior years upon payment of one-fifth of the amount thereof as originally assessed in accordance with subdivision (f), pay the taxes for 1927 and subsequent years against that one-half year interest on the same basis, but he cannot pay the taxes on the other half interest for 1927 and subsequent years at that rate but must discharge that part of his taxes at the rate specified in section 2. Op. Atty. Gen., June 1, 1931.

Where taxes for the years 1923 and 1925 are delinquent and taxes for 1926 to 1929, inclusive, are delinquent, record owner, but not a stranger, may by purchasing the 1923-1925 taxes and then proceeding under Section 2 instead of under Section 1 (f), discharge all these taxes. Op. Atty. Gen., July 17, 1931.

§2139½. Unredeemed lands.—Subd. (a). In the event that there are no taxes for 1925 or prior years delinquent and held by the state against any parcel of land but the taxes for 1926 or 1927 or any part thereof are delinquent and held by the state, the county auditor and treasurer of each county are hereby authorized and directed to certify and accept in full payment and discharge of all taxes and assessments and interest and penalties thereon against such parcel or for an assignment thereof, an amount equal to three-fifths of the total taxes and assessments against it, as originally assessed and taxed.

Subd. (b). In the event that the taxes for 1927 and all prior years against any parcel of land have been paid, or sold or assigned to a purchaser other than the state, but the taxes for 1928 or 1929, or any part thereof

remain delinquent and held by the state, the county auditor and treasurer are authorized and directed to accept in full payment and discharge of all taxes and assessments and interest and penalties thereon, or for an assignment thereof, an amount equal to such taxes and assessments as originally assessed and taxed, without penalty or interest.

Subd. (c). The authority of the county auditor and treasurer to accept payment of such taxes or assessments or to assign the same under the terms set forth in this section shall exist only where such payment or assignment is made on or prior to December 31st, 1931.

Subd. (d). The authority granted to the county auditor and treasurer by this act to accept payment, waive penalties or interest, or to assign taxes at the rates provided for in this section shall not exist before July 1st, 1931, and, if before that date the county board as to general taxes or ditch or road liens, or the governing body of the town or municipality interested, as to other special assessments, shall have adopted a resolution, and filed a certified copy thereof with the county auditor, fixing a minimum amount of such taxes, liens or assessments or accrued interest and penalties which shall be accepted, the terms of such resolution shall control with respect thereto. (Act Apr. 9, 1931, c. 129, §2.)

The bargain sale does not apply to 1930 taxes at all except, insofar as this section applies to such taxes, and one who failed only to pay for the year 1925 could not pay his 1930 taxes on the basis of one-half of the original tax. Op. Atty. Gen., June 15, 1931.

The provisions of this section do not apply where 1925 taxes are delinquent and held by the State. Op. Atty. Gen., July 18, 1931.

§2139-2. Forfeiture in five years.—Except as hereinbefore provided, all parcels of land hereafter duly sold at the annual delinquent tax sale, whether so sold to an actual purchaser or bid in for the state as provided by law, shall at the expiration of five years from the date of such sale become and be the absolute property of the purchaser or of the state, or of his or its assigns, without the doing of any act or thing whatsoever, without any right of redemption, and no notice of expiration of the time to redeem from any such sale shall be required. The notice attached to each delinquent list hereafter issued pursuant to Section 2107, General Statutes 1923, and acts amendatory thereof, shall contain in addition to the contents therein provided for, and immediately preceding the signature of the clerk, the following language: "You are further notified that at the expiration of five years from the date of the tax judgment sale pursuant to such judgment, each parcel of land sold at such sale, and not redeemed, will become and be the absolute property of the purchaser or of the state, or of his or its assigns, without further right of redemption, and without any notice of expiration of the time to redeem the same." Provided that at any time before the expiration of such period of five years from the sale of any parcel at any such annual or delinquent tax sale any person interested in such parcel may redeem the same or, may apply to the court on notice to the county auditor and to the purchaser at

such tax sale, if any, for cause shown, to have the taxes, penalties, interest and costs remaining unpaid on such parcel, set aside or reduced and the determination of the court on such application shall have like effect to that of a judgment in proceedings to enforce delinquent real estate taxes, except that the period of redemption shall not be extended thereby beyond such time as may be determined by the court. If by such determination the amount required to redeem from such sale is reduced, the purchaser at the sale or his assigns shall be entitled to refundment of the excessive amount paid by him, with interest, as in other cases of refundment. Provided, further, that no action, defense or application attacking the validity of the sale of any parcel at an annual delinquent tax sale or the validity of any subsequent delinquent taxes shall be entertained unless brought, interposed or made within five years from such sale. The title to each and every parcel of land thereby acquired by the state shall be held by it in trust for each and all of the taxing districts interested in the taxes and assessments, penalties, interest and costs accrued therein at the time of such forfeiture in the proportions of their respective interests, and the county auditor of the county in which each such parcel is situated shall furnish to the State Tax Commission, and keep on file in his office, the accurate statement of the amount of such accrued taxes, assessments, penalties, interest and costs, with the amount of the interest of each such taxing district therein. (As amended Apr. 27, 1929, c. 415, §3.)

Effect of Laws 1929, c. 415, amending this section. Op. Atty. Gen., July 20, 1929.

Holder of state assignment certificate for delinquent taxes is not required to serve notice of expiration of time for redemption, but title vests in him automatically upon expiration of the five-year period. Op. Atty. Gen., Apr. 21, 1931.

§2140. Purchaser to receive deed.

In the event that purchaser of 1925 taxes at forfeited tax sale does not desire to take up the 1926, 1927 and 1928 taxes, but attempts to perfect title on his certificate for the 1925 taxes alone, the notice of expiration of time for redemption should include in the amount necessary to redeem the 1926, 1927 and 1928 taxes, if still held by the state. Op. Atty. Gen., Sept. 5, 1930.

§2148. Invalid certificate.

Doctrine of caveat emptor applies to purchaser at tax sale, and he has no right to recover money paid from municipality, except as provided in §2177. 174M234, 219NW545.

Holder of invalid tax title is entitled to lien for all subsequent taxes, penalties, interests and costs paid by him, even though a part thereof was covered by an assignment certificate which he had surrendered for cancellation, assuming that he had acquired title under his prior certificate. Warroad Co-op Creamery Co. v. H., 233M824. See Dun. Dig. 5398(52).

