

CHAPTER 277

DELINQUENT PERSONAL PROPERTY TAXES; DEFENSES

277.01 WHEN PERSONAL PROPERTY TAXES DELINQUENT; PENALTY.

HISTORY. R.S. 1851 c. 12 s. 36; P.S. 1858 c. 9 s. 32; 1860 c. 1 ss. 10, 25; G.S. 1866 c. 11 ss. 91, 92; 1871 c. 15; 1874 c. 1 ss. 95, 96; 1878 c. 1 s. 58; G.S. 1878 c. 11 s. 58; 1885 c. 2 s. 5; G.S. 1894 c. 1567; R.L. 1905 c. 888; G.S. 1913 s. 2076; G.S. 1923 s. 2088; M.S. 1927 s. 2088; 1933 c. 379 s. 1.

Taxes were assessed on May 1, 1893, and became due on the first Monday in January thereafter, but did not become delinquent until the following March 1st. *Nelson v Becker*, 63 M 61, 65 NW 119.

No personal property is exempt from seizure or sale under personal property tax judgment. OAG July 19, 1933.

If half of the amount of tax is not paid before March 1st the penalty is figured on the entire amount of the tax. OAG March 9, 1939 (421a-5).

If a dog license is not paid to the county treasurer before the first day of March following the date upon which the tax and penalty has been certified to the county treasurer, the same penalty applies as in the case of any delinquent personal property tax. 1936 OAG 280, May 22, 1936 (146d-2).

Referring to sections 277.01 and 277.03, the sheriff under Laws 1933, Chapter 379, may collect an eight per cent penalty. 1936 OAG 387, March 26, 1936 (390c-13).

277.02 TREASURER TO FILE DELINQUENT LIST IN COURT; ANSWER; TRIAL.

HISTORY. R.S. 1851 c. 12 s. 36; P.S. 1858 c. 1 s. 32; 1860 c. 1 ss. 10, 25; G.S. 1866 c. 11 ss. 91, 92; 1871 c. 15; 1874 c. 1 ss. 95, 96; 1878 c. 1 s. 58; G.S. 1878 c. 11 s. 58; 1885 c. 2 s. 5; G.S. 1894 s. 1567; 1897 c. 79; 1899 c. 246 s. 1; R.L. 1905 s. 889; G.S. 1913 s. 2077; G.S. 1923 s. 2089; M.S. 1927 s. 2089; 1933 c. 379.

1. Personal liability
2. Filing
3. Defense by answer
4. Trial procedure

1. Personal liability

As respects the personal property of a resident owner, taxes are not imposed on the property but against the owner. *Clarke v County*, 47 M 552, 50 NW 615; *State v Red River Valley Elevator*, 69 M 131, 72 NW 60; *Laird v County of Pine*, 72 M 409, 75 NW 723; *State ex rel v Eberhard*, 90 M 120, 95 NW 1115.

In collecting delinquent taxes the collector may seize any personal property of the person taxed and is not confined to the property on which the tax is based. *Nelson v McKinnon*, 61 M 219, 63 NW 630.

2. Filing

The certifying by the county treasurer of a list of delinquent personal property taxes as provided by Laws 1897, Chapter 79, Section 1, and the filing of such list by the clerk of the district court, are ministerial acts only; and the word "immediately" means that the treasurer must certify the list within a reasonable time after April 1st. *State v St. Paul Trust*, 76 M 423, 79 NW 543.

3. Defense by answer

In answering, the form should be similar to that used in defending against alleged delinquent real estate taxes; and the defenses are similar to those that may be raised in case of a citation. The purpose of the amendment (Laws 1897, Chapter 79) was to allow the taxpayer a remedy to prevent the issuance of a distraint warrant until he could have a hearing on the validity of the tax. The filing of the answer changes the proceedings from ministerial to judicial. *State v St. Paul Trust*, 76 M 423, 79 NW 543.

4. Trial procedure

The burden is on the taxpayer to show the invalidity of the tax. *State v Meehan*, 92 M 283, 100 NW 6.

Laws 1899, Chapter 246, requiring that these cases be determined at the first term of court after the taxes become delinquent is not mandatory but directory. *State v Meehan*, 92 M 283, 100 NW 6.

