1941 Supplement

To

Mason's Minnesota Statutes, 1927

and

Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by
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ritorial limits of any city of the first class, and the government of which district is not provided for in charter of such city, to issue refunding bonds to refund outstanding bonds, and bonds hereafter issued, which do not mature serially in annual installments, and to levy taxes to pay such refunding bonds, and validates such outstanding bonds which do not so mature.

Act Apr. 18, 1941, c. 297, provides for relief of certain school districts by creating a School District Relief Fund. Laws 1941, c. 297, §2. Amended, Laws 1943, c. 436.

CHAPTER 10A

Depositories of Public Funds

1973-1. Depository bonds.

Editorial note:—The word "of" following "state" should probably be "or."

It is not essential that each individual bond offered as collateral security for deposit of county funds be approved, and it is sufficient if entire issue is approved, as in case of United States bonds or State of Minnesota bonds. Op. Atty. Gen. (140F-3), June 16, 1941, June 20, 1941.

Keeping collateral in a safety deposit box rented from bank furnishing collateral, requiring simultaneous use of two keys, one in possession of county treasurer and other in possession of bank, does not violate section. Op. Atty. Gen. (140F-3), Sept. 4, 1941.

A blanket assignment of F. H. A. mortgages may be used and recorded, but it must describe each individual mortgage. Op. Atty. Gen. (140f-6), Dec. 2, 1941.

Bank need not be a member of the Federal Deposit Insurance Corporation. Op. Atty. Gen. (140f-1), Dec. 3, 1941.

Commodity stamp funds. Op. Atty. Gen. (140a-7), Dec. 22, 1941; note under §3199-114.

Federal reserve bank as custodian of bonds assigned to city as collateral by depository bank has no right to substitute other like bonds for the particular bonds deposited pursuant to city charter of city of Austin, but this is not controlling any other municipality. Op. Atty. Gen. (140a-13), June 25, 1942.

1973-6. Depositories—Bank delinquent in payment of taxes on stock shares. [Repealed.]

Repealed. Laws 1943, c. 202.

Laws 1937 (Ex. Sess.), c. 64. Repealed. Laws 1943, c. 502.

National bank delinquent in payment of taxes assessed on stock shares cannot remain a county depository. Op. Atty. Gen. (140a), March 20, 1940.

1973-7. Same—National banks—Agreement to pay taxes due on shares of stock. [Repealed.]

Repealed. Laws 1943, c. 202.

1973-10. Depositories insured under federal act excused from giving security to extent of insurance coverage.

An unincorporated volunteer fire department and an incorporated fire department relief association should be considered as separate depositors, though membership of both organizations is the same. Op. Atty. Gen. (198B-2), Dec. 14, 1939.

Commodity stamp funds. Op. Atty. Gen. (140a-7), Dec. 22, 1941; note under §3199-114.

1973-12. Limitation of deposits dependent on capital and surplus.

This section repeals by implication provision in Mason's St., §846, Minn. St. 1941, §395.07, that amount deposited in any banks shall not exceed capital stock and permanent surplus thereof. Op. Atty. Gen. (140a-1), March 15, 1943.

1973-14. Deposit of town and school district funds with county treasurer in certain cases.—Whenever the town board of any town or the school board of any school district in this state, by a unanimous resolution, deem it advisable, such town board or school board may invest such amount of funds in such town or school treasury as will not, in the opinion of such board, be needed by such town or school district during the fiscal year, in any of the bonds of any county, city, town, village, school district, drainage or other district created pursuant to law for public purposes in Minnesota, Iowa, Wisconsin and North and South Dakota, or in bonds of the United States of America, or in the bonds of any city, county, town, village, school district, drainage or other district created pursuant to law for public purposes in the United States, containing at least 3,500 inhabitants provided that the total bonded indebtedness of any such municipality or district shall not exceed ten per cent of its assessed valuation. (As amended Act Feb. 25, 1943, c. 77, §1.)

School district may not invest surplus funds in United States Defense Bonds, but may so invest sinking fund. Op. Atty. Gen. (159A-13), Oct. 1, 1941.

Proceeds of a bond issue for an addition to a school building may be invested at interest where priorities and the war have prevented building. Op. Atty. Gen. (159a-13), Apr. 24, 1942.

CHAPTER 11

Taxes

GENERAL PROVISIONS

1974. Property subject to taxation.

1. General rules.

Exercise by the United States of sovereignty over lands within the Dominion of Canada furnished no valid basis for taxation by state of Minnesota. Pettibone v. C., (DC-Minn), 31FSupp881.

Land taxed is sole source to which state and its subdivisions may look for revenue, and there is no personal obligation on part of owner. State v. Washington County, 207M530, 292NW204. See Dun. Dig. 9281(29, 30).

Real estate taxes operate exclusively in rem and the statutes impose no personal obligation upon anyone to pay them. Spaeth v. Hallam, 211M156, 300NW600. See Dun. Dig. 9114a.

Taxation is primarily a legislative function, and steps taken under authority of legislature are administrative in character, in which judicial assistance may be invoked as a matter of convenience, but legislature may authorize such proceedings to be conducted from beginning to end before or by administrative officers or bodies, and their functions are not "judicial" in the strict sense. State v. Erickson, 212M218, 3NW(2d)231.

A tax, absent clear expression to the contrary should be construed as prospective in operation, but this does not mean that a tax upon an occupation or the receipts from a business may not be computed after the taxing period according to the statutory rate in effect while taxpayer was engaged in the occupation or in earning the receipts. State v. Casualty Mut. Ins. Co., 213M220, 6NW(2d)800. See Dun. Dig. 9173.

Cases pertaining to possessory and improvement liens which attach to property irrespective of ownership of the property are not applicable or comparable to lien imposed to insure collection of excise taxes, which owe their existence and effect entirely to the statute creating them. State v. Heskin, 213M368, 7NW(2d)1. See Dun. Dig. 9160.

A tax is not a lien upon property except as made so by statute. Id. See Dun. Dig. 9160.

Tax liens owe their duration, force, and effect entirely to the statutes creating them. Id. See Dun. Dig. 9160, 9161, 9162.

Statutes impose a tax upon all personal property of a resident, whether within or without the state. State v. Northwest Airlines, 213M395, 7NW(2d)691. See Dun. Dig. 9128.

Possibility of taxation of same property by more than one state is no longer a constitutional objection. Id. See Dun. Dig. 9146.

Cases characterizing a tax as a "contribution" by the citizen in return for the protection afforded him by the state, set forth an erroneous theory, since the power to tax is not a statutory right, but an incident of sovereignty. S.R.A., Inc., 213M487, 7NW(2d)484. See Dun. Dig. 9114.

Taxes are pecuniary charges imposed by legislative power to raise money for public purposes, a burden imposed to supply the very lifeblood of the state. Id. See Dun. Dig. 9114.

Vendee under contract of sale of land entitled to possession and who takes possession may not use his vendor's immunity to taxation as a shield to avoid meeting his tax obligations as an owner, since it is his land that is being taxed, not that of his vendor. Id. See Dun. Dig. 9126.

Where a corporation, organized under the laws of one state, transacts no business there and establishes its principal office in another, where it manages and directs its business, it acquires a commercial domicile there, in virtue of which it is subject to taxation there upon its intangibles, even though its business may extend into other states. Cargill v. Spaeth, 215M540, 10NW(2d)728. See Dun. Dig. 9155.

A state may tax interest received by a domiciliary thereof from a source without the state. Id.

Multi-state taxation of tangible personal property. 27 MinnLawRev 320.

6. Federal property and agencies.

Under section 10 of the Hayden-Cartwright Act of June 16, 1936, 49 Stat. 1521 as amended by the Buck Act of Oct. 9, 1940, 54 Stat. 1060 (4 Mason's U. S. Code Ann. §12), providing that all taxes levied by the state upon sales of gasoline and other motor vehicle fuels may be levied upon such fuel sold by or through post exchanges located in United States Military Reservations when such fuels are not for the exclusive use of the United States, state of Minnesota was entitled to payment of taxes collected on sales of gasoline at the Fort Snelling Post Exchange, as against contention that the Minnesota gasoline tax was not a sales tax but a use or property tax. State v. Keeley, (C.C.A.8), 126 F. (2d) 863, rev'g State v. Ristine, (DC-Minn) 36 F. Supp. 3. See Dun. Dig. 9576e.

A bank stock corporation holding stock of a chain of banks both state and national is an entity distinct from that of the bank which it controls and manages, and is a complete "non-conductor" of qualified immunity from state taxation enjoyed by national banks, and dividends received by resident stockholders of the holding corporation are subject to state income tax. Irvine v. Spaeth, 210M489, 299NW204. Cert. den. 62SCR117. See Dun. Dig. 9120.

National banks, as federal instrumentalities, are subject to no inherent power in states to tax them, and banks, their property, and shares of their capital stock are subject to state taxation only as Congress permits, and a tax beyond that permission is void. Id.

State has power to tax interests and rights acquired under a contract of sale of land from the United States, which agrees to execute and deliver a deed at a certain specified future date if vendee has paid the total purchase price. S.R.A., Inc., 213M487, 7NW(2d)484. See Dun. Dig. 9120.

An elevator owned by the Reconstruction Finance Corporation is exempt from state taxation, if personal property. Op. Atty. Gen., (421a-11), June 4, 1940.

Real property owned by the Disaster Loan Corporation, which is an arm or branch of the Reconstruction Finance Corporation, is subject to state tax. Op. Atty. Gen. (412a-2), Apr. 16, 1941.

Effect and results of federal court judgment invalidating taxes on and forfeiture of Indian land in Mahnomen County determined. Op. Atty. Gen. (412a-10), Apr. 16, 1941.

As a general rule federal land grants to railroads are exempt from general taxation until conveyed or sold on contract by railroad, and railroad pays in lieu thereof a gross earnings tax. Op. Atty. Gen. (414d-13), Apr. 29, 1941.

State cannot collect a tax on 3.2 beer sold by Post Exchange at Fort Snelling, but can collect a tax on beer sold by private individuals, concessions or in any other manner than through an authorized governmental instrumentality to authorized purchasers, in view of Buck Resolution, act of congress Oct. 9, 1940, c. 787. Op. Atty. Gen. (217j), May 20, 1941.

Farmers who have obtained loans on their wheat which is sealed by government on their farms are subject to personal property tax. Op. Atty. Gen. (215c-10), June 21, 1941.

Postal savings certificates and accounts are subject to money and credits tax. Op. Atty. Gen. (614G), Aug. 26, 1941.

7. Interstate commerce.

Oklahoma use tax on materials and equipment brought into state and used in repair of interstate pipe lines held not invalid as exacting money without due process of law. Oklahoma Tax Com'n v. S., (CCA10), 113F(2d)853, rev'g (DC-Okl), 30FSupp131. Cert. den., 61SCR75.

Interstate character of a sale, made on a contract for purchase of goods which are to be shipped from another state, is not affected by fact that goods are consigned to shipper or his agent to whom order is given and are to be delivered by such agent, nor by employment of another agent or agency for delivery of goods purchased or by fact that goods ordered by several purchasers are shipped in bulk to agent and are delivered by agent to respective purchasers after breaking bulk. City of Waseca v. B., 206M154, 288NW229. See Dun. Dig. 4894.

Negotiation of sales of goods which are in another state, for purpose of introducing them into state in which negotiation is made, is interstate commerce. Id.

City ordinance requiring hawkers and peddlers taking orders for future delivery to have a license and pay a tax imposed an unlawful burden upon interstate commerce, as applied to local agent with local business receiving goods from employer in another state. Id.

State may not tax interstate commerce either by laying tax upon business which constitutes such commerce, or privilege of engaging in it, or upon receipts, as such, deprived from it. Id. See Dun. Dig. 4895.

Property engaged in transportation of interstate commerce may be subjected to the usual nondiscriminatory property taxes of the state if jurisdiction to tax otherwise is present. State v. Northwest Airlines, 213M395, 7NW(2d)691. See Dun. Dig. 9121.

Validity of a property tax on airplanes is governed by same principles as those relating to personal property generally. Id. See Dun. Dig. 9121.

10. Property of resident outside state.

A resident could be taxed for hives of bees temporarily outside state on May 1. Op. Atty. Gen. (421a-14), Apr. 7, 1941.

1975. Property exempt from taxation.—All property described in this section to the extent herein limited shall be exempt from taxation, to-wit:

(1) All public burying grounds.

(2) All public schoolhouses.

(3) All public hospitals.

(4) All academies, colleges, and universities, and all seminaries of learning.

(5) All churches, church property and houses of worship.

(6) Institutions of purely public charity.

(7) All public property exclusively used for any public purpose.

(8) Personal property of every household of the value of $100. The county auditor shall deduct such exemption from the total valuation of such property as equalized by the tax commission assessed to such household, and extend his levy of taxes upon the remainder only. The term "household" as used in this section shall be defined as a domestic establishment maintained either (1) by two or more persons living together within the same house or place of abode, subsisting in common and constituting a domestic or family relationship, or (2) by one person.

In case there is an assessment against more than one member of a household the $100 exemption shall be divided among the members assessed in the proportion that the assessed value of the personal property of each bears to the total assessed value of the personal property of all the members assessed. The personal property of each household claimed to be exempt shall be limited to property in one taxing district, except in those cases where a single domestic establishment is maintained in two or more adjoining districts. (As amended Act Feb. 18, 1943, c. 41, §1.)

Exemption of property of United States, see 5, 6-3, 6-9 to 6-15.

½. In general.

Exemption of property from taxation does not comprehend exemption from the payment of excise and impost taxes by the owner of the exempted property, especially those which are not imposed in lieu of property taxes. Christgau v. W., 208M263, 293NW619. See Dun. Dig. 9149.

Rule that ambiguities in statutes imposing taxes are to be resolved in favor of taxpayers does not apply to deductions, which are allowable only when plainly authorized. Abbott's Estate, 213M289, 6NW(2d)466. See Dun. Dig. 9173.

Land acquired by Hamline University in 1925 is exempt from all general taxes for years subsequent thereto, but is subject to a ditch lien placed against premises before that date and also to all special assessments for local improvements before and after that date. Op. Atty. Gen., (414B-4), May 3, 1940.

Where a village acquires deed to land which has been sold to the state for delinquent taxes, village need not pay the delinquent taxes and state cannot proceed to forfeiture and deed to the village should be recorded without payment of taxes. Op. Atty. Gen., (414a-11), May 7, 1940.

Mere fact that private hospital records articles of incorporation setting forth that it is of a charitable nature does not necessarily make its property exempt. Op. Atty. Gen. (414-d-10), July 29, 1940.

Constitutional exemption of public hospitals from taxation applies to moneys and credits. Op. Atty. Gen. (614G), Nov. 28, 1940.

1. None except authorized by constitution.

In order to be exempt a hospital must be devoted to a public use and operated for charitable purposes, and it is not enough that it is a corporation organized under charitable statutes. Op. Atty. Gen. (414d-10), Feb. 8, 1940.

No land owned by the trustees of Hamline University is subject to taxation, i. e. general taxes. Op. Atty. Gen., (414B-4), May 3, 1940.

Land leased to United States government creates and establishes a recreational area for an indefinite period, in consideration of $1 and other valuable consideration, may be considered "public lands," and its taxability would depend upon exclusive use by the government without any substantial use reserved by lessor. Op. Atty. Gen. (414a-2), Oct. 18, 1940.

Personal property exemption provided in §1975(8) is applicable to any personal property which taxpayer may own and is not limited to household goods described in §1993(2). Op. Atty. Gen. (421B-5), Dec. 6, 1940.

Professional equipment of dentists serving in the armed forces is not exempt from taxation. Op. Atty. Gen. (414a-9), July 1, 1943.

2. Strict construction.

Clauses creating exemption from taxation are strictly construed. C. Thomas Stores Sales System v. Spaeth, 209 M504, 297NW9. See Dun. Dig. 9150.

3. Special assessments.

School districts and counties may be assessed for local improvements by any village, borough or city, except home rule cities of the first class. Laws 1943, c. 609.

While legislature may authorize assessment of school property for local improvements, such authorization must be explicit, otherwise, it is deemed to be withheld. Ind. School Dist. v. C., 208M29, 292NW777. See Dun. Dig. 9151a.

A purchaser of lands takes them free of assessments for improvements made by city while state was owner of land if assessment was made before purchase, but subject to assessment for improvements made while land was owned by state if such assessment was not finally confirmed and established until after purchase. Op. Atty. Gen. (412a-26), Dec. 2, 1939.

On forfeiture of land to state for nonpayment of taxes all special assessments should be cancelled, and all special assessments made while state owned lands are void, and under no circumstances may county board pay for a special assessment for improvements made to property owned by state, though an obligation to pay a special assessment upon property owned by a school district or a county is created by statute independent of a lien. Op. Atty. Gen. (408c), Dec. 26, 1939.

Tax forfeited land cannot be charged with a lien for local improvements, though enhanced value of property by virtue of improvements should be considered by county board in appraising land for sale. Op. Atty. Gen., (396c-6), Jan. 10, 1940.

On forfeiture of land to the state all existing special assessments are cancelled, including those payable after purchase from the state, and any assessments levied while title was in the state are void. Op. Atty. Gen. (408c), Jan. 23, 1940.

Land forfeited to state for nonpayment of taxes is not subject to assessment for local improvements, but must be included in determining rate of assessment of other property, and one purchasing from the state is not liable for assessment made while land was owned by state. Op. Atty. Gen. (412a-26), Feb. 15, 1940.

Land acquired by Hamline University in 1925 is exempt from all general taxes for years subsequent thereto, but is subject to a ditch lien placed against premises before that date and also to all special assessments for local improvements before and after that date. Op. Atty. Gen., (414B-6), May 6, 1940.

Where ditch liens against agricultural lands were cancelled on forfeiture of land to state for nonpayment of taxes, and while property was owned by state repairs were made to ditches and assessments were not spread against lands, no assessment could later be spread against lands after sale of lands by state to private party. Op. Atty. Gen., (425c-3), May 27, 1940.

Where a drainage system was established after state sold trust fund land under contract and contract was forfeited for failure of performance, an assessment of benefits from drainage system never became a lien and the land could be later sold by the state free of lien. Op. Atty. Gen. (408c), Oct. 5, 1943.

4. Held exempt.

Where fee is conveyed to county, property is exempt from future taxation, and payment of taxes which are a lien at time of conveyance cannot be enforced, but where an easement only is conveyed fee remaining in grantor, payment of taxes which are remaining at time of conveyance may be enforced, as against interest remaining in grantor, and interest in county is exempt from future taxation during existence of easement. Op. Atty. Gen. (373B-17(e)), Oct. 7, 1939.

Land conveyed to a cemetery association for burial purposes is exempt from taxation, even though part of it is leased annually for farm purposes on a cash rental basis, and association has never filed articles of incorporation. Op. Atty. Gen., (414d-4), May 1, 1940.

No land owned by the trustees of Hamline University is subject to taxation, i. e. general taxes. Op. Atty. Gen., (414B-4). May 3, 1940.

As a general rule federal land grants to railroads are exempt from general taxation until conveyed or sold on contract by railroad, and railroad pays in lieu thereof a gross earnings tax. Op. Atty. Gen. (414d-13), Apr. 29, 1941.

Lands of American Red Cross are exempt. Op. Atty. Gen. (414a-10), Nov. 13, 1941.

Land and an apartment house upon it deeded to university as an outright gift is not subject to general real estate taxation, though leased out by university to tenants. Op. Atty. Gen. (407Q), Jan. 8, 1942.

Stock of a municipal liquor store is not subject to tax. Op. Atty. Gen. (218g-13), Apr. 7, 1942.

A lot adjoining, or across street from, a church, used exclusively for parking purposes for members of church who desire to attend worship, and property used as a playground situated across street from a non-public school, are exempt from taxation. Op. Atty. Gen. (414d-6), Apr. 8, 1942.

Hibbing General Hospital was exempt from taxation from the time contract was entered into for its ownership and operation by the Benedictine Sisters Benevolent Association. Village of Hibbing, MBTA (No. 117), Sept. 15, 1943.

The state's title to lands acquired by foreclosure of "rural credits" mortgages is subject to tax liens accruing while the mortgages were in effect, and same rule necessarily follows where state has sold land acquired through foreclosure to a purchaser who covenants to pay taxes assessed against land during continuance of his contractual ownership and whose rights thereto are subsequently canceled by statutory notice of default. State v. Washington County, 207M530, 292NW204. See Dun. Dig. 9151a.

Property owned by a corporation organized as a public charity is not exempt as property of an institution of purely public charity where it is subject to private control and is devoted to substantial use for private profit. State v. Willmar Hospital, 212M38, 2NW(2d)564. See Dun. Dig. 9153.

Cases cited on point whether beauty and hairdressing school personal property is exempt from taxation. Op. Atty. Gen., (414B-3), May 7, 1940.

5. Held not exempt.

Property turned over to church and used for religious purposes for many years without payment of rent or interest was not exempt from taxation while owned by individual, but commissioner of taxation could grant reduction or abatement of tax after owner conveyed it to church. Op. Atty. Gen. (414d-6), Dec. 12, 1939.

A city, such as Chatfield, has power to accept a hotel building as a gift and lease it temporarily, and it is subject to tax. Op. Atty. Gen. (59a-40), Oct. 6, 1942.

Public lands leased for and devoted to private purposes is taxable. Op. Atty. Gen. (59a-40), Mar. 27, 1943.

6. Effect of assessing exempt property.

Lien for taxes existing prior to acquisition by state or subdivision thereof may remain on auditor's books, but any proceeding to forfeit for delinquent taxes is void. Op. Atty. Gen. (414c-3), Sept. 29, 1939.

1977. Real property.

Expansion of operation was not test upon which to base right to allowance under War Mineral Relief Act of Mar. 2, 1919, as amended (40 Stat. 1272, 42 Stat. 322, 45 Stat. 1166) of payments to state of Minnesota for taxes under this section during period of world war in which mining operations were carried on under government stimulation, and denial by Secretary of Interior of such allowance upon applying such test was error. Crowley v. I., (USAppDC), 107F(2d)256. Cert. den. 60 SCR582.

Where express company has leased portion of large building for a period of years, real estate tax should be assessed against the entire building, since real estate cannot be divided for purposes of assessment. Op. Atty. Gen. (474-d-1), July 24, 1940.

Where one buys timber but it is still standing on state land on May 1, it should be taxed as real estate. Op. Atty. Gen. (429g), July 15, 1942.

Real estate for taxation purposes includes land itself and all structures and improvements upon it, as well as all rights and privileges belonging or appertaining to the land. S.R.A., Inc. 213M487, 7NW(2d)484. See Dun. Dig. 9126.

Where vendee under a contract of sale of land has taken possession, his interest for purpose of taxation is the same as that of any other owner. Id. See Dun. Dig. 9126.

1978. Mineral, gas, coal, oil, etc.

Taxation of taconite. Laws 1941, c. 375.

Register of deeds can properly refuse to record a conveyance of mineral rights, which has not heretofore been separated from fee title, without certificate from county auditor and treasurer that all taxes have been paid. Op. Atty. Gen. (373B-9 (B)), May 18, 1940.

Where record title to surface is in one person and record title to minerals is in another person or set of persons, it is duty of taxing officers to assess and tax separately interests of surface and mineral owners. Op. Atty. Gen. (412a-23), Nov. 1, 1940.

Where there has been a conveyance effecting a severence of mineral interest from surface interest and it has been recorded, county auditor must certify "no taxes delinquent" as to subsequent taxes where mineral rights were not assessed separately and taxes on surface are delinquent. Op. Atty. Gen. (311*l*), June 8, 1943.

1978-1. Taxation of reserved timber or mineral rights; etc.

Where one buys timber but it is still standing on state land on May 1, it should be taxed as real estate. Op. Atty. Gen. (429g), July 15, 1942.

1979. Personal property.

Entire fleet of airplanes of a transport company domiciled in the state is subject to property tax, where all of the airplanes are in the state from time to time during the year carrying passengers, property, and mail, and for purpose of periodic overhauling. State v. Northwest Airlines, 213M395, 7NW(2d)691. See Dun. Dig. 9128.

Possibility of taxation of same property by more than one state is no longer a constitutional objection. Id. See Dun. Dig. 9155.

Statutes impose a tax upon all personal property of a resident, whether within or without the state. Id. See Dun. Dig. 9155, 9197.

Gasoline held in storage on May 1 is subject to a personal property tax even though gasoline tax has been paid. Op. Atty. Gen., (325), Mar. 1, 1941.

(3).

Where taxpayer owns a contiguous tract of land less than one-third of an acre in extent on part of which she maintains her home, and the remainder of land has been leased for 10 years to a tenant who has erected buildings thereon subject to removal upon termination of lease, tenant's buildings should be assessed with the land. Op. Atty. Gen. (232d), Sept. 9, 1940.

1980. Other definitions.

Valuation of "unmined iron ore". Village of Aurora, MBTA (No. 55, 56), March 13, 1943.

Taxation situs of machines of International Business Machines Corporation. Op. Atty. Gen. (421a-17), Sept. 17, 1934.

(5).

Liquor stock of retailer should be valued without deducting taxes previously paid and evidenced by revenue stamps. Op. Atty. Gen. (421a), July 5, 1940.

1983. Powers of tax commission.—The Commissioner of Taxation shall prescribe the form of all blanks and books required under this charter. He shall hear and determine all matters of grievance relating to taxation. He shall have power to grant such reduction or abatement of assessed valuations or taxes and of any costs, penalties or interest thereon as he may deem just and equitable, and to order the refundment in whole or in part of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid. Application therefor shall be submitted with a statement of facts in the case and the favorable recommendation of the county board or of the board of abatement of any city where any such board exists, and the county auditor of the county wherein such tax was levied or paid. In the case of gross earnings taxes the application may be made directly to the Commissioner without the favorable action of the county board and county auditor, and the Commissioner shall direct that any gross earnings taxes which may have been erroneously or unjustly paid shall be applied against unpaid taxes due from the applicant for said refundment. But no reduction, abatement or refundment of any special assessments made or levied by any municipality for local improvements shall be made unless it is also approved by the board of review or similar taxing authority of such municipality. The Commissioner may refer any question that may arise in reference to the true construction of this chapter to the attorney general, and his decision thereon shall be in force and effect until annulled by the judgment of a court of competent jurisdiction. The Commissioner shall forward to the county auditor a copy of the order by him made in all cases in which the approval of the county board is required. The Commissioner may by written order abate, reduce or refund any penalty imposed by any law relating to taxation, if, in his opinion, the enforcement of such a penalty would be unjust and inequitable. Such order shall, in the case of real and personal property taxes, be made only on application and approval as provided in this section; in the case of all other taxes, such order shall be made on application of the taxpayer to the Commissioner and shall be valid only if approved in writing by the attorney general. (As amended Act Apr. 25, 1941, c. 454, §1.)

Though the United States was prevented from completely discharging its trust owing to Indian to turn over land on expiration of trust period free of charge or encumbrance because of wrongful assessment of taxes against the land, county was not liable in suit by the United States for taxes voluntarily paid by the Indian in settlement of assessment against such land. Mahnomen County v. United States, 319US474, 63SCR1254, rev'g (CC A8), 131F(2d)936. See Dun. Dig. 9120, 9516.

Demand for taxes paid a county in Minnesota is not an element of the cause of action for recovery nor a step in the remedy. Pettibone v. Cook County, (CCA8), 120 F(2d)850, aff'g (DC-Minn), 31FSupp881. See Dun. Dig. 2300, 3744, 5602, 5609, 9520a, 9530, 9676, 9678a.

Form provided for application for reduction in assessed valuation of personal property. Op. Atty. Gen. (421a-15), Nov. 23, 1939.

Property turned over to church and used for religious purposes for many years without payment of rent or interest was not exempt from taxation while owned by individual, but commissioner of taxation could grant reduction or abatement of tax after owner conveyed it to church. Op. Atty. Gen. (414d-6), Dec. 12, 1939.

Mortgage registry tax may be refunded in the discretion of the commissioner where mortgagors decided not to complete transaction, and mortgage was satisfied of record. Op. Atty. Gen., (418a-6), Jan. 8, 1940.

County board has power to recommend granting application for reduction of assessed valuation of township but does not have power to make reduction. Op. Atty. Gen. (424a-15), Jan. 8, 1940.

Commissioner of taxation may allow taxes represented by a confessed judgment to be settled for less than full amount, on recommendation by county board and county auditor. Op. Atty. Gen. (412a-10), Feb. 5, 1940.

In absence of an order of tax commissioner specifically granting an abatement of penalty and interest, they must be imposed. Op. Atty. Gen. (505J), March 9, 1940.

Default in confession of judgment does not prevent application for abatement of delinquent taxes under this section. Op. Atty. Gen., (412a-10), May 20, 1940.

This section is applicable to taxes on land owned by Department of Rural Credits following cancellation of contracts for deeds. Op. Atty. Gen. (770g), June 20, 1940.

There is no statutory provision for reinstatement of taxes which have been abated by the commissioner of taxation. Id.

County board has no power to abate penalty and interest on delinquent taxes, but may recommend such abatement to state commissioner of taxation. Op. Atty. Gen. (505a), Sept. 17, 1940.

Where tax-forfeited lands were sold on May 17, and county auditor after sale spread taxes against property for that year, attempt of auditor to impose the taxes was ineffective and entry on tax list for that year should be removed by proper marginal note, and if taxes were paid they should be returned by county board upon proper claim without necessity of any proceedings before State Department of Taxation. Op. Atty. Gen. (424a-9), Sept. 21, 1940.

Notice should be given attorney general of an order granting reduction abatement or refundment in excess of $100. Op. Atty. Gen. (130a), Dec. 23, 1940.

Personal property tax judgment may be cancelled only as provided by §2092 or abated only as provided by this section. Op. Atty. Gen. (407l), Mar. 17, 1941.

Members of village council organized under 1905 Act are not required to pass on petition for equalization of assessments, and all that is required in such a case is favorable action by village board of review which is composed of assessor, clerk and president. Op. Atty. Gen. (406e), May 7, 1941.

Pendency of application for abatement does not prevent forfeiture. Op. Atty. Gen. (407f), May 29, 1941.

Commissioner of taxation does not have power to abate taxes which have been assigned. Op. Atty. Gen. (407l), July 15, 1941.

Where a personal property tax judgment has been taken and later an abatement is allowed by commission, county auditor should transmit to clerk of district court a certified copy of order of commission, and clerk of district court should make appropriate record upon his judgment's docket, and if clerk is entitled to any fee for entry of such reduction, it should be added to amount of judgment and paid by judgment debtor when judgment is satisfied. Op. Atty. Gen. (421a-8), July 16, 1941.

Where taxes on real estate are being paid under ten year plan, and land goes delinquent again after only one payment has been made, and later owner obtained abatement, clerk of court on a fee basis is not entitled to any fees for discharging remaining ninth payment, because confession of judgment is no longer operative and there can be no satisfaction. Id.

Commissioner of taxation has authority to cancel taxes on property transferred to the university. Op. Atty. Gen. (407Q), Jan. 8, 1942.

Refund of mortgage registry tax paid on exempt property cannot be obtained except by application therefor to tax commissioner, first approved by county board. Op. Atty. Gen. (418c-3), June 16, 1942.

LISTING AND ASSESSMENT

1984. Time.

Op. Atty. Gen. (59a-1), Sept. 27, 1939; note under §1990.

It is improper for city assessor to make a general revaluation of real property in a year other than the

regular year for assessing property, but city may employ an appraiser to prepare a plot of the city, establish comparable land values, and make records of improvement and establish comparable values on improvement, and fix salary of such appraiser at any reasonable figure, which data may be used in proper year by assessor in arriving at his own independent judgment in making assessment. Op. Atty. Gen. (12e), July 23, 1941.

Property owned on May 1st by a corporation organized as a public charity is not exempt as property of an institution of purely public charity where it is subject to private control and is devoted to substantial use for private profit. State v. Willmar Hospital, 212M38, 2NW (2d)564. See Dun. Dig. 9153.

Assessor should list and assess in odd numbered years all real property platted since last real estate assessment, but only as to plats which were both accepted by village council and recorded on or before May 1. Op. Atty. Gen. (474j-2), July 30, 1941.

Repurchase of tax-forfeited land after May 1 does not require inclusion of 1943 tax in repurchase price, but such tax is to be assessed and levied as omitted taxes. Op. Atty. Gen. (425c-13), Sept. 22, 1943.

1985. Omitted property. Subdivision 1.—If any real or personal property be omitted in the assessment of any year or years, and the property thereby escape taxation, or if any real property be undervalued by reason of failure to take into consideration the existence of buildings or improvements thereon, or be erroneously classified as a homestead, when such omission, undervaluation or erroneous classification is discovered the county auditor shall in the case of omitted property enter such property on the assessment and tax books for the year or years omitted, and in the case of property undervalued by reason of failure to take into consideration the existence of buildings or improvements thereon, or property erroneously classified as a homestead, shall correct the valuation or classification thereof on the assessment and tax books; and he shall assess the property, and extend against the same on the tax list for the current year all arrearage of taxes properly accruing against it, including therein, in the case of personal property taxes, interest thereon at the rate of seven per cent. per annum from the time such taxes would have become delinquent, when the omission was caused by the failure of the owner to list the same. If any tax on any property liable to taxation is prevented from being collected for any year or years by reason of any erroneous proceedings, undervaluation by reason of failure to take into consideration the existence of buildings or improvements, erroneous classification as a homestead, or other cause, the amount of such tax which such property should have paid shall be added to the tax on such property for the current year.

Subdivision 2. Nothing in this act shall authorize the county auditor to enter omitted property on the assessment and tax books more than six years after May first of the year in which the property was originally assessed or should have been assessed and nothing in this act shall authorize the county auditor to correct the valuation or classification of real property as herein provided more than one year after May first of the year in which the property was assessed or should have been assessed.

Subdivision 3. Nothing in this act shall affect any rights in undervalued or erroneously classified property, acquired for value in good faith prior to the correction of the assessed value thereof by the county auditor as provided in this section. Any person whose rights are adversely affected by any action of the county auditor as provided in this subdivision may apply for a reduction of the assessed valuation under the provisions of Mason's Supplement 1940, Section 1983, as amended by Laws 1941, Chapter 454, Section 1, relating to the powers of the Commissioner of Taxation. (As amended Apr. 24, 1943, c. 632, §1.)

Op. Atty. Gen. (59a-1), Sept. 27, 1939; note under §1990.

Inadvertently omitted past paving assessment installments may be added by county auditor to taxes for current year. Op. Atty. Gen. (408c), Nov. 26, 1941; Dec. 6, 1941.

Making up a deficit in ditch funds. Op. Atty. Gen. (901b), July 29, 1942.

1. Liability for taxes unaffected by omission.

Moneys and credits taxes omitted from personal property tax list may be placed in list for subsequent year, and there is no authority for acceptance by treasurer of a partial payment when it is placed in list. Op. Atty. Gen. (614*l*), May 29, 1941.

Where county auditor spread assessment against lands benefited by drainage system, but it was found that extra funds were necessary and amount of extra costs were determined at time of construction and records made thereof, but county auditor failed to spread assessment for extra cost against benefited lands, and an overdraft exists in ditch system accounts, county auditor may now cause such assessments to be spread as liens against benefited property under this section, though more than 20 years have elapsed. Op. Atty. Gen. (901b), June 27, 1941.

Indian land in White Earth Indian Reservation which became taxable at expiration of trust patent, but escaped taxation due to confusion, should be entered as omitted property on assessment books for past years, subject to the time limitation of six years, and it is immaterial that such lands have been transferred and are in the hands of innocent third party. Op. Atty. Gen. (21d), Oct. 11, 1943.

13. Void forfeiture.

Where forfeiture is void for insufficiency in description of property in delinquent list and judgment and certificate of forfeiture is cancelled, property may then be assessed and taxes levied for proper years as in case of omitted taxes. Op. Atty. Gen. (412a-13), May 10, 1941.

1986. Assessment—Mode.

In absence of any charter provisions prohibiting it, city council may enter into contract with a person to reassess property in city for agreed compensation. Op. Atty. Gen., (12a), Feb. 4, 1941.

County auditor is not concerned in controversy between private claimants to title of land. Op. Atty. Gen. (425i), Aug. 6, 1943.

Assessor is not bound to assess the number of acres stated in the government survey if he finds that the acreage is incorrectly stated therein, and having determined correct location of corners, the acreage yields to the monuments so established. Op. Atty. Gen. (404b), Nov. 17, 1943.

1986-1. Compensation of assessors in certain counties.—In all towns, villages and cities other than cities of the first class and cities now or hereafter having home rule charters containing provisions in conflict with this act which are situated in counties having a population of not less than 450,000 inhabitants and an assessed valuation, including money and credits, of more than $450,000,000, the assessor and each deputy assessor of each such town, village and city, shall be entitled to compensation for each day's service necessarily rendered by him, the sum of $5.00, not exceeding, however, 120 days in any one year, and mileage at the rate of five cents per mile for each mile necessarily traveled by him in going to and returning from the county seat of such county to attend any meeting of the assessors of such county which may be legally called by the Minnesota tax commission and also for each mile necessarily traveled by him in making his return of assessment to the proper officer of such county; provided, when the county auditor shall direct an assessor to perform work additional to the work performed within the 120 day period, the assessor shall be paid for such additional work at the rate of 75 cents per hour, but not to exceed $50.00 in addition to the compensation hereinbefore provided. (As amended Act Apr. 16, 1941, c. 248, §1.)

Assessor is not entitled to any compensation for checking division sheet sent to him by county auditor, at least for services performed after the last Monday in July. Op. Atty. Gen. (12-B-1), Sept. 5, 1940.

Village assessor should not work on Sundays or holidays, and should not be compensated for work done on those days. Op. Atty. Gen. (12B-1), Feb. 13, 1942.

1986-2. Time for performance of duties; etc.

Assessor has until last Monday in July to perform his duties and return his books to the county auditor. Op. Atty. Gen. (12B), July 5, 1940.

Assessor is not entitled to compensation for services rendered after last Monday in July. Op. Atty. Gen. (12-B-1), Sept. 5, 1940.

Assessor should list and assess in odd numbered years all real property platted since last real estate assessment, but only as to plats which were both accepted by village council and recorded on or before May 1. Op. Atty. Gen. (474j-2), July 30, 1941.

1988. Deputy assessors.

Payment of a salary to a deputy assessor is discretionary with city council. Op. Atty. Gen. (12E), June 26, 1940.

A village assessor may appoint a deputy with the approbation of the county auditor if he deems it necessary, and approval of the council is not required, and a bond and oath are both required, and both assessor and deputy must qualify as an elector of the village as to age. Op. Atty. Gen. (12e), Apr. 19, 1943.

Appointment of deputy where absence of assessor from state is voluntary. Op. Atty. Gen. (12e), Apr. 26, 1943.

Village assessor in appointing a deputy need not obtain approval of council, approval by county auditor being sufficient. Op. Atty. Gen. (12e), Aug. 26, 1943.

Mere fact that assessor's deputy is his wife would not, standing alone, make it illegal to pay her for her work as deputy. Id.

1990. Assessor's duties.

1. Assessments, when and how made.

Where lands were annexed to city of Austin by resolution adopted by city council on July 21, and filed for records with register of deeds and county auditor on Sept. 9, county auditor should tax annexed lands in the township and not the city, except that special assessments should be listed in political subdivision of which land was a part at time of levy, notwithstanding that levy of taxes in the city is made during month of October. Op. Atty. Gen. (59a-1), Sept. 27, 1939.

Where taxpayer owns a contiguous tract of land less than one-third of an acre in extent on part of which she maintains her home, and the remainder of land has been leased for 10 years to a tenant who has erected buildings thereon subject to removal upon termination of lease, tenant's buildings should be assessed with the land. Op. Atty. Gen. (232d), Sept. 9, 1940.

1990-1. City council to fix salary of city assessor in certain cases.

Provision in South St. Paul City Charter ch. 6, §1 fixing salary of an assessor was superseded by Laws 1933, ch. 234, and council may increase or diminish salary of elected assessor during his term. Op. Atty. Gen. (12a-1), Dec. 8, 1942.

1992. Valuation of property.

In hearing on objections to valuation of land and department store for tax purposes, wherein leases to the proprietor of the store were admitted in evidence, though contention that value of these leases as evidence was affected by the critical financial situation of the department store and that evidence of its condition and that it was contemplating proceedings in bankruptcy should have been admitted, had some apparent merit as impeaching the probative force of the leases, such evidence has been considered inadmissible, and unless there was some evidence tending to prove that the property was not leasable at a figure which would return a fair income on the valuation fixed upon the land, the exclusion of the evidence was not prejudicial. Kalscheuer v. State, 214 M441, 8NW(2d)624. See Dun. Dig. 9214.

Contention that building was oversized for housing of a department store commensurate with demands of the market was not supported by proof that would bring it within the rule laid down in the case of State v. McNiven, 183M539, 237NW410. Id. See Dun. Dig. 9210, (49b).

While trial court would not have been justified in basing its valuation solely upon leases executed many years before, it was entirely justified in receiving them as an element to be considered. Id. See Dun. Dig. 9214.

Many considerations may give rise to tax delinquency, and if such delinquencies exist uniformly in a district of which the property under consideration is a part, it might be error to exclude from evidence a list of tax delinquent property, but court was justified in rejecting such evidence where the lands listed therein were rather remote, in hearing on objections to valuation of land for tax purposes. Id. See Dun. Dig. 9214.

Income from property is one factor to be considered in arriving at its sales value for taxation purposes. Id. See Dun. Dig. 9214.

Party challenging amount of real estate tax as burden of proving that property was overvalued. Id. See Dun. Dig. 9214.

Aim of statute is to make a distinction between market or sales value and cost price or intrinsic value. Id. See Dun. Dig. 9214.

In valuing land for tax purposes when no sales have occurred for a long time, the value may be determined by judgment and opinion of men whose experience and knowledge of the lands and their surrounding circumstances qualify them in the court's view to give reliable opinions as to fair value. Id. See Dun. Dig. 9214.

Testimony of assessors held to sustain findings of trial court as to value of real estate. Delinquent Real Estate Taxes, 212M562, 4NW(2d)783. See Dun. Dig. 9210.

Liquor stock of retailer should be valued without deducting taxes previously paid and evidenced by revenue stamps. Op. Atty. Gen. (421a), July 5, 1940.

Valuation of "unmined iron ore". Village of Aurora, MBTA (No. 55, 56), **March 13, 1943.**

1992-1. Assessment of real property.

While trial court would not have been justified in basing its valuation solely upon leases executed many years before, it was entirely justified in receiving them as an element to be considered. Kalscheuer, v. State, 214M441, 8NW(2d)624 See Dun. Dig. 9214.

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Valuation of "unmined iron ore". Village of Aurora, MBTA (No. 55, 56), **March 13, 1943.**

1993. Classification of property—How classified.—Subdivision 1. All real and personal property subject to a general property tax and not subject to any gross earnings or other lieu tax is hereby classified for purposes of taxation as provided by this section.

Subdivision 2. **Class 1.**—Iron ore, whether mined or unmined, shall constitute class one and shall be valued and assessed at 50 per cent of its full and true value. If unmined, it shall be assessed with and as a part of the real estate in which it is located, but at the rate aforesaid. Iron ore which either (a) is mined by underground methods and placed in stockpile subsequent to August first of a calendar year and prior to the next succeeding May first, and which contains phosphorus in excess of .180 per cent, dried analysis, or which is classified by the iron ore trade as silicious, manganiferous, Mesabi Bessemer, or Mesabi non-Bessemer ore, or (b) is mined by open-pit methods, and in accordance with good engineering and metallurgical practice, requires concentration other than crushing or screening or both to make it suitable for commercial blast furnace use, and which is so concentrated and placed in stockpile subsequent to August first of a calendar year and prior to the next succeeding May first, for two taxable years after being mined only, shall be listed and assessed in the taxing district where mined at the same amount per ton as it would be assessed if still unmined, and thereafter such ore in stockpiles shall be valued and assessed as mined iron ore, as otherwise provided by law. The real estate in which iron ore is located, other than the ore, shall be classified and assessed in accordance with the provisions of classes three, three "b," and four, as the case may be. In assessing any tract or lot of real estate in which iron ore is known to exist the assessable value of the ore exclusive of the land in which it is located, and the assessable value of the land exclusive of the ore shall be determined and set down separately and the aggregate of the two shall be assessed against the tract or lot.

Subdivision 3. **Class 2.**—All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence, shall constitute class two and shall be valued and assessed at 25 per cent of the full and true value thereof.

Subdivision 4. **Class 3.**—All agricultural products, except as provided by class three "a," and class three "d," stocks of merchandise of all sorts together with the furniture and fixtures used therewith, manufacturers' materials and manufactured articles, all tools, implements and machinery, whether fixtures or otherwise, except as provided by class three "d," and all unplatted real estate, except as provided by classes one and three "b" hereof, shall constitute class three and shall be valued and assessed at 33⅓ per cent of the full and true value thereof.

Subdivision 5. **Class 3a.**—All agricultural products in the hands of the producer shall constitute class

three "a" and shall be valued and assessed at ten per cent of the full and true value thereof. Wine produced in this State and in the possession of the producer and held in storage under bond to the United States Government, shall be classed as agricultural products for the purposes of this act. (As amended Apr. 24, 1943, c. 648, §1.)

Subdivision 6. **Class 3b.**—All unplatted real estate, except as provided by class one hereof, and which is used for the purposes of a homestead, shall constitute class three "b" and shall be valued and assessed at 20 per cent of the full and true value thereof. If the full and true value is in excess of the sum of $4,000, the amount in excess of that sum shall be valued and assessed as provided for by class 3. The first $4,000 full and true value of each tract of unplatted real estate used for the purpose of a homestead shall be exempt from taxation for state purposes; except that the first $4,000 full and true value shall remain subject to and be taxed for the purpose of raising funds for the discharge of any and all state indebtedness incurred prior to and existing at the time of the passage of this section.

Subdivision 7. **Class 3c.**—All platted real estate, except as provided by class one, which is used for the purposes of a homestead, shall constitute class 3c and shall be valued and assessed at 25 per cent of the full and true value thereof. If the full and true value is in excess of the sum of $4,000, the amount in excess of that sum shall be valued and assessed as provided for by class four. The first $4,000 full and true value of each tract of platted real estate used for the purposes of a homestead shall be exempt from taxation for state purposes; except that the first $4,000 full and true value shall remain subject to and be taxed for the purpose of raising funds for the discharge of any and all state indebtedness incurred prior to and existing at the time of the passage of this section.

For the purpose of determining salaries of all officials based on assessed valuations and of determining tax limitations and net bonded debt limitations now established by statute or by charter, class 3b and class 3c property shall be figured at 33⅓ per cent and 40 per cent of the full and true value thereof, respectively.

Subdivision 8. **Class 3d.**—Live stock, poultry, all horses, mules, and asses used exclusively for agricultural purposes, all agricultural tools, implements and machinery used by the owner in any agricultural pursuit shall constitute class 3d and shall be valued and assessed at 20 per cent of the full and true value thereof.

Subdivision 9. **Class 4.**—All property not included in the preceding classes shall constitute class four and shall be valued and assessed at 40 per cent of the full and true value thereof.

Subdivision 10. **Homestead of member of U. S. Armed Forces in class 3b or 3c.**—Real estate actually occupied and used for the purpose of a homestead by any person entering the service of the armed forces of the United States, if such entry took place on or after July 1, 1940, shall, notwithstanding the removal therefrom of such person and his family, be classified in class 3b or 3c, as the case may be, provided, that absence of the owner therefrom is solely by reason of service in the armed forces, and that he intends to return thereto as soon as discharged or relieved from such service, and claims it as his homestead. Every person who, for the purpose of obtaining or aiding another in obtaining any benefit under this subdivision, shall knowingly make or submit to any assessor any affidavit or other statement which is false in any material matter shall be guilty of a felony.

Subdivision 11. **Assessor may require proof.**—The assessor may require proof, by affidavit or otherwise of the facts upon which classification as a homestead may be determined under the provisions of subdivisions 6, 7 and 10 of this section. (As amended Apr. 24, 1941, c. 436, §1; Apr. 24, 1941, c. 437, §1; Apr. 24, 1941, c. 438, §1; Mar. 25, 1943, c. 172, §1; Apr. 24, 1943, c. 648, §1.)

Act Apr. 24, 1941, c. 436, took effect Jan. 1, 1941.

Forms for application for reclassification as homestead, certificate of recommendation by county board and county auditor, and order of commissioner of taxation. Op. Atty. Gen. (414a-13), Sept. 26, 1939.

Elements entering into classification of land as platted, unplatted, and industrial. Op. Atty. Gen., (554c), March 7, 1940.

In determining salary of judge of probate assessed valuation should be determined by figuring class 3b and class 3c property at 33⅓ and 40% of full and true value thereof. Op. Atty. Gen. (347i), July 18, 1941.

Laws 1941, cc. 436, 437 and 438, must be read together and section be read as it is in Mason's Supp. 1940 with amendment to the various subdivisions and addition of new subdivisions, and all agricultural products in hands of producer, whether held for sale or for private consumption, shall be valued and assessed at 10% of full and true value thereof under Class 3a, and all agricultural products held by anyone who is not producer thereof, whether held for sale or private consumption, shall be valued at 33⅓% and fall in Class 3. Op. Atty. Gen. (421c), July 24, 1941.

Procedures which may be taken where city sold tract of land to a can company, part of which is acreage and part platted, and effect upon classification for taxation and vacation of street, stated. Op. Atty. Gen. (18D), Mar. 26, 1942.

Subd. 2, Class 1.

Where mineral is listed and assessed separately from surface, mineral should be assessed at 50 per cent of its true value if it is iron ore, and at 33⅓ per cent if it is some other mineral. Op. Atty. Gen. (412a-23), Nov. 1, 1940.

Valuation of "unmined iron ore". Village of Aurora, MBTA (No. 55, 56), March 13, 1943.

Subd. 3, Class 2.

Personal property exemption provided in §1975(8) is applicable to any personal property which taxpayer may own and is not limited to household goods described in §1993(2). Op. Atty. Gen. (421B-5), Dec. 6, 1940.

Subd. 6, Class 3b.

Where taxpayer owns a contiguous tract of land less than one-third of an acre in extent on part of which she maintains her home, and remainder of land has been leased for 10 years to a tenant who has erected buildings upon it subject to removal upon termination of lease, homestead exemption may be applied only to that portion of premises upon which owner resides and which is not leased to tenant, and part leased should be placed in Class 4. Op. Atty. Gen. (232d), Sept. 9, 1940.

Homesteads up to $4,000 through and full value are exempt from 3 tax levy items imposed by Laws 1939, cc. 238, 245, and 436, relating to old age assistance; aid to dependent children, and relief. Op. Atty. Gen. (519), Nov. 22, 1940.

Each part owner who occupies platted real estate for the purposes of his homestead is entitled to the 25% assessment rate on so much of the first $4,000 of value thereof as such owner's share bears to the whole. Op. Atty. Gen. (232d) June 18, 1943.

Homestead classification is not applicable to leased land. Op. Atty. Gen. (232d), June 21, 1943.

It is a question of fact whether premises are occupied as a homestead while owner is absent working in a defense plant. Op. Atty. Gen. (232d), June 22, 1943.

Real estate no longer occupied by the owner but leased to another is not used for the purpose of a homestead, even though the owner is absent for the purpose of working in a defense plant. Id.

House on two lots and adjoining store on one of the lots should all be given homestead classification. Op. Atty. Gen. (232d), July 2, 1942.

Proper valuations to use in determining amount of county and state school taxes are respectively for unplatted real estate used as a homestead 20 per cent of true value and for platted real estate used as a homestead 25 per cent of true and full value. Op. Atty. Gen. (519), Dec. 12, 1940.

Subd. 7, Class 3c.

State board of investment may not invest in bonds of a school district if total indebtedness of district will exceed 15% of actual assessed valuation, and legislature is powerless to provide otherwise. Op. Atty. Gen. (928a-11), March 21, 1940.

Provision as to valuation for purpose of salaries and tax limitations applies to township levies of taxes. Op. Atty. Gen., (519o), April 5, 1940.

Mere temporary absence of owner will not terminate his homestead rights, providing he maintains his living quarters upon premises in condition for continued occupancy by himself or his family, showing his intention to return presently, but if owner moves and actually establishes his regular home elsewhere, he thereby terminates his homestead right for taxation purposes, even though he may intend to return there at some future time. Op. Atty. Gen., (232d), May 13, 1940.

Filing notice of homestead claim under §8342 has no effect upon homestead rights for taxation purposes. Op. Atty. Gen., (232d), May 23, 1940.

Exemption goes only to an individual taxpayer occupying premises as his homestead, not to a corporation. Op. Atty. Gen., (232d), May 29, 1940.

Homesteads up to $4,000 through and full value are exempt from 3 tax levy items imposed by Laws 1939, cc. 238, 245, and 436, relating to old age assistance, aid to dependent children, and relief. Op. Atty. Gen. (519), Nov. 22, 1940.

Subd. 8, Class 3d.

All livestock is to be assessed at rate specified in class 3(d), and insertion in such class of words "all horses, mules and asses used exclusively for agricultural purposes" should not be construed as limiting effect of use of word "livestock". Op. Atty. Gen. (421C-16), Feb. 18, 1942.

Subd. 10.

Soldier can claim his homestead exemption when he is away from the home and not occupying it. Op. Atty. Gen. (232d), May 23, 1942.

1994. Assessment of real property in odd numbered years.

Assessor should list and assess in odd numbered years all real property platted since last real estate assessment, but only as to plats which were both accepted by village council and recorded on or before May 1. Op. Atty. Gen. (474j-2), July 30, 1941.

1995. Listing, valuation and assessment of exempt property, etc.

County auditor is not concerned in controversy between private claimants to title of land. Op. Atty. Gen. (425i), Aug. 6, 1943.

LISTING PERSONAL PROPERTY

2003. Personalty—Where listed.

Listing and assessment of deeds located in county other than that of owner's residence should be in county of residence. Op. Atty. Gen. (421a-17), Nov. 14, 1940.

Property of adult incompetent ward not having fixed place of residence must be assessed in district in which owner was residing at time assessment of property was made. Op. Atty. Gen. (421A-17), Sept. 26, 1941.

Whether cows, owned by one who lives outside of a village, kept and cared for by a son who lives within village, are assessable in village is a question of fact. Op. Atty. Gen. (421a-17), July 3, 1942.

For purposes of taxation, intagibles have a situs at the taxpayer's commercial domicile. Cargill v. Spaeth, 10 NW(2d)728. See Dun. Dig. 9155.

Taxation situs of machines of International Business Machines Corporation. Op. Atty. Gen. (421a-17), Sept. 17, 1943.

2004. Capital stock and franchises.

Section covers all types of personal property owned by corporation, and pipe lines owned by a natural gas corporation must be assessed at its principal place of business. Op. Atty. Gen., (421c-28), Mar. 3, 1941.

Taxation situs of machines of International Business Machines Corporation. Op. Atty. Gen. (421a-17), Sept. 17, 1943.

2005. Merchants and manufacturers.

State v. Hughes Bros. Timber Co., 163M4, 203NW436. Reversed and remanded, 272US469, 47SCR170, 71LEd359.

Taxation situs of machines of International Business Machines Corporation. Op. Atty. Gen., (421a-17), Sept. 17, 1943.

2006. Farm property of non-resident.

Cows owned by one who lives outside of a village but kept and cared for by a son who lives within village are assessable in village if person keeping animals is operating a farm. Op. Atty. Gen. (421a-17), July 3, 1942.

Place of assessment of personal farm property where owner resides in village is town in which farm is located. Op. Atty. Gen. (421a-17), May 24, 1943.

2009. Express, stage and transportation companies.—The personal property of express, stage, and transportation companies, and of pipeline companies engaged in the business of transporting natural gas, gasoline or other petroleum products, except as otherwise provided by law, shall be listed and assessed in the county, town, or district where the same is usually kept. (As amended Apr. 24, 1943, c. 604, §1.)

An airline company which is not a Minnesota corporation and which is engaged as a common carrier in carrying passengers and freight for hire is a "transportation company" within meaning of this section, and its airplanes and other personal properties should be assessed in taxing district where they are usually kept, regardless of principal place of business of corporation. Op. Atty. Gen. (421a-17), Dec. 14, 1940.

Section covers all types of personal property owned by corporation, and pipe lines owned by a natural gas corporation must be assessed at its principal place of business. Op. Atty. Gen., (421c-28), Mar. 3, 1941.

2012. Electric light and power companies; etc.

Notwithstanding Laws 1939, c. 321, Mason's Minn. Stats. 1927, §§2012-1 to 2012-3, remain applicable to transmission lines outside corporate limits operated by cooperative association, and personal property of such association within corporate limits remain subject to assessment as provided by §2012. Op. Atty. Gen. (421c-30), Oct. 25, 1940.

2012-2. Same—Percentage of assessments; etc.

Notwithstanding Laws 1939, c. 321, Mason's Minn. Stats. 1927, §§2012-1 to 2012-3, remain applicable to transmission lines outside corporate limits operated by cooperative association, and personal property of such association within corporate limits remain subject to assessment as provided by §2012. Op. Atty. Gen. (421c-30), Oct. 25, 1940.

2012-3. Same—Rate of taxation—Entry and certification—Credit on payment.

"Average rate of taxes levied for all purposes throughout the county" refers to all property including all classifications whenever created. Op. Atty. Gen. (421C-30), Feb. 16, 1942.

In Ramsey county where there is no general school fund one half of money collected should be paid by the county to the "school district in which the property tax is situated", and if property is located in more than one school district apportionment should be on basis of assessed valuation of the property located in each school district. Op. Atty. Gen. (554e), Apr. 12, 1943.

Though county has no general school fund, the half of the tax money derived from the taxes raised under this act should be distributed in the same manner as would be done if the county did maintain a general school fund, as provided by Laws 1941, c. 169, Art. IX, §2. Op. Atty. Gen. (554E), Sept. 28, 1943; correcting Op. Atty. Gen. (554e), Apr. 12, 1943.

Distribution of tax in Ramsey County. Op. Atty. Gen. (554e), Oct. 8, 1943.

2012-4. Exemptions.—Co-operative associations organized under the provisions of Laws 1923, Chapter 326, and laws amendatory thereof and supplemental thereto, and engaged in electrical heat, light or power business upon a mutual, non-profit and cooperative plan in rural areas as hereinafter defined, are hereby recognized as quasi-public in their nature and purpose. Provided, however, that such cooperative associations, which operate within the corporate limits of any village, city or borough shall be assessed on the basis of 40% of the full and true value of that portion of its property located within the corporate limits of any village, city or borough as provided for in Mason's Supplement 1940, Section 1993, as amended. (As amended Apr. 28, 1943, c. 643, §2.)

2012-6. Same—Amount of tax.

Act is applicable to all members of association, even though they are not consumer members and are waiting for such time as they may be served. Op. Atty. Gen. (93a-42), Sept. 25, 1939.

Notwithstanding Laws 1939, c. 321, Mason's Minn. Stats. 1927, §§2012-1 to 2012-3, remain applicable to transmission lines outside corporate limits operated by cooperative association, and personal property of such association within corporate limits remain subject to assessment as provided by §2012. Op. Atty. Gen. (421c-30), Oct. 25, 1940.

Personal property of associations which upon May 1, does not constitute and is not a part of either distribution lines or attachments and appurtenances thereto, should be assessed in same manner as any other personal property. Op. Atty. Gen. (421c-30), May 14, 1941.

2015. Persons under guardianship.

Property of adult incompetent ward not having fixed place of residence must be assessed in district in which owner was residing at time assessment of property was made. Op. Atty. Gen. (421A-17), Sept. 26, 1941.

2017. Property moved between May and July.

Op. Atty. Gen. (59a-1), Sept. 27, 1939; note under §1990.

Property of adult incompetent ward not having fixed place of residence must be assessed in district in which owner was residing at time assessment of property was made. Op. Atty. Gen. (421A-17), Sept. 26, 1941.

2018. Where listed in case of doubt.

Taxation situs of machines of International Business Machines Corporation. Op. Atty. Gen. (421a-17), Sept. 17, 1943.

STATEMENTS BY CORPORATIONS, ETC.

2021. Corporations, companies and associations generally.

National banks, as federal instrumentalities, are subject to no inherent power in states to tax them, and banks, their property, and shares of their capital stock

are subject to state taxation only as Congress permits, and a tax beyond that permission is void. Irvine v. Spaeth, 210M489, 299NW204. Cert. den. 62SCR117. See Dun. Dig. 9570d.

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

A bank stock corporation holding stock of a chain of banks both state and national is an entity distinct from that of the bank which it controls and manages, and is a complete "non-conductor" of qualified immunity from state taxation enjoyed by national banks, and dividends received by resident stockholders of the holding corporation are subject to state income tax. Irvine v. Spaeth, 210M489, 299NW204. Cert. den. 62SCR117. See Dun. Dig. 9120.

REVIEW AND CORRECTION OF ASSESSMENTS

2034. Board of review.—The town board of each town, the council or other governing body of each village and city, except in cities whose charters provide for a board of equalization, and except as provided in Mason's Minnesota Statutes of 1927, Section 2035, shall be a board of review. Such board shall meet on the fourth Monday of June at the office of the clerk to review the assessment of property in such town or district, and they shall immediately proceed to examine and see that all taxable property in their town or district has been properly placed upon the list, and duly valued by the assessor. In case any property, real or personal, shall have been omitted, said board shall place it upon the list with its true value, and they shall correct the assessment so that each tract or lot of real property, and each article, parcel, or class of personal property, shall be entered on the assessment list at its true and full value; but no assessment of the property of any person shall be raised until he has been duly notified of the intent of the board so to do. On the application of any person feeling aggrieved, they shall review the assessment, and correct it as shall appear to them just. A majority of the members may act at such meeting, and may adjourn from day to day until they shall finish the hearing of all cases presented. The assessor shall attend, with his assessment books and papers, and take part in the proceedings, but shall not vote, and shall note all changes and additions made by the board, and correct his work accordingly. All complaints of individuals, residents of the town or district, in reference to the assessment of personal property, shall be heard and decided by the town board; but the complaints of nonresidents in reference to the assessment of any property, real or personal, and of others in reference to any assessment made after the meeting of such board, shall be heard and determined by the county board of equalization. (As amended, Act Apr. 24, 1941, c. 402, §1.)

Op. Atty. Gen. (59a-1), Sept. 27, 1939: note under §1990.

Members of village council organized under 1905 Act are not required to pass on petition for equalization of assessments, and all that is required in such a case is favorable action by village board of review which is composed of assessor, clerk and president. Op. Atty. Gen. (406e), May 7, 1941.

Members of city board of equalization of Winona are not entitled to compensation over and above their yearly official salaries. Op. Atty. Gen. (406c), Aug. 24, 1942.

Authority of town board limited to review of current tax assessment. Op. Atty. Gen. (407o), Dec. 16, 1943.

2035. Board of review in cities.

City charter governs time that city board of equalization shall receive compensation. Op. Atty. Gen. (206c), Aug. 22, 1940.

2036. Notice of meeting.—The clerk shall give at least ten days' nosted notice of the time and place of the meeting of the board of review; but the failure to give such notice or hold such meeting shall not vitiate any assessment, except as to the excess over the true and full value of the property. (As amended Act Apr. 24, 1941, c. 402, §2.)

2042. Correction of books.

This section does not entitle assessor to any compensation for checking division sheet sent out by county auditor, at least after last Monday in July. Op. Atty. Gen. (12-B-1), Sept. 5, 1940.

EQUALIZATION OF ASSESSMENTS

2049. County board of equalization.

County board meeting as a board of equalization and passing upon assessed valuation of a township in 1938, exhausted its authority and has no authority in Jan., 1940, to pass upon application for reduction in valuation of a township so as to affect taxes for 1939 payable in 1940. Op. Atty. Gen. (424a-15), Jan. 8, 1940.

LEVY AND EXTENSION

2055. Levy in specific amounts.

1. Definition of levy.

To levy a tax means to impose on persons or property by the exercise of legislative power a tax of a certain amount or of a certain percentage according to a determined tax base. Saxhaug v. County of Jackson, 215M490, 10NW(2d)722. See Dun. Dig. 9236.

2. Valid levy essential to valid tax.

A valid levy is essential to a valid tax or assessment. Saxhaug v. County of Jackson, 215M490, 10NW(2d)722. See Dun. Dig. 9237.

3. Levy in specific amounts.

A legislative requirement that a tax shall be levied in a certain amount or at a certain rate must be strictly complied with. Saxhaug v. County of Jackson, 215M490, 10NW(2d)722. See Dun. Dig. 9238.

The rule with respect to general taxes is that a tax cannot be levied without fixing the rate or the amount as required by statute. Id.

2056. Certification of state tax levy.

Laws 1943, c. 665, §1, provides that: For the purpose of defraying the expenses of the state for the fiscal year ending June 30, 1944, there is hereby levied on all taxable property of the state a tax of such a number of mills that the same when added to the total number of mills of general property taxes for state purposes authorized to be imposed by all other statutes shall not exceed six mills.

Laws Apr. 24, 1943, c. 665, §2, provides that: For the purpose of defraying the expenses of the state for the fiscal year ending June 30, 1945, there is hereby levied on all taxable property of the state a tax of such number of mills that the same when added to the total number of mills of general property taxes authorized to be imposed by all other statutes shall not exceed five and one-half mills.

Laws Apr. 24, 1943, c. 665, §3, provides that: Under no circumstances shall the state auditor certify to the county auditors a higher total rate of general property tax for all state purposes for the fiscal year ending June 30, 1944, than six mills or a higher total rate of general property tax for all state purposes for the fiscal year ending June 30, 1945, than five and one-half mills.

Laws Apr. 24, 1943, c. 665, §4, provides that: The state auditor shall not levy any tax upon any taxable property of the state for the general revenue fund in the state treasury, nor shall he certify to the county auditors any tax to be levied for such purpose.

Laws 1943, c. 665, §8, provides that: The state auditor is authorized and directed to pay, prior to the certification by him of the state tax levy for 1943, such certificates of indebtedness, including interest, in the aggregate amount of $2,000,000 for the payment of which taxes would otherwise be levied in 1943 as he, with the approval of the Governor, may deem proper, and for the payment thereof the sum of $2,000,000 is hereby appropriated to the State Auditor from the moneys in the general revenue fund in the state treasury otherwise set aside by law for the prepayment of state indebtedness.

2057. County taxes.

Counties having population of not less than 22,000, or more than 30,000, containing 36 congressional or 30 organized townships, with an area of not less than 665,000 acres nor more than 670,000 acres, may levy taxes for general revenue purposes to defray county expenses, not to exceed $75,000. Act Feb. 13, 1941, c. 9.

Laws 1941, c. 93, authorizes tax levies in excess of present limitations in certain counties having a population of not less than 30,000.

Certain counties having population of between 14,000 and 15,000. Act Mar. 28, 1941, c. 101, §1.

Counties containing between 22 and 24 congressional townships, having populations between 18,000 and 19,000, and having assessed valuations of between $7,000,000 and $9,000,000, may levy taxes for general revenue purposes, in excess of legal limitations, in certain amount for period of year after passage of act. Act Apr. 9, 1941, c. 144.