The rights of a purchaser at a discount sale held after the date permitted by §2138 as amended by Laws 1929, c. 415, may be enforced under this section, but a suit in equity may be necessary. Op. Atty. Gen., June 30, 1930.

§2149. Indorsement before record.

The title of the holder becomes complete on the endorsement of a certificate of nonredemption, and he cannot thereafter have the tax cancelled under §2152, though he has obtained title from another source and has not recorded his certificate. Op. Atty. Gen., July 7, 1930.

§2150. Lands bid in for the State.—When any parcel of land is bid in for the state, until its rights 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, and the amount of all subsequent delinquent taxes, 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 lands. 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 and the amount of all subsequent delinquent taxes, stating such amount and the date of sale, with penalties and 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 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.

Provided further, that if at any time while the sheriff is collecting such rent the lease upon said property shall expire, or, if the sheriff has once commenced to collect such rent and said property becomes vacant, the county auditor may lease said property upon five days' notice to the owner, subject to the approval of the district court.

Provided further, that at any time while the sheriff is collecting the rent under any lease, no modification of the lease between the owner and the tenant shall be valid unless approved by the district court upon five days' notice to the county auditor.

Provided further, that the collection of such

rent under this statute shall not be a bar to the county auditor assigning said taxes to an actual purchaser, or selling the land at a forfeited tax sale under the present laws or any laws hereafter enacted. (As amended Apr. 20, 1929, c. 266, §1.)

Warroad Co-op Creamery Co. v. H., 233NW824; notes under §§2137, 2188.

Sheriff has right to bring unlawful detainer where tenant does not pay rent. Op. Atty. Gen., Sept. 3, 1929.

Under this section as amended by Laws 1929, c. 266, the county cannot expend money to repair property sold for taxes, in order to make it tenable, even though the money sought to be used has been collected as rent on the property. Op. Atty. Gen., Mar. 13, 1930.

Sheriff is entitled to fees the same in source, amount and manner of payment as he is allowed for collections made under execution. Op. Atty. Gen., July 21, 1930.

Institution of proceedings for the attachment of rent from delinquent land is discretionary with the county auditor. Op. Atty. Gen., Apr. 11, 1931.

Where rents are attached on two lots, the sheriff should apportion the rents received between the two parcels on a fair basis, but amounts collected cannot be applied upon current taxes. Op. Atty. Gen., June 1, 1931.

REDEMPTION FROM TAX SALES

§2152. Amount payable.

Certificate holder cannot be deemed to have paid any delinquent taxes unless he has paid them in the manner required by §2136. Op. Atty. Gen., May 9, 1929.

The tax laws passed in 1927 and 1928 did not amend in any way this section with reference to the amount which must be paid by a person redeeming. Op. Atty. Gen., Jan. 16, 1930.

Where the holder of a tax certificate acquires title through other means he cannot have the tax cancelled under this section though he has not yet recorded his certificate. Op. Atty. Gen., July 7, 1930.

In the event that purchaser of 1925 taxes at forfeited tax sale does not desire to take up the 1926, 1927 and 1928 taxes, but attempts to perfect title on his certificate for the 1925 taxes alone, the notice of expiration of time for redemption should include in the amount necessary to redeem the 1926, 1927 and 1928 taxes, if still held by the state. Op. Atty. Gen., Sept. 5, 1930.

§2158. Specific part.

An owner desiring to sell a five acre tract out of a larger tract is entitled to have the taxes separated under this section, though the most appropriate way might be to convey the five acres to a third person who could secure the separation and then convey the land to the purchaser. Op. Atty. Gen., Jan. 15, 1930.

The purchaser of part of a large tract at mortgage foreclosure sale is entitled to a division of the assessment both as to general taxes and as to special assessments. Op. Atty. Gen., April 2, 1930.

The owner of the whole of a tract which has been sold for taxes as one tract is not entitled to redeem a specific portion thereof without redeeming the whole parcel, though it consists of two distinct governmental subdivisions. Op. Atty. Gen., July 17, 1931.

§2160. Auditor to determine proposition.

The notice provided for herein need not be published in the official newspaper. Op. Atty. Gen., Feb. 13, 1930.

County board has no authority to contract for printing under this section. Op. Atty. Gen., June 3, 1930.

§2163. Notice of expiration of redemption—etc.

Laws 1931, c. 158, validates titles acquired where notice of expiration of time for redemp-

tion did not properly state amount necessary to redeem by failure to include taxes for 1926.

9. Statement of amount required to redeem.

When taxes for 1926, 1927 and 1928 may be paid without penalties or interest under Laws 1929, c. 415, §4. 178M404, 227NW209.

13. Publication.

Notice under this section need not be published in the official newspaper. Op. Atty. Gen., Feb. 13, 1930.

County board has no authority to contract for printing under this section. Op. Atty. Gen., June 3, 1930.

§2171. Redemption, when expires.

The title of the holder becomes complete on the endorsement of a certificate of nonredemption, and he cannot thereafter have the tax cancelled under §2152, though he has obtained title from another source and has not recorded his certificate. Op. Atty. Gen., July 7, 1930.

REFUNDMENT

§2177. On sale or assignment, when allowed.

Assessments and interest held voluntarily paid, notwithstanding protest. 171M309, 213N W916.

Interest and installments of assessments voluntarily paid could not be recovered. 171M309, 213NW916.

This section specifies the exclusive cases in which a purchaser at a tax sale may have a refundment. 174M431, 219NW545.

Rule of caveat emptor applies to purchaser at tax sale. 174M431, 219NW545.

Where a discount sale is made under §2138 as amended by Laws 1929, c. 415, after the date permitted by that section, the sale is illegal, but refundment cannot be had under this section, the proper remedy being under §2148, but as the latter section seems to contemplate a sale for the full amount of the taxes due the right of the purchaser may be determined in a suit in equity. Op. Atty. Gen., June 30, 1930.

Where state lands were sold and school or swamp land certificates issued, and lands were placed on tax list and then sold for delinquent taxes, and petitioners purchased at the tax judgment sale or took assignments from the estate, and original purchaser of lands failed to live up to the terms of his contract, petitioners were not entitled to a refund. Op. Atty. Gen., Feb. 2, 1931.

ACTIONS INVOLVING TAX TITLES

§2185. Tax judgment or sale set aside—Lien.

174M431, 219NW545, notes under §§2128, 2129, 2148, 2177.

MISCELLANEOUS PROVISIONS

§2191. Lien of real estate taxes.