Delinquent tax lists filed with the clerk of the district court is prima facie evidence of compliance with the law and the list establishes a prima facie case. *State v Backus-Brooks*, 102 M 50, 112 NW 863; *State v Minnesota & Ontario*, 147 M 369, 180 NW 548.

Under our tax system the county attorney is charged with the duty of conducting proceedings for the collection of general taxes against real and personal property; and a city has no power to employ counsel to assist the county attorney in performance of that duty. *Thwing v City of International Falls*, 148 M 37, 180 NW 1117.

Where a tax can be enforced only in the manner and by the procedure provided by the general tax laws, and such laws afford an adequate remedy if the tax is illegal, a suit in equity to enjoin the taxing officers from levying it can not be maintained. *Wall v Borgen*, 152 M 106, 188 NW 159; *Bradish v Erskine*, 155 M 70, 192 NW 193.

Procedure outlined in cases where an answer is interposed. OAG May 6, 1939 (429a-5).

277.03 DISTRESS AND SALE.

HISTORY. R.S. 1851 c. 12 s. 36; P.S. 1858 c. 9 s. 32; 1860 c. 1 ss. 10, 25; G.S. 1866 c. 11 ss. 91, 92; 1871 c. 15; 1874 c. 1 ss. 95, 96; 1878 c. 1 s. 58; G.S. 1878 c. 11 s. 58; 1885 c. 2 s. 5; G.S. 1894 s. 1567; 1897 c. 79; 1899 c. 246 s. 1; R.L. 1905 s. 890; G.S. 1913 s. 2078; G.S. 1923 s. 2090; M.S. 1927 s. 2090.

Under the statutes as they were in 1865, taxes were not delinquent until there was a personal demand or publication. *St. Anthony v Greeley*, 11 M 321 (225).

An officer of the law is presumed to have done his duty. Where the statute required him to demand the amount of the tax before levying a distress warrant, it is presumed after he made such a levy that before he did so he made the statutory demand. *Nelson v McKinnon*, 61 M 219, 63 NW 630.

Under General Statutes 1866, Chapter 11, Section 75, the treasurer had authority to collect taxes by distress either on the delinquent list or on the duplicate. *Piper v Branham*, 14 M 548 (418).

Formal defects in the tax warrant are immaterial; and if a warrant is regular on its face the officer is fully protected. The issuance of a warrant is a ministerial act of the clerk and not a judicial act of the court and need not be under seal. *County v Winona & St. Peter*, 40 M 512, 41 NW 465, 42 NW 473; *Nelson v McKinnon*, 61 M 219, 63 NW 630.

Laws 1893, Chapter 151, providing for the taxation of property previously unlawfully omitted from the assessment or grossly under-valued is not in conflict with the federal constitution. *State v Weyerhaeuser*, 72 M 519, 75 NW 718.

The limit decreed by statute within which time distress is to be made, and returns made on delinquent property tax warrants, is directory and not mandatory. 1934 OAG 828, July 14, 1933.

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Laws 1933, Chapter 379, reduces the penalty from ten per cent to eight per cent. 1936 OAG 387, March 26, 1936 (390c-13).

The distress under section 272.51 is in addition to the distress provided in section 277.03. OAG May 11, 1939 (421a-5).

277.04 PAYMENT UNDER PROTEST.

HISTORY. 1889 c. 246 s. 2; R.L. 1905 s. 891; G.S. 1913 s. 2079; G.S. 1923 s. 2091; M.S. 1927 s. 2091.

Laws 1899, Chapter 246, Section 2, does not furnish a remedy in the instant case for the reason no such recovery was allowed by law in cases of this kind at the time of the passage of the act, except where statutory remedies for correcting unjust or illegal taxation were first resorted to. *State ex rel v Dunn*, 86 M 307, 90 NW 772.

Where recovery is allowed for taxes paid under protest the element of coercion must be found. In the absence of present or potential compulsion mere protest is not sufficient. In the instant case the payment was a voluntary one, but was made under duress. *Oakland v County of Ramsey*, 98 M 404, 108 NW 857, 109 NW 237; *State v Cudahy*, 103 M 419, 115 NW 645, 1039.