Laws of 1943, c. 55, authorizes county board of county containing 350 to 400 square miles and having a population of 13,500 to 16,000, and an assessed value of $5,000,000 to $10,000,000, and 225,000 to 230,000 acres, to levy taxes annually for general revenue purposes at such rate and in an amount in excess of existing limits as will produce sufficient revenue to defray the county expenses payable out of the revenue fund; providing the annual tax revenue shall not exceed 50,000.

Laws 1943, c. 64, authorizing county boards in counties having population of 20,000 to 26,000, an assessed valuation of $5,500,000 to $9,000,000, and an acreage of 550,000

to 552,000, to levy a tax on property not within territory organized for town government, such levy to be in addition to authorized levy. But such levy shall not exceed seven mills, and the rate shall be determined by the county board, extended by county auditor and when collected shall be kept separate and designated as unorganized town revenue fund, to be expended by county board for elections, assessment of property and other governmental purposes, validating prior collection and expenditure of such tax.

County board may make levy for library purposes after July meeting. Op. Atty. Gen. (519d), Nov. 20, 1942.

2057-3. County board to fix levy.

Levy for general revenue purposes in certain counties having population of between 30,000 and 33,000. Act Mar. 28, 1941, c. 93, §1.

Laws 1943, c. 138, provides that: In any county in this state now or hereafter having a taxable valuation in excess of $11,000,000 and less than $13,000,000, and containing more than 20,000 and less than 30,000 inhabitants, and containing less than 23 full and fractional congressional townships, and containing a land area of over 700 square miles, the board of county commissioners may levy for general revenue purposes in excess of the legal limitations on such counties not more than one mill.

Act to be in effect until Apr. 1, 1945.

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

Reenacted as 3156-8(3) in part.

State v. County of Pennington, 211M569, 2NW(2d)41; note under §2083.

Where lands were annexed to city of Austin by resolution adopted by city council on July 21, and filed for records with register of deeds and county auditor on Sept. 9, county auditor should tax annexed lands in the township and not the city, except that special assessments should be listed in political subdivision of which land was a part at time of levy, notwithstanding that levy of taxes in the city is made during month of October. Op. Atty. Gen. (59a-1), Sept. 27, 1939.

County auditor is not authorized to levy a tax where neither electors nor board of school district makes a levy as required by law. Op. Atty. Gen. (519M), Oct 24, 1940.

2058-1. Salaries of members of board; etc.

Alderman who, as chairman of ways and means committee of city council, served as an ex-officio member of board of estimate and taxation of city of Minneapolis, is entitled to compensation or his services on board at full rate prescribed by 1931 Act up to maximum of $500 per year, notwithstanding that compensation of aldermen has been increased to $2400. Op. Atty. Gen. (63a-2), Nov. 6, 1940.

2058-2. Additional tax levies in certain municipalities.—Whenever the assessed valuation of any city, village, township or school district for any taxable year is reduced after the taxes for such year have been spread by the county auditor and whenever the mill rate as determined by the county auditor based upon the original assessed valuation is applied upon such reduced valuations and does not produce the full amount of taxes as actually levied and certified for such taxable year upon the original assessed valuations, such city, village, township or school district may include in its tax levy made following such reduction in assessed valuation, an amount equal to the difference between the total amount of taxes actually levied and certified for such taxable year upon the original assessed valuation, not exceeding the maximum amount which could be raised upon such assessed valuation as reduced, within existing mill limitations, if any, and the amount of taxes collected for such taxable year upon such reduced valuations. (Act Apr. 20, 1943, c. 523, §1.)

[275.48]

2058-3. Same—To be additional levy.—The amount of taxes so included shall be levied separately and shall be levied in addition to all limitations permitted by Mason's Supplement 1940, Section 2061, as amended by Laws 1941, Chapter 543, Section 1, as other applicable laws limiting levies in cities, villages, towns or school districts. (Act Apr. 20, 1943, c. 523, §2.)

[275.48]

2058-4. Municipalities may levy additional taxes.—Any county, city of any class, village, borough, or town, may, notwithstanding any millage limitation imposed by law or home rule charter, levy a tax for each of the years 1943 and 1944 in excess thereof, but not in excess of the tax on moneys and credits, assessed in said political subdivision for the year 1942, and apportioned to it in 1943 as provided in Mason's Minnesota Statutes of 1927, Section 2349. (Act Apr. 24, 1943, c. 665, §6.)

A municipality can levy an amount sufficient to replace loss caused by repeal of tax on moneys and credits, but the total levy cannot exceed any statutory or charter per capita limitation. Op. Atty. Gen. (519i), Aug. 16, 1943.

Authority to make additional levies is not conferred upon school district. Op. Atty. Gen. (519i), Nov. 30, 1943.

Statute does not authorize the exceeding of per capita tax limitations. Op. Atty. Gen. (519i), Nov. 30, 1943.

2059. Auditor to fix rate.

State v. County of Pennington, 211M569, 2NW(2d)41; note under §2083.

The county auditor is without power to levy taxes and assessments, and where there is no valid levy county auditor is unauthorized to supply the deficiency. Saxhaug v. County of Jackson, 215M490, 10NW(2d)722. See Dun. Dig. 9238.

A village cannot levy a tax which will exceed 2% of assessed valuation, and if village levy exceeds 20 mills, auditor should reduce levy to that amount, unless an excess is necessary to retire outstanding bonds or pay interest thereof, or is for some special purpose authorized by statute in addition to 20 mill limit. Op. Atty. Gen. (519i), Nov. 28, 1939.

Village of assessed valuation of less than $500,000 can levy a tax of 2 per cent for general revenue, 1 per cent for street and bridge taxes, and sufficient to care for bonds outstanding, but cannot levy a tax for light in addition to 2 per cent levy for general revenue. Op. Atty. Gen. (519q), Nov. 26, 1941; Dec. 8, 1941.

2060. Rate of levy.—There shall be levied annually on each dollar of taxable property, except such as is by law otherwise taxable, as assessed and entered on the tax lists, for the several purposes enumerated, taxes at the rates specified as follows:

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

2. For county purposes, such amount as may be levied by the county board, the rate of which tax for general revenue purposes shall not exceed five mills, unless such maximum mill levy will not raise the sum of $40,000 based upon the last preceding assessed valuation of such county, in which case the county board by unanimous vote may levy at such rate as will raise the amount levied by the board but not exceeding said sum of $40,000, except that in any county now or hereafter having a population of not less than 65,000, nor more than 85,000, inhabitants, according to the last Federal census, and having not less than 35, nor more than 49, full or fractional congressional townships, the county board is hereby authorized by unanimous vote of its members to make levies for general revenue purposes up to but not exceeding seven mills.

3. For town purposes, such sum as may be voted at any legal town meeting, the rate of which tax shall not exceed, exclusive of such sums as may be voted at the annual town meeting for road and bridge purposes and for the support of the poor, two mills in any town having a taxable valuation of $100,000 or more, and the amount of which shall not exceed $150 in any town having a taxable valuation less than $100,000, and the rate of which shall not exceed one-half of one per cent in any town. The rate of tax for road and bridge purposes in any town shall not exceed five mills per dollar, and the tax for poor purposes shall not exceed two mills, provided, however, that in any town in which the amount levied within the above limitations is not sufficient to enable such town to carry on its necessary governmental functions, the electors, during the business hour after disposing of the annual report may make an additional levy of not to exceed three mills to enable such town to carry on such necessary governmental functions.

4. For school district purposes, such amounts as are provided in chapter 14. (As amended Mar. 26, 1943, c. 183, §1.)

Laws 1939, c. 26, Laws 1939, c. 82, repealed by c. 65, §2, Laws 1943.

Laws 1939, c. 31. Repealed Laws 1943, c. 64, §6.

Laws 1939, c. 82. Repealed Laws 1943, c. 65, §2.

Act Feb. 21, 1941, c. 14, §1, amends Act Feb. 3, 1939, c. 6, allowing certain counties having an area of not less than 43 nor more than 45 congressional townships, and population of not less than 20,000 nor more than 31,000, to levy taxes for general revenue purposes not exceeding $85,000.

Laws 1941, c. 14. Amended. Laws 1943, c. 29.

County commissioners may levy taxes in excess of legal limitations for revenue purposes in counties containing not less than 22, nor more than 24 full or fractional congressional townships, having not less than 18,000 nor more than 19,000 inhabitants, and having an assessed valuation of not less than $7,000,000, nor more than $9,000,000. Laws 1941, c. 144.

Act Apr. 28, 1941, c. 484, authorizes the levy of a tax for state purposes for the fiscal years ending June 30, 1942, and June 30, 1943, at such a number of mills that the total rate shall not exceed nine mills.

Laws 1943, c. 29, repeals Laws 1941, c. 14, and provides that in any county in this state now or hereafter having an area of not less than 43 nor more than 45 full or fractional congressional townships and a population of not less than 20,000 nor more than 31,000, according to the 1940 Federal census, and an assessed valuation of less than $13,000,000, exclusive of moneys and credits, the county board may levy taxes for general revenue purposes at such a rate and in such an amount in excess of existing limitations as will produce sufficient revenue to defray county expenses, payable out of the revenue fund: provided, however, that no levy shall be made at a rate that will produce more than $85,000 in taxes collected and paid into the revenue fund of said county, which rate calculated to produce said amount shall be based on the percentage of the taxes, currently payable in the preceding year, which have been collected by July first of the year in which the levies authorized hereby are made.

Laws 1943, c. 65, tax levy in counties having population of 20,000 to 26,000, assessed valuation $5,500,000 to $9,000,000, and acreage of 550,00 to 552,000, authorized for general revenue, but not to exceed $45,000.

Laws 1943, c. 70, authorizes any county having tax valuation from $8,000,000 to $10,000,000, a population of 19,227, and containing not more than 17 full and fractional congressional townships, county board may levy for general revenue purpose in excess of general limitations on such county of not more than 2 mills of 1944 and not more than one mill each year thereafter.

Laws 1943, c. 76, authorizes county board in counties having population of 15,000 to 18,000, a valuation of $6,500,000 to $8,500,000, and 20 to 22 full or fractional congressional townships, the levy of tax to produce not exceeding $12,000 annually for construction of buildings.

Laws 1943, c. 78, authorizes county board of county having less than 18,000 and more than 16,000 population and not less than 56 and not more than 58 full or fractional congressional townships to levy tax not to exceed ten mills for the maintenance of sanatorium.

Laws 1943, c. 80, validates certain town warrants and orders in counties having not less than 101 full or fractional townships, a valuation of $2,800,000 to $3,000,000, where such town was dissolved prior to July 11, 1934, and authorized payment thereof by county, and the levy of tax upon property formerly in said town if funds insufficient.

Notes of Decisions

Limit that a county auditor can levy in computing tax rate for township revenue purposes varies in townships of different valuations, but limitation is fully covered by Laws 1939, c. 170, amending this section, which supersedes any former acts which are inconsistent therewith. Op. Atty. Gen. (519l), Nov. 28, 1939.

Electors of a town can vote a levy up to 15 mills for road and bridge purposes, and in an emergency may levy an additional five mills for road and bridge purposes. Op. Atty. Gen., (519o), April 5, 1940.

(3).

Limitation on township levy for road and bridge fund is governed by §2573, and not §2060, and Laws 1939, c. 170, did not supersede all former provisions. Op. Atty. Gen., (519l), March 5, 1940, reversing Op. Atty. Gen., Nov. 23, 1939, and Op. Atty. Gen., Nov. 28, 1939.

Absolute duty to adequately provide for the poor and needy prevents a limitation on levy for poor purposes, and townships, especially under township system, should levy sufficient for their needs, and county auditor should permit such assessment to stand. Op. Atty. Gen., (519i), March 5, 1940.

Laws 1939, c. 26, as amended by Laws 1939, c. 82, no longer applies to Carlton County. Op. Atty. Gen. (1241), Aug. 20, 1941.

Jackson county cannot levy in excess of 5 mills, notwithstanding salary schedule has been increased. Op. Atty. Gen. (519d), July 26, 1943.

2060½. Levies validated.—Any taxes heretofore levied in any such county for general revenue purposes are hereby validated and approved. (Act Mar. 26, 1943, c. 183, §2.)

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

See Laws 1943, c. 526 (Mason's Minn. Stat. §1938-3, note).

Annual state, county, township, and school levy in certain counties having populations of between 25,000 and 32,000. Act Apr. 25, 1941, c. 451, §1.

A town cannot levy a tax for band purposes over and above and in addition to taxes permitted to be levied by this section. Op. Atty. Gen. (519H), Feb. 23, 1942.

2060-2. Rate of tax levy in towns—Exceptions.

See Laws 1943, c. 526 (Mason's Minn. Stat. §1938-3, note).

Section 3286-6 authorizes county auditor to make levy to pay for state's claim of public examination as an additional levy without regard to 17 mill limitation imposed by §2060-2. Op. Atty. Gen. (519O), Dec. 18, 1940.

2060-3 and 2060-4.

See Laws 1943, c. 526 (Mason's Minn. Stat. §1938-3, note).

2061. Tax levy for general purposes limited.—The total amount of taxes levied by or for any city or village, having a population of more than 3,000, 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 in any year the amount hereinafter indicated per capita of the population of such city or village: 1941, $67.50 per capita; 1942, $65.00 per capita; 1943, $62.50 per capita; 1944, $60.00 per capita; 1945, $57.50 per capita; 1946, $55.00 per capita; 1947, $52.50 per capita; 1948 and thereafter, $50.00 per capita. In the case of cities or villages having a population of 3,000 or less, such levies shall not exceed in any year the amount hereinafter indicated per capita of the population of such city or village: 1941 and 1942—$70.00 per capita; 1943—$67.50 per capita; 1944—$65.00 per capita; 1945—$62.50 per capita; 1946—$60.00 per capita; 1947—$57.50 per capita; 1948—$55.00 per capita; 1949—$52.50 per capita; 1950 and thereafter $50.00 per capita. (As amended Act Apr. 28, 1941, c. 543, §1.)

Reduction of assessed values in certain cases. Laws 1943, c. 523.

Levies made under Laws 1933, ch. 280 and Mason's Minn. Stat. 1927, §1933, are included within limitations. Op. Atty. Gen., (519q), Feb. 25, 1941.

Village may establish a sinking fund to pay outstanding bonds when due and levy a tax therefor within statutory tax limits. Op. Atty. Gen. (519q), June 10, 1941.

Limit for Chisholm permitted by law when Laws 1941, Ch. 543, became effective was $70.00 per capita, and this was not increased by passage of that act, but this is a permissive limit only, which embraces within it other limits. Op. Atty. Gen. (519i), Apr. 6, 1942.

Per capita tax law does not specify that surplus on hand must be deducted in arriving at permissible levy, and the law does not limit the amount which may be expended in any one year. Op. Atty. Gen. (519i), Nov. 8, 1943.

Laws 1943, c. 600, §18, the Civilian Defense Act, permits levies in excess of per capita limitations. Op. Atty. Gen. (519i), Nov. 30, 1943.

2061-2. Tax levy in certain villages.—Any village now or hereafter having a population of not less than 2,800 or more than 3,200 according to the 1940 federal census, and an assessed valuation of not more than $900,000, exclusive of money and credits, located in a county having an area of not less than 43 nor more than 45 full or fractional townships and a population of not less than 25,000 nor more than 32,000, according to the last federal census, may levy annually for general corporation purposes, an amount not exceeding 25 mills on its assessed valuation. (As amended Apr. 9, 1941, c. 133, §1.)

2062. Tax levy for schools limited.—The total amount of taxes levied by or for any school district in the state of Minnesota having a population of more than 5,000 for all general and special school purposes whatsoever including the county school tax of one mill, required to be levied by the statute, but exclusive of any state levy, shall not exceed in any year the amount hereinafter indicated per capita of the population of such school district: 1941, $57.50 per capita; 1942, $55.00 per capita; 1943, $52.50 per capita; 1944, $50.00 per capita; 1945, $47.50 per capita; 1946, $45.00 per capita; 1947, $42.50 per capita; 1948 and thereafter $40.00 per capita; in

school districts having a population of 5,000 or less, such levy shall not exceed in any year the amount hereinafter indicated per capita of the population of such school district; 1941 and 1942—$60.00 per capita; 1943—$57.50 per capita; 1944—$55.00 per capita; 1945—$52.50 per capita; 1946—$50.00 per capita; 1947—$47.50 per capita; 1948—$45.00 per capita; 1949—$42.50 per capita; 1950 and thereafter—$40.00 per capita. Provided, if in any year the maximum levy specified herein will not amount to $110,000 in any district, such district in said year may levy in excess of the amounts herein provided but not in excess of $60.00 per capita and not in excess of $110,000. (As amended Act Apr. 28, 1941, c. 543, §2.)

Section limits only amount of levy for one year and does not prevent expenditure of money saved in prior years. Op. Atty. Gen. (519M), Sept. 23, 1941.

2063. Not to apply to outstanding indebtedness.—If, prior to the calendar year 1941, any such city, village or school district has incurred by proper authority a valid indebtedness, including bonds, in excess of its cash on hand, plus any amount in any sinking fund for the payment of indebtedness, such city, village or school district, 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 that nothing in this section, as amended, shall be construed to affect or limit levies heretofore or hereafter made pursuant to Laws 1921, Chapter 417, Section 3, for the retirement of indebtedness incurred prior to April 21, 1921, within the limits then permitted by law, or pursuant to Laws 1929, Chapter 206, for the retirement of indebtedness incurred prior to the calendar year 1929, within the limits then permitted by law. The term indebtedness shall include any indebtedness which any such school district is obligated to pay pursuant to Laws 1935-1936, Extra Session, Chapter 2. (As amended Act Apr. 28, 1941, c. 543, §3.)

City of Chisholm. Op. Atty. Gen. (519i), Apr. 6, 1942; note under §2061.

Assuming that the Village of Mountain Iron had a valid indebtedness in excess of its cash on hand plus any amount in any of its sinking funds for the payment of indebtedness, it could in 1941 and subsequent years make a special levy covering the difference between its levy of $70 per capita in 1940 and the limit prescribed in §2061, Mason's Minn. St. 1941 Supp. Op. Atty. Gen., June 30, 1941.

City may levy an amount not exceeding difference between the per capita limitation for a given year and the $70.00 per year per capita limitation, even though there may be no part of such indebtedness due and payable in the year next following that in which the levy is made, to be kept separate in nature of sinking fund. Op. Atty. Gen. (519i), Apr. 6, 1942.

Proceeds of levies for retirement of indebtedness may be used to retire valid indebtedness in advance of its due date. Id.

Construing Laws 1941, c. 543, additional levy may not be made to pay indebtedness incurred prior to 1941 but not due at time of levy because paid before date of levy. Op. Atty. Gen. (519c), July 15, 1943.

Separate levy may be made to pay judgment indebtedness on account of accident occurring in 1936. Op. Atty. Gen. (519c), Aug. 2, 1943.

Additional levies to pay outstanding indebtedness are permitted to a certain extent. Op. Atty. Gen. (519i), Nov. 30, 1943.

Municipality is not required to submit evidence justifying the additional levies for outstanding indebtedness. Op. Atty. Gen. (519i), Nov. 30, 1943.

2064. Special census may be taken.

Either last state or federal census must be used as a basis for determining amount of taxes which may be levied, or a special census of population of entire school district must be taken at expense of district and result of that census must be used, but a special census of only a city within a school district indicating an increase in population could not be used. Op. Atty. Gen. (519M), Dec. 18, 1940.

2066. County auditor to fix amount of levy.—If any such municipality shall return to the county auditor a levy greater than herein permitted such county auditor shall extend only such amount of taxes as the limitations herein prescribed will permit; provided if such levy shall include any levy for the payment of bonded indebtedness or judgments, such levies for bonded indebtedness or judgments shall be extended in full, and the remainder of said levies shall be reduced so that the total thereof, including levies for bonds and judgments, shall not exceed such amount as the limitations herein prescribed will permit. (As amended Act Apr. 28, 1941, c. 543, §4.)

Act Apr. 28, 1941, c. 543, §5, provides that this act shall be considered an additional limitation and shall not be construed as in any instance authorizing the levy of total amounts of taxes in any year in excess of the amount allowed by law at the time of the passage of this act.

Section 6 of said act provides this act shall take effect and be in force from and after its passage.

City of Chisholm. Op. Atty. Gen. (519i), Apr. 6, 1942; note under §2061.

2066-1 to 2066-3.

See Laws **1943, c. 526.**

2066-4. May sell certificates of indebtedness.

See Laws 1943, c. 526 (Mason's Minn. Stat. §1938-3, note).

Opinion of August 11, 1934 has been superseded. Op. Atty. Gen., (519i), May 17, 1940.

2066-5 and 2066-6.

See Laws 1943, c. 526 (Mason's Minn. Stat. §1938-3, note).

2066-8. Limit of tax levy.

Utilities commission of village of Hibbing may purchase replacements and obligate itself to pay in monthly instalments from "reserve fund", which is composed of percentage of gross receipts from patrons. Op. Atty. Gen. (624C-5), Jan. 29, 1942.

2070. Contracts in excess void—Liability of officers.

Authority of a county board is limited so that no contracts made may extend beyond term of office in exercising governmental powers, but in exercising business or proprietary powers, that body may ordinarily bind successors in office, as in purchasing insurance, and insurance may be purchased in a mutual company if maximum liability is within tax limits. Op. Atty. Gen. (707a-7), March 14, 1940.

Village council may not enter into contract for a period of ten years for purchase of electric energy for street lighting purposes when there is not sufficient moneys in treasury or in process of collection from taxes which have been previously levied to meet liability incurred by contract and payable during ten year period. Op. Atty. Gen. (396c-7), Apr. 1, 1941.

Township would violate law in exceeding its budget and income for current fiscal year and individual liability would be imposed on every officer or agent who would participate in making a contract of employment, and fact that workmen agree to deferred payment would not validate transaction. Op. Atty. Gen., Sept. 17, 1941.

Utilities commission of village of Hibbing may purchase replacements and obligate itself to pay in monthly instalments from "reserve fund", which is composed of percentage of gross receipts from patrons. Op. Atty. Gen. (624C-5), Jan. 29, 1942.

Right of a village to issue warrants when there is not money immediately available in the treasury for their payment is limited to its right to anticipate the current tax levy, and warrants issued in payment of interest on outstanding warrants are unlawful. Op. Atty. Gen. (476c-3), June 5, 1942.

2071. Tax lists made by auditor.

State v. County of Pennington, 211M569, 2NW(2d)41; note under §2083.

County auditor is not concerned in controversy between private claimants to title of land. Op. Atty. Gen. (425i), Aug. 6, 1943.

2073-1. Personal property tax list in certain counties.—The county treasurer of each county in this state which now has or hereafter may have, less than 150,000 inhabitants, shall cause to be published once between January 1st and February 1st, of each year in a legal newspaper published in the county that portion of the current personal property tax list which pertains to personal property taxes in cities, villages, towns or assessment districts nearest the place where said newspaper is published, so far as practicable, the portion of said list to be published in the respective newspaper to be fixed and designated by the county treasurer. Provided that whenever and wherever any city or village is situated in more than one county, that portion of the current personal property tax list which pertains to personal property within said city

or village, shall be published, so far as practicable, in any legal newspaper published within the corporate limits of said city or village, and any such publication shall be of the same force and effect as if published in any legal newspaper within the county.

If the county board, by resolution adopted at its meeting in December preceding such publication, provides that the money and credits tax may be excluded from such publication, such money and credits taxes shall not be included in such publication. (As amended Apr. 24, 1943, c. 596, §3.)

County treasurer is not required to call for bids for publication of personal property tax list. Op. Atty. Gen. (421a-10), Dec. 29, 1939.

It is duty of county treasurer to publish lists in newspaper nearest to assessment district, and he has no discretion in the matter. Op. Atty. Gen. (421A-10), Jan. 20, 1942.

2073-1a. Where assessed.—The money and credits of a minor, incompetent, or other person under guardianship, shall be assessed in the taxing district where the guardianship is principally administered. (Act Apr. 24, 1943, c. 596, §4.)
[285.095]

2073-1b. Money and credits in the hands of an estate.—Money and credits in the hands of an estate or trust shall be assessed to the representative or trustee, as the case may be. Upon request of any representative or trustee who is about to be discharged from his trust after May 1 and before December 31 in any year, the assessor or county auditor shall determine the tax due for the current year and issue a statement thereof to the representative or trustee. The county treasurer shall accept payment of the said tax and issue his receipt therefor. The tax so paid shall be deposited in a special fund and credited, after the succeeding January 1, in the same manner as other money and credits taxes then currently payable. (Act Apr. 24, 1943, c. 596, §5.)
[285.096]

2073-1c. Provisions severable.—If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of this act and the application of such provision to other persons or circumstances, shall not be affected thereby. (Act Apr. 24, 1943, c. 596, §6.)

COLLECTION BY TREASURER

2074. Lists to treasurer.

State v. County of Pennington, 211M569, 2NW(2d)41; note under §2083.

Declaration that lists shall be treasurer's authority for receiving payment necessarily implies that until he has the lists, which normally is not before first Monday in January, he has no authority to receive payment. Spaeth v. Hallam, 211M156, 300NW600. See Dun. Dig. 9243.

Where land is purchased in September, 1936, and taxes for 1936 are paid during 1937, payment is deductible in computation of income tax for 1937, since it cannot be considered a capital expenditure. Id. See Dun. Dig. 9570d.

2074-1. Emergency declared to exist.—In the emergency now threatening the peace and security of this nation the entry of many citizens of this state into the military service of the United States, with consequent temporary decrease of personal income and inability to attend to private affairs, has created a condition likely to result in widespread and uneconomic forfeiture to the state of privately owned real estate under existing laws. The legislature of the state of Minnesota recognizes such a result would be detrimental to the state and in order to avoid such a result the above described emergency is hereby declared to exist; the condition stated is declared to require preventive legislative action; and provision is hereby made for suspension during said emergency and a necessary time thereafter of enforcement of taxes on real estate owned by people in the military service of the United States and their dependents. (Act Apr. 24, 1943, c. 641, §1.)
[401.01]

2074-2. Definitions.—Subdivision 1. The term "persons in military service", as used in this act, shall include the following persons and no others: All members of the army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the public health service detailed by proper authority for duty either with the army or the navy.

Subdivision 2. The term "military service", as used in this act, shall signify federal service in active duty in any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The term "active duty", as used in this act, shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave or other lawful cause.

Subdivision 3. The term "period of military service", as used in this act, shall include the time between the following dates: For persons in active service at the date of the approval of this act, it shall begin with the date of its approval; for persons entering active service after the date of this act, with the date of entering active service. It shall terminate with the date of discharge from active service or with death in active service, but in no case later than the date when this act ceases to be in force. The term "period of military service", when used with respect to any tax or real estate affected by this act, shall also mean the term of military service of the person in military service who claims or through whom is claimed benefit of this act.

Subdivision 4. The word "tax", as used in this act, shall mean any tax including special assessment due and payable in the year 1943 or subsequent years, while this act continues in force, on real estate owned by a person in military service or his dependents during his period of military service.

Sudivision 5. The word "dependent", as used in this act, shall mean a person related to a person in military service as spouse or child or parent who is actually substantially financially dependent on the relative who is the person in military service through whom benefit is claimed under this act.

Subdivision 6. "Real estate", as used in this act, shall mean (a) any real estate in which a freehold estate is owned by a person defined in Subdivision 4 of this section or his dependents at the time of his entry in military service, unless such estate owned by such person at such time is acquired after the enactment of this law other than by inheritance or devise, in which case it shall mean only real estate in which such freehold estate is acquired by a purchase the consideration for which is reasonably near the value of the estate purchased, and (b) any real estate in which such person or his dependents acquire a freehold estate by inheritance or devise during his period of military service; provided, if such freehold estate owned or acquired by such person is the estate of a joint tenant or an undivided estate, then this act shall apply only to the joint tenancy or other undivided estate owned by such person, and when the provisions of this act are invoked the county auditor shall separate on his books such estate, allocate against such separate estate the proper proportion of the tax assessed against the whole tract of which the separate estate is a part, and while this act remains effective as to such separate estate, the separate estate shall be deemed separately taxed.

Subdivision 7. As used in this act, the masculine shall include the feminine, and unless the context otherwise indicates, the singular shall include the plural. (Act Apr. 24, 1943, c. 641, §2.)
[401.02]

2074-3. When provisions are applicable.—The provisions of this act shall not be applicable to a tax on real estate until a person in military service or his dependent shall make and file with the county auditor

of the county wherein the affected real estate lies an affidavit setting forth:

(a) That he is a person in military service or a dependent of such a person within the definition of this act, and

(b) The branch of federal service of which he is a member and the date of the beginning of his period of military service. If the affidavit is made by a dependent it shall state the branch of federal service in which and the date of the beginning of the period of military service of the person through whom the dependent claims benefit of this act; and

(c) A description of the real estate taxes which will be affected by this act, the nature of the estate of the affiant therein, and that such interest or estate is real and not acquired for the purpose of taking advantage of the provisions of this act and if such interest or estate is acquired after enactment of this law that it was purchased, the consideration for the purchase, and that such consideration was of a value reasonably near the value of the interest or estate purchased; and

(d) The date when the affiant became the owner of such estate and whether he became an owner by gift, purchase, devise or inheritance.

(e) In those cases where the person in military service acquired his estate after the enactment of this law by purchase, the affidavit required by this section shall be accompanied by an affidavit of the seller stating the consideration for the purchase.

The affidavit described in this section may be made and filed with like effect by another for the person in military service or his dependent, but in such case the affidavit shall state why it is not made by the person for whom it is filed and the basis of the affiant's knowledge of the facts therein set forth. (Act Apr. 24, 1943, c. 641, §3.)
[401.03]

2074-4. No change in assessments or taxation.—Real estate coming within the provisions of this act shall be assessed and taxed in the same manner as other real estate. (Act Apr. 24, 1943, c. 641, §4.)
[401.04]

2074-5. Enforcement of payment of delinquent taxes stayed.—When an affidavit substantially in the form provided by Sec. 3 hereof is filed with the proper county auditor showing that real estate therein described comes within the purview of this act, all proceedings for the enforcement of delinquent taxes on such real estate shall be stayed and no interest or penalty for failure to pay any such tax on such real estate when due shall be charged or shall accrue except as hereinafter provided. (Act Apr. 24, 1943, c. 641, §5.)
[401.05]

2074-6. No interest or penalty to accrue during stay.—Under the circumstances set out in Sec. 5 proceedings for the enforcement of delinquent taxes shall be stayed for the period of military service and during that period no interest or penalty for failure to pay taxes on said real estate when due shall be charged or shall accrue. And such real estate shall not be included in any list of lands upon which taxes are delinquent or in any proceedings with respect thereto during such period of military service, but the county auditor shall keep a separate list of the lands and owners thereof which are within the provisions of this act and upon which taxes are not paid showing the years for which taxes are not paid. (Act Apr. 24, 1943, c. 641, §6.)
[401.06]

2074-7. To notify county auditor in writing of termination of service.—It shall be the duty of any person to notify the proper county auditor in writing of the termination of the period of military service during which he is entitled to claim benefits under this act within six months of such termination. Failure to so notify shall prevent any further benefits under this act, all unpaid taxes on real estate owned by that person shall become immediately due and payable, interest and penalties shall accrue and be charged from the date of termination of the period of military service, and, unless unpaid taxes with accrued interest and penalties are sooner paid, such land shall be included in the next proceeding for the enforcement of payment of delinquent taxes with other land in the county. If it shall appear after the provisions of this act are evoked as to any real estate that such real estate does not come within the terms of this act or that a person claiming the benefits of this act is not entitled thereto, it shall have the same effect as failure to notify of the termination of the period of military service. (Act Apr. 24, 1943, c. 641, §7.)
[401.07]

2074-8. Five years to pay.—Any person in military service or his dependent shall have five years in which to pay the taxes accrued on his real estate in the period of military service during which he is entitled to the benefits of this act if he pays not less than one fifth thereof in each of the five calendar years following the end of such period of military service, but any payment thereof must be made at the same time as he pays a part of the taxes then current and payable on the real estate upon which taxes have accrued. Failure to pay at least one-fifth of such accrued taxes in any such calendar year shall cause all of the unpaid accrued taxes to become immediately delinquent, payment of which shall be enforced like any other delinquent real estate tax with interest and penalties from the date the same became delinquent. (Act Apr. 24, 1943, c. 641, §8.)
[401.08]

2074-9. Time to answer increased.—The time in which a defense or objection to any tax, assessment, or levy affected by this act may be made under Laws 1935, Chapter 300, and acts amendatory thereof, is extended to the first day of June which is more than six months following termination of the period of military service, and as to any tax affected by this act, payment of the part of the tax required by Laws 1935, Chapter 300, Section 3, as amended, shall not be required. (Act Apr. 24, 1943, c. 641, §9.)
[401.09]

2074-10. Effective until May 15th, 1945.—This act shall remain in force until May 15, 1945; provided, that should the United States be then engaged in a war, this act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President of the United States, and for six months thereafter. (Act Apr. 24, 1940, c. 641, §10.)
[401.10]

2075. Treasurer to be collector.

County treasurer and county auditor must pay over to township tax money collected for it, and cannot refuse on ground that town must stand its proportionate share of former loss of tax money through bank insolvency. State v. County of Pennington, 211M569, 2NW(2d)41. See Dun. Dig. 2313, 2323. 9260, 9260a, 9261.

In North Dakota, as in Minnesota, county is agency through which the state collects its real estate taxes. S.R.A., Inc., 213M487, 7NW(2d)484. See Dun. Dig. 9124.

2080. Undivided interest—Payment and receipt.

Where persons owning undivided interest paid proportionate share of taxes covering year 1931 but failed to pay any taxes for 1932 and subsequent years, and other undivided interests were subject to forfeiture by the state, persons owning undivided interest upon which they paid taxes for 1931 could redeem their respective interests by paying their proprotionate shares of 1932 and subsequent taxes with interest and penalties, and might also redeem the other interest, but not in their own name. Op. Atty. Gen. (423h), May 10, 1940.

One owning the surface and one-third of the mineral may redeem the surface and his undivided one-third of minerals, and this would not affect proceedings to enforce collection of tax against remaining two-thirds interest in the minerals and a new judgment is not necessary. Op. Atty. Gen. (407l), July 15, 1941.

2081. Orders received for taxes.
Commissioner of banks liquidating a bank can compel village to pay warrants held by bank notwithstanding that there are delinquent taxes on buildings owned by the bank far in excess of the amount of the warrants. Op. Atty. Gen. (476c-6), Oct. 30, 1939.

ACCOUNTING AND DISTRIBUTION OF FUNDS

2082. Settlement between auditor and treasurer.
State v. County of Pennington, 211M569, 2NW(2d)41; note under §2083.

2083. Apportionment and distribution of funds.
County treasurer and county auditor must pay over to township tax money collected for it, and cannot refuse on ground that town must stand its proportionate share of former loss of tax money through bank insolvency. State v. County of Pennington, 211M569, 2NW (2d)41. See Dun. Dig. 2313, 2323, 9260, 9260a, 9261.

2084. When treasurer shall pay funds.
County treasurer and county auditor must pay over to township tax money collected for it, and cannot refuse on ground that town must stand its proportionate share of former loss of tax money through bank insolvency. State v. County of Pennington, 211M569, 2NW(2d)41. See Dun. Dig. 2313, 2323, 9260, 9260a, 9261.

2085. Auditor to keep accounts.
Where on death of city treasurer city council could not agree on appointment of any person as city treasurer, but under its charter appointed a person as assistant city treasurer with all powers of a city treasurer, city clerk could file a certificate to the effect that the assistant city treasurer was duly authorized to receive all money payable to the city treasurer, and that assistant treasurer had given bond according to law. Op. Atty. Gen. (63a-1), Jan. 19, 1940.

2087-1. Additional appropriations by state; etc.
Laws 1943, c. 22, amends this section as it appears in Mason's 1927, Minnesota Statutes, by substituting the word "thirteen" instead of the word "twelve", as the thirtieth word of the text. This section, as amended, now reads: "Whenever the value of the property in and within two miles of the corporate limits of any city or village in the State of Minnesota, containing not more than thirteen thousand inhabitants, * * *" otherwise the statute is the same as appears in Mason's 1927 Minnesota Statutes, §2087-1.
Laws 1943, c. 559. Towns within county containing 1,000,000 acres and 60 to 75 townships and population of 30,000 to 50,000.
Valuation of property and computation of allowance is to be made as of May 1 in taxable year, and population change according to 1940 federal census did not become effective for purposes of state laws until May 12, 1941, when governor filed with secretary of state a certified copy of official 1940 census tables containing a report of population of Brainerd showing that its population had become more than 12,000, and that city is entitled to an allowance in 1942 for 1941 taxes. Op. Atty. Gen. (454E), Oct. 21, 1941.

2087-5. Certain towns to receive special relief.—Whenever the value of the property within the boundaries of the corporate limits of any town in the state, which is exempt from local taxation because taxes thereon are paid into the state treasury under the provisions of the gross earnings tax law, exceeds $2,000,000 and is equal to or greater than the taxable value of all real and personal property, exclusive of money and credits within any such town, then such town shall be entitled to receive from the state treasury, in addition to all other taxes received thereby, such an amount as would be produced by computing a tax of one-third of the current tax rate for town purposes upon such property so exempt from local taxation, provided, that the amount which any such town shall receive shall not exceed $1,500 in any year. Railroad valuations shall cover all railroad property located in any town except rolling stock, main tracks and fills or bridges supporting the same. (As amended Act Apr. 20, 1943, c. 506, §1.)

2087-6. Same—Shall make applications to state auditor.
Relief to certain towns. Amended. Laws 1943, c. 559.

DELINQUENT PERSONAL PROPERTY TAXES

2089. Treasurer to file delinquent list in court—Answer—Trial.
1. Proceedings in personam.
Unlike real estate taxes, personal property taxes are enforced in personam, although assessed and imposed because of property ownership. S.R.A., Inc., 213M487, 7NW(2d)484. See Dun. Dig. 9281.

2091. Payment under protest.
Mere fact that taxes were illegal does not make the payment thereof involuntary. Pettibone v. C., (DC-Minn), 31FSupp881.
Fact that drainage assessment was paid under protest was immaterial, unless payment was made under duress or coercion, and then only as evidence to show that alleged payment was a result of duress, as affecting waiver of notice of hearing on assessment of annual taxes in drainage proceedings to keep ditches in proper repair and free from obstruction. Petition of Slaughter, 213M70, 5 NW(2d)64. See Dun. Dig. 9517.

2092. Sheriff to file list of uncollected taxes.
Personal property tax judgment may be cancelled only as provided by this section or evaded only as provided by §1983. Op. Atty. Gen. (407*l*), Mar. 17, 1941.

2093. Citation to delinquents—default judgment.
Amount of expense incurred by county, including fees to sheriff and mileage paid, should be included in judgment entered. Op. Atty. Gen. (390c-13), Oct. 21, 1942.

2097. Clerk's fee—Execution.
A personal tax judgment is not a lien against the homestead, but no personal property, including household goods, is exempt from execution. Op. Atty. Gen. (421a-16), Sept. 25, 1939.
If clerk receives a definite salary in lieu of all fees collected by him, he is not entitled to fees provided for herein, but if he receives fee in lieu of a definite salary, he is entitled to these fees. Op. Atty. Gen. (144B-21), Sept. 30, 1939.
Fee of $1.50 is not earned by clerk apparently unless judgment is perfected, and for issuing a citation in any case where judgment is not perfected, whether defendant is served or not, clerk should receive a fee of 25 cents. Op. Atty. Gen. (144p-21), Sept. 4, 1942.

2098. Sheriff's fees.
Where a default personal property tax judgment is entered and sheriff returns execution unsatisfied, he is entitled to usual fee, including mileage and percentage, in case taxpayer thereafter voluntarily pays amount of tax judgment to county treasurer. Op. Atty. Gen. (390c-13), Nov. 28, 1939.
If collection of personal property tax citation is made by the sheriff without distress and sale, the compensation is such as is fixed by the county board, but if collection is after distress and sale, fees are 5% on the amount collected. Op. Atty. Gen. (390c-13), Oct. 11, 1943.

2101. Docketing judgment.
Where a personal property tax judgment has been taken and later an abatement is allowed by commission, county auditor should transmit to clerk of district court a certified copy of order of commission, and clerk of district court should make appropriate record upon his judgment's docket, and if clerk is entitled to any fee for entry of such reduction, it should be added to amount of judgment and paid by judgment debtor when judgment is satisfied. Op. Atty. Gen. (421a-8), July 16, 1941.
There is no procedure provided by statute for any official to execute and deliver an instrument releasing homestead from lien of judgment without payment of taxes. Op. Atty. Gen. (421a-8), Apr. 10, 1942.

2102. Interest.
Personal property tax reduced to judgment bears interest at 6%. Op. Atty. Gen. (520i), Dec. 8, 1939.
Personal property and money and credits taxes, upon which penalties have already been imposed, do not bear interest prior to judgment. Op. Atty. Gen., (421-2-8), Jan. 16, 1941.

2103. Satisfaction of judgment.
Manner of extinguishing liens of judgment in favor of state following tax forfeiture and sale. Op. Atty. Gen. (425d), Jan. 9, 1943.

DELINQUENT REAL ESTATE TAXES

2104. Penalty and interest on real estate taxes.
If an owner pays no part of his land taxes before June 1st, he may pay one-half thereof at any time before November 1st together with penalties accrued on that one-half, and remaining one-half may be paid without penalty at any time prior to November 1st. Op. Atty. Gen. (474h), Oct. 6, 1939.
Where 1932 tax was delinquent in 1934 and in 1935 the 1933 tax became delinquent, 1933 tax should bear interest from March 1, 1935. Op. Atty. Gen. (412a-9), May 28, 1941.

2105. Duties of county auditor and treasurer.—On the first Monday in January, of each year, the county treasurer shall return the tax lists in his hands to the county auditor, who shall compare the same with the statements receipted for by the treasurer on file in the auditor's office and each tract or lot of real property against which the taxes, or any part thereof, remain unpaid, shall be deemed delinquent, and there-

upon an additional penalty of two 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 law, 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 amounts of any items omitted. (As amended Apr. 2, 1943, c. 281, §1.)

PROCEEDINGS FOR COLLECTION OF DELINQUENT REAL ESTATE TAXES

7. A proceeding in rem—Constructive seizure sufficient.
Real estate taxes, which are assessed and enforced against the land itself, are not charges against the person owning the property or his estate, and proceedings to enforce them are strictly in rem, not in personam. S.R.A., Inc., 213M487, 7NW(2d)484. See Dun. Dig. 9281.

2105-1. Interest on delinquent real estate taxes.—The rate of interest on delinquent real estate taxes levied in the year 1930 and 1931 is hereby fixed at ten per cent per annum, and the rate of interest on delinquent real estate taxes levied in the year 1932 and subsequent years is hereby fixed at eight per cent per annum. The rate of interest on delinquent taxes levied in the year 1942 and subsequent years is hereby fixed at six 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 redemption from such sale or assignment are hereby amended to correspond herewith. In calculating such interest for any fractional part of a year on taxes levied in 1930 and 1931 it shall be calculated on the basis of five-sixths of one per cent for any month or major fraction thereof; and in calculating such interest for any fractional part of a year on taxes levied in 1932 and subsequent years, it shall be calculated on the basis of two-thirds of one per cent for any month or major fraction thereof. In calculating such interest for any fractional part of a year on taxes levied in 1942 and subsequent years, it shall be calculated on the basis of one-half of one per cent for any month or major fraction thereof.

Such interest shall be calculated from the second Monday of May following the year in which the taxes became due, on the full amount of the taxes, penalties and costs accrued. (As amended Apr. 2, 1943, c. 281, §2.)

Laws 1943, c. 281, amending this section and fixing second Monday in May for interest computation, applies only to taxes for 1942 and subsequent years. Op. Atty. Gen. (412a-9), May 18, 1943.

2105-1a. Application.—The provisions of section 2 of this act shall not apply to any taxes which have heretofore been bid in by an actual purchaser at a May tax sale or which have heretofore been assigned. (Act Apr. 2, 1943, c. 281, §3.)

2105-3. Delinquent real estate taxes—Payment.—In any case where taxes for two or more years are delinquent against a parcel of land, such taxes for one or more entire years, if held by the state, may be paid in the inverse order to that in which the taxes were levied, with accrued penalties, interest, and costs upon the taxes so paid, without payment of the taxes for the first of such years; provided, that such payment shall not affect the lien of any unpaid taxes or tax judgment. (Act Mar. 28, 1941, c. 97, §1.) [280.39]

2105-4. Same—Credits—Interest.—Whenever the sheriff shall pay into the county treasury rents collected as provided in Mason's Supplement 1940. Section 2150, and acts amendatory thereof or supplementary thereto, the same shall be applied in the inverse order to that in which such taxes were levied, crediting the same as follows: (1) against penalties, interest, and costs upon the last delinquent taxes, (2) against such taxes as levied; and the same procedure shall be followed for each year's delinquent taxes until such payments have been exhausted. Whenever, under Mason's Supplement 1940, Section 2150, a year's taxes are partially paid, interest shall be charged thereafter only upon the unpaid balance; provided, that in case of part payment of the taxes for any year, the land affected shall remain, as to the unpaid balance, subject to sale, redemption, forfeiture, and all other proceedings, respecting delinquent taxes in like manner as for a full year's taxes. (Act Mar. 28, 1941, c. 97, §2.) [280.40]

2106. Delinquent list—Filing—Effect.

THE DELINQUENT LIST GENERALLY

1. Auditor prepares list.
Soldiers' and Sailors' Civil Relief Act has no effect upon confession of judgment, and reinstatement of all penalties and interest, but lands should not be listed as delinquent or be sold. Op. Atty. Gen. (310), Nov. 2, 1942.

2. What taxes included.
Taxes for two or more years may be included in the list but should be stated separately. Op. Atty. Gen. (412a-13), Oct. 4, 1943.

Where tax judgment was a nullity, the taxes for the year for which the judgment was taken, and all subsequent unpaid taxes, remained delinquent the same as if no proceeding for obtaining judgment had been attempted, and delinquent taxes for all such years should be included in the next delinquent tax list. Op. Atty. Gen. (412a-10), Dec. 2, 1943.

3. Lands bid in for state not included.
There was no statutory authority for taking of a new judgment for 1933 taxes when there was already a judgment for 1932 taxes which had not been assigned. Op. Atty. Gen. (412a-10), May 10, 1941.

4. Statement of amount due.
Where judgment had been entered for 1932 delinquent real estate taxes, delinquent taxes for subsequent years were properly attached to tax judgment and omitted from subsequent tax lists. Singer v. Village of Goodridge, 210 M324, 298NW35. See Dun. Dig. 9293.

5. Mistake in name of owner.
County auditor is not concerned in controversy between private claimants to title of land. Op. Atty. Gen. (425i), Aug. 6, 1943.

DESCRIPTION OF THE REAL ESTATE

20. Descriptions held insufficient.
Description of property as Pt. NW¼ of SE¼, 2 acres Sec. 36, T. 162, R. 35, and naming the owner was insufficient. Op. Atty. Gen. (412a-13) May 10, 1941.

Descriptions such as "one acre in NW¼ of NW¼" is too indefinite and judgment thereon is void. Op. Atty. Gen. (412a-10), Dec. 2, 1943.

FILING THE LIST

22. Jurisdictional.
Where notice required to be published and attached to list of delinquent real estate taxes for 1932 included the paragraph provided by L. 1927, c. 119, §3, to effect that five years after sale of land for taxes real estate would become absolute property of purchaser without any further right of redemption and without any notice of expiration of time to redeem, such notice did not vitiate district court's jurisdiction to enter judgment even though L. 1933, c. 366, §1, required notice of expiration of time to redeem because it merely related to redemption and not to court's acquisition of jurisdiction. Singer v. Village of Goodridge, 210M324, 298NW35. See Dun. Dig. 9290, 9322.

2107. Copy of list and notice.
Where notice required to be published and attached to list of delinquent real estate taxes for 1932 included the paragraph provided by L. 1927, c. 119, §3, to effect that five years after sale of land for taxes real estate would become absolute property of purchaser without any further right of redemption and without any notice of expiration of time to redeem, such notice did not vitiate district court's jurisdiction to enter judgment, even though L. 1933, c. 366, §1, required notice of expiration of time to redeem, because it merely related to redemption and not to court's acquisition of jurisdiction. Singer v. Village of Goodridge, 210M324, 298NW 35. See Dun. Dig. 9290, 9322.

2108. Bids for publication.
Op. Atty. Gen. (412A-13), Jan. 2, 1942; note under §2109.

2109. Designation of newspaper.—At their annual meeting in January, and prior to the designation, the county board shall open, examine and consider all offers for publication filed or presented as provided in Section 2096, and shall thereupon award the publica-

tion of the notice and list to the publisher or proprietor of the newspaper whose offer is found to be the lowest, and does not exceed forty-five cents for each description. The board may reject any offer, if, in its judgment the public interest so require, and may thereupon designate a paper without regard to any rejected offer. In counties now or hereafter having a population of 75,000 or more, the board shall designate a daily paper of general circulation throughout such county; provided that if no such daily paper submits a bid at the rate herein provided, the board may designate a weekly paper of general circulation throughout said county. In any county in which there is no legal newspaper the board shall designate any such newspaper printed in the judicial district in which the county is situated, and circulating in the county. Every such designation shall be by resolution, which shall be substantially in the following form:

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

A copy of the resolution certified by the auditor, shall be filed with the clerk of the district court. If, for any reason, the board fail to designate a newspaper, or the proprietor of the newspaper fail to give the required bond, the auditor shall thereupon designate the same in writing, and immediately file such writing in his office, and a certified copy thereof with such clerk. (As amended Act Apr. 24, 1941, c. 400, §1.)

It is the offer and the acceptance of the offer of the printer that makes the contract, and we must look to the offer to determine the amount. Op. Atty. Gen. (412A-13), Jan. 2, 1942.

2110. Publication of notice and list.

2. Period of publication.

Whether publication of notice and list of delinquent real property two weeks apart prevented court from acquiring jurisdiction was considered but not determined. Op. Atty. Gen. **(412a-13), Apr. 15, 1941.**

Publication for two weeks with one week intervening between two publications is invalid. Op. Atty. Gen. (412a-13), Oct. 4, 1943.

2115. What defects jurisdictional.

CONCLUSIVENESS OF THE JUDGMENT

5. Collateral attack—General statement.

Whether publication of notice and list of delinquent real property two weeks apart prevented court from acquiring jurisdiction was considered but not determined. Op. Atty. Gen. (412a-13), Apr. 15, 1941.

6. Collateral attack—List of grounds for.

Description of property as Pt. NW¼ of SE¼, 2 acres Sec. 36, T. 162, R. 35, and naming the owner was insufficient. Op. Atty. Gen. (412a-13), May 10, 1941.

2116. Who may answer—Form.

½. In general.

A new procedure for questioning correctness of an assessment of land for tax purposes was prescribed by Laws 1935, ch. 300, §1 (Mason St. §§2126-1 to 2126-14). Delinquent Real Estate Taxes, 212M562, 4NW(2d)783. See Dun. Dig. 9328.

Question whether this section was superseded by Laws 1935, chapter 300, was mentioned but not determined. Petition of Slaughter, 213M70, 5NW(2d)64. See Dun. Dig. 9328-9330.

The same defense may now be asserted by petition as were asserted formerly by answer under this section. Saxhaug v. County of Jackson, 215M490, 10NW(2d)722. See Dun. Dig. 9334.

Procedure provided by §2126-1 to §2126-14 is exclusive method by which there may be raised a claim that property has been partially, unfairly or illegally assessed, or has been assessed at a valuation greater than its real or actual value, or that tax levied against it is illegal in whole or in part, and as to these defenses such sections supersede remedy provided in §2116, though defense that a tax has been paid or that property is exempt from tax so levied may be raised under either procedure, but if it is raised under procedure provided in §2126-1, et seq., judgment is conclusive and question may not again be raised by answer in delinquent tax proceedings. Op. Atty. Gen., (412a), April 25, 1940.

12. List of admissible defenses.

Order of county board purporting to levy an assessment for ditch repairs "at a rate not exceeding 30 mills" was void for failure to fix a definite rate, and spreading of an assessment by county auditor based upon such order was illegal, and could be attacked by answer or petition. Saxhaug v. County of Jackson, 215M490, 10NW (2d)722. See Dun. Dig. 2840, 9338, (63).

2117. Judgment when no answer—Form—Entry.

1. Statutory form must be followed.

Proposed changes in real estate tax judgment book should not be made until validity is upheld by supreme court or law amended to permit them. Op. Atty. Gen., (21f), Jan. 17, 1941.

9. Premature entry.

Entry of tax judgment six days before time of answering expired, is an irregularity not fatal in a collateral attack on the judgment. Miner v. B., 206M341, 288NW 582. See Dun. Dig. 9348.

2119. Judgment.

On appeal to the district court, landowner challenging amount of tax has burden of proving that property was overvalued. Kalscheuer v. State, 214M441, 8NW(2d)624. See Dun. Dig. 9332.

2122. Appeal to supreme court.

If findings of district court as to value of land in tax proceedings are reasonably supported by evidence, they must be sustained on appeal. Delinquent Real Estate Taxes, 212M562, 4NW(2d)783. See Dun. Dig. 9336.

Unless trial court's finding of value of land on appeal *in tax proceeding is manifestly against the weight of the* evidence, supreme court must affirm. Kalscheuer v. State, 214M441, 8NW(2d)624. See Dun. Dig. 9535.

2126. Payment before judgment.

Even though statutes provide for issuance of a certificate to purchaser who pays subsequent taxes at annual May sale following the date they become delinquent, this does not change character of payment as affecting amounts necessary to redeem. Op. Atty. Gen. (423k), June 29, 1942.

DEFENSES OR OBJECTIONS TO TAXES ON REAL ESTATE

2126-1. Defense or objection to tax on land—Service and filing.

Supreme court did not decide whether it was necessary to follow new procedure for questioning correctness of an assessment of land for tax purposes where question was not raised. Delinquent Real Estate Taxes, 212M562, 4NW(2d)783. See Dun. Dig. 9328.

It is a material condition of the act that petition for cancelation of ditch assessments be served upon county auditor, treasurer, and attorney on or before first day of June of year in which tax becomes payable. Petition of Slaughter, 5NW(2d)64. See Dun. Dig. 9328-9330.

Question whether this act superseded old law was mentioned but not determined. Id.

On appeal from an order denying a blended motion for amended findings or new trial, only that part of order denying a new trial will be reviewed. S.R.A., Inc., 213M487, 7NW(2d)484. See Dun. Dig. 300, 301.

A finding not sustained by the record and which is in substance a mere conclusion of law may be stricken as irrelevant to the issues. Id. See Dun. Dig. 9535.

Payment by a taxpayer of a portion of a tax or assessment "under protest", but not as a result of duress or coercion, constitutes a waiver by taxpayer of any objections he might have to the assessment proceedings on jurisdictional grounds. Rosso v. Village of Brooklyn Center, 214M364, 8NW(2d)219. See Dun. Dig. 9219b.

Section applies to special assessments as well as general taxes. Id. See Dun. Dig. 9219b.

Where statute affords a taxpayer an adequate remedy at law to contest assessment proceedings or the collection of an assessment, taxpayer is not entitled to maintain a suit in equity to enjoin collection of the assessment. Id. See Dun. Dig. 9537.

Where landowner's right to object to an assessment has not been foreclosed by the prior proceedings, the statute permitting him to contest the validity of taxes by petition should be liberally construed to afford him relief not otherwise open to him. Saxhaug v. County of Jackson, 215M490, 10NW(2d)722.

The same defenses may be asserted by petition under this section as were asserted formerly by answer. Id.

Order of county board purporting to levy an assessment for ditch repairs "at a rate not exceeding 30 mills" was void for failure to fix a definite rate, and spreading of an assessment by county auditor based upon such order was illegal, and could be attacked by answer or petition.. Id. See Dun. Dig. 2840, 9338(63).

Procedure provided by §2126-1 to §2126-14 is exclusive method by which there may be raised a claim that property has been partially, unfairly or illegally assessed, or has been assessed at a valuation greater than its real or actual value, or that tax levied against it is illegal in whole or in part, and as to these defenses such sections supersede remedy provided in §2116, though defense that a tax has been paid or that property is exempt from tax so levied may be raised under either procedure, but if it is raised under procedure provided in §2126-1, et seq., judgment is conclusive and question may not again be raised by answer in delinquent tax proceedings. Op. Atty. Gen., (412a), April 25, 1940.

2126-3. Payment of portion of tax.
Persons in military service. Laws 1943, c. 641.

2126-4. Treasurer must stamp tax lists.
Where judgment is entered before time for filing of delinquent list it is not necessary to add premises upon which judgment has already been taken to delinquent list for purpose of taking a new judgment. Op. Atty. Gen. (412a-10), March 11, 1940.

2126-5. Trial of issues.
There was no intention on part of legislature in enacting Laws 1939, c. 431, Art. 6, §18, to deprive municipality of a right of review when it contends that determination of commissioner is inadequate. Village of Aurora, MBTA(No. 55), May 20, 1941.

2126-7. Judgment—Amount—Costs.
Where petitioner is awarded judgment that a purported tax against his property is illegal, he is entitled to his costs and disbursements. Saxhaug v. County of Jackson, 215M490, 10NW(2d)722.

2126-8. Penalties and interest.
Where a petition for review has been filed and judgment is entered prior to first of November, one-half or one-quarter of tax remaining unpaid after tax has been sustained in whole or in part, sections 2126-8 and 2126-10 require auditor to add to judgment an 8% penalty for failure to pay taxes for November 1st. Op. Atty. Gen. (412a-10), March 11, 1940.

2126-10. To be entered in judgment book.
Where judgment has been entered prior to publication of notice of regular annual sale, land shall be sold at such sale, but if judgment is entered subsequent to publication of notice for regular annual sale, then a special sale upon judgment shall be immediately advertised and land sold. Op. Atty. Gen. (412a-10), March 11, 1940.

2126-15. Acquisition of tax delinquent land before forfeiture.—Whenever any lands have been bid in for the state for delinquent taxes at any tax judgment sale and have not been sold or assigned, the county board of the county in which such lands are situated may, in its discretion, with the consent first obtained of the governing body of the city, village, or town in which such lands are situated, accept a conveyance from the owner thereof to the state; provided that the county attorney finds that such owner has good title to such lands and that they are free and clear of all encumbrances except taxes. (Act Apr. 6, 1943, c. 327, §1.)
[280.385]

2126-16. To have same status as tax forfeited lands.—Upon conveyance of title to the state, such lands shall have the status of lands absolutely forfeited to the state for taxes, and shall be subject to all applicable provisions of law as if they had become so forfeited at the date of acceptance of the conveyance by the county board. (Act Apr. 6, 1943, c. 327, §2.)
[280.385]

2126-17. Procedure if title fails.—If the title of the state under such conveyance should for any reason be finally adjudged void or subject to any encumbrance, the county auditor, upon the filing in his office of a certified copy of such judgment, shall reinstate all taxes, penalties, and interest which were a lien upon said lands at the time such conveyance was made, and shall assess as omitted the taxes for the years subsequent thereto. Such lands shall thereupon be subject to forfeiture or other proceedings upon such taxes as provided by law as if no conveyance to the state had been made. (Act Apr. 6, 1943, c. 327, §3.)
[280.385]

TAX SALES

2127. Mode of sale.
Soldiers' and Sailors' Civil Relief Act has no effect upon confession of judgment, and reinstatement of all penalties and interest, but lands should not be listed as delinquent or be sold. Op. Atty. Gen. (310), Nov. 2, 1942.

2. Contents.
Notice following repealed law by specifying that at expiration of 5 years, each parcel of land sold at sale, and not redeemed, will become and be absolute property of the purchaser or of the state, was not sufficient to invalidate notice. Op. Atty. Gen., (419), Mar. 14, 1941.

2128. Public vendue.

1. Conduct of generally.
Where tax records did not note easements of railroad paying gross earnings tax, judgment and sale to the state was not void but was ineffective as far as railroad easements was concerned, and notice of expiration of period of redemption or certificate after expiration of time for redemption should include words "subject to railroad easement". Op. Atty. Gen. (216i), June 16, 1942.

4. Bidding in for state.
Where a village acquires deed to land which has been sold to the state for delinquent taxes, village need not pay the delinquent taxes and state cannot proceed to forfeiture and deed to the village should be recorded without payment of taxes. Op. Atty. Gen., (414a-11), May 7, 1940.

2129. Certificate of sale.

CERTIFICATE OF SALE

2. Contents.
Form of certificate provided by attorney general. Op. Atty. Gen. (409b-8), Apr. 8, 1941.

4. Upon sale to the state.
Where property was sold to state for taxes, state became absolute owner subject only to a trust in favor of respective taxing subdivisions interested in the property. Fortman v. City of Minneapolis, 212M340, 4NW(2d) 349. See Dun. Dig. 9373, 9419b.

RIGHTS OF CERTIFICATE HOLDER

8½. In general.
Validity of a tax certificate and rights of holder thereunder are to be determined by law in force at time certificate issues. Absetz v. M., 290NW298. See Dun. Dig. 9406.

10. After expiration of redemption period.
One who enters into a collusive agreement with a life tenant for purpose of defeating interests of remaindermen cannot enforce a lien on property for amount paid to acquire title thereto at a tax sale. Turner v. E., 207 M455, 292NW257. See Dun. Dig. 3167.

As between life tenant and remaindermen, it is duty of former to pay taxes, and acquisition of a tax title by a life tenant is treated as a payment or a redemption thereof for benefit of both life tenant and remaindermen. Id. See Dun. Dig. 3170.

Grantee of a mortgagor stands in no better position than mortgagor insofar as his ability to acquire a tax title valid as against mortgagee is concerned. Pulsifer v. Paxton, 212M68, 2NW(2d)427. See Dun. Dig. 6267, 9374.

Prior to foreclosure, a mortgagor may not acquire a valid tax title as against mortgagee by failing to pay taxes in violation of a covenant or condition of his mortgage. Id.

Where land standing in name of married woman was sold for taxes to her daughter who paid subsequent taxes, and old age assistance was thereafter furnished surviving husband of owner and lien filed, on expiration of period of redemption taxpayer acquires title free from any claim on part of state, and further old age recipient has only a life estate which will terminate upon his death and render lien of state unenforcible. Op. Atty. Gen., (521p-4), May 10, 1940.

An ordinance attempting to make a payment of delinquent water bill incurred by former owner of tax-forfeited premises a condition precedent to supplying of water to purchaser from the state would be invalid. Op. Atty. Gen. (624d-5), July 8, 1942. See Dun. Dig. 1668, 1674, 9396.

2134. Record of assignment.
Repurchases of tax forfeited land under Laws 1933, c. 407, Laws 1937, Ex. Sess., c. 88, Laws 1939, c. 283, and Laws 1941, c. 43, are not purchases upon sale of land for general taxes or for special assessments for local improvements, and this section has no application. Op. Atty. Gen. (409B-3), Oct. 24, 1941.

Section has no application to sales under Laws 1935, c. 210, Laws 1935, c. 386, as amended by Laws 1939, c. 328, or Laws 1941, c. 511. Id.

County auditor should continue to accept for record assignment after time for redemption expires unless it appears that certificate or deed involved is void for failure to comply with §2170. Id.

Term "certificate or deed" means certificate issued pursuant to a sale held on second Monday in May in each year, and reason for requiring recording is just as compelling after expiration of time for redemption as it is before. Id.

A state assignment certificate may be recorded where no notice has ever been given. Op. Atty. Gen. (409b-5), Sept. 14, 1943.

2136. Payment of subsequent taxes.
Even though Mason's St. Supp. 1940, §2136, provides for issuance of a certificate to purchaser who pays subsequent taxes at the annual May sale following the date they become delinquent, this does not change character of payments within meaning of Mason's St. §2152(2). Op. Atty. Gen. (423k), Apr. 15, 1942.

Even though statutes provide for issuance of a certificate to purchaser who pays subsequent taxes at annual May sale following the date they become delinquent,

this does not change character of payment as affecting amounts necessary to redeem. Op. Atty. Gen. (423k), June 29, 1942.

2137. Lands bid in for state.

CERTIFICATE OF ASSIGNMENT

3. Who may take.
City of Moorhead has power to buy interest of state in land bid in for state at delinquent tax judgment sale, and county auditor was authorized to issue certificate assigning state's interest to buyer, and this right was not impliedly or otherwise affected by confession of judgment statutes, words "not assigned by it" referring to time owner offered to confess judgment, and not to moment law was approved. Adams v. Atkinson, 212M 131, 2NW(2d)818. See Dun. Dig. 9390, 9405a.

4. Purchaser must pay subsequent delinquent taxes.
Where judgment was secured upon 1932 taxes and separate assignment for 1933 taxes was given to same person who took assignment of 1932 taxes, notice of expiration of time of redemption must be served upon 1932 taxes, since separate assignment made of 1933 taxes was of no force. Op. Atty. Gen. (412a-23), June 24, 1941.

5. Authority of auditor limited by statute.
Owner of land sold for taxes desiring to confess judgment and redeem cannot take any advantage of irregularities of city council in procuring from county auditor certificate assigning state's interest to it. Adams v. Atkinson, 212M131, 2NW(2d)818. See Dun. Dig. 9390, 9405a.

9. Time of assignment.
Where lands were sold for delinquent taxes for year 1931 in May, 1935, whereas 1932 tax on same property was bid in for state in May, 1934, and all tax judgments for years 1933, 1934, 1935, 1936 and 1937 were added to judgment obtained in May, 1934, under 1932 tax sale, it was too late in April, 1940, to obtain an assignment of the 1932 tax judgment, but one could obtain assignments of 1931 tax judgments and pay tax judgments for 1932 taxes, and later years, and serve notice of expiration of redemption and acquire title, without entering into competitive bidding. Op. Atty. Gen., (412a-10), April 18, 1940.

11. Effect of abatement of taxes.
Commissioner of taxation does not have power to abate taxes which have been assigned. Op. Atty. Gen. (407i), July 15, 1941.

2138. Unredeemed lands.

1. In general.
Effect on purchaser from the state of defect in notice of expiration of period of redemption. McHardy v. State, 215M132, 9NW(2d)427; McHardy v. State, 215M141, 9NW (2d)432; McHardy v. State, 215M146, 9NW(2d)435; note under §2164-12, 281.23.

Lien of judgment creditor is extinguished by forfeiture to state for delinquent taxes. Op. Atty. Gen. (412a-10), Feb. 13, 1940.

State may execute conveyances to two persons as joint tenants. Op. Atty. Gen. (410-B), July 19, 1940.

Certificates of sale issued in 1927 became void after October 25, 1941, if not already void, and notice of expiration of redemption cannot now be issued. Op. Atty. Gen. (409c-2), Nov. 24, 1941.

2139. Same—Conduct of sale.

City ordinances attempting to recoup losses of city on special improvements (sewer and water mains) assessed against a parcel of land forfeited to state for nonpayment of taxes by imposing upon purchaser from state a connection fee equal to the unrealized portion of the assessment as condition of using water and sewer facilities violated state law and city charter. Fortman v. City of Minneapolis, 212M340, 4NW(2d)349. See Dun. Dig. 9373.

