

CHAPTER 291

TAXES ON INHERITANCES, DEVISES, AND BEQUESTS

291.01 TAX IMPOSED.

HISTORY. 1893 c. 1; 1905 c. 168; 1905 c. 288 s. 1; 1911 c. 372 s. 1; G.S. 1913 s. 2271; G.S. 1923 s. 2292; M.S. 1927 s. 2292; 1935 c. 334; Ex. 1937 c. 50 s. 3; 1939 c. 338 s. 1; 1939 c. 431 art. 6 s. 6; 1941 c. 470; 1943 c. 504 ss. 1, 2.

The constitutional amendment permitting taxation of devises and inheritances proposed by Laws 1893, Chapter 1, failed of passage. The first statute, Laws 1899, Chapter 293, was declared unconstitutional in *Drew v Tift*, 79 M 175, 81 NW 839. The second statute taxing inheritances, Laws 1901, Chapter 255, was held unconstitutional in *State v Bazille*, 87 M 500, 92 NW 415. The third statute on the subject, Laws 1902, Chapter 3, was declared void in *State v Harvey*, 90 M 180, 95 NW 764. The "wide-open" tax amendment proposed by Laws 1905, Chapter 168, was adopted by the electorate. Based upon that amendment to Minnesota Constitution, Article 9, Section 1, Laws 1905, Chapter 288, imposing a tax upon certain devises, bequests, inheritances, and gifts, is held to be a constitutional and valid legislative enactment. *State ex rel v Bazille*, 97 M 11, 106 NW 93.

A tax on a legacy which vests only upon the happening of some future event so that the true value cannot be presently ascertained accrues when the beneficiary is entitled to possession. *State ex rel v Probate Court*, 100 M 192, 110 NW 865; *State ex rel v Probate Court*, 112 M 279, 128 NW 18.

A transfer from the residue of the estate to the trustee was not taxable, but a tax will accrue from time to time on the income and on the corpus of the estate as *Brown* may become entitled to any part thereof. *State ex rel v Probate Court*, 100 M 192, 110 NW 865.

Acting under a power of appointment in a will executed by a resident of Kentucky, a testator residing in Minnesota exercised the power in his will and named his nephews, residents of Tennessee, as beneficiaries. The property subject to the exercise of the power consisted of bonds and mortgages in custody of a resident of Kentucky. The exercise of the power of appointment and not its creation constituted the transfer of the property and the property was taxable in Minnesota under Laws 1905, Chapter 288, even though there might be double taxation in Kentucky or Tennessee. *State ex rel v Probate Court*, 124 M 508, 145 NW 390.

The language of the reciprocal exemption amendment to our inheritance tax law, Laws 1911, Chapter 372, indicates an intention on the part of the legislature to impose a succession tax in all cases in which it had the power to impose such tax, and the statute cannot be construed as applying only where the devolution of the property is governed by our laws; and promissory notes, stock of corporations, and stock of national banks located in this state, are subject to a succession tax in this state, although the debts are owing to and the stock was held by non-resident decedents. *State ex rel v Probate Court*, 128 M 371, 150 NW 1094.

Under the Minnesota inheritance tax laws (Laws 1905, Chapter 288, as amended by Laws 1911, Chapter 372), bonds of a railroad company incorporated under the laws of Minnesota having its principal place of business and general offices in the state, payable in New York, owned by a resident of Illinois and in his possession there at the time of his death, the persons succeeding thereto being residents of Illinois, and the railway being subject to jurisdiction in states other than Minnesota, and it not being necessary to invoke the laws of Minnesota or resort to its courts, are not subject to a succession tax in Minnesota. This distinguishes *State v Probate Court*, 128 M 371. *State v Chadwick*, 133 M 117, 157 NW 1077, 158 NW 637.

Delivery of a deed to a third person with instructions to record it presumptively constitutes him the grantee's agent, as it is the duty of the grantee to record the deed. *Ingersoll v Odendahl*, 136 M 428, 162 NW 525.

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The widow of a testate who renounces the will and elects to take her statutory one-third must pay the tax upon the third so given, less the exemption specified in law. *State ex rel v Probate Court*, 137 M 238, 163 NW 285.

Neither upon the allowance made for the support of the widow and her family pending the administration thereof, nor upon the personal property which the widow is entitled to select, may the state inheritance tax be imposed. *State ex rel v Probate Court*, 137 M 238, 163 NW 285.