Relief accorded to a taxpayer as to taxes illegally assessed or collected. 15 MLR 692.

277.05 SHERIFF TO FILE LIST OF UNCOLLECTED TAXES.

HISTORY. 1860 c. 3 s. 35; 1861 c. 3 s. 8; G.S. 1866 c. 11 s. 93; 1871 c. 15; 1873 c. 105; 1874 c. 1 ss. 97 to 100; 1878 c. 1 s. 59; G.S. 1878 c. 11 s. 59; 1885 c. 2 s. 6; 1889 c. 195; G.S. 1894 s. 1568; 1895 c. 14; R.L. 1905 s. 892; G.S. 1913 s. 2080; G.S. 1923 s. 2092; M.S. 1927 s. 2092.

The county board has no authority to cancel personal taxes until there is delivered to it by the clerk of the district court the sheriff's list of uncollected taxes and the required affidavit, and the proceedings by the board must be in strict accordance with section 277.05. *Grunwysen v Polk County*, 57 M 212, 58 NW 864; *Clarke v Board*, 66 M 304, 69 NW 25.

This section does not justify charging the sheriff with personal liability merely because he did not file the list until after the date required by law. The provision as to time is directory and not mandatory. *Gutches v County of Todd*, 44 M 383, 46 NW 678.

The county board lacks authority to settle a personal property tax judgment of \$85.00 for \$50.00. Section 277.05 does not give it that authority. 1934 OAG 232, March 16, 1934 (421a).

The provisions of section 277.05 must be strictly followed in canceling certain property tax judgments. 1934 OAG 771, April 5, 1933 (407e).

Where assessment is illegal, cancellation may be had under the provisions of section 272.07 or abated under section 277.05. 1942 OAG 344, March 17, 1941 (407-L).

277.06 CITATION TO DELINQUENTS; DEFAULT JUDGMENT.

HISTORY. 1860 c. 3 s. 35; 1861 c. 3 s. 8; G.S. 1866 c. 11 s. 93; 1871 c. 15; 1873 c. 105; 1874 c. 1 s. 98; 1878 c. 1 s. 60; G.S. 1878 c. 11 s. 60; 1885 c. 2 s. 7; 1889 cc. 192, 193; G.S. 1894 s. 1569; R.L. 1905 s. 893; G.S. 1913 s. 2081; G.S. 1923 s. 2093; M.S. 1927 s. 2093.

The burden of proof is on the taxpayer to show the invalidity of the tax; and the levy and assessment are presumed valid until the contrary is affirmatively shown. *Thompson v Tinkcom*, 15 M 295 (226); *State v Deering*, 56 M 24, 57 NW 313; *State v Union Tank Line*, 94 M 320, 102 NW 721; *State v Western Union*, 96 M 13, 104 NW 567; *State v Houston*, 96 M 174, 104 NW 835; *State v Cudahy*, 103 M 419, 115 NW 645, 1039.

A personal tax assessed against a corporation cannot be collected in an action or proceeding against the receiver personally instituted under section 277.06. A proceeding instituted by a citation to show cause is in the nature of a personal action. *State v Red River Valley*, 69 M 131, 72 NW 60.

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To collect a personal property judgment against a person in military service leave must be obtained from the district court; embodying a determination that the fact that the person is in military service does not affect his ability or disability to pay the tax. OAG July 18, 1944 (421a-8).

277.07 CITATION TO DISTRIBUTEES.

HISTORY. 1860 c. 3 s. 35; 1861 c. 3 s. 8; G.S. 1866 c. 11 s. 93; 1871 c. 15; 1873 c. 105; 1874 c. 1 s. 98; 1878 c. 1 s. 60; G.S. 1878 c. 11 s. 60; 1885 c. 2 s. 7; 1889 cc. 192, 193; G.S. 1894 s. 1569; R.L. 1905 s. 894; G.S. 1913 s. 2082; G.S. 1923 s. 2094; M.S. 1927 s. 2094.

Assessment and collection of taxes against omitted moneys and credits after the deceased owner's estate is closed in probate court. 1936 OAG 380, January 7, 1935 (614f).