It is not the policy of the state, nor should it be, to deprive owners of real estate of their interest therein on account of tax delinquency, and if any reasonable means can be devised whereby ownerships may be protected against tax forfeitures, without injury to others, clearly it should be the purpose of the state to lend a helping hand. State v. Flach, 213M353, 6NW(2d)805. See Dun. Dig. 9180.

Effect on purchaser from the state of defect in notice of expiration of period of redemption. McHardy v. State, 215M132, 9NW(2d)427; McHardy v. State, 215M141, 9NW (2d)432; McHardy v. State, 215M146, 9NW(2d)435; note under §2164-12, 281.23.

Failure of posted notice of expiration of redemption to designate name of assessed owner as carried on official assessment books rendered tax forfeiture proceedings fatally defective. McHardy v. State, 215M141, 9NW(2d) 432; McHardy v. State, 215M146, 9NW(2d)435. See Dun. Dig. 9440.

County board member may not rent or purchase. Op. Atty. Gen. (425c-10), Feb. 19, 1940.

2139-½. Unredeemed lands.

City ordinances attempting to recoup losses of city on special improvements (sewer and water mains) assessed against a parcel of land forfeited to state for nonpayment of taxes by imposing upon purchaser from state a connection fee equal to the unrealized portion of the assessment as condition of using water and sewer facilities violated state law and city charter. Fortman v. City of Minneapolis, 212M340, 4NW(2d)349. See Dun. Dig. 9373.

2139-1. Same—Delinquent taxes for 1926.

Rights of purchaser at a delinquent tax sale under Laws 1927, c. 119, were not extinguished by failure to record his certificate of tax sale within statutory limit of time fixed and provided by §§2169 and 2170. Absetz v. M., 207M202, 290NW298. See Dun. Dig. 9386.

2139-2. Same—Attacking validity of sales. [Repealed.]

Repealed. Act Apr. 24, 1941, c. 428. Pending actions not affected by such repeal.

Where notice required to be published and attached to list of delinquent real estate taxes for 1932 included the paragraph provided by Laws 1927, c. 119, §3, to effect that five years after sale of land for taxes real estate would become absolute property of purchaser without any further right of redemption and without any notice of expiration of time to redeem, such notice did not vitiate district court's jurisdiction to enter judgment, even though Laws 1933, c. 366, §1, required notice of expiration of time to redeem, because it merely related to redemption and not to court's acquisition of jurisdiction. Singer v. Village of Goodridge, 210M324, 298NW35. See Dun. Dig. 9290, 9322.

Where judgment had been entered for 1932 delinquent real estate taxes, delinquent taxes for subsequent years were properly attached to tax judgment and omitted from subsequent tax lists. Id. See Dun. Dig. 9293.

2139-8. Penalties and interest.

Regular rate of interest on delinquent taxes for 1931 where no answer was interposed is 10%, both under Laws 1931, c. 315, and Laws 1933, c. 337. Op. Atty. Gen. (423a), May 23, 1941.

2139-15. Classification as conservation or non-conservation—Matters and data considered—Reclassification—Sale to municipalities of tax-forfeited lands.—(a) All parcels of land becoming the property of the state in trust under the provisions of any law now existing or hereafter enacted declaring the forfeiture of lands to the state for taxes, shall be classified by the county board of the county wherein such parcels lie as conservation or non-conservation. Such classification shall be made with consideration, among other things, to the present use of adjacent lands, the productivity of the soil, the character of forest or other growth, accessibility of lands to establish roads, schools, and other public services, and their peculiar suitability or desirability for particular uses. Such classification, furthermore, shall aid: to encourage and foster a mode of land utilization that will facilitate the economical and adequate provision of transportation, roads, water supply, drainage, sanitation, education, and recreation; to facilitate reduction of governmental expenditures; to conserve and develop the natural resources; and to foster and develop agriculture and other industries in the districts and places best suited thereto. In making such classification the county board may make use of such data and information as may be made available by any office or department of the federal, state, or local governments, or by any other person or agency possessing information pertinent thereto at the time such classification is made. Such lands may be reclassified from time to time as the county board may deem necessary or desirable, except as to conservation lands held by the state free from any trust in favor of any taxing district. Provided (1) that if any such lands are located within the boundaries of any organized town, or incorporated municipality, the classification or reclassification and sale shall first be approved by the town board of such town or the governing body of such municipality in so far as the lands located therein are concerned. Any tax-forfeited lands may be sold by the county board to any organized or incorporated governmental subdivision of the state for any public purpose for which such subdivision is authorized to acquire property or may be released from the trust in favor of the taxing districts upon application of any state agency for any authorized use at not less than their value as determined by the county board. The commissioner of taxation shall have power to convey by deed in the name of the state any tract of tax-forfeited land held in trust in favor of the taxing districts, to any governmental subdivision for any authorized public use, provided that an application therefor shall be submitted to the commissioner with

a statement of facts as to the use to be made of such tract and the need therefor and the recommendation of the county board. The deed of conveyance shall be upon a form approved by the attorney general and shall be conditioned upon continued use for the purpose stated in the application.

Whenever any governmental subdivision to which any tax-forfeited land has been conveyed for a specified public use as provided in this section shall fail to put such land to such use or shall abandon such use, the governing body of the subdivision shall authorize the proper officers to convey the same to the State of Minnesota, and such officers shall execute a deed of such conveyance forthwith, in form approved by the attorney general. No vote of the people shall be required for such conveyance. In case any such land shall not be so conveyed to the state, the commissioner of taxation shall by written instrument, in form approved by the attorney general, declare the same to have reverted to the state, and shall serve a notice thereof, with a copy of the declaration, by registered mail upon the clerk or recorder of the governmental subdivision concerned, provided, that no declaration of reversion shall be made earlier than five years from the date of conveyance for failure to put such land to such use or from the date of abandonment of such use if such lands have been put to such use. The commissioner shall file the original declaration in his office, with verified proof of service as herein required. The governmental subdivision may appeal to the district court of the county in which the land lies by filing with the clerk of court a notice of appeal, specifying the grounds of appeal and the description of the land involved, mailing a copy thereof by registered mail to the commissioner of taxation, and filing a copy thereof for record with the register of deeds or registrar of titles, all within 30 days after the mailing of the notice of reversion. The appeal shall be tried by the court in like manner as a civil action. If no appeal is taken as herein provided, the declaration of reversion shall be final. The commissioner of taxation shall file for record with the register of deeds or registrar of titles, of the county within which the land lies, a certified copy of the declaration of reversion and proof of service. (As amended Apr. 28, 1941, c. 511; Mar. 27, 1943, c. 204, §1.)

(b) Lands classified as conservation lands, unless reclassified as non-conservation lands, sold to a governmental subdivision of the state, or released from the trust in favor of the taxing districts as herein provided, will be held under the supervision of the county board of the county with which such parcels lie.

The said county board may by resolution duly adopted resolve that certain lands classified as conservation lands shall be devoted to conservation uses and may submit such resolution to the commissioner of conservation. If upon investigation the commissioner of conservation determines that the lands covered by such resolution or any part thereof can be managed and developed for conservation purposes, he shall make a certificate describing the lands and reciting the acceptance thereof on behalf of the state for such purposes. The commissioner shall transmit the certificate to the county auditor, who shall note the same upon his records and record the same with the register of deeds. The title to all lands so accepted shall be held by the state free from any trust in favor of any and all taxing districts and such lands shall be devoted thereafter to the purposes of forestry, water conservation, flood control, parks, game refuges, controlled game management areas, public shooting grounds, or other public recreational or conservation uses, and shall be managed, controlled, and regulated for such purposes under the jurisdiction of the commissioner of conservation and the divisions of his department. In case the commissioner of conservation shall determine that any tract of land so held by the state and situated within or adjacent to the boundaries of any governmental subdivision of the state is suitable for use by such subdivision for any authorized public purpose, he may convey such tract by deed in the name of the state to such subdivision upon the filing with him of a resolution adopted by a majority vote of all the members of the governing body thereof, stating the purpose for which the land is desired. The deed of conveyance shall be upon a form approved by the attorney general and shall be conditioned upon continued use for the purpose stated in the resolution. All proceeds derived from the sale of timber, lease of hay stumpage, or other revenue from such lands under the jurisdiction of the conservation commissioner shall be paid into the general revenue fund of the state. The county auditor, with the approval of the county board, may lease conservation lands, remaining under the jurisdiction of the county board and may sell timber and hay stumpage thereon in the manner hereinafter provided, and all proceeds derived therefrom shall be distributed in the same manner as provided in Section 2139-18.

(c) All such parcels of land classified as non-conservation, except those which may be reserved, as hereinafter provided, shall be sold at public or private sale, as hereinafter provided, if it shall be determined, by the county board of the county wherein such parcels lie, that it is advisable to do so, having in mind their accessibility, their proximity to existing public improvements, and the effect of their sale and occupancy on the public burdens. Any parcels of land proposed to be sold shall be first appraised by the county board of the county wherein such parcels lie, and such parcels may be reappraised whenever the county board deems it necessary to carry out the intent of this act; provided that in such appraisal the value of the land and any standing timber thereon shall be separately determined, and, provided further, that before any parcel of land is sold the appraised value of the timber thereon shall first have been approved by the commissioner of conservation. If any public improvement is made by a municipality after any parcel of land has been forfeited to the state for the non-payment of taxes and such improvement is assessed in whole or in part against the property benefited thereby, the clerk of such municipality shall certify to the county auditor immediately upon the determination of the assessments for such improvement the total amount that would have been assessed against such parcel of land if it had been subject to assessment. The county board shall determine the amount, if any, by which the value of such parcel was enhanced by such improvement and shall include such amount as a separate item in fixing the appraised value for the purposes of sale. In classifying, appraising and selling such lands, the county board may designate the tracts as assessed and acquired, or may by resolution provide for the subdivision of such tracts into smaller units or for the grouping of several of such tracts into one tract when such subdivision or grouping is deemed advantageous for the purpose of sale, but each such smaller tract or larger tract must be classified and appraised as such before being offered for sale. (As amended Act Apr. 23, 1941, c. 394, §1.)

(d) Such sale shall be conducted by the county auditor in the county seat of the county in which such parcels lie, and such parcels shall be sold for cash only and at not less than the appraised value, unless the county board of said county shall have adopted a resolution providing for their sale on terms, in which event such resolution shall control with respect thereto. Provided, however, that when the sale is made on terms other than for cash only a payment of at least ten per cent of the purchase price of land and improvements must be made at the time of purchase, thereupon the balance shall be paid in equal yearly or monthly installments over a period of not to exceed ten years, and providing further that in addition thereto the sale price of all such timber or timber products as may have been standing on such lands at

the time of purchase shall be paid by the purchaser at the time of sale. When sales are made on such terms the interest rate on the unpaid portion shall be four per cent per annum, and the county board may where parcels have insurable buildings thereon compel the purchaser to carry fire and windstrom insurance on said building or buildings in such an amount as to insure the balance of the purchase price with a rider attached in favor of the State of Minnesota as its interest may appear. Failure to pay premiums on said insurance when due shall be considered cause for cancellation of the certificate as set forth in subdivision (e). The purchaser at such sale shall be entitled to immediate possession, subject to the provisions of any existing valid lease or easement made in behalf of the state.

(e) When sales hereafter are made on terms the purchaser shall receive a certificate from the county auditor in such form, consistent with the provision of this act and setting forth the terms of sale, as may be prescribed by the attorney general. Failure of the purchaser or any person claiming under him, to pay any of the deferred installments with interest, or the current taxes, or to comply with any conditions that may have been stipulated in the notice of sale or in the auditor's certificate herein provided for, shall constitute default; and the state may, by order of the county board, during the continuance of such default, without notice, declare such certificate cancelled and take possession of such lands and may thereafter resell or lease the same in the same manner and under the same rules as other lands forfeited to the state for taxes are sold or leased. When the county board shall have adopted a resolution ordering the cancellation of such certificate or certificates the cancellation shall be deemed complete and a reentry shall be deemed to have been made on the part of the state without any other act or deed whatsoever, and without any right of redemption by the purchaser or any one claiming under him; and the original purchaser in default or any person claiming under him, who shall remain in possession or enter thereon shall be deemed a willful trespasser and shall be punished as such. (As amended Apr. 28, 1941, c. 511, §1; Mar. 27, 1943, c. 204, §2; Apr. 24, 1943, c. 627, §§1-3.)

(f) When any sale has been made by the county auditor under this act, he shall immediately certify to the Minnesota tax commission such information relating to such sale, on such forms as the commission may prescribe as will enable said commission to prepare an appropriate deed if the sale is for cash, or keep its necessary records if the sale is on terms; and not later than October 31st of each year the county auditor shall submit to the tax commission a statement of all instances wherein any payment of principal, interest or current taxes on lands held under certificate, due or to be paid during the preceding calendar years, are still outstanding at the time such certificate is made. When such statement shows that a purchaser or his assignee is in default, the tax commission may instruct the county board of the county in which the land is located to cancel said certificate of sale in the manner provided by subdivision (e) of this section, provided that upon recommendation of the county board, and where the circumstances are such that the tax commission after investigation is satisfied that the purchaser has made every effort reasonable to make payment of both the annual installment and said taxes, and that there has been no willful neglect on the part of the purchaser in meeting these obligations, then the said tax commission may extend the time for said payment for such period as it may deem warranted, not to exceed one year. On payment in full of the purchase price, appropriate conveyance in fee, in such form as may be prescribed by the attorney general, shall be issued by the Minnesota tax commission, which conveyance shall have the force and effect of a patent from the state. (As amended Apr. 28, 1941, c. 511, §1; Apr. 24, 1943, c. 627, §§1-3.)

(g) The sale herein provided for shall commence at such time as the county board of the county wherein such parcels lie, shall direct. The county auditor shall offer the parcels of land in order in which they appear in the notice of sale, and shall sell them to the highest bidder, but not for a less sum than the appraised value, until all of the parcels of land shall have been offered, and thereafter he shall sell any remaining parcels to anyone offering to pay the appraised value thereof. Said sale shall continue until all such parcels are sold or until the county board shall order a reappraisal or shall withdraw any or all such parcels from sale. Such list of lands may be added to and the added lands may be sold at any time by publishing the descriptions and appraised values of such parcels of land as shall have become forfeited and classified as non-conservation since the commencement of any prior sale or such parcels as shall have been reappraised, or such parcels as shall have been reclassified as non-conservation or such other parcels as are subject to sale but were omitted from the existing list for any reason in the same manner as hereinafter provided for the publication of the original list, provided that any parcels added to such list shall first be offered for sale to the highest bidder before they are sold at appraised value. All parcels of land not offered for immediate sale, as well as parcels of such lands as are offered and not immediately sold shall continue to be held in trust by the state for the taxing districts interested in each of said parcels, under the supervision of the county board, and such parcels may be used for public purposes until sold, as the county board may direct. (As amended Apr. 23, 1941, c. 391, §1; Apr. 28, 1941, c. 511, §1; Feb. 15, 1943, c. 37, §1; Mar. 27, 1943, c. 204, §2; Apr. 24, 1943, c. 627, §§1-3.)

Chapter 204, §1, Laws of 1943, recites: "Mason's Supplement 1940, Section 2139-15, Subdivision (a), as amended by Laws 1941, Chapters 355 and 511, is hereby amended." There is nothing in c. 355, Laws 1941, indicating an amendment of §2139-15, subd. (a).

In view of laws 1939, c. 328, wherein method of classification was changed to "conservation or non-conservation", county officials instead of making a complete new classification, may simply adopt a resolution reclassifying as non-conservation lands, lands previously classified as agricultural and vice versa, provided such reclassification was warranted by actual condition of lands, and such reclassification should be done without delay, and if any lands have been sold since April 20, 1939, without reclassification as non-conservation, resolution should recite that they shall be deemed to have been so classified prior to sale thereof, and that sale is ratified and confirmed. Op. Atty. Gen. (525), Oct. 10, 1939.

As to land already offered for sale, county board may do one of three things: Continue to offer such land for sale at not less than their appraised value; order a reappraisal of any or all parcels of land remaining unsold; withdraw any or all parcels of land from sale; and if reappraisal is ordered, such parcel or parcels may again be offered for sale, but only by proceeding in same manner as provided for publication of notice and sale of such lands in the first instance, irrespective of whether or not there are new lands subsequently forfeited to the state. Id.

Where board by mistake appraised wrong land and purchaser paid full appraised value, purchase money may be refunded. Op. Atty. Gen., (424a-2), April 17, 1940.

County board may authorize application for zoning under city zoning ordinance or state law. Op. Atty. Gen. (700a-6), May 10, 1940.

Where improved homestead consisting of 5 platted lots was listed and appraised as vacant and unoccupied lots, sale was voidable for lack of a proper appraisal. Op. Atty. Gen., (425c), Feb. 1, 1941.

Laws 1941, c. 394 and Laws 1941, c. 511, amending this section, are both to be given effect. Op. Atty. Gen., June 23, 1941.

Generally speaking, county board has no authority to grant easements or permits for electric power lines over tax forfeited lands. Op. Atty. Gen. (700A-3), Aug. 21, 1941.

Lien of all taxes levied on property of a recipient of old age assistance while property remains in private ownership will be superior to any liens which may accrue for old age assistance, and old age assistance liens are extinguished upon forfeiture of property for delinquent taxes, subject to possible revival in case of repurchase of property by former owner or someone claiming under him. Op. Atty. Gen. (425C-13), Oct. 7, 1941.

Full effect must be given to amendments contained in both Laws 1941, c. 394 and Laws 1941, c. 511. Op. Atty. Gen. (425C-15), Oct. 8, 1941.

Method of submitting amount of special assessments to county board explained. Id.

Conveyance to county of tax forfeited lands for gravel pit is a proper public purpose. Op. Atty. Gen. (410b), Apr. 24, 1942.

County board has legal authority to offer an undivided interest to the state without consent of other co-owners, and commissioner of conservation can legally accept such interest and manage and develop land for conservation purposes, subject to rights of co-tenants. Op. Atty. Gen. (983m), May 13, 1942.

Section authorizes any state agency such as the highway department to apply to county board to have lands released from trust in favor of taxing district for any public use, including use as a gravel pit by highway department, whether sand and gravel are minerals or not. Op. Atty. Gen. (311j), May 21, 1942.

Form of quitclaim deed for reconveyance of tax-forfeited lands which had previously been conveyed to a governmental subdivision pursuant to Laws 1941, c. 511, and such conveyance restores such land to status which is held at time of its conveyance to governmental subdivision. Op. Atty. Gen. (410b), July 11, 1942.

A tract of tax-forfeited land sold pursuant to this section can only be conveyed as one tract upon compliance with all terms of contract of purchase. Op. Atty. Gen. (425c), Dec. 12, 1942.

Income from tax forfeited lands within state forests which were turned over to the state under Laws 1941, c. 511, are to be distributed in accordance with Laws 1943, c. 171, §7. Op. Atty. Gen. (983e), July 13, 1943.

(a).

Amended. Laws 1943, c. 204, §1. See above text.

Statute considered in determining whether condemnation of land amounted to a "sale" by the state within meaning of 1941 repurchase act. State v. Flach, 213M 353, 6NW(2d)805. See Dun. Dig. 9405a.

A governmental subdivision may purchase at private sale, and county board should by resolution make sale, and fix price to be paid and direct county auditor to issue certificate of purchase to governmental subdivision concerned, and duplicate of certificate should be forwarded to commissioner of taxation, who should issue a state deed to purchaser. Op. Atty. Gen. (425c-11), Oct. 16, 1939.

Without approval of board or governing body of town or municipality in which lands may be located, classification by county board is ineffective. Op. Atty. Gen. (983m), Sept. 24, 1940.

Law does not contemplate that a conveyance be made to a municipal corporation without any consideration whatever but it does not follow that a money consideration is required to support a conveyance. Op. Atty. Gen. (425c-11), May 13, 1941.

Securing of land by county near court house for use as a parking lot. Op. Atty. Gen. (425c-10), May 22, 1941.

Procedure for classification and sale of forfeited land and authority of town boards and governing bodies of incorporated municipalities relative thereto. Op. Atty. Gen. (425c), May 29, 1941.

Form provided for application by governmental subdivision for conveyance of forfeited lands. Op. Atty. Gen. (425c-11), June 4, 1941.

A municipal corporation may acquire tax forfeited lands either by direction of county board, upon payment of the appraised value, without restriction to specified uses and without provision for reversion; or by direction of commissioner of taxation, with approval of county board, without payment of any consideration, but subject to restrictions as to public use. Op. Atty. Gen. (425C-11), Aug. 15, 1941.

Form of deed for conveyance to municipal corporation for public purposes. Op. Atty. Gen., (410B), Sept. 2, 1941.

Favorable recommendation of county board for conveyance to municipality. Op. Atty. Gen. (425C-11), Sept. 9, 1941.

There are two different methods for acquisition of tax forfeited land by a municipality: sale by county board for any authorized public use at actual fair value, and any price less than fair value would constitute evasion of law; sale for any authorized public use without money consideration conditioned upon continuance of such use, but if such use is abandoned land reverts to state. Op. Atty. Gen. (410B), Oct. 10, 1941.

Classification of land by county board should antedate any application by governmental subdivision to acquire land for public uses. Op. Atty. Gen. (425C-10), Jan. 13, 1942.

State's ownership of undivided one-half fee interest in lands turned over to state free of trust in favor of taxing districts was available for exchange purposes, as where state and individual each owned an undivided half interest in two tracts and exchange is made so that each owns entire fee in one tract. Op. Atty. Gen. (700d-1e), July 13, 1942.

Where tax-forfeited land is sold and purchaser receives a deed and becomes dissatisfied with bargain because of zoning regulations that prevent use of property for purpose for which it was bought, county auditor has no right to cancel the deed and return money. Op. Atty. Gen. (211), Jan. 12, 1943.

No application may be made by a city for conveyance while a repurchase contract is outstanding. Op. Atty. Gen. (425c-11), Dec. 3, 1943.

(b).

Land released to state for conservation uses is not subject to repurchase. Op. Atty. Gen. (425c-13), Oct. 27, 1941.

(c).

Appraisal of land need not be approved by town board or governing body of municipality. Op. Atty. Gen. (983m), Sept. 24, 1940.

Where two adjoining lots owned by different persons were forfeited to the state and county board appraised two lots together for purposes of sale because there was a building situated partly on one lot and partly on the other, son of deceased owner of one lot could repurchase that lot separately. Op. Atty. Gen. (425C-13), Oct. 22, 1941.

Land may not be sold where no timber appraisal has been made though all timber and timber products are reserved to the state. Op. Atty. Gen. (425), Jan. 29, 1942.

Where tax-forfeited lands were appraised and offered for sale prior to time special assessments were certified to county auditor, county board was not required to reappraise and re-advertise upon receiving delayed certification unless value of land was enhanced by such improvement, and need not withdraw land from sale. Op. Atty. Gen. (425c-15), Jan. 8, 1943.

It is the duty of county board to appraise land at its full market value, and this amount has no relations to either the total amount of taxes for which the land was forfeited to the state or the amount of unpaid assessments not included within such taxes. Op. Atty. Gen. (425c-15), July 26, 1943.

(d).

County may not assign contract for deed to third person upon payment of amounts remaining unpaid. Op. Atty. Gen. (410b), May 29, 1942.

(e).

Amended. Laws 1943, c. 204, §2. See above text.

Form of certificate to be given to a purchaser. Op. Atty. Gen. (409B-3), Sept. 19, 1939.

Where land was purchased under Laws 1935, c. 386, before amendment in 1939, default in payment of interest and principal instalments did not automatically cancel contract, and county auditor may accept delinquent interest and principal payments until expiration of thirty days after service of notice of cancellation, and until the expiration of such thirty days period county board may extend time for payment with approval of commissioner of taxation. Op. Atty. Gen. (425C-6), Sept. 12, 1941.

Cancellation of land contract restores status as tax-forfeited land and automatically extinguishes liens for taxes levied, and auditor may make an appropriate entry upon his records. Op. Atty. Gen. (407H), Oct. 18, 1941.

Form of quitclaim deed for reconveyance when there is default in contract for purchase. Op. Atty. Gen. (410b), July 11, 1942.

(f).

Form of deed for making a conveyance to joint tenant is prescribed by attorney general. Op. Atty. Gen. (410-B), Nov. 14, 1940.

Primary duty of cancelling defaulted certificates is upon county board and upon its failure to act it is mandatory that commissioner of taxation instruct board to proceed with cancellation unless time for payment has been extended. Op. Atty. Gen., (409-2-1), Jan. 15, 1941.

(g).

Amended. Laws 1943, c. 37, §1. See above text.

Where lands were sold for delinquent taxes for year 1931 in May, 1935, whereas 1932 tax on same property was bid in for state in May, 1934, and all tax judgments for years 1933, 1934, 1935, 1936 and 1937 were added to judgment obtained in May, 1934, under 1932 tax sale, it was too late in April, 1940, to obtain an assignment of the 1932 tax judgment, but one could obtain assignments of 1931 tax judgments and pay tax judgments for 1932 taxes, and later years, and serve notice of expiration of redemption and acquire title, without entering into competitive bidding. Op. Atty. Gen., (412a-10), April 18, 1940.

Sale of parcels of land out of regular order would not necessarily be void. Op. Atty. Gen. (425c), Oct. 22, 1940.

Contract for sale of land for which there was no bid at public sale could be cancelled by county auditor by notation in books where there was a mistake as to land on the part of the auditor, but no cancellation if the mistake was that of purchaser. Op. Atty. Gen. (424a-2), Oct. 21, 1942.

2139-15a. Sales without compliance with preceding section—Ratification.—Where a sale of tax-forfeited land under Mason's Supplement 1940, Section 2139-15, was made prior to June 20, 1940, without first having the appraised value of the timber thereon approved by the commissioner of conservation as therein provided, such sale may be ratified by the commissioner of taxation in the manner herein provided, if prior to the making of application therefor the entire purchase price of said tax-forfeited land has been paid. (Act Apr. 24, 1941, c. 433, §1.)

2139-15b. Same—Application for ratification.—The purchaser at such sale or the county auditor of the county in which said land is located shall file an application for the ratification of the sale with the board of county commissioners of said county, submitting therewith a statement of the facts of the case and satisfactory proof that the purchase price of such land at the sale has been paid in full. Such application shall be considered by the county board and shall thereafter be submitted by it to the commissioner of taxation with the recommendation of the county board and of the county auditor in all cases wherein he is not the applicant. The commissioner of taxation shall consider said application and if he determines that the conditions above referred to exist he shall make his order ratifying the sale of said tax-forfeited land and transmit a copy thereof to the county auditor of the county in which said tax-forfeited land is located, if any such sale be ratified by the commissioner of taxation, it shall not thereafter be subject to attack for failure to have the timber appraisal approved before the sale. If no conveyance by the state has theretofore been made, the county auditor, upon receipt of said order, shall request the issuance of an appropriate conveyance as provided for in said Section 2139-15. If a conveyance has been made by the state of said land pursuant to said Section 2139-15, said conveyance shall not thereafter be subject to attack on account of the failure to have the timber appraisal approved before the sale. (Act Apr. 24, 1941, c. 433, §2.)

Procedure to be followed and form of application provided by Attorney General. Op. Atty. Gen. (425c), July 18, 1941.

2139-15c. Same—Application of act.—The provisions of this act shall not apply so as to prejudice the rights of any person in any action or proceeding heretofore commenced to the sale in any court of this state. (Act Apr. 24, 1941, c. 433, §3.)

2139-15d. Lost or destroyed deeds.—Whenever an unrecorded deed from the State of Minnesota conveying tax-forfeited lands shall have been lost or destroyed, an application, in form approved by the attorney general, for a new deed may be made by the grantee or his successor in interest to the commissioner of taxation. If it appears to the commissioner of taxation that the facts stated in the petition are true, he shall issue a new deed to the original grantee, in form approved by the attorney general, with like effect as the original deed. (Act Mar. 26, 1943, c. 195, §1.)
[282.33]

2139-15e. Certificates ratified.—All declarations or certificates heretofore issued by the commissioner of taxation relating to the issuance of state deeds to tax-forfeited lands which have been lost or destroyed are hereby ratified. Every such declaration or certificate and the record thereof shall be prima facie evidence of the facts therein stated. (Act Mar. 26, 1943, c. 195, §2.)
[282.33]

2139-15f.—Whenever in any county more than one sale of tax-forfeited land has been held in any one year all such sales are hereby legalized, ratified, confirmed and validated as against any defect arising out of the holding of more than one sale in the same year. This provision shall not impair or prejudice any rights or interest involved in any action now pending in any courts in this state. (Act Feb. 15, 1943, c. 37, §2.)
[282.01]

2139-15g. Sales of certain tax-forfeited lands legalized.—In all cases where the county board of any county has erroneously authorized and directed the holding of more than one forfeited tax sale, during any one year period, and where such sales have in all other respects been held and conducted in conformity with the provisions of Laws 1935, Chapter 386, and act amendatory thereof, such sales are hereby legalized and made valid. (Act Apr. 1, 1943, c. 239, §1.)

2139-16. List of lands to be offered for sale.

Fact that notice of sale purports to have been given by auditor on second day of February, 1940, while as matter of fact date should have been second day of January, 1940, did not invalidate sale. Op. Atty. Gen. (419B), Feb. 5, 1940.

County board has no authority to delay placing lands on sale because it has been rented by owner before it was forfeited to state. Op. Atty. Gen. (425c-4), June 13, 1940.

Only one new list may be made up each year, and there can be but one list published and only one published notice of sale and hence only one public sale, though that sale continues from time it commences until parcels are sold. Op. Atty. Gen. (425c-5), Jan. 8, 1943.

2139-17. Limitations in use of lands.

Land may not be sold where no timber appraisal has been made though all timber and timber products are reserved to the state. Op. Atty. Gen. (425), Jan. 29, 1942.

2139-18. County auditor may sell hay stumpage and lease lands—Sale of leased lands—Repairs or improvements—Demolition of buildings—Partition of undivided interest.—(a) The county auditor may sell dead, down and mature timber upon any tract that may be approved by the conservation commissioner. Such sale of timber products shall be made for cash at not less than the appraised value determined by the county board to the highest bidder after not less than one week's published notice in an official paper within the county. Provided that any timber offered at such public sale and not sold may thereafter be sold at private sale by the county auditor at not less than the appraised value thereof, until such time as the county board may withdraw such timber from sale. Provided, however, that the appraised value of the timber and the forestry practices to be followed in the cutting of said timber shall be approved by the commissioner of conservation. Payment of the full sale price of all timber sold on tax-forfeited lands shall be made in cash at the time of the timber sale. The county board may, however, require final settlement on the basis of a scale of cut products. Any parcels of land from which timber is to be sold by scale of cut products shall be so designated in the published notice of sale above mentioned, in which case the notice shall contain a description of such parcels, a statement of the estimated quantity of each specie of timber thereon and the appraised price of each specie of timber per 1000 feet, per cord or per piece, as the case may be. In such cases any bids offered over and above the appraised prices shall be by percentage, the per cent bid to be added to the appraised price of each of the different species of timber advertised on the land. The purchaser of timber from such parcels shall pay in cash at the time of sale at the rate bid for all of the timber shown in the notice of sale as estimated to be standing on the land, and in addition shall pay at the same rate for any additional amounts which the final scale shows to have been cut or was available for cutting on the land at the time of sale under the terms of such sale. Provided, however, where the final scale of cut products shows that less timber was cut or was available for cutting under terms of such sale than was originally paid for, the excess payment shall be refunded from the forfeited tax sale fund upon the claim of the purchaser, to be audited and allowed by the county board as in case of other claims against the county. No timber may be removed from such parcels of land until scaled by a person or persons designated by the county board and approved by the commissioner of conservation. No timber shall be removed until fully paid for in cash. Small amounts of green standing, dead, down, dying, insect infected or diseased timber not exceeding $250.00 in appraised valuation may be sold for not less than the full appraised value at private sale to individual persons without first publishing notice of sale or calling for bids, provided that

in case of such sale involving a total appraised value of more than $50.00 the sale shall be made subject to final settlement on the basis of a scale of cut products in the manner above provided and not more than one such sale, directly or indirectly to any individual shall be in effect at one time. As directed by the county board, the county auditor may lease tax-forfeited lands to individuals, corporations or organized subdivisions of the state at public or private vendue with or without provision for annual renewal, and at such prices and under such terms as the county board may prescribe, for use as cottage and camp sites and for agricultural purposes and for the purpose of taking and removing of hay stumpage, sand, gravel, clay, rock, marl, peat and black dirt therefrom, for storing thereon ore, waste materials from mines, or rock and tailings from ore milling plants and for garden sites and other temporary uses provided that no leases shall be for a period to exceed one year. Under like conditions the county auditor may grant easements or permits over and across any unsold tax forfeited lands for the purpose of permitting the passage over and across such lands of telephone, telegraph, electric power and light, sewer and water lines, highways, and railroads; provided that all lands subject to such agreements, lease and easements shall be subject to sale at any time and to leasing of such lands for mineral or other legal purposes and shall contain a provision for cancellation by order of the county board at any time upon three months written notice for any cause specified in the agreement; provided further that any leases involving a consideration of more than $10.00 per year shall first be offered at public sale in the same manner provided herein for sale of timber. Upon the sale of any such leased land, it shall remain subject to the lease for not to exceed one year from the beginning of the term of the lease. Any rent paid by the lessee for the portion of the term cut off by such cancellation shall be refunded from the forfeited tax sale fund upon the claim of the lessee, to be audited and allowed by the county board as in case of other claims against the county.

(b) Until after the sale of a parcel of forfeited land the county auditor may, with the approval of the county board of commissioners, provide for the repair and improvement of any building or structure located upon such parcel, if it is determined by the county board that such repairs or improvements are necessary for the operation, use, preservation and safety thereof. Such county auditor may, with the approval of the county board, provide for the demolition of any building or structure, and for the sale of salvaged material therefrom.

The net proceeds from any sale of timber or other products or leases made under this law shall be deposited in the forfeited tax sale fund and shall be distributed in the same manner as if the parcel had been sold.

(c) Where an undivided portion of any parcel of land is forfeited to the state for taxes, the owner or owners of the portions of said parcel not forfeited, or the State of Minnesota, may in the manner provided by Sections 9524 to 9555, inclusive, Mason's Minnesota Statutes of 1927, maintain an action for the partition of said parcel making the state or other owners as their interests may appear a defendant in said action. If the state is made a defendant in said action, the summons shall be served upon the county auditor of the county in which the land is located, and the county attorney shall appear for the state. (As amended Apr. 21, 1941, c. 355, §1; Apr. 24, 1943, c. 627, §4.)

County board member may not rent or purchase. Op. Atty. Gen. (425c-10), Feb. 19, 1940.

Generally speaking, county board has no authority to grant easements or permits for electric power lines over tax forfeited lands. Op. Atty. Gen. (700A-3), Aug. 21 1941.

Land may not be sold where no timber appraisal has been made though all timber and timber products are reserved to the state. Op. Atty. Gen. (425), Jan. 29, 1942.

Leasing authority conferred on county officials by this section pertains only to surface of land, and does not authorize any lease with reference to minerals or other things under the surface. Op. Atty. Gen. (311D-8), Mar. 20, 1942.

County is not liable for negligence in repairing or failing to repair leased land. Op. Atty. Gen. (844c), June 2, 1943. See Dun. Dig. 2286.

(a).

A tenant in possession of land at time of forfeiture holds thereafter only through sufferance, and unlawful detainer may be brought in name of state, and lease may be made only in accordance with statutes, but tenant is liable as an occupant for rent at reasonable rate. Op. Atty. Gen. (412a-25), Dec. 3, 1940.

(b).

County may not acquire easement in the name of the state on the ground that it is an "improvement". Op. Atty. Gen. (107b-20), Apr. 12, 1943.

2139-19. Proceeds to be apportioned.

Moneys received by a town from tax-forfeited land fund go into general fund of town and must first be used for payment of indebtedness, and where there is no existing indebtedness town may transfer part of fund to road and bridge fund. Op. Atty. Gen. (442a-23), June 6, 1942.

Money must be used to pay indebtedness and cannot be used for any other purpose as long as such outstanding indebtedness exists, and "indebtedness" refers to general obligations of municipality, including indebtedness payable primarily out of a special fund if, after the special fund is exhausted, the same would have to be met out of the general fund of the municipality, but it is discretionary with municipality whether it is used to retire floating or bonded indebtedness, subject to any priority as between debts. Op. Atty. Gen., Sept. 2, 1942.

If municipality has only bonded indebtedness and bonds are not due, money may be placed in sinking fund, if it would have or might have a tendency to reduce amount of taxes which would otherwise have to be levied to liquidate the outstanding bonds. Op. Atty. Gen., Sept. 2, 1942.

Words "general funds" means the general revenue funds of the municipal subdivision. Op. Atty. Gen., Sept. 2, 1942.

2139-21. Auditor to cancel taxes.

City ordinances attempting to recoup losses of city on special improvements (sewer and water mains) assessed against a parcel of land forfeited to state for nonpayment of taxes by imposing upon purchaser from state a connection fee equal to the unrealized portion of the assessment as condition of using water and sewer facilities violated state law and city charter. Fortman v. City of Minneapolis, 212M340, 4NW(2d)349. See Dun. Dig. 9479.

Ditch liens upon state trust fund lands are to be cancelled as on other forfeitable lands where they have been sold under state contract and purchaser's interest has been forfeited under state tax forfeiture statute. Op. Atty. Gen. (921g), Sept. 28, 1939.

Ditch liens upon forfeited lands within a conservation area are to be cancelled. Id.

A purchaser of land takes it free of assessment for improvements made by city while state was owner of land if assessment was made before purchase, but subject to assessment for improvements made while land was owned by state if such assessment was not finally confirmed and established until after purchase. Op. Atty. Gen. (412a-26), Dec. 2, 1939.

Special assessments for paving levied prior to forfeiture to state should be cancelled, and assessments made while title was in the state, are void. Op. Atty. Gen. (408c), Dec. 21, 1939.

On forfeiture of land to state for nonpayment of taxes all special assessments should be cancelled, and all special assessments made while state owned lands are void, and under no circumstances may county board pay for a special assessment for improvements made to property owned by state, though an obligation to pay a special assessment upon property owned by a school district or a county is created by statute independent of a lien. Op. Atty. Gen. (408c), Dec. 26, 1939.

On forfeiture of land to the state all existing special assessments are cancelled, including those payable after purchase from the state, and any assessments levied while title was in the state are void. Op. Atty. Gen. (408c), Jan. 23, 1940.

Where assessment is made for extension of sanitary sewers and water mains and land is forfeited to state and assessments are cancelled by county auditor and property is then repurchased, city council cannot impose "tapping fee" as condition precedent to water main and sewer connections to compel owner to make good cancelled assessment. Op. Atty. Gen. (412a-26), March 11, 1940.

In arriving at amount to be assessed per front foot for an improvement frontage of tax forfeited lands is to be included, though not subject to assessment. Op. Atty. Gen. (412a-26), March 12, 1940.

Where ditch liens against agricultural lands were cancelled on forfeiture of land to state for nonpayment of taxes, and while property was owned by state repairs

were made to ditches and assessments were not spread against lands, no assessment could later be spread against lands after sale of lands by state to private party. Op. Atty. Gen., (425c-3), May 27, 1940.

Where tax-forfeited lands were sold on May 17, and county auditor after sale spread taxes against property for that year, attempt of auditor to impose the taxes was ineffective and entry on tax list for that year should be removed by proper marginal note, and if taxes were paid they should be returned by county board upon proper claim without necessity of any proceedings before State Department of Taxation. Op. Atty. Gen. (424a-9), Sept. 21, 1940.

Where school lands which have been sold and on which a portion of the purchase price remains due are forfeited to the state for delinquent taxes, the land in question again becomes unsold trust fund land and it cannot be sold to a third party as tax forfeited land. Op. Atty. Gen. (425c-1), July 11, 1941.

Old Age Assistance lien is revived by repurchase of tax forfeited land by owner, but effect of repurchase by mortgagee would depend on relative priority of respective liens. Op. Atty. Gen. (425C-13), Oct. 9, 1941.

Where trust fund land was sold under contract and was tax forfeited and classified as state forest land and buildings erected by purchaser were declared fire hazards and sold and removed, money received should be credited to the permanent school fund. Op. Atty. Gen. (454e), Dec. 2, 1941.

Property purchased from the state on which a ditch lien has been cancelled is subject to assessment for repairs on ditch made after property was sold by state. Op. Atty. Gen., Dec. 26, 1941.

Forfeiture of land to state wiped out all liability for any repairs or maintenance of ditches performed before lands were forfeited whether spread upon books of county auditor or not. Op. Atty. Gen. (425c-3), May 26, 1942.

When interest of certificate holder of trust fund land reverts to the state by virtue of Laws 1935, c. 386, prior existing ditch liens are extinguished and should be expunged from the record. Op. Atty. Gen. (700d), May 27, 1943.

Ditch lien of county is protected by distribution of proceeds of sale of land. Op. Atty. Gen. (425c-3), Sept. 9, 1943.

2139-22. Apportionment of receipts.—The net proceeds from the sale or rental of any parcel of forfeited land, or from the sale of any products therefrom, shall be apportioned by the county auditor, to the taxing districts interested therein, as follows:

(a) Such portion as may be required to pay any amounts included in the appraised value under Mason's Supplement 1940, Section 2139-15(c), as representing increased value due to any public improvement made after forfeiture of such parcel to the state, but not exceeding the amount certified by the clerk of the municipality, shall be apportioned to the municipal subdivision entitled thereto.

(b) Such portion of the remainder as may be required to discharge any special assessment chargeable against such parcel for drainage or other purpose, whether due or deferred at the time of forfeiture, shall be apportioned to the municipal subdivision entitled thereto.

(c) Such portion of the remainder as may have been theretofore levied on said parcel of land for any bond issue of the school district, township, city, village or county, wherein said parcel of land is situated shall be apportioned to said municipal subdivisions in the proportions of their respective interest.

(d) Any balance remaining shall be apportioned as follows: State ten per cent, county 30 per cent, township, village or city 20 per cent and school district 40 per cent. (As amended Act Apr. 23, 1941, c. 394, §2.)

Where property was sold to state for taxes, state became absolute owner subject only to a trust in favor of respective taxing subdivisions interested in the property. Fortman v. City of Minneapolis, 212M340, 4NW(2d) 349. See Dun. Dig. 9373, 9419b.

No provision is made for preferential reimbursement to municipality for special improvements made after forfeiture of land, though an indirect benefit may be acquired by having county board increase appraisement. Op. Atty. Gen. (412a-26), Feb. 15, 1940.

Land forfeited to state for nonpayment of taxes is not subject to assessment for local improvements, but must be included in determining rate of assessment of other property, and one purchasing from the state is not liable for assessment made while land was owned by state. Id.

Forfeiture of land to state wiped out all liability for any repairs or maintenance of ditches performed before lands were forfeited whether spread upon books of county auditor or not. Op. Atty. Gen. (425c-3), May 26, 1942.

Where lands were forfeited to state for non-payment of taxes, including special assessments for water mains which were not constructed, and lots were sold, village council could not pass a resolution reciting that there was no present intention of constructing the water mains in front of certain lots and directing payment of a certain sum of money to the purchaser of the lot. Op. Atty. Gen. (425c-15), June 1, 1942.

Money must be used to pay indebtedness and cannot be used for any other purpose as long as such outstanding indebtedness exists, and "indebtedness" refers to general obligations of municipality, including indebtedness payable primarily out of a special fund if, after the special fund is exhausted, the same would have to be met out of the general fund of the municipality, but it is discretionary with municipality whether it is used to retire floating or bonded indebtedness, subject to any priority as between debts. Op. Atty. Gen., Sept. 2, 1942.

If municipality has only bonded indebtedness and bonds are not due, money may be placed in sinking fund, if it would have or might have a tendency to reduce amount of taxes which would otherwise have to be levied to liquidate the outstanding bonds. Op. Atty. Gen., Sept. 2, 1942.

Where tax-forfeited lands were appraised and offered for sale prior to time special assessments were certified to county auditor, county board was not required to reappraise and re-advertise upon receiving delayed certification unless value of land was enhanced by such improvement, and need not withdraw land from sale. Op. Atty. Gen. (425c-15), Jan. 8, 1943.

(b).

Word "due" means all installments of a special assessment for local improvement which are unpaid and which are included in the taxes for which the nonpayment of which the real property in question has been forfeited to the state, while the word "deferred" means all remaining installments of the special assessment for a local improvement which are unpaid and which have not been included in the taxes for the nonpayment of which the land has been forfeited to the state, but it is duty of county board in appraising tax forfeited land before offering it for sale to appraise such land at its full market value, and this amount has no relation to either the total amount of taxes for which the land was forfeited to the state or the amount of unpaid assessments not included within such taxes. Op. Atty. Gen. (425c-15), July 26, 1943.

2139-23. Forfeited tax sale fund—Cutting weeds.—The county auditor and county treasurer shall place all moneys received through the operation of this act in a fund to be known as the "Forfeited Tax Sale Fund" and all disbursements and costs shall be charged against said fund, when allowed by the county board, including compensation of the members of the county board at not to exceed $3.00 per day and mileage as now fixed by law and such compensation as the county board shall allow the county auditor in an amount not to exceed five per cent of his annual salary and for other necessary clerical help. Compensation allowed to members of county boards hereunder shall be in addition to other compensation allowed by law, provided that the amount received hereunder shall not increase the total compensation received by any such member to more than $1200 for any one year; provided that when disbursements are made from the fund for repairs, refundments, expenses of actions to quiet title, or any other purpose, which particularly affects specific parcels of forfeited lands, the amount of such disbursements shall be charged to the account of the taxing districts interested in such parcels. The county auditor shall make an annual settlement of the net proceeds received from sales and rentals by the operation of this act, at the regular March settlement, for the preceding calendar year. In all counties within whose territorial boundaries there is situated a city of the first class, from said "Forfeited Tax Sale Fund," the authorities duly charged with the execution of the duties imposed by this act, at their discretion, may expend moneys for the cutting down of weeds on all tax-forfeited lands, provided, however, that in any year, the moneys to be expended therefor shall not exceed in amount more than 5% of the net proceeds of said "Forfeited Tax Sale Fund" during the preceding calendar year, or $5,000.00, whichever is the lesser sum. (As amended Apr. 16, 1943, c. 472, §1.)

Where in proceedings to register title to tax forfeited lands county did not collect in advance enough money to cover expenses of proceedings, and in other cases through inadvertence or otherwise failed to have interested purchaser advance any amount, expenses of ac-

tion to quiet title or register title should be paid from "forfeited tax sale fund." Op. Atty. Gen. (374l), Apr. 27, 1942.

Members of county board already receiving $1800 a year as salary cannot receive additional compensation. Op. Atty. Gen. (124), Jan. 8, 1943.

Clerical employees may be put on pay roll and paid as other clerical help is paid without submitting verified statement. Op. Atty. Gen. (104a-3), Feb. 16, 1943.

County board may provide compensation to county auditor for additional services performed under Laws 1935, c. 386, to be paid only out of forfeited tax sales funds, cannot be paid in connection with land in Red Lake Game Refuge, auditor may be compensated for past services rendered prior to fixing of compensation. Op. Atty. Gen. (23d), Feb. 25, 1943.

Expenses incurred before land actually becomes forfeited should be paid out of the revenue fund, and all expenses incurred after the land actually becomes tax forfeited land should be charged to and paid out of the tax forfeited land fund. Op. Atty. Gen. (107b-19), Mar. 30, 1943.

2139-24. All minerals reserved.

State retains no mineral reservation in tax forfeited lands repurchased by owner. Op. Atty. Gen. (425C-13), Jan. 13, 1942.

If reservation of minerals applies to gravel, it affects only sale of land to a third party, and does not prevent use of gravel by the state itself after release from the trust pursuant to Laws 1941, c. 511, and state highway department may use gravel and maintain a gravel pit. Op. Atty. Gen. (311j), May 21, 1942.

Mineral reservation to the state on registration of land title. Op. Atty. Gen. (311f), Dec. 2, 1942.

Form of reservation in deed. Op. Atty. Gen. (410b), Aug. 3, 1943.

2139-25. May appoint land commissioner.—The county board may appoint a land commissioner and necessary assistants, such land commissioner to perform any or all of the following duties as directed by the county board: to gather data and information on tax-forfeited lands; make land classifications and appraisals of land, timber and other products and uses; enforce trespass laws and regulations; seize and appraise timber and other products and property cut and removed illegally from tax-forfeited lands; assist the county auditor in the sale and rental of forfeited lands and the products thereon; and such other duties concerning tax-forfeited lands as the county board may direct. Such appointment shall be for such time as the county board may determine. The compensation of said land commissioner and assistants shall be fixed by the county board and their salaries and expenses shall be paid from the Forfeited Tax Sale Fund. Any funds required by the tax commission for the purpose of cancellation of contracts, as provided in Section 1 of Chapter 386, Laws of 1935 shall be paid by the county auditor upon the written order of the Commissioner of Taxation from monies then available in said fund. (As amended Apr. 24, 1943, c. 627, §5.)

2139-25a. Law amended—Powers and duties may be delegated.—All powers and duties concerning approval of appraised timber values, forestry practices and parcels of land from which timber may be sold which are conferred upon the commissioner of conservation by laws of 1935, Chapter 386, as amended, may be delegated by said commissioner to competent forestry field officers of the conservation department, and approval by such field officers in such manner as the commissioner shall prescribe shall be deemed sufficient for the purposes of that act. (Act Apr. 24, 1943, c. 627, §6.)
[282.131]

2139-27b. Classification and appraisal of forfeited lands within conservation areas—Sale.

Curative act. Laws 1943, c. 332.

2139-27d. Same—Public Sale—Notice.—

Subdivision 1. All lands so classified and appraised and remaining unsold shall be offered for sale at a public sale to be held by the county auditor at the time determined by the county board in a resolution fixing the date of said sale. The auditor shall publish a notice of the intended sale by publication once a week for two weeks in an official newspaper of the county, the last publication to be not less than ten days previous to the commencement of said sale. Notice of such sale shall be given in substantially the following form:

NOTICE OF SALE OF AGRICULTURAL LANDS

Notice is hereby given that I shall sell to the highest bidder at my office in the courthouse in the city or village of ..... in the county of ....., the following described parcels of land forfeited to the state for non-payment of taxes, which have been classified and appraised as provided by law. Said sale will be governed by Laws 1939, Chapter ..... and will commence at ..... o'clock a. m., on the ..... day of ....., 19.....

Description Subdivision Sec. Twp. Range or Lot Block	Appraised Value of Land $	Appraised Value of Timber $

Given under my hand and seal this ..... day of ....., 19.....

.....
County Auditor,
..... County, Minnesota.

Subdivision 2. Any lands not sold at such sale may at any time within four months following the opening of said sale be sold by the county auditor at a price not less than the appraised value thereof. All lands remaining unsold shall be included in the notice of sale and offered for sale by the county auditor in each following year until the same shall be sold. (As amended Act Mar. 12, 1941, c. 59, §1.)

Defect in notice of tax sale held not material. Op. Atty. Gen. (419b), Nov. 14, 1941.

2139-27g. Same—County treasurer to collect payments—Special fund—Compensation of county board members—Payment to state auditor.

Proceeds arising from sale of agricultural land in the conservation area must be handled exactly as prescribed by this section, and no part of a land commissioner's salary or expenses may be paid out of the fund, no auditors' fees can be paid, no office supplies can be paid for, expense of giving the notice of expiration of redemption cannot be paid, nor can any other fees and expenses than those expressly stated. Op. Atty. Gen. (107b-19), Apr. 6, 1943.

2139-27i. Same—Conveyance.

Form of conveyance prescribed by attorney general. Op. Atty. Gen. (410B), Nov. 2, 1939.

A conveyance of land by state auditor with an acknowledgment omitting customary statement of venue preceding acknowledgment should be recorded when presented to a register of deeds, but in order to avoid any question as to validity of conveyances an appropriate curative act is suggested. Op. Atty. Gen. (24D), (320F), Jan. 24, 1942.

2139-27kk. Conveyances by state auditor validated.—All conveyances heretofore executed by the state auditor pursuant to Mason's Supplement 1940, Sections 2139-27b to 2139-27k, regular and proper in all respects save that a caption containing the venue of the acknowledgment thereof by him, as certified by a notary public or other person authorized to take and certify the same, was omitted, are together with the records thereof, if the same shall have been recorded, hereby declared to be valid and effectual for all purposes notwithstanding such omission, and no action or proceeding to assert a right based on such omission shall be maintained unless commenced within three months after the approval of this act; provided, however, that this act shall not apply so as to prejudice or impair any right or interest involved in any action or proceeding now pending in any court of this state. (Act Apr. 7, 1943, c. 332, §1.)

2139-27l. Refundment of purchase price in certain cases.

Statute considered in determining whether condemnation of land amounted to a "sale" by the state within meaning of 1941 Repurchase Act. State v. Flach, 213M 353, 6NW(2d)805. See Dun. Dig. 9405a.

2139-27n. State may quiet title—Torrens title.
Where in proceedings to register title to tax forfeited lands county did not collect in advance enough money to cover expenses of proceedings, and in other cases through inadvertence or otherwise failed to have interested purchaser advance any amount, expenses of action to quiet title or register title should be paid from "forfeited tax sale fund." Op. Atty. Gen. (374i), Apr. 27, 1942.
County attorney may act as attorney for a plaintiff in a suit to quiet title where plaintiff's title is based upon a deed from the state but in which the state is not a party defendant. Op. Atty. Gen. (121a-7), Aug. 30, 1943.

2140. Purchaser to receive deed.
State may execute conveyances to two persons as joint tenants. Op. Atty. Gen. (410-B), July 19, 1940.
Where an erroneous tax deed has been issued but not recorded, the error being based on error in the name or description in the auditor's certificate, the commissioner of taxation may issue a corrected deed upon receipt of a corrected certificate from the auditor. Op. Atty. Gen. (410b), July 11, 1941.
If an erroneous tax deed has been recorded, the commissioner of taxation has no power to correct the error, the only remedy being through court proceedings or a curative act of the legislature. Id.
Upon proper affidavit from the grantee that a tax deed has been lost, the commissioner of taxation may issue a certified copy of the deed originally issued, but should not issue a new deed. Id.

2150. Lands bid in for the State—Attachment of rents, crops, etc.
Delinquent taxes on real estate held by state may be paid in inverse order to that in which levied. Laws 1941, c. 97. Taxes paid into county treasury by sheriff shall be applied in inverse order in which levied. Laws 1941, c. 97.
In order to subject a tenant to liability for payment of rent to sheriff, he must be brought personally within jurisdiction, and a new tenant should be given some sort of notice. Op. Atty. Gen. (412a-25), Nov. 8, 1939.
A tenant in possession of land at time of forfeiture holds thereafter only through sufferance, and unlawful detainer may be brought in name of state, and lease may be made only in accordance with statutes, but tenant is liable as an occupant for rent at reasonable rate. Op. Atty. Gen. (412a-25), Dec. 3, 1940.
Section has no application where land has forfeited to state, and tenant remains after forfeiture only through sufferance and may be evicted by unlawful detainer. Id.
Owners of houses may remove them from village regardless of outstanding bonds, if there is no tax lien. Op. Atty. Gen. (476a-3), Feb. 24, 1943.

REDEMPTION FROM TAX SALES

2151. By whom—When.
1. Statutory.
Right to redeem from a tax sale is a statutory right. State v. Erickson, 212M218, 3NW(2d)231. See Dun. Dig. 9405.
5. Who may redeem.
Redemption statutes, because of their remedial nature, are to be construed liberally and beneficially for the owner. State v. Erickson, 212M218, 3NW(2d)231. See Dun. Dig. 9409.
Right of bankrupt to redeem from tax sale passes to trustee in bankruptcy, but right to purchase land from the state after title has passed does not pass to trustee. Cobleigh v. State Land Office Board, 305Mich434, 9NW(2d)665. See Dun. Dig. 9410.

2151-1. Service of notice of expiration of time of redemption on lands in which persons in military service are interested.—Whenever the sheriff of any county serves notice of expiration of the time for redemption of any parcel of real property from delinquent taxes thereon upon any occupant of any such real property, he shall inquire of such occupant and otherwise as he may deem proper whether such real property was owned and occupied for dwelling, professional, business or agricultural purposes by a person in the military service of the United States as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, or his dependents at the commencement of his period of military service and is still occupied for such purposes by his dependents or employees. If the sheriff finds that such real property is so owned and occupied, he shall make a certificate thereof to the county auditor, setting forth the description of the property, the name of the owner, the particulars of his military service so far as ascertained or claimed, the name of the present occupant and his relationship to the owner, and the names and addresses of the persons of whom the sheriff made inquiry. Such certificate shall be filed with the county auditor and shall be prima facie evidence of the facts therein stated. If the real property described in any such certificate becomes forfeited to the state, it shall be withheld from sale or conveyance as tax-forfeited property in accordance with and subject to the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, but no longer than is required by said act or acts amendatory thereof or supplementary thereto. If upon further investigation the sheriff finds at any time that any such certificate is erroneous in any particular, he shall file a supplemental certificate referring to the matter in error and stating the facts as found by him. Such supplemental certificate shall be prima facie evidence of the facts therein stated, and shall supersede any prior certificate so far as in conflict therewith. If it appears from such supplemental certificate that the owner of the real property affected is not entitled to have the same withheld from sale under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, the property shall not be withheld further hereunder. (Act Apr. 22, 1943, c. 565, §1.)
[281.273]

2151-2. Same. Subdivision 1. **May be withheld from sale—Payments.**—The owner of any real property withheld from sale pursuant to Section 1 hereof, or his agent or representative, may at any time while he is entitled to have the same withheld from sale under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, pay the aggregate amount of all delinquent taxes and assessments as provided in Subdivision 2 hereof in one payment without penalties, interest or costs or in ten installments as provided in Subdivision 3 hereof. Upon full payment of such aggregate amount of all delinquent taxes and assessments, the forfeiture shall be cancelled and of no effect, and the county auditor shall certify to the commissioner of taxation the following facts: The description of the real property, the name of the owner thereof, the particulars of his military service for the United States, so far as known, the payment in full of the aggregate amount of such taxes and assessments, and the date thereof. Upon receipt of such certificate from the county auditor, such owner shall receive a quitclaim deed to such property from the state executed by the commissioner of taxation.

Subd. 2. The aggregate amount to be paid as provided in Subdivision 1 hereof shall mean the sum of the taxes and assessments without penalties, interest or costs accrued against such real property and unpaid, including taxes and assessments levied and assessed as omitted taxes as hereinafter provided. When an application is made to pay taxes and assessments as provided in Subdivision 1 hereof, the auditor shall levy and assess against such real property as omitted taxes, upon the basis of the assessed valuation in effect in the last year in which taxes included in such notice of expiration of the time for redemption were levied and assessed, all taxes which would have been assessed in each year after the last year so included in such notice and all assessments which would have been levied and assessed against such real property after the last year included in such notice.

Subd. 3. When any person accorded the right in Subdivision 2 hereof to pay taxes makes application to the county auditor to pay the aggregate amount of such taxes and assessments in installments, he shall pay one-tenth of the aggregate amount of such taxes and assessments at the time of his application and the balance thereof in nine equal annual installments, with the privilege of paying the unpaid balance in full at any time, with interest at the rate of 4% on the balance remaining unpaid each year, the first installment of principal and interest to become due and payable on October 31 of the year following the year in which the application was made, the remaining installments to become due and payable on October 31 of each year thereafter until fully paid. Failure

to make any payment herein required within sixty days from the date on which payment was due shall constitute default and upon such default the right, title, and interest of such person in the military service or his heirs, representatives or assigns in such real property shall terminate without the doing by the state of any act or thing whatsoever. (Act Apr. 22, 1943, c. 565, §2.)
[281.274]

2151-3. Same—County Board may petition District Court.—If at any time the county board is of the opinion that the ability of the person in the military service to pay the taxes or assessments upon such real property is not materially affected by reason of such service, it may petition the district court of the county wherein such real property is situated for an order authorizing the property to be sold or otherwise disposed of under the laws relating to tax-forfeited property in conformity with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, Section 500 (2). Upon the filing of such petition the court shall fix a time and place for hearing thereon, and notice of the time and place of such hearing and the relief requested thereat shall be served upon the owner of such real property in like manner as a summons is served in a civil action. If there be no appearance by such person who is in the military service of the United States, the court shall proceed in the manner prescribed by the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, Section 200 to Section 205, inclusive. (Act Apr. 22, 1943, c. 565, §3.)
[281.275]

2151-4. Same—Return of sheriff must show military service.—Unless a sheriff's certificate showing military service is filed as required by Section 1 hereof, it shall be presumed that the owner of the property described in the notice of expiration of the time for redemption from delinquent taxes is not in such service. The filing of the sheriff's certificate provided for in Section 1 hereof shall not affect the forfeiture of the real property described in such notice of the expiration of the time for redemption from delinquent taxes or their proceedings relating thereto except as expressly herein provided. (Act Apr. 22, 1943, c. 565, §4.)
[281.276]

2151-5. Same—Not to affect rights secured by other acts.—Nothing herein contained shall be construed to prejudice or preclude any right secured to any person under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. (Act Apr. 22, 1943, c. 565, §5.)
[281.277(1)]

2151-6. Same—Duration of act.—This act shall remain in force as long as the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall remain in force. (Act Apr. 22, 1943, c. 565, §6.)
[281.277(2)]

2152. Amount payable.

½. In general.

Application of money paid under a confession of judgment which thereafter became in default. Op. Atty. Gen. (412A-10), Oct. 13, 1941.

2. When land bid in for state and subsequently assigned.

Even though Mason's St. Supp. 1940, §2136, provides for issuance of a certificate to purchaser who pays subsequent taxes at the annual May sale following the date they become delinquent, this does not change character of payments within meaning of Mason's St., §2152(2). Op. Atty. Gen. (423k), Apr. 15, 1942.

Even though statutes provide for issuance of a certificate to purchaser who pays subsequent taxes at annual May sale following the date they become delinquent, this does not change character of payment as affecting amounts necessary to redeem. Op. Atty. Gen. (423k) June 29, 1942.

3. What are delinquent taxes.

Delinquent taxes in April, 1942, include 1940 taxes which are delinquent and unpaid, though they cannot be paid by holder of assigned certificate until next month. Op. Atty. Gen. (423k), Apr. 15, 1942.

2154. Redemption by minors.

Section contemplates a suit after minor becomes of age to enforce redemption, but this relief may be obtained by answer in a suit by tax purchaser to determine adverse claim. Miner v. B., 288NW582. See Dun. Dig. 9411.

2156. Undivided part.

Mason's St., §§2156, 2157, 2158, 2159, all relate to partial redemption and must be read together when construction of any one of them is challenged. State v. Erickson, 212M218, 3NW(2d)231. See Dun. Dig. 9412.

Where persons owning undivided interest paid proportionate share of taxes covering year 1931 but failed to pay any taxes for 1932 and subsequent years, and other undivided interests were subject to forfeiture by the state, persons owning undivided interest upon which they paid taxes for 1931 could redeem their respective interests by paying their proportionate shares of 1932 and subsequent taxes with interest and penalties, and might also redeem the other interest, but not in their own name. Op. Atty. Gen., (423h), May 10, 1940.

Where record title to minerals is in one set of persons and record title of surface in another and they are so listed and assessed, owner of minerals has right to redeem irrespective of any action taken by owner of surface, and if there are several owners of minerals, any owner may redeem his interest separately. Op. Atty. Gen. (412a-23), Nov. 1, 1940.

One owning the surface and one-third of the mineral may redeem the surface and his undivided one-third of minerals, and this would not affect proceedings to enforce collection of tax against remaining two-thirds interest in the minerals and a new judgment is not necessary. Op. Atty. Gen. (407i), July 15, 1941.

County auditor must accept fractional part of taxes and penalties tendered by owner of undivided part of land though tax judgment was taken against whole tract of real estate. Op. Atty. Gen. (412a-10), June 13, 1942.

2157. Undivided share.

Mason's St., §§2156, 2157, 2158, 2159, all relate to partial redemption and must be read together when construction of any one of them is challenged. State v. Erickson, 212M218, 3NW(2d)231. See Dun. Dig. 9412.

2158. Specific part.

In mandamus by owner of a specific part of land sold for taxes as one parcel to compel county auditor to apportion tax judgment so that plaintiff could redeem part of parcel, opinion evidence as to whether value of a specific part as compared to value of whole parcel could be determined and as to how a division of taxes would affect value of remaining portion of parcel was irrelevant, immaterial and incompetent. State v. Erickson, 212M218, 3NW(2d)231. See Dun. Dig. 9412.

Owner of a portion of a parcel of land sold as a whole for taxes, his portion having a definite geographical boundary, is entitled to redeem his property by paying his proportionate part of tax judgment, notwithstanding that whole parcel is occupied by a single structure and aggregate value of segregated parts is less than that of whole parcel taken as a single tract. Id.

There was no merit in contention that owner of specific part of property sold in one parcel had an adequate remedy at law by redemption under Mason's St., §2162. Id.

"Specific part" is the antithesis of "undivided part" and must refer to any portion of parcel sold having a definite geographical boundary. Id.

Mason's St., §§2156, 2157, 2158, 2159, all relate to partial redemption and must be read together when construction of any one of them is challenged. Id.

Mason's St., §2160, requiring county auditor to apportion a tax judgment so that an owner of a specific part of a parcel taxed as a whole can redeem pursuant to §2158, does not impose judicial functions upon an administrative officer in violation of Const. Art. 3, §1. Id. See Dun. Dig. 9413.

Where delinquent taxes covered three 40-acre tracts in one assessment and all included in judgment, owner who thereafter defaulted in payments due under confessed judgment was not entitled to pay up taxes on one of 40-acre tracts. Op. Atty. Gen. (412a-10), May 8, 1941.

2159. Specific part of undivided part.

A minor, owner of an undivided one-half of a mortgage on the premises involved in tax judgment and sale, is entitled to redeem therefrom though owners right of redemption has been terminated by notice. Miner v. B., 206M341, 288NW582. See Dun. Dig. 9412.

Mason's St., §§2156, 2157, 2158, 2159, all relate to partial redemption and must be read together when construction of any one of them is challenged. State v. Erickson, 212M218, 3NW(2d)231. See Dun. Dig. 9412.

2160. Auditor to determine proposition.

Mason's St., §2160, requiring county auditor to apportion a tax judgment so that an owner of a specific part of a parcel taxed as a whole can redeem pursuant to §2158, does not impose judicial functions upon an administrative officer in violation of Const. Art. 3, §1. State v. Erickson, 212M218, 3NW(2d)231. See Dun. Dig. 9413.

Where record title to minerals is in one set of persons and record title of surface in another and they are so listed and assessed, owner of minerals has right to redeem irrespective of any action taken by owner of

surface, and if there are several owners of minerals, any owner may redeem his interest separately. Op. Atty. Gen. (412a-23), Nov. 1, 1940.

2161. Taxpayer may pay taxes on part.

Where part of land upon which judgment was confessed was subject to a mortgage which was foreclosed, there can be no partial relief from confession of the judgment on application of the confessor, but mortgagee may, if individual lots have been separately assessed, pay full amount due for taxes, penalties, interest, and costs, without regard to the confession of judgment, upon each parcel so assessed which is subject to his mortgage, or to which he may have acquired title through foreclosure, and if individual lots have not been separately assessed, mortgagee may apply to county auditor for determination of proportionate amount due upon property which is subject to his mortgage or to which he may have acquired title through foreclosure, and after these payments confession of judgment for proportionate amount appertaining to remainder of property remained standing subject to all original conditions. Op. Atty. Gen. (412a-10), Dec. 12, 1940.