Upon the expenditure by an executor with the approval of the probate court of a sum to provide a tombstone upon the grave of the deceased, the amount so expended is not subject to an inheritance tax. *State ex rel v Probate Court*, 138 M 107, 164 NW 365.

The rule of practical construction does not control the court in this case; the shares of beneficial certificates in a trust entitling the holder to dividends from the shares of mining corporations, domestic and foreign, constituting the corpus of the trust and to ultimately share in the trust property, and which certificates have a market value, are subject to a succession tax when their non-resident owner dies, if the trust has a domicile or situs within the jurisdiction of Minnesota. *Thorne v State*, 145 M 412, 177 NW 638.

A homestead willed to surviving children and set apart to them by order of the probate court is not subject to a transfer or inheritance tax. *Estate v McDougall*, 160 M 393, 200 NW 353.

Debts due a non-resident decedent from residents of this state come within the operation of the succession tax, and the tax is not affected by the amount, form, value, or location of any security for the debt. *State ex rel v Probate Court*, 168 M 508, 210 NW 383.

The fact that the will of the non-resident provided that the amount of the debt owing at the time of her death from a resident of this state should be deducted from the amount bequeathed the debtor, does not reduce the tax. *State ex rel v Probate Court*, 168 M 508, 210 NW 389.

Deceased transferred certain property in trust for himself, his wife, and five children, each to receive one-seventh of the net income during life, and the corpus to be distributed to the wife and children and their issue after the lapse of a specified time. The transfers were not made in contemplation of death and the beneficial interest to six-sevenths of the property vested immediately in the transferees, and no tax could be laid on the six-sevenths interest. *Estate of Marshall*, 179 M 233, 228 NW 920.

There is no constitutional objection to the imposition of an inheritance tax on the succession to property, subject to a power of appointment, which takes place on the death of the donee of the power and because of his failure to exercise it, even though the power was created and the property subjected thereto by a deed of trust antedating the passing of the taxing statute. *State v Brooks*, 181 M 262, 232 NW 331.

Shares of stock in a domestic corporation represent the interest of the owner in the corporation itself, and the property interest so represented is so far localized in this state that the state has jurisdiction for the purpose of imposing its inheritance tax upon the shares by will or intestate law. This does not violate the 14th Amendment to the Constitution of the United States, notwithstanding the non-residence of their owner. *Estate of Lund*, 183 M 368, 236 NW 626.

The debt of the decedent to the claimant was barred by the statute of limitations when presented; and the correction of an error in bookkeeping which occurred years before, the correction being made after the statute had run, was not a payment which tolled the statute. Considering the nature of the claim of the statute to a succession tax, and the statute providing that no claim shall be barred by the statute of limitations when filed shall be allowed, the executors cannot waive the bar of the statute. *Estate of Walker*, 184 M 164, 238 NW 58.

Gifts inter vivos, but with reservation of income to the donor, are expressly taxable as substitutes for testamentary disposition properly made so to prevent evasion of the inheritance tax otherwise easily possible. Our state tax on gifts and successions differs from the federal estate tax, the federal tax being only a transfer tax. *Estate of Rising*, 186 M 56, 242 NW 459.

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A death transfer tax cannot be imposed in Minnesota upon shares of stock in a domestic corporation, the owner of which is domiciled in another state, the rule being that tangibles are taxable where they are and intangibles at the domicile of the owner. Overruling Estate of Lund, 183 M 368, 236 NW 626, and other prior decisions. Estate of Kennedy, 186 M 160, 242 NW 697.

Contracts to pay annuities each year to the insured and to beneficiaries after the death of the purchaser who paid a lump sum in consideration, are subject to the succession tax. Thornton's Estate, 186 M 351, 243 NW 389.

The 1906 amendment to Minnesota Constitution, Article 9, Section 1, is no more restrictive upon the legislature's power to tax or classify than is the clause in the 14th Amendment to the Constitution of the United States. The graduated feature of the income tax laws is a legitimate exercise of the legislature's power to classify. Double taxation is not forbidden by the state or national constitutions unless it results in a lack of uniformity, or offends the due process of equal protection clauses. The maxim's "expressio unius" does not apply to constitutions with the same force that it does to statutes. City of Minneapolis v Armson, 188 M 167, 246 NW 660, distinguished. Reed v Bjornson, 191 M 254, 253 NW 102.

Under the inheritance tax statute a taxable succession takes place as from the donee rather than the donor of a power of appointment when a person succeeds to the property subject thereto by reason of the exercise of the power. Estate of Robinson, 192 M 39, 255 NW 486.