On May 1, 1893, defendant was administrator of the Keogh Estate. His final account was allowed and the final decree of distribution was entered on December 21, 1893, without the tax being paid. The defendant was not personally liable for such taxes because the auditor did not file the tax list until January 2, 1894, and consequently at the time the estate was closed the tax had not been finally ascertained and no levy had been made. *Nelson v Becker*, 63 M 61, 65 NW 119.

277.08 CITATION TO NON-RESIDENT.

HISTORY. 1860 c. 3 s. 35; 1861 c. 3 s. 8; G.S. 1866 c. 11 s. 93; 1871 c. 15; 1873 c. 105; 1874 c. 1 s. 98; 1878 c. 1 s. 60; G.S. 1878 c. 11 s. 60; 1885 c. 2 s. 7; 1889 cc. 192, 193; G.S. 1894 s. 1569; R.L. 1905 s. 895; G.S. 1913 s. 2083; G.S. 1923 s. 2095; M.S. 1927 s. 2095.

277.09 CITATION PRIMA FACIE EVIDENCE.

HISTORY. 1860 c. 3 s. 35; 1861 c. 3 s. 8; G.S. 1866 c. 11 s. 93; 1871 c. 15; 1873 c. 105; 1874 c. 1 s. 98; 1878 c. 1 s. 60; G.S. 1878 c. 11 s. 60; 1885 c. 2 s. 7; 1889 cc. 192, 193; G.S. 1894 s. 1569; R.L. 1905 s. 896; G.S. 1913 s. 2084; G.S. 1923 s. 2096; M.S. 1927 s. 2096.

1. Admissible defenses
2. Inadmissible defenses
3. Formal defects

1. Admissible defenses

It was improper for an assessor to list wheat as "household goods" and a tax assessed on such listing was invalid. *Thompson v Davidson*, 15 M 412 (333).

The owner may set up as a defense and prove that the tax is void for want of authority to levy it even though he is not prejudiced. *Board v Nettleton*, 22 M 356.

The right to use of water power is taxable as real property and when taxed as personal property the tax is invalid. *State v Minneapolis Mill*, 26 M 229, 2 NW 839.

If the person assessed was not the owner that fact would be a good defense. *State v Minneapolis Millers Assn.* 30 M 429, 16 NW 151.

A personal tax assessed against the corporation cannot be collected in an action or proceedings against the receiver personally instituted under section 277.06. *State v Red River Valley*, 69 M 131, 72 NW 60.

Where the contract was executory and the title to the logs did not pass to the purchaser until after May 1, the logs were properly assessable against the vendor. *State v Meehan*, 92 M 283, 100 NW 6.

Where there was a variance between the name in the tax list and in the certificate as compared to the real name, but the discrepancy was such that it was immaterial, it is not available as a defense. *State v Houston*, 96 M 174, 104 NW 835.

Where the listing and assessment was irregular the judgment had thereon was erroneous. *State v Rand*, 39 M 502, 40 NW 835.

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The actions of the board while irregular were not prejudicial to the plaintiff and the tax is sustained. *Faribault v County of Rice*, 44 M 12, 46 NW 173; *State v Deering*, 56 M 24, 57 NW 313.

In so far as Laws 1893, Chapter 150, undertook to confer jurisdiction upon the district court against lands upon which the state had lost its lien for taxes, the statute was unconstitutional because not due process of law. *Kipp v Elwell*, 65 M 525, 68 NW 105.

The property not having a situs in this state, there was no right of taxation. *State v Scottish-American*, 76 M 155, 78 NW 962.

Where the assessed valuation of personal property is so excessive as to clearly indicate unfairness as shown by proof to the trial court, the assessment should be reduced to the actual value of the property and this is a judicial question not controlled by the action of the assessor or board of equalization. *State v London*, 80 M 277, 83 NW 339.

The prima facie validity of an assessment of personal property is not overcome by a well-grounded claim of overvaluation. Courts will only interfere when the tax officials have acted fraudulently to the substantial prejudice of the taxpayer or have made a mistake so gross as to be inconsistent with honest judgment. *State v Western Union*, 96 M 13, 104 NW 567.