Where delinquent taxes covered three 40-acre tracts in one assessment and all included in judgment, owner who thereafter defaulted in payments due under confessed judgment was not entitled to pay up taxes on one of 40-acre tracts. Op. Atty. Gen. (412a-10), May 8, 1941.

2162. Land held jointly.

This section did not provide an adequate and speedy remedy at law for owner of a specific part of land sold as a single parcel, seeking to redeem his part under Mason's St., §2158. State v. Erickson, 212M218, 3NW(2d) 231. See Dun. Dig. 9412.

2163. Notice of expiration of redemption—To whom given—Form of notice

Persons in armed services. Laws 1943, c. 565. See §§2151-1 to 2151-6, herein.

2. What law governs.

Rights of purchaser at a delinquent tax sale under Laws 1927, c. 119, were not extinguished by failure to record his certificate of tax sale within statutory limit of time fixed and provided by §§2169 and 2170. Absetz v. M., 207M202, 290NW298. See Dun. Dig. 9386.

In cases of defaulted confession of judgment settlements, notice of expiration of redemption should be given under Laws 1935, ch. 278, except in those instances where taxes of 1931 and 1932 are involved, and notice should be based upon original real estate tax judgment and not judgment confessed and should not make any reference to confession of judgment settlements, and taxes collected upon confessed judgment should be credited on that judgment in inverse order, chronologically speaking. Op. Atty. Gen. (412a-10), July 5, 1940.

Certificates of sale issued in 1927 became void after October 25, 1941, if not already void, and notice of expiration of redemption cannot now be issued. Op. Atty. Gen. (409c-2), Nov. 24, 1941.

5. Statute mandatory—Must be followed strictly.

In tax title proceedings to divest owner of his title to real estate there must be strict compliance with statutory requirements. Absetz v. M., 290NW298. See Dun. Dig. 9409.

6½. Payment of subsequent taxes.

Where judgment was secured upon 1932 taxes and separate assignment for 1933 taxes was given to same person who took assignment of 1932 taxes notice of expiration of time of redemption must be served upon 1932 taxes, since separate assignment made of 1933 taxes was of no force. Op. Atty. Gen. (412a-23), June 24, 1941.

8. Sufficiency of generally.

Two or more descriptions may not be combined in one notice. Op. Atty. Gen. (423c), Oct. 6, 1939.

Form of notice of expiration of redemption for taxes of 1931 to be used in those instances where an answer was interposed questioning 1931 taxes, so that postponement by Laws 1933, c. 337, did not apply, and sale was held before passage of Laws 1935, c. 278. Op. Atty. Gen. (419f), Nov. 27, 1939.

Notice of expiration of time for redemption may be by printed form or an actual clipping from newspaper of publication. Op. Atty. Gen., (419f-3), May 4, 1940.

Form of notice for land sold for 1934 taxes. Op. Atty. Gen. (423a), May 23, 1941.

9. Statement of amount required to redeem.

Where lands were sold for delinquent taxes for year 1931 in May, 1935, whereas 1932 tax on same property was bid in for state in May, 1934, and all tax judgments for years 1933, 1934, 1935, 1936 and 1937 were added to judgment obtained in May, 1934, under 1932 tax sale, it was too late in April, 1940, to obtain an assignment of the 1932 tax judgment, but one could obtain assignments of 1931 tax judgments and pay tax judgments for 1932 taxes, and later years, and serve notice of expiration of redemption and acquire title, without entering into competitive bidding. Op. Atty. Gen., (412a-10), April 18, 1940.

In cases of defaulted confession of judgment settlements, notice of expiration of redemption should be given under Laws 1935, ch. 278, except in those instances where taxes of 1931 and 1932 are involved, and notice should be based upon original real estate tax judgment and not judgment confessed and should not make any reference to confession of judgment settlements, and taxes collected upon confessed judgment should be credited on that judgment in inverse order, chronologically speaking. Op. Atty. Gen. (412a-10), July 5, 1940.

Application of money paid under a confession of judgment which thereafter became in default. Op. Atty. Gen. (412A-10), Oct. 13, 1941.

10. Statement of time to redeem—Notices held sufficient.

Time to be allowed in notice of expiration of time for redemption of 1931 taxes is 60 days. Op. Atty. Gen. (423c), March 6, 1940.

In case of delinquent real estate tax for year 1931 for which tax judgment sale was postponed and taxes were sold in 1935, the stated period of redemption expired in May, 1940, and the taxes having been subsequently sold to the state, if a state assignment certificate is issued to an individual or actual purchaser covering such taxes, time allowed in notice of expiration should be 60 days. Op. Atty. Gen. (423a), May 23, 1941.

12. To whom directed, upon whom served, and return of service.

Where four tenants were in possession of involved real property, one occupying a store building or shop, and other three occupying a dwelling house, and only occupant of shop was duly served with notice of expiration of redemption, failure to make service upon occupants of dwelling house vitiated service of notice of redemption. Absetz v. M., 207M202, 290NW298. See Dun. Dig. 9435.

In action to quiet title evidence held to sustain finding that defendants were personally served with notice of expiration of time of redemption on lands sold for taxes. Holmes v. Conter, 212M394, 4NW(2d)106. See Dun. Dig. 9435.

Return of deputy sheriff upon notice of expiration of time of redemption on lands sold for taxes is not conclusive, but may be overcome only by clear and satisfactory evidence. Id. See Dun. Dig. 7818, 9436.

Where land is purchased by the state for taxes, and state has lien on land for old age assistance, notice of expiration of redemption should be served upon the state through the attorney general. Op. Atty. Gen., (419f), May 4, 1940.

Notice of expiration of redemption should be filed with clerk of federal district court where owner is a bankrupt. Op. Atty. Gen. (520B), July 11, 1940.

2164-1. Redemption from tax sales.

Laws 1933, chapter 366 (§§2164-1 and 2164-2) was passed for obvious purpose of giving landowner more time in which to save his property, and notice of expiration was deemed to be of aid to him, not only to afford him additional time but also that he would be reminded of what was impending. Absetz v. M., 207M 202, 290NW298. See Dun. Dig. 9433.

Where notice required to be published and attached to list of delinquent real estate taxes for 1932 included the paragraph provided by L. 1927, c. 119, §3, to effect that five years after sale of land for taxes real estate would become absolute property of purchaser without any further right of redemption and without any notice of expiration of time to redeem, such notice did not vitiate district court's jurisdiction to enter judgment, even though L. 1933, c. 366, §1 required notice of expiration of time to redeem, because it merely related to redemption and not to court's acquisition of jurisdiction. Singer v. Village of Goodridge, 210M324, 298NW35. See Dun. Dig. 9290, 9322.

In case of delinquent real estate tax for year 1931 for which tax judgment sale was postponed and taxes were sold in 1935, the stated period of redemption expired in May, 1940, and the taxes having been subsequently sold to the state, if a state assignment certificate is issued to an individual or actual purchaser covering such taxes, time allowed in notice of expiration should be 60 days. Op. Atty. Gen. (423a), May 23, 1941.

2164-4c. Delinquent taxes—Entry of judgment in certain cases.—Where lands bid in for the state for delinquent taxes between the passage of Chapter 366, Laws of 1933, and the passage of Chapter 278, Laws of 1935, have not been assigned to actual purchasers, the county board of the county in which such lands are located may, at any time prior to February 1, 1945, adopt a resolution instructing the county auditor to list such lands as delinquent for taxes for 1942 and to file and docket such list with the clerk of the district court as though said taxes for 1942 were the first delinquent taxes against said lands and judgment shall be entered and proceedings taken with reference to such lands as though the delinquent taxes for the year 1942 constituted the first instance of real estate tax delinquency with respect thereto; provided, however, that nothing herein contained shall impair the right of the state to enforce any lien in its favor which has accrued by reason of the delinquency or non-payment of taxes for any year prior to the year 1942. (As amended Apr. 1, 1943, c. 240, §1.)

Laws 1943, c. 467, §1, provides that: In all cases where any county has taken new judgments for the 1938 taxes,

on lands delinquent for the first time in 1932, as authorized by Mason's Supplement 1940, Section 2164-4c, and where such judgments have been taken in conformity with all of the provisions of said section, except that said judgments were taken in 1941 instead of in 1940, the same are hereby legalized and made valid, to the extent that they would have been valid if taken in the year 1940.

There was no statutory authority for taking of a new judgment for 1933 taxes when there was already a judgment for 1932 taxes which had not been assigned. Op. Atty. Gen. (412a-10), May 10, 1941.

Lists of lands mentioned cannot be added to delinquent list for any other year than 1938, but this does not mean that auditor cannot place upon delinquent list in any year lands which were by oversight, mistake or otherwise omitted from delinquent list of a previous year. Op. Atty. Gen. (412A-13), Jan. 13, 1942.

A new judgment for the 1942 taxes may be taken on lands on which judgment already has been taken for 1932 taxes, and may be sold or assigned to an actual purchaser, and purchaser need not pay up the prior taxes; county auditor gives him a state assignment certificate on such prior taxes, except where the stated period of redemption has run, in which case issuance of an assignment certificate is unauthorized, and tax judgment for 1932 taxes is in this category, if taken up to and including May, 1938. Purchaser may serve a notice of expiration of time of redemption on the 1942 judgment and thereby acquire tax title, in the absence of a redemption therefrom, and subject to the lien of delinquent taxes for any prior year. Op. Atty. Gen. (412a-10), Aug. 5, 1943.

2164-5. Stated period of redemption.

Time within which state assignment certificates may be issued is limited by the statutes, and any issues after that date are invalid, and there is no statute providing a remedy for a purchaser of such an invalid certificate. Op. Atty. Gen. (409c-2), Apr. 7, 1943.

State assignment certificate may not issue after expiration of stated period of redemption. Op. Atty. Gen. (409b-5), Oct. 5, 1943.

2164-6. Period of redemption extended to July 1, 1936.

This section applies to notice of expiration and time for redemption to a parcel of land bid in by state on May 11, 1936 for taxes delinquent in year 1934, and wherein assignment was made to an actual purchaser on December 20, 1939. Op. Atty. Gen. (423a), May 23, 1941.

Stated period of redemption on 1940 tax sale terminates five years thereafter, and notice of expiration is to issue not earlier than sixty days prior to running of such period. Op. Atty. Gen. (409c-2), June 22, 1943.

Notice of expiration of period of redemption under tax sale certificate for years 1938, 1939, 1940, may be served not earlier than 60 days before expiration of stated period of redemption, which is five years from date of the tax judgment sale. Op. Atty. Gen. (419F-1), Oct. 5, 1943.

(b).

Time within which state assignment certificates may be issued is limited by the statutes, and any issues after that date are invalid, and there is no statute providing a remedy for a purchaser of such an invalid certificate. Op. Atty. Gen. (409c-2), Apr. 7, 1943.

(c).

Exact time of expiration of "stated period of redemption", for a particular parcel of land sold for taxes for either 1931 or 1932, is end of last day of a five year period which commences to run on date following day on which land was sold for taxes and bid in for state. Op. Atty. Gen. (412a-23), Aug. 12, 1940.

2164-9. To what sales applicable.

In case of a certificate of tax judgment sale, based on 1935 taxes, and purchased at May sale in 1937, time for redemption expires 60 days after notice of expiration has been served, whether notice is given by county auditor on behalf of state or on behalf of individual who has succeeded to rights of state either by virtue of an assignment or purchase at tax sale. Op. Atty. Gen. (423C), Jan. 29, 1942.

2164-10. Notice of expiration of redemption.

"Sale" of tax-forfeited land within meaning of repurchase act. **State v. Flach**, 213M353, 6NW(2d)805. See Dun. Dig. **9405a.**

In case of delinquent real estate tax for year 1931 for which tax judgment sale was postponed and taxes were sold in 1935, the stated period of redemption expired in May, 1940, and the taxes having been subsequently sold to the state, if a state assignment certificate is issued to an individual or actual purchaser covering such taxes, time allowed in notice of expiration should be 60 days. Op. Atty. Gen. (423a), May 23, 1941.

This section applies to notice of expiration and time for redemption to a parcel of land bid in by state on May 11, 1936 for taxes delinquent in year 1934, and wherein assignment was made to an actual purchaser on December 20, 1939. Id.

Regular rate of interest on delinquent taxes for 1931 where no answer was interposed is 10%, both under Laws 1931, c. 315, and Laws 1933, c. 337. Id.

In case of a certificate of tax judgment sale, based on 1935 taxes, and purchased at May sale in 1937, time for redemption expires 60 days after notice of expiration has been served, whether notice is given by county auditor on behalf of state or on behalf of individual who has succeeded to rights of state either by virtue of an assignment or purchase at tax sale. Op. Atty. Gen. (423C), Jan. 29, 1942.

Stated period of redemption on 1940 tax sale terminates five years thereafter, and notice of expiration is to issue not earlier than sixty days prior to running of such period. Op. Atty. Gen. (409c-2), June 22, 1943.

Notice of expiration of period of redemption under tax sale certificate for years 1938, 1939, 1940, may be served not earlier than 60 days before expiration of stated period of redemption, which is five years from date of the tax judgment sale. Op. Atty. Gen. (419F-1), Oct. 5, 1943.

2164-11. County auditor to give notice.

Statutory requirements with reference to the service of the notice of expiration of redemption are of great importance and strict compliance therewith is vital. McHardy v. State, 215M132, 9NW(2d)427. See Dun. Dig. 9424.

Lien for taxes existing prior to acquisition by state or subdivision thereof may remain on auditor's books, but any proceeding to forfeit for delinquent taxes is void. Op. Atty. Gen. (414c-3), Sept. 29, 1939.

In cases of defaulted confession of judgment settlements, notice of expiration of redemption should be given under Laws 1935, ch. 278, except in those instances where taxes of 1931 and 1932 are involved, and notice should be based upon original real estate tax judgment and not judgment confessed and should not make any reference to confession of judgment settlements, and taxes collected upon confessed judgment should be credited on that judgment in inverse order, chronologically speaking. Op. Atty. Gen. (412a-10), July 5, 1940.

(a).

Where lands were sold for delinquent taxes for year 1931 in May, 1935, whereas 1932 tax on same property was bid in for state in May, 1934, and all tax judgments for years 1933, 1934, 1935, 1936 and 1937 were added to judgment obtained in May, 1934, under 1932 tax sale, it was too late in April, 1940, to obtain an assignment of the 1932 tax judgment, but one could obtain assignments of 1931 tax judgments and pay tax judgments for 1932 taxes, and later years, and serve notice of expiration of redemption and acquire title, without entering into competitive bidding. Op. Atty. Gen., (412a-10), April 18, 1940.

2164-12. Form of notice.

Statutes relative to tax title proceedings which result in the owner's forfeiture of his property should require a stricter construction than those relating to mortgage foreclosure proceedings, which involve merely a creditor's proceeding to recover a debt due him. McHardy v. State, 215M132, 9NW(2d)427. See Dun. Dig. 9424.

Failure of posted notice of expiration of redemption to designate name of assessed owner as carried on official assessment books rendered tax forfeiture proceedings fatally defective. McHardy v. State, 215M141, 9NW(2d) 432; McHardy v. State, 215M146, 9NW(2d)435. See Dun. Dig. 9428.

It is vital that all persons in possession be served with proper notice, but this does not mean necessarily that all who chance to live on the premises are to be regarded as persons in possession and as such possession must be substantial and suited to the appropriate use of the property and independent and of equal dignity with others in possession and not of a trivial nature. McHardy v. State, 215M132, 9NW(2d)427. See Dun. Dig. 9435.

Question as to the fact of occupancy and whether the nature and character thereof are of such substance and dignity as to require service of notice are to be determined by the triers of fact on the evidence there presented. Id. See Dun. Dig. 9435.

Where husband and wife were in possession of property as tenants and possession of each was of the same importance, service of notice upon husband alone was fatal. McHardy v. State, 215M132, 9NW(2d)427; McHardy v. State, 215M141, 9NW(2d)432. See Dun. Dig. 9435.

Notice of expiration of redemption should be filed with clerk of federal district court where owner is a bankrupt. Op. Atty. Gen. (520B), July 11, 1940.

(c).

If sheriff finds a tract vacant and unoccupied, and so certifies in his return filed with county auditor, service of notice as to such parcel is completed, and no further search for owner or additional publication is necessary. Op. Atty. Gen., (423c), March 26, 1940.

Notice of expiration of time for redemption may be by printed form or an actual clipping from newspaper of publication. Op. Atty. Gen., (419f-3), May 4, 1940.

Notice need not be served upon any lien claimant, which includes state and its political subdivisions and agencies under its claim of lien for payment of old age assistance. Op. Atty. Gen., (521p-4), May 10, 1940.

(f).
County auditor may make one certificate covering all lands described in notice of expiration of time for redemption. Op. Atty. Gen. (409a-3), Apr. 18, 1941.
Where tax records did not note easements of railroad paying gross earnings tax, judgment and sale to the state was not void but was ineffective as far as railroad easements was concerned, and notice of expiration of period of redemption or certificate after expiration of time for redemption should include words "subject to railroad easement." Op. Atty. Gen. (216l), June 16, 1942.

2164-12a. Cancellation of certificates of forfeiture where lands were exempt.—Where a certificate of forfeiture required by Laws of 1935, Chapter 278, Section 8, Subdivision (f), describing lands which were exempt from taxation under the Laws of the United States in the year upon which the supposed forfeiture is based, or which describes lands that were owned by the State of Minnesota or some department or subdivision thereof at the time the supposed forfeiture took place or lands which, because of defective service of the notice of forfeiture or other reason, the title thereto did not in fact forfeit to the State, has been erroneously recorded or filed, such forfeiture may be set aside and such certificate may be cancelled in the manner herein provided. (As amended Act Apr. 25, 1941, c. 441, §1.)
Certificates of forfeiture may be cancelled where forfeiture was erroneously entered. Laws 1941, c. 253.
This act does not authorize setting aside a tax deed or other deeds by the state. Op. Atty. Gen. (410B), Oct. 16, 1940.
Certificate of forfeiture could not be cancelled because of mistake of county auditor in describing wrong land in a confession of judgment. Op. Atty. Gen. (409a-3), Nov. 25, 1940.
Act is broad enough to permit commissioner to cancel a certificate of forfeiture where taxes upon which forfeiture was based had actually been paid. Op. Atty. Gen., (408a-3), Jan. 21, 1941.
Effect and results of federal court judgment invalidating taxes on and forfeiture of Indian land in Mahnomen County determined. Op. Atty. Gen. (412a-10), Apr. 16, 1941.
Where forfeiture is void for insufficient description of property in delinquent tax list and judgment, county auditor should make a petition under this act for cancellation of certificate of forfeiture and property could then be assessed and taxes levied for proper years as in case of omitted taxes. Op. Atty. Gen. (412a-13), May 10, 1941.
Procedure for cancellation of forfeiture under this act should not be used in any case where land has been sold by the state unless interest of purchaser has first been disposed of either by judicial action or voluntary settlement. Op. Atty. Gen. (409a-1), June 5, 1941.
In case of land to which village holds unrecorded deed, cancellation of tax forfeiture may be obtained under this act, and all taxes which have been levied on land before forfeiture would be cancelled upon consummation of forfeiture and would not be reinstated upon cancellation of forfeiture because land, being village property was exempt from taxation. Op. Atty. Gen. (407), Oct. 10, 1941.
Neither county board nor commissioner of taxation could make a determination of title in a village by adverse possession, court action being necessary. Id.

2164-12b. Same—Applications by owner.—The owner at the time of forfeiture or someone authorized to act in his or its behalf shall file an application for cancellation with the county auditor submitting therewith a statement of the facts of the case and satisfactory proof that the supposed forfeiture was erroneous upon one or more of the grounds hereinbefore stated. Such application may be made by the county auditor when he has knowledge of the facts. Such application shall be considered by the county board and the county auditor as in the case of application under Section 1983 of Mason's Minnesota Statutes of 1927, and shall thereafter be submitted to the commissioner of taxation with the recommendation of the county board and the county auditor. The commissioner of taxation shall consider said application and if he determines that the supposed forfeiture was erroneous upon such grounds he shall order the county auditor to record and file in the manner in which the original certificate of forfeiture was recorded and filed, a certificate of cancellation which shall refer to said original certificate, the provisions of this act, and the proceedings taken pursuant hereto, and state that the original certificate is void upon the grounds so determined. Upon compliance with such order by the county auditor, the supposed forfeiture and original certificate thereof shall be void. Unless exempt the lands affected by such cancellation shall be deemed to have been subject to taxation as if the supposed forfeiture had not occurred, and all taxes and assessments which have been cancelled or omitted be reinstated or levied and assessed as in the case of omitted taxes, as the case may require. (As amended Act Apr. 25, 1941, c. 441, §2.)
Certificates of forfeiture may be cancelled where forfeiture was erroneously entered. Laws 1941, c. 253.
Payment of taxes is not a condition precedent to cancellation of certificate. Op. Atty. Gen., (409a-1), Jan. 15, 1941.
Forms of application for cancellation and certificate of cancellation provided by attorney general. Op. Atty. Gen. (407), June 2, 1941.

2164-12c. Cancellation of certificates of forfeiture —Reinstatement of cancelled taxes.—Whenever, heretofore, due in whole or in part to an error of the county auditor or any deputy, an owner has entered into a confession of judgment on lands of another, and as a result thereof such owner has been misled into permitting his own lands to forfeit to the state of Minnesota, but which have not been sold by the state, upon the recommendation of the board of county commissioners and the county auditor, the certificate of forfeiture of such lands and the notice upon which it is based shall be cancelled by the department of taxation and the county auditor. Such certificate of forfeiture may be cancelled by proceedings as provided in Mason's Supplement 1940, Sections 2164-12a and 2164-12b. When such certificate is cancelled as herein provided, the county auditor shall reinstate all cancelled taxes, penalties and interest; and taxes for all years subsequent to the supposed forfeiture shall be levied and assessed as in the case of omitted taxes. The authority of the board of county commissioners under the provisions of this act shall not extend to any petition filed after August 1, 1941. (Act Apr. 16, 1941, c. 253, §1.)

2164-13. Land subject to assignment.
Time within which state assignment certificates may be issued is limited by the statutes, and any issues after that date are invalid, and there is no statute providing a remedy for a purchaser of such an invalid certificate. Op. Atty. Gen. (409c-2), Apr. 7, 1943.
State assignment certificate may not issue after expiration of stated period of redemption. Op. Atty. Gen. (409b-5), Oct. 5, 1943.

2164-14. Titles to be held in trust by the state.
A tenant in possession of land at time of forfeiture holds thereafter only through sufferance, and unlawful detainer may be brought in name of state, and lease may be made only in accordance with statutes, but tenant is liable as an occupant for rent at reasonable rate. Op. Atty. Gen. (412a-25), Dec. 3, 1940.
Form of quitclaim deed for reconveyance of tax-forfeited lands which had previously been conveyed to a governmental subdivision pursuant to Laws 1941, c. 511, and such conveyance restores such land to status which is held at time of its conveyance to governmental subdivision. Op. Atty. Gen. (410b), July 11, 1942.
Personal property contained in building on tax-forfeited property is regulated by common-law principles of abandonment. Op. Atty. Gen. (425c-14), Apr. 26, 1943.

2169. Failure to serve notice to extinguish lien.
Rights of purchaser at a delinquent tax sale under Laws 1927, c. 119, were not extinguished by failure to record his certificate of tax sale within statutory limit of time fixed and provided by §§2169 and 2170. Absetz v. M., 207M202, 290NW298. See Dun. Dig. 9386.
Certificates of sale issued in 1927 became void after October 25, 1941, if not already void, and notice of expiration of redemption cannot now be issued. Op. Atty. Gen. (409c-2), Nov. 24, 1941.
A state assignment certificate may be recorded where no notice has ever been given. Op. Atty. Gen. (409b-5), Sept. 14, 1943.

2170. Limitation of time for filing certificate.
Absetz v. M., 207M202, 290NW298; note under §2169.
Certificates of sale issued in 1927 became void after October 25, 1941, if not already void, and notice of expiration of redemption cannot now be issued. Op. Atty. Gen. (409c-2), Nov. 24, 1941.

A state assignment certificate may be recorded where no notice has ever been given. Op. Atty. Gen. (409b-5), Sept. 14, 1943.

2170-1. Notice of expiration of time of redemption—Tax judgment sale certificate—Limitation of time.—No notice of the expiration of the time of redemption upon any real estate tax judgment sale certificate, forfeited tax sale certificate or state assignment certificate heretofore issued pursuant to any law of this state at or pursuant to any such sale held in the year 1935 or prior thereto, which has not become void under Mason's Minnesota Statutes of 1927, section 2169 or section 2170, or any other law, shall issue or be served after the expiration of six months from the date this act becomes effective; nor shall such certificate be recorded in the office of the register of deeds or filed in the office of the registrar of titles of the proper county after December 31, 1942. (Act Apr. 24, 1941, c. 399, §1.)
[272.54]

Certificates of sale issued in 1927 became void after October 25, 1941, if not already void, and notice of expiration of redemption cannot now be issued. Op. Atty. Gen. (409c-2), Nov. 24, 1941.

No notice of expiration of time for redemption could be issued after June 31, 1941 upon a state assignment certificate issued for taxes of the year 1928, regardless of date of assignment certificate. Op. Atty. Gen. (419f-1), Dec. 15, 1941.

The words "year 1935 or prior thereto" refers to the date of the sale and not the date of a state assignment certificate issued pursuant to such sale. Op. Atty. Gen. (409b-5), Sept. 14, 1943.

2170-2. Same—Limitation of time.—No notice of expiration of the time of redemption upon any real estate tax judgment sale certificate, forfeited tax sale certificate or state assignment certificate issued pursuant to any law of this state at or pursuant to any such sale held between January 1, 1936, and the date this act takes effect, or held thereafter, shall be issued or served after the expiration of six years from the date of the certificate, nor shall such certificate be recorded in the office of the register of deeds or filed in the office of the registrar of titles of the proper county after the expiration of seven years from the date of the certificate. (Act Apr. 24, 1941, c. 399, §2.)
[272.55]

The six-year limitation applies to all cases wherein tax judgment sale was held after 1935, but the period begins to run from date of the certificate, not from the date of tax judgment sale. Op. Atty. Gen. (419f-1), Dec. 15, 1941.

2170-3. Same—Tax judgment sale certificates—Limitation of time.—Any such certificate upon which notice of expiration of redemption shall not be issued, served, and recorded or filed within the time limited by this act, shall be void and of no force and effect for any purpose whatever, and failure to serve such notice or record or file such certificate within the time herein prescribed shall operate to extinguish the lien of the holder of said certificate for the taxes for the year or years in such certificate described and the lien of all subsequent taxes paid under such certificate. (Act Apr. 24, 1941, c. 399, §3.)
[272.56]

2170-4. Same—Cancellation of record of sale certificates.—The county auditor shall annually, as soon as practicable after the second Monday of May, cancel of record all real estate tax judgment sale certificates, forfeited tax sale certificates, and state assignment certificates, upon which notice of expiration of the time of redemption has not been served, and recorded or filed of record within the time herein fixed, by making an entry, "Cancelled by Limitation", in the proper real estate tax judgment book opposite the description of land covered by such certificate. (Act Apr. 24, 1941, c. 399, §4.)
[272.57]

State assignment certificate cannot be cancelled after notice of expiration of time for redemption has been served though assignee died before expiration of time and recording of certificate. Op. Atty. Gen. (412A-27), Mar. 4, 1942.

There is now no distinction between procedure as to certificate dated prior to January 1, 1936, and those dated for years subsequent thereto, and all auditor need observe is flat six year rule. Op. Atty. Gen. (409a-1), March 18, 1943.

2176-5. Termination of option.

Option to repurchase is automatically terminated by failure to pay installments or taxes, and no notice of cancellation is necessary. Op. Atty. Gen. (425c-6), July 5, 1940.

2176-6. Conveyance of land by state.

Where repurchase price has been paid and deed issued, another deed may not be issued on certificate by county auditor that repurchase was made for benefit of a person other than grantee, only remedy being in court by proper proceeding to have trust impressed upon title. Op. Atty. Gen. (425C-13), Dec. 30, 1941.

2176-7. Occupants not to be evicted, when.

Section applies only to lands forfeited for taxes of years 1926 and 1927. Op. Atty. Gen. (412a-25), Dec. 3, 1940.

2176-11. Confession of judgment for delinquent taxes and payment in installments without penalties and interest—Etc.

Owner of real estate may confess judgment for delinquent taxes and pay same in installments. Laws 1941, c. 17.

Reinstatement after default. Laws 1943, c. 333.

Owner confessing judgment on several forties cannot make payment in full of taxes assessed against one forty and obtain a satisfaction of judgment as to it. Op. Atty. Gen. (412a-10), Nov. 23, 1939.

Owner who confessed judgment and thereafter defaulted was entitled to have sum paid credited against amount due at time judgment was confessed. Op. Atty. Gen. (412a-10), Feb. 5, 1940.

Commissioner of taxation may allow taxes represented by a confessed judgment to be settled for less than full amount, on recommendation by county board and county auditor. Id.

Soldiers' and Sailors' Civil Relief Act has no effect upon confession of judgment, and reinstatement of all penalties and interest, but lands should not be listed as delinquent or be sold. Op. Atty. Gen. (310), Nov. 2, 1942.

2176-12. Waiver of penalties and interest; etc.

Upon default penalties and interests accrued on taxes are immediately reinstated and property becomes same as though no confession of judgment had ever been made, except for crediting amounts actually paid under judgment. Op. Atty. Gen. (412a-10), May 8, 1941.

Where one of four heirs of an estate made a confession of judgment and kept payments for five years, she may not now, instead of continuing the payments, have auditor assign taxes to her so that she may foreclose tax lien and get title to the property. Op. Atty. Gen. (412a-10), May 20, 1942.

2176-13. Receipt for deferred installments—Duplicate—Distribution of taxes collected.

Taxes paid under confession of judgment before default must be credited. Op. Atty. Gen., (412a-10), April 25, 1940.

2176-14. Fees of clerk of district court.

Fees earned by clerk in confession of judgment matters under §2176-14 should be included by clerk in his report of fees under Laws 1919, chapter 229. Op. Atty. Gen. (144B-3), Feb. 6, 1940.

Where a man confesses judgment on his delinquent taxes and pays his first installment of 10% plus 30 cents clerk fee, and then a year later pays all of remaining 9 payments at once, clerk can collect only 15 cents for releasing the judgment. Op. Atty. Gen. (144b-5), Dec. 15, 1942.

2176-15. Applicability and effect of Laws 1935, c. 278.

Reinstatement after default, see post, §§2176-16p to 2176-16r.

Owner who confessed judgment and thereafter defaulted was entitled to have sum paid credited against amount due at time judgment was confessed. Op. Atty. Gen. (412a-10), Feb. 5, 1940.

In cases of defaulted confession of judgment settlements, notice of expiration of redemption should be given under Laws 1935, ch. 278, except in those instances where taxes of 1931 and 1932 are involved, and notice should be based upon original real estate tax judgment and not judgment confessed and should not make any reference to confession of judgment settlements, and taxes collected upon confessed judgment should be credited on that judgment in inverse order, chronologically speaking. Op. Atty. Gen. (412a-10), July 5, 1940.

Where default occurs after several installments are paid, auditor should first proceed to distribute taxes in

manner described in §2176-13 and then proceed to take appropriate steps to forfeit lands for non-payment of 1931 and subsequent taxes which may be in default. Op. Atty. Gen., (412a-10), Jan. 18, 1941.

2176-16a. Confession of judgment for delinquent taxes.

Reinstatement after default. Laws 1943, c. 333.

City of Moorhead has power to buy interest of state in land bid in for state at delinquent tax judgment sales, and county auditor was authorized to issue certificate assigning state's interest to buyer, and this right was not impliedly or otherwise affected by confession of judgment statutes, words "not assigned by it" referring to time owner offered to confess judgments, and not to moment law was approved. Adams v. Atkinson, 212M131, 2NW(2d)818. See Dun. Dig. 9390, 9405a.

Owner of land sold for taxes desiring to confess judgment and redeem cannot take any advantage of irregularities of city council in procuring from county auditor certificate assigning state's interest to it. Id.

Two or more parcels may not be joined in one confession of judgment. Op. Atty. Gen. (412a-10), Sept. 25, 1939.

Taxes for 1938 may not be included in confession of judgment and must be paid before such judgment can be entered. Op. Atty. Gen. (412a-10), Nov. 4, 1940.

Delinquent taxes for year 1938 must be paid and cannot be included in confession of judgment. Id.

Where part of land upon which judgment was confessed was subject to a mortgage which was foreclosed, there can be no partial relief from confession of the judgment on application of the confessor, but mortgagee may, if individual lots have been separately assessed, pay full amount due for taxes, penalties, interest, and costs, without regard to the confession of judgment, upon each parcel so assessed which is subject to his mortgage, or to which he may have acquired title through foreclosure, and if individual lots have not been separately assessed, mortgagee may apply to county auditor for determination of proportionate amount due upon property which is subject to his mortgage or to which he may have acquired title through foreclosure, and after these payments confession of judgment for proportionate amount appertaining to remainder of property remained standing subject to all original conditions. Op. Atty. Gen. (412a-10), Dec. 12, 1940.

Where a man confesses judgment on his delinquent taxes and pays his first installment of 10% plus 30 cents clerk fee, and then a year later pays all of remaining 9 payments at once, clerk can collect only 15 cents for releasing the judgment. Op. Atty. Gen. (144b-5), Dec. 15, 1942.

2176-16d. Fees.

Fees received for confessions of judgments are to be disposed of as are other fees received by officers, under Laws 1933, c. 143. Op. Atty. Gen., (144B-3), May 28, 1940.

2176-16e. Application of act.

Reinstatement after default, see post, §§2176-16p to 2176-16r.

Notice of expiration of redemption is annulled by confession of judgment, but default in payment restores tax judgment, and thereafter due notice of expiration is necessary. Op. Atty. Gen. (412a-10), Sept. 7, 1939.

Payments may not be accepted after default occurs. Op. Atty. Gen., (412a-10), Jan. 18, 1941.

Where wife confessed judgment on property held jointly by her with her husband and paid some of the annual installments and current taxes, wife cannot protect her interest in the property by only paying her share of the current tax, since it would constitute a default. Op. Atty. Gen. (412a-10), May 22, 1943.

2176-16f. Only one confession to be made.

A mortgagee may confess judgment, notwithstanding the fact that previously owner has confessed judgment and defaulted. Op. Atty. Gen. (412a-10), June 18, 1940.

2176-16h. Confession of judgment for delinquent taxes.—Delinquent taxes upon any parcel of real estate for 1938 and prior years, which have been bid in for and are held by the state and not assigned by it, together with taxes for the year 1939, which shall have become attached to a prior judgment, or delinquent taxes upon any parcel of real estate upon which a prior judgment for taxes has heretofore been declared void by a court of competent jurisdiction and upon which a new judgment for delinquent taxes shall have been entered in 1941, and which shall have been bid in for and shall be held by the state and not assigned by it, may be composed into one item or amount by confession of judgment prior to December 1, 1941, for the entire amount of all such taxes and costs, excluding penalties and interest, and thereafter, until December 1, 1942, for the entire amount of all such taxes and costs, excluding the regular penalties and interest, but plus a penalty of ten (10) per cent of the amount of such taxes as originally assessed, as hereinafter provided: provided that no such taxes upon lands classified for assessment at an assessed value exceeding 40 per cent of the full and true value, shall be composed into any such judgment or be payable in the manner provided by this act.

The owner of any such parcel, or any person to whom the right to pay taxes has been given by statute, mortgage or other agreement, may make and file with the county auditor of the county wherein said parcel is located a written offer to pay the current taxes each year before they become delinquent, or within 30 days after the entry of final judgment in proceedings to contest such taxes under Laws 1935, Chapter 300, as amended by Laws 1937, Chapter 483, [2126-3, 2126-5] and agree to confess judgment for the amount of such delinquent taxes, costs and penalty, if any, as hereinbefore provided, as determined by the county auditor, and shall thereby waive all irregularities in connection with the tax proceedings affecting such parcel and any defense or objection which he may have thereto, and shall thereby waive the requirements of any notice of default in the payment of any installment or interest to become due pursuant to the composite judgment to be so entered, and shall tender therewith one-tenth of the amount of such delinquent taxes, costs, and penalty, if any, and agree therein to pay the balance in nine equal annual installments, with interest at the rate of 5 per cent per annum, payable annually, on installments remaining unpaid from time to time, on or before October 31 of each year following the year in which judgment was confessed, which offer shall be substantially as follows:

"To the clerk of the district court of.....
county, I, ...owner of the following described parcel of real estate situate in.....
.....county, Minnesota, to-wit.....
upon which there are delinquent taxes for the year ....., and prior years, as follows: (here insert year of delinquency and the total amount of delinquent taxes, costs, and penalty, if any), do hereby offer to confess judgment in the sum of $....., and hereby waive all irregularities in the tax proceedings affecting such taxes and any defense or objections which I may have thereto, and direct judgment to be entered for the amount hereby confessed, less the sum of $.....hereby tendered, being one-tenth of the amount of said taxes, costs, and penalty, if any. I agree to pay the balance of said judgment in nine equal annual installments, with interest at the rate of 5 per cent per annum, payable annually, on the instalments remaining unpaid from time to time, said installments and interest to be paid on or before October 31 of each year following the year in which this judgment is confessed and current taxes each year before they become delinquent, or within 30 days after the entry of final judgment in proceedings to contest such taxes under Laws 1935, Chapter 300, as amended by Laws 1937, Chapter 483.

Dated this ....., 19....."

At the time of such offer he shall pay any delinquent taxes which have not attached to a judgment for prior years, with accrued interest, penalty and costs.

Upon the receipt of said offer and payment of the sums herein required, the said auditor shall note the same upon his records and shall forthwith file said offer and confession of judgment with the clerk of the district court of the county who is hereby directed to enter judgment in accordance with said offer.

The auditor shall immediately deliver to the treasurer the initial payment received by him. The judgment so rendered shall not constitute a personal judgment against the party or parties therein and shall be a judgment in rem. (Act Feb. 21, 1941, c. 17, §1.)

Confession of judgment for delinquent taxes and payment in installments. Laws 1943, c. 163.

Reinstatement after default. Laws 1943, c. 603.

Where owner has confessed judgment for the 1933 and 1934 taxes and such judgment is now in default by reason of nonpayment of subsequent taxes, a mortgagee may come in and confess judgment for balance of 1933 and 1934 taxes together with subsequent years' taxes which remain unpaid without waiting until December 31, 1941. Op. Atty. Gen. (412-A-10), July 3, 1941.

Where owner has confessed judgment for the 1933 and 1934 taxes and such judgment is now in default, county auditor may serve notice of expiration of redemption without waiting until after December 31, 1941. Id.

2176-16hh. Same.—In all cases where any county auditor and county treasurer have accepted payment of one or more delinquent installments of the amount specified in any confession of judgment agreement, after the due date specified in said judgment, and the full amount of the installments with penalty, if any, and interest has been paid, such payments are hereby legalized and made valid to the extent that they would have been legal if paid within the time specified in said confessed judgment. (Act Apr. 1, 1943, c. 239, §3.)

2176-16i. Penalties and interest waived.—Upon the entry of said judgment, all the accrued penalties and interest on the taxes embraced within said judgment shall be waived, except as herein provided, and further proceedings shall be suspended on any judgment for taxes embraced in said confessed judgment as long as no default exists. Upon the payment in full of the amounts required to be paid under the confessed judgment the original judgment shall be satisfied. (Act Feb. 21, 1941, c. 17, §2.)

2176-16j. Notice to person confessing judgment.—The county auditor shall give notice by mail not later than September 30 of each year to the person or persons making such confession of judgment at the address given therein of the payment due under the confession on the following October 31. Failure to send or receive the notice shall not operate to postpone any payment or excuse any default under the confession of judgment. (Act Feb. 21, 1941, c. 17, §3.)

2176-16k. Payment not for specific year's taxes.—The county auditor's statement and county treasurer's receipt isssued for payment of a deferred installment, as herein provided for, shall not read for any specific year's taxes, but shall read for partial or full release of judgment, as the case may be, and shall show the year that such judgment was entered. In distributing the taxes collected in this manner, the county auditor shall apply the same in the inverse order to that in which such taxes were levied. All penalties and interest collected under the provisions of this act shall be apportioned by the county auditor in accordance with Mason's Minnesota Statutes of 1927, Sections 2086 and 2087. A duplicate treasurer's receipt for payment of a deferred installment, as hereinafter provided, shall be delivered to the clerk of the district court, and the clerk of the district court shall credit the amount so paid upon the judgment entered. (Act Feb. 21, 1941, c. 17, §4.)

2176-16l. Fees—Purchase of supplies.—The party or parties making such confession of judgment shall pay the county auditor a fee of 50 cents and a fee of 50 cents to the clerk of the court for entry of judgment and 15 cents for each full or partial release thereof, which shall be collected by the county auditor; provided, however, that in counties where said fees would revert to the County Revenue Fund under existing laws, the County Auditor may use said fees for the purchase of supplies necesssary to carrying out the provisions of this act or for additional clerk hire in his office. (Act Feb. 21, 1941, c. 17, §5.)

Where a man confesses judgment on his delinquent taxes and pays his first installment of 10% plus 30 cents clerk fee, and then a year later pays all of remaining 9 payments at once, clerk can collect only 15 cents for releasing the judgment. Op. Atty. Gen. (144b-5), Dec. 15, 1942.

2176-16m. Application of law.—This act shall not apply to any parcel of land which has become or hereafter may become the absolute property of the state in fee or in trust under the provisions of any law declaring a forfeiture of lands to the state for taxes. Failure to make any payment required by the confessed judgment within sixty days from the date on which payment was due shall constitute a default. In the event of default occurring in the payments to be made under any confessed judgment entered pursuant hereto, the penalties and interest waived under the terms of Section 2 hereof shall be reinstated and the lands described in such confessed judgment shall thereupon be subject to forfeiture according to the provisions of law applicable thereto. (Act Feb. 21, 1941, c. 17, §6.)

Sixty days grace is not applicable to confessions under prior laws, nor to reinstated confessions under Laws 1941, c. 26, Op. Atty. Gen. (412A-10), Oct. 22, 1941.

2176-16n. Only one confession to be made.—Not more than one confession of judgment and agreement to pay in installments under this or any prior law affecting the same taxes or any portion thereof may be made by or on behalf of any owner of any particular right, title, interest in, or lien upon, any given parcel of land, his heirs, representatives or assigns. (Act Feb. 21, 1941, c. 17, §7.)

One who took property by deed from a grantor who had confessed judgment under Mason's Minn. St. 1940 Supp. §2176-16a to 2176-16g, and then allowed the payment provided for in those sections to become delinquent, could not again confess judgment for the same delinquency. Op. Atty. Gen. (412a-10), July 11, 1941.

2176-16o. Provisions severable.—If any section or part of this act shall be declared to be unconstitutional or invalid for any reason, the remainder of this act shall not be affected thereby. (Act Feb. 21, 1941, c. 17, §8.)

2176-16p. Confession of judgment for delinquent taxes—Reinstatement after default.—Any person or persons who have confessed judgment for delinquent taxes pursuant to Extra Session Laws 1935, Chapter 72, [2176-11 to 2176-16], Extra Session Laws 1935, Chapter 72 as amended by Laws 1937, Chapter 486, [2176-11] or Laws 1939, Chapter 91, [2176-16a to 2176-16g] and who have defaulted in the payments to be made thereunder may remove the default and reinstate the confessed judgment by making and filing with the county auditor prior to December 31, 1941, a written request that the confessed judgment be reinstated and tendering therewith an amount sufficient to pay all delinquent installments with interest, together with proper reecipts showing payment of the taxes, including current taxes, required to be paid by the confessed judgment. Upon receipt of the request and payment of all sums herein required, the county auditor shall note the reinstatement upon his records and shall immediately deliver the payment received by him to the county treasurer. (Act Feb. 26, 1941, c. 26, §1.)

Defaulted landowner does not have until December 31, 1941, to reinstate if forfeiture will become complete July 1, 1941. Op. Atty. Gen. (412a-10), June 6, 1941.

Where owner has confessed judgment for the 1933 and 1934 taxes and such judgment is now in default by reason of nonpayment of subsequent taxes, a mortgagee may come in and confess judgment for balance of 1933 and 1934 taxes together with subsequent years' taxes which remain unpaid without waiting until December 31, 1941. Op. Atty. Gen. (412-A-10), July 3, 1941.

Where owner has confessed judgment for the 1933 and 1934 taxes and such judgment is now in default, county auditor may serve notice of expiration of redemption without waiting until after December 31, 1941. Id.

2176-16q. Same—Fees—Collection and disposition.—The person or persons reinstating such confession of judgment shall pay the county auditor a fee of fifty cents and a fee of fifty cents to the clerk of the court for the partial satisfaction of the judgment, which shall be collected by the county auditor; provided, however, that in counties where said fees would revert to the county revenue fund under existing laws, the county auditor may use said fees for the purchase of supplies necessary to carry out the provisions of this act or for additional clerk hire in his office. (Act Feb. 26, 1941, c. 26, §2.)

2176-16r. Same—Application of law.—This act shall not apply to any parcel of land unless the delinquent taxes thereon, whether composed into the confessed judgment or subsequently delinquent, have been bid in for and are held by the state and not assigned by it when the request for reinstatement is filed with the county auditor, nor shall it apply to any parcel of land which has become the absolute property of the state in fee or in trust under the provisions of any law declaring a forfeiture of lands to the state for taxes. (Act Feb. 26, 1941, c. 26, §3.)

Defaulted landowner does not have until December 31, 1941 to reinstate if forfeiture will become complete July 1, 1941. Op. Atty. Gen. (412a-10), June 6, 1941.

2176-16s. Confession of judgment for delinquent taxes.—Delinquent taxes upon any parcel of real estate for 1940 and prior years, which have been bid in for and are held by the state and not assigned by it, together with taxes for the year 1941, which shall have become attached to a prior judgment, or delinquent taxes upon any parcel of real estate upon which a prior judgment for taxes has heretofore been declared void by a court of competent jurisdiction and upon which a new judgment for delinquent taxes shall have been entered in 1943, and which shall have been bid in for and shall be held by the state and not assigned by it, may be composed into one item or amount by confession of judgment prior to December 1, 1943, for the entire amount of all such taxes and costs, excluding penalties and interest, and thereafter, until December 1, 1944, for the entire amount of all such taxes and costs, excluding the regular penalties and interest, but plus a penalty of ten per cent of the amount of such taxes as originally assessed, as hereinafter provided: provided that no such taxes upon lands classified for assessment at an assessed value exceeding 40 per cent of the full and true value, shall be composed into any such judgment or be payable in the manner provided by this act.

The owner of any such parcel, or any person to whom the right to pay taxes has been given by statute, mortgage or other agreement, may make and file with the county auditor of the county wherein said parcel is located a written offer to pay the current taxes each year before they become delinquent, or within 30 days after the entry of final judgment in proceedings to contest such taxes under Mason's Supplement 1940, Sections 2126-1 to 2126-14, and agree to confess judgment for the amount of such delinquent taxes, costs, interest and penalty, if any, as hereinbefore provided, as determined by the county auditor, and shall thereby waive all irregularities in connection with the tax proceedings affecting such parcel and any defense or objection which he may have thereto, and shall thereby waive the requirements of any notice of default in the payment of any installment or interest to become due pursuant to the composite judgment to be so entered, and shall tender therewith one-tenth of the amount of such delinquent taxes, costs and penalty, if any, and agree therein to pay the balance in nine equal annual installments, with interest at the rate of four per cent per annum, payable annually, on installments remaining unpaid from time to time, on or before December 31 of each year following the year in which judgment was confessed, which offer shall be substantially as follows:

"To the clerk of the district court of ..... county, I, ... owner of the following described parcel of real estate situate in ..... county, Minnesota, to-wit: ..... upon which there are delinquent taxes for the year ....., and prior years, as follows: (here insert year of delinquency and the total amount of delinquent taxes, costs, interest and penalty, if any,) do hereby offer to confess judgment in the sum of $....., and hereby waive all irregularities in the tax proceedings affecting such taxes and any defense or objections which I may have thereto, and direct judgment to be entered for the amount hereby confessed, less the sum of $....., hereby tendered, being one-tenth of the amount of said taxes, costs and penalty, if any. I agree to pay the balance of such judgment in nine equal, annual installments, with interest at the rate of four per cent per annum, payable annually, on the installments remaining unpaid from time to time, said installments and interest to be paid on or before December 31 of each year following the year in which this judgment is confessed and current taxes each year before they become delinquent, or within 30 days after the entry of final judgment in proceedings to contest such taxes under Mason's Supplement 1940, Sections 2126-1 to 2126-14.

Dated this ....., 19....."

At the time of such offer he shall pay any delinquent taxes which have not attached to a judgment for prior years, with accrued interest, penalties and costs.

Upon the receipt of said offer and payment of the sums herein required, the said auditor shall note the same upon his records and shall forthwith file said offer and confession of judgment with the clerk of the district court of the county who is hereby directed to enter judgment in accordance with said offer.

The auditor shall immediately deliver to the treasurer the initial payment received by him. The judgment so rendered shall not constitute a personal judgment against the party or parties therein and shall be a judgment in rem. (Act Mar. 22, 1943, c. 163, §1.)

[279.35]

2176-16t. Penalties and interest waived.—Upon the entry of said judgment, all the accrued penalties and interest on the taxes embraced within said judgment shall be waived, except as herein provided, and further proceedings shall be suspended on any judgment for taxes embraced in said confessed judgment as long as no default exists. Upon the payment in full of the amounts required to be paid under the confessed judgment, except the then current taxes not yet delinquent, the original judgment shall be satisfied. (Act Mar. 22, 1943, c. 163, §2.)

[279.35]

2176-16u. County auditor shall give notice.—The county auditor shall give notice by mail not later than November 30 of each year to the person or persons making such confession of judgment at the address given therein of the payment due under the confession on the following December 31. Failure to send or receive the notice shall not operate to postpone any payment or excuse any default under the confession of judgment. (Act Mar. 22, 1943, c. 163, §3.)

[279.35]

2176-16v. Form of statement and receipt.—The county auditor's statement and county treasurer's receipt issued for payment of a deferred installment, as herein provided for, shall not read for any specific year's taxes, but shall read for partial or full release of judgment, as the case may be, and shall show the year that such judgment was entered. In distributing the taxes collected in this manner, the county auditor shall apply the same in the inverse order to that in which such taxes were levied. All penalties and interest collected under the provisions of this act shall be apportioned by the county auditor in accordance with Mason's Minnesota Statutes of 1927, Sections 2086 and 2087. A duplicate treasurer's receipt for payment of a deferred installment, as hereinafter provided, shall be delivered to the clerk of the district court, and the clerk of the district court shall credit the amount so paid upon the judgment entered. (Act Mar. 22, 1943, c. 163, §4.)

[279.35]

2176-16w. Fees for entry of judgment.—The party or parties making such confession of judgment shall pay the county auditor a fee of 50 cents and a fee of

50 cents to the clerk of the court for entry of judgment and 15 cents for each full or partial release thereof, which shall be collected by the county auditor; provided, however, that in counties where said fees would revert to the county revenue fund under existing laws, the county auditor may use said fees for the purchase of supplies necessary to carry out the provisions of this act or for additional clerk hire in his office. (Act Mar. 22, 1943, c. 163, §5.)
[279.35]

2176-16x. Application of act—Default—Penalties and interest reinstated.—This act shall not apply to any parcel of land which has become or hereafter may become the absolute property of the state in fee or in trust under the provisions of any law declaring a forfeiture of lands to the state for taxes. Failure to make any payment required by the confessed judgment within sixty days from the date on which payment was due shall constitute a default. In the event of default occurring in the payments to be made under any confessed judgment entered pursuant hereto, the penalties and interest waived under the terms of Section 2 hereof shall be reinstated and the lands described in such confessed judgment shall thereupon be subject to forfeiture according to the provisions of law applicable thereto. (Act Mar. 22, 1943, c. 163, §6.)
[279.35]

2176-16y. Not to make more than two confessions of judgment.—Not more than two confessions of judgment and agreement to pay in installments under this law affecting the same taxes or any portion thereof may be made by or on behalf of any owner of any particular right, title, interest in, or lien upon, any given parcel of land, his heirs, representatives or assigns. (Act Mar. 22, 1943, c. 163, §7.)
[279.35]

A second confession of judgment may be entered for taxes which have already been included in a confession of judgment under the former law wherein default has occurred in the terms of the agreement and confession. Op. Atty. Gen. (410a-10), Apr. 13, 1943.

A landowner who confessed judgment in 1941 and has made all his installment payments but is in default on his judgment because he failed to pay the 1941 taxes may confess judgment a second time under this act. Op. Atty. Gen. (412a-10), Apr. 26, 1943.

Computing amount of second confession of judgment after default in first confession. Op. Atty. Gen. (412a-10), Apr. 28, 1943.

2176-16z. Defaulted confessions of judgment may be reinstated.—Any person or persons who have confessed judgment for delinquent taxes pursuant to Extra Session Laws 1935, chapter 72, Extra Session Laws 1935, chapter 72 as amended by Laws 1937, chapter 486, Laws 1939, chapter 91, or Laws 1941, chapter 17, and who have defaulted in the payments to be made thereunder may remove the default and reinstate the confessed judgment by making and filing with the county auditor prior to December 31, 1943, a written request that the confessed judgment be reinstated and tendering therewith an amount sufficient to pay all delinquent installments with interest, together with proper receipts showing payment of the taxes, including current taxes, required to be paid by the confessed judgment. Upon receipt of the request and payment of all sums herein required, the county auditor shall note the reinstatement upon his records and shall immediately deliver the payment received by him to the county treasurer. (Act Apr. 7, 1943, c. 333, §1.)
[279.313]

A landowner who confessed judgment in 1941 and made all his installment payments but is in default on his judgment because he failed to pay the 1941 taxes may have relief under this act. Op. Atty. Gen. (412a-10), Apr. 26, 1943.

Taxpayer may proceed under this act in preference to making a second confession of judgment under Laws 1943, c. 163. Op. Atty. Gen. (412a-10), Apr. 28, 1943.

2176-16zz. Fee for reinstatement.—The person or persons reinstating such confession of judgment shall pay the county auditor a fee of fifty cents and a fee of fifty cents to the clerk of the court for the partial satisfaction of the judgment, which shall be collected by the county auditor; provided, however, that in counties where said fees would revert to the county revenue fund under existing laws, the county auditor may use said fees for the purchase of supplies necessary to carry out the provisions of this act or for additional clerk hire in his office. (Act Apr. 7, 1943, c. 333, §2.)
[279.313]

2176-16zzz. Application of act.—This act shall not apply to any parcel of land unless the delinquent taxes thereon, whether composed into the confessed judgment or subsequently delinquent, have been bid in for and are held by the state and not assigned by it when the request for reinstatement is filed with the county auditor, nor shall it apply to any parcel of land which has become the absolute property of the state in fee or in trust under the provisions of any law declaring a forfeiture of lands to the state for taxes. (Act Apr. 7, 1943, c. 333, §3.)
[279.313]

2176-26. Repurchase after forfeiture — Price — Special assessments reinstated—Interest.

Repurchase of land after forfeiture to state for taxes. Laws 1941, c. 43.

Reinstatement of repurchase agrements. Laws 1943, c. 603.

Where owner repurchases land under this act and city desires to acquire the land by purchase, city must perform all of conditions of former owner's contract of repurchase. Op. Atty. Gen. (425c-11), Oct. 4, 1939.

A city may take an assignment of a repurchase contract, but must pay contract balance. Op. Atty. Gen. (425c-11), Dec. 3, 1943.

2176-30. Same—Receipt—Certificate to tax commission; etc.

Agreements for repurchase of tax-forfeited land under extra session laws 1937, c. 88, which have terminated for default due to oversight or error may be reinstated. Laws 1941, c. 108.

Option to repurchase is automatically terminated by failure to pay installments or taxes, and no notice of cancellation is necessary. Op. Atty. Gen. (425c-6), July 5, 1940.

Where owner repurchases tax-forfeited property and assigns his interest to a third person and deed is issued directly to assignee, judgment docketed against assignor attached to interest of assignee. Op. Atty. Gen. (412a-23), Sept. 13, 1940.

Owner repurchasing property may assign his interest to a third person and have deed issued directly to assignee. Id.

If quitclaim deed was issued upon certificate of county auditor issued without authority after default in payment and proper petition for reinstatement was made and approved and taxes paid, commissioner of taxation may execute another quitclaim deed, though first deed is on record. Op. Atty. Gen. (425c-13), Oct. 29, 1941.

Where holder of unrecorded deed from record owner repurchased land and then defaulted in payment of one of installments, contract was automatically terminated, and a mortgagee of former record owner who subsequently completed payment of installments acquired nothing. Op. Atty. Gen. (425c-6), Feb. 23, 1943.

2176-30a. Repurchase of tax-forfeited lands—Reinstatement of agreements.—Any agreement for repurchase of tax-forfeited land under Extra Session Laws 1937, Chapter 88 [2176-26 to 2176-34], which has been terminated for default may be reinstated as herein provided upon petition of the purchaser under the agreement, his heirs or representatives, provided the default was due to oversight or error on the part of the purchaser or someone acting for him or of some official charged with the duty of administering the tax laws, and provided the land has not been resold. The petition shall state the grounds upon which reinstatement is prayed for, shall be verified, and shall be filed with the county auditor not later than December 31, 1941. The petitioner shall deposit therewith an amount sufficient to pay all delinquent installments due under the agreement, with interest, and all delinquent taxes, penalties, interest, and costs required to be paid under the agreement together with an amount equal to the taxes and assessments that would have been levied and payable but for the termination of such repurchase agreement; such taxes shall

be computed by the county auditor as in the case of omitted taxes that would have been assessed between the date of the termination of such agreement and the petition for reinstatement thereof. No proceedings for the resale of the land involved shall be suspended or otherwise affected by the filing or pendency of any such petition. (Act Apr. 1, 1941, c. 108, §1.)
[281.66]

County is entitled to collect any rents which accrue between time of default and time of reinstatement, but owner is entitled to use of property after reinstatement, subject to provisions of any existing lease executed by county, and entitled to all rentals accruing after reinstatement. Op. Atty. Gen. (148a-3), June 12, 1941.

If quitclaim deed was issued upon certificate of county auditor issued without authority after default in payment and proper petition for reinstatement was made and approved and taxes paid, commissioner of taxation may execute another quitclaim deed, though first deed is on record. Op. Atty. Gen. (425c-13), Oct. 29, 1941.

2176-30aa. Payments legalized.—In all cases where any county auditor and county treasurer have accepted payment of one or more delinquent installments of the purchase price of any repurchase contract, entered into for the repurchase of tax-forfeited lands, after the due date of such payment, and where such payments consisted of the full amount of the installment due with accrued interest, said payments are hereby legalized and made valid to the extent that they would have been legal if paid within the time specified in said repurchase contracts. (Act Apr. 1, 1943, c. 239, §2.)

2176-30b. Same—Duties of county auditor.—The county auditor shall present the petition to the county board at its next meeting; provided, that no petition shall be presented or acted upon after January 31, 1942. The board shall consider the petition and shall require such evidence as it deems necessary to enable it to ascertain the truth of the matters alleged. If the board finds upon the evidence that the petitioner is entitled to reinstatement hereunder, it shall adopt a resolution stating the facts and authorizing such reinstatement. Thereupon the county auditor shall note the reinstatement upon his records and shall pay over to the county treasurer the amount deposited by the petitioner, but if the petition be denied the deposit shall be refunded. If such reinstatement is made after May 1st, 1941, the county auditor shall levy taxes for the year 1941 on said land as in the case of omitted taxes. (Act Apr. 1, 1941, c. 108, §2.)
[281.67]

2176-34a. Repurchase of land after forfeiture—Who may—Time of repurchase.—The owner at the time of forfeiture or his heirs or representatives, or any person to whom the right to pay taxes was given by statute, mortgage or other agreement, may repurchase any parcel of land claimed by the state to be forfeited to the state for taxes, if such repurchase is made prior to November 1, 1941, unless prior to the time repurchase is made such parcel shall have been sold by the state as provided by law, for a sum equal to the aggregate of all delinquent taxes and assessments computed as provided by Section 2 of this act, without penalties or costs, with interest at 4 per cent from the time the taxes or assessments were or would have been delinquent. (Act Mar. 5, 1941, c. 43, §1.)
[282.24]

Repurchase of land after its forfeiture to the state for taxes. Laws 1943, c. 164.

Legalization of sales of tax forfeited lands and payments of delinquent installments on repurchase contracts. Laws 1943, c. 239.

Reinstatement of repurchase agreements. Laws 1943, c. 603.

Act does not place any limitation upon right of county board to sell or lease tax forfeited lands or to sell timber thereon and there is no provision which would authorize giving former owner any credit for amount of money received from sale of timber in determining amount necessary to repurchase. Op. Atty. Gen. (425c-13), Apr. 5, 1941.

State as owner of property after forfeiture is entitled to rents during period between time of forfeiture and repurchase. Op. Atty. Gen. (425c-13), Apr. 18, 1941.

No credit may be given for rentals collected by state after forfeiture. Id.

Act does not prevent county commissioners from having a sale of forfeited land before Nov. 1, 1941. Op. Atty. Gen. (425c-13), Apr. 21, 1941.

Old Age Assistance lien is revived by repurchase of tax forfeited land by owner, but effect of repurchase by mortgagee would depend on relative priority of respective liens. Op. Atty. Gen. (425C-13), Oct. 9, 1941.

Where two adjoining lots owned by different persons were forfeited to the state and county board appraised two lots together for purposes of sale because there was a building situated partly on one lot and partly on the other, son of deceased owner of one lot could repurchase that lot separately. Op. Atty. Gen. (425C-13), Oct. 22, 1941.

Where only an undivided one-fifth interest in a tract of land has become forfeited, owner of other undivided four-fifths may not repurchase the undivided one-fifth, unless he makes purchase for common benefit of himself and owner of one-fifth interest. Op. Aty. Gen. (425C-13), Oct. 23, 1941.

If court should hold that repurchase under 1937 act was invalid, because not made by an authorized person, land would revert to its previous status of tax-forfeited land, subject to sale, and to repurchase under this act. Id.

Land released to state for conservation uses is not subject to repurchase. Op. Atty. Gen. (425c-13), Oct. 27, 1941.

Statute for repurchase of forfeited lands is remedial in its purpose, and it is duty of court to give it full effect when reasonably possible. State v. Flach, 213M353, 6NW (2d)805. See Dun. Dig. 8950 (63), 9405a.

A "taking" under condemnation is not a "sale" by the state as provided by law, within meaning of this act. Id.

2176-34b. Same—Special assessments reinstated—Interest—Delinquent taxes defined.—Upon the repurchase of land pursuant to Section 1 of this act any special assessments heretofore canceled under Laws of 1935, Chapter 386 [2139-15 to 2139-27], or any other law, shall be reinstated by the county auditor and any such special assessments so reinstated which are payable in the future shall be paid at the time and in the manner said special assessments would have been payable except for forfeiture, except that special assessments payable in 1941 shall be paid in full at the time of repurchase. The sum of such special assessments that would except for forfeiture have been levied and assessed against such land between the date of forfeiture and January 1, 1941, and payable before such date, shall be computed by the county auditor and included in the purchase price hereunder. When an application to repurchase a parcel of land under this act is made the county auditor shall compute and determine as in the case of omitted taxes, upon the basis of the assessed valuation of such parcel in effect at the time of forfeiture, the amount of taxes that would have been assessed and levied against such parcel between the date of forfeiture and the date of repurchase, and the amount so determined without penalties and costs, with interest at 4 per cent, shall be included in the purchase price hereunder. When the term "delinquent taxes" is used in Section 1 of this act, it shall mean the sum of taxes and assessments without penalties or costs, with interest at 4 per cent to the date of repurchase from the time such taxes and assessments became delinquent, accrued against a parcel at the time of forfeiture, and also the sum of taxes and assessments without penalties or costs, with interest at 4 per cent to the date of repurchase from the time such taxes and assessments would have been delinquent that would have been levied and assessed against a parcel between the date of forfeiture and the date of repurchase, computed by the county auditor in the manner provided by this section. If the repurchase is made after May 1, the county auditor shall levy taxes for 1941 on the parcel as in the case of omitted taxes. (Act Mar. 5, 1941, c. 43, §2.)
[282.25]

2176-34c. Same—Installment payments—Time for—Current taxes.—A person repurchasing under Section 1 of this act shall pay at the time of repurchase not less than one-fifth of such repurchase price and shall pay the balance in ten equal annual installments, with the privilege of paying the unpaid balance in full at any time, with interest at the rate of 4 per cent on

the balance remaining unpaid each year, the first installment of principal and interest to become due and payable on October 31 of the year following the year in which the repurchase was made, the remaining installments to become due and payable on October 31 of each year thereafter until fully paid. He shall pay the current taxes each year thereafter before the same shall become delinquent up to the time when he shall pay the repurchase price in full. (Act Mar. 5, 1941, c. 43, §3.)
[282.26]

2176-34d. Same—Notice of payments.—The county auditor shall give notice by mail not later than September 30 of each year to the person or persons making such repurchase at the address given therein of the payment due under the repurchase on the following October 31. Failure to send or receive the notice shall not operate to postpone any payment or excuse any default under the repurchase. (Act Mar. 5, 1941, c. 43, §4.)
[282.27]

2176-34e. Same—Lease prior to repurchase.—Until repurchased all parcels of land subject to the provisions of this act shall be subject to lease under the provisions of Laws 1935, Chapter 386 [2139-15 to 2139-27] as amended, and any repurchase of such land under this act shall be subject to the provisions of any such existing lease. (Act Mar. 5, 1941, c. 43, §5.)
[282.28]

2176-34f. Same—Payments to county treasurer—Disposition of proceeds.—All payments under this act shall be made to the county treasurer of the county in which the parcel of land upon which such payments are made is located. Such payments shall be deposited by the county treasurer in the forfeited tax sale fund and be distributed in the manner in which other moneys in said fund are distributed. (Act Mar. 5, 1941, c. 43, §6.)
[282.29]

2176-34g. Same—Receipt—Certificate to commissioner of taxation—Conveyance—Default.—The purchaser shall receive from the county auditor at the time of repurchase a receipt, in such form as may be prescribed by the attorney general. When the purchase price of a parcel of land shall be paid in full, the following facts shall be certified by the county auditor to the commissioner of taxation of the state of Minnesota; the description of land, the date of sale, the name of the purchaser or his assignee, and the date when the final installment of the purchase price was paid. Upon payment in full of the purchase price, the purchaser or his assignee shall receive a quitclaim deed from the state, to be executed by the commissioner of taxation. Failure to make any payment herein required within 60 days from the date on which payment was due shall constitute default and upon such default the right, title and interest of the purchaser or his heirs, representatives or assigns in such parcel shall terminate without the doing by the state of any act or thing whatsoever. (Act Mar. 5, 1941, c. 43, §7.)
[282.30]

State does not retain any reservation of minerals in lands repurchased, provided such minerals were acquired by tax forfeiture proceedings. Op. Atty. Gen. (425C-13), Sept. 8, 1941.