A resident of North Dakota placed intangibles in the custody of a trustee in Minnesota where the trust was to be administered. He reserved the power to supervise investments and to change or revoke the trust. He died domiciled in North Dakota. The transfer of a corpus of the trust which took place upon his death in North Dakota occurred there and is subject to an inheritance tax under the laws of that state only. Estate of Frank, 192 M 151, 257 NW 330.

There is nothing unconstitutional about a legislative appropriation wherewith to refund inheritance taxes improperly collected by the state. It is but a recognition by the legislature of a just demand against the state and the making of provision for its payment. Estate of Monfort, 193 M 594, 259 NW 554; Estate of Birch, 193 M 599, 259 NW 556.

The gain in the market value of the property of an estate of a deceased person between the time of his death and the distribution of the property to heirs, devisees, or legatees, is not subject to the succession tax. Estate of Bigelow, 199 M 239, 271 NW 459.

Where the husband acquired corporate stock individually through brokers, but subsequently changed his trading account to stand in the names of himself and his wife as joint tenants and stock was subsequently re-issued in the names of husband and wife as joint tenants, and the wife was not liable after the husband's death for the husband's unpaid income taxes to the extent of an undivided half-interest in such shares, as she would have been if tendency in common had been created and the wife had received the husband's half-interest as distributee. Irvine v Helvering, 99 F(2d) 265.

In administering an estate the probate court possesses no independent jurisdiction in equity or at law over controversies between the representatives of the estate, or those claiming under it, with strangers claiming adversely, nor of collateral action. This applies in respect to fees of attorneys for services rendered. State ex rel v Probate Court, 204 M 5, 283 NW 545.

Ex. Laws 1937, Chapter 50, Section 3, Subdivision 7, authorizes the imposition of an inheritance or transfer tax upon the proceeds of the life insurance policy above the exemption, the transfer to the relator having been made after Chapter 50 went into effect. The relator was not entitled to have the tax reduced by the cash surrender value of the policy as of the time of the death of the insured. De Coster v Commissioner of Taxation, 216 M 2, 11 NW(2d) 489.

The deductibility of a charitable bequest for estate purposes depends upon the legal completeness or legal certainty of what testator has himself done or mandated in the will. An excise tax is on the act of the testator, and the legal situation for tax purposes must be admeasured as it stood on the day the testator died. First Trust v Reynolds, 137 F(2d) 518.

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The liability of donor for a gift tax under the revenue act is primary, and that of donee secondary, but donee's liability does not expire when statute of limitations has run against the donor's liability; nor is the personal liability of the donee conditioned upon the insolvency of the donor. *Winton v Reynolds*, 57 F. Supp. 565.

An annuity was purchased, the mother and daughter each investing one-half. Monthly instalments to the mother for life and upon her death monthly instalments to the daughter for life. Upon the death of the mother there was a taxable transfer, the amount of the original investment of the daughter being taken into consideration. *Stewart's Estate*, Board of Tax Appeals, March 7, 1944 (125).

Taxation of Life Insurance proceeds. 28 MLR 199.

Taxation of transfers intended to take effect in possession or enjoyment at grantor's death. 14 MLR 453, 613.

Jurisdiction to tax intangibles. 14 MLR 799.

Single situs for inheritance taxation of intangibles. 16 MLR 335.

Inheritance taxability of sums paid out in compromise of will contest. 16 MLR 722.

Taxability of proceeds of annuity insurance policies. 17 MLR 454.

Life estate with absolute power of disposal. 18 MLR 489.

Taxation of joint estates and tenancies by entireties. 20 MLR 294.

Inter vivos transfers where donor reserves power to revoke, alter, or amend. 20 MLR 444.

Reciprocal and retaliatory legislation. 21 MLR 371.

Minnesota inheritance tax procedure. 23 MLR 120.

Retroactive taxation; estate and inheritance taxes applied to joint tenancy created before their enactment. 23 MLR 547.

291.02 RATE OF TAX.

HISTORY. 1905 c. 288 s. 2; 1911 c. 372 s. 2; 1913 c. 455; G.S. 1913 s. 2272; 1919 c. 410; G.S. 1923 s. 2293; 1927 c. 205 ss. 1, 2; M.S. 1927 s. 2293; 1939 c. 338 s. 2; 1943 c. 504 s. 3.