The property of the relators located in Carlton county was erroneously taxed in that county because the personal property was employed exclusively in connection with the relators' manufacturing business which was located in St. Louis county and the property though located in Carlton county was properly taxed in St. Louis county. *State ex rel v Dunn*, 86 M 301, 90 NW 772.

The defendant was the owner of stock in a foreign corporation which had never been listed or assessed in any manner for taxation, and the trial court properly excluded the omitted stock as a factor in determining the amount of the judgment for taxes. *State v Nelson*, 107 M 319, 119 NW 1058.

It is not necessary to entitle the property owner to interpose a defense of unconstitutionality that he first apply to the board of equalization. *In re proceedings v Koochiching*, 146 M 87, 177 NW 940.

2. Inadmissible defenses

Where the property owners have made a return in respect to their assessable property they are bound by it and cannot raise the question of error. *State v Deering*, 56 M 24, 57 NW 313.

Where the defendant overlooked claiming an exemption because of its indebtedness he cannot claim such exemption by answer or citation. *State v Northern Trust*, 73 M 70, 75 NW 754; *State v Willard*, 77 M 190, 79 NW 829; *State v London*, 80 M 277, 83 NW 339.

The defendant cannot raise the question by answer or on citation that the property was not listed in the right county. *State v Willard*, 77 M 190, 79 NW 829; *State ex rel v Hynes*, 82 M 34, 84 NW 636; *State ex rel v Dunn*, 86 M 301, 90 NW 772.

While tax laws must aim at equality in taxation, approximation to equality in the actual result of its practical operation is all that can be had; and inequality is no defense where the assessment is admittedly less than the actual value of the property. *State v Cudahy*, 103 M 419, 115 NW 645, 1039.

In 1906 the assessor of Minneapolis made an arbitrary assessment against the defendant Bell for "credits". Bell had previously made his return to the assessor in the village of Excelsior in the same county where he resided. There being no proof that Bell owned any such property, or had listed it for taxation at Excelsior, or made an application to the county board of equalization, the judgment on the Minneapolis assessment must stand. *State v Bell*, 111 M 295, 126 NW 901.

3. Formal defects

A showing of unfair or unequal assessment is not necessary to permit a defense based on irregularity or omission of members or violations of mandatory requirements. *Board v Nettleton*, 22 M 356; *State v Rand*, 39 M 502, 40 NW 835.

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Defects, irregularities, or omissions of form in proceedings prior to the citation is not a defense unless such defect resulted in prejudice to the defendant resulting in an unfair or unequal assessment. In case of such prejudice or inequality in assessment and in no other case the court has power to reduce the amount of the taxes. *Faribault v County of Rice*, 44 M 12, 46 NW 143; *State v Deering*, 56 M 24, 57 NW 313; *State v Backus-Brooks*, 102 M 50, 112 NW 863; *State v Cudahy*, 103 M 419, 115 NW 645, 1039.

277.10 CLERK'S FEES; EXECUTION.

HISTORY. 1874 c. 1 s. 99; 1878 c. 1 s. 61; G.S. 1878 c. 11 s. 61; 1885 c. 2 s. 8; G.S. 1894 s. 1570; R.L. 1905 s. 897; G.S. 1913 s. 2085; G.S. 1923 s. 2097; M.S. 1927 s. 2097.

The enforcement of personal property taxes is a special proceeding controlled by the statutes establishing it and the legislature has provided a course of procedure in tax cases complete in itself; and section 277.10 provides for the fees of the clerk in court cases not contested, and in contested cases such fees as are allowed in civil action. *Justus v Board*, 94 M 72, 101 NW 943.

When the last half of the taxes have not been paid and judgment is taken, the clerk's fees are included in the judgment and the amount is payable not to the treasurer but to the sheriff. OAG July 30, 1934 (421a-8).

In counties where the clerk receives a salary in full for all services, the clerk's fees may be charged but when collected belong to the county and not to the clerk. OAG Aug. 19, 1935 (390c-1); OAG Aug. 25, 1937 (144b-15).

277.11 SHERIFF'S FEES.

HISTORY. 1860 c. 1 s. 80; G.S. 1866 c. 11 ss. 98, 101; 1874 c. 1 ss. 104, 105; 1878 c. 1 s. 65; G.S. 1878 c. 11 s. 65; 1885 c. 2 s. 12; G.S. 1894 s. 1574; R.L. 1905 s. 898; G.S. 1913 s. 2086; G.S. 1923 s. 2098; M.S. 1927 s. 2098.