2176-34h. Lands within game preserves and conservation areas, and conservation lands.—This act shall not apply to lands within the game preserve established by Laws 1929, Chapter 258, [5620-1 to 5620-13], [or conservation areas established by Laws of 1931, Chapter 407, [6452-1 to 6452-13], or by Laws of 1933, Chapter 402, [4031-75 to 4031-88], which included in the sum for which said lands were forfeited any ditch assessments, or to any lands classified as conservation lands under the authority of any existing law other than lands classified as conservation lands under Laws 1939, Chapter 328, [2139-15 to 2139-23, 2139-27*l* to 2139-o, 5620-13½b, 5620-13½ d]. (Act Mar. 5, 1941, c. 43, §8.)
[282.31]

2176-34i. Same—Removal of minerals and timber-enhancing value.—When any forfeited lands are repurchased, as provided for in this act, no structure, minerals, sand, gravel, top-soil, subsoil or peat shall be removed, nor shall any timber or timber products be cut and removed until the purchase price has been paid in full. Nothing in this section, however, shall be construed as prohibiting the removal of such sand, gravel, top-soil, subsoil or peat as may be incidental to the erection of structures on such repurchased lands or to the grading of such lands whenever such removal or grading shall result in enhancing the value thereof. (Act Mar. 5, 1941, c. 43, §9.)
[282.32]

2176-34j. Same—Separability clause.—If any section or part of this act shall be declared to be unconstitutional or invalid for any reason, the remainder of this act shall not be affected thereby. (Act Mar. 5, 1941, c. 43, §10.)

2176-34k. Owner of forfeited land may repurchase.—The owner at the time of forfeiture or his heirs or representatives, or any person to whom the right to pay taxes was given by statute, mortgage or other agreement, may repurchase any parcel of land claimed by the state to be forfeited to the state for taxes, if such repurchase is made prior to November 1, 1943, unless prior to the time repurchase is made such parcel shall have been sold by the state as provided by law, or proceedings which have been commenced by the state or any of the political subdivisions or by the United States to condemn such parcel of land, for a sum equal to the aggregate of all delinquent taxes and assessments computed as provided by section 2 of this act, without penalties or costs, with interest at four per cent from the time the taxes or assessments were or would have been delinquent. (Act Mar. 22, 1943, c. 164, §1.)
[281.621]

Right of bankrupt to redeem from tax sale passes to trustee in bankruptcy, but right to purchase land from the state after title has passed does not pass to trustee. Cobleigh v. State Land Office Board, 305 Mich 434, 9NW (2d)665. See Dun. Dig. 746, 747.

Holder of a contract for a deed, whether active or in default, with right or obligation to pay taxes is entitled to repurchase, provided contract has not been terminated in some manner. Op. Atty. Gen. (425c-13), July 8, 1943.

Repurchase available to owners of lands described as being within White Earth State Forest but not actually acquired by the state for that purpose. Op. Atty. Gen. (425c-13), Sept. 29, 1943.

2176-34*l*. Special assessments to be reinstated.—Upon the repurchase of land pursuant to section 1 of this act any special assessments heretofore cancelled under Mason's Supplement 1940, Sections 2139-15 to 2139-27, as amended, or any other law, shall be reinstated by the county auditor and any such special assessments so reinstated which are payable in the future shall be paid at the time and in the manner said special assessments would have been payable except for forfeiture, except that special assessments payable in 1943 shall be paid in full at the time of repurchase. The sum of such special assessments that would except for forfeiture have been levied and assessed against such land between the date of forfeiture and January 1, 1943, and payable before such date, shall be computed by the county auditor and included in the purchase price hereunder. When an application to repurchase a parcel of land under this act is made the county auditor shall compute and determine as in the case of omitted taxes, upon the basis of the assessed valuation of such parcel in effect at the time of forfeiture, the amount of taxes that would have been assessed and levied against such parcel between the date of forfeiture and the date of re-

purchase, and the amount so determined without penalties and costs, with interest at four per cent, shall be included in the purchase price hereunder. When the term "delinquent taxes" is used in section 1 of this act, it shall mean the sum of taxes and assessments without penalties or costs, with interest at four per cent to the date of repurchase from the time such taxes and assessments became delinquent, accrued against a parcel at the time of forfeiture, and also the sum of taxes and assessments without penalties or costs, with interest at four per cent to the date of repurchase from the time such taxes and assessments would have been delinquent that would have been levied and assessed against a parcel between the date of forfeiture and the date of repurchase, computed by the county auditor in the manner provided by this section. If the repurchase is made after May 1, the county auditor shall levy taxes for 1943 on the parcel as in the case of omitted taxes. (Act Mar. 22, 1943, c. 164, §2.)
[281.621]

Repurchase of tax-forfeited land after May 1 does not require inclusion of 1943 tax in repurchase price, but such tax is to be assessed and levied as omitted taxes. Op. Atty. Gen. (425c-13), Sept. 22, 1943.

2176-34m. Payments to be made under act.—A person repurchasing under section 1 of this act shall pay at the time of repurchase not less than one-tenth of such repurchase price and shall pay the balance in ten equal annual installments, with the privilege of paying the unpaid balance in full at any time, with interest at the rate of four per cent on the balance remaining unpaid each year, the first installment of principal and interest to become due and payable on December 31 of the year following the year in which the repurchase was made, the remaining installments to become due and payable on December 31 of each year thereafter until fully paid. He shall pay the current taxes each year thereafter before the same shall become delinquent up to the time when he shall pay the repurchase price in full. (Act Mar. 22, 1943, c. 164, §3.)
[281.621]

2176-34n. Notice by county auditor.—The county auditor shall give notice by mail not later than November 30 of each year to the person or persons making such repurchase at the address given therein of the payment due under the repurchase on the following December 31. Failure to send or receive the notice shall not operate to postpone any payment or excuse any default under the repurchase. (Act Mar. 22, 1943, c. 164, §4.)
[281.621]

2176-34o. Lands may be leased.—Until repurchased all parcels of land subject to the provisions of this act shall be subject to lease under the provisions of Mason's Supplement 1940, Sections 2139-15 to 2139-27, as amended, and any repurchase of such land under this act shall be subject to the provisions of any such existing lease. (Act Mar. 22, 1943, c. 164, §5.)
[281.621]

2176-34p. Payments to be made to the county treasurer.—All payments under this act shall be made to the county treasurer of the county in which the parcel of land upon which such payments are made is located. Such payments shall be deposited by the county treasurer in the forfeited tax sale fund and be distributed in the manner in which other moneys in said fund are distributed. (Act Mar. 22, 1943, c. 164, §6.)
[281.621]

2176-34q. Form of receipt.—The purchaser shall receive from the county auditor at the time of repurchase a receipt, in such form as may be prescribed by the attorney general. When the purchase price of a parcel of land shall be paid in full, the following facts shall be certified by the county auditor to the commissioner of taxation of the state of Minnesota: the description of land, the date of sale, the name of the purchaser or his assignee, and the date when the final installment of the purchase price was paid. Upon payment in full of the purchase price, the purchaser or his assignee shall receive a quit claim deed from the state, to be executed by the commissioner of taxation. Failure to make any payment herein required within sixty days from the date on which payment was due shall constitute default and upon such default the right, title and interest of the purchaser or his heirs, representatives or assigns in such parcel shall terminate without the doing by the state of any act or thing whatsoever. (Act Mar. 22, 1943, c. 164, §7.)
[281.621]

2176-34r. Application of act.—This act shall not apply to lands zoned by any county board as non-agricultural lands, unless such repurchase is approved by the County Board or to lands within the game preserve established by Laws 1929, chapter 258, or conservation areas established by Laws of 1931, chapter 407, or by Laws of 1933, chapter 402 which included in the sum for which said lands were forfeited any ditch assessments, or to any lands classified as conservation lands under the authority of any existing law other than lands classified as conservation lands under Laws 1939, chapter 328. (Act Mar. 22, 1943, c. 164, §8.)
[281.621]

Land in a "restricted" zone passed under Laws 1939, c. 340, held not non-agricultural so as to prevent repurchase under this act. Op. Atty. Gen. (425c-13), Apr. 13, 1943.

Act applies to lands classified as conservation under Laws 1939A, c. 328. Op. Atty. Gen. (425c-13), Oct 11, 1943.

Repurchase applies to lands classified as agricultural within conservation area established by Laws 1933, c. 402, which included in the sum for which lands were forfeited no ditch assessments. Op. Atty. Gen. (425c-13), Oct. 21, 1943.

2176-34s. Not to remove structures, timber, etc., until payment is made in full.—When any forfeited lands are repurchased, as provided for in this act, no structure, minerals, sand, gravel, topsoil, subsoil or peat shall be removed, nor shall any timber or timber products be cut and removed until the purchase price has been paid in full. Nothing in this section however, shall be construed as prohibiting the removal of such sand, gravel, topsoil, subsoil or peat as may be incidental to the erection of structures on such repurchased lands or to the grading of such lands whenever such removal or grading shall result in enhancing the value thereof. (Act Mar. 22, 1943, c. 164, §9).
[281.621]

2176-34t. Reinstatement of agreements on tax forfeited lands.—Any agreement for repurchase of tax-forfeited land under Extra Session Laws 1937, Chapter 88, or Laws 1939, Chapter 283, or Laws 1941, Chapter 43, which has been terminated for default may be reinstated as herein provided upon a written request by the purchaser under the agreement, his heirs or representatives, filed with the county auditor not later than December 31, 1944, provided the land has not been resold. The petitioner shall deposit therewith an amount sufficient to pay all delinquent taxes, penalties, interest and costs required to be paid under the agreement, together with an amount equal to the taxes and assessments that would have been levied and payable but for the termination of such repurchase agreement; such taxes shall be computed by the county auditor as in the case of omitted taxes that would have been assessed between the date of the termination of such agreement and the petition for reinstatement thereof. (Act Apr. 24, 1943, c. 603, §1.)

2176-34u. Auditor to note reinstatement—Taxes to be levied on lands.—Thereupon the county auditor shall note the reinstatement upon his records and shall pay over to the county treasurer the amount de-

posited by the petitioner. If such reinstatement is made after May 1st, 1943, the county auditor shall levy taxes for the year 1943 on said land as in the case of omitted taxes. (Act Apr. 24, 1943, c. 603, §2.)

2176-38. Owner may repurchase homestead lands after forfeiture.

Reinstatement of repurchase agreements. Laws 1943, c. 603.

An heir entitled to an undivided interest may repurchase his particular interest and certificate may be issued in his name, or he may purchase whole estate, in which case certificate must run to all owners, according to their shares at time of forfeiture, and should state by whom purchase price was paid. Op. Atty. Gen. (412a-23), Sept. 19, 1939.

Where repurchase is made by a mortgagee, certificate of purchase must be in name of owner at time of forfeiture, subject to rights of person who pays the purchase price. Id.

Holder of an unrecorded deed at time of forfeiture may repurchase, and certificates of purchase should be made to him as grantee. Id.

If record owner is living and has been receiving old age assistance, a son or an adopted son claiming to be owner of half of the property may, upon proving to satisfaction of auditor that he is owner of a half interest, repurchase such half interest or the whole estate, but if he repurchases whole estate, certificates should be made to him and to his father in equal undivided shares, subject to rights connected with payment of purchase price by him. Id.

One with an undivided interest in land would not have right to repurchase any particular acreage, but only an undivided interest. Id.

2176-39. Amount required to be paid—Application to county board—Hearing and determination.

Laws 1943, c. 535, §1, provides that: Where a repurchase of tax forfeited lands under Laws 1939, c. 283, was made prior to Aug. 10, 1939, without compliance with the provisions of §2 thereof and where a deed to such repurchased land has been made by the state pursuant to such repurchase, such sale is hereby confirmed and such deed is hereby ratified and confirmed.

2176-44. Auditor to issue receipt.

County auditor may not reinstate any contract for repurchase or accept default payment, though Laws 1941, c. 108, provides for reinstatement of defaulted contract made under earlier repurchase act. Op. Atty. Gen. (425C-6), Feb. 3, 1942.

2176-45. Application of act.

Former owner may repurchase lands within conservation area which have never been subject to a ditch lien. Op. Atty. Gen. (921g), Sept. 28, 1939.

2176-47. Owner may repurchase homestead; etc.

State retains no mineral reservation in tax forfeited lands repurchased by owner. Op. Atty. Gen. (425C-13). Jan. 13, 1942.

REFUNDMENT

2177. On sale or assignment, when allowed.

Statutes do not provide a remedy for a purchaser of an invalid state assignment certificate issued by the county auditor after the stated period of redemption. Op. Atty. Gen. (409c-2), Apr. 7, 1943.

2178. In case of exemption.

Where tax-forfeited lands were sold on May 17, and county auditor after sale spread taxes against property for that year, attempt of auditor to impose the taxes was ineffective and entry on tax list for that year should be removed by proper marginal note, and if taxes were paid they should be returned by county board upon proper claim without necessity of any proceedings before State Department of Taxation. Op. Atty. Gen. (424a-9), Sept. 21, 1940.

2180. Limitation on right.

The fact that taxpayers remained in ignorance of the existence of their cause of action to recover taxes paid Minnesota county on islands in Canada did not toll the statute of limitations. Pettibone v. Cook County, (CCA 8), 120F(2d)850, aff'g (DC-Minn), 31FSupp881. See Dun. Dig. 2300, 3744, 5602, 5609, 9520a, 9530, 9676, 9678a.

2184. Excess taxes under Laws 1889, c. 322.

Statutes do not provide a remedy for a purchaser of an invalid state assignment certificate issued by the county auditor after the stated period of redemption. Op. Atty. Gen. (409c-2), Apr. 7, 1943.

2184-4. Resale of state land previously sold, for delinquent taxes—Refundments.—

Subdiviion 1. Refundment may be made as provided in this subdivision in any case where state school land or other trust fund land previously sold by the state upon a certificate of sale providing for deferred payments has again been sold for delinquent taxes to an actual purchaser under the following conditions:

(a) That at the time of the tax sale there was an unpaid amount owing under the prior trust fund land certificate less than the purchase price paid at the tax sale;

(b) That the rights of the purchaser under the trust fund land certificate were not finally terminated by reason of default therein, but passed to the purchaser at the tax sale, subject to payment of the amount owing under the prior certificate;

(c) That the purchaser at the tax sale acted in good faith and without actual knowledge of the fact that the land was state trust fund land or that it was subject to payment of the amount owing under the trust fund land certificate;

(d) That the purchase price at the tax sale was based upon an appraisal or valuation of the land, but that no allowance for the amount owing under the trust fund land certificate was made in determining such price.

Upon application of the purchaser at the tax sale or his successor in interest and upon satisfactory proof of the existence of the specified conditions, the county board of the county in which the land is situated shall ascertain the amount owing under the certificate of trust fund land sale at the time of the tax sale, including principal and interest then accrued, but without further interest, and shall order such amount refunded to the applicant, to be paid as provided in Subdivision 5. Such refundment shall not affect the validity of the tax deed or certificate of sale, which shall remain in effect as if the purchase price thereunder had been reduced by the amount of the refundment.

Subdivision 2. Refundment may be made in like manner as provided in Subdivision 1, subject to the further provisions hereof, in any case where land has been sold for delinquent taxes under the same conditions as specified in Subdivision 1 except that the total amount owing under the trust fund land certificate at the time of the tax sale equaled or exceeded the amount of the purchase price paid at such sale. In such case any subsequent taxes, penalties, interest, and costs paid by the purchaser or his successors in interest shall also be refunded, but the total amount refunded shall not exceed the total amount actually paid by the purchaser or his successors. As a condition of refundment under this subdivision, the tax deed or certificate of sale shall be surrendered and cancelled and the tax obligations against the land shall be reinstated as provided in Subdivision 4.

Subdivision 3. Refundment may be made in like manner as provided in Subdivision 1, subject to the further provisions hereof, in any case where state school land or other trust fund land previously sold by the state upon a certificate of sale providing for deferred payments has again been sold or assigned for delinquent taxes to an actual purchaser or assignee under the following conditions:

(a) That at the time of the tax sale or assignment there was an unpaid amount owing under the prior trust fund land certificate, it being immaterial whether such amount was greater or less than the purchase price paid at the tax sale or assignment;

(b) That the state had either cancelled the trust fund land certificate for non-payment of the amount due thereon and had reoffered the land for sale, or that the land still remained subject thereto;

(c) That the purchaser or assignee at the tax sale or assignment acted in good faith and without knowledge of the fact that the land was state trust fund land or that it was subject to the aforesaid conditions attaching thereto;

(d) That the purchase price paid at the tax sale or assignment was fixed by law and was not subject to appraisal or adjustment according to the value of the land.

In such case any subsequent taxes, penalties, interest, and costs paid by the purchaser or assignee or his successors in interest shall also be refunded, but the total amount refunded shall not exceed the total amount actually paid by the purchaser or assignee or his successors. As a condition of refundment under this subdivision, the tax deed or certificate of sale or assignment shall be surrendered and cancelled and the tax obligations against the land shall be reinstated as provided in Subdivision 4.

Subdivision 4. In any case where refundment is allowed under Subdivision 2 or Subdivision 3, the applicant shall, as a condition of the refundment, surrender the tax deed or certificate of sale or assignment for cancellation, and shall deliver to the county auditor an instrument in such form as may be prescribed by the attorney general, executed by the applicant and by any other necessary parties in interest, witnessed and acknowledged as a conveyance, releasing and conveying to the state all right, title, and interest in the land acquired by virtue of the tax deed or certificate of sale or assignment or by virtue of any subsequent taxes, penalties, interest, and costs paid by the purchaser or assignee or his successors in interest and included in the refundment, and consenting to the cancellation of the tax deed or certificate of sale or assignment and of such subsequent payments. The execution and sufficiency of the instrument shall be approved by the county attorney. Thereupon the county auditor shall cancel upon his records the tax sale or assignment and any such subsequent payments, reinstating against the land all tax judgments, taxes, assessments, penalties, interest and costs covered thereby in like manner as if the sale or assignment or subsequent payments had not been made. If the land was sold directly to an actual purchaser at tax judgment sale and the certificate of such sale is cancelled hereunder, the land shall be deemed to have been bid in for the state at such sale as provided by law. If the tax deed or certificate of sale or assignment or any other instrument pertaining to the proceedings has been recorded with the register of deeds, the auditor shall execute a certificate of such cancellation, in such form as the attorney general may prescribe, and shall record the same, together with the instrument obtained from the applicant, with the register of deeds.

Subdivision 5. Every refundment authorized under this section shall be paid by warrant of the county auditor upon the county treasurer and shall be charged against the funds which benefited by the proceeds of the tax sale or assignment in proportion to the benefit, so far as practicable, or, if no special fund be available or properly chargeable therewith, against the general revenue fund of the county, as the county board may determine. (Act Apr. 16, 1941, c. 273, §1.)

Subd. 3.

"Costs" refers only to costs attaching up to and including tax judgment sale, and does not include payments to purchaser of any amounts which he may have expended in forfeiture proceedings, such as sheriff's fees and mileage and publication of notice of expiration of time of redemption. Op. Atty. Gen. (424A-16), Sept. 9, 1941.

ACTIONS INVOLVING TAX TITLES

2185. Tax judgment or sale set aside—Lien.

In a county under town system of relief, member of town board may receive relief without resigning, but in doing so he would be guilty of a misdemeanor. Op. Atty. Gen. (359A-19), Jan. 19, 1942.

Town clerk is not a member of town board and may receive relief. Id.

2188. Action to quiet title.

Where plaintiff's allegation of ownership did not disclose to defendants that she was relying on a tax deed, defendants could not be required to have alleged fraud in order to introduce evidence thereof under general denial. Turner v. E., 207M455, 292NW257. See Dun. Dig. 3826, 7585.

One who enters into a collusive agreement with a life tenant for purpose of defeating interests of remaindermen cannot enforce a lien on property for amount paid to acquire title thereto at a tax sale. Id. See Dun. Dig. 3167.

County attorney cannot represent a purchaser of tax title in action to quiet title where land involved prior to expiration of redemption was owned by old age assistance recipient and state is made a party defendant. Op. Atty. Gen. (121B), Sept. 12, 1940.

As affecting purchase by school district of tax title lands, a tax title is not a good marketable title until title has been quieted by action, since a tax title is subject to many errors and mistakes, which might be raised at any time within 15 years by original owner. Op. Atty. Gen. (425c-12), Sept. 12, 1940.

2190-1. Action to try title; etc.

Procedure for cancellation of forfeiture should be had under this act in any case where land has been sold by the state unless interest of purchaser has first been disposed of by some other judicial action or voluntary settlement, and action should also be had under this act where amount claimed by purchaser is more than amount paid as purchase price because of improvements made or other reasons. Op. Atty. Gen. (409a-1), June 5, 1941.

2190-2. Same—Persons entitled to sue; etc.

County attorney cannot represent a purchaser of tax title in action to quiet title where land involved prior to expiration of redemption was owned by old age assistance recipient and state is made a party defendant. Op. Atty. Gen. ((121B), Sept. 12, 1940.

County atorney may not act as atorney for private party in action to quiet title to tax-forfeited land, even though state may have no substantial interest. Op. Atty. Gen. (121A-7), Oct. 23, 1941.

Section was enacted primarily to apply to lands claimed to have been forfeited to the state under present laws, but is probably broad enough to apply to cases arising under earlier laws. Op. Atty. Gen. (425i), Nov. 14, 1942.

2190-4. Same—Claimant to deposit taxes in court; etc.

Provisions are mandatory and must be complied with by a party claiming adversely to the state in an action respecting lands claimed to have been forfeited to the state for taxes, and this is true in an action or proceeding to register title to land. Bonley, 213M214, 6NW (2d)245. See Dun. Dig. 9534.

2190-5. Same—State may bring action to quiet title; etc.

Op. Atty. Gen. (374g), Dec. 4, 1940; note under §2190-11.

Forfeiture proceedings invalid for indefinite description cannot be cured in action to quiet title. Op. Atty. Gen. (374g, 412a-13), May 18, 1942.

County should not pay costs when judgment entered by stipulation did not so provide. Op. Atty. Gen. (410b), Apr. 26, 1943.

2190-6. Same—County attorney or attorney general to bring action.

County attorney is not entitled to additional compensation. Op. Atty. Gen. (121B-21), June 10, 1940.

Action to evict parties from real estate which has been forfeited to the state should be brought in name of the state, but it is not necessary that any action be taken by any state department or officer before proceedings are begun by the proper county authority. Op. Atty. Gen. (700-d), July 3, 1941.

County attorney has authority to bring an action in the name of the state for the recovery of possession of tax forfeited real estate after judgment has been entered quieting title in the state in trust for the taxing districts. Op. Atty. Gen. (121b-21), June 4, 1943.

2190-7. Same—Venue—Lands included in suit.

County attorney may join in one action as many parcels of land as he deems advisable, within authority given him by county board, whether forfeiture occurred before or after passage of this act, and may quiet title to parcels of tax forfeited lands which have been sold under installment contracts to prevent default by a purchaser because of doubtful title. Op. Atty. Gen., (374G), April 9, 1940.

2190-11. Same—Service of summons; etc.

Notice of lis pendens need not be filed or published in an action under this act. Op. Atty. Gen. (374g), Dec. 4, 1940.

In publishing summons pursuant to §10933-12, effect should be given to Laws 1941, c. 103, which amended §10937 prior to its repeal. Op. Atty. Gen. (83f), May 19, 1942.

2190-15. Same—Present laws to govern.

Op. Atty. Gen. (374g), Dec. 4, 1940; note under §2190-11.

2190-16. Same—Defects in proceedings.

Trial court could properly find that failure to serve notice of expiration of period of redemption upon wife as well as husband was fatal to jurisdiction of the authorities in the proceeding. McHardy v. State, 215M132, 9NW(2d)427. See Dun. Dig. 9533.

Failure of posted notice of expiration of redemption to designate name of assessed owner as carried on official assessment books rendered tax forfeiture proceedings fatally defective. McHardy v. State, 215M141, 9NW(2d) 432; McHardy v. State, 215M146, 9NW(2d)435. See Dun. Dig. 9440.

2190-19. Same—Lien for taxes in case forfeiture is invalidated—Exceptions—Enforcement—Sale.

Effect on purchaser from the state of defect in notice of expiration of period of redemption. McHardy v. State, 215M132, 9NW(2d)427; McHardy v. State, 215M141, 9NW (2d)432; McHardy v. State, 215M146, 9NW(2d)435; note under §2164-12, 281.23.

2190-20. Same—Act to be supplementary.

Op. Atty. Gen. (374g), Dec. 4, 1940; note under §2190-11.

MISCELLANEOUS PROVISIONS

2191. Lien of real estate taxes.

Op. Atty. Gen. (59a-1), Sept. 27, 1939; note under §1990.

2. When attaches.

Where land is purchased in September, 1936, and taxes for 1936 are paid during 1937, payment is deductible in computation of income tax for 1937, since it cannot be considered a capital expenditure. Spaeth v. Hallam, 211 M156, 300NW600. See Dun. Dig. 9570d.

Where tax-forfeited lands were sold on May 17, and county auditor after sale spread taxes against property for that year, attempt of auditor to impose the taxes was ineffective and entry on tax list for that year should be removed by proper marginal note, and if taxes were paid they should be returned by county board upon proper claim without necessity of any proceedings before State Department of Taxation. Op. Atty. Gen. (424a-9), Sept. 21, 1940.

Where taxpayer purchased land in September, 1936, and paid the 1936 taxes in 1937, making his return on cash receipts and disbursements basis, such payment of taxes in 1937 constituted a deduction from income taxes for 1937, and not merely a payment of part of capital costs of acquiring property. Hallam, MBTA(33), Nov. 28, 1940.

Church parsonage acquired after May 1 is not exempt from real estate taxes for the year. Op. Atty. Gen. (414D-12), Mar. 3, 1942.

Where an option to purchase state land was obtained in December, 1940, and on March 2, 1941, state had deed prepared and ready for delivery, at which time purchaser did not have funds to complete deal, and deed was delivered to purchaser and recorded on June 2, 1941, and purchaser was required to pay rent to state from December 14 to June 2, 1941, land was not subject to tax for year 1941, and taxes levied for that year are absolutely void. Op. Atty. Gen. (232D), Mar. 6, 1942.

6. Conflict of liens.

A tax lien is superior to lien under old-age assistance law. Op. Atty. Gen. (521p-4), June 4, 1942.

2192. Assessments for local improvements in cities.

City ordinances attempting to recoup losses of city on special improvements (sewer and water mains) assessed against a parcel of land forfeited to state for nonpayment of taxes by imposing upon purchaser from state a connection fee equal to the unrealized portion of the assessment as condition of using water and sewer facilities violated state law and city charter. Fortman v. City of Minneapolis, 212M340, 4NW(2d)349. See Dun. Dig. 9166, 9167.

2199. Lien of personal property taxes.

This section was amended by §2199-1 so that lien attaches from and after May 1 in year in which levied. Op. Atty. Gen. (421a-9), May 25, 1940.

2199-1. Lien of taxes on personal property—Nature, extent and priority; etc.

A personal tax judgment is not a lien against the homestead, but no personal property, including household goods, is exempt from execution. Op. Atty. Gen. (421a-16), Sept. 25, 1939.

Section is constitutional. Op. Atty. Gen. (520i), Oct. 20, 1939.

Lien applies to all personal property taxes whether judgment has been entered or not, and is effective from time tax books are received by county treasurer. Id.

Law as amended is not retroactive. Id.

A lien for personal property taxes is superior to a lien of a chattel mortgage on file. Op. Atty. Gen. (520i), Dec. 8, 1939.

This amended §2199 so that lien attaches to all personal property of person assessed from and after May 1 of the year in which levied. Op. Atty. Gen. (421a-9), May 25, 1940.

Where money and credit assessment are paid prior to entry of judgment, taxpayer is required to pay interest on tax as well as cost in connection with issuance of citation and of sheriff for return of not found. Op. Atty. Gen. (421a-8), Oct. 18, 1940.

Prior to amendment in 1937, a chattel mortgage became a lien prior to taxes subsequently levied. Op. Atty. Gen. (520i), Feb. 2, 1943.

2200. Interest on unpaid taxes.

Where money and credit assessment are paid prior to entry of judgment, taxpayer is required to pay interest on tax as well as cost in connection with issuance of citation and of sheriff for return of not found. Op. Atty. Gen. (421a-8), Oct. 18, 1940.

Personal property and money and credits taxes, upon which penalties have already been imposed, do not bear interest prior to judgment. Op. Atty. Gen., (421-2-8), Jan. 16, 1941.

2202. Not to apply to certain taxes.

Personal property and money and credits taxes, upon which penalties have already been imposed, do not bear interest prior to judgment. Op. Atty. Gen., (421-2-8), Jan. 16, 1941.

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

Subdivision 1. No structures, standing timber, minerals, sand, gravel, peat, subsoil or top-soil 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, minerals, sand, gravel, peat, subsoil or top-soil 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, minerals, sand, gravel, peat, subsoil or top-soil therefrom until such taxes are paid. No bond shall be required of plaintiff in such suit.

Subdivision 2. The county auditor may enter into an agreement with the taxpayer for the removal of any structures, standing timber, minerals, sand, gravel, peat, subsoil or top-soil from the property of the taxpayer upon which taxes are due and payable, which agreement shall provide that the entire sale price thereof, or the reasonable market value thereof, whichever is the greater, or if the property is not sold, then the fair market value thereof is to be paid to the county treasurer to be applied upon the taxes on said property, penalties, costs and interests, in the inverse order to that in which such taxes were levied, to be applied as follows: (1) upon the penalties, costs and interest, (2) upon the taxes levied; and the same procedure shall be followed for each year's taxes until the entire sum so paid shall have been applied; provided that if the judgment for any such delinquent taxes shall have been partially paid, it shall not affect the right of the State to forfeit the title to such lands in the event of the failure to redeem the same; provided, further, that the contract between the county auditor and the taxpayer shall provide that said contract shall be fully completed prior to the time that the title to said property would otherwise forfeit to the State; and provided, further, that the county auditor may, if in his opinion it is necessary to protect the State, demand that the taxpayer make, execute and deliver a bond to the State in such an amount as may be necessary in the opinion of the county auditor to protect the State, to insure the payment to the county treasurer of the purchase price or the reasonable market value of the property removed from said land under said agreements; and provided, further, that nothing herein, however, shall be construed as prohibiting the removal of such sand, gravel, peat, subsoil or top-soil as may be incidental to the erection of structures on said land, or to the grading of said land, whenever such removal or grading shall result in enhancing the value thereof; nor shall anything herein be construed as prohibiting the removal of the overburden on mine properties; provided, further, that the removal of any structures, standing timber, minerals, sand, gravel, peat, subsoil or top-soil under such agreements with the county auditor shall not be construed to be in violation of this act. (As amended Act Apr. 24, 1941, c. 397, §1.)

[272.38]

State fire marshall has authority to condemn and order the removal of any fire hazards regardless of the fact that taxes on the property involved are delinquent. Op. Atty. Gen. (197c), July 9, 1941.

Fire marshal may condemn structure on which taxes are being paid under confession of judgment, but owner may not sell and remove building without an agreement with county auditor and payment of proceeds to county treasurer. Op. Atty. Gen. (412a-24), Oct. 29, 1941.

Building may be removed from land on which there are no taxes due any time before January 1. Op. Atty. Gen. (412a-24), Dec. 2, 1941.

2204. Structures, etc., may be seized.—Any structure, timber, minerals, sand, gravel, peat, subsoil, or top-soil removed from any tract of land upon which taxes are due and payable 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 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, minerals, sand, gravel, peat, subsoil or top-soil if known, and, if unknown, shall be deposited in the county treasury subject to the right of the owner. (As amended Act Apr. 24, 1941, c. 397, §2.)

[272.39]

2205. Penalty for removal.—Any person who shall remove or attempt to remove any structure, timber, minerals, sand, gravel, peat, subsoil or top-soil from any tract of land contrary to the provisions of this chapter, after such taxes become due and payable, and before the same have been fully paid and discharged, shall be guilty of a gross misdemeanor. (As amended Act Apr. 24, 1941, c. 397, §3.)

[272.40]

This section does not apply after land has been forfeited to state. Op. Atty. Gen. (412a-24), June 6, 1940.

2206. Right to assess and collect.

If all assessments have been timely and properly made, there is a 6 year period of limitations with respect to action to enforce collection of moneys and credits taxes and no limitation with respect to personal property taxes. Op. Atty. Gen. (421a-8), Oct. 18, 1940.

Two year statute of limitations against actions for penalties or forfeitures is not applicable to a tax penalty, and especially a tax penalty upon a privilege tax such as gross premium taxes. Op. Atty. Gen. (254d), Nov. 7, 1940.

2209. Taxes paid by mortgagees, etc.

A weed lien is good as against mortgagee who subsequently obtained possession of the land. Op. Atty. Gen. (322a-2), Nov. 7, 1939.

Where part of land upon which judgment was confessed was subject to a mortgage which was foreclosed, there can be no partial relief from confession of the judgment on application of the confessor, but mortgagee may, if individual lots have been separately assessed, pay full amount due for taxes, penalties, interest, and costs, without regard to the confession of judgment, upon each parcel so assessed which is subject to his mortgage, or to which he may have acquired title through foreclosure, and if individual lots have not been separately assessed, mortgagee may apply to county auditor for determination of proportionate amount due upon property which is subject to his mortgage or to which he may have acquired title through foreclosure, and after these payments confession of judgment for proportionate amount appertaining to remainder of property remained standing subject to all original conditions. Op. Atty. Gen. (412a-10), Dec. 12, 1940.

2211. Payment of taxes before recording of transfer—Certain violations gross misdemeanors.—When a deed or other instrument conveying land, or a plat of any townsite or addition thereto, is presented to the county auditor for transfer, he shall ascertain from his records if there be taxes due upon the land described therein, or if it has been sold for taxes. If there are taxes due, he shall certify to the same; and upon payment of such taxes, and of any other taxes that may be in the hands of the county treasurer for collection or in case no taxes are due, he shall transfer the land upon the books of his office, and note upon the instrument, over his official signature, the words, "taxes paid and transfer entered," or, if the land described has been sold or assigned to an actual purchaser for taxes, the words "paid by sale of land described within"; and, unless such statement is made upon such instrument, the register of deeds or the registrar of titles shall refuse to receive or record the same; provided, that sheriff's or referees' certificates of sale on execution or foreclosure of a lien or mortgage, decrees and judgments, receivers' receipts, patents, and copies of town or village plats, in case the original plat filed in the office of the register of deeds has been lost or destroyed, and instruments releasing, removing and discharging reversionary and forfeiture provisions affecting title to land and instruments releasing, removing or discharging easement rights in land or building or other restrictions, may be recorded without such certificate; and, provided that instruments conveying land and, as appurtenant thereto an easement over adjacent tract or tracts of land, may be recorded without such certificate as to the land covered by such easement; and, provided, further, that any instrument granting an easement made in favor of any public utility in the nature of a right of way over, along, across or under a tract of land may be recorded without such certificate as to the land covered by such easement.

A violation of this section by the register of deeds or the registrar of titles shall be a gross misdemeanor, and, in addition to the punishment therefor, he shall be liable to the grantee of any instrument so recorded for the amount of any damages sustained. (As amended Apr. 16, 1943, c. 475, §1.)

Conveyances of highway easements and leases of gravel pit to a county need not bear auditor's certificate as to payment of taxes as a prerequisite to their record. Op. Atty. Gen. (373B-17(e)), Oct. 7, 1939.

A register of deeds should not accept a contract for deed for record unless usual certificate as to payment of taxes is attached thereto. Op. Atty. Gen., (373B-9(e)), April 25, 1940.

Where a village acquires deed to land which has been sold to the state for delinquent taxes, village need not pay the delinquent taxes and state cannot proceed to forfeiture and deed to the village should be recorded without payment of taxes. Op. Atty. Gen., (414a-11), May 7, 1940.

Register of deeds can properly refuse to record a conveyance of mineral rights, which has not heretofore been separated from fee title, without certificate from county auditor and treasurer that all taxes have been paid. Op. Atty. Gen. (373B-9 (B)), May 18, 1940.

Leases may be recorded without certification as to taxes. Op. Atty. Gen., (373B-17(e)), Feb. 25, 1941.

Register of Deeds must record a deed issued by a railroad pursuant to decree of federal court in bankruptcy and reorganization proceedings, whether or not he is able to obtain certificate from County Auditor and County Treasurer, court order so requiring. Op. Atty. Gen., (373B-9(d)), Mar. 5, 1941.

Since taxes are cancelled by forfeiture of land to state, a deed may be filed without payment, and county auditor should make an appropriate certificate. Op. Atty. Gen., (373B-9(e)), Mar. 12, 1941.

While contract for deed itself could not be recorded without certificate of auditor and treasurer that all taxes have been paid, notice of cancellation may be recorded without certificate as to taxes. Op. Atty. Gen. (373b-9 (e)), May 21, 1941.

A deed cannot be recorded unless county treasurer and state auditor certify that all taxes against land are paid, notwithstanding that it is claimed that property is exempt from taxation and there is an appeal to the supreme court, nor can a bond in lieu of payment of taxes be given or money placed in escrow. Op. Atty. Gen., June 24, 1941.

A deed purporting to convey a contingent interest is a conveyance which cannot be recorded without payment of taxes. Op. Atty. Gen. (373B-9(f)), Aug. 11, 1941.

Where deed embracing several parcels is presented, on one of which taxes have not been paid, auditor may not make notation of payment of taxes. Op. Atty. Gen. (373b-9(e)), Dec. 9, 1941.

Certificate of taxes paid must be endorsed on cemetery deed before recording. Op. Atty. Gen. (373b-15), Feb. 16, 1943.

Where there has been a conveyance effecting a severence of mineral interest from surface interest and it has been recorded, county auditor must certify "no taxes delinquent" as to subsequent taxes where mineral rights were not assessed separately and taxes on surface are delinquent. Op. Atty. Gen. (311*l*), June 8, 1943.

When land has been forfeited to the state and taxes cancelled, deeds may thereafter be recorded without payment of such cancelled taxes. Op. Atty. Gen. (373b-9-e), June 21, 1943.

Deed from farm security administration to holder of contract for deed. Op. Atty. Gen. (373b-17d), July 19, 1943.

2212. Treasurer's certificate.
Register of Deeds must record a deed issued by a railroad pursuant to decree of federal court in bankruptcy and reorganization proceedings, whether or not he is able to obtain certificate from County Auditor and County Treasurer, court order so requiring. Op. Atty. Gen., (373B-9(d)), Mar. 5, 1941.

2215. Transfer of specific part.
Where delinquent taxes covered three 40-acre tracts in one assessment and all included in judgment, owner who thereafter defaulted in payments due under confessed judgment was not entitled to pay up taxes on one of 40-acre tracts. Op. Atty. Gen. (412a-10), May 8, 1941.

2219. Platting of irregular tracts.
There is no statute providing for correction of errors in plats made under this section, and auditor may insist upon owner filing a correct and proper plat. Op. Atty. Gen. (18d), Apr. 22, 1941.
Procedures which may be taken where city sold tract of land to a can company, part of which is acreage and part platted, and effect upon classification for taxation and vacation of street, stated. Op. Atty. Gen. (18D), Mar. 26, 1942.
A plat of irregularily shaped land made under direction of county auditor by county surveyor for taxation purposes does not have to be approved by city council of West St. Paul or by the city planning committee. Op. Atty. Gen. (18d), Jan. 18, 1943.

2220. Government and railroad lands becoming taxable—Lists—Lists of lands reverting to railroad. —On April 1 in each year the commissioner of taxation shall obtain lists of all government and railroad lands becoming taxable, and he shall compile therefrom, and from the records of sales of state lands, complete lists of all such lands; and on or before April 15 in each year he shall certify the same for taxation to the auditors of the counties in which such lands lie. At the same time he shall obtain lists of lands reverting to the railroad companies each year by reason of the forfeiture of contracts, and certify the same to the county auditors, who shall thereupon remove such lands from the tax lists; but nothing herein shall be construed to relieve such forfeited lands from any lien for taxes or assessments accruing thereon during the life of such contract. The railroad companies shall report such sales and forfeitures to the commissioner of taxation April 1 in each year, and at other times when required by him. All forfeited lands not so reported shall be held for all taxes accruing thereon. (As amended Apr. 22, 1943, c. 564, §1.)

2221. Railroad lands—Sale.
Taxability of land sold under contract by United States or the state. S. R. A., Inc., 213M487, 7NW(2d)484; note under Const. Art. 9, §1.

2231. Auditor to furnish statement of tax liens; etc.
It is official duty of auditor to certify to delinquent taxes and of the treasurer to certify as to current taxes, though auditor may certify as to current taxes as a gratuity. Op. Atty. Gen. (21A), Mar. 27, 1942.
County auditor is not required to certify to future installments of local assessments not extended upon tax lists. Op. Atty. Gen. (21a), Oct. 7, 1943.

2232. Compensation to auditor; etc.
General rule as to retention of fees by auditor and treasurer stated. Op. Atty. Gen. (21A), Mar. 27, 1942.

2232-1. County treasurer to search and certify taxes due.
It is official duty of auditor to certify to delinquent taxes and of the treasurer to certify as to current taxes, though auditor may certify as to current taxes as a gratuity. Op. Atty. Gen. (21A), Mar. 27, 1942.

COMPANIES PAYING GROSS EARNINGS TAX

2233. Report of gross earnings—Computation.
State v. Chicago, M. St. P. & P. R. Co., 210M484, 299NW 212; note under §2238.

2234. Duties of tax commission and auditor.
State v. Chicago, M. St. P. & P. R. Co., 210M484, 299 NW212; note under §2238.

2235. Failure to pay.
State v. Chicago, M. St. P. & P. R. Co., 210M484, 299 NW212; note under §2238.

2237. Failure to report—Assessment, etc.
State v. Chicago, M. St. P. & P. R. Co., 210M484, 299 NW212; note under §2238.

2238. Delinquent tax, a lien.—Such delinquent and unpaid tax and penalties, assessed and certified by the commissioner of taxation, as provided in sections 2235 and 2237, shall be a lien upon all the property, estate and effects of any such company, joint stock association, co-partnership, corporation, or individual, and shall take precedence of all demands and judgments against the same, and said lien shall relate back to and be effective from the date when such tax was originally due and payable; and the certificate of the commissioner of taxation that said tax and penalties are due and unpaid, and the unpaid draft of the state auditor issued in pursuance thereof, shall be sufficient warrant for the attorney general to institute proceedings for the collection of said tax and penalties by sale of such property or otherwise. (As amended Mar. 15, 1943, c. 120, §1.)
Lien given arises, as to earnings omitted from returns of previous years, only when those earnings have been assessed and taxes thereon certified by tax commissioner to state auditor, and where there has been a transfer, in connection with receivership proceedings of ownership of railroad from whose returns earnings were omitted, properties acquired by successor railroad are not subject to lien. State v. Chicago, M. St. P. & P. R. Co., 210M484, 299NW212 . See Dun. Dig. 9161.
Inception, continued existence, and duration of lien is entirely statutory. Id. See Dun. Dig. 9160.

2238-1. Same—Application of act.—This act shall apply to all taxes and penalties certified by the commissioner of taxation after the passage of this act; provided that nothing herein shall affect property rights acquired in good faith and for value from a gross earnings taxpayer prior to the passage of this act. (Act Mar. 15, 1943, c. 120, §2.)

2240. Evasions and violations.
State v. Chicago, M. St. P. & P. R. Co., 210M484, 299 NW212; note under §2238.

RAILROAD COMPANIES

2246. Gross earnings.
½. In general.
Illinois Cent. R. Co. v. Minnesota, 309US157, 60SCR419, aff'g 305Minn1, 284NW360, 205Minn621, 286NW359. Reh. den., 60SCR585.
State v. Chicago, M. St. P. & P. R. Co., 210M484, 299NW 212; note under §2238.
Almer Ry. Equipment Co., 213M62, 5NW(2d)637. Appeal dism'd 317US605, 63SCR524.
Gross earnings tax imposed under authority of Const. Art. 4, §32a, is a property tax upon all railroad property owned or operated for railroad purposes, including its franchise to exist as a corporation and to transact railroad business in this state State v. Duluth, M. & N. Ry. Co., 207M618, 292NW401. See Dun. Dig. 9541. See also 207M637, 292NW411. Cert. den. 61SCR439.
Land privately owned and purchased by a railroad company only because of gravel value and having no spur tracks is not exempt from regular tax. Op. Atty. Gen. (414d-13), Oct. 23, 1939.
Freight Line Companies Gross Earnings Tax Law does not amend Railroad Gross Earnings Tax Law and is not therefore invalid because of failure to submit it for ratification to electors. Almer Railway Equipment Co., MBTA(No. 46), Nov. 8, 1941.
4. System unconstitutional prior to 1871.
Gross earnings tax paid by freight line companies furnishing special cars to common carriers within the state under Mason's Stat., §§2270 to 2276-1, does not violate Minn. Const., Art. 9, §1, or the 14th amendment of the Constitution of the United States on ground that it is not uniform upon property of the same class. Almer Ry. Equipment Co. v. Commr. of Taxation, 213M62, 5NW (2d)637. App. dism'd 317US605, 63SCR524. See Dun. Dig. 9545.
5. System applicable to all railroads.
"Railroad" does not include stockyard railway company rendering certain terminal services. Op. Atty. Gen. (216I), Feb. 6, 1942.
11. Land must be devoted to railroad purposes.
Gross earnings tax on common carriers is a lieu tax, and common carrier railroads do not pay a gross earnings tax upon all of their real estate or personal property, but only that used in or for transportation purposes is subject to that tax; other property owned by them for investment or other purposes is subject to and pays the ad valorem tax. Almer Ry. Equipment Co. v. Commr. of Taxation, 213M62, 5NW(2d)637. App. dism'd 317US605, 63SCR524. See Dun. Dig. 9552.
11½. Easements.
Where tax records did not note easements of railroad paying gross earnings tax, judgment and sale to the state was not void but was ineffective as far as railroad easements was concerned, and notice of expiration of period

of redemption or certificate after expiration of time for redemption should include words "subject to railroad easement." Op. Atty. Gen. (216i), June 16, 1942.

21. What included in gross earnings.

Earnings from any source other than ownership or operation for a railroad purpose are not included in gross earnings tax measures, and any property owned by railroad, but used for a non-railroad purpose, is subject to ordinary ad valorem property taxation. State v. Duluth, M. & N. Ry. Co., 207M618, 292NW401. See Dun. Dig. 9551. See also 207M637, 292NW411. Cert. den. 61SCR 439.

So-called "recapture funds" taken from earnings of railroads under Transportation Act of 1920, 41 Stat. 456, 489, 49 Mason's U. S. C. A., §15a(6), and returned to the railroads under the provisions of the emergency Railroad Transportation Act of 1933, 48 Stat. 211, 220, 49 Mason's U. S. C. A., §15b, and upon which a gross earnings tax was paid to the state, are not non-railroad income nor subject to the tax imposed by Mason's Minn. St., §2394-2. Id.

Receipts of an express company derived from "transfer" and "pick-up and delivery" services rendered to railroads paying gross earnings tax under contract are part of its gross earnings for purposes of taxation. State v. Railway Express Agency, 210M556, 299NW657. See Dun. Dig. 9570a.

Recreation center on second floor of St. Paul Union Depot, consisting of a bowling alley, tables, chairs, lockers, steam tables, ice cream fountains, etc., is so disconnected from transportation business of proprietary lines that income therefrom cannot be considered as part of gross income of the proprietary lines, and is not subject to gross earnings tax, and personal property used in the business is properly subject to the ad valorem tax. Op. Atty. Gen. (216i-3), Aug. 6, 1942.

2247. "Gross earnings" defined.

Illinois Cent. R. Co. v. Minnesota, 309US157, 60SCR419, aff'g 205Minn1, 284NW360, 205Minn621, 286NW359.

Earnings from any source other than ownership or operation for a railroad purpose are not included in gross earnings tax measures, and any property owned by railroad, but used for a non-railroad purpose, is subject to ordinary ad valorem property taxation. State v. Duluth, M. & N. Ry. Co., 207M618, 292NW401. See Dun. Dig. 9552. See also 207M637, 292NW411. Cert. den. 61SCR439.

2251. Railroad companies defined.

"Railroad" does not include stockyard railway company rendering certain terminal services. Op. Atty. Gen. (216 I), Feb. 6, 1942.

EXPRESS COMPANIES

2262. Annual statement.

Receipts of an express company derived from "transfer" and "pick-up and delivery" services rendered to railroads paying gross earnings tax under contract are part of its gross earnings for purposes of taxation. State v. Railway Express Agency, 210M556, 299NW657. See Dun. Dig. 9570a.

2268. Gross earnings tax.

Exacting a motor vehicle tax from an express company in addition to a gross earnings tax (which is in lieu of all other taxes except those on motor vehicles) is not a denial of equal protection or due process of law. State v. Holm, 209M9, 295NW297. See Dun. Dig. 9140a.

There is no double taxation of earnings received by an express company from a railroad where each pays a gross earnings tax on its own property in lieu of all other taxes, except a tax on motor vehicles. State v. Railway Express Agency, 210M556, 299NW657. See Dun. Dig. 9570a.

Gross earnings tax is a tax on property, and earnings are merely convenient yardstick or measure by which that property tax is determined. State v. Fawkes, 210M587, 299NW666. See Dun. Dig. 9570a.

Payment of gross earnings tax by an express company does not cover property of a lessee under a 99-year lease who in turn leases the property to the express company. Id.

Where express company has leased portion of large building for a period of years, real estate tax should be assessed against the entire building, since real estate cannot be divided for purposes of assessment. Op. Atty. Gen. (474-d-1), July 24, 1940.

FREIGHT LINE COMPANIES

2270. Definition of freight line company.

Gross earnings tax paid by freight line companies furnishing special cars to common carriers within the state under Mason's Stat., §§2270 to 2276-1, does not violate Minn. Const., Art. 9, §1, or the 14th amendment of the Constitution of the United States on ground that it is not uniform upon property of the same class. Almer Ry. Equipment Co. v. Commr. of Taxation, 213M62, 5NW (2d)637. App. dism'd 317US605, 63SCR524. See Dun. Dig. 9544.

Freight Line Companies Gross Earnings Tax Law does not amend Railroad Gross Earnings Tax Law and is not therefore invalid because of failure to submit it for ratification to electors. Almer Railway Equipment Co., MBTA(No. 46), Nov. 8, 1941.

Law is constitutional. Id.

2272. Seven per cent on gross earnings.

That on railroad-owned cars railroads pay five per cent of tariff on freight, while freight line companies, in addition to what railroads pay, must pay seven per cent on mileage haul received from railroads, does not constitute double taxation or discrimination. Almer Ry. Equipment Co. v. Commr. of Taxation, 213M62, 5NW(2d) 637. App. dism'd 317US605, 63SCR524. See Dun. Dig. 9140a.

VESSELS NAVIGATING INTERNATIONAL WATERS

2291. Tonnage tax—Distribution.

Act Apr. 28, 1941, c. 521, §8, provides that the state treasurer is hereby authorized to set aside in a separate account the counties' share of the vessel tonnage tax, and to distribute the same to the counties entitled thereto at the end of each fiscal year as provided by section 2291.

INHERITANCES, DEVISES, BEQUESTS AND GIFTS

2292. Imposition of tax.—

Subsection 1. **Transfers.** A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporation within the state, for strictly county, town or municipal purposes, in the following cases:

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

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

(c) When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor, or donor, or, intended to take effect in possession or enjoyment at or after such death. Any transfer of the material part of the property of a deceased in the nature of a final disposition or distribution thereof, made within two years prior to death, without adequate and full consideration in money or money's worth, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this act.

(d) Nothing in this act shall be construed as imposing a tax upon any transfer as defined in this act, of intangibles, however used or held, whether in trust or otherwise, by a person, or by reason of the death of a person, who was not a resident of this state at the time of his death. (As amended Act Apr. 26, 1941, c. 470, §1.)

Subsection 2. * * * * *.

Subsection 3. * * * * *.

Subsection 4. **Jointly owned property.**—(a) Whenever any property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or in other institutions or depositaries in the joint names of two or more persons payable to either or the survivor, upon the death of one of such persons the right of the survivor or survivors, to the immediate ownership or possession and enjoyment of such property, shall be deemed a transfer and subject to the inheritance tax imposed by this act, except such part thereof as may be shown to have originally belonged to the survivor or survivors and never to have been received or acquired by them from the decedent for less than an adequate and full consideration in money or money's worth; in which case there shall be excepted only such part as is proportionate to the consideration furnished by the survivor or survivors. Provided, where any property has been acquired prior to April 29, 1935, by the decedent and spouse, as joint tenants, not in excess of one-half

of the value thereof shall be taxable. Provided, further, where property has been acquired at any time by gift, bequest, devise or inheritance, by the decedent and any other person or persons, as joint tenants, the taxable portion shall be the value of a fractional part of said property to be determined by dividing the value of the property by the number of joint tenants.

(b) Every tax imposed upon property taxable under subsection 4 of this section shall be a lien upon the interest of the deceased joint tenant until paid, and the survivor or survivors shall be personally liable for such tax to the extent of the value of such property. Such lien shall be limited to a period of ten years from the date of recording a copy of the death record of the deceased joint tenants.

(c) The commissioner of taxation shall determine the inheritance tax, if any, under this subsection 4. When the tax is paid or if there is no tax, the commissioner of taxation shall make and deliver, to the surviving joint tenant, his certificate to that effect, and the said certificate may be recorded as other instruments affecting the title to real estate. (As amended Apr. 20, 1943, c. 504, §1.)

Subsection 5. **Life insurance policies.**—(a) The proceeds of all life or accident insurance policies taken out by decedent and payable on account of his death in excess of $32,500, receivable by named beneficiaries, shall be subject to the tax herein imposed, as follows:

(1) The proceeds of all such policies hereafter issued payable to named beneficiaries.

(2) The proceeds of all such policies now in force payable to named beneficiaries in which the insured has the right to change the beneficiary or under which he has cash surrender right.

(b) Such proceeds in excess of $32,500 shall be deemed a transfer within the meaning of that term as used in this act and a part of decedent's estate, and shall be taxable to the person or persons entitled thereto. In the computation of the tax, the proceeds upon which no tax is imposed shall be credited as follows:

(1) To the surviving spouse, the amount of such proceeds received by such spouse, not in excess, however, of $32,500.

(2) To each minor child of the decedent the amount of such proceeds received by such child, not in excess, however, of $32,500, less the amount, if any, allowable to the surviving spouse.

(3) To each adult child of the decedent the amount of such proceeds received by such child, not in excess, however, of $32,500, less the amounts, if any, allowable to the surviving spouse and minor child or children of the decedent.

(4) To any person, the amount of such proceeds received by such person, not in excess, however, of $32,500, less the amount, if any, allowable to the surviving spouse and children of the decedent.

(c) If the amount otherwise allowable to any class of persons as aforesaid, together with the amounts allowable to prior classes, shall aggregate more than $32,500, the difference between the aggregate of the amounts allowable to prior class or classes and $32,500 shall be prorated among the members of such class in proportion to the amount of such proceeds received by each.

(d) Every corporation, partnership, association, individual, order or society authorized to transact life, accident, fraternal, mutual benefit or death benefit insurance business which shall pay to any person, association, or corporation any insurance or death benefit or shall transfer any unpaid balance of, or any interest in, any annuity contract or deposit, upon the death of a resident of this state, shall give notice of such payment or transfer to the commissioner of taxation within ten days from the date thereof. Such notice shall be given on the forms prescribed by the commissioner of taxation, and such notice shall set forth such information as the commissioner of taxation shall prescribe.

(e) The receipt of any such proceeds upon which no tax is imposed shall not affect the right to any exemption otherwise provided in this act.

(f) The commissioner of taxation shall determine the tax, if any, under subdivision 5. (As amended Apr. 26, 1941, c. 470, §1; Apr. 20, 1943, c. 504, §§1, 2.)

A federal estate tax is on the act of the testator and not on the property of his estate or the transfer to the beneficiary. **First Trust Co. of St. Paul v. Reynolds**, (DC-Minn), 46FSupp497. See Dun. Dig. 9571a.

Under statute imposing tax on transfers in contemplation of death and authorizing deductions in case transfer is made for a valuable consideration, a consideration monetary value of which was not received by transferor was not deductible. Mossberg v. M., 14Atl(2d)(Conn)733.

A transfer of $46,000 before amendment of this section in 1939, three weeks before death of donor and while she was in the hospital suffering from an incurable disease, of which she had no knowledge, was held a gift and not a transfer in contemplation of death, under evidence that it was made to stimulate interest of donee in business and constituted only 3½% of donor's estate. Donaldson, M.B.T.A. (No. 67), Aug. 12, 1942. See Dun. Dig. 9572c.

Where insured under life policy irrevocably assigned policy to wife as beneficiary and named children as contingent beneficiary, amount of cash surrender just prior to death may not be deducted, though beneficiary could have borrowed or cashed policy. DeCoster, MBTA (No. 111), Nov. 30, 1942.

Amendment of 1937 making proceeds of life insurance policies taxable applied to policies in effect, and was valid. Id.

Title to original act and amendments was sufficient to include amendment making proceeds of insurance taxable. Id.

Multi-state taxation of transfers of intangible personal property at death. 27MinnLawRev83.

Power of appointment—property distributed under compromise agreement. 27MinnLawRev96.

The Revenue Act of 1942. 27MinnLawRev217.

A symposium on state inheritance and estate taxation. 26 Ia Law Rev 449 to 673.

(1)(d).

It is still proper to require "consent to transfer" in case of assignments of mortgages or other liens made by foreign representatives or by decrees of foreign courts, even in absence of a tax. Op. Atty. Gen. (242a-18), Dec. 13, 1941.

(4).

Amended. Laws 1943, c. 504, §1. See above text.

(4)(a).

Survivor who furnished entire consideration for joint tenancy created prior to April 29, 1935, is not liable for tax. McCormack, MBTA(48), Feb. 21, 1941.

Where a resident of another state placed property in joint ownership with a daughter residing in this state and then moved to this state and died, there was a transfer on death to the daughter of the whole value of the property. Dillon, M. B. T. A. (No. 112), May 13, 1943.

(5).

Amended. Laws 1943, c. 504, §2. See above text.

2203. Rate of tax.—Subdivision 1. The tax so imposed sall be computed upon the true and full value in money of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

Subdivision 2. **Primary rates.**—When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified and shall not exceed in value $15,000 the tax hereby imposed shall be:

(1) Where the person entitled to any beneficial interest in such property shall be the wife, or lineal issue, or any child adopted as such in conformity with the laws of this state, or any lineal issue of such adopted child at the rate of one per cent of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the husband, lineal ancestor of the decedent or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's 15th birthday, and was continuous for said ten years thereafter, or any lineal issue of such mutually acknowledged child, at the rate of one and one-half per cent of the clear value of such interest in such property.

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

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

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, except as hereinafter provided, at the rate of five per cent of the clear value of such interest in such property.

Subdivision 3. **Primary rates.**—The foregoing rates in subdivision 2 are for convenience termed the primary rates.

When the amount of the clear value of such property or interest exceeds $15,000, the rates of tax upon such excess shall be as follows:

(1) Upon all in excess of $15,000 and up to $30,000, two times the primary rates.

(2) Upon all in excess of $30,000 and up to $50,000, three times the primary rates.

(3) Upon all in excess of $50,000 and up to $100,000, three and one-half times the primary rates.

(4) Upon all in excess of $100,000 and up to $200,000, four times the primary rates.

(5) Upon all in excess of $200,000 and up to $300,000, five times the primary rates.

(6) Upon all in excess of $300,000 and up to $400,000, six times the primary rates.

(7) Upon all in excess of $400,000 and up to $500,000, seven times the primary rates.

(8) Upon all in excess of $500,000 and up to $600,000, eight times the primary rates.

(9) Upon all in excess of $600,000 and up to $700,000, nine times the primary rates.

(10) Upon all in excess of $700,000 and up to $900,000, ten times the primary rates.

(11) Upon all in excess of $900,000 and up to $1,100,000, eleven times the primary rates.

(12) Upon all in excess of $1,100,000, twelve times the primary rates.

Provided the tax imposed hereby shall in no case exceed 35 per cent of the true and full value of the property transferred in excess of the applicable specific exemptions.

Subdivision 4. **Exemptions.**—The following exemptions from the tax are hereby allowed:

(1) any devise, bequest, gift, or transfer to or for the use of the United States of America or any state or any political subdivision thereof for public purposes exclusively, and any devise, bequest, gift or transfer to or for the use of any corporation, fund, foundation, trust, or association operated within this state for religious, charitable, scientific, literary, education, or public cemetery purposes exclusively, including the encouragement of art and the prevention of cruelty to children or animals, no part of which devise, bequest, gift or transfer inures to the profit of any private stockholder or individual, and any bequest or transfer to a trustee or trustees exclusively for such purposes, shall be exempt. Any devise, bequest, gift, or transfer to or for the use of any corporation, fund, foundation, trust or association operated for religious, charitable, scientific, literary, education, or public cemetery purposes exclusively, including the encouragement of art, and the prevention of cruelty to children or animals, no part of which devise, bequest, gift, or transfer inures to the profit of any private stockholder or any individual, and any bequest or transfer to a trustee or trustees exclusively for such purposes, shall be exempt, if, at the date of the decedent's death, the laws of the state under the laws of which the transferee was organized or existing, either (1) did not impose a death tax of any character, in respect of property transferred to a similar corporation, fund, foundation, trust, or association, organized or existing under the laws of this state, or (2) contained a reciprocal provision under which transfers to a similar corporation, fund, foundation, trust, or association, organized or existing under the laws of another state were exempted from death taxes of every character if such other state allowed a similar exemption to a similar corporation, fund, foundation, trust, or association, organized under the laws of such state.

The homestead of a decedent, and the proceeds thereof if sold during administration, transferred to the spouse or issue of a decedent, shall be exempt to the extent of $30,000 of the appraised value thereof.

(2) Property of the clear value of $10,000 transferred to the widow and to each child of the decedent or any legally adopted child who is a minor or dependent at the death of the decedent, shall be exempt.

Property of the clear value of $5,000 transferred to husband of the decedent, an adult child or other lineal descendant of the decedent, any adult adopted child, or any child to whom the decedent for not less than ten years prior to his death, stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's 15th birthday, and was continuous for ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, shall be exempt.

(3) Property of the clear value of $3,000 transferred to each of the lineal ancestors of the decedent shall be exempt.

(4) Property of the clear value of $1,000 transferred to each of the persons described in the third subdivision of subdivision 2 shall be exempt.

(5) Property of the clear value of $250.00 transferred to each of the persons described in the fourth subdivision of subdivision 2 shall be exempt.

(6) Property of the clear value of $100.00 transferred to each of the persons and corporations described in the fifth subdivision of subdivision 2 shall be exempt.

Subdivision 5. **Limited exemption where decedent acquired property within five years of his death.**—Where property is transferred to any person described in paragraphs (1) and (2) of subdivision 2 which can be identified as having been transferred to the decedent from a person who died within five years prior to the death of the decedent, and such transfer to the decedent was within the class of transfer described in said paragraphs (1) and (2) of subdivision 2 such property shall be exempt to the extent of the value thereof at the date of death of the prior decedent but not to exceed the value at the date of death of the second decedent. Provided, however: (1) no such exemption shall be allowed unless an inheritance tax was determined and paid to this state on the transfer thereof from the said prior decedent; (2) the exemption shall be limited to the value of property which is in excess of the amount of the exemption provided in subdivision 4 allowed on the transfer to the decedent; (3) unless such previously transferred property is specifically devised or bequeathed, the exempt property for purposes of taxation shall be considered as belonging to the residue of the estate; (4) property exempt under this subdivision shall not be included in computing the rate applicable to other transfers to the beneficiary receiving such exempt property.

Subdivision 6. **Expenses of administration.**—Reasonable expenses of administration, funeral expenses, expenses of last sickness, claims against the decedent

duly allowed as such, family maintenance to the extent provided by Mason's Supplement 1940, Section 2293-1, and allowances to the surviving spouse, Federal estate taxes and taxes which have accrued or are a lien on property in the estate at the date of death, shall be allowed as deductions, in the amount allowed by the probate court having jurisdiction, before computing the tax.

Subdivision 7. **Apportionment of expense.**—Where any tax is due on the transfer of any property or interest therein owned by a nonresident, the exemptions provided in subdivision [4] shall be allowed as in the case of residents. No deductions except those actually incurred within this state shall be allowed.

Subdivision 8. **Determination of tax.**—Except as otherwise herein provided the tax upon any transfers by a nonresident of real property within this state or personal property having a situs within this state shall be determined by the probate court in all cases where the estate is probated in this state. In all cases where the tax is not determined by the probate court it shall be determined by the commissioner of taxation. (As amended Act Apr. 20, 1943, c. 504, §3.)

Taylor's Estate, 176M634, 222NW528. Rev'd 280US204, 50SCR98, 74LEd371, 65ALR1000. See 175M310, 219NW153; 175M310, 221NW64.

Expenditures by executors in locating assets of large estates held deductible as administration expenses, and disallowance of deductions on ground that such expenses were incurred in prolonging administration to provide funds for testamentary trusts and in carrying on a business by the executors for profit was improper, nor was such disallowance justified on ground that the deductions claimed were also claimed in connection with income taxes of the estate. Adams, (CCA8), 110F(2d)578, rev'g 39BTA1239.

Burden of proof as to amount executors were entitled to deduct for expenses of administration and as to allowable character of deductions claimed in determining federal estate tax was upon them, and hence upon reversal of determination of Board of Appeals disallowing claimed deduction, case would be remanded to afford opportunity to prove that the administration expenses claimed as deductions were allowable as such. Id.

Bequests to religious and charitable institutions which were subject to the condition that testator's wife give her consent, and which were to be revoked in the absence of such consent, were not deductible from for purposes of federal estate tax. First Trust Co. of St. Paul v. Reynolds, (DC-Minn), 46FSupp497. See Dun. Dig. 9572a, 9573.

Losses arising from sales necessarily and properly made in course of administration, whether necessity arises from lack of cash to pay debts and specific legacies or from a mandatory requirement in a will may be deducted as administrative expenses. Op. Atty. Gen. (242-a-17), July 2, 1940.

Apportionment of a mortgage covering both homestead and non-homestead property on basis of value of security is proper. Op. Atty. Gen. (242c-2), May 26, 1942.

Inclusion of proceeds of life insurance policies in gross estate. 24 MinnLawRev 963.

2294. To take effect on death—When payable.—(1) All taxes imposed by this act shall take effect at and upon the death of the person from whom the transfer is made and shall be due and payable at the expiration of 15 months from such death, except as otherwise provided in this act. (As amended Act Apr. 20, 1943, c. 504, §4.)

(2) The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except: (a) for every future or limited estate, income, interest or annuity, the value of which is not based upon an assumed or fixed rate of interest, the rate of interest and the discount rate, for making such computation, shall be four per cent per annum; (b) the value of an annuity contract issued by a company regularly engaged in the sale of contracts of that character shall be determined by the amount at which comparable contracts were sold by that company at the date of the decedent's death. (As amended Act Apr. 20, 1943, c. 504, §5.)