The ambiguous use of the word "excess" is considered in the light of the general rule that inaccurately drawn statutes will be construed to effectuate the intention of the legislature, and in this instance the statute is operative. *State v Bazille*, 97 M 11, 106 NW 93.

Where the estate descends to two or more legatees or devisees in equal shares, an exemption to each should be allowed. *State ex rel v Probate Court*, 101 M 485, 112 NW 878.

Whether a distinction should be made between collateral and lineal descendants is a matter of legislative discretion, and not a judicial question. *State v Bazille*, 97 M 11, 106 NW 93.

Computation of inheritance tax rate. *State v Probate Court*, 111 M 297, 126 NW 1070; *State ex rel v Probate Court*, 112 M 279, 128 NW 18.

In computing the beneficial interest which passes from the decedent to the beneficiary, the federal inheritance tax is to be deducted from the value of the estate in ascertaining such clear value. *State ex rel v Probate Court*, 139 M 210, 166 NW 125.

Where a will contest has been amicably settled, the tax should be computed upon the shares received by each beneficiary under the decree. *State ex rel v Probate Court*, 143 M 77, 172 NW 902; *Estate of Thorson*, 150 M 464, 185 NW 508.

The practical interpretation by state officials concerned in the enforcement of the inheritance tax law during a long period of time should be given weight by the court when the question of proper construction of the law is presented. *Estate of Boutin*, 149 M 148, 182 NW 990.

Where testator devised all his property to his wife for life, the remainder to their daughter, the title vests at the death of the testator, and the probate court in the first instance correctly determined the value of the property to each of the legatees. *Estate of Meldrum*, 149 M 342, 183 NW 835.

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The residuary devisee would have received by descent one-third in fee of the homestead of the testator. By will he received all of it. He was not entitled to more than one-third of the value of the homestead as exempt from the inheritance tax. Estate of Morgan, 169 M 425, 211 NW 823.

Public securities, such as state and municipal bonds and similar, owned by a non-resident at the time of his death, are tangibles and are treated as property in the state where they are found. Intangibles were at one time subjected to the inheritance tax of Minnesota upon the theory that the owner might invoke our laws. (State ex rel v Probate Court, 128 M 371, 150 NW 1094; State ex rel v Probate Court, 168 M 508; Estate of Taylor, 175 M 310, 219 NW 153.) In this case, and following a federal decision, those holdings were reversed, and such securities are now taxable only at the domicile of the owner. Estate of Taylor, 175 M 310, 221 NW 64.

Payments made by the federal government under a war risk insurance policy to the administrator, or to the beneficiary designated in the policy, are not subject to the state inheritance tax. Estate of Harris, 179 M 450, 229 NW 781.

Where personal property is sold for less than its appraised value the difference is deductible for inheritance tax purposes as an expense of administration, and not to be included in the calculation of the tax to be paid by the residuary legatee. Estate of Bowlin, 189 M 196, 248 NW 741.

The gain in the market value of property between the time of death and the distribution to the heirs, is not subject to the succession tax. Estate of Bigelow, 199 M 239, 271 NW 459.

Constitutionality of certain tax laws. 1934 OAG 799, Feb. 25, 1933 (82-1).

Where deceased left 160 acres, one-half of which was homestead, there being a mortgage covering the entire 160 acres, valuation for tax purposes is by apportionment on the basis of the value of the security. 1942 OAG 333, May 26, 1942 (232-D).

Inheritance taxation; intangibles under control of trustee. 19 MLR 487.

Practical construction of statutes. 20 MLR 60.

Minnesota inheritance tax procedure. 23 MLR 120.

Effect of homestead on creditor's rights. 25 MLR 75.

291.03 PRIMARY RATES.

HISTORY. 1905 c. 288 s. 2; 1911 c. 372 s. 2; 1913 c. 455; G.S. 1913 s. 2272; 1919 c. 410; G.S. 1923 s. 2293; M.S. 1927 s. 2293; 1939 c. 338 s. 2a; 1943 c. 504 s. 3.

See annotations under section 291.02.

291.04 EXCESS RATES.

HISTORY. 1905 c. 288 s. 2; 1911 c. 372 s. 2; 1913 c. 455; G.S. 1913 s. 2272; 1919 c. 410; G.S. 1923 s. 2293; M.S. 1927 s. 2293; 1939 c. 338 s. 2b; 1943 c. 504 s. 3.

See annotations under section 291.02.