174M431, 219NW545, notes under §§2128, 2129, 2148, 2177.

2. When attaches.

179M298, 229NW127.

Where Government condemns property for post office, title does not pass until final judgment and payment of the award, and county auditor has authority until that time to assess taxes against the property, even though under Mason's USCA, Title 40, §258, title relates back to the date of the filing of the commissioner's award. Op. Atty. Gen., Jan. 26, 1931.

Where city of St. Paul acquired by condemnation portions of property for widening of street and property owner gave city deed on December 26th, 1930, and award was ratified by city council on December 30th, 1930, but proceedings of council were not published in the official newspaper until January 3rd, 1931, on which date award was paid, taxes for 1930 spread by the auditor on December 24th, 1930,

constituted a lien on the property and should be paid by the city. Op. Atty. Gen., April 25, 1931.

11. Personal liability.

180M283, 230NW654.

§2202-1. Day for payment of taxes, etc.

Where the last day of February, May or October falls on Sunday, county treasurer and auditor may make distribution under Section 2082 on the first day of the following month. Op. Atty. Gen., April 23, 1931.

Where May 30th is a holiday and May 31st falls on Sunday, first half of taxes may be paid on June 1st, without penalty. Op. Atty. Gen., April 23, 1931.

§2203. Structures, etc., not to be removed.

—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 or the county 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, either 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 plaintiff in such suit. (As amended Apr. 24, 1931, c. 333, §1.)

Before taking any action under this and the following section it is necessary to first secure the consent and direction of the state auditor. Op. Atty. Gen., Jan. 15, 1930.

State auditor had no power to prevent the removal of a spur track after Railroad and Warehouse Commission made its order permitting its abandonment and removal. Op. Atty. Gen., Mar. 31, 1931.

§2204. Structures, etc., may be seized.—

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 the county auditor, or by any person authorized by either of them 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. (As amended Apr. 24, 1931, c. 333, §2.)

Amount collected under this section may be applied upon delinquent taxes even though not sufficient to discharge in full any one year's taxes. Op. Atty. Gen., May 16, 1931.

§2205. Penalty for removal.

It is not necessary for a county attorney to secure authority from the state auditor to institute criminal proceedings under this section. Op. Atty. Gen., Jan. 15, 1930.

§2206. Right to assess and collect.

An action in the district court for the enforcement of the lien of the inheritance tax under section 2311 is not barred by limitations. State v. Brooks, 236NW316. See Dun. Dig. 5656, 9525.

§2207. Real estate tax judgment—No limitation.

Ten year statute runs against personal property tax judgment. Op. Atty. Gen., Feb. 5, 1929.

§2210. Taxes paid by occupant, etc.

Does not apply to voluntary payment of taxes by person other than owner. 180M283, 230NW 654.

§2211. Payment of taxes before transfer, etc.

One holding unrecorded deed to land, the title to which had passed to third persons by purchase at foreclosure sale, who voluntarily paid the taxes in order to record his deed, held not entitled to recover the amount so paid from such purchasers. 180M283, 230NW654.

Laws 1895, c. 8, §285, controls over this section in a city organized and operating under such 1895 act. Op. Atty. Gen., Dec. 26, 1929.

Certificate releasing claim or interest to timber upon specified land to "owner of the fee," held a quit claim deed entitled to record, and one contemplated by this section, unless the facts show that it comes within some of the exceptions set forth in the statute; and it is immaterial that the instrument is not dated. Op. Atty. Gen., June 7, 1930.

Needs to the state highway department may be recorded without the certificate of the county auditor or the county treasurer as to the payment of taxes. Op. Atty. Gen., April 23, 1931.

Op. Atty. Gen., July 23, 1931; note under §2213.

§2213. Transfer of undivided interest.

Where state highway department has condemned an easement across a tract of land against which there are delinquent taxes, the taxes cannot be divided so as to determine the amount of the tax against the particular piece crossed by the highway, so that only that portion of the tax will be payable out of the award. Op. Atty. Gen., July 23, 1931.

§2216. Mortgages foreclosed, etc.

The words "preceding year" relates to the calendar year from Jan. 1, to Dec. 31. Op. Atty. Gen., Jan. 25, 1930.

§2219. Irregular tracts to be platted.

Where surveyor did not register letters to owners, his survey and plats could be used after new notice and failure of owners to have surveys made in the interim. Op. Atty. Gen., Mar. 25, 1929.

§2221. Railroad lands—Sale.

Upon railroad company contracting to sell land, it becomes subject to taxation as other real estate is taxed, and the amount of such taxes should be determined by assessment of the land at its full value as other land is assessed. Op. Atty. Gen., June 17, 1931.

§2232-1. County treasurer to search and certify taxes due.

County treasurer is not entitled to keep fees collected for issuance of certificates for search of tax records, but must turn them into the county treasury. Op. Atty. Gen., April 22, 1931.

COMPANIES PAYING GROSS EARNINGS TAX**§2235. Failure to pay.**

Where there is a failure to report earnings there is at the time of the failure also a default in payment rendering railroad liable for penalties and interest. 181M615, 233NW866. See Dun. Dig. 9562.

§2240. Evasions and violations.

Where there is a failure to report earnings, there is at the time of the failure also a default in payment rendering railroad liable for penalties and interest. 181M615, 233NW866. See Dun. Dig. 9562.

RAILROAD COMPANIES**§2246. Gross earnings.**

This section, as applied to ore transported

from the iron range to Wisconsin docks, at a rate which absorbs the dock service, held not invalid as violative of the commerce clause or the 14th Amendment of the federal constitution. 49SCR191, aff'g 174M3, 218NW167.

The tax constitutes a property tax.—J.D.

Where there is a failure to report earnings, there is at the time of the failure also a default in payment rendering railroad liable for penalties and interest. 181M615, 233NW866. See Dun. Dig. 9562.

20. Union station.

Receipt from checking room in union depot handled by depot company as agent of railroads using depot, held to constitute taxable gross income. 181M615, 232NW105. See Dun. Dig. 9561, 9562.

21. What included in gross earnings.

Pullman excess receipts paid to railroad company, held not a part of taxable gross income, where the Pullman Company has paid a gross earnings tax on such receipt. 181M615, 232NW 105. See Dun. Dig. 9562.

23. Exemption from special assessments.

An assessment greatly in excess of special benefit is invalid, and while the test of benefit is the increase in market value of the property after the improvement is made, the Supreme Court cannot review the matter of special benefit where the evidence is not in the record, the conclusion of the municipal authorities being prima facie correct, and the burden of proof being on the objector. 172M554, 216NW318.