(3) to (9) * * * * *.

2295. Subdivision 1. **Collection of tax by administrator—Executor—Trustees.**—Any administrator, executor or trustee having in charge or in trust any property for distribution embraced in or belonging to any inheritance, devise, bequest, legacy or gift, subject to the tax thereon as imposed by this act, shall deduct the tax therefrom, before paying or distributing the same. If such property be not in money, he shall collect the tax on such inheritance, devise, bequest, legacy, or gift upon the appraised value thereof, from the person entitled thereto. He shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy or gift, subject to tax under this act, to any person until he shall have collected the tax thereon. All taxes so collected, together with interest thereon, if any, shall be paid to the county treasurer as herein provided, and no administrator, executor or trustee shall be entitled to a discharge of his duties and liabilities until such tax is paid.

Subdivision 2. Every representative shall, at the time of filing the inventory as required by law, or, if no inventory is filed, the petitioner shall at the time of filing the petition for decree of descent, petition for summary distribution, or other document initiating the proceedings, file with the Probate Court a return under oath, in such form as may be prescribed by the commissioner of taxation, of all property within his knowledge and the value thereof at the date of the decedent's death, (a) which the decedent has at any time transferred and which is or may be subject to an inheritance tax, (b) which the decedent held in joint tenancy, (c) which was subject to the exercise of a power of appointment by the decedent. The return shall also contain a list of all policies of insurance on the life of the decedent payable to named beneficiaries, and the amounts thereof, if the total amount thereof exceeds $32,500.

Subdivision 3. In all cases where a federal estate tax return is filed, a true copy thereof shall be filed with the commissioner of taxation at the time of filing the original. (As amended Act Apr. 20, 1943, c. 504, §6.)

2296. Taxes to be paid to county or state treasurer.—Subdivision 1. The tax imposed by this act upon inheritance, devises, bequests, legacies, gifts and other transfers shall be paid to the treasurer of the county in which the probate court having jurisdiction is located or, where there are no probate proceedings in this state to the commissioner of taxation.

Subdivision 2. If the tax is paid to the county treasurer he shall give the executor, administrator, trustee or person paying such tax, duplicate receipts therefor, one of which shall be immediately transmitted to the commissioner of taxation, whose duty it shall be to verify the correctness of the amount so paid and thereupon to countersign the same and return it to the executor, administrator or trustee, or other person paying such tax, whereupon it shall be a proper voucher in the settlement of his accounts. The county treasurer upon receiving written notice from the commissioner of taxation that the receipt has been countersigned and delivered, shall transmit the amount so paid to the commissioner of taxation.

Subdivision 3. If the tax is paid directly to the commissioner of taxation he shall, after verifying the correctness of the amount so paid, issue his receipt to the executor, administrator or trustee, or other person paying such tax, and it shall be a proper voucher in the settlement of his accounts.

Subdivision 4. No executor, administrator or trustee shall be entitled to a final accounting of an estate, in the settlement of which a tax may become due under the provisions of this act, until he shall produce a receipt, countersigned or issued by the commissioner of taxation, or a certified copy of the same.

Subdivision 5. All taxes paid under the provisions of this act shall be deposited by the commissioner of taxation in the state treasury, and shall belong to and

be a part of the revenue fund of the state. (As amended Apr. 23, 1943, c. 593, §1.)

2298. Interest.—If such tax is not paid within 15 months from the accruing thereof, interest shall be charged and collected thereon at the rate of six per centum per annum from the time the tax is due. All payments shall be applied first on interest and then upon principal. (As amended Act Apr. 20, 1943, c. 504, §7.)

2301. Tax erroneously paid—Refundment.—When any tax imposed by this act shall have been erroneously paid, wholly or in part, the person paying the same shall be entitled to a refundment of the amount so erroneously paid in the manner provided by Mason's Minnesota Statutes of 1927, Section 2315, as amended, provided, however, that all applications for such refunding of erroneous taxes shall be made within three years from the payment thereof. (As amended Apr. 23, 1943, c. 593, §2.)

2302. Transfer by foreign executors—Personal property of non-resident decedent.—Subdivision 1. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the commissioner of taxation on the transfer thereof, and no such assignment or transfer shall be valid until such tax is paid.

Subdivision 2. If any nonresident of this state dies owning personal property in this state, such property may be transferred or assigned by the personal representative of, or trustee for the decedent, only after such representative or trustee shall have procured a certificate from the commissioner of taxation consenting to the transfer of such property. Such consent shall be issued by the commissioner of taxation only in case there is no tax due hereunder; or in case there is a tax, when the same shall have been paid.

Subdivision 3. Any personal representative, trustee, heir or legatee of a nonresident decedent desiring to transfer property having its situs in this state may make application to the commissioner of taxation for the determination of whether there is any tax due to the state on account of the transfer of the decedent's property and such applicant shall furnish to the commissioner of taxation therewith an affidavit setting forth a description of all property owned by the decedent at the time of his death and having its situs in the state of Minnesota, the value of such property at the time of said decedent's death; also when required by the commissioner of taxation, a description of and statements of the true value of all the property owned by the decedent at the time of his death and having its situs outside the state of Minnesota, and also a schedule or statement of the valid claims against the estate of the decedent, including the expenses of his last sickness and funeral and the expenses of administering his estate, to the extent that such claims were incurred within this state. Such person shall also, on request of the commissioner of taxation, furnish to the latter a certified copy of the last will of the decedent in case he died testate, or an affidavit setting forth the names, ages and residences of the heirs at law of the decedent in case he died intestate and the proportion of the entire estate of such decedent inherited by each of said persons, and the relation, if any, with each legatee, devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. Such affidavits shall be subscribed and sworn to by the personal representative of the decedent or some other person having knowledge of the facts therein set forth.

Subdivision 4. The statements in any such affidavits as to value or otherwise shall not be binding on the commissioner of taxation in case he believes the same to be untrue. From the information so furnished to him and such other information as he may have with reference thereto, the commissioner of taxation shall, with reasonable expedition, determine the amount of tax, if any, due the state under the provisions of this act and notify the person making the application of the amount thereof claimed to be due. On payment of the tax so determined to be due or in case there is no tax due to the state, the commissioner of taxation shall issue a consent to the transfer of the property so owned by the decedent.

Subdivision 5. Any person aggrieved by the determination of the commissioner of taxation in any matter hereinbefore provided for, may within twenty days thereafter appeal to the district court of Hennepin county, or Ramsey county, Minnesota, by filing with the commissioner of taxation a notice in writing setting forth his objections to such determination and that he appeals therefrom and thereupon within ten days thereafter the commissioner of taxation shall transmit the original papers and records which have been filed with him in relation to such application for consent, to the clerk of the district court to which the appeal shall have been taken, and thereupon said court shall acquire jurisdiction of such application and proceeding. Upon eight days' notice given to the commissioner of taxation by the appellant, the matter may be brought on for hearing and determination by such court either in term time or vacation, at a general or special term of said court, or at chambers as may be directed by order of the court. The said court may determine any and all questions of law and fact necessary to the enforcement of the provisions of this act according to its intent and purpose, and may by order direct the correction, amendment or modification of any determination made by the commissioner of taxation.

Subdivision 6. On such hearing either party may introduce the testimony of witnesses and other evidence in the same manner and subject to the same rules which govern in civil actions. When necessary, the court may adjourn or continue its hearings from time to time, to enable the parties to secure the attendance of witnesses or the taking of depositions. Depositions may be taken and used in such proceedings in the same manner as is now provided by law for the taking of depositions in civil actions.

Subdivision 7. The commissioner of taxation and any person aggrieved by the order of the district court may appeal to the supreme court from any such order by said courts, within the time and in the manner now provided by law for the taking of appeals from orders in civil actions. (As amended Apr. 23, 1943, c. 593, §3.)

It is still proper to require "consent to transfer" in case of assignments of mortgages or other liens made by foreign representatives or by decrees of foreign courts, even in absence of a tax. Op. Atty. Gen. (242a-18), Dec. 13, 1941.

"Consent to transfer" should be obtained in event of a change of ownership in a joint tenancy mortgage by reason of death of one of joint owners. Id.

2303. Subdivision 1. **Safety deposit companies not to transfer funds.**—No person holding securities of assets belonging at the time of death of a decedent to him or to him and another or others as joint tenants, or having on deposit funds in excess of $1,000 to the credit of a decedent and another or others as joint tenants, or to the credit of the decedent as trustee for another or others, or renting a safe deposit box or other place of safekeeping to a decedent, individually or as joint tenant or tenant in common, shall deliver or transfer the same to any person, or permit any person to have access thereto, unless notice of the time and place of such intended transfer or access be served upon the county treasurer, personally or by representative, in which event the county treasurer, personally or by representative, may examine said securities, assets, funds or contents of such safe deposit box, at the time of such delivery, transfer or access. If, upon such examination the county treasurer or his representative shall for any cause deem it advisable that such securities, assets or

funds should not be immediately delivered or transferred, or access to said safe deposit box or other place of safekeeping should not immediately be granted, he may forthwith notify in writing such person to defer delivery or transfer or access, as the case may be, for a period not to exceed ten days from the date of such notice, and thereupon it shall be the duty of the person notified to defer such delivery, transfer or access until the time stated in such notice or until prior revocation thereof. Failure to serve the notice first above mentioned, or to allow such examination, or to defer delivery or transfer of such securities, assets, or funds, or to refuse access to such safe deposit box or other place of safekeeping for the time stated in the second of such notices, shall render such person liable to the payment of the tax due, not exceeding $1000, upon the transfer of said securities, assets, or funds, or upon securities, assets, or moneys in such safe deposit box or other place of safekeeping, pursuant to the provision of this act; provided, however, that nothing herein contained shall subject such person to liability for the payment of any such tax unless such person had knowledge of the death of the decedent prior to such delivery or transfer of such securities, assets, or funds, or entry to said safe deposit box or other place of safekeeping. Nothing herein contained shall apply with respect to negotiable instruments on which such person is obligated, nor to the delivery or transfer of securities or assets standing in the name of decedent alone, except contents of safe deposit boxes, to his duly qualified executor, administrator or personal representative. The word "person" as used herein shall include individual persons, safe deposit companies, banks, trust companies, savings and loan associations, partnerships and all other organizations.

Any person seeking access to any safe deposit box upon the death of any person who at the time of his death was a tenant thereof either individually or as joint tenant or tenant in common, or seeking to withdraw securities, assets or funds belonging to the decedent or which decedent had the right to withdraw, shall notify the person renting such safe deposit box or holding such securities, assets or funds of the decedent's death. Any person who wilfully fails to give the notice of the death of the decedent required by this paragraph with intent to evade taxes due hereunder shall be guilty of a misdemeanor. It shall be a complete defense to any prosecution under the provisions of this subdivision that no inheritance tax was due from the decedent's estate.

Subdivision 2. The county treasurer shall within ten days deliver a written report of the property examined by him to the probate court and the commissioner of taxation.

Subdivision 3. No corporation organized under the laws of this state shall transfer on its books or on its records kept as transfer agent for any corporation any shares of stock standing in the name of a decedent who is known to have been a resident of this state or of a foreign country at the time of his death without the written consent of the commissioner of taxation. Any corporation violating the provisions of this section shall be liable to the state for the amount of any tax due on the transfer of such shares of stock. (As amended Act Apr. 20, 1943, c. 504, §8.)

2304. Commissioner of taxation to to receive list of property.—Subdivision 1. The county treasurers of the several counties, and the commissioner of taxation, shall have the same rights to apply for letters of administration as are conferred upon creditors by law.

Subdivision 2. In all estates where it appears from the inventory, appraisal and return that an inheritance tax may be imposed, the representative shall, upon the filing thereof, under direction of the court, deliver a copy of each, and of the petition, and will, if any, to the commissioner of taxation, and upon filing the final account shall deliver a copy thereof to the commissioner of taxation.

Subdivision 3. The values shown by such inventory, appraisal and return shall be deemed conclusive and final in the computation of inheritance taxes unless within ninety days after the filing of copies thereof with the commissioner of taxation as required by subdivision 2 of this section, the representative of the estate, or the commissioner of taxation, or any party in interest, shall file objections thereto with the probate court and, if he is not the party objecting, with the commissioner of taxation, as to any specific item or items therein. If such objections are filed the probate court shall fix a time and place for the determination of the tax and shall give thirty days' written notice thereof to the commissioner of taxation and to the representative of the estate and to any party who has filed objections, and upon such hearing shall determine the values of the items objected to and determine the tax. If no objections are filed the court shall make its order determining the tax on the values set forth in the appraisal and the return as herein provided.

Subdivision 4. **Commissioner of taxation to receive list of property.**—Upon making and filing the order determining the tax, a copy thereof shall be served on the county treasurer, the commissioner of taxation, and the representatives of the estate. Within 30 days thereafter the commissioner of taxation or any other interested party may file written objections thereto with the probate court, and apply for a reassessment and redetermination of the tax. The court shall thereupon set a time for hearing thereof, and give at least ten days' notice to the commissioner of taxation, the county treasurer and other interested parties. Upon such hearing the court may set aside or amend its order, or any part thereof. Notice of the order made after such hearing shall be served in the same manner as the original order. (As amended Apr. 20, 1943, c. 504, §9; Apr. 23, 1943, c. 593, §4.)

(4).
Amended. Laws 1943, c. 504, §9, and c. 593, §4. See above text.

2309. Probate court to report to commissioner of taxation and state auditor.—The probate court upon serving a copy of the order determining the tax, as herein provided shall deliver to the commissioner of taxation, a full report showing such other matters in connection therewith as may be required by the commissioner of taxation upon such forms as may be furnished by him to said court or as may be particularly requested. The county board may allow the county treasurer and the judge of probate to employ such additional clerical assistance for all or part of the time as may be necessary to properly perform the additional duties imposed upon such officers by the inheritance tax law. (As amended Apr. 23, 1943, c. 593, §5.)

2312. Reports by Probate Judge and Register of Deeds.—Subdivision 1. The commissioner of taxation shall furnish to each probate court a book which shall be a public record, and in which shall be entered by the judge of said court the name of every decedent upon whose estate an application has been made for the issue of letters of administration, or letters testamentary or ancillary letters, the date and place of death of such decedent, names and places of residence and relationship to decedent of the heirs at law of such decedent, the estimated value of the property of such decedent, names and places of residence and relationship to decedent of the heirs at law of such decedent, the names and places of residence of the legatees, devisees, and other beneficiaries in any will of any such decedent, the amount of each legacy, and the estimated value of any property devised therein and to whom devised. These entries shall be made from data contained in the papers filed on such

application or in any proceeding relating to the estate of the decedent.

Subdivision 2. The judge of probate shall also enter in such book the amount of the property of any such decedent, as shown by the inventory thereof, when made and filed in his office, and the returns made by any appraisers appointed by him under this act, and the value of all inheritances, devises, bequests, legacies and gifts inherited from such decedent, or given by such decedent in his will or otherwise as fixed by the probate court, and the tax assessed thereon, and the amounts of any receipts for payment thereof filed with him.

Subdivision 3. The commissioner of taxation shall also furnish forms for the reports to be made by such judge of probate, which shall correspond with the entries to be made in such book.

Subdivision 4. Each judge of probate, on determining a tax, shall immediately make a report to the commissioner of taxation upon the forms furnished by the commissioner of taxation containing all of the data and matters required to be entered in such book.

Subdivision 5. The register of deeds of each county shall, on the first day of January and July of each year, make reports in duplicate to the auditor of state and attorney general, containing a statement of any conveyance filed or recorded in his office of any property which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor with the name and place of residence of the vendor or vendee, and the description of the property transferred, as shown by such instrument. Such county official shall also furnish to either of said state officials, upon request, all information specifically requested as to any instruments of record in his office. (As amended Act Apr. 20, 1943, c. 504, §10.)

Laws 1943, c. 504, §11, provides: "This act shall apply in the case of all persons whose deaths occur after its passage."

2313. When estate of nonresident not probated.—Subdivision 1. The commissioner of taxation, by and with the consent and approval of the attorney general, in case of the estate of a nonresident decedent whose estate has not been probated in this state, and the consent and approval of the probate judge in the case of any estate probated in this state, expressed in writing, is hereby authorized and empowered to enter into an agreement with the trustees of any estate in which remainders or expectant estates are of such a nature or so disposed and circumstanced that the taxes are not presently payable or where the interests of the legatees or devisees are or were not ascertainable under the provisions of this chapter, at the time fixed for the appraisal and determination of the tax on estates and interests transferred in fee, and to thereby compound the tax upon such transfers upon such terms as are deemed equitable and expedient; to grant a discharge to said trustees on account thereof upon payment of the taxes provided for in such composition agreement; provided, however, that no such composition shall be conclusive in favor of said trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment, or fixed, abolute or indefeasible, rights of future enjoyment or of such as would possess such rights in the event of the immediate termination of any particular estate, unless they consent thereto either personally or by duly authorized attorney, when competent, or by guardian or committee. Composition agreements made, affected and entered into under the provisions of this section shall be executed in triplicate, and one copy thereof filed in the probate court of the county in which the tax is to be paid, one copy in the office of the commissioner of taxation and one copy shall be delivered to the persons paying the tax thereunder.

Subdivision 2. The commissioner of taxation shall not consent to the assignment or delivery of any property embraced in any legacy, devise or transfer from a nonresident decedent to a nonresident trustee thereof under the provisions of Mason's Supplement 1940, Section 2302, as amended, where the property embraced in such legacy, devise or transfer is so circumstanced and disposed of that the tax thereon cannot be presently ascertained, but is so circumstanced and disposed of as to authorize him to enter into a composition agreement with reference to the tax on any estate or interest therein as herein provided, until the tax on the transfer of any such estate or interest shall have been compounded and the tax paid as hereinbefore provided for; or in lieu thereof the trustee or other person to whom the possession of such property is delivered shall have made, executed and delivered to the commissioner of taxation, a bond to the state of Minnesota in an amount equal to the amount of tax which in any contingency may become due and owing to the state on account of the transfer of such property, such bond to be approved by the commissioner of taxation and conditioned for the payment to the state of Minnesota of any tax which may accrue to the state under this act on the subsequent transfer or delivery of the possession of such property to any person beneficially entitled thereto. The provisions of Mason's Minnesota Statutes of 1927, Sections 9677, 9686, and 9689, as amended, shall apply to the execution of said bond and the qualification of the surety or sureties thereon.

Subdivision 3. No property having its situs in this state embraced in any legacy or devise bequeathed or devised to a nonresident trustee and circumstanced or disposed of as last hereinbefore described, shall be decreed and distributed by any court of this state to such nonresident trustee until he shall have compounded and paid the tax as provided for in this section; or in lieu thereof given a bond to the state as provided for in this section with reference to transfers of property owned by nonresident decedents. (As amended Apr. 23, 1943, c. 593, §6.)

2315. Refundment of tax.—Whenever, under the provisions of Mason's Supplement 1940, Section 2294, as amended, or Mason's Minnesota Statutes of 1927, Section 2301, as amended, any person or corporation shall be entitled to a return of any part of a tax previously paid, he shall make application to the commissioner of taxation for a determination of the amount which he is entitled to have returned, and on such application shall furnish the commissioner of taxation with affidavits and other evidence showing the facts which entitle him to such return and the amount he is entitled to have returned. The commissioner of taxation with the approval of the attorney general shall thereupon determine the amount, if any, which the applicant is entitled to have returned, and shall cause such refund to be paid in the manner provided by law.

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

Any person aggrieved by the determination of the commissioner of taxation may appeal to the district court in the manner and with the same effect as is provided for in Mason's Supplement 1940, Section 2302, as amended. (As amended Apr. 23, 1943, c. 593, §7.)

2316. Payments to counties.—On or before the first of November in each year the commissioner of taxation shall determine the amount of inheritance tax which has been paid in to the commissioner of taxation by the county treasurers of the several counties of this state, from estates of residents thereof, during the preceding fiscal year ending July 31, and the amount returned under the provisions of Mason's Minnesota Statutes of 1927, Section 2315, as amend-

ed, which was originally paid to the county treasurer, and shall cause to be paid to each county from which any tax shall have been received during the fiscal year ending July 31 next preceding, ten per cent of the amount of the inheritance tax, money so received from each such county respectively, less ten per cent of any tax which has been returned under the provisions of Mason's Minnesota Statutes of 1927, Section 2315, as amended, and which was originally paid to the county treasurer of any such county. Said payments shall be transmitted to the county auditor of each county, to be placed to the credit of the county revenue fund.

It shall be the duty of the state treasurer to pay warrants therefor out of any funds in the state treasury not otherwise appropriated. The moneys necessary to pay such warrants are hereby appropriated out of any moneys in the state treasury not otherwise appropriated. (As amended Apr. 23, 1943, c. 593, §8.)

2316-1. Effective July 1, 1943.—This act shall take effect July 1, 1943. Nothing in this act shall affect any liability for taxes, interest, and penalties incurred prior to its effective date. (Act Apr. 23, 1943, c. 593, §9.)

[291.405]

MORTGAGES ON REAL PROPERTY

2322. Mortgage defined.

An executory contract for sale of land under which vendee is entitled to or does take possession thereof is deemed, for purposes of mortgage registration act, a mortgage of the land for the unpaid balance of the purchase price. S. R. A., Inc., 213M487, 7NW(2d)484. See Dun. Dig. 9576b.

A contract for a deed is a "mortgage", but a quit-claim deed granting title to grantee, satisfying terms of mortgage, and releasing grantee from further obligations under the instruction is not a mortgage. Op. Atty. Gen. (418B-5), Jan. 23, 1940.

Tax must be paid on new mortgage substituted for existing mortgage for purpose of reducing interest. Op. Atty. Gen., (418a-11), April 16, 1940.

A conveyance with a purported consideration of $1 and other valuable considerations, consisting of reservation of life estate with payment to grantor of a certain monthly sum during his life time or until sum of $25,000 has been paid is not a mortgage. Op. Atty. Gen., (418B-5), May 8, 1940.

Warranty deed given to son, providing that son pay all taxes and legal assessments when due, and in addition to pay to grantors annually so long as either shall live, $100, stipulated payments being of essence of deed with reverter back if not made, is subject to mortgage registration tax. Op. Atty. Gen., (418B-8), Jan. 21, 1941.

Entire amount of new bond issue to refund original issue is subject to tax. Op. Atty. Gen. (418B-20), Sept. 26, 1941.

Mortgage given to include "different" or "substituted" security, as distinguished from "additional" security is not exempt, though it secures same note. Op. Atty. Gen. (418B-12), Mar. 27, 1942.

Where purchase price of land under contract for deed is 10,000 bushels of wheat payable in installments, it is duty of county auditor and county treasurer to fix some value upon land or wheat and base mortgage registry tax thereon. Op. Atty. Gen. (418a), May 28, 1942.

Whether valid or not, a properly witnessed and acknowledged trust mortgage to a county in another state for the benefit of public welfare board of that state, federal government and county in providing old-age assistance, is entitled to record, but is not exempt from mortgage registry tax, amount of which is to be determined upon such information as is available. Op. Atty. Gen. (373b-11), Feb. 9, 1943.

No tax is payable when mortgage is given simply to include additional security for all indebtedness. Op. Atty. Gen. (418b-12), June 8, 1943.

2323. Tax on record or registration.

Minnesota mortgage registry tax is a revenue measure and mortgages issued to a federal land bank under Federal Farm Loan Act is immune from that tax. McGovern v. F., 296NW473. See Dun. Dig. 9576.

Where grantee (or mortgagee) is to pay $400 per year for so long as both grantors shall live, $400 should be multiplied by number of years of life expectancy of grantor who has longest life expectancy, plus extra amount to be paid to surviving grantor. Op. Atty. Gen. (418B-5), Jan. 23, 1940.

Where part of mortgage matures before five years and sixty days, tax on that portion should be fifteen cents per hundred, and tax on remainder should be twenty-five cents per hundred. Op. Atty. Gen., (418a-11), April 29, 1940.

Where mortgage is given to secure payment of monthly sum during lifetime, usual method of computing tax is to determine years of expectancy from an approved mortality table and then to multiply yearly value of payments by expectancy in years at time contract is made, and portion of contract price payable in over five years and sixty days carries a 25 cent rate. Op. Atty. Gen., (418B-5), May 8, 1940.

Registration tax need not be paid on mortgages running to Minnesota Rural Rehabilitation Corporation, incorporated for purely benevolent purposes, and nonprofit, in order to accept and use federal relief grant under Federal Emergency Relief Act. Op. Atty. Gen. (418a-13), Nov. 26, 1940.

No tax need be paid on mortgages running to the Farm Security Administration for benefit of the United States. Op. Atty. Gen. (418a-14), Dec. 12, 1941.

An agreement whereby mortgagee accepted an advance payment on principal and reduced rate of interest and monthly payments, but which did not extend time of maturity, could be recorded without payment of additional tax. Op. Atty. Gen. (418A-11), Jan. 7, 1942.

Whether valid or not, a properly witnessed and acknowledged trust mortgage to a county in another state for the benefit of public welfare board of that state, federal government and county in providing old-age assistance, is entitled to record, but is not exempt from mortgage registry tax, amount of which is to be determined upon such information as is available. Op. Atty. Gen. (373b-11), Feb. 9, 1943.

Determination of value where mortgaged property lies in two states. Op. Atty. Gen. (418a), Apr. 9, 1943.

2324. Exemption from other taxes.

Registration tax must be paid on a mortgage given by a corporation which is exempt but taken by a corporation which is not exempt from taxation. Op. Atty. Gen. (414a-14), Apr. 30, 1941.

Mortgage on church property is exempt from registry tax. Op. Atty. Gen. (418c-3), June 16, 1942.

Whether mortgage of church building society lending money to a church is subject to registration act is dependent upon whether such society is a purely charitable organization or corporation. Op. Atty. Gen. (418c-3), Dec. 11, 1942.

No registration tax may be charged where mortgagor and mortgagee are both church corporations. Op. Atty. Gen. (418c-3), Aug. 2, 1943.

2328. Prepayment of tax—Evidence—Notice.

Statute is a revenue measure, and failure to pay tax on a mortgage or contract for deed does not render instrument void, but merely suspends legal efficacy by holding its enforcement in abeyance until tax is paid Kirk v. Welch, 212M300, 3NW(2d)426. See Dun. Dig. 9576b.

Payment of mortgage registry tax on a contract for deed may be made at any time before instrument is enforced. Id.

MONEY AND CREDITS

2337. Definitions.—Subdivision 1. As used in this section, the word "money" means gold and silver coin, treasury notes, bank notes and other forms of currency in common use; and the word "credits" means and includes every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, and all shares of stock in corporations 75 per cent or more of the real and tangible personal property of which is not taxable in this state.

Subdivision 2. As hereinbefore defined, money and credits are hereby exempt from taxation other than that imposed by this act, and except as hereinafter provided shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof.

Subdivision 3. The following money and credits shall not be subject to the tax imposed by this act; (a) money and credits belonging to incorporated banks located within this state; (b) money and credits held in a trust forming a part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of some or all of his employees, and which is of the kind and nature described and defined in Mason's Supplement 1940, Section 2394-28 (d); (c) mortgages and other evidences of indebtedness on which taxes have been fully and properly paid, under the provisions of Mason's Minnesota Statutes of 1927, Sections 2322-2336, as amended, until maturity and for one year thereafter; (d) money and credits, however held and

whether in trust or otherwise, in the proportion that the income therefrom would not be subject to tax under the provisions of the income tax law of this state; (e) moneys and credits of corporations which or the shares of stock of which are subject to the tax imposed by Section 2026-5, 1940 Supplement, Mason's Minnesota Statutes, 1927. (As amended Apr. 24, 1943, c. 596, §1.)

Exempt for years 1943 and 1944. Laws 1943, c. 656, §30.

"Resident", in statute laying credits and moneys tax upon any person resident or engaged in business within district means domicile. Sweeney v. D., (AppDC), 113F (2d)25.

If all assessments have been timely and properly made, there is a 6 year period of limitations with respect to action to enforce collection of moneys and credits taxes and no limitation with respect to personal property taxes. Op. Atty. Gen. (421a-8), Oct. 18, 1940.

Where money and credit assessment are paid prior to entry of judgment, taxpayer is required to pay interest on tax as well as cost in connection with issuance of citation and of sheriff for return of not found. Id.

Constitutional exemption of public hospitals from taxation applies to moneys and credits. Op. Atty. Gen. (614G), Nov. 28, 1940.

Postal savings certificates and accounts are subject to money and credits tax. Op. Atty. Gen. (614G), Aug. 26, 1941.

Deposits in a building and loan association, 25% or more of real and tangible personal property of which is taxable in Minnesota, are not taxable provided they constitute payment in part or in whole for shares of stock in association, notwithstanding that shares purchased may be reduced to cash, and cash withdrawn, at any time or under limitations. Op. Atty. Gen. (614N), Jan. 15, 1942.

Benefit Association organized under Laws 1933, c. 241, is subject to money and credits tax, subject to general provisions with respect to taxable money and credits. Op. Atty. Gen. (614H), Jan. 22, 1942.

2337-1. Exemption of moneys and credits.—Money and credits of each individual, estate, trust and partnership of the fair cash value of $1,000.00 shall not be subject to the tax imposed by Mason's Minnesota Statutes of 1927, Sections 2337 to 2349, as amended. For the purpose of determining salaries of all officials based on assessed valuations and of determining tax limitations and net bonded debt limitations now established by statute or by charter, the assessed value of money and credits in each municipality or other taxing district shall not be less than the assessed value of money and credits as finally equalized for the year 1942. (Act of Apr. 24, 1943, c. 596, §2.)
[285.023]

2337-2. Tax on money and credits suspended.—Money and credits, as defined in Mason's Supplement 1940, Section 2337, as amended by Laws 1943, Chapter 596, are hereby exempted from taxation, for the years 1943 and 1944. No returns for said years shall be required, and no assessment thereof shall be made.

The exemption provided by this section shall not affect or prevent the assessment, levy, or collection of taxes on money and credits for any year or years prior to 1943.

The exemption provided by this section shall not preclude the taking of money and credits into account in determining the assessed value of property within any city of any class, any village, borough, county, town or school district, for purpose of computing the limit of indebtedness prescribed by any general law or by the special law or home rule charter under which it is organized, and the property so exempted shall for these purposes be taken into account at its assessed value as finally equalized for the year 1942.

The exemption provided by this section shall not preclude the taking of money and credits into account in determining the assessed value of property within any city of any class, any village, borough, county, town, or school district, in classifying such city, village, borough, county, town or school district, under any law of this state, for the purpose of determining salaries of public officers, or for any other purpose, and the property so exempted shall for such purposes be taken into account at its assessed value as finally equalized for the year 1942.

This section shall take effect upon the passage of this act and shall have no force and effect after April 30, 1945. (Apr. 24, 1943, c. 656, §30.)

Laws 1943, c. 596, §6, provides that if any provision of this act is held invalid or not applicable such fact will not affect the remainder of the act.

Laws 1943, c. 656, §31, provides that this section, as amended, thereby shall apply to taxable years beginning after December 31, 1942.

GRAIN IN ELEVATORS

2350 to 2353. [Repealed.]
Repealed. Act Apr. 28, 1941, c. 542, §12.

GRAIN HANDLING

2353-½. Definitions.—As used in this act:

"Person" means individuals, corporations, firms and associations of whatever form.

"Handling" or "Handled" means the receiving of grain at or in each elevator warehouse, mill or other facility in this state in which it is received for storage, accumulation, sale or processing for any purpose whatsoever, except as otherwise provided in this act.

"Grain" means all commercial field seeds in their natural state, or when hulled, cleaned, dried, graded, or polished; but such term excludes such seeds when otherwise processed and the products of such processing, or when packaged or sacked. (Act Apr. 28, 1941, c. 542, §1.)
[286.01]

2353-½a. Nature of tax—Rate.—In lieu of all taxes on grain as property of any person handling grain, an annual excise tax is hereby levied on the handling of grain for all the purposes for which taxes would otherwise be levied on such grain as property in this state measured as follows:

A sum equal to one-half mill per bushel upon all wheat, soybeans, and flax handled in this state in the year hereinafter specified, ascertained as hereinafter provided, plus a sum equal to one-fourth mill per bushel upon all other grain so handled. (Act Apr. 28, 1941, c. 542, §2.)
[286.02]

2353-½b. Statement—Filing—Form.—Every person engaged in handling grain shall on May first of each year make and file a statement with the assessor of the taxing district in which the grain was handled setting forth the number of bushels of each kind of grain handled by him in that district during the year immediately preceding or the part thereof during which he was engaged in handling grain.

A form for making such statement shall be included in the blanks prescribed by the commissioner of taxation. (Act Apr. 28, 1941, c. 542, §3.)
[286.03]

2353-½c. Assessment.—The assessor of each such district, from the statement required by Section 3 of this act, or from such other facts and information as he may acquire, shall ascertain the number of bushels of each class of grain mentioned in Section 2 of this act handled by each person in his district during the preceding year, or part thereof and shall assess the same to such person under the provisions of this act.

The rate or rates imposed by Section 2 of this act shall be applied to the number of bushels of each class of grain and the amount resulting therefrom shall constitute the tax to be assessed. (Act Apr. 28, 1941, c. 542, §4.)
[286.04]

2353-½d. Time of payment—Duties of officers—Appeal.—The tax imposed by this act shall be payable at the time or times specified by law for the payment of taxes in respect of taxable personal property, and in the district in which the assessment is made. All the powers and duties vested in or imposed upon the county auditor or the commissioner of taxation, or any other officer or board with respect to the assessment of

taxable personal property shall apply to said commissioner and other officers with respect to the assessment of the tax imposed by this act. All rights and privileges of a taxpayer or of any other person in behalf of or in succession to a taxpayer, or with respect to the assessment and payment of taxes levied on personal property, including specifically but without prejudice, all rights of appeal from such personal property and penalty assessments, are hereby conferred upon each such person and made applicable to the assessment and payment of the tax imposed by this act. (Act Apr. 28, 1941, c. 542, §5.)
[286.05]

2353-½e. General personal property list—Entry—Personal property tax law to govern collection.—All taxes assessed pursuant to this act shall be entered on the proper general personal property list in the taxing district in which the same are required by this act to be assessed, and shall be considered the same as taxes imposed upon personal property, and all provisions of law relating to the collection of personal property taxes and the powers and duties of the county treasurer, the county auditor, and all other officers with respect to the collection and enforcement of personal property taxes shall apply to the collection and enforcement of the tax imposed by this act. (Act Apr. 28, 1941, c. 542, §6.)
[286.06]

2353-½f. Distribution of tax.—All taxes levied by and assessed under this act shall, when collected, be distributed by the county auditor and county treasurer to and among the several taxing districts in the same proportion in which such taxing districts are entitled to share in the revenue accruing from the collection of personal property taxes. (Act Apr. 28, 1941, c. 542, §7.)
[286.07]

2353-½g. Exemption from personal property tax.—All grain included in the statements required to be made by this act and upon the handling of which a tax is hereby imposed, shall be exempt from taxation as personal property. (Act Apr. 28, 1941, c. 542, §8.)
[286.08]

2353-½h. Not applicable to farmers.—Nothing in this act shall apply to a farmer in respect to grain raised and stored, kept or found on a farm owned or operated by himself, nor to such grain as shall be handled, held or kept for sale for seed purposes by any person engaged in the business of buying and selling grain for such purposes. (Act Apr. 28, 1941, c. 542, §9.)
[286.09]

2353-½i. Penalties.—When a person fails to file a statement, or fails to list in the statement any item or items of grain which he is required by Section 3 of this act to list therein, the proper assessor shall ascertain as nearly as possible the number of bushels of grain of the various kinds subject to taxation in his taxing district under this act, and thereupon shall add to the assessment of each class or item of taxable property which the taxpayer failed to return or list a penalty of 50 per cent thereof. (Act Apr. 28, 1941, c. 542, §10.)
[286.10]

2353-½j. Severability clause.—The provisions of this act shall be severable. The invalidity of any one provision, section or part shall not affect the validity of the remainder. (Act Apr. 28, 1941, c. 542, §11.)

2353-½k. Repealed.—That Mason's Minnesota Statutes of 1927, Sections 2350, 2351, 2352, and 2353 are hereby repealed. (Act Apr. 28, 1941, c. 542, §12.)

2353-½l. Time of taking effect.—This act shall take effect from the date of passage of this act. The first assessment of taxes hereunder shall be based upon and measured by grain received during the period from March 1, 1940, to May 1, 1941, and thereafter annually on May 1 of each year. (Act Apr. 28, 1941, c. 542, §13.)
[286.11]

MINNESOTA TAX COMMISSION

2362. Salary and expenses. [Repealed.]
Repealed. **Laws 1943, c. 160.**

DEPARTMENT OF TAXATION

2362-2. Department and commissioner of taxation—Appointment; etc.
Veterans' relief to be administered includes relief to honorably discharged soldiers, sailors or marines, who have rendered service in the present war, and this relief extends to their families and dependents. Op. Atty. Gen. (310M), Mar. 10, 1942.

2362-9. Orders—Decisions—Report.—(a) All orders and decisions of the commissioner of taxation or any of his subordinates respecting any tax, assessment, or other obligation shall be in writing, filed in the offices of the department. No order or decision increasing or decreasing any tax, assessment, or other obligation by a sum exceeding $100 on real or personal property, or the assessed valuation thereof, or other obligation relating thereto, the result of which is to increase or decrease the total amount payable including penalties and interest, by a sum exceeding $300.00, and no order or decision increasing or decreasing any other tax by a sum exceeding $100.00 exclusive of penalties and interest, shall be made without the written approval of the commissioner or his deputy in each case. Written notice of every order granting a reduction, abatement, or refundment exceeding $100 of any tax on real or personal property or the assessed valuation thereof, or other obligation relating thereto, the result of which is to decrease the total amount payable including penalties and interest by a sum exceeding $300, and of every order reducing, abating or refunding any other tax by a sum exceeding $100 exclusive of penalties and interest, shall be given within five days to the attorney general. The attorney general shall forthwith examine such order, and if he deems the same proper and legal he shall approve the same in writing, and may waive the right of appeal therefrom in behalf of the state; otherwise he shall take an appeal from the order in behalf of the state as herein provided. Provided however, that written approval of the commissioner or his deputy and written notice to the attorney general, shall not be required with respect to the following orders: (1) orders reducing assessed valuation of property by reason of its classification as a homestead; (2) orders involving property of the Department of Rural Credits; (3) orders not involving refunds which have the effect only of correcting income and franchise tax assessments to conform to the amounts shown on final returns filed as provided by Mason's Supplement 1940, Section 2394-39(e); (4) original orders for the refundment of gasoline taxes. (As amended Mar. 25, 1943, c. 174, §1; Apr. 24, 1943, c. 652, §1.)

(b) * * * * *.

(c) The commissioner shall include in the printed biennial report of the department a statement of all abatements, reductions, and refundments of assessments, taxes, or other obligations granted by the department during the biennium, which require the written approval of the commissioner or his deputy, and of which written notice to the attorney general is required, under the provisions of Subdivision (a) of this section. Provided, however, that all reductions of assessed valuation of more than $50,000.00 and all reductions, refundments, or abatements of real estate tax of more than $1,000.00 shall be separately shown in such statement. Such statement shall show the names of all taxpayers or other persons concerned, the original amount of each assessment, tax, or other obligation, the amount of abatement, reduction, or refundment allowed in each case, and the totals of

the respective items, notwithstanding any provisions of law requiring secrecy to the contrary. The commissioner shall also include in such statement the amount of all increases of taxes or assessments made by the department, classified in such manner as he may deem proper, but not showing the names of taxpayers or other persons concerned or the amounts in individual cases. (As amended Mar. 25, 1943, c. 174, §§ 1, 2; Apr. 24, 1943, c. 652, §1.)

Section does not require tax commissioner to give attorney general written notice of equalization orders authorized by §2366, or orders made under authority of §2365, or Laws 1931, c. 304, and does not require approval of attorney general of such orders. Op. Atty. Gen. (130a), Dec. 23, 1940.

(a) Necessity of writing—Etc.

Subsection (a) as amended by Laws 1943, c. 174, §1 is amended by Laws 1943, c. 652. See above text.

Section 2362-15(c) cannot be construed as making it mandatory upon commissioner to make formal findings of fact and rulings of law in every order increasing tax shown by return of taxpayer. Commander Larabee Corp. MBTA (9) February 24, 1940.

(c).

Amended. Laws 1943, c. 174, §2. See above text.

2362-10. Board of tax appeals.—(a) **Creation—Membership—Qualifications.**—There is hereby created * * * * *.

(b) * * * * *.

(c) * * * * *.

(d) Each member of the board shall receive $25 per day for time spent in the performance of his duties, but not exceeding compensation for 150 days in any calendar year, or a proportionate amount for a fraction of a year. He shall also receive his actual and necessary expenses paid or incurred in the performance of his duties. (As amended Act Apr. 20, 1943, c. 533, §1.)

2362-11. Chairman—Clerk, deputies, employees.

Clerk of board of tax appeals is in classified service. Op. Atty. Gen. (644B), Jan. 23, 1942.

2362-15. Appeals from orders—(a) **Who entitled to appeal.**—Except as otherwise provided by law, * * * * *.

(b) * * * * *.

(c) * * * * *.

(d) At the time of filing the notice of appeal the appellant shall pay to the clerk of the board an appeal fee equal to ten cents for each one hundred dollars or fraction thereof of the amount at issue in the proceedings; provided, that the minimum fee shall be $5 and the maximum fee $15; provided further, that no appeal fee shall be required of the commissioner of taxation, the attorney general, the state or any of its political subdivisions. In any case where the foregoing provisions for determination of the appeal fee are inapplicable the amount of the fee shall be $10. (As amended Mar. 25, 1943, c. 174, §3.)

(e) * * * * *.

(f) * * * * *.

Appeal may be taken from any official order of commissioner under §§1983, 2365, 2366, or Laws 1931, c. 304. Op. Atty. Gen. (130a), Dec. 23, 1940.

A village and a school district could appeal from order of tax commissioner in matter of equalization of assessments of unmined iron ore. Village of Aurora, MBTA (Nos. 55, 56), March 13, 1943.

(b).

Order of commissioner determining value of property as of January 1, 1933, is prima facie valid, and burden of proving such value is upon the taxpayer an appeal to the board. Latz, MBTA (No. 58) Aug. 28, 1941.

(c) Return—Contents—Etc.

Statute requires only filing of return with board and not service of same upon taxpayer. Commander Larabee Corp. MBTA (9) February 24, 1940.

Taxpayer was not entitled to have return stricken from files because not filed within 20 days from notice of appeal, especially where taxpayer thereafter filed petition for leave to file an amended notice of appeal. Id.

Section cannot be construed as making it mandatory upon commissioner to make findings of fact and rulings of law in every order which he may make. Id.

A plea for better tax pleading. 18 Cornell Law Quarterly 507.

(d).

Amended. Laws 1943, c. 174, §3. See above text.

(f).

The only issues before the board are those specified in the notice of appeal, and where notice of appeal related only to 1937 income tax, board could not consider contention that taxpayer should be permitted to amend 1936 return. Stansfield, M.B.T.A. (No. 85), May 22, 1942.

Upon appeal by a municipality from order of tax commissioner determining valuation of unmined iron ore there must be a hearing and a determination de novo upon the issues raised in the notice and in the return, and in order to determine the ultimate issue of whether there was an undervaluation, board must of necessity determine, from all the evidence presented, the true and actual value of the property as of May 1. Village of Aurora, MBTA (No. 55, 56), March 13, 1943.

2362-18. Inheritance taxes.

(c).

There was no intention on part of legislature to deprive municipality of a right of review when it contends that determination of a commissioner is inadequate. Village of Aurora, MBTA (No. 55), May 20, 1941.

Iron mining company, taxpayer, became a party to an appeal by municipality from an order of commissioner fixing valuation of unmined iron ore. Village of Aurora, MBTA (No. 55, 56), March 13, 1943.

2362-19. Certiorari from Supreme Court—Procedure; Costs.—(a) A review of any final order * * * * *.

(b) Within twenty days after notice of the making and filing of the order of the board, and in any case within sixty days after the making and filing of such order, the petitioner for review shall obtain from the supreme court a writ of certiorari, and shall serve the same upon the commissioner of taxation and upon all other parties appearing in the proceedings before the board, also upon the attorney general, unless he is the petitioner, and shall file the original, with proof of such service, with the clerk of the board. Every petitioner except the attorney general, the commissioner of taxation, the state and its political subdivisions, shall also pay to the clerk a fee of $15 and file a bond or make a deposit in like manner and amount as in case of an appeal from the district court. The fee shall be disposed of as in such case. Return upon the writ shall be made to the supreme court and the matter shall be heard and determined by the court as in other certiorari cases, subject to the provisions hereof and to such rules as the court may prescribe for cases arising hereunder. (As amended Mar. 25, 1943, c. 174, §4.)

Determination of taxing officials, if reasonably supported by competent evidence and permissible inferences therefrom, will be sustained under the rule that findings of administrative officers, when made upon such proofs, are final on review. Cargill v. Spaeth, 215M540, 10NW(2d) 728. See Dun. Dig. 397b, 9577c.

2362-20. Orders to be prima facie evidence of facts.

Hibbing General Hospital was exempt from taxation from the time contract was entered into for its ownership and operation by the Benedictine Sisters Benevolent Association. Village of Hibbing, MBTA (No. 117), Sept. 15, 1943.

2362-25. May make rules and regulations.

AMENDED RULES AND REGULATIONS OF THE MINNESOTA BOARD OF TAX APPEALS

(Filed December 29, 1939)

The following rules and regulations are hereby promulgated by the Board of Tax Appeals of the State of Minnesota pursuant to Article VI, Chapter 431, Sections 10 to 31 inclusive, Session Laws of Minnesota for the year 1939, and are hereby substituted in full for the rules and regulations heretofore promulgated by said Board and filed with the Secretary of State of the State of Minnesota on October 4, 1939.

Rule 1. Appearance and practice before the board.

Any person may appear and act for himself or for a partnership of which he is a member or for a corporation of which he is an officer.

Others who may practice before the Board as hereinafter provided shall be:

(a) Attorneys at law duly licensed to practice law in the State of Minnesota.

(b) Certified Public Accountants duly qualified under the Laws of Minnesota, provided, however, that practice by Certified Public Accountants shall be limited to the following:

(1) Presentation of matters in which the facts are submitted by stipulation and in which the taking of evidence before the Board is not required.

(2) Arguments on questions of fact and problems in accountancy in all hearings before the Board.

The Board may for cause deny or suspend the right of any person to practice before it.

Rule 2. Meetings.
The Board shall meet on the first Tuesday of each month, or if the same shall fall on a holiday then on the Wednesday following, at ten o'clock A.M. at its office in the State Capitol. The Board shall meet at such other times and at such other places as shall be designated by the chairman or any two members of the Board.

Rule 3. Hearings.
(a) One or more members of the Board designated by the chairman, or in his absence by the vice-chairman, may hold hearings and take testimony at any place within the state, and such testimony so taken shall be reported for action by the Board.

(b) Hearings before the Board shall be open to the public. All findings and decisions of the Board after they have been filed with the clerk of said Board shall be a matter of public record.

Rule 4. Title of cause.
(a) Each notice of appeal and all other papers filed with the Board shall contain a caption in the following form:

State of Minnesota Board of Tax Appeals

Appellant, vs. The Commissioner of Taxation, Appellee.	In the Matter of the Appeal from the Commissioner's Order dated ———— relating to ———— tax of ———— (Name of Taxpayer)

(b) In all cases the appellee shall be "The Commissioner of Taxation," who shall be designated by his official title without naming the individual holding the office, and if a change occurs in the individual holding the office while an appeal is pending the appeals shall not abate and no substitution of parties shall be necessary.

(c) The appellant shall be the taxpayer or the person authorized by Laws 1939, Chapter 431, Article VI, Section 15, to appeal from the order of the Commissioner.

Rule 5. Notice of appeal.
A notice of appeal shall be signed by the appellant personally or by an attorney at law duly licensed to practice law in the State of Minnesota.

Rule 6. Proof of service.
Proof of service shall be evidenced by an affidavit of service attached to, or by admission of service endorsed on the original of the instrument served.

Rule 7. Agreed statements of facts.
The parties may by stipulation in writing, filed with the Board, or presented at the hearing, agree upon any or all questions of fact involved in the appeal. An original and three copies of such stipulation shall be furnished to the Board.

Rule 8. Documentary Evidence.
(a) When books, documents, records, or other papers have been received in evidence, a copy thereof or of so much thereof as may be material or relevant, may, in the discretion of the Board, be substituted therefor.

(b) Originals of books, documents, records, diagrams or other exhibits introduced in evidence before the Board may be withdrawn from the custody of the Board in such manner and upon such terms as the Board in its discretion may prescribe. Exhibits shall not be open to the inspection of the public.

(c) Evidence as to the contents of books, documents, records and other papers may, in the discretion of the Board, be given by oral testimony.

Rule 9. Briefs.
(a) Briefs may be filed with the Board either before or at the time of hearing. An original and three copies of the same shall be furnished to the Board.

(b) Upon request made by any party at the time of hearing, the Board, may, in its discretion, grant said party additional time within which to file a brief. If such leave is granted, the Board shall designate the period of time within which said party shall serve and file said brief and the time within which the other party shall serve and file a reply brief. In the event leave to file such brief is granted the matter shall be deemed to have been submitted to the Board on the date set for the filing of the last brief or upon the actual filing thereof.

(c) Any taxpayer interested in or affected by any matter pending before the Board may petition the Board for leave to file a brief amicus curae and the Board in its discretion may grant or deny such petition.

Rule 10. Submission without hearing.
If all parties to an appeal shall by written stipulation waive their right to a public hearing, the parties may submit such matter to the Board on written stipulation of facts and briefs, but after such submission the Board may, in its discretion, require appearances for the taking of further testimony or for oral argument. In the event such appearance is required, ten (10) days notice shall be given by mail to all parties to the proceeding.

Rule 11. Intervention.
In the event an appeal is taken by the Attorney General in behalf of the State, or by any resident taxpayer in behalf of the State in case the Attorney General shall refuse to appeal, any taxpayer named in the order appealed from may by petition to the Board ask leave to intervene in said matter.

Rule 12. Practice and Procedure.
Unless otherwise herein provided, the practice and procedure before the Board shall be substantially such as obtains in the District Courts of this state. The Board, however, reserves the right to vary such practice and procedure by the incidental suspension of the more rigid forms of pleadings, practice and evidence when in its opinion the best interests of the parties involved may be thereby conserved or the determination of the cause expedited.

When at any time by proper motion board is asked to grant any party in a proceeding relief which will tend to simplify, clarify and expedite hearing on merits, board will consider such application in light of this rule. Commander Larabee Corp. MBTA (9) February 24, 1940.

Rule 13. Continuances.
Continuances and postponements may be ordered by the Board on its own motion or may, at the discretion of the Board, be granted on motion of either party.

Rule 14. Extension of time for appealing.
If any party shall request an extension of time for appealing under Section 15 (b), Chapter 431, Session Laws of Minnesota for 1939, said party shall submit a verified petition setting out the rounds upon which said extension is requested and shall attach to said petition an order providing for the extension.

Rule 15. Additional hearings.
If after the holding of any hearing in any matter the Board shall deem that the rights of the parties will be better served by the holding of a further hearing or hearings in said matter, the Board may order such further hearing or hearings, and ten (10) days' notice of such further hearing or hearings shall be given by mail to all parties to the proceeding.

Rule 16. Reservation.
The Board reserves the right to amend, relax and dispense with these rules and regulations from time to time as circumstances may require, or render necessary or expedient.

2364. Powers and duties of commissioner.—It shall be the duty of the commissioner and he shall have power and authority:

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

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

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

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

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

(6) To visit at least one-half the counties of the state annually and every county of the state at least once in two years and inquire into the methods of assessment and taxation and ascertain whether the assessors faithfully discharge their duties, particularly as to their compliance with the laws requiring the assessment of all property not exempt from taxation.

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

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

(9) To transmit to the governor, on or before the third Monday in December of each even-numbered year, and to each member of the legislature, on or before January first of each odd-numbered year, the report of the commissioner for the preceding years, showing all the taxable property in the state and the value of the same, in tabulated form.

(10) To exercise and perform such further powers and duties as may be required or imposed upon the commissioner by law. (As amended Mar. 26, 1943, c. 199, §1.)

Expenses of investigations in cities and villages may be charged against appropriation for "reassessment expenses" in event it is found that a reassessment is unnecessary. Op. Atty. Gen. (130A), Oct. 7, 1941.

2372-5. Notice of appeal.

There was no intention on part of legislature in enacting Laws 1939, c. 431, Art. 6, §18, to deprive municipality of a right of review when it contends that determination of commissioner is inadequate. Village of Aurora, MBTA (No. 55), May 20, 1941.

OCCUPATION TAX ON MINING OR PRODUCING IRON ORE OR OTHER ORES

2373. Occupation tax on producing ores.—Every person engaged in the business of mining or producing iron ore or other ores in this state shall pay to the state of Minnesota an occupation tax equal to 10½ per cent for the years, 1943 and 1944, and nine per cent each year thereafter of the valuation of all ores mined or produced, which said tax shall be in addition to all other taxes provided for by law, said tax to be due and payable from such person on May 1 of the year next succeeding the calendar year covered by the report thereon to be filed as hereinafter provided. (As amended Act Apr. 28, 1941, c. 544, §1; Apr. 23, 1943, c. 590, §1.)

Valuation of "unmined iron ore". Village of Aurora, MBTA (No. 55, 56), March 13, 1943.

2373-1. Ores subject to increased rates.—All ores mined or produced subsequent to December 31, 1942, shall be subject to the increased rates provided by this act. (As amended Act Apr. 28, 1941, c. 544, §2; Apr. 23, 1943, c. 590, §2.)

2373-2. Low grade ore.—(a) For the purpose of increasing employment and the utilization of low-grade, underground, and high labor cost ores, any taxpayer on whom a tax is imposed by reason of the provisions of Mason's Supplement 1940, Section 2373, as amended, shall be allowed a credit against the occupation tax as computed in said section because of the mining or production of ore from any mine in an amount equal to 10 per cent of that part of the cost of labor, excepting administrative labor, employed at said mine or in the beneficiation of such ore at or near said mine, in any calendar year, in excess of 20 cents and not in excess of 30 cents per ton of the ore produced during that year, and an amount equal to 15 per cent of that part of the cost of such labor in excess of 30 cents and not in excess of 45 cents per ton of ore produced during that year, and an amount equal to 20 per cent of that part of the cost of such labor in excess of 45 cents per ton of ore produced during that year; provided, however, that in no event shall the credit allowed hereunder be in excess of 90 per cent of the total of the tax computed under the provisions of Mason's Supplement 1940, Section 2373.

(b) In lieu of the credit above provided, at the election of the taxpayer, there may be allowed a credit against the occupation tax assessed against any mine of two-thirds of one per cent of the amount of such tax for each one per cent of the total production of iron ore from said mine which is converted into pig iron, sponge iron, or powdered iron, within the limits of the State of Minnesota. The taxpayer shall make such election at the time of filing the occupation tax return for said mine.

(c) In the event that the credit provided for in (b) hereof is found unconstitutional by any court of last resort, then the taxpayer shall be limited to the labor credit herein provided in (a) hereof. (As amended Act Apr. 28, 1941, c. 544, §3; Apr. 23, 1943, c. 590, §3.)

2373-3. Appropriation—Rehabilitation.—For the period beginning May 1, 1941, and ending April 30, 1942, there is hereby appropriated from the general revenue fund, for the purposes hereinafter set forth, five per cent of amounts paid and credited into said fund from the proceeds of taxes paid under the provisions of the law relating to occupation taxes on the business of mining or producing iron ore, and on and after May 1, 1942, there is hereby appropriated from the general revenue fund, for the purposes hereinafter set forth, ten per cent of all amounts paid and credited into said fund from the proceeds of said taxes. The office of Commissioner of Iron Range Resources and Rehabilitation is hereby created. The Commissioner shall be appointed by the Governor, with the advice and consent of the Senate, for a term of two years, the first term to begin July 1, 1941. The salary of the Commissioner shall be $5,000 per annum which shall be paid from the amounts appropriated by this section, provided, however, that such salary shall be reduced by such amount as he may receive from other funds, and the said Commissioner may hold such other positions or appointments as are not incompatible with his duties as Commissioner of Iron Range Resources and Rehabilitation. All expenses of the Commissioner, including the payment of such assistance as may be necessary, shall be paid out of the amounts appropriated by this section.

When the Commissioner above named shall determine that distress and unemployment exists or may exist in the future in any county by reason of the removal of natural resources or a possibly limited use thereof in the future and the decrease in employment resulting therefrom, now or hereafter, he may use such amounts of the appropriation made to him in this section as he may determine to be necessary and proper in the development of the remaining resources of said county and in the vocational training and rehabilitation of its residents.

There is hereby created the Iron Range Resources and Rehabilitation Commission, consisting of seven members, three of whom shall be state senators appointed by the Committee on Committees of the Senate, and three of whom shall be representatives, appointed by the Speaker of the House of Representatives, their terms of office to commence on May 1, 1943, and continue until January 3rd, 1945, or until their successors are appointed and qualified. Their successors shall be appointed each two years in the same manner as the original members were appointed, in January of every second year, commencing in January, 1945. The seventh member of said commission shall be the Commissioner of Conservation of the State of Minnesota. Vacancies on said Commission shall be filled in the same manner as the original members were chosen. All expenditures and projects made

by the Commissioner of Iron Range Resources and Rehabilitation shall first be submitted to said Iron Range Resources and Rehabilitation Commission which shall recommend approval or disapproval or modification of expenditures and projects for rehabilitation purposes as provided by this act, and the method, manner and time of payment of all said funds proposed to be disbursed shall be first approved or disapproved by said commission. The commission shall biennially make it's report to the Governor of the State of Minnesota and the State Legislature prior to the convening of each regular session. The expenses of said commission shall be paid by the State of Minnesota from the funds raised pursuant to this act.

Said commission is hereby authorized and directed to cause to be made a study of high labor costs mining in the state of Minnesota and of the policy and plans for future development of low grade ore, and to cooperate with and advise the Commissioner of Iron Range Resources and Rehabilitation in the development of the natural resources of the State of Minnesota. (Act Apr. 28, 1941, c. 544, §4; Apr. 23, 1943, c. 590, §4.)

2373-4. Severability clause.—The provisions of this act shall be severable with respect to the effect of invalidity of any provision or the application hereof. (Act Apr. 28, 1941, c. 544, §5.)

2374. Value of ore—How ascertained.

(4).

When there are 2 mining leases in force upon separate mines, in each of which lessee and lessor are same parties, they may by agreement transfer or apply advance royalty payments credited upon one lease to other having no such credit if done in good faith and without intention to evade tax. State v. Commissioner of Taxation, 209M150, 295NW652. See Dun. Dig. 9576c.

Advance royalties paid on inactive lease and transferred in good faith to active lease were properly deducted. The Mesaba-Cliffs Mining Co., MBTA, No. 12, June 25, 1940.

2383. Notices—Hearings—Determination of amount of tax is final—Certiorari.—Subdivision 1. On or before May 1 in each year, the commissioner of taxation shall send to each person subject to an occupation tax under the provisions of Laws of 1921, chapter 223 as amended a notice of the amount of the tax so determined to be due from him. Said notice shall be sent by registered mail and directed to him at the address given in the report filed by him, and, if no report has been filed or no address given, then at such address as the commissioner of taxation may be able to ascertain; but the validity of the tax shall not be affected by the failure of the commissioner of taxation to mail such notice or the failure of the person subject to the tax to receive it.

Subdivision 2. On the first secular day following the fourteenth day of May, the commissioner of taxation shall hold a hearing at his office in St. Paul which may be adjourned from day to day. Every person subject to such tax may at such hearing present evidence and argument on any matter bearing upon the validity or correctness of the tax determined to be due from him, and the commissioner of taxation shall review his determination of such tax.

Subdivision 3. After such hearing the commissioner of taxation shall make his order either affirming his determination of the tax due from the person so appearing or modifying such determination as he shall deem just and equitable, and upon the making and filing of such order said determination shall, except as hereinafter provided, become final and conclusive. The determination of the amount of tax due from any person not appearing at such hearing shall, except as hereinafter provided, become final and conclusive on the second secular day following the fourteenth day of May without further order. The determination by the commissioner of taxation of the amount of any tax due hereunder shall, except as hereinafter provided, be subject to review only on a writ of certiorari issued out of the supreme court on petition therefor presented to said court by the person subject to the tax on or before July first next following the determination of the tax.

Subdivision 4. If the amount of tax determined by the commissioner is subsequently found to be erroneous, the commissioner may, at any time within three years from the date the tax is certified as provided in Sec. 2384, redetermine the amount thereof. No such redetermination shall be made increasing the tax unless the person from whom the additional amount is due is given ten days written notice thereof and an opportunity to be heard thereon. If an order is made increasing the tax, the same proceedings shall be had as provided for occupation taxes originally determined nad certified. Any person who has paid an occupation tax may apply to the commissioner within the time herein limited for a redetermination of the tax, and if the commissioner determines that the tax has been overpaid, he shall make and file an order determining the amount of such overpayment, and credit it against occupation taxes otherwise payable by the person who has overpaid the amount as so determined. If the tax is increased, interest at 6 per cent per annum from the date payment should have been made shall be determined and paid; if the tax is reduced, interest at the rate of 3 per cent per annum from the date of overpayment shall be allowed. (As amended Apr. 24, 1943, c. 657, §1.)

2392. Taxes to go to revenue fund if act is declared invalid.

State v. Commissioner of Taxation, 209M150, 295NW 652; note under §2374(4).

The Mesaba-Cliffs Mining Co., MBTA, No. 12, June 25, 1940; note under §2374(4).

Where lessee placed certain ore in stock piles as valueless, and after termination of lease owner of land agreed to let taxpayer, a third party, remove the ore at a price of 25 cents per ton, such payments were not a royalty subject to tax. Argonne Ore Co., MBTA (No. 41), Apr. 17, 1941.

TAX ON IRON ORE ROYALTIES

2392-1. Tax on severance of ore from land—Royalties—Rate.—There shall be levied and collected upon all royalty received during the year ending December 31, 1923, and upon all royalty received during each calendar year thereafter, for permission to explore, mine, take out and remove ore from land in this state, a tax of 10½ per cent for the years 1943 and 1944, and nine per cent each year thereafter. (As amended Act Apr. 28, 1941, c. 545, §1; Apr. 23, 1943, c. 589, §1).

2392-1a. Applicable from December 31, 1942.—The increased rates provided hereby shall be applicable to all royalties received subsequent to December 31, 1942. (As amended Apr. 28, 1941, c. 545, §2; Apr. 23, 1943, c. 589, §2.)

2392-7. Time for payment of tax.

Money in special deposit in hands of state treasurer received in payment of iron ore royalty taxes accrued on royalties during current calendar year may be covered into the revenue fund at any time, retaining only a sum necessary for suspense fund. Op. Atty. Gen. (454e), Nov. 28, 1941.

2392-8. Lien of tax.

State v. Commissioner of Taxation, 209M150, 295NW 652; note under §2374(4).

Section 80-2, Mason's Stat., is in conflict with §2392-8, and latter must control procedure with respect to royalty taxes. Op. Atty. Gen. (454e), Dec. 10, 1941.

2392-14. "Taconite," definition.—For the purpose of this law, "taconite" is defined as ferruginous chert or ferruginous slate in the form of compact, siliceous rock, in which the iron oxide is so finely disseminated that substantially all of the iron-bearing particles of merchantable grade are smaller than 20 mesh. Taconite may be further defined as ore-bearing rock which is not merchantable as iron ore in its natural state, and which cannot be made merchantable by simple methods of beneficiation involving only crushing, screening, washing, jigging, drying or any combination thereof. (Act Apr. 22, 1941, c. 375, §1.) [298.23]

2392-15. Tax upon taconite and iron ore concentrate.—There is hereby imposed upon taconite, and upon the mining and quarrying thereof, and upon the production of iron ore concentrate therefrom, and upon the concentrate so produced, a tax of five cents per ton of merchantable iron ore concentrate as shipped therefrom, plus one-tenth of one cent per ton for each one per cent that the iron content of such shipping product exceeds 55 per cent, when dried at 212 degrees Fahrenheit. (Act Apr. 22, 1941, c. 375, §2.)
[298.24]

2392-16. Exclusive tax on property—Exceptions—Such tax shall be in addition to the occupation tax imposed upon the business of mining and producing iron ore and in addition to the royalty tax imposed upon royalties received for permission to mine and produce iron ore. Except as herein otherwise provided, it shall be in lieu of all other taxes upon such taconite, or the lands in which it is contained, or upon the mining or quarrying thereof, or the production of concentrate therefrom, or upon the concentrate produced, or upon the machinery, equipment, tools, supplies and buildings used in such mining, quarrying or production. Provided that nothing herein shall prevent the assessment and taxation of the surface of such lands at their value thereof without regard to the taconite therein, nor the assessment and taxation of merchantable iron ore or other minerals, or iron-bearing materials other than taconite in such lands in the manner provided by law. (Act Apr. 22, 1941, c. 375, §3.)
[298.25]

2392-17. Assessment under certain conditions.—In any year in which at least 1,000 tons of iron ore concentrate is not produced from any 40 acre tract or governmental lot containing taconite, a tax may be assessed upon the taconite therein at the mill rate prevailing in the taxing district and spread against the assessed value of the taconite, such assessed value to be determined in accordance with existing laws. Provided the amount of the tax spread under authority of this section by reason of the taconite in any tract of land shall not exceed $1.00 per acre. (Act Apr. 22, 1941, c. 375, §4.)
[298.26]

2392-18. Method of collection and payment.—The tax provided by Section 2 hereof shall be collected and paid in the same manner and at the same time as provided by law for the payment of the occupation tax. Reports shall be made and hearings held upon the determination of the tax at the same times and in the same manner as provided by law for the occupation tax. The commissioner of taxation shall have authority to make reasonable regulations as to the form and manner of filing reports necessary for the determination of the tax hereunder, and by such regulations may require the production of such information as may be reasonably necessary or convenient for the determination of the tax. All the provisions of the occupation tax law with reference to the assessment, determination and collection of the occupation tax, including all provisions for penalties and for appeals from or review of the orders of the commissioner of taxation relative thereto, are hereby made applicable to the tax imposed by Section 2 hereof, except insofar as inconsistent herewith. (Act Apr. 22, 1941, c. 375, §5.)
[298.27]

2392-19. Distribution of proceeds.—The proceeds of the tax collected under Section 2 hereof shall be distributed by the state treasurer, upon certificate of the commissioner of taxation, to the general fund of the state and to the various taxing districts in which the lands from which the taconite was mined or quarried were located in the following proportions: one-fourth thereof to the city, village or town; one-fourth thereof to the school district; one-fourth thereof to the county; one-fourth thereof to the state. The amount so distributed shall be divided among the various funds of the state, or of the taxing districts in the same proportion as the general ad valorem tax thereof. Provided if in any year the state shall not spread any general ad valorem tax levy against real property, the state's proportion of the tax shall be paid into the general revenue fund. (Act Apr. 22, 1941, c. 375, §6.)
[298.28]

TAXES DUE UNITED STATES

2394. Taxpayer may pay taxes on part.
See Laws 1943, c. 665, §6.

INCOME TAX

ARTICLE I.—GENERAL DEFINITIONS

The Revenue Act of 1942. 27MinnLawRev217.