A sheriff is entitled to the same compensation upon a tax warrant which he is unable to collect as a constable upon an execution which he is unable to collect. (Overruled by *Chappel v Board*, 71 M 18, 73 NW 520). *Schmid v County of Brown*, 44 M 67, 46 NW 145.

A sheriff is not entitled to fees for making a return of "no property found" on tax warrants issued for the collection of delinquent personal property taxes, nor for attempted service on persons not found. (*Schmid v Brown County*, 44 M 67, 46 NW 145 overruled). *Chappel v Board*, 71 M 18, 73 NW 520; *McKinnon v Board*, 71 M 481, 73 NW 1085; *Wagener v Board*, 76 M 368, 79 NW 166; *Miesen v County of Ramsey*, 101 M 516, 112 NW 874.

The sheriff has no lien on funds in his hands for his fees. *Board v Clapp*, 83 M 522, 86 NW 775.

A sheriff is not entitled to fees of \$1.00 from his county for each execution issued upon a personal property tax judgment delivered to him, and returned by him unsatisfied. *Justus v Board*, 94 M 72, 101 NW 943.

County board has no authority to contract for the collection of delinquent personal property taxes on a commission basis. OAG March 7, 1935 (421a-5).

In the collecting of the judgment the sheriff at the same time may collect his fees. OAG Dec. 30, 1943 (390c-13).

277.12 NEGLECT OF SHERIFF.

HISTORY. 1871 c. 15; 1873 c. 105; 1874 c. 1 s. 100; 1878 c. 1 s. 62; G.S. 1878 c. 11 s. 62; 1885 c. 2 s. 9; G.S. 1894 s. 1571; R.L. 1905 s. 899; G.S. 1913 s. 2087; G.S. 1923 s. 2099; M.S. 1927 s. 2099.

Section 277.12 does not justify charging the sheriff merely because he did not file the list of uncollected taxes until after the first day of January, as directed by statute. *Gutches v County of Todd*, 44 M 383, 46 NW 678.

277.13 REMOVAL OF DELINQUENT; DUTY OF COUNTY AUDITOR.

HISTORY. 1860 c. 1 ss. 78, 79; G.S. 1866 c. 11 ss. 96, 97; 1874 c. 1 ss. 102, 103; 1878 c. 1 ss. 63, 64; G.S. 1878 c. 11 ss. 63, 64; 1885 c. 2 ss. 10, 11; G.S. 1894 ss. 1572, 1573; R.L. 1905 s. 900; G.S. 1913 s. 2088; G.S. 1923 s. 2100; M.S. 1927 s. 2100.

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277.14 DOCKETING JUDGMENT.

HISTORY. R.L. 1905 s. 901; G.S. 1913 s. 2089; G.S. 1923 s. 2101; M.S. 1927 s. 2101.

A personal property tax judgment is not a lien against the judgment debtor's homestead. OAG Sept. 14, 1934 (421a-9).

A personal property tax judgment outlaws in ten years. OAG Dec. 31, 1937 (421a-8).

The executive council may authorize the proper officer to release a tax judgment outstanding against homestead property, but the state auditor lacks the power to do so on his own initiative. OAG Dec. 15, 1937 (421-8).

277.15 INTEREST.

HISTORY. 1909 c. 448 s. 1; G.S. 1913 s. 2090; G.S. 1923 s. 2102; M.S. 1927 s. 2102.

277.16 SATISFACTION OF JUDGMENT.

HISTORY. 1860 c. 1 s. 80; G.S. 1866 c. 11, ss. 98, 101; 1874 c. 1 ss. 104, 105; 1878 c. 1 s. 65; G.S. 1878 c. 11 s. 65; 1885 c. 2 s. 65; G.S. 1894 s. 1574; R.L. 1905 s. 902; G.S. 1913 s. 2091; G.S. 1923 s. 2103; M.S. 1927 s. 2103.

A county attorney has no authority to settle a personal property tax judgment. OAG Jan. 17, 1945 (421a-8).