Gross earnings tax under this section is a "property tax" and is valid. 174M1, 218NW167.

§2247. "Gross earnings" defined.

49SCR191, aff'g 174M3, 218NW167; notes under §2246.

Moneys paid by Pullman Company to railway company for space in terminal depots should not be included in calculating the gross earnings tax of the railway company. Op. Atty. Gen., April 11, 1931.

As between two railroads one of which collects a charge from the shipper and pays it to the other, the ultimate recipient is the one that should be called upon to pay the gross earnings tax. Op. Atty. Gen., July 15, 1931.

EXPRESS COMPANIES**§2262. Annual statement.**

Express shipments originating in Minnesota for points in Canada, which are transferred to Canadian express companies are included in "business done" within this state in connection with other companies for the purpose of computing the Minnesota gross earnings tax on express companies. State v. Am. Ry. Express Co., 236NW321. See Dun. Dig. 9570a.

§2268. Gross earnings tax.

Refund of amount paid as motor vehicle registration tax. 173M98, 216NW541.

The tax imposed by this section is a lieu property tax measured by gross earnings, and the motor vehicle registration tax in addition thereto is invalid. 173M72, 216NW542.

Laws 1929, c. 361, impliedly amending this section, and excluding from the gross earnings tax the license tax on vehicles used on the highways, is unconstitutional. 180M268, 230NW815.

SLEEPING CAR COMPANIES**§2270. Gross earnings defined.**

Pullman excess receipts on which gross earnings tax has been paid by the Pullman Company are not again taxable after payment to railroad company. 181M651, 232NW105. See Dun. Dig. 9562.

TELEGRAPH AND TELEPHONE COMPANIES**§2286. Telephone companies to pay 4% tax, etc.**

Telephone company deriving income from ad-

vertisements in its telephone directory, which are so arranged as to lead the patron to look at the advertisements rather than the regular list of names to find the number of a particular advertiser, held returnable as gross income along with income derived from the placing of names in the alphabetical list in display type. Op. Atty. Gen., April 7, 1930.

Telephone company which permits another company to use its lines for the installation of radio service is required to report as a part of its gross earnings not only the charge for the use of the wires but the cost of installation of the radio receiver. Op. Atty. Gen., April 7, 1930.

INHERITANCES, DEVISES, BEQUESTS AND GIFTS

§2292. Taxation on inheritances, etc.

Transfer by deceased to his wife and children, held not shown to have been made in contemplation of death or intended to take effect at or after death, and property transferred was not subject to tax. 179M233, 228NW920.

Act to obtain benefit of Federal Estate tax. Laws 1931, c. 332.

Shares of stock in a domestic corporation are so far localized in the state that state has jurisdiction for purpose of imposing an inheritance tax, notwithstanding nonresidence of owner. Benson v. State, 236NW626. See Dun. Dig. 9572b (40).

The transfer of insurance received by war veteran from the Government for disability or under the compensation act is not subject to inheritance tax in this state. Op. Atty. Gen., April 23, 1931.

The tax imposed is a succession duty, and is valid, though the instrument creating the power of appointment was executed prior to the passage of the statute. 186M262, 232NW331. See Dun. Dig. 9571.

§2293. Tax, how computed—exemptions.

* * * *
Section 2c. The following exemptions from the tax are hereby allowed: Any devise, bequest, gift, or transfer to or for the use of the State of Minnesota or any political division thereof for public purposes exclusively, and any devise, bequest, gift or transfer to or for the use within this state of any corporation or association operated within this state for religious, charitable, scientific, literary, educational or public cemetery purposes exclusively, including the encouragement of art within this state, and the prevention of cruelty to children or animals within this state, no part of which devise, bequest, gift or transfer inures to the profit of any private stockholder or individual, any bequest or transfer to a trustee or trustees exclusively for such purposes shall be exempt. (As amended Apr. 18, 1931, c. 208.)

Laws 1931, c. 208 amends "the first paragraph of * * * section 2293, sub-section 2c" to read as above.

Public securities consisting of state bonds, certificates of indebtedness and bonds of municipalities owned by a nonresident at the time of his death are tangibles, and are treated as property in the state where they are found. 175M310, 219NW153.

To ascertain the value of the property upon which the inheritance tax is to be imposed, it is proper to deduct the amount paid as an inheritance or succession tax in another state. 175M310, 219NW153.

In the imposition of an inheritance tax in Minnesota, state bonds, state certificates of indebtedness, and bonds of municipalities owned by a nonresident at the time of his death are intangibles having a situs at the domicile of the owner. 175M310, 221NW64, reversing 175M310, 219NW153.

Such intangibles are subjected to an inherit-

ance tax in this state upon the theory that the owner may invoke our laws. State ex rel. Graff v. Probate Court, 128M371, 150NW1094, L. R. A. 1916A, 901, and State ex rel. March v. Probate Court, 168M508, 210NW389, followed. 175M310, 221NW64, reversing holding in 175M310, 219NW153.

Payments by federal government under war risk policy, held not subject to tax. 229NW781.

§2302. Transfer by foreign executors, etc.—Etc.

Shares of stock in a domestic corporation are so far localized in the state that state has jurisdiction for purpose of imposing an inheritance tax, notwithstanding nonresidence of owner. Benson v. State, 236NW626. See Dun. Dig. 9572b (40).

§2311. Non-payment of tax—Property omitted.

The district court has jurisdiction of a suit to enforce the lien of the inheritance tax upon property omitted from the appraisal and inventory in the probate court so that its value was not considered in that court in the determination of the inheritance tax. State v. Brooks, 236NW316. See Dun. Dig. 2759.

Neither laches nor estoppel may be invoked against the state in an action by it to enforce its inheritance tax lien under this section. State v. Brooks, 236NW316. See Dun. Dig. 3211, 5356.

An action in the district court for the enforcement of the lien of the inheritance tax is not barred by limitations. State v. Brooks, 236NW316. See Dun. Dig. 9525.