2394-1. Definitions—When used in this Act.
(a) * * * * * *.
(b) * * * * * *.
(c) The term "corporation" shall include joint stock companies and corporations existing under the laws of any state or country; partnerships, limited or otherwise, the organization of which is not interrupted by the death of a general partner or by a change in the ownership of his participating interest, and the management of which is centralized in one or more persons acting in a representative capacity; associations (other than ordinary partnerships) and common-law trusts organized or conducted for profit. (As amended Apr. 24, 1943, c. 656, §1.)
(d) to (p) * * * * * *.

Laws 1943, c. 107, makes comprehensive provisions relating to taxes on income of persons in the armed forces.

Laws 1943, c. 656, §31, provides that this section, as amended, thereby applies to taxable years ending in 1939 and during subsequent years.

The prior construction of the federal act should be considered in construing the state income tax law. State v. Stickney, 213M89, 5NW(2d)351. See Dun. Dig. 9570d.

A corporation and sole owner of its stock will be treated as separate and distinct for income tax purposes, except in some exceptional cases, such as where the corporation is a mere sham and is used for tax avoidance. Cargill v. Spaeth, 215M540, 10NW(2d)728. See Dun. Dig. 9570dd.

The federal taxing power and the income tax. 26 Minn. Law Rev. 421.

(c).

A group of 50 individuals who executed a "power of attorney" and "agreement between individual subscribers" and created a plan of insurance known as Lloyds, and transacted insurance pursuant to laws of Minnesota, constituted an association and within meaning of term "corporation", and credit for gross premium taxes was properly allowable to the association and not to individual members thereof. Hauschild, MBTA (No. 49), May 13, 1941.

(e).

Each member of a partnership may deduct up to $2,000 for capital losses of firm, each partner being a "taxpayer." Atwood, M.B.T.A. (No. 104), Oct. 16, 1942.

ARTICLE II.—IMPOSITION OF TAXES

2394-2. Imposition on corporations; etc.

Income from enameling parts of stoves and refrigerators for out-of-state customers held income derived from services and not from sales, and taxable under state income tax law, though contracts for such services were made outside of state, services being performed within state. Department of Treasury v. Ingram-Richardson Mfg. Co., 313US252, 61SCR866, 85LEd1313, rev'g (CCA7), 114F(2d) 889. Reh. den. 313US600, 61SCR1107, 85LEd1552. See Dun. Dig. 9570e.

Tax imposed upon corporations by Laws 1933, c. 405, §2, (§2394-2), is a property tax upon right or franchise of corporations to exist and to transact business in this state, measured by corporations' net taxable income as defined in that chapter, and in so far as c. 405 assumes to impose a franchise tax, measured by income, upon a railroad based upon its ownership or operation for railroad purposes provisions of c. 405 are contrary to Const. Art. 4, §32a, and invalid since c. 405 has never been approved by a vote of people as required by that section. State v. Duluth, M. & N. Ry. Co., 207M618, 292NW 401. See Dun. Dig. 9570d. See also 207M637, 292NW411. Cert. den. 61SCR439.

So-called "recapture funds" taken from earnings of railroads under Transportation Act of 1920, 41 Stat. 456, 489, 49 Mason's U. S. C. A., §15a(6), and returned to the railroads under the provisions of the emergency Railroad Transportation Act of 1933, 48 Stat. 211, 220, 49 Mason's U. S. C. A., §15b, and upon which a gross earn-

ings tax was paid to the state, are not nonrailroad income nor subject to the tax imposed by Mason's Minn. St., §2394-2. Id.

Income received from federal securities may not be used in computing net income of a corporation as a measure of franchise tax. Id.

Attempt of tax commission to increase rate of interest on demand deposits made by defendants with parent corporation from 2½% to 5% was unreasonable and arbitrary and properly set aside by trial court. Id.

Rent paid to a lessor railroad by its operating lessee may not properly be considered fruits of a nonrailroad exercise of lessor's franchise. Id.

That part of its corporate franchise which a railroad corporation exercises outside scope of railroad ownership or operations becomes subject to tax imposed by this section measured by net taxable income from such non-operating activity as defined by this act. Id.

Accretions and interest on funds recaptured by railroads from payments made under federal transportation act arise from exercise of corporate franchise within scope of railroad ownership or operation and are therefore not subject to taxation under Mason's Minn. St. §2394-2. State v. Duluth, M. & N. Ry. Co., 207M637, 292 NW411. See Dun. Dig. 9570d.

Interest on deposits with United States Steel Corporation and on bank balances was railroad income and had not become characterized as an investment. Id.

Houses rented and sold to employees appear to be such as would not otherwise have been available and were built in order to provide habitations for employees at a place convenient to work. The rent and interest on purchase price, therefore, were funds arising out of exercise of franchise for railroad purposes. Id.

Strictly, a corporation can be domiciled only in state of its incorporation, but "domiciled" in this act includes any corporation qualified to do business in state. Canisteo Corp. v. Spaeth, 211M185, 300NW596. See Dun. Dig. 9570d.

Tax on a foreign corporation is an income tax only in sense that it is measured by income, being essentially an excise tax on privilege of being here for transaction of business. Id.

Delaware corporation was transacting business in Minnesota in 1934 and 1935, though it was in securities business and placed its property in hands of a custodian in New York. The Canisteo Corp., MBTA(17), Mar. 7, 1941.

Income from intangibles in New York could not be assigned to Minnesota. Id.

(a).

A state does not transcend the limits of its jurisdiction as fixed by the due process and equal protection clauses of the federal constitution by constituting a corporation of another state doing business and licensed in the state, a resident of the state for income tax purposes. Chestnut Securities Co. v. Oklahoma Tax Comm., (CCA10), 125F(2d)571. Cert. den. 62SCR1035. See Dun. Dig. 9570d.

2394-3. Classes of tax-payers.—An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

(a) Domestic and foreign corporations not taxable under Section 2 who own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both.

(b) Resident and nonresident individuals, except that no nonresident individual shall be taxed on the income from compensation for labor or personal services within this state during any taxable year unless he shall have been engaged in work within this state for more than 150 working days during such taxable year.

(c) Estates of decedents, dying domiciled within or without this state and,

(d) Trusts (except those taxable as corporations) however created by residents or nonresidents or by domestic or foreign corporations. (As amended Act Apr. 28, 1941, c. 550, §1.)

Income tax on income of stockholder of a bank stock holding corporation is a tax in personam on the individual computed on his income, and cannot be considered a tax on its source. Irvine v. Spaeth, 210M489, 299NW204. Cert. den. 62SCR117. See Dun. Dig. 9570d.

2394-4. Accrual of liability; etc.

(a).

Canisteo Corp. v. Spaeth, 211M185, 300NW596: note under §2394-2.

The Canisteo Corp., MBTA(17), Mar. 4, 1941; notes under §2394-2.

2394-5. Exemptions from act.—The following corporations, individuals, estates, trusts and organizations shall be exempted from taxation under this act, provided that every such person or corporation claiming exemption under this act, in whole or in part, must file with the commissioner upon request such financial statements as are necessary to enable him to determine the taxable status of any income or activity:

(a) National and state banks, except as such banks are subject to the excise tax imposed by Sections 32-4 and 32-5.

(b) Corporations, individuals, estates and trusts engaged in the business of mining or producing iron ore; but if any such corporation, individual, estate or trust engages in any other business or activity or has income from any property not used in such business it shall be subject to this tax computed on the net income from such property or such other business or activity. Royalty (as defined in Mason's Minnesota Statutes of 1927, Section 2392-2) shall not be considered as income from the business of mining or producing iron ore within the meaning of this section.

(c) Farmers' mutual insurance companies organized and existing under the laws of the state and credit unions organized under Chapter 206, Laws of 1925.

(d) Fraternal beneficiary associations wherever organized, and public department relief associations of public employees of this state or of any of its political subdivisions.

(e) ***Annual tax on cooperative associations.***—Cooperative or mutual rural telephone associations; and cooperative associations organized under the provisions of Laws 1923, Chapter 326, as amended, which are engaged in the transmission and distribution of electrical heat, light or power upon a mutual, and cooperative plan in areas outside the corporate limits of any city or village; but if any such cooperative association engages in supplying electrical heat, light or power to consumers within the corporate limits of any city, village or borough, then such association shall be subject to this tax computed on that portion of its net income which its gross receipts from consumers within such corporate limits bears to its total gross receipts. (As amended Apr. 1, 1941, c. 109, §1; Apr. 28, 1941, c. 550, §2; Apr. 24, 1943, c. 643, §1.)

(f) Labor, agricultural and horticultural organizations, no part of the net income of which inures to the benefit of any private member, stockholder or individual.

(g) Farmers', fruit growers', or like associations organized and operated on a co-operative basis (a) for the purpose of processing or marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who process or market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of non-members in an amount the value of which does not exceed the value of the products marketed

for members, and may purchase supplies and equipment for non-members in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph.

(h) Corporations operating or conducting public burying grounds, public school houses, public hospitals, academies, colleges, universities, seminaries of learning, churches, houses of worship, and institutions of purely public charity, no part of the net income of which inures to the benefit of any private member, stockholder or individual.

(i) Corporations organized for exclusively scientific, literary or artistic purposes, no part of the net income of which inures to the benefit of any private member, stockholder or individual.

(j) Business leagues and commercial clubs, not organized for profit and no part of the net income of which inures to the benefit of any private member, stockholder or individual.

(k) Clubs organized and operated exclusively for pleasure, recreation or other nonprofitible purposes, no part of the net income of which inures to the benefit of any private member, stockholder or individual.

(l) Any corporation, fund foundation, trust or association organized for exclusively scientific, literary, religious, charitable, educational, or artistic purposes, no part of the net income of which inures to the benefit of any private member, stockholder, or individual.

(m) The United States of America, the State of Minnesota or any political subdivision of either agencies, or instrumentalities, whether engaged in the discharge of governmental or proprietary functions. (As amended Apr. 28, 1941, c. 550, §2; Apr. 24, 1943, c. 656, §27.)

(n) Corporations organized by an association exempt under the provisions of paragraph (g), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose.

(o) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this act.

(p) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident or other benefits to the members of such association or their dependents if no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual. (As amended Act Apr. 1, 1941, c. 109, §1; Apr. 28, 1941, c. 550, §2; Apr. 24, 1943, c. 643, §1; Apr. 24, 1943, c. 656, §27.)

Laws 1943, c. 656, §31, provides that this section, as amended, thereby shall apply to taxable years beginning after December 31, 1943.

Exemption of social clubs under federal act. 27Minn LawRev98.

(a).

A bank stock corporation holding stock of a chain of banks both state and national is an entity distinct from that of the bank which it controls and manages, and is a complete "non-conductor" of qualified immunity from state taxation enjoyed by national banks, and dividends received by resident stockholders of the holding corporation are subject to state income tax. Irvine v. Spaeth, 210M489, 299NW204. Cert. den. 62SCR117. See Dun. Dig. 9570d.

(e).

Amended. Laws 1943, c. 643, §1. See above text.

(j).

Credit association organized for benefit of retail merchants in city, and to educate public in advantages of credit buying, which made no profits, paid no salaries for services, its funds coming from membership dues, held exempt as a "business league" under federal revenue act. Retail Credit Ass'n of Minneapolis v. U. S., (DC-Minn), 30FSupp855.

(l).

Amended. Laws 1943, c. 656, §27. See above text.

(m).

Amended. Laws 1943, c. 656, §27. See above text.

2394-6. Rates of tax—Credits—Apportionment.

(a) * * * * *.

(b) * * * * *.

(c) The taxes due under the foregoing computation shall be credited with the following amounts:

1. In the case of an unmarried individual, and except as provided in paragraph 6, in the case of the estate of a decedent, $10.00, and in the case of a trust, $5.00.

2. In the case of a married individual, living with husband or wife, and in the case of a head of a household, $30.00. If such husband and wife make separate returns the personal exemption may be taken by either or divided between them.

3. In the case of an individual, $10.00 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer. One taxpayer only shall be allowed this credit with respect to any given dependent. A payment to a divorced or separated wife which is includible under this act in the gross income of such wife, shall not be considered a payment by the husband for the support of any dependents. A husband who makes periodic payments to a divorced, separated or remarried wife, who is not a resident of this state shall be entitled to the same personal credit as provided in the preceding paragraph 2.

4. In the case of a corporation, an amount computed by applying to the tax a fraction equal to one-tenth of the average of the following ratios:

(a) The ratio of the fair value of tangible property, real, personal and mixed, owned or used by the taxpayer in this state in connection with his trade or business during the taxable year to the total fair value of such property of the taxpayer owned or used by him in connection with the trade or business everywhere. Cash on hand or in bank, shares of stocks, notes, bonds, accounts receivable or other evidence of indebtedness, special privileges, franchises, good will or property the income of which is not taxable or is separately allocable, shall not be considered tangible property nor included in the apportionment.

(b) The ratio of the total wages and salaries paid or incurred during the taxable year in this state to the total wages and salaries paid or incurred during the taxable year everywhere.

5. In the case of an insurance company, it shall receive a credit on the tax computed as above equal in amount to any taxes based on premiums paid by it during the period for which the tax under this act is imposed by virtue of any law of this state, other than the surcharge on premiums imposed by Extra Session Laws of 1933, Chapter 53, as amended.

6. If the status of a taxpayer, insofar as it affects the credits allowed under paragraphs 1, 2 and 3 of this subsection (c) shall change during the taxable year, or if the taxpayer shall either become or cease to be a resident of the state during such taxable year, such credit shall be apportioned, in accordance with

the number of months before and after such change. For the purpose of such apportionment, a fractional part of a month shall be disregarded unless more than one-half of a month, in which case it shall be considered as a month. In case of death during a taxable year a credit shall be allowed to the decedent, in proportion to the number of months before his death, and to his estate, in proportion to the number of months after his death, and in any event a minimum credit of $5.00 shall be allowed to the decedent and his estate, respectively.

7. In the case of a nonresident individual, credits under paragraphs 1, 2 and 3 of this subsection (c) shall be apportioned in the proportion of the gross income from sources in Minnesota to the gross income from all sources, and in any event a minimum credit of $5.00 shall be allowed. (As amended Apr. 28, 1941, c. 550, §3; Apr. 24, 1943, c. 656, §2.)

Laws 1942, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

Byard v. C., 209M215, 296NW10; note under §2394-32a.

(c)(4).

All corporations are not entitled to a flat ten per cent credit and section is valid as so construed. Montgomery Ward & Co., MBTA (No. 122), Mar. 24, 1943. Aff'd 12NW (2d)—.

(c)(5).

A group of 50 individuals who executed a "power of attorney" and "agreement between individual subscribers" and created a plan of insurance known as Lloyds, and transacted insurance pursuant to laws of Minnesota, constituted an association and within meaning of term "corporation", and credit for gross premium taxes was properly allowable to the association and not to individual members thereof. Hauschild, MBTA (No. 49), May 13, 1941.

2394-6a. Certain income from United States bonds may be treated as income.—Subdivision 1. In the case of obligations of the United States issued at a discount and redeemable for fixed amounts increasing at stated intervals, a corporate taxpayer may at its election treat such increases as income for any taxable year beginning after December 31, 1940, notwithstanding the fact that such taxpayer files its returns on the cash basis.

Subdivision 2. If at least 80 per cent of the total compensation for personal services covering a period of 36 months or more is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period preceding the date of receipt or accrual. This provision shall be applicable to taxable years beginning after December 31, 1940.

Subdivision 3. Income attributable to the recovery during the year of a bad debt, on account of which a deduction or credit was allowed for a prior taxable year, shall be included in gross income only to the extent that the deduction or credit resulted in a reduction of the tax imposed by this act for such prior year. (Act Apr. 24, 1943, c. 656, §3.)

[290.071]

Laws 1942, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

2394-6b. Certain alimony payments to be reported for taxation.—Subdivision 1. Periodic payments to a wife who is divorced or separated from her husband by decree of divorce or separate maintenance, received subsequent to such decree in discharge of, or attributable to property transferred in trust or otherwise in discharge of, a legal obligation imposed on the husband by such decree or by written instrument incident to such divorce or separation, shall be included in the gross income of the wife if she is a resident of the State of Minnesota.

Subdivision 2. Amounts received by the wife who is a resident of the State of Minnesota from property transferred under the conditions set forth in subdivision 1 shall not be included in gross income of the husband, and amounts included in gross income of such wife shall be deductible from gross income of the husband except to the extent they are excluded from his gross income as provided in this subdivision.

Subdivision 3. This section shall not apply to that part of any periodic payment which is fixed by the decree or written instrument as payable for the support of minor children of the husband. To the extent of the amount so fixed, the entire amount of such payment, if less than the total amount payable, shall be considered as payable for the support of minor children.

Subdivision 4. Installment payments of lump sum obligations fixed in the decree or written instrument shall not be considered periodic payments under this section, unless the total amount is to be paid within a period ending more than 10 years from the date of the decree or instrument, and then only to the extent that installment payments received during the taxable year do not exceed 10 per cent of the total amount so fixed.

Subdivision 5. For purposes of this section the terms "wife" and "husband" shall include "former wife" and "former husband", respectively. (Act Apr. 24, 1943, c. 656, §4.)

[290.072]

Laws 1942, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

ARTICLE III.—COMPUTATION OF NET INCOME

2394-9. Taxable net income.

Exemption as inheritance of receipts under agreement not to contest will. 24MinnLawRev134.

(a).

Pendleton-Gilkey Co., MBTA(35), Jan. 8, 1941; note under §2394-27(g).

Union depot company was not initially compelled to compute its income or report it in accordance with the retirement method, but where it did compute it in accordance with such method for the years prior to 1935 the use of such method constituted an election binding both upon it and the commissioner. St. Paul Union Depot Co., (C.C.A.8), 123 F. (2d) 235. See Dun. Dig. 9570ddd.

2394-10. What is net income.

Pendleton-Gilkey Co., MBTA(35), Jan. 8, 1941; note under §2394-27(g).

2394-11. What is gross income.—The term "gross income" shall include every kind of compensation for labor or personal services of every kind from any private or public employment, office, position or services, whatsoever; income derived from the ownership or use of property; gains or profits derived from every kind of disposition of, or every kind of dealings in, property; income derived from the transaction of any trade or business; and income derived from any source whatever. Items of gross income includible within said definitions shall be deemed such regardless of the form in which received. Items of gross income shall be included in gross income of the taxable year in which received by a taxpayer unless properly to be accounted for as of a different taxable year under methods of accounting permitted by section mine, except that (1) amounts transferred from a reserve or other account, if in effect transfers to surplus, shall, to the extent that such amounts were accumulated through deductions from gross income or entered into the computation of taxable net income during any taxable year, be treated as gross income for the year in which the transfer occurs, and (2) amounts received as refunds on account of taxes deducted from gross income during any taxable year shall be treated as gross income for the year in which actually received. (As amended, Act Apr. 28, 1941, c. 550, §4.)

Pendleton-Gilkey Co., MBTA(35), Jan. 8, 1941; note under §2394-27(g).

The law in this state imposes upon a father an obligation to support and educate his minor children, so that income of trust created by him to provide for the maintenance and education of such children is taxable income of the father. Mairs v. Reynolds, (CCA8), 120F(2d)857. See Dun. Dig. 7302, 9570a.

Where liability of government for loss by forest fire was judicially determined and full amount of property loss was fixed, and taxpayer accepted the settlement on

basis of 50% in 1922 and Congress authorized payment of the additional 50% in 1936, amount received in 1936 was only a return of capital and was not includable in taxable income, fire claim having no established value as of January 1, 1933. Dodge, MBTA (8) February 20, 1940.

Renewal insurance commissions received by a resident are taxable income though they grow out of services and activities taking place in another state in a prior year. McMahon, MBTA, No. 38, Sept. 10, 1940.

Texas real estate consisting of composite reservation of oil to be produced from leased land in Texas which is conveyed by a Minnesota corporation to its stockholders as a dividend is taxable as income to recipient stockholder who is a resident of Minnesota. Westernhagen, MBTA(No. 60), Nov. 26, 1941.

Money paid to corporate officer as salary and received as such was all income, and not in part a loan or distribution of capital assets, because there existed a resolution prohibiting payment of a salary in excess of net income of corporation, salary paid having exceeded income for year in question and officer having been required to account to minority stockholders in a subsequent year. Thompson, M.B.T.A. (No. 68, 69), Mar. 26, 1942.

Where attorney who made returns on a cash basis agreed in 1919 to render services in connection with income taxes and estate taxes until death of client for $10,000, placed in escrow and to be paid at death of client, which occurred in 1936, the whole amount was income for 1936. Williams, M. B. T. A. (No. 118), Apr. 21, 1943.

Salaries of district court judges are subject to income tax. Op. Atty. Gen. (531-h), June 21, 1940.

2394-11a. What is income.—Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income, and included in gross income for the taxable year in which received. If the taxpayer so elects, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the commissioner a change to a different method is authorized. This section shall apply to 1942 and subsequent taxable years. (Act Apr. 24, 1943, c. 656, §22.)
[290.073]

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

2394-11b. Farm income—How computed.—In the event any person engaged in the business of farming, whose return is filed on a cash basis, derives income from a sale of personal property made in the course of liquidating his business, the gain therefrom shall be computed by deducting from the gross sale price of each item or group of items sold, either the basis thereof as provided in Mason's Supplement 1940, Section 2394-18 and 2394-19, as amended, or, at the option of the taxpayer, 50 per cent of the gross sale price. This section shall apply to 1942 and subsequent taxable years. (Act Apr. 24, 1943, c. 656, §23.)
[290.074]

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

2394-11c. Re-negotiated contracts to be adjusted.—Any taxpayer who supplies any goods, wares and merchandise or performs services, or both, under any contract, with the United States of America, or under any subcontract thereunder, or under a cost-plus-a-fixed-fee contract with the United States of America, or any agency thereof and who is subject to renegotiations under the renegotiation laws of the United States of America, or is required to renegotiate with his subcontractor, shall be required to adjust his or its Minnesota income and franchise tax liability in accordance with the following rules:

A return shall be filed, and the income and franchise tax computed, on the basis of the Minnesota taxable net income without giving effect to any renegotiations occurring after the close of the taxable year. If after the close of the taxable year there is a final determination under renegotiation, and if the net income of the taxpayer for the year in which the determination is made, computed without regard to said renegotiation, is less than the difference between (1) the amount determined by the renegotiation to be (a) excess profits, (b) excess fees under a fixed fee contract with the United States, or any agency thereof, or (c) the amount of any item for which the taxpayer has been reimbursed but which is disallowed as an item of cost chargeable to a fixed fee contract, and (2) the amount of federal income and excess profits taxes applicable thereto, then the taxpayer shall be entitled to a refund of the state income tax which it has paid on the excess of said difference over the amount of its net income for the year in which the determination under renegotiation is made. This section shall apply to all taxable years ending after December 31, 1941, notwithstanding the expiration of the period of limitation provided by law, provided, however, that no refund shall be allowed unless a claim therefor is filed as provided by law within six months after the final determination in proceedings for renegotiation. The certificate of the agency or instrumentality of the United States conducting such renegotiation proceedings shall be evidence of the amount of the renegotiated profit and of the date thereof. In no event shall a refund under the provisions of this section exceed ten per cent of the state income and franchise tax paid on the taxable net income computed without giving effect to the renegotiation, as provided by this section. (Act Apr. 24, 1943, c. 656, §26.)
[290.075]

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

2394-12. Exemptions from gross income.—(a) The value of property acquired by gift, devise, bequest or inheritance, but the income from such property shall be included in gross income; the income received under a gift, devise, bequest or inheritance of a right to receive income shall also be included in gross income. Amounts paid, credited, or to be distributed at intervals, under the terms of the gift, bequest, devise or inheritance, shall be included in gross income of the recipient to the extent paid, credited, or to be distributed out of income. (As amended Apr. 24, 1943, c. 656, §5.)

(b) to (d) * * * * * *.

(e). Amounts received by any person from the United States or the state of Minnesota by way of a pension, public employee retirement benefit, social security benefit or railroad retirement benefit, family allotment, or other similar allowance. (As amended, Act Apr. 28, 1941, c. 550, §5.)

(f) * * * * *

(g). Interest upon obligations of the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law; provided that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies or its instrumentalities shall be excluded from gross income for all taxable years ending prior to January 1, 1939; provided further that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies or its instrumentalities for taxable years ending prior to January 1, 1939 shall be excluded only to the extent that salaries, wages, commissions, fees and other compensation received from the state of Minnesota, its political or governmental subdivisions, its municipalities or its governmental agencies or instrumentalities for said year are excluded from gross income under the Federal Revenue Acts; provided further that salaries, wages, fees, commissions or other compensation received from the United States, its possessions, its agencies, or its instrumentalities, by federal employees residing in "federal areas" shall be excluded from gross income for all taxable years ending prior to January 1, 1941. (As amended Act Apr. 28, 1941, c. 550, §6.)

(h-k) * * * * *

(*l*) Subdivisions (c), (d), (i) and (j) shall not apply to corporations and subdivisions (f) and (g)

shall not apply to corporations taxable under section 2 or under section 32-4, except so far as taxable under Section 8. (As amended Act Feb. 21, 1941, c. 18, §4.)

(m) **Exemptions from gross income.**—Income, other than rent, derived by a lessor of real property upon the termination of a lease, representing the value of such property attributable to buildings erected or other improvements made by the lessee. (As amended Apr. 28, 1941, c. 550, §§5-7; Apr. 24, 1943, c. 656, §§5, 21.)

Laws 1943, c. 656, §31, provides that this section shall apply in computing taxes for all taxable years commencing December 31, 1942.

Money received by candidate for campaign expenses need not be reported as income, but an individual who is a paid worker for some candidate and receives compensation for services rendered must report such compensation as income. Op. Atty. Gen. (531), Oct. 10, 1940.

(a).

Amended. **Laws 1943, c. 656, §5.**

(g).

Income received from federal securities may not be used in computing net income of a corporation as a measure of franchise tax. State v. Duluth, M. & N. Ry. Co., 207M618, 292NW401. See Dun. Dig. 9570d. See also 207M637, 292NW411. Cert. den. 61SCR439.

(m).

Added. Laws 1943, c. 656, §21.

2394-12a. What are included in income taxes.—The compensation received for services performed within this state by an individual who resides and has his place of abode and place to which he customarily returns at least once a month in another state, shall be excluded from gross income to the extent such compensation is subject to an income tax imposed by the state of his residence; provided that such state allows a similar exclusion of compensation received by residents of Minnesota for services performed therein, or a credit against the tax imposed on the income of residents of this state substantially similar in effect. (Act Apr. 24, 1941, c. 429, §1, as amended Apr. 24, 1943, c. 656, §19.)

[290.081]

Act Apr. 24, 1941, c. 429, §2, provides that this act shall apply to taxes for the calendar year 1940 and all subsequent taxable years.

Act Apr. 24, 1943, c. 656, §2, provides that this act shall apply to taxable year of 1942 and subsequent years.

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

2394-12b. Definitions.—Subdivision 1. The term "withholding agent" means any individual, fiduciary, corporation, association, or partnership, in whatever capacity acting, including all officers and employees of the state, or any political subdivision of the state, who is obligated to pay or has control of paying to any nonresident any salary, wages, bonuses, fees, commissions, or other compensation for personal services performed in this state.

Subdivision 2. Every withholding agent shall, except as hereinafter provided, deduct and withhold each month from the amount paid to any nonresident in the form of salary, wages, bonuses, fees, commissions, or other compensation for personal services performed within this state the amounts shown in the following schedule:

Compensation paid during each month	Amount to be withheld	Compensation paid during each month	Amount to be withheld
$ 0 to $ 90	$ 0	$250 to $ 275	$ 4.50
90 to 100	.20	275 to 300	5.45
100 to 110	.40	300 to 350	7.30
110 to 120	.60	350 to 400	9.60
120 to 125	.70	400 to 450	12.00
125 to 130	.80	450 to 500	14.85
130 to 140	.95	500 to 600	20.50
140 to 150	1.15	600 to 700	26.90
150 to 175	1.60	700 to 800	33.50
175 to 200	2.30	800 to 900	41.00
200 to 225	3.00	900 to 1,000	48.50
225 to 250	3.70	Over $1,000	50.00

Subdivision 3. On or before the 15th day of January, April, July and October in each year, every withholding agent shall file with the commissioner of taxation a report, in such form as the commissioner may prescribe, accompanied by a remittance of all amounts withheld during the three month period ending on the last day of the month preceding the due date of the report, which amounts shall be deposited in a special fund described as "Nonresident Income Tax Fund".

Subdivision 4. Upon the filing of an income tax return, as provided by law, by any nonresident from whose compensation an amount has been withheld as provided by this act, the commissioner shall determine the income tax due, and the penalty and interest if any, for the period covered by the return, and shall cause to be refunded from the Nonresident Income Tax Fund any amount withheld during said period in excess of the amount of the tax, penalty and interest. Interest upon such refund shall be computed from 90 days after the date the return is filed. The provisions of Mason's Supplement 1940, Sections 2394-43 and 2394-47, as amended by Laws 1941, Chapter 550, Sections 18 and 22, relating to the refundment of income taxes, shall be applicable unless otherwise specifically provided by this act. If no return is filed within one year after due date, no refund shall be made of any part of the amount withheld during the period for which the return should have been made.

Subdivision 5. If the commissioner determines that no income tax will be due on account of any compensation for services performed by a nonresident, he may authorize in writing the withholding agent to pay the full amount of such compensation without withholding any amount therefrom, or may cause to be refunded the amount withheld, either before or after it has been deposited in the Nonresident Income Tax Fund, without requiring an income tax return from such nonresident.

Subdivision 6. The commissioner of taxation shall cause to be transferred to the Income Tax School Fund, at least once in each year, from the Nonresident Income Tax Fund, (1) the amount of income taxes determined to be due from those nonresidents who have filed returns, to the extent of the amount withheld from their compensation and deposited in said Nonresident Income Tax Fund; (2) all amounts withheld from the compensation of nonresidents who have failed to file a return within one year after the due date thereof.

Subdivision 7. Every withholding agent who knowingly and wilfully fails to comply with the provisions of this act shall be liable for the amount of the tax due from any nonresident, to the extent of the amount the said agent has failed to withhold and remit as required by this act. Such liability shall be assessed and collected in the same manner and subject to the same limitations, as provided for income taxes.

Subdivision 8. This section shall take effect July 1, 1943. (Act Apr. 24, 1943, c. 656, §20.)

[290.411]

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

2394-13. Deductions from gross income.—The following deductions from gross income shall be allowed in computing net income:

(a) Ordinary and necessary expenses paid or incurred in conducting the activity or in carrying on the trade, profession, gainful occupation or business from which the gross income is derived, including a reasonable allowance for salaries and voluntary or compulsory contributions made by employers to maintain a voluntary or compulsory system of unemployment insurance or a system of old age pensions for their employes, and any welfare work for the benefit of such employees.

(b) The interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is excludible from gross income under Section 12, or on indebtedness incurred

or continued in connection with the purchasing or carrying of an annuity.

(c) **Deductions from gross income.**—Taxes paid or accrued within the taxable year, except (a) income or franchise taxes imposed by this Act; and (b) taxes assessed against local benefits of a kind deemed in law to increase the value of the property assessed; and (c) inheritance, gift and estate taxes. Income taxes permitted to be deducted hereunder shall, regardless of the methods of accounting employed, be deductible only in the taxable year in which paid. Taxes imposed upon a shareholder's interest in a corporation which are paid by the corporation without reimbursement from the shareholder shall be deductible only by such corporation. (As amended Apr. 28, 1941, c. 550, §7; Apr. 24, 1943, c. 656, §6.)

(d) Losses sustained during the taxable year not compensated for by insurance or otherwise if incurred in connection with a business or transaction the gains from which, if any, would be includible in gross income; or if arising from fires not attributable to arson by the taxpayer or some one acting for him, or from storms, wrecks, other casualty, or theft. Losses from wagering transactions shall be allowed only to the extent of the gain from such transactions. No deductions shall be allowed under this subdivision for any loss sustained in any sale or other disposition of shares of stock or other securities if within 30 days before or after the date of such sale or other disposition the taxpayer has acquired (other than by bequest or inheritance) or entered into a contract or option to acquire substantially identical property and the property so acquired is held by the taxpayer for any period after such sale or disposition; but if such acquisition or the contract or option to acquire is to the extent of part only of substantially identical property, then only a proportionate part of such loss shall be disallowed. A loss deductible under this subdivision shall be treated as sustained in the taxable year during which the property in respect of which it has occurred is disposed of by some method of disposition other than gift, devise, bequest or inheritance, but if it shall clearly appear that it is unlikely that such property can ever be disposed of, then it shall be deemed sustained during the taxable year when it first became reasonably clear that it had become worthless, provided that deductible losses arising from fires, storms, wrecks, or other casualty shall be treated as sustained in the taxable year during which the property was injured or destroyed, and deductible losses rising from theft shall be treated as sustained in the taxable year in which the taxpayer discovers the theft. The amount of the deductible loss shall be computed on the same basis as is provided by Section 16 for determining the gain or loss on the sale or other disposition of property.

(e) **Deductions from gross income.**—Debts which become worthless during the taxable year, provided, that the taxpayer may in the alternative deduct a reasonable addition to a reserve for bad debts; provided further, that the commissioner may allow a bad debt to be deducted or charged off in part. (As amended Apr. 28, 1941, c. 550, §7; Apr. 24, 1943, c. 656, §7.)

(f) A reasonable allowance for the exhaustion, wear and tear of property the periodical income from which is includible in gross income, and of property used in an occupation or business, including a reasonable allowance for obsolescence. In the case of property held by one person for life with remainder to another person the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiary and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. In the case of buildings or other structures or improvements constructed or made on leasesd premises by a lessee, and the fixtures and machinery therein installed, the lessee alone shall be entitled to the allowance of this deduction.

(g) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion. In the case of leases the deduction shall be equitably apportioned between the lessor and lessee in accordance with rules prescribed by the commissioner. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(h) The amount of the deduction under subdivision (f) and (g) shall be computed on the basis specified in Section 20.

(i) The deductions provided for herein shall be taken for the taxable year in which paid or accrued, dependent upon the method of accounting employed in computing net income, unless in order to clearly reflect income they should be taken as of a different year.

(j) No deductions shall be allowed unless the taxpayer, when thereunto requested by the Commissioner furnishes it with information sufficient to enable it to determine the validity and correctness thereof.

(k) **Deductions from gross income.**—Payments for expenses for hospital, nursing, medical, surgical, dental and other healing services and for drugs and medical supplies incurred by the taxpayer on account of sickness or personal injury to himself or his dependents. Hotel and traveling expenses shall not be deductible under the provisions of this subdivision. (As amended Apr. 28, 1941, c. 550, §7; Apr. 24, 1943, c. 656, §8.)

(l) An allowance for amortization of war facilities to the extent that such deduction is finally allowed under Section 124 of the internal revenue code provided no deduction has been claimed with respect thereto under subsection 13 (f) or any other section or subsection of this act. (As amended Act Apr. 28, 1941, c. 550, §7.)

(m) **Income from discharge of indebtedness.**—In the case of a corporation, the amount of any income of the taxpayer attributable to the discharge, within the taxable year, of any indebtedness of the taxpayer, or for which the taxpayer is liable evidenced by a security (as hereinafter in this paragraph defined) if the taxpayer makes and files at the time of filing the return, in such manner as the Commissioner by regulations prescribes, its consent to the regulations prescribed under section (16) (c) then in effect. In such cases the amount of any income of the taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income and amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. As used in this paragraph the term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness issued by any corporation. (As added Apr. 24, 1943, c. 656, §24.)

(n) **Deductions from gross income.**—An allowance for all taxable years beginning after December 31, 1942, for amortization of bond premiums in accordance with the provisions of section 125 of the Internal Revenue Code adapted to the provisions of this Act under regulations issued by the Commissioner, but only to the extent that such deduction has not been

allowed under any other section of this Act. (As amended Apr. 28, 1941, c. 550, §7; Apr. 24, 1943, c. 656, §§6, 7, 8, 24.)

Act Apr. 24, 1943, c. 656, §24, subd. 3, provides that this section shall apply to all taxable years commencing after December 31, 1941.

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942, except as herein otherwise expressly provided.

A decision of tax commission allowing certain deductions from income constituted a settlement of income taxes for the year involved, but had no binding effect as to subsequent year. Abbott's Estate, 213M289, 6NW (2d)466. See Dun. Dig. 9570ddd.

Rule that ambiguities in statutes imposing taxes are to be resolved in favor of taxpayers does not apply to deductions, which are allowable only when plainly authorized. Id. See Dun. Dig. 9570ee.

(a).

Expenditures for churches in unincorporated town population of which consists almost wholly of taxpayer's employees and families, and land and buildings of which are owned by taxpayer are ordinary and necessary business expense deductible under this section and not contributions or gifts under §2394-27(b). McClond River Lbr. Co., M. B. T. A., (1), Dec. 15, 1939.

Where expediture made by taxpayer has reasonable and direct relationship to welfare work for the benefit of taxpayer's employees, the same constitutes an ordinary and necessary business expense and is deductible under this section. Id.

Attorney fees expended in action against trustee of trust estate of which taxpayer was sole beneficiary were deductible as incurred in "conducting an activity." Queal, MBTA, No. 18, Sept. 9, 1940.

Where corporation owning fee to certain mining properties and leaseholds on other mines turned property over to a non-profit corporation, reserving to itself certain additional royalties, royalties received were properly credited to gross income, but money advanced to operate non-profit corporation was deductible as an ordinary business expense, though it received ore in return for money advanced. The Shenango Furnace Company, MBTA (No. 34), July 8, 1941.

A bonus or additional salary voted by taxpayer in 1937 to a former employee who had died in 1919 and which was paid to estate of such deceased employee by cancelling an indebtedness to taxpayer from said estate was not deductible as an ordinary and necessary expense. Fairmont Railway Motors, M.B.T.A. (No. 87), Mar. 26, 1942.

Election expenses of one elected or reelected to office are not deductible. Hanft, M.B.T.A. (No. 107), Oct. 16, 1942.

(c).

Amended. Laws 1943, c. 656, §6. See above text.

Minnesota insurance corporation doing business in Canada was entitled to a deduction from its gross income for tax paid under Canadian law on insurance premiums received from its Canadian business. St. Paul Fire & Marine Ins. Co. v. Reynolds, (D.C.-Minn.) 44 F. Supp. 863. See Dun. Dig. 9570d.

French and Latin origins of word "accrue" and its derivatives justify generally idea that anything accrues when it attaches itself to something else, but such word in a statute has a variety of meanings. Spaeth v. Hallam, 211M156, 300NW600. See Dun. Dig. 9570.

Where land is purchased in September, 1936, and taxes for 1936 are paid during 1937, payment is deductible in computation of income tax for 1937, since it cannot be considered a capital expenditure. Id. See Dun. Dig. 9570d.

Income tax regulations that amounts from salaries of railroad employees, as contributions under railroad retirement act are not deductible by employee, is valid. Op. Atty. Gen. (531-L), July 17, 1940.

Where taxpayer purchased land in September, 1936, and paid the 1936 taxes in 1937, making his return on cash receipts and disbursements basis, such payment of taxes in 1937 constituted a deduction from income taxes for 1937, and not merely a payment of part of capital costs of acquiring property. Hallam, MBTA(33), Nov. 28, 1940.

Old age benefit taxes paid to the United States on salary received by tax-payer as an employee are "taxes" deductible under this section. Hauschild, MBTA (No. 49), May 18, 1941.

(d).

Realizable loss by worthlessness of common stock held sustained in year of forced liquidation of corporation and not in earlier year because of depreciation in value resulting from financial depression, absence of market for corporate securities, and bank holiday. Nelson v. U. S. (CCA8), 131F(2d)301. See Dun. Dig. 9570ee.

Expenditures in connection with tangible property outside Minnesota, whether incurred pursuant to contract to organize a corporation and distribute profits by way of dividends "if mines could be profitably operated" or pursuant to an informal agreement or a mere intent to form a corporation should gold be found, are not deductible in income tax returns to the state of Minnesota. Abbott's Estate, 213M289, 6NW(2d)466. See Dun. Dig. 9570ee.

Where taxpayer owned stock of a corporation which began liquidating in 1932 and last liquidating dividend was paid in 1935, and there was pending in 1935 a lawsuit in behalf of corporation which was lost by corporation in lower court decision in 1936, and appeal was taken and lower court decision affirmed in 1937, stock did not become worthless until year 1937, and was deductible as a loss in that year and not in year 1935 or 1936. Green, MBTA(26, 40), Nov. 28, 1940.

Loss on corporate stock becoming worthless is deductible only in year in which "sustained," and not year in which taxpayer ascertains that it is worthless, and burden of proof is upon taxpayer to show when loss was "sustained." Schultz, M.B.T.A. (No. 61), May 28, 1942.

Where building was destroyed by fire on December 16, 1936, loss was sustained during that year and not in 1937 when adjustments were made with insurance company and amount of net loss was determined, and no deduction could be allowed from income for year 1937. Valentine, M.B.T.A. (No. 94), Aug. 21, 1942. See Dun. Dig. 9570ee.

(e).

Amended. Laws 1943, c. 656, §7. See above text.

(f).

Union depot company was not initially compelled to compute its income or report it in accordance with the retirement method, but where it did compute it in accordance with such method for the years prior to 1935 the use of such method constituted an election binding both upon it and the commissioner. St. Paul Union Depot Co., (C.C.A.8), 123 F. (2d) 235. See Dun. Dig. 9570ddd.

Subscription list purchased by newspaper is not a tangible asset which is subject to wear and tear or exhaustion so as to entitle newspaper publisher to a deduction for loss of subscription or anticipated renewal, under the federal income tax laws. National Weeklies v. Reynolds, (D.C.-Minn.), 43 F. Supp. 554. See Dun. Dig. 9570d.

Disallowance for obsolescence or depreciation of machines was proper where entire cost had been charged off in previous years as a business expense, though taxpayer changed method of reporting income in compliance with ruling of federal authorities. Stansfield, M.B.T.A. (No. 85), May 22, 1942.

(j).

Taxpayer must furnish information requested by commissioner or take chance of having entire sum disallowed and a tax assessed thereon, but section was never intended to bar a taxpayer from showing that questioned item or items were properly deductible if circumstances did not permit his furnishing information before order of assessment, and relief may be obtained before the board on appeal. Pogue, MBTA (No. 128), Feb. 4, 1943.

(k).

Amended. Laws 1943, c. 656, §8. See above text.

(m).

Added by Laws 1943, c. 656, §24.

(n).

Added by Laws 1943, c. 656, §25.

2394-14. Non-deductible items.—In computing the net income no deduction shall in any case be allowed for:

(a) Personal, living or family expenses;

(b) Amounts paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(c) Amounts expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;

(d) Premiums paid on any life insurance policy covering the life of the taxpayer or of any other person;

(e) The shrinkage in value, due to the lapse of time, of a life or terminable interest of any kind in property acquired by gift, devise, bequest or inheritance.

(f) Losses from sales or exchanges of property, directly or indirectly, (1) between members of a family, or (2) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per cent in value of the outstanding stock; or (3) between any person or corporation and a trust created by him or it or of which he or it is a beneficiary, directly or indirectly; for the purpose of this paragraph. . . (4) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (5) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestor, and lineal descendants, but such losses shall be allowed as deductions if the taxpayer shows to the satisfaction of the commission that the sale or exchange was bona fide and for a fair and adequate consideration.

(g) In computing net income, no deduction shall be allowed under Section 13(a), relating to expenses incurred or under Section 13(b), relating to interest accrued; and

(1) If such expenses or interest not paid within the taxable year or within two and one-half months after the close thereof; and

(2) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(3) If, at the close of the taxable year of the taxpayer or at any time within two and one-half months thereafter, both the taxpayer, and the person to whom the payment is to be made are persons between whom losses would be disallowed under Section 14(f).

(h) Contributions by employees under the federal railroad retirement act, the federal social security act, or to Minnesota public employee retirement funds. (As amended Act Apr. 28, 1941, c. 550, §8.)

(a).

Election expenses of candidate are not deductible. Hanft, M.B.T.A. (No. 107), Oct. 16, 1942.

2394-15. Inventories shall be taken in certain cases.

An inventory in probate proceedings was not an "inventory" within income tax law for purposes of determining gain or loss from a sale or disposition of property acquired by bequest. State v. Stickney, 213M 89, 5NW(2d)351. See Dun. Dig. 9570d.

Construction of federal internal revenue code §22 (c) by the federal court is adopted as the construction of this section. Id.

A taxpayer has no right to use an inventory for determining gain or loss except as authorized by regulations of the commissioner. Id.

2394-16. Gain and loss on sales.

Thorpe, MBTA(19), Jan. 10, 1941; note under §2394-19.

Prior to 1937, a donee of property acquired before January 1, 1933, was required to adopt fair market value on that date as basis for computation of capital gain or loss upon sale or other disposition of that property. Thorpe v. Spaeth, 211M205, 300NW607. See Dun. Dig. 9570d.

Gain or loss for income tax purposes must be computed not by reference to stock market, but by reference to methods and measures provided by legislature. Id.

(b).

Where taxpayer acquired homestead in 1914 and abandoned property as homestead in 1923 when it became rental property and sold it in 1937, depreciation should be charged for period property was a homestead. Latz, MBTA (No. 58) Aug. 28, 1941.

2394-17. Transactions in which gain or loss is not recognized.

(a)(3).

A corporation's receiver, reporting to court sale of assets of corporation, of which he was a stockholder and officer, without disclosing his previous arrangement with purchaser to continue as stockholder and officer of new corporation to be formed by them, may not be heard to say that there was a "reorganization" or "plan of reorganization" and thus avoid taxation of gain on his subsequent sale of stock in new corporation. Feinberg v. Spaeth, 214M399, 8NW(2d)240, aff'g MBTA No. 65, July 7, 1942. See Dun. Dig. 9570ddd.

There was no reorganization as to a stockholder who invested money in corporation which went into receivership and whose assets were sold to one not a stockholder, though, due to his knowledge of the business, he obtained an equivalent interest in a new corporation, whose stock he later sold, and investment in former corporations could not be considered in determining cost of stock in new corporation. Feinberg, M.B.T.A. (No. 65), July 7, 1942.

(f).

Feinberg v. Spaeth, 214M399, 8NW(2d)240, aff'g MBTA No. 65, July 7, 1942; note under §2394-17(a)(3), 290.13 (1)(3).

2394-18. Basis for determining gain or loss.—The basis for determining * * * * *.

(a) to (k) * * * * *.

(*l*) **Basis for determining gain or loss.**—Neither the basis nor the adjusted basis of any portion of real property shall, in the case of a lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludible from gross income under Section 2394-12(m). If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of such property was included in gross income of the lessor for any taxable year beginning before January 1, 1943, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income. (As amended Apr. 24, 1943, c. 656, §21.)

Laws 1943, c. 656, §§21 and 31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

Feinberg v. Spaeth, 214M399, 8NW(2d)240, aff'g MBTA No. 65, July 7, 1942; note under §2394-17(a)(3), 290. 13 (1)(3).

Feinberg, M.B.T.A. (No. 65), July 7, 1942; note under §2394-17(a)(3).

(b).

Thorpe, MBTA(19), Jan. 10, 1941; note under §2394-19.

Prior to 1937, a donee of property acquired before January 1, 1933, was required to adopt fair market value on that date as basis for computation of capital gain or loss upon sale or other disposition of that property. Thorpe v. Spaeth, 211M205, 300NW607. See Dun. Dig. 9570d.

(d).

Fair market value at date of decedent's death may be considered as a basis for determining gain or loss only in virtue of express statutory provision to that effect. State v. Stickney, 5 N. W. (2d) 351. See Dun. Dig. 9570d.

2394-19. Basis for determining gain or loss from disposition of property acquired before January 1, 1933.—The basis for determining the gain from the sale or other disposition of property acquired before January 1, 1933, shall be the fair market value thereof on said date except that, if its cost to the taxpayer, adjusted as provided in Section 16 (b) for the period prior to January 1, 1933, (or, in the case of inventory property, its last inventory value) exceeds such value, the basis shall be such adjusted cost (or last inventory value). The basis for determining loss from the sale or other disposition of property acquired before January 1, 1933, shall be the cost to the taxpayer adjusted as provided in Section 16 (b) for the period prior to January 1, 1933. The basis prescribed by Section 18 for determining gain or loss with respect to property acquired by gift through an inter vivos transfer in trust, by devise, bequest, or inheritance, or by the estate of a decedent from such decedent, shall be deemed the cost of such property to the taxpayer for the purpose of this section. (As amended Apr. 28, 1943, c. 550, §9; Apr. 24, 1943, c. 656, §9.)

Laws 1943, c. 656, §31, provides that this section as amended thereby applies to taxable years ending during 1941, and subsequent years.

Feinberg v. Spaeth, 214M399, 8NW(2d)240, aff"g MBTA No. 65, July 7, 1942; note under §2394-17(a)(3), 290. 13(1) (3).

Prior to 1937, a donee of property acquired before January 1, 1933, was required to adopt fair market value on that date as basis for computation of capital gain or loss upon sale or other disposition of that property. Thorpe v. Spaeth, 211M205, 300NW607. See Dun. Dig. 9570d.

Fair market value at date of decedent's death may be considered as a basis for determining gain or loss only in virtue of express statutory provision to that effect. State v. Stickney, 213M89, 5NW(2d)351. See Dun. Dig. 9570d.

An inventory in probate proceedings was not an "inventory" within income tax law for purposes of determining gain or loss from a sale or disposition of property acquired by bequest. Id.

There is no "cost" to a taxpayer of property acquired by devise, bequest, or inheritance for the same reason that there is no cost to a taxpayer of property acquired by gift. Id.

Where state income tax statute is the same or substantially the same as the federal act from which it was copied, the prior construction of the federal statute should be deemed controlling in construing the state statute. Id.

Basis for determining gain or loss from a sale or disposition occurring prior to amendment by Laws 1937, Ex. Sess., c. 49, §14, of property acquired by a taxpayer by devise, bequest, or inheritance before January 1, 1933, was the fair market value on that date. Id.

On disposition of property acquired by gift prior to January 1, 1933, sole basis is fair market value on January 1, 1933. Thorpe, MBTA(19), Jan. 10, 1941.

Where taxpayer acquired homestead in 1914 and abandoned homestead in 1923 when it became rental property and sold it in 1937, depreciation should be charged for period property was a homestead for purpose of ascertaining adjusted cost as of January 1, 1933. Latz, MBTA (No. 58) Aug. 28, 1941.

Burden of proving fair market value of January 1, 1933, is upon taxpayer on appeal to the board from adverse determination of commissioner. Id.

"Cost" in 1933 act was construed to mean adjusted cost. Id.

2394-20. Deductions.—(a) * * *

(b) **Deductions.**—Losses from sales or exchanges of capital assets shall be allowed only to the extent of $2,000 plus the gains from such sales or exchanges. For this purpose the term "capital assets" shall mean property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in Section 13 (f) or amortization allowance provided in Section 13 (1), or real property used in the trade or business of the taxpayer. (As amended Apr. 28, 1941, c. 550, §10; Apr. 28, 1943, c. 656, §10.)

(c) * * * * *.

Laws 1943, c. 656, §31, provides that this section as amended thereby, shall apply to taxable years beginning after December 31, 1942.

Taxes paid by purchaser of land as capital assets. Spaeth v. Hallam, 211M156, 300NW600; note under §2394-13(c).

(b).

Loss resulting from mortgage foreclosure was a loss sustained "upon the sale or exchange of a capital asset" notwithstanding involuntary character of the transfer of title and a fortiori a mortgagor's voluntary conveyance of his equity in satisfaction of the mortgage debt is a sale or exchange, and any loss resulting therefrom is a capital loss subject to the $2,000 limitation. Larus, (C.C.A.2), 123 F. (2d) 254, aff'g 43 B.T.A. 1209. See Dun. Dig. 9570ee.

Loss sustained through cancellation of a contract for purchase of land for nonpayment of installments is a loss sustained through a sale or exchange of capital assets and subject to the $2,000 limitation. Paulson, (C.C.A.8), 123 F. (2d) 255. See Dun. Dig. 9570ee.

Each member of a partnership is entitled to deduct his share of capital loss of the firm up to $2,000. Atwood, M.B.T.A. (No. 104), Oct. 16, 1942.

2394-21. Definitions.—(a) The term "dividends" shall mean any distribution made by a corporation to its shareholders, whether in money or in other property, out of its accumulated earnings or profits or out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made. Dividends paid in property other than cash shall be included in the recipient's income at the fair market value of such property on the date the action ordering their distribution was taken, or if no such action was taken, on the date of the actual payment or credit thereof to the shareholder.

(b) For the purposes of this section every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. If a distribution (other than a distribution in liquidation) is made by a corporation that is not out of such earnings or profits, the distributee may receive the same free from tax until the amount thereof equals the loss or gain basis applicable to the stock in respect of which it is received, but amounts received in excess thereof shall be treated as income for the taxable year when received by him; amounts received tax-free hereunder shall be applied to reduce the loss or gain basis applicable to the stock in respect of which received whenever such stock is sold or otherwise disposed of. (As amended Apr. 24, 1943, c. 656, §11.)

(c) * * * * *.

(d) Amounts distributed in liquidation of a corporation shall be treated as payment in exchange for the stock, and the gain or loss to the distributee resulting from such exchange shall be determined under Section 16 but shall be recognized only to the extent provided in Section 17. Amounts distributed in complete liquidation of a corporation shall be taken into account in computing net income only to the extent provided by subsection (B) of Section 20 and for that purpose "complete liquidation" shall include any one of a series of distributions made by a corporation in complete cancellation or redemption of all of its stock in accordance with a bona fide plan of liquidation and under which the transfer of property under the liquidation is to be complete within the time specified in the plan, not exceeding two years from the close of the taxable year during which is made the first of the series of distributions under the plan. No amounts received in liquidation shall be taxed as a gain until the distributee shall have received in liquidation an amount in excess of the applicable loss or gain basis of the stock in respect of which the distribution is received, and any such excess shall be taxed as gain in the year in which received. No amount received in liquidation shall be treated as the distribution of an ordinary dividend. (As amended Act Apr. 28, 1941, c. 550, §11; Apr. 24, 1943, c. 656, §11.)

Laws 1943, c. 656, §31, provides that this section as amended thereby, shall apply to taxable years beginning after December 31, 1942.

(a).

Amended. Laws 1943, c. 656, §11. See above text.

Texas real estate consisting of composite reservation of oil to be produced from leased land in Texas which is conveyed by a Minnesota corporation to its stockholders as a dividend is taxable as income to recipient stockholder who is a resident of Minnesota. Westernhagen, MBTA(No. 60), Nov. 26, 1941.

(b).

Amended. Laws 1943, c. 656, §11. See above text.

Money paid to corporate officer as salary and received as such was all income, and not in part a loan or distribution of capital assets, because there existed a resolution prohibiting payment of a salary in excess of net income of corporation, salary paid having exceeded income for year in question and officer having been required to account to minority stockholders in a subsequent year. Thompson, M.B.T.A. (No. 68, 69), Mar. 26, 1942.

(d).

Where taxpayer owned stock of a corporation which began liquidating in 1932 and last liquidating dividend was paid in 1935, and there was pending in 1935 a lawsuit in behalf of corporation which was lost by corporation in lower court decision in 1936, and appeal was taken and lower court decision affirmed in 1937, stock did not become worthless until year 1937, and was deductible as a loss in that year and not in year 1935 or 1936. Green, MBTA(26, 40), Nov. 28, 1940.

2394-22. Taxable net income.

Pendleton-Gilkey Co., MBTA(35), Jan. 8, 1941; note under §2394-27g.

2394-23. Gross income to be allocated.

A resident of North Dakota who was a member of a partnership which did no business in that state but operated a business in Minnesota was subject to income tax in North Dakota on his distributive share of partnership income, notwithstanding that he also paid a tax thereon in Minnesota. Goldberg v. Gray, 70ND663, 297NW124.

Dividends and interest paid to a parent company having a commercial domicile in Minnesota, by a wholly owned subsidiary which does no business in Minnesota, can be allocated in their entirety to the state of Minnesota and a tax imposed thereon. Cargill, Inc., MBTA (Nos. 108, 109, 110), Nov. 30, 1942.

(a).

A nonresident employed in this state for a period in excess of 150 days, must include in his gross income salary paid while on a vacation outside this state. Hughes v. S., 292NW194. See Dun. Dig. 9571a.

Renewal insurance commissions received by a resident are taxable income though they grow out of activities and services rendered in another state in a prior year. McMahon, MBTA, No. 38, Sept. 10, 1940.

(b).

Strictly, a corporation can be domiciled only in state of its incorporation, but "domiciled" in this act includes any corporation qualified to do business in state. Canisteo Corp. v. Spaeth, 211M185, 300NW596. See Dun. Dig. 9570d.

Expenditures in connection with tangible property outside Minnesota, whether incurred pursuant to contract to organize a corporation and distribute profits by way of dividends "if mines could be profitably operated" or pursuant to an informal agreement or a mere intent to form a corporation should gold be found, are not deductible in income tax returns to the state of Minnesota. Abbott's Estate, 213M289, 6NW(2d)466. See Dun. Dig. 9570ee.

Dividends received by a corporation having a commercial domicile within the state from stocks of its

subsidiaries not employed in its, but in their, business, are assignable to the state of Minnesota, and the same is true as to interest received from a source without the state. Cargill v. Spaeth, 215M540, 10NW(2d)728, aff'g MBTA (Nos. 108, 109, 110), Nov. 30, 1942. See Dun. Dig. 9570e.

A Delaware corporation with principal place of business in Minnesota and its intangibles in hands of custodian corporation in New York, sole business being purchase and sale of securities, was not "domiciled" in Minnesota and income from intangibles could not be assigned to Minnesota in measuring privilege tax. The Canisteo Corp., MBTA(17), Mar. 7, 1941.

Texas real estate consisting of composite reservation of oil to be produced from leased land in Texas which is conveyed by a Minnesota corporation to its stockholders as a dividend is taxable as income to recipient stockholder who is a resident of Minnesota. Westernhagen, MBTA(No. 60), Nov. 26, 1941.

Assignments of participating royalties in leases of oil and gas wells located in California did not constitute an interest in real estate in that state, but constituted intangible property, loss from which was deductible under Minnesota act. Willits, M.B.T.A. (No. 92), Aug. 29, 1942. See Dun. Dig. 9570ee.

(d).

An individual resident of the state engaged in the diamond jobbing business and selling diamonds in and out of the state through salesmen who fixed the prices and selected the purchase price at place of sale was entitled to an allocation of income based on sales made within the state as compared to total sales wherever made. Ruvelson, MBTA (No. 89), Oct. 7, 1943.

2394-24. Computation of net income.

Assignments of participating royalties in leases of oil and gas wells located in California did not constitute interest in real estate in that state, but constituted intangible property, loss from which was deductible under Minnesota act. Willits, M.B.T.A. (No. 92), Aug. 29, 1942. See Dun. Dig. 9570ee.

(a).

Election expenses of officer. Hanft, M.B.T.A. (No. 107), Oct. 16, 1942; note under §2394-13(a).

2394-25. Net income to be allocated.—(A) The taxable net income from a trade or business carried on partly within and partly without this state shall be computed by deducting from the gross income of such business, wherever derived, deduction of the kind permitted by Section 13 so far as connected with or allocable against the production or receipt of such income. The remaining net income shall be apportioned to Minnesota as follows:

(1) If the business consists of the manufacture in Minnesota or within and without Minnesota of personal property and the sale of said property within and without the state, said remainder shall be apportioned to Minnesota on the basis of the percentage obtained by taking the arithmetical average of the following three percentages:

(a) The percentage which the sales made within this state and through, from or by offices, agencies, branches or stores within this state is of the total sales wherever made;

(b) The percentage which the total tangible property, real, personal, and mixed, owned or used by the taxpayer in this state in connection with said trade or business is of the total tangible property real, personal, or mixed, wherever located, owned, or used by the taxpayer in connection with said trade or business; and,

(c) The percentage which the taxpayer's total payrolls paid or incurred in this state or paid in respect to labor performed in this state in connection with said trade or business if of the taxpayers total payrolls paid or incurred in connection with said entire trade or business;

(d) Provided, however, that the percentage of such remainder to be assigned to this state shall not be in excess of the sum of the following percentages: 70 per cent of the percentage determined under subdivision (A) (1) (a) above, 15 per cent of the percentage determined under subdivision (A) (1) (b) above, and 15 per cent of the percentage determined under subdivision (A) (1) (c) above.

(2)(a) In all other cases the proportion of such remainder to be assigned to this state shall be that which the sales, gross earnings or receipts from business operations in whole or in part within this state bear to the total sales, gross earnings or receipts from business operations wherever conducted.

(b) If the methods prescribed under subsection (2)(a) will not properly reflect taxable net income assignable to this state, there shall be used if practicable and if such use will properly and fairly reflect such income (1) the arithmetical average of the three percentages set forth in subdivisions (a)(b)(c) of subsection (1) of this section, or (2) the separate or segregated accounting method.

(3) The sales payrolls, earnings, and receipts referred to in this section shall be those for the taxable year in respect of which the tax is being computed. The property referred to in this section shall be the average of the property owned or used by the taxpayer during the taxable year in respect of which the tax is being computed.

(4) For the purposes of this section, in determining the amount of sales made within Minnesota, there shall be excluded therefrom sales negotiated or effected in behalf of the taxpayer by agents or agencies chiefly situated at, connected with or sent out from premises for the transaction of business owned or rented by the taxpayer or by his agents or agencies outside the state and sales otherwise determined by the commissioner to be attributable to the business conducted on such premises. If the commissioner finds that the taxpayer maintains an office, warehouse or other places of business outside the state for the purpose of reducing its tax under this section it shall in determining the amount of taxable net income include therein the proceeds of sales attributed by the taxpayer to the business conducted at such place outside the state.

(B) The methods prescribed by subsection (A) shall apply wherever and insofar as, the business carried on within this state is an integral part of a business carried on both within and without this state.

(C) Nothing in this section shall prevent the application of Section 23 and 24 to that portion of a taxpayer's income which is not from a trade or business carried on partly within and partly without this state. (As amended, Act Apr. 28, 1941, c. 550, §20.)

Cargill, Inc., MBTA (Nos. 108, 109, 110), Nov. 30, 1942; note under §2394-23.

Exception in Indiana Income Tax Statute of gross income derived from business conducted in commerce between the states "but only to the extent to which the state of Indiana is prohibited from taxing such gross income by the Constitution of the United States," held not an exemption provision but merely a limitation in conformity with the commerce clause upon power of state to tax, which neither adds to, nor detracts from, the rights of either the taxpayer or the state. Ingram-Richardson Mfg. Co. v. D., (CCA7), 114F(2d)889. Rev'd on other grounds 313US252, 61SCR866, 85LEd1313. Reh. den. 313US600, 61SCR1107, 85LEd1552. See Dun. Dig. 9570e.

Dividends received by a corporation having a commercial domicile within the state from stocks of its subsidiaries not employed in its, but in their, business, are assignable to the state of Minnesota, and the same is true as to interest received from a source without the state. Cargill v. Spaeth, 215M540, 10NW(2d)728, aff'g MBTA (Nos. 108, 109, 110), Nov. 30, 1942. See Dun. Dig. 9570e.

Income from intangibles follows the domicile of the recipient. Id.

Apportionment to Minnesota of income of a Delaware meat packing and selling corporation on the basis of all sales made from Minnesota plants, regardless of destination, was not shown to be improper. Wilson & Co., MBTA (No. 115), Dec. 23, 1943.

Allocation of business income for state income tax purposes. 25MinnLawRev851.

(a)(1).

An individual resident of the state engaged in the diamond jobbing business and selling diamonds in and out of the state through salesmen who fixed the prices and selected the purchase price at place of sale was entitled to an allocation of income based on sales made within the state as compared to total sales wherever made. Ruvelson, MBTA (No. 89), Oct. 7, 1943.

2394-26. Commission to prescribe methods of accounting.

It was not an unlawful delegation of legislative power to permit Commissioner of Taxation to select a method of apportionment of income of foreign corporations for purpose of income tax. Wilson & Co., MBTA (No. 115), Dec. 23, 1943.

Apportionment to Minnesota of income of a Delaware meat packing and selling corporation on the basis of all sales made from Minnesota plants, regardless of destination, was not shown to be improper. Wilson & Co., MBTA (No. 115), Dec. 23, 1943.

2394-27. Credits against tax.—(a) * * *

(b) **Credits against tax.**—An amount for contributions or gifts made within the taxable year.

(1) To or for the use of the United States of America, the State of Minnesota, or political subdivisions of either, for exclusively public purposes.

(2) To or for the use of any community chest, corporation, organization, trust, fund, association, or foundation operating within this state, organized and operating exclusively for religious, charitable, scientific, literary, artistic or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(3) To or for the use of any community chest, corporation, trust, fund, association, or foundation, organized and operated exclusively for any of the purposes specified in Paragraph (2) of this subdivision, and organized and existing under the laws of a state, the laws of which either do not impose a tax on net income, or allow a credit or deduction in computing such tax for contributions and gifts to similar organizations organized and existing under the laws of this state, or provide for such a credit or deduction under reciprocal provisions and existing under the laws of this state, or provide for such a credit or deduction under reciprocal provisions.

(4) To a fraternal society, order, or association, operating under the lodge system if such contributions or gifts are to be used within this State exclusively for the purposes specified in (2); or for or to posts or organizations of war veterans or auxiliary units or societies of such posts or organizations, if they are within the state and no part of their net income inures to the benefit of any private shareholder or individual.

(5) The total credit against net income hereunder shall not exceed 15 per cent of the taxpayer's taxable net income. (As amended Apr. 24, 1943, c. 656, §28.)

(c) * * * * *.

(d) * * * * *.

(e) To each mutual investment company, as defined by the United States internal revenue code, Section 361, an amount equal to the interest and dividends paid during the taxable year, and to each building and loan and savings and loan association, an amount equal to the dividends paid during the taxable year to its members as members. (As amended, Act Apr. 28, 1941, c. 550, §21; Apr. 24, 1943, c. 656, §28.)

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

(b).

Amended. Laws 1943, c. 565, §28. See above text.

(b) (2).

Expenditures for churches in unincorporated town in another state, population of which consists almost wholly of taxpayer's employees and families and land and buildings of which are owned in fee by taxpayer are not contributions or gifts, but ordinary and necessary business expense deductible under §2394-13(a). McClond River Lbr. Co., M. B. T. A., (1), Dec. 15, 1939.

The legislature in using the words "contributions or gifts" referred to payments made from philanthropic motives where there would be no direct benefit to donor. Id.

(c).

Vandever, MBTA, No. 32, Oct. 29, 1940; note under §2394-28.

"Entire net income" means net income of corporation as disclosed by the return of the corporation for tax purposes. Pendleton-Gilkey Co., MBTA(35), Jan. 8, 1941.

(e).

This subdivision was added by Laws 1941, c. 550, §21.

ARTICLE IV.—PROVISIONS RELATING TO SPECIAL CASES

2394-28. Application of act.