291.05 EXEMPTIONS.

HISTORY. 1905 c. 288 s. 2; 1911 c. 372 s. 2; 1913 c. 455; G.S. 1913 s. 2272; 1919 c. 410; G.S. 1923 s. 2293; 1927 c. 290 s. 1; M.S. 1927 s. 2293; 1931 c. 208; Ex. 1937 c. 50 s. 2; 1939 c. 338 s. 2c; 1943 c. 504 s. 3.

See annotations under section 291.02.

291.06 LIMITED EXEMPTION WHERE DECEDENT ACQUIRED PROPERTY WITHIN FIVE YEARS OF HIS DEATH.

HISTORY. 1905 c. 288 s. 2; 1911 c. 372 s. 2; 1913 c. 455; G.S. 1913 s. 2272; 1919 c. 410; G.S. 1923 s. 2293; M.S. 1927 s. 2293; 1939 c. 338 s. 2d; 1943 c. 504 s. 3.

The difference between federal savings and loan associations and credit unions, organized under the laws of the state of Minnesota, is sufficient to sustain the classification embodied in the law. The tax commissioner had authority to eliminate

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the provision "organized under the laws of the state", and the act with such elimination is valid. *State v Minn. Federal*, 218 M 229, 15 NW(2d) 568.

See annotations under section 291.02.

291.07 EXPENSES OF ADMINISTRATION.

HISTORY. 1905 c. 288 s. 2; 1911 c. 372 s. 2; 1913 c. 455; G.S. 1913 s. 2272; 1919 c. 410; G.S. 1923 s. 2293; M.S. 1927 s. 2293; 1939 c. 338 s. 2e; 1943 c. 504 s. 3.

See annotations under section 291.02.

291.08 APPORTIONMENT OF EXPENSE.

HISTORY. 1905 c. 288 s. 2; 1911 c. 372 s. 2; 1913 c. 455; G.S. 1913 s. 2272; 1919 c. 410; G.S. 1923 s. 2293; M.S. 1927 s. 2293; 1939 c. 338 s. 2f; 1943 c. 504 s. 3.

See annotations under section 291.02.

291.09 DETERMINATION OF TAX.

HISTORY. 1905 c. 288 s. 2; 1911 c. 372 s. 2; 1913 c. 455; G.S. 1913 s. 2272; 1919 c. 410; G.S. 1923 s. 2293; M.S. 1927 s. 2293; 1939 c. 338 s. 2g; 1943 c. 504 s. 3.

See annotations under section 291.02.

291.10 MAINTENANCE OF FAMILY IN INHERITANCE TAX CASES.

HISTORY. 1935 c. 335; M. Supp. s. 2293-1.

Minnesota inheritance tax procedure; deductions and balance. 23 MLR 124.

291.11 WHEN EFFECTIVE.

HISTORY. 1905 c. 288 s. 3; 1911 c. 209 s. 1; G.S. 1913 s. 2273; G.S. 1923 s. 2294; M.S. 1927 s. 2294; 1939 c. 338 s. 3; 1943 c. 504 ss. 4, 5.

In construing this section and prior to the amendment, *Laws 1911, Chapter 209*, see *State ex rel v Probate Court*, 100 M 192, 110 NW 865 supra; *State ex rel v Probate Court*, 101 M 485, 112 NW 878 supra; and *State ex rel v Probate Court*, 112 M 279, 128 NW 18 supra.

Under *Laws 1905, Chapter 288*, prior to the amendment made by *Laws 1911, Chapter 209*, a tax upon inheritances was computed upon the value at the time of the decedent's death of the right to receive the amount actually paid at the time of its payment, and it became due when the beneficiary entered into the possession and enjoyment of any part. In this case, the court does not state the basis of computation of the inheritance tax governed by the amendment of 1911. *State ex rel v Probate Court*, 132 M 104, 155 NW 1077.

The inheritance law as amended requires the immediate payment of all inheritance taxes except in the single case of a tax measured by a value not susceptible of present valuation. If the tax rate be uncertain, the tax is to be paid at the highest rate to which the succession would in any event be subject, and if it is found that rate is too high, the excess is to be refunded. *State ex rel v Probate Court*, 136 M 392, 162 NW 459.

In case of a will contest, the tax is computed upon the share received by each beneficiary under the decree. *State ex rel v Probate Court*, 143 M 77, 172 NW 902.

Practical interpretation by state enforcement officials over a period of time should be given weight by the court concerning matters of construction. *Estate of