§2321-1. Inheritance tax.—There shall be assessed by the probate court in addition to the inheritance tax as now provided by Mason's Minnesota Statutes of 1927, Sections 2292-2321, an estate tax upon all estates which are subject to taxation under the present Federal Revenue Act of Nineteen Hundred Twenty-six. Said tax is hereby imposed upon the transfer of the estate of every person, who at the time of his death was a resident of this state. The amount of said tax shall be computed by the attorney general and his computation shall be sent to the probate court of the county of deceased's residence and shall be by the probate court assessed as an additional amount of inheritance tax as fixed in accordance with the provisions of this act by said probate court. In the event that the estate of the deceased is not probated, said tax shall be determined and computed by the attorney general. The amount of said tax so assessed shall be the amount by which eighty per cent of the estate tax, payable to the United States under the provisions of the said Federal Revenue Act of Nineteen Hundred Twenty-six [Mason's U. S. Code, Anno., title 26, §§1136-1 to 1136-49], shall exceed the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to the several states of the United States in respect to any property owned by such decedent, or subject to such taxes as a part of or in connection with his estate. (Act Apr. 24, 1931, c. 332, §1.)

§2321-2. When payable.—The tax imposed by this act shall become due and payable at the expiration of 18 months after the death of the person from whom the transfer is made, and executors, administrators, trustees, grantees, donees, beneficiaries and surviving joint owners shall be and remain liable for the tax until it is paid. If the tax is not paid when due interest at the rate of seven

percentum per annum shall be charged and collected from the time the same became payable 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 percentum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which seven percentum shall be charged. (Act Apr. 24, 1931, c. 332, §2.)

§2321-3. To become void when.—This act shall become void and of no effect in respect to estates of persons who die subsequent to the effective date of the repeal of Title III of said Federal Revenue Act [Mason's U. S. Code, Anno., title 26, §§1136-1 to 1136-25] or of the provisions thereof providing for a credit of the taxes paid to the several states of the United States not exceeding 80 per cent of the tax imposed by said Title III [Mason's U. S. Code, Anno., title 26, §1136-3(b)]. (Act Apr. 24, 1931, c. 332, §3.)

§2321-4. Intent of act.—It is hereby declared to be the intent and purpose of this act to obtain for this state the benefit of the credit allowed under the provisions of said Title III, Section 301, subsection (b) of the Federal Revenue Act of Nineteen Hundred Twenty-six [Mason's U. S. Code, Anno., title 26, §1136-3(b)] to the extent that this state may be entitled by the provisions of this act, by imposing additional taxes, and the same shall be liberally construed to effect this purpose. The attorney general may make such regulations, relative to the assessment and the collection of the tax provided by this act, not inconsistent with law, as may be necessary to carry out this intent. (Act Apr. 24, 1931, c. 332, §4.)

§2321-5. Application.—The provisions of this act shall also apply to all estates not fully distributed and now in process of settlement, where the date of death was subsequent to February 26, 1926. (Act Apr. 24, 1931, c. 332, §5.)

§2321-6. Other laws made part of this act.—All provisions of Sections 2292-2321, Mason's Minnesota Statutes of 1927, and amendments thereto, relating to succession taxes are hereby made a part of this act wherever the same are applicable. (Act Apr. 24, 1931, c. 332, §6.)

§2321-7. Apportionment of tax.—The tax which may be imposed under section 1 [§2321-1] of this act shall be chargeable against the interests of each beneficiary in proportion to the amount of the normal state inheritance tax paid by each. (Act Apr. 24, 1931, c. 332, §7.)

§2321-8. Provisions separable.—If any portion of this act is held to be unconstitutional, such decision shall not invalidate the provisions unaffected thereby. In the event that any part of the Federal Revenue Act or Federal Estate Tax Law, hereinbefore referred to, shall be declared to be in violation of the constitution of the United States, such declaration shall not be construed to affect the

provisions of this act. (Act Apr. 24, 1931, c. 332, §8.)

MORTGAGES ON REAL PROPERTY

§2322. Mortgage defined.

Transfer by managing officer of bank to certain directors to secure his indebtedness to the bank, held a mortgage and not an assignment for benefit of creditors. 172M149, 214NW787.

The fact that the tax was not paid until after the trial but before final submission of the case does not avoid the instrument. 172M-49, 214NW 787.

Finding that judgment creditors had no knowledge of deed until after the docketing of their judgments held sustained by the evidence. 173M244, 217NW132.

Failure to pay mortgage registry tax for two extensions of a mortgage on which the tax was originally paid, held not to invalidate the mortgage, and it was enforceable without such payment. Mooty et al. v. U., 231NW406(2).

The ordinary essential elements of a real estate mortgage are: (1) A conveyance, and (2) security for a debt. Spielman v. A., 236NW319. See Dun. Dig. 6145.

A mortgage running to a national bank is subject to the mortgage registry tax. Op. Atty. Gen., Mar. 17, 1931.

§2323. Tax on record or registration.

Laws 1931, c. 173, legalizes termination of land contracts where tax was not paid.

173M244, 217NW132, note under §2322.

Where tax was paid on mortgage it could be enforced, though the tax was not paid on two extensions of the mortgage. 231NW406(2).

Where registration tax is paid for five years to maturity, there is no further tax due to failure of mortgagee to foreclose for a number of years after maturity. Op. Atty. Gen., July 20, 1929.

§2324. Exemption from other taxes.

Present payment of mortgage registration tax does not exempt mortgagee or grantor in contract for deed from liability for money and credits tax avoided in prior years. Op. Atty. Gen., Apr. 23, 1929.

§2326. Tax, how payable—Receipts.

There can be no refundment of a tax paid under this act except by application to the tax commission under §1983. Op. Atty. Gen., April 28, 1930.

§2327. Mortgage on exempt property—property not directly taxed—receipt—apportionment of tax.—When any real estate situate in this state and described in any such mortgage is exempt from taxation under Section 1, Article 9 of the Constitution, the tax herein provided shall be paid to the treasurer of the county in which such real estate is situate in the same manner as if such real estate was not exempt from taxation. When any real estate situate in this state and described in such mortgage is not exempt from taxation under such section, but 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. When any such mortgage shall describe any real estate, part of which is not taxed by direct tax, upon the assessed valuation thereof

and part of which is so taxed or is exempt from taxation, the proportionate amount of the tax to be paid to the state treasurer and to the county treasurer shall be determined in accordance with the proportionate value of the real estate included therein as such valuation shall be determined by the state auditor upon application of the mortgagee. The amount of the tax payable to the state treasurer shall thereupon be paid to him, who shall endorse upon such mortgage that the proportionate amount of the tax payable to him has been paid and the balance of such tax shall be paid to the county treasurer of the county where the mortgage is first presented for record or registration and shall be divided and paid to the county treasurers of the other counties entitled thereto, as provided by Section 3326, G. S. 1923. (As amended Feb. 20, 1929, c. 30.)

§2327-1. Records legalized.—The record or registration of any mortgage covering real estate, part or all of which is exempt from taxation or not taxable by direct tax upon the assessed valuation thereof, upon which the mortgage registration tax has heretofore been paid either to the county treasurer of the county where such mortgage was first presented for record or to the state treasurer, is hereby legalized and made valid for all purposes, notwithstanding such tax may have been paid to the wrong officer if all other requirements of law in relation to the recording or registration of such mortgage have been complied with. (Act Feb. 20, 1929, c. 30, §2.)

§2328. 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; but if the tax be paid no error in computation or ascertainment of the amount thereof shall affect the validity of such mortgage or the record or foreclosure thereof. (As amended Apr. 18, 1929, c. 222, §1.)

In prosecution of notary for false certifying acknowledgment of mortgage, the mortgage was properly admitted in evidence, though registration tax was not paid. 171M345, 214NW262.

MONEY AND CREDITS

§2337. Definitions.

Reserve or surrender value of single premium policies is not taxable, but the present value of installments or annuities is taxable after maturity. Op. Atty. Gen., Apr. 4, 1929.

Moneys and credits are not to be taken into consideration in determining the limit of the city of Stillwater of its authorized levy of taxes for current purposes. Op. Atty. Gen., July 3, 1930, Feb. 6, 1930.

The First Bank Stock Corporation and the Northwest Bancorporation are not "banks" or "mortgage loan companies" within statutes providing for method of taxation of banks. Op. Atty. Gen., Aug. 29, 1930.

TRANSIENT MERCHANTS

§2353-1. Taxation of personal property of transient merchants—etc.

This act does not affect a stock of merchant-

dise moved into an assessment district between January 1st and May 1st with the intent of being sold and disposed of before the latter date. Op. Atty. Gen., Feb. 6, 1930.

MINNESOTA TAX COMMISSION

§2364-1. Banks and certain corporations to report to Minnesota Tax Commission.—Each bank and each financial, mercantile, manufacturing and business corporation having its actual and principal place of business within this State shall make and file with the Minnesota Tax Commission, on forms prepared by said Commission, a statement of its net income and net profits as set forth in its last preceding income tax return to the United States Government in the statement therein or reconciliation of net income and its total taxes on real property and its total taxes other than on real property imposed on any such bank or corporation by authority of this State during the period of which such return relates, and which such corporation shall include in such report such other information as said Minnesota Tax Commission shall require and which may now or hereafter be required by any law of Congress of the United States as a condition to the right of this State in the taxation of national banks or their shareholders. (Act Apr. 20, 1931, c. 278, §1.)

§2364-2. Filing of reports—penalties.—Such report shall be filed with the Minnesota Tax Commission on such forms on or before the first day of June in the year 1931 and on or before the first day of April in each and every year hereafter. Any bank or other corporation which fails or refuses to file such report on or before the date on which it is due shall be guilty of a misdemeanor and shall be guilty of such misdemeanor for each separate day thereafter during which it shall fail to file such report and each such misdemeanor shall be deemed to have been committed at the capital of this State. (Act Apr. 20, 1931, c. 278, §2.)

§2364-3. Commission to publish statistics.—The Minnesota Tax Commission shall annually compile and cause to be published statistics showing the respective aggregates of net income and net profits reported by and of the taxes aforesaid imposed upon national banking associations or their shareholders, all other financial corporations and all mercantile, manufacturing and business corporations, and to publish such other statistics and information as may be required to be published by any state by the laws of Congress relating to the State taxation of national banks. All such information in relation to any individual bank or other corporation herein referred to shall be confidential and not disclosed by said commission to any person or persons. (Act Apr. 20, 1931, c. 278, §3.)

§2372-1. Municipalities to be party to tax hearings.—Any city, town, village, borough, school district, or county (all of which governmental subdivisions shall be embraced in the word "municipality" as used hereinafter) may appear at and become a party to any proceedings before the Tax Commission held for the purpose of equalizing or assessing

any real or personal property in said municipality, or reducing the assessed value of any such property. For that purpose any such municipality may employ counsel and disburse money for other expenses in connection with such proceedings, on duly itemized verified claims, which shall be audited and allowed as now provided by law for the allowance of claims against a municipality. It shall be the duty of the Tax Commission, at the time of such hearing to grant the municipality, at its request, such further reasonable time as may be necessary for such municipality to prepare for further hearing. It shall be the duty of the Tax Commission whenever any taxpayer or property owner has applied for a reduction of the assessed valuation of any real or personal property in an amount exceeding Fifteen (\$15,000) Thousand Dollars, to give written notice to the officials of the municipality wherein such property is located, and to permit such municipality to have a reasonable opportunity to be heard at any proceedings concerning such application. (Act Apr. 23, 1931, c. 304, §1.)

§2372-2. Must file written request for hearing.—Any such municipality may, at any time within ten days after the final adjournment of the county board of equalization of the county in which such municipality is located, or within 10 days after the filing with the county auditor of such county of any order of the tax commission reducing the assessed valuation of any property in such municipality, file a written request with the tax commission for a hearing upon the equalization or assessment of any property within such municipality, specifying the property and the name and address of the owner thereof, as they appear from the assessment books. The tax commission shall thereupon order a hearing thereon and shall mail a notice stating the time and place of such hearing to the municipality and to the owner of such property. It shall be the duty of the Tax Commission, at the time of such hearing to grant the municipality, at its request, such further reasonable time as may be necessary for such municipality to prepare for further hearing. (Act Apr. 23, 1931, c. 304, §2.)

§2372-3. Commission to summon witnesses.—Upon any such hearing the tax commission shall, upon the request of such municipality or any party to such proceedings, issue subpoenas and summon witnesses to appear and give testimony, and to produce books, records, papers and documents. For the purpose of preparing for and participating in said hearing the municipality shall have access to, and use of, all the data, records and files of the tax commission pertaining to the property in question. Upon demand of any party a record shall be kept by the tax commission of all evidence offered or received upon such hearing, the cost thereof to be paid by the party making such demand. (Act Apr. 23, 1931, c. 304, §3.)

§2372-4. Commission to make findings of facts.—The tax commission shall determine the controversy upon the evidence produced at such hearing and shall make and file writ-

ten findings of fact and its order determining the controversy. In the equalization and determination of valuations, the findings and values as given by the Assessor of the local assessment district shall be considered as prima facie correct. Copies of such order and findings shall be mailed to all parties appearing at said hearing, and to the county auditor of the county in which the property is located. Any municipality which has appeared in such proceedings, and which is aggrieved by the order of the tax commission reducing the assessed valuation of any such property, or failing to increase such assessed valuation, may have the order of the commission reviewed by appeal to the supreme court on any of the following grounds:

(1) That the determination of the commission was not in accordance with the laws relating to the assessment of property, or that the commission committed any other error of law; (2) That the findings of fact and determination of value were unwarranted by or were contrary to the weight of the evidence. Any owner of property who has appeared in such proceedings and who is aggrieved by the order of the tax commission raising the assessed valuation of any such property, or failing to reduce such assessed valuation may have the order of the commission reviewed on appeal to the Supreme Court in like manner and upon the same grounds as hereinabove provided for review on the appeal of any municipality as herein-after provided. (Act Apr. 23, 1931, c. 304, §4.)

§2372-5. Notice of appeal.—To secure such review, the municipality shall, within thirty days after mailing of notice of such determination by the tax commission, serve upon such commission a notice of appeal to the supreme court from the order of the commission and shall file the original thereof with proof of service with the clerk of the supreme court, paying the filing fee provided by law for appeals in civil actions. The filing of such notice of appeal shall vest the supreme court with jurisdiction thereof and such appeal shall be heard and disposed of as in the case of appeals from civil actions from the district court. Record and briefs shall be served and filed as provided by law or rule of court in such appeals. (Act Apr. 23, 1931, c. 304, §5.)

§2372-6. Supreme Court to determine.—The supreme court shall reverse or affirm the order of the commission or remand the cause to the commission for a new hearing or further proceedings or for other disposition thereof with such directions as the court may deem proper. (Act Apr. 23, 1931, c. 304, §6.)

§2372-7. Not to stay collection.—The institution of any such appeal from the order of the commission shall not operate to stay in any way proceedings for the assessment or collection of taxes against the property involved therein. Notwithstanding such appeal, the tax commission shall file with the county auditor of the county in which such property is situated its order confirming, increasing, decreasing or determining the assessed value

thereof, and the county auditor shall extend and levy against said property or the owner thereof the taxes thereupon for said year according to such assessment, and all subsequent proceedings for the determination of the taxes and the collection thereof shall be taken as if no appeal from such order were pending. When the matter is finally determined on review, a properly authenticated copy of the findings, order or judgment shall be filed with the county auditor of the county in which the land or property referred to in the proceedings is situated. If said order or judgment lowers the taxable valuation of the land or property referred to in the proceedings the tax commission, upon petition of the owner, approved by the county board, shall abate so much of the taxes against such property as is attributable to the excessive valuation thereof. If such tax has been paid the county auditor, upon petition of the owner, approved by the county board and tax commission, shall refund so much of such payment as is attributable to such excess valuation. Upon such refund being made the county auditor shall charge the same to the state and the various governmental subdivisions thereof that participated in such excessive payment in proportion to their respective shares therein and deduct the same in the next tax apportionment. (Act Apr. 23, 1931, c. 304, §7.)

§2372-8. Shall be extended as additional taxes.—If such final order and judgment results in raising the valuation of the property affected by the proceedings, the county officers shall, for the next ensuing year, in addition to the regular taxes levied for such ensuing year, levy, extend and spread against such property (if real property) or against the owner thereof (if personal property) a tax equal to the difference between the taxes actually levied and extended against such property or owner for the year in question and the taxes which should have been levied or extended against such property or owner at the increased valuation as finally determined. (Act Apr. 23, 1931, c. 304, §8.)

§2372-9. Proceedings to determine assessed valuation.—The proceedings provided hereby are for the purpose of determining the assessed valuation upon the basis of which taxes are spread against property or the owner thereof in the first instance. The order of the commission or the final order for judgment of the supreme court thereon shall not be a bar to any defense against such taxes interposed at the time of the proceedings for judgment thereon, and all defenses which may be set up against the proceedings for judgment upon such taxes under existing laws may be asserted notwithstanding the determination of the commission or the supreme court hereunder. In the event that taxes are levied or extended pending review of the order of the commission by the supreme court as hereinbefore provided, a judgment entered upon such taxes in the tax delinquency proceedings shall not be a bar to the spreading of further taxes against such property for such year in the event the assessed valuation of such property is raised as herein provided. In the proceedings for the collec-

tion of any taxes which include an additional levy because of the raising of the assessed valuation of any property hereunder the owner may answer separately to the proceedings to obtain judgment for such excess levy. (Act Apr. 23, 1931, c. 304, §9.)

§2372-10. Inconsistent acts repealed.—All acts and parts of acts inconsistent with the provisions of this act shall be and the same are hereby repealed. (Act Apr. 23, 1931, c. 304, §10.)

OCCUPATION TAX ON MINING OR PRODUCING IRON ORE OR OTHER ORES

§2373. Occupation tax of 6% on iron ore.

172M263, 271, 273, 215NW71, 180, 181, note under §2392-1. 221NW13.

181M221, 232NW35; note under §2374.

Reformation of covenant in lease to pay tax. 43F(2)17. See Dun. Dig. 8328.

The occupation tax and the royalty tax are complementary. 172M235, 215NW74.

§2374. Value of ore—How ascertained.

The purchaser of a mining lease is entitled to a deduction as advance royalty from the valuation of the ore produced, in addition to the rent or royalty reserved, of the amount paid for the lease, whether by way of additional rent or royalty or by lump sum payment. 172M235, 215NW74.

Money paid for an assignment is none the less advance royalty because the assignment is without condition and contains no right of re-entry. 172M235, 215NW74.

Where company took assignments of leases and other property in 1906, and gave assignor a mortgage, and transferred part of the corporate stock to him, held that there were no advance royalties. 172M235, 215NW74.

A corporation which buys a mining lease from a stockholder in good faith is entitled to the benefit of advance royalties paid therefor. 176M125, 222NW649.

Where a mining lease is sold or transferred, the transferee is entitled to the benefit of advance royalties paid by the transferor on ore thereafter mined. 176M125, 222NW649.

Where the sum paid for a mining lease includes the amount for the privilege of mining the ore and also the price paid for other property, the amount of advance royalty may be determined by deducting the value of the other property from the sum paid. 176M125, 222NW649.

In fixing the value of iron ore for the purpose of computing the occupation tax, advance royalties paid thereon are to be deducted. 176M125, 222NW649.

The deduction of royalty does not include the 6% royalty tax imposed by §§2392-1 and 2392-2, as the latter is a tax and not a royalty, the royalty upon which it is imposed being a royalty subtracted in computing the occupation tax. 181M221, 232NW35. See Dun. Dig. 9576c.

§2383. Notices to persons liable of amount of tax—Hearings and review.

Certiorari to the Tax Commission discharged for want of sufficient record. 172M605, 216NW240.

TAX ON IRON ORE ROYALTIES

§2392-1. Tax on royalties—Rate of tax.

181M221, 232NW35; note under §2392-2.

Reformation of covenant in lease to pay tax. 43F(2d)17. See Dun. Dig. 8328.

The royalty tax is imposed upon the right, title, and interest of the lessor, and where the lessee has covenanted to pay all taxes and assessments, he must pay the royalty tax. 172M263, 271, 273, 215NW71, 180, 181.

The occupation tax and the royalty tax are complementary. 172M235, 215NW74.

Laws 1923, c. 226, is properly entitled and does not offend constitution, art. 4, §27. 175M305, 221NW13.

Tax imposed by Laws 1923, c. 226 does not violate const. art. 1, §7, or art. 9, §1, 175M305, 221NW13.

Following *Marble v. Oliver Mining Co.*, 172M263, 215NW71, and *Fryberger v. Inland Steel Co.*, 218NW553, the leases here involved obligated the lessees to pay the tax imposed by chapter 226, L. 1923. 175M305, 221NW13.

§2392-2. Same—Definitions.

172M235, 215NW74, note under §2374.

Mineral lease of lands belonging to state imposed upon lessee the duty to pay all taxes, and an assignment put upon assignee duty to perform all covenants of the lessee, and to pay royalty tax upon additional royalties reserved by lessee, under new statute. 174M139, 218NW553.

The tax imposed by this section is a property tax not deductible as a non-statutory deduction in fixing the valuation of the ore produced in computing the occupation tax imposed by §2373. 181M221, 232NW35. See Dun. Dig. 9576c.

§2392-5. Tax on royalties—assessment by tax commission.—Upon the receipt by the Minnesota Tax Commission of the report provided for in Section 3 [§2392-8] of this act it shall determine from such information as it may possess or obtain, whether the same is correct or otherwise, and if found correct, said tax commission shall determine therefrom the amount of tax due from such person, and shall enter the amount thereof in its records and shall make its certificate of taxes due thereon from such person, and of the amount that has been paid thereon, and on or before the first day of May of each year file the same with the state auditor and a duplicate thereof with the state treasurer; and the tax commission shall have power, in case it shall deem said report incorrect, to make its findings as to the amount of such taxes due after hearing upon notice to the person interested, and its findings shall have the same effect as the determination of the amount of such taxes upon a report made as hereinbefore provided.

A person subletting land for the use of which he received royalty shall be required to pay taxes only on the difference between the amount of royalty paid by him and the amount received. (As amended Apr. 20, 1931, c. 234, §1.)

§2392-7. Time for payment of tax.—Any portion of such tax that has not been withheld and paid by the royalty payor as herein required shall be due and payable on or before May 31st of each year. (As amended Apr. 20, 1931, c. 234, §2.)

§2392-8. Lien of tax.—The situs of royalty for all purposes of this act shall be in this state; and the tax herein provided for shall be a specific lien from the time the royalty accrues upon all and singular the right, title and interest of the person to whom such royalty is payable, in and to the land for permission to explore, mine, take out and remove ore on which the royalty is paid, and shall be a specific lien upon such royalties as they accrue. Every person paying royalty to another which is subject to tax hereunder and upon which the royalty tax has not been

paid shall withhold the amount of the tax upon such royalty and remit the same to the state treasurer at the time the royalty is paid. Such payment to the state treasurer shall operate to discharge to that extent the liability of the person paying such royalty to the royalty recipient. At the time of such payment he shall file with the state auditor and with the Minnesota Tax Commission a report thereof on forms to be prescribed by the Minnesota Tax Commission. If any person paying royalty to another shall fail to withhold the tax thereon and pay the same to the state treasurer he shall be liable for the amount of such tax, with interest at the rate of 12 percent per annum from the time the same should have been paid, to be recovered in an action by the attorney general for and on behalf of the state. The tax commission may, upon petition of any royalty payor or recipient, and upon such conditions as it may impose, permit the paying of the tax in one annual payment instead of as such royalty accrues, in which case such annual payment shall be made at such times as the tax commission directs, not later than May 31 of the year following the accrual of the royalty. No such extension of time shall be granted unless as one of the conditions thereof the royalty payor shall guarantee the payment of the tax.

In the event the royalty is paid in ore instead of in cash the tax provided for herein shall be a specific lien upon the ore apportioned to the royalty recipient or, if such ore be not apportioned, upon the royalty recipient's interest in the ore mined, and such ore shall not be shipped from the state of Minnesota unless:

(a) The royalty tax be paid, or

(b) A bond be given to secure such payment, upon a form and with sureties approved by the tax commission, in an amount 25 per cent in excess of the tax commission's estimate of the tax, or

(c) The estimated amount of the tax (such estimate to be made by the tax commission) be deposited with the state treasurer as security for such payment, or

(d) The payment of the tax be guaranteed or secured in some other manner satisfactory to the tax commission. (As amended Apr. 20, 1931, c. 234, §3.)

§2392-8½. Application.—Nothing in this act shall be construed as amending, modifying, qualifying or in any way affecting the nature or character of the tax imposed by Mason's Statutes of 1927, Section 2392-1 to 2392-13 inclusive. (Act Apr. 20, 1931, c. 234, §4.)

TAXES DUE UNITED STATES

§2394. Taxpayer may pay taxes, etc.

Laws 1931, c. 111, limits scope of Laws 1915, c. 44, as amended by Laws 1919, c. 528.

Laws 1931, c. 127, relates to mailing statement of taxes to landowners in counties with assessed valuation of \$20,000,000 to \$25,000,000, population of 35,000 to 40,000, and area of 400,000 to 500,000 acres.

Laws 1931, c. 207, legalizes abatement of taxes in counties having an area of over 1,000,000 acres and assessed valuation of \$6,000,000 to \$12,000,000 because of destruction of crops.