Where taxpayer received entire income of trust which received dividends derived from Minnesota business but lost money on other activities, dividend credit cannot exceed amount of trust income distributed to taxpayer. Vandever, MBTA, No. 32, Oct. 29, 1940.

2394-28a Estate or trusts—Computations—Credits or deductions.—(a) * * *

(b) **Estates or trusts—Computation—Credits—Deductions.**—There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries subject to taxation under this act whether distributed to them or not. As used in this sub-section "income which is to be distributed currently" includes income of the estate or trust which, within the taxable year, becomes payable to the beneficiary. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under sub-section (c) of this section in the same or any succeeding taxable year. (As amended Apr. 24, 1943, c. 656, §13.)

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary, to the extent that such amount is properly includible in computing the taxable net income of such legatee, heir or beneficiary under the provisions of this act. (As amended, Act Apr. 28, 1941, c. 550, §12; Apr. 24, 1943, c. 656, §13.)

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

There is no inconsistency in deducting administration expenses as to both estate and income taxes. Adams, (CCA8), 110F(2d)578, rev'g 39BTA1239.

(b).

Amended. Laws 1943, c. 565, §12. See above text.

2394-28b. Same—Personal credit.—An estate shall be allowed the same personal credit against the tax as is allowed to a single person under Section 6 (c) (1). (As amended, Act Apr. 28, 1941, c. 550, §23.)

2394-28f. Reservation by grantor of right to income.

The law in this state imposes upon a father an obligation to support and educate his minor children, so that income of trust created by him to provide for the maintenance and education of such children is taxable income of the father. Mairs v. Reynolds, (CCA8), 120F(2d)857. See Dun. Dig. 7302, 9570e.

Income from short term family trust held taxable to the donor and not to the beneficiary where the donor after the creation of the trust was still in effect the owner of the corpus and his financial condition was not substantially affected. McKnight, (C.C.A.8), 123 F. (2d) 240, aff'g 43 B.T.A. 1209; Bush, (C.C.A.8), 123 F. (2d) 242, aff'g 43 B.T.A. 535. See Helvering v. Clifford, 309 U. S. 331, 60 S.C.R. 554, 84 L.E.D. 788, rev'g (C.C.A.8), 105 F. (2d) 586 and aff'g 37 B.T.A. 1226. See Dun. Dig. 9570e.

Income of trust for benefit of trustor's wife, payable to her at the discretion of the husband as trustee, the trust being terminable at a specified date on failure of the happening of certain contingencies and property reverting to husband, held taxable income of husband. Com. of Int. Rev. v. Goulder, (C.C.A.6), 123 F. (2d) 686, rev'g 39 B.T.A. 670. See Dun. Dig. 9570e.

Liability of settlor for tax on trust income payable to divorced wife but expended in part for support of minor children. 27MinnLawRev99.

2394-29. Transferees and fiduciaries.—(a) The amounts * * * * *.

(b) **Transferees and fiduciaries.**—The period of limitation for assessment and collection of any such liability of the transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer, the tax may be assessed within one year after the expiration of the period of limitation for assessment against the taxpayer, and may be collected by action brought within one year after the expiration of the period of limitation for the commencement of an action against the taxpayer.

(2) In the case of the liability of the transferee of a transferee of the property of the taxpayer, the tax may be assessed within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three and one-half years after the expiration of the period of limitation for assessment against the taxpayers and may be collected by action brought within one year after the expiration of the period of limitation for the commencement of an action against the preceding transferee, but only if within four years after the expiration of the period of limitation for bringing an action against the taxpayer; except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding, and the period of limitation for collection by action shall expire one year after the said liability is assessed.

(3) In the case of the liability of a fiduciary, the tax may be assessed not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later, and may be collected by action brought within one year after assessment. (As amended Apr. 24, 1943, c. 656, §13.)

(c) to (e) * * * * *.

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to all existing liabilities.

2394-30. Partnerships not to be taxed.

(a).

Each member of a partnership is a "taxpayer" for purpose of deducting $2,000 for capital losses of the firm. Atwood, M.B.T.A. (No. 104), Oct. 16, 1942.

(d).

Where partnership used fiscal year accounting period ending June 30, 1937, partner making individual 1937 return on calendar year basis was properly taxed for entire partnership income at rates in effect under 1937 act, though there was a monthly distribution of profits from July 1, 1936 to June 30, 1937. Byard, MBTA (3) Feb. 20, 1940. Aff'd 209M215, 296NW10.

2394-32. Special taxes for corporations.—(a) If a corporation is formed or availed of for the purpose of splitting up the income of its stockholders, or of the holders of a majority of its shares, with an aim to reducing the total amount of their taxes under this act, there shall be imposed upon it a special tax, in addition to those otherwise imposed by this act, of ten per cent of its taxable net income assignable to this state less credits against net income under Section 27.

(b) When any corporation liable to taxation under this act conducts its business in such a manner as either directly or indirectly to benefit its members or stockholders or any person or corporation interested in such business or to reduce the income attributable to this state by selling the commodity or services in which it deals at less than the fair price which might be obtained therefor, or buying such commodities or services at more than the fair price for which they might have been obtained, or when any corporation, a substantial portion of whose shares is owned, directly or indirectly, by another corporation, deals in the commodities or services of the latter corporation in such a manner as to create a loss of improper net income or to reduce the taxable net income attributable to this state, the commission may determine the amount of its income so as to reflect what would have been its reasonable taxable net income but for the arrangements causing the understatement of its taxable net income or the overstatement of its losses, having regard to the fair profits which, but for any agreement, arrangement, or understanding, might have been or could have been obtained from such business."

(c) Whenever a corporation which is required to file an income tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporation, or has its income regulated through contract or other arrangement, the commissioner of taxation may permit or require such consolidated statement as in his opinion are necessary in order to determine the taxable net income received by any one of the affiliated or related corporations. (As amended Act Apr. 26, 1941, c. 458, §1.)

See also, §§2394-32g, 2394-32h.

Subdivision (A) of Mason's 1940, Supp. was repealed by Act Apr. 28, 1941, c. 550, §13. Such subdivision (a) was amended to read as above by Act Apr. 26, 1941, c. 458, §1.)

(a). Repealed.

Subdivision (a) of this section as set forth in Mason's 1940 Supp. was repealed. Laws 1941, c. 550.

(c).

Nonrailroad income is subject to this section, and should be included in the combined taxable net income of the affiliated corporations, and we refrain from determining whether certain items are railroad income since their aggregate amount is less than net deficit in income shown by combined return of affiliated corporations. State v. Duluth, M. & N. Ry. Co., 207M618, 292NW 401. See Dun. Dig. 9570d. See also 207M637, 292NW411. Cert. den. 61SCR439, 440.

Section requires imposition of tax on combined net taxable income of affiliated or related corporations where 90% or more of their voting stock is owned or controlled by same interests, and word "may" as it appears in last sentence of subsection is mandatory and tax commission has no discretion. State v. Oliver Iron Min. Co., 207M630, 292NW407. See Dun. Dig. 9570d.

It does not offend our tax law that affiliated or related corporations which have no tax status in this state are not joined in consolidated return. If all affiliated corporations which are taxable in this state are joined in consolidated return it is a sufficient compliance with our law, although there may be other affiliated corporations having no tax status here. Id.

2394-32a. Taxable year extending into calendar years affected by different laws.

Where partnership used fiscal year accounting period ending June 30, 1937, partner making individual 1937 return on calendar year basis was properly taxed for entire partnership income at rates in effect under 1937 act, though there was a monthly distribution of profits from July 1, 1936 to June 30, 1937. Byard, MBTA (3) Feb. 20, 1940. Aff'd 209M215, 296NW10.

2394-32b. Insurance companies; report of net income; etc.

Minnesota insurance corporation doing business in Canada was not entitled to a credit against its federal income tax on account of a tax paid in Canada on premiums received, according to Canadian law. St. Paul Fire & Marine Ins. Co. v. Reynolds, (DC-Minn) 44 F. Supp. 863. See Dun. Dig. 9570d.

2394-32d. National and state banks—computation of net income—Rate of tax—payment and distribution.—(a). An excise tax measured by net income is hereby imposed on national and state banks by this act and shall be governed by the provisions of section 2 and the term "corporation" as used in this act, shall include a banking corporation organized under the laws of the United States or of this state, and the taxable net income shall be computed in the manner provided by this act except that in the case of national and state banks the rate shall be eight per cent instead of six per cent and the basic date for the purpose of computing gain or loss and depreciation shall be January 1, 1940 instead of January 1, 1933.

(b) The state is hereby adopting the method numbered (4) authorized by the act of March 25, 1926, amending section 5219 of the Revised Statutes of the United States.

(c) The revenues derived from the excise tax on banks shall be paid into the state treasury and credited to a special fund, from which shall be paid all refunds of taxes erroneously collected from banks as certified by the commissioner. The balance of said fund shall be transmitted, on the last day of May and

November of each year, to the respective counties in which are located the banks paying the tax. The county auditor shall apportion and distribute the respective amounts paid by each bank in his county, less refunds paid to that bank, in the same manner and on the same basis as he distributes taxes on personal property in the taxing district in which such bank is located.

(d) The tax hereby imposed upon national and state banks shall be in lieu of all taxes upon the capital, surplus, property, assets and shares of such banks, except taxes imposed upon real property. (Apr. 21, 1933, c. 405, §§32-4, added Feb. 21, 1941, c. 18, §1.)
[290.361]

Editor's Note: A tax on banks according to or measured by net income is imposed by Alabama, California, Colorado, Connecticut, Idaho, Massachusetts, New York, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Utah and Wisconsin.

A bank stock corporation holding stock of a chain of banks both state and national is an entity distinct from that of the bank which it controls and manages, and is a complete "non-conductor" of qualified immunity from state taxation enjoyed by national banks, and dividends received by resident stockholders of the holding corporation are subject to state income tax. Irvine v. Spaeth, 210M489, 299NW204. Cert. den. 62SCR117. See Dun. Dig. 9570d.

(c).

Refundments after period in which tax has been distributed. Op. Atty. Gen. 29A-(29), Dec. 20, 1943.

2394-32e. Same—Gross income—Inclusion of dividends from banks.—By reason of the adoption of method numbered (4) authorized by the Act of March 25, 1926, amending Section 5219 of Revised Statutes of the United States whereby a state may impose an excise tax upon national banks, and the state having elected in Section 32-4 of this act to impose such tax, every taxpayer taxable under this act must include in gross income dividends received from national banks (to the extent permitted by said section 5219) and dividends from state banks in the same manner and to the same extent as other dividend income is includable in gross income for the purpose of computing his taxable net income. (Apr. 21, 1933, c. 405, §32-5, added Feb. 21, 1941, c. 18, §2.)
[290.362]

2394-32f. Effective date of act—Time of filing returns—Suspension of other taxes.—This act shall take effect as of January 1, 1940. The first return hereunder shall be for the calendar year 1940 and shall be filed on March 15, 1941, or within 30 days after the enactment hereof, whichever is later. The collection and enforcement of all taxes assessed or levied upon the shares of national and state banks for the year 1940 is hereby suspended during the period that this act shall be in force and if any tax so levied shall have been paid it shall be refunded. (Act Feb. 21, 1941, c. 18, §3.)
[290.363]

2394-32g. Affiliated groups of corporations.—An affiliated group of corporations, all the members of which are required to file income tax returns under the provisions of this act, shall have the privilege of filing a consolidated return in lieu of separate returns, if the entire income of each of the members of the affiliated group including the common parent, if any, is assignable to this state under the provisions of this act. In the case of a corporation which is a member of the affiliated group for a fractional part of the taxable year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group. Only one credit provided by Section 27(a) of this act shall be allowed in computing the tax on such consolidated return. The consolidated net income of the affiliated group shall be determined in accordance with such regulations as the commissioner may prescribe. As used in this subdivision an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if (1) at least 90 per cent of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and (2) the common parent corporation owns directly 90 per cent of the stock of at least one of the other corporations; and (3) each of the corporations is either (a) a corporation whose principal business is that of a common carrier by railroad or (b) a corporation, the assets of which consist principally of stock in such corporation, and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad. As used in this subdivision, the term "railroad" includes a street, suburban, or interurban electric railway, or a street or suburban trackless trolley system of transportation, or a street or suburban bus system of transportation operated as part of a street or suburban electric railway or trackless trolley system. As used in this section, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. (Added Act Apr. 26, 1941, c. 458, §2.)
[290.34(3)]

2394-32h. Application of act.—This act [2394-32, 2394-32g] shall apply to the determination and assessment of taxes for all taxable years beginning after December 31, 1940. (Added Act Apr. 26, 1941, c. 458, §3.)
[290.34(4)]

ARTICLE V.—RETURNS

2394-33. Who shall make returns.—Subdivision 1. The following persons shall make a return which shall contain or be verified by a written declaration that it is made under the penalties of criminal liability for wilfully making a false return, for each taxable year, or fractional part thereof where permitted or required by law:

(a) Individuals with respect to their own taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specified credit allowed, or if their gross income exceeds $5000.

Subdivision 2. The following persons shall make a return under oath for each taxable year, or a fractional part thereof where permitted or required by law:

(a) The executor or administrator of the estate of a decedent with respect to the taxable net income of such decedent for that part of the taxable year during which he was alive, if such taxable net income exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if such decedent's gross income for the aforesaid period exceeds $1000.

(b) The executor or administrator of the estate of a decedent with respect to the taxable net income of such estate if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if such estate's gross income exceeds $1000.

(c) The trustee or other fiduciary of property held in trust with respect to the taxable net income of such trust if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if the gross income of such trust exceeds $1000, if, in either case such trust belongs to the class of taxable persons.

(d) The guardian of an infant or other incompetent person with respect to such infant's or other person's taxable net income if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed, or if their gross income exceeds $1000.

(e) Every corporation with respect to its taxable net income if in excess of $1000, or if its gross income exceeds $5000. The return in this case shall be sworn to by the president, vice-president or other principal officer, and by the treasurer or assistant treasurer.

(f) The receivers, trustees in bankruptcy, or assignees operating the business or property of a taxpayer with respect to the taxable net income of such taxpayer if that exceeds an amount on which a tax at the rates herein provided would exceed the specific credit allowed (or, if the taxpayer is a corporation, if the 30 taxable net income exceeds $1000), or if such taxpayer's gross income exceeds $5000. (As amended Apr. 24, 1943, c. 656, §14.)

Laws 1943, c. 656, §31, provides that this section as amended thereby, shall apply to taxable years beginning after December 31, 1942.

2394-36. Filing of return.

State v. Duluth, M. & N. Ry. Co., 207M637, 292NW411; note under §2394-45(a).

2394-38. Partnership returns.—(a) * * * * *

(b) Every person or corporation making payments during the taxable year to any person or corporation in excess of $500.00 on account of rents, or in excess of $100.00 on account of interest or dividends, or in excess of $1,000 on account of either wages, salaries or commissions, shall make a return in respect to such payments in excess of the amounts specified, giving the names and addresses of the persons to whom such payments were made, the amounts paid to each. The state treasurer and the treasurer, or other corresponding officer by whatever name known, of every political subdivision of the state, or every city, village or borough and of every school district, shall, on or before the 1st day of March of each year, beginning with March, 1938, make and file with the commissioner a report giving the name of each employee or official to whom the state or such political subdivision, city, village, borough or school district, during the preceding calendar year, paid any salary or wages in excess of $1,000 together with the last known address of such employee or official.

The commissioner may also require brokers to furnish it with the names of the customers for whom they have transacted business, and with such details as to transactions of any customer as will enable it to determine whether all income due on profits or gains or such customers has been paid.

The commissioner may require any person acting as agent for another to make a return giving such information as may be reasonably necessary to properly assess and collect the tax imposed by this act upon the person for whom he acts. (As amended Act Apr. 28, 1941, c. 550, §14.)

ARTICLE VI.—COLLECTION OF TAX

2394-42. Tax to be paid when return is filed—Installments—Extension of time.—(a) All taxes imposed by this act shall be paid at the time fixed for filing the return on which the tax is based, except that they may, at the election of the taxpayer, be paid in two equal installments, the first of which shall be paid at the time above specified, and the second on or before six months thereafter. Provided, however, that with respect to all such taxes payable after January 1, 1942, when the amount due from any taxpayer is $30.00 or more, any such taxpayer may elect to pay the tax in four equal installments in which case the first installment shall be paid on the date prescriped for the payment of the tax by the taxpayer, the second installment shall be paid on the 15th day of the third month, the third installment on the 15th day of the sixth month, and the fourth installment on the 15th day of the ninth month, after such date. If any installment is not paid on or before the date fixed for its payment the whole amount of the tax unpaid shall become due and payable. They shall be paid to the commissioner or to the local officers designated by the commissioner with whom the return is filed as hereinbefore provided.

(b) At the request of the taxpayer, and for good cause shown the commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, or any amount determined as a deficiency, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension. (As amended Act Apr. 21, 1941, c. 335, §1; Act Apr. 28, 1941, c. 550, §15.)

2394-43. Tax commission to examine return.

Although income taxpayer had a right to amend, its statements in original objections to additional assessments were admissible upon same theory as are admissions in a pleading. Cargill v. Spaeth, 215M540, 10NW(2d) 728. See Dun. Dig. 3424.

Penalty is imposed upon failure to pay tax within 30 days after demand regardless of pending appeal for board of tax appeals. Op. Atty. Gen. (531), June 26, 1940.

(a).

State v. Minnesota Tax Commission, 208M195, 293NW 243; note under §2394-47.

(b).

Commissioner is required to give same kind of notice under §2394-43 and §2394-44, which is merely a notice containing a computation of the tax, and notice need not provide for an opportunity for a hearing before the commissioner to submit evidence as to correctness of return which it had made. Commander Larabee Corp. MBTA (9) February 24, 1940.

2394-44. Failure to make return or pay tax.—If any person or corporation required by this act to file any return shall fail to do so within the time prescribed by this act or by regulations under the authority thereof, or shall make, wilfully or otherwise, an incorrect, false or fraudulent return, he shall on the written demand of the commissioner file such return, or corrected return, within 30 days after the mailing of such written demand and at the same time pay the whole tax, or additional tax, due on the basis thereof. If such taxpayer shall fail within said time to file such return, or corrected return, the commissioner shall make for him a return, or corrected return, from its own knowledge and from such information as it can obtain through testimony or otherwise, and assess a tax on the basis thereof, which tax, (less any payments theretofore made on account of the tax for the taxable year covered by such return) shall be paid within 10 days after the commissioner has mailed to such taxpayer a written notice of the amount thereof and demand for its payment. Any such return or assessment made by the commissioner on account of the failure of the taxpayer to make a return, or a corrected return, shall be prima facie correct and valid, and the taxpayer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto. (As amended Act Apr. 28, 1941, c. 550, §16.)

Commissioner is required to give same kind of notice under §2394-43 and §2394-44, which is merely a notice containing a computation of the tax, and notice need not provide for an opportunity for a hearing before the commissioner to submit evidence as to correctness of return which it had made. Commander Larabee Corp. MBTA (9) February 24, 1940.

2394-45. Actions for collection of tax.

(a).

Before state may challenge correctness of taxpayer's return by action, it must make its own computation after examination and investigation and serve notice upon the taxpayer thereof, and this applies to combined return required of affiliated corporations. State v. Duluth, M. & N. Ry. Co., 207M637, 292NW411. See Dun. Dig. 9570d.

State's offers of proof of corrections in tax returns of affiliate corporations, even if received and accepted as proved, were insufficient in amount to change result. Id.

2394-46. Assessment of tax.—(a) The amount of taxes assessable with respect to all taxable years ending after January 1, 1937, shall be assessed within three and one-half years after the return is filed.

Such taxes shall be deemed to have been assessed within the meaning of this section whenever the commissioner shall have determined the taxable net income of the taxpayer and computed and recorded the amount of tax with respect thereto, and if the amount is found to be in excess of that originally declared on the return, whenever the commissioner shall have prepared a notice of tax assessment and mailed the same to the taxpayer. The notice of tax assessment shall be sent by registered mail to the post office address given in the return, and the record of such mailing shall be presumptive evidence of the giving of such notice, and such records shall be preserved by the commissioner.

(b) In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed within 18 months, and any proceeding in court for the collection of such tax shall be begun within two years after written request for such assessment (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but no assessment shall be made after the expiration of three and one-half years after the return was filed, and no action shall be brought after the expiration of four years after the return was filed. This subsection (b) shall not apply in the case of a corporation unless

(1) Such written request notifies the commissioner that the corporation contemplates dissolution at or before the expiration of such 18 months' period; and

(2) The dissolution is in good faith begun before the expiration of such 18 months' period; and

(3) The dissolution is completed.

(c) If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time within five years after the return was filed.

(d) If the taxpayer omits from gross income an amount properly includible therein under Section 21 (d) as an amount distributed in liquidation of a corporation, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time within 4 years after the return was filed.

(e) For the purposes of this section and of Mason's Supplement 1940, Section 2394-47, as amended, a return filed before the last day prescribed by law for filing thereof shall be considered as filed on such last day.

(f) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun at any time.

(g) Where the assessment of any tax is hereafter made within the period of limitation properly applicable thereto, such tax may be collected by a proceeding in court, but only if begun

(1) within four years after the return was filed, or

(2) within six months after the expiration of the period agreed upon by the commissioner and the taxpayer, pursuant to the provisions of subsection (h) hereof, or

(3) within two months after final disposition of any appeal from the order of assessment.

(h) In the case of a corporation, if before the expiration of the time prescribed by subsection (a) hereof for the assessment of the tax, and if the commissioner has effected an examination of the taxpayer's return and supporting books and records, and has prepared a proposed redetermination of the tax liability and mailed a copy of its proposed redetermination to the taxpayer and has afforded the taxpayer an opportunity to appear before him and duly protest such redetermination, and if the commissioner and the taxpayer are unable to agree upon the correct tax liability because of a disagreement as to a material fact or point of law, then before the expiration of the time prescribed by subsection (a) hereof for the assessment of the tax, the commissioner and the taxpayer may consent in writing to the assessment of the tax, and the tax not exceeding the amount of the proposed redetermination herein provided for, may be assessed at any time prior to the expiration of the time agreed upon. (As amended Apr. 28, 1941, c. 550, §17; Apr. 24, 1943, c. 656, §15.)

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to all existing liabilities. *Commander Larabee Corp.* MBTA (9) Feb. 24, 1940; note under §2394-44.

(a).

Where additional assessment was made by commissioner on disallowing a loss of corporate stock for year 1937, holding that it should have been deducted in 1936, after time during which taxpayer could have filed a claim for refund on his 1936 tax, board held that taxpayer did not show unconstitutionality of provisions permitting additional assessments to be made within three and one-half years and permitting taxpayer only two years in which to apply for a refund. Schultz, M.B.T.A. (No. 61), May 28, 1942.

Where property was destroyed by fire December 16, 1936, and actual amount of loss sustained was not determined until 1937 and taxpayer deducted amount of loss in 1937 income tax return and did not ask for refund on 1936 tax pay, taxpayer was not entitled to offset the 1936 overpayment against an additional assessment for 1937 and Commissioner was not authorized to make such an adjustment. Valentine, M.B.T.A. (No. 94), Aug. 21, 1942. See Dun. Dig. 9570eee.

Return of attorney on cash basis was fraudulent and limitations did not run where fee was received for services covering seventeen years and was not reported, and penalty and interest were properly added. Williams, M. B. T. A. (No. 118), Apr. 21, 1943.

2394-47. Refundment of overpayment.—(a) A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected (other than by the methods provided for in subdivisions (a) and (e) of Section 45) an amount of tax for any year in excess of the amount legally due for that year, may file with the commissioner a claim for a refund of such excess. No such claim shall be entertained unless filed within two years after such tax was paid or collected, or within three and one-half years from the filing of the return, whichever period is the longer; except that if the claim relates to an overpayment on account of failure to deduct a loss due to a bad debt or to a security becoming worthless, the period shall be seven years from the date the return was filed, and in such case the refund shall be limited to the amount of such overpayment; but no claim for any year ending prior to January 1, 1939, shall be allowed, unless (1) the deduction was claimed by the taxpayer with respect to a subsequent year, and disallowed by the commissioner of taxation prior to January 1, 1943, and (2) the claim is filed before December 1, 1943. If the claim is not filed within 3½ years after the return is filed, or, to the extent that it refers to bad debt or worthless stock losses, within 7 years after the return is filed, the refund shall not exceed the amount paid within two years prior to the filing of the claim. Upon the filing of a claim the commissioner shall examine the same and shall make and file written findings thereon denying or allowing the claim in whole or in part and shall mail a notice thereof by registered mail to the taxpayer at the address stated upon the return. If such claim is allowed in whole or in part, the commissioner shall issue his certificate for the refundment of the excess paid by the taxpayer, with interest at the rate of three per cent per annum computed from the date of the payment or collection of the tax until the date the refund is paid to the taxpayer, and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by this act, as other state moneys are expended. So much of the proceeds of such taxes as may be necessary are hereby appropriated for that purpose.

(b) If the claim is denied in whole or in part, the taxpayer may commence an action against the commissioner to recover any overpayments of taxes claimed

to be refundable but for which the commissioner has issued no certificate of refundment. Such action may be brought in the district court of the district in which lies the county of his residence or principal place of business or if an estate or trust, of the principal place of its administration, or in the district court for Ramsey County. Such action may be commenced after the expiration of six months after the claim is filed if the commissioner has not then taken final action thereon, and shall be commenced within 18 months after the notice of the order denying the claim. If the commissioner has not acted within two years after the claim is filed it shall be considered denied.

(c) Either party to said action may appeal to the supreme court as in other cases. (As amended Apr. 28, 1941, c. 550, §§18, 22; Apr. 24, 1943, c. 656, §16.)

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply, except as expressly provided therein, to claims filed after the passage of this act.

In action for recovery of income tax deficiency paid under protest it was not error for trial court to submit for jury's determination the question whether or not plaintiff had "established by a fair preponderance of evidence that the fair market value of the stock involved on March 1, 1913, was an amount in excess of the value determined by the commissioner" preliminary to the question "what was the March 1913 market value". Concord Co. v. Willcuts, (CCA8), 125F(2d)584. Cert. den. 316 US705, 62SCR1309. Reh. den. 317US705, 63SCR25. See Dun. Dig. 9570d.

(a).

Schultz, M.B.T.A. (No. 61), May 28, 1942; note under §2394-46(a).

Where claim was filed within two years after tax was paid, and more than two years after claim was filed commission found that taxpayer had overpaid, it then became duty of commission to issue its certificate for refundment, and this could be enforced by mandamus. State v. Minnesota Tax Commission, 208M195, 293NW243. See Dun. Dig. 9570d.

Taxpayer required by federal authority to change from a full charge-off of machines to a capitalized and depreciation method of accounting was not entitled to amend a state return for a prior year unless acting in the matter within two years. Stansfield, M.B.T.A. (No. 85), May 22, 1942.

Where property was destroyed by fire December 16, 1936, and actual amount of loss sustained was not determined until 1937 and taxpayer deducted amount of loss in 1937 income tax return and did not ask for refund on 1936 tax pay, taxpayer was not entitled to offset the 1936 overpayment against an additional assessment for 1937 and Commissioner was not authorized to make such an adjustment. Valentine, M.B.T.A. (No. 94), Aug. 21, 1942. See Dun. Dig. 9570eee.

(b).

Where more than two years after tax was paid and claim for refundment filed, commission determined that there was an overpayment of tax, but rejected claim on ground of limitations, taxpayer was not an "aggrieved party," and could proceed by mandamus to compel issuance of certificate for refundment. State v. Minnesota Tax Commission, 208M195, 293NW243. See Dun. Dig. 9570d.

(c).

This subsection does not deprive taxpayer of right to refundment, and where commission proceeds to determine merits of claim, it has no application whatsoever. State v. Minnesota Tax Commission, 208M195, 293NW243. See Dun. Dig. 9570d.

2394-48. Tax a personal debt.

Income tax on income of stockholder of a bank stock holding corporation is a tax in personam on the individual computed on his income, and cannot be considered a tax on its source. Irvine v. Spaeth, 210M489, 299NW204. Cert. den. 62SCR117. See Dun. Dig. 9570d.

ARTICLE VII.—INTEREST AND PENALTIES

2394-49. Penalties.—(a) If any tax imposed by this act, or any portion thereof, is not paid within the time herein specified for the payment thereof, or within 30 days after final determination of an appeal to the Board of Tax Appeals relating thereto, there shall be added thereto a specific penalty equal to five per centum of the amount so remaining unpaid. Such penalty shall be collected as part of said tax, and the amount of said tax not timely paid, together with said penalty shall bear interest at the rate of six per cent per annum from the time such tax should have been paid until paid. Interest accruing upon the tax due as disclosed by the return or upon the amount determined as a deficiency from the date prescribed for the payment of the tax (if the tax is paid in installments, from the date prescribed for the payments of the first installment) shall be added to the tax and be collected as a part thereof. Where an extension of time for payment has been granted under Section 42(b) interest shall be paid at the rate of six per cent per annum from the date when such payment should have been made if no extension had been granted, until such tax is paid. If payment is not made at the expiration of the extended period the penalties provided in this section shall apply.

(b) If any person, with intent to evade the tax imposed by this act, shall fail to file any return required by this act, or shall with such intent file a false or fraudulent return, there shall also be imposed on him as a penalty an amount equal to fifty per centum of any tax (less any amounts paid by him on the basis of such false or fraudulent return) found due from him for the period to which such return related. The penalty imposed by this subdivision shall be collected as part of the tax, and shall be in addition to any other penalties, civil and criminal, provided by this section.

(c) In addition to the penalties hereinbefore prescribed, any person who wilfully fails to make a return or wilfully makes a false return, with an intent to evade the tax, or a part thereof, imposed by this act, shall be guilty of a felony. The term "person" as used in this subsection includes any officer or employee of a corporation or a member or employee of a partnership who as such officer, member or employee is under a duty to perform the act in respect to which the violation occurs.

(d) All payments received shall be credited first to penalties, next to interest, and then to the tax due.

(e) The commissioner shall have power to abate penalties when in his opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the attorney general. (As amended Apr. 28, 1941, c. 550, §19; Apr. 28, 1943, c. 656, §17.)

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to all assessments thereafter made.

Penalty is imposed upon failure to pay tax within 30 days after demand regardless of pending appeal for board of tax appeals. Op. Atty. Gen. (531), June 26, 1940.

(c).

Return of attorney on cash basis was fraudulent and limitations did not run where fee was received for services covering seventeen years and was not reported, and penalty and interest were properly added. Williams, M. B. T. A. (No. 118), Apr. 21, 1943.

(e).

That former tax commission allowed similar deductions is not controlling, but taxpayer's reliance thereon in taking deduction entitles his estate to abatement of penalties. Abbott's Estate, 213M289. 6NW(2d)466. See Dun. Dig. 9570ee.

(f).

Return of attorney on cash basis was fraudulent and limitations did not run where fee was received for services covering seventeen years and was not reported, and penalty and interest were properly added. Williams, M. B. T. A. (No. 118), Apr. 21, 1943.

2394-49a. Application of the law.—(a) This law shall take effect from and after its passage, but shall apply in computing taxes as follows:

(1) To the taxable year 1941 and all subsequent years of taxpayers reporting on a calendar year basis.

(2) To the taxable year ending during the calendar year 1941 of taxpayers reporting on a fiscal year basis, in which case the tax shall be computed as provided in Section 2394-32 (a) of Mason's Supplement 1940 and to all subsequent taxable years of such taxpayers.

(3) To every taxable year commencing on or after January 1, 1941 of every other taxpayer.

(b) All provisions of Laws 1933, Chapter 405, and Extra Session Laws of 1935, Chapter 87, and Extra Session Laws of 1937, Chapter 49 and Laws of 1939, Chapter 446 as they existed prior to the passage of this act, shall remain in full force and effect so far as necessary to preserve any liability for taxes, interest, and penalties incurred prior to the passage of this act. (Act Apr. 28, 1941, c. 550, §24.)

[290.55]

ARTICLE VIII.—ADMINISTRATIVE PROVISIONS

2394-50. Administration and enforcement.—The commissioner shall administer and enforce the assessment and collection of the taxes imposed by this act. He may, from time to time, make and publish such rules and regulations, in enforcing its provisions. He shall cause to be prepared blank forms for the returns required by this act, which shall include a simplified form for individual taxpayers having a gross income less than $5,000, or a gross income in excess of $5,000 if it is derived solely from wages, salaries, dividends and interest, which statement may be verified by written declaration that it is made under the penalties of criminal liability for wilfully making a false return and which shall list gross income, deductions, net income, gross tax, personal credits and tax payable, provided, however, that detailed returns may subsequently be required of said persons by the commissioner. The commissioner shall distribute the same throughout this state and furnish them on application, but failure to receive or secure them shall not relieve any person or corporation from the obligation of making any return required of him or it under this act. The commissioner may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before the commissioner, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable services, and otherwise competent to advise and assist such claimants in the presentation of their case. And such commissioner may, after due notice and opportunity for hearing, suspend and disbar from further practice before him, any such person, agent, or attorney, shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by words, circular, letter, or by advertisement. This shall in no way curtail the rights of individuals to appear in their own behalf or partners or corporations' officers to appear in behalf of their respective partnerships or corporations. (As amended Apr. 24, 1943, c. 656, §18.)

Laws 1943, c. 656, §31, provides that this section as amended thereby, shall apply to taxable years beginning after December 31, 1942.

Regulations adopted by the commissioner have the force of law. State v. Stickney, 213M89, 5NW(2d)351. See Dun. Dig. 9570d.

2394-50a. May make agreements.

Where property was destroyed by fire December 16, 1936, and actual amount of loss sustained was not determined until 1937 and taxpayer deducted amount of loss in 1937 income tax return and did not ask for refund on 1936 tax pay, taxpayer was not entitled to offset the 1936 overpayment against an additional assessment for 1937 and Commissioner was not authorized to make such an adjustment. Valentine, M.B.T.A. (No. 94), Aug. 21, 1942. See Dun. Dig. 9570eee.

2394-55. Payment of expenses.—All the expenses of the administration of this Act shall be paid out of the receipts therefrom as other moneys of the state are expended by the departments incurring the same, and there is hereby appropriated out of such receipts so much thereof as may be necessary therefor. Expenses of the administration of this Act as provided for herein shall include fees and expenses incurred by the Attorney General in litigation for the collection of the taxes provided for in this Act. Provided that none of said departments may expend any money for any of the purposes of this Act after February 15, 1935, unless the same shall be appropriated by the Legislature. (As amended Mar. 10, 1943, c. 115, §1.)

2394-56. Publicity of returns.

(a) It shall be unlawful for the Commission or any other public official or employee to divulge or otherwise make known in any manner any particulars set forth or disclosed in any report or return required by this act, or any information concerning, the taxpayer's affairs acquired from his or its records, officers or employees while examining or auditing any taxpayer's liability for taxes imposed hereunder, except in connection with a proceeding involving taxes due under this act from the taxpayer making such return, and except as provided in Section 32-4 [2394-32d]. The Commission may furnish a copy of any taxpayer's return to any official of the United States or of any state having duties to perform in respect to the assessment or collection of any tax imposed upon or measured by income, if such taxpayer is required by the laws of the United States or of such state to make a return therein and if the laws of the United States or of such state provide subsantially for the same secrecy in respect to the information revealed thereby as is provided by our laws. The Commission and all other public officials and employees shall keep and maintain the same secrecy in respect to any information furnished by any department, commission or official of the United States or of any other state in respect to the income of any person as is required by this section in respect to information concerning the affairs of taxpayers under this act. Nothing herein contained, however, shall be construed to prohibit the Commission from publishing statistics so classified as not to disclose the identity of particular returns or reports and the items thereof. (As amended Feb. 21, 1941, c. 18, §5.)

ARTICLE IX.—DISTRIBUTION OF PROCEEDS OF TAXES

2394-57. Distribution—Refunds.—The revenues derived from the taxes, interest and penalties under Mason's Supplement 1940, Sections 2394-1 to 2394-61, inclusive, shall be paid into the state treasury; and be credited to a special fund to be known as "Income Tax School Fund," and be distributed as follows:

(a) There shall be paid from said Income Tax School Fund all refunds of taxes erroneously collected from taxpayers under Mason's Supplement 1940, Sections 2394-1 to 2394-61, inclusive, as provided herein.

(b) There shall be transferred each year from said fund to the General Revenue Fund the amount expended from the latter fund for expenses of administering Mason's Supplement 1940, Sections 2394-1 to 2394-61, inclusive.

(c) Out of the balance in said income Tax School Fund after meeting the requirements of subsections (a) and (b), there shall be distributed to each school district of the state, including municipalities operating their own school, an amount equal to $10.00 per child between the ages of six years and sixteen years, both years inclusive, residing in such district, provided that a child in his sixteenth year shall be included only if in actual attendance in school. Providing also that if a child attends another district to obtain a high school education, the $10 per child shall be paid to the district maintaining such public high school where the child attends, but this shall not apply to any county where the high school district may require the payment of tuition in addition to the state non-resident high school tuition as provided by the terms of Chapter 328, Laws of 1941. The school census taken during the fiscal year shall be used as the basis for computing the amount due each school district. Except as otherwise provided by any law heretofore or hereafter passed with respect to particular school districts, the money so distributed shall be used for the following purposes only:

(1) Payment or providing for the payment of any bonded or other indebtedness of such district outstanding January 1, 1933.

(2) Providing for the payment of any bonded or other indebtedness thereafter incurred until such debts are fully paid or payment thereof provided for.

(3) Any such revenue not required to pay or provide for the payment of any such indebtedness shall

be used to pay current operating expenses and to reduce and replace levies on real and personal property.

(4) Where the county auditor is required by any law to levy a tax to pay any interest or principal of any bonded indebtedness of a school district, such district may on or before October 1 of any year pay any of such money available therefor to the county treasurer to pay any interest or principal maturing or becoming due during the next ensuing year, in which case the auditor shall reduce the amount of the levy so required to be made by him by the amount so paid to the treasurer.

(d) If any money remains in said Income Tax School Fund after making the distribution specified in subsections (a), (b) and (c), such balance, not in excess, however, of the amount appropriated for such purpose, shall be used to pay special school aid provided by law, and the amount so used shall be deducted from the appropriation therefor.

(e) The money available for distribution under subsections (c) and (d), shall be distributed by the state board of education semi-annually, in the same manner, as nearly as practicable, as now provided by law governing the distribution of state funds by said board, except that each school district shall be entitled to receive the money distributable under subsection (c) without being subject to any conditions.

(f) All money collected up to and including December 31, 1937, irrespective of the year for which taxes were assessed and from which have been deducted the sums required for the payment of all costs of administration incurred and paid prior to said December 31, 1937, and for the payment of all refunds granted prior to said December 31, 1937, and not heretofore distributed, shall be distributed on the basis of school population within such district of compulsory school age and shall be based on the 1936 school census; this distribution shall be additional to the amounts provided in subsection (c) hereof and used only for the purposes therein stated.

(g) All money collected on and after Jan. 1, 1938, irrespective of the year for which such taxes were assessed shall be distributed as provided in subsection (c) hereof; provided, that in common school districts which have no debt and where no school is conducted but where educational facilities are provided by contract with another public school, the income tax accruing to said common school district may, by a majority vote of the governing board of such common school district, be assigned to the public school providing the educational facilities for the pupils of such common school district, for the purpose of aiding in the liquidation of bonded indebtedness incurred in construction of school buildings in the district affording such educational facilities under contract with such common school district. The assignment of such income tax shall not be construed as compensation for providing educational facilities for the students of such common school district but in addition thereto, and only for the purpose herein designated. (As amended Apr. 24, 1943, c. 630, §1.)

(h) **Distribution to school districts.**—Out of the balance in said income tax school fund, after distributing the amounts hereinbefore provided, there shall be distributed to each school district in the state an amount equal to the tax on the money and credits in said school district for the year 1942, which was apportioned to and received by it in 1943, as provided by Mason's Minnesota Statutes of 1927, Section 2349. Such distribution shall be semi-annually during the calendar years 1944 and 1945, and thereafter this sub-section shall have no force and effect. (As amended Apr. 28, 1941, c. 445, §1; Apr. 24, 1943, c. 630, §1; Apr. 24, 1943, c. 656, §29.)

Laws 1943, c. 656, §31, provides that this section as amended thereby shall apply to taxable years beginning after December 31, 1942.

Laws 1943, c. 665, §7, provides that: There is hereby transferred from the income tax school fund to the current school fund the sum of $1,000,000, for the fiscal years ending June 30, 1944 and 1945, respectively and the state auditor and the state treasurer are hereby authorized and directed to make the appropriate entries in the accounts of the respective funds.

Responsibility of execution of hot lunch program is problem for Department of Education, and Division of Public Institutions may not contribute thereto, by way of surplus commodities or otherwise. Op. Atty. Gen. (159a), Aug. 17, 1943.

Subsec. (c)(5) appearing in Laws 1937, c. 397, which amended this section, was omitted by subsequent amendments through oversight, and is still in effect. Op. Atty. Gen. (531i), Oct. 15, 1940; Oct. 22, 1940.

Subsec. (c)(5) referred to by the attorney general read as follows: "Any income tax payable to an unorganized territory having children living within the boundaries of any disorganized school district which has been consolidated with the unorganized territory, may be used by the County Board of Education, upon an unanimous vote of its members, to pay any bonded or floating indebtedness existing at the time of consolidation with the unorganized territory. The county auditor, upon request of the County Board of Education, shall apply such income tax to such indebtedness of the dissolved district each and every year thereafter, according to the number of pupils reported by the County Superintendent of Schools until such debts have been fully paid. Floating indebtedness shall be paid by the County Board of Education as the situation may seem warranted and when funds are available.

For the purpose of this section the bonded or other indebtedness to the payment of, or provision for, which the sums distributed must or may be applied shall, in the case of municipalities operating their own school system, be limited to such indebtedness incurred for school purposes."

Section prohibits directly or indirectly paying any current operating expenses out of income tax money until all other bonded or other indebtedness has been fully paid or payments provided for, and if bonds issued after Jan. 1, 1933, were refunding bonds, they would represent same indebtedness that was outstanding on Jan. 1, 1933. Op. Atty. Gen., (531*l*), Feb. 19, 1941.

Income is distributed to district where pupils are taught and not in district in which they live, and a district receiving income tax for a nonresident pupil must deduct the amount from the per capita limitation on tax levy. Op. Atty. Gen. (531i), Nov. 27, 1943.

(c).

Where it appears that overpayments were made to certain districts, state treasurer has right to off-set overpayments from any future distribution. Op. Atty. Gen., (531i), April 25, 1940.

Where a number of school districts consolidate, first income tax money must be used to retire bonded indebtedness of old districts, then bonded indebtedness of new districts, before any part can be used for school maintenance. Op. Atty. Gen., (531i), April 30, 1940.

Boys in state training school at Red Wing may not be counted for purposes of income tax distribution. Op. Atty. Gen. (56B), June 5, 1940.

If a child attends a fractional part of the school year, the $10 will then be prorated on a fractional basis counting 9 months as a school year, and the state board has authority to make rule indicating that aid will be paid at the end of each school semester, and may also rule that no aid will be paid for less than one month of attendance. Op. Atty. Gen. (168), May 11, 1943.

(c)(2).

The only outstanding warrants which can be considered as "other indebtedness" are such interest bearing warrants as have been marked "not paid for want of funds." Op. Atty. Gen. (531i), July 25, 1941.

(c)(3).

After all bonded indebtedness is retired it is contemplated that tax on real and personal property will be replaced by income tax money, or at least reduced by amount received from income tax fund. Op. Atty. Gen., (519m), Feb. 19, 1940.

(d).

Since special school aids are paid out of general revenue fund, it is proper to transfer semi-annually such balance not needed for other payments provided. Op. Atty. Gen. (168c), Dec. 9, 1941.

(h).

Amended. Laws 1943, c. 656, §29. See above text.

Overpayment by the state to school district may be adjusted and deductions made from next distribution of income tax to public schools. Op. Atty. Gen. (531i), Feb. 11, 1943.

Income tax may be used for maintenance. Op. Atty. Gen. (531i), Oct. 19, 1943.

2394-57a. Use of money received by cities of the first class.—All money received by any city of the first class maintaining its own schools, or by any school district or districts covering the territory of any such city, on distribution by the state of Minnesota of money derived from payment of income taxes, may be used for current maintenance and operating expenses to the extent required by the governing body

charged by law with the control and maintenance of such schools. (Act Feb. 25, 1941, c. 21, §1.)
[128.015]

Sec. 2 of Act Feb. 25, 1941, c. 21, cited, provides that the Act shall take effect and be in force from and after its passage.

ARTICLE X

2394-59. Effective date.
(a).
Byard v. C., 209M215, 296NW10; note under §2394-32a.

VICTORY TAX FUND

2394-62. Victory tax fund established — State Treasurer to be custodian.—There is hereby created and established the Victory Tax Fund in which shall be deposited all deductions made pursuant to this act. The State Treasurer shall be ex-officio the custodian of all moneys deposited with him to the credit of the Victory Tax Fund and his general bond to the state shall cover all liability for his acts as custodian thereof. Such moneys shall be subject to all provisions of law governing the keeping and disbursement of state moneys, so far as applicable, except as otherwise herein provided. (Act Apr. 14, 1943, c. 1, §1.)
[290.64]

2394-63. Commissioner of Administration to act as agent for the United States.—The commissioner of administration is authorized and empowered to cooperate with [and] act as agent for the United States of America in the collection of any tax now or hereafter imposed by the United States of America upon any officer or employee of the state of Minnesota or his salary or wages which is to be collected by withholding it from the salary or wages of the officer or employee. The head of each department of the state is hereby required to cause such tax to be withheld by causing the necessary deduction to be made from the salary or wages of each of said persons on every payroll abstract and to approve one voucher payable to the State Treasurer, Custodian, Victory Tax Fund, for the aggregate amount so deducted from the salaries or wages covered by said payroll abstract, provided that deductions from salaries or wages of officers or employees paid direct by any institution or agency of the state shall be made by the officer or employee authorized by law to pay such salaries or wages. Whenever an error has been made with respect to a deduction hereunder, proper adjustment shall be made by decreasing or increasing subsequent deductions. All warrants and checks for deductions hereunder shall be remitted promptly to the State Treasurer who shall deposit the amount thereof to the credit of the Victory Tax Fund. The money so deposited with the State Treasurer shall be paid out upon authorization of the commissioner of administration by state warrant payable to the proper Federal authority or such other person as may be authorized by law of the United States of America to receive the same. Such portion of said fund as may be necessary to discharge the obligation of the State of Minnesota to the United States of America now or hereafter imposed by any law of the United States of America requiring deductions from salaries or wages is hereby appropriated for such purpose. (Act Apr. 14, 1942, c. 1, §1.)
[290.64]

Procedure for handling Federal Current Tax Payment Act. Op. Atty. Gen. (454k), July 7, 1943.

2394-64. Commissioner to make reports.—The commissioner of administration shall, as required by proper Federal authority, make all necessary reports of deductions made hereunder and cause the moneys so deducted to be paid out as herein provided. (Act Apr. 14, 1942, c. 1, §3.)
[290.64]

2394-65. Officers and employees to report to Commissioner as required.—All officers and employees shall prepare and transmit to the commissioner of administration such information and forms as he may require for the purposes of this act. (Act Apr. 14, 1942, c. 1, §4.)
[290.64]

GIFT TAX

2394-73. Exemptions.—The following transfers by gift shall be exempt * * * * *.

(a) Gifts to or for the use of the United States of America or any state or any political subdivision thereof for exclusively public purposes. (As amended Act Apr. 20, 1943, c. 505, §1.)

(b) Gifts to or for the use of any fund, foundation, trust, association, organization or corporation operated within this state for religious, charitable, scientific, literary, or educational purposes exclusively, including the promotion of the arts, or the conduct of a public cemetery, if no part thereof inures to the profit of any private shareholder or individual. Gifts to or for the use of any corporation, fund, foundation, trust, or association operated for religious, charitable, scientific, literary, or educational purposes, including the promotion of the arts, or the conduct of a public cemetery, no part of which inures to the profit of any private shareholders or individual, shall be exempt, if at the date of the gift, the laws of the state under the laws of which the donee is organized or existing either (1) do not impose a gift tax in respect of property transferred to a similar corporation, fund, foundation, trust, or association, organized or existing under the laws of this state, or (2) contain a reciprocal provision under which gifts to a similar corporation, fund, foundation, trust, or association organized or existing under the laws of another state are exempt from gift taxes if such other state allows a similar exemption to a similar corporation, fund, foundation, trust, or association, organized or existing under the laws of such state. (As amended Act Apr. 20, 1943, c. 505, §2.)

(c) to (f) * * * * *.

2394-74. Specific exemptions. — (a) Particular donees.—The following specific exemptions shall be deducted * * * * *.

(b) The exemptions provided by this section shall be allowed once only with respect to gifts by the donor to the same donee; provided, that where the relationship of the donee to the donor changes between gifts, the exemption allowed after the change shall be the exemption applicable at the date of gift to the extent that it exceeds any exemption deducted under this section from prior gifts. (As amended Act Apr. 20, 1943, c. 505, §3.)

(c) * * * * *.

2394-75. Computation of tax.—The tax shall be based on the aggregate sum of the gifts made by the donor to the same donee in excess of the applicable annual exemptions and specific exemption. Net taxable gifts are here defined as the sum of gifts made by the donor to the same donee during any stated period of time in excess of the applicable annual exemptions and applicable specific exemption. For each calendar year the tax shall be an amount equal to the excess of (1) a tax, computed by applying the rates hereniafter set forth, to the net taxable gifts for such calendar year and for all preceding and calendar years, over (2) a tax computed in like manner for all preceding calendar years; provided, that if the relationship of the donee to the donor changes between gifts, the tax on the gifts made subsequent to such change shall be computed as hereinbefore provided, but the rate shall be determined as follows: the primary rate shall be the rate applicable to the new relationship; the additional rate, as provided in Section 2394-76 (c), shall be the rate applicable to the amount obtained by adding the net taxable gifts made after the change of relationship to the net taxable gifts made before the change of relationship. (As amended Act Apr. 20, 1943, c. 505, §4.)

There is no cut-off or start of a new aggregation when a stranger in blood to donor marries him. Op. Atty. Gen. (242a-21), Jan. 14, 1943.

2394-76. Rates of tax.—(a) in computing the tax imposed by this Act the schedule or rates specified in subdivisions (b) and (c) of this section shall apply.

(b) The rates on the net taxable gifts up to $15,000.00 shall be (1) three-fourths per centum if the donee is a member of Class A donees; (2) one and one-eighth per centum if the donee is amember of Class B donees; (3) two and one-fourth per centum if the donee is a member of Class C donees; (4) three per centum if the donee is a member of Class D donees; and (5) three and three-fourths per centum if the donee is a member of Class E donees. The rates herein specified shall be known as the primary rates.

(c) The rates on such part of said net taxable gifts as exceeds $15,000.00 and is not in excess of $30,000.00 shall be two times the primary rates; on such part thereof as exceeds $30,000.00 and is not in excess of $50,000.00, three times the primary rate; on such part thereof as exceeds $50,000.00 and is not in excess of $100,000.00, three and one-half times the primary rate; on such part thereof as exceeds $100,000.00 and is not in excess of $200,000.00, four times the primary rate; and on such part thereof as exceeds $200,000.00 and is not in excess of $300,000.00, five times the primary rate; on such part thereof as exceeds $300,000.00 and is not in excess of $400,000.00, six times the primary rate; on such part thereof as exceeds $400,000.00 and is not in excess of $500,000.00, seven times the primary rate; on such part thereof as exceeds $500,000.00 and is not in excess of $600,000.00, eight times the primary rate; on such part thereof as exceeds $600,000.00 and is not in excess of $700,000.00, nine times the primary rate; on such part thereof as exceeds $700,000.00 and is not in excess of $900,000.00, ten times the primary rate; on such part thereof as exceeds $900,000.00 and is not in excess of $1,100,000.00, eleven times the primary rates; and upon such part thereof as exceeds $1,100,000.00, twelve times the primary rates.

(d) The tax shall, however, in no case exceed thirty-five per centum of the full and true value of the net taxable gifts. If the tax imposed herein is assessed against and attempted to be collected from the donee, the tax shall in no case exceed thirty-five per centum of the full and true value of the gift in excess of the applicable specific exemption after deducting therefrom any gift tax imposed by the United States Government if such federal tax was assessed against and collected from the donee.

(e) Class A donees shall include only the wife and lineal issue of the donor, an adopted child of the donor, and the lineal issue of any such adopted child. Class B donees shall include only the husband of the donor, lineal ancestors of the donor, any child of the donor to whom he or she has stood in the mutually acknowledged relation of parent for not less than 10 years prior to the making of the gift if such relationship began at or before such child's fifteenth birthday and was continuous for 10 years thereafter, and the lineal issue of such child. Class C donees shall include only a brother or sister of the donor, a descendant of such brother or sister, a wife or widow of a son of the donor, and the husband of a daughter of the donor. Class D donees shall include only the brother or sister of the father or mother of the donor, and a descendant of a brother or sister of the father or mother of the donor. Class E donees shall include all donees other than those includible in the foregoing classes. (As amended Act Apr. 20, 1943, c. 505, §5.)

2394-77. Returns.—(a) Every person making any gifts other than those exempted by Section 3 of this Act (§2394-73), during that part of the calendar year 1937 subsequent to the effective date of this Act, or during any subsequent calendar year, shall make a return thereof in duplicate to the commissioner of taxation of the State of Minnesota. Every return shall specifically set forth the property transferred by gift, the date of the gift, the value at the date of the gift of every item of property transferred by gift, the name and residence of each donee and the relationship of the donee to the donor, and, in the case of property transferred for less than an adequate consideration in money or money's worth, the character and value of the consideration received by the donor. The commissioner of taxation may also require such other information to be given on such return as may be necessary for the effective enforcement of this Act. The return shall be in such form as he may prescribe as necessary to compute the tax imposed by this Act, and shall be under oath of the person making the return. In the case of a donor dying without filing a required return the return shall be made on his behalf by his executor or administrator, if no representative is appointed in probate proceedings the return shall be filed by the donee; that of a person for whom or whose property a guardian has been appointed shall be made by the guardian of his person or his property or both; and that of a person employing any device to make gifts indirectly shall be made by him and by those in charge or in control of the agency or instrumentality through which such person is making gifts indirectly.

(b) The returns required to be made under subdivision (a) of this section shall be filed with the commissioner of taxation on or before the fifteenth day of March of the calendar year immediately succeeding that for which the return is made.

(c) The commissioner of taxation may, whenever in his opinion good cause exists therefor, extend the time for filing any return required hereunder for not to exceed three months.

(d) The commissioner of taxation may, whenever necessary in his opinion to the effective enforcement of this Act, require donees to file a return of gifts received by them, and such return may require such donees to report such information as is necessary to the effective enforcement of this Act. Returns required hereunder shall be filed with the commissioner of taxation within 30 days after he has mailed notice and demand therefor to the last known address of the donee required to make such return. (As amended Act Apr. 20, 1943, c. 505, §6.)

Duties of attorney general transferred to commissioner of taxation, §2362-6.

2394-78. Assessment—To whom assessed—Notice.—(a) The commissioner of taxation shall determine and assess all taxes imposed by this Act. The tax shall be assessed upon the donor, and shall be paid by him to the commissioner of taxation within 60 days after notice of such assessment shall have been served upon him. The tax in the case of a donor who has died prior to its assessment shall be assessed upon his executor or administrator, and be paid by such executor or administrator within 60 days after notice of such assessment shall have been served upon him. The tax in the case of indirect gifts may, in the discretion of the commissioner of taxation, be assessed upon the donor, or the person or persons in charge or in control of the agency or instrumentality through which such donor is making indirect gifts, or upon both, and shall be paid by the person upon whom it is assessed within 60 days after notice of such assessment shall have been served upon him (but one tax only shall be collected in such case). Notice of assessment shall be deemed to have been made within the meaning of this subdivision (a) when a letter containing such notice has been mailed to the last known address of the person upon whom the assessment is made. (As amended Apr. 23, 1943, c. 592, §1.)

(b) to (d) * * * * * *.

Duties of attorney general transferred to commissioner of taxation, §2362-6.

2394-81. Refundments.—The commissioner of taxation shall determine the amount of any taxes paid by, or collected from, any person in excess of the amount of tax legally due from him under the provisions of this Act if claim therefor is filed with the commissioner of taxation within two years after such tax was paid or collected. He shall cause to be refunded in the manner provided by law the amount of the tax illegally paid or collected, plus interest thereon at the rate of six per centum per annum from the date of the payment or collection of the tax until the date the refund is paid. The amount necessary to pay such refunds is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, and the state treasurer shall pay warrants therefor out of any funds in the state treasury not otherwise appropriated. No refund shall be denied merely because the tax was voluntarily paid or no protest made to its payment. (As amended Apr. 23, 1943, c. 592, §2.)

2394-81a. Same—Effective July 1, 1943.—This act shall take effect July 1, 1943. Nothing in this act shall affect any liability for taxes, penalties or interest accrued prior to its effective date. (Act Apr. 23, 1943, c. 592, §3.)

2394-105. Exemptions from income tax for members of armed forces.—The first $2,000 received by any individual as compensation for personal services in the Armed Forces of the United States, shall be excluded from gross income in computing income taxes under the provisions of Mason's Supplement 1940, Sections 2394-1 to 2394-61, as amended. This section shall apply to the taxable year 1942 and all subsequent taxable years, but shall not apply to any period beyond two years after the cessation of hostilities as determined by act of Congress or by the President of the United States. (Act Mar. 6, 1943, c. 107, §1.)
[290.65]

2394-106. Extension of time for performing of acts and duties.—Subdivision 1. The limitations of time provided by Mason's Supplement 1940, Sections 2394-1 to 2394-61, as amended, relating to income taxes, and Sections 2362-10 to 2362-31, as amended, relating to the Board of Tax Appeals, for (a) filing returns, (b) paying taxes, (c) claiming refunds, (d) commencing action thereon, (e) appealing to the Board of Tax Appeals from orders relating to income taxes, and (f) appealing to the Supreme Court of Minnesota from decisions of the Board of Tax Appeals relating to income taxes, are hereby extended, with respect to each individual, for the period during which such individual is, or has been for any period commencing after December 7, 1941, continuously and for more than 90 days outside the United States, and for a further period of six months after his return to the United States.

Subdivision 2. **No interest to be assessed.**—No interest upon any income tax shall be assessed or collected from any individual with respect to whom, and for the period during which, the limitations of time are extended as provided in subdivision 1 of this section; provided, that interest shall accrue, notwithstanding such extension, for such part of said period as the individual is not serving in the Armed Forces of the United States. No penalty shall be assessed against or collected from any individual by reason of failure, during the extension of the periods of time as provided in subdivision 1, to perform any act required by the laws prescribed in said subdivision. No interest shall be paid upon any income tax refund to any individual with respect to whom, and for the period during which, the limitations of time are extended as provided in subdivision 1 of this section.

Subdivision 3. **Limitation.**—The limitations of time for the assessment of any tax, penalty or interest, as provided by the laws described in subdivision 1 are hereby extended, with respect to the same individuals, and for the same period, as provided in said subdivision, and for a further period of six months; and the limitations of time for the commencement of action to collect any tax, penalty or interest from such individuals are hereby extended for a period ending six months after the expiration of the time for assessment as herein provided. For the purpose of this subdivision the period of six months after return to the United States, as provided in subdivision 1, shall not begin to run until written notice of such return is filed with the Commissioner of Taxation.

Subdivision 4. **Construction of act.**—Nothing in this section shall be construed as reducing any period of time provided by the laws set forth in subdivision 1, within which any act is required or permitted to be done.

Subdivision 5. **What are included in the United States.**—The term "United States" as used in this section does not include Alaska, Hawaii, Canal Zone or the Caribbean Islands.

Subdivision 6. **Limitations.**—The provisions of subdivision 1 shall not extend the time for performing any of the acts therein set forth beyond the expiration of three months after the appointment of an executor, administrator, or guardian, in this state, for any individual described therein.

Subdivision 7. **Application of act.**—This section shall apply to all periods of limitation which expire after the passage of this act. If any such period has expired prior to the passage of this act, and subsequent to December 7, 1941, and the right of any individual described in subdivision 1 of this section is barred thereby, the said period of limitations is hereby revived and extended as provided in this section, and any taxes, penalty or interest assessed contrary to the provisions of subdivision 2 of this section shall be abated. (Act Mar. 6, 1943, c. 107, §2.)
[290.65]

2394-107. Limitation of time extended.—Subdivision 1. The limitations of time provided by Mason's Supplement 1940, Sections 2394-1 to 2394-61, as amended, relating to income taxes, and Sections 2362-10 to 2362-31, as amended, relating to the Board of Tax Appeals, for (a) filing returns, (b) paying taxes, (c) claiming refunds, (d) commencing action thereon, (e) appealing to the Board of Tax Appeals from orders relating to income taxes, and (f) appealing to the Supreme Court from decisions of the Board of Tax Appeals relating to income taxes, are hereby extended, with respect to each individual, for the period during which such individual is or has been continuously for any period beginning after December 7, 1941, serving in the Armed Forces of the United States, and for a further period of six months after the termination of such service, provided, that the ability of such individual to file the return, pay the tax or any part thereof, or any interest or penalty thereon, or to perform any other act described in this subdivision is materially impaired by reason of such service. The commissioner may by regulation require the filing of a statement or affidavit or other proof, at the time the return or tax is due or other act is required to be done, stating the fact of inability to comply with the requirements of law because of service in the Armed Forces of the United States.

Subdivision 2. **No interest to be collected.**—No interest upon any income tax shall be assessed or collected from any individual, and no interest shall be paid upon any income tax refund to any individual, with respect to whom, and for the period during which, the limitations of time are extended as provided in Subdivision 1 of this section. No penalty shall be assessed or collected from any such individual by reason of failure during such period to perform any act required by the laws described in Subdivision 1 of this section.

Subdivision 3. **Limitation of time.**—The limitations of time provided for the assessment of any tax, penalty or interest, as provided by the laws described in

subdivision 1, are hereby extended, with respect to the same individuals, and for the same period, as provided in said subdivision, and for a further period of six months; and the limitations of time for the commencement of action to collect any tax, penalty or interest from such individuals are hereby extended for a period ending six months after the expiration of the time for assessment as herein provided. For the purpose of this subdivision the period of six months after termination of service in the Armed Forces, as provided in Subdivision 1, shall not begin to run until written notice of such termination is filed with the Commissioner of Taxation.

Subdivision 4. **Construction of act.**—Nothing in this section shall be construed as reducing any period of time provided by the laws set forth in subdivision 1, within which any act is required or permitted to be done.

Subdivision 5. **Limitation of act.**—The provisions of subdivision 1 shall not extend the time for performing any of the acts therein set forth beyond the expiration of three months after the appointment of an executor, administrator, or guardian, in this state, for any individual described therein.

Subdivision 6. **Application of act.**—This section shall apply to all periods of limitation which expire after the passage of this act. If any such period has expired prior to the passage of this act, and subsequent to December 7, 1941, and the right of any individual described in subdivision 1 of this section is barred thereby, the said period of limitation is hereby revived and extended as provided in this section, and any taxes, penalty or interest assessed contrary to the provisions of subdivision 2 of this section shall be abated. (Act Mar. 6, 1943, c. 107, §3.)
[290.65]

CHAPTER 12

Military Code

Editorial note:—Remedies against soldiers and sailors, including draftees, are affected by the Selective Training and Service Act of 1940, §13, and the new Soldiers' and Sailors' Civil Relief Act of 1940. See page I of this Supplement.

MILITIA

2395. Military code.
Acquisition of land for military or naval training purposes. Laws 1941, c. 496.

2397. What are Military Forces.—Subdivision 1. **Definitions.**—The term "military forces" shall include the National Guard, the Naval Militia, and any other organizations or components of the organized militia.

Subdivision 2. **Definitions.**—The designation "company," as used in this act, shall be understood and construed to include a company of infantry, engineers, signal corps, a flight of the air service, a battery of field artillery, a troop of cavalry, or any similar organization in any branch of the military service authorized by federal law for this state, including a permanent detachment of the medical department attached to a line or staff organization, a field hospital, or a headquarters detachment. The designation, "battalion," applies in like manner to squadron of cavalry and air service.

Subdivision 3. **Definitions.**—"Active service" shall be understood and construed to be service on behalf of the state, in case of public disaster, war, riot, tumult, breach of the peace, resistance of process, or whenever the same is threatened, whenever called upon in aid of civil authorities, at encampments whether ordered by state or federal authority, or upon any other duty requiring the entire time of the organization or person. "On duty" shall include periods of drill and such other training and service as may be required under state or federal law, regulations or orders.

Subdivision 4. **Definitions.**—The terms, "in the service of the United States" and "not in the service of the United States," used herein shall be understood to mean and be the same as such terms are used in the National defense act of congress approved June third, nineteen hundred sixteen and amendments thereto. (As amended Act Mar. 6, 1943, c. 108, §1.)

2399. Militia—Who compose—Exemptions.—Subdivision 1. The militia shall consist of all able-bodied male citizens of the state and all other able-bodied males, resident therein, who have or shall have declared their intention to become citizens of the United States, when so authorized by federal law, who shall be 18 or more years of age, and, except as otherwise provided, not more than 45 years of age; provided, that the governor may, when he deems it necessary for the defense of the state, extend the maximum age for militia service to not more than 64 years.

Subdivision 2. **Classes.**—The militia shall be divided into two classes, the organized militia and the unorganized militia. The organized militia shall consist of the following:

(1) the national guard;
(2) the naval militia;
(3) the state guard, which shall comprise all organized components of the militia except the national guard and the naval militia.

The unorganized militia shall consist of all other members of the militia.

Subdivision 3. **May enlist female citizens.**—The governor may authorize the appointment or enlistment of female citizens of the state in the medical corps, nurse corps, and other noncombatant branches and services of the organized militia, and while so serving they shall have the same status as male members of the military forces.

Subdivision 4. **Exemptions from military duty.**—The officers, judicial and executive, of the government of the United States and of the states; persons in the military or naval service of the United States; custom house clerks, persons employed by the United States in the transmission of the mail; artificers and workmen employed in the armories, arsenals, and navy yards of the United States; pilots and mariners actually employed in the sea service of any citizen or merchant within the United States, shall all be exempt from militia duty without regard to age, and all persons who because of religious beliefs shall claim exemption from military service if the conscientious holding of such belief by such person shall be established under such regulations as the President of the United States shall prescribe, shall be exempt from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the President of the United States shall declare to be non-combatant. (As amended Mar. 6, 1943, c. 108, §2.)

Purchase of materials. State v. Gravlin, 209M136, 295 NW654. See Dun. Dig. 6118.

After a Filipino not born in the United States has declared his intention to become a citizen of the United States, he may enlist in the service of the state, but not in the service of the United States. Op. Atty. Gen. (310), Aug. 26, 1942.

City employees who are members of state guard are entitled to military leave with pay while attending field training activities under orders issued by Adjutant General. Op. Atty. Gen. (319h-1-a), June 30, 1943.

2400 to 2403. [Repealed.]
Repealed. Laws 1943, c. 108, §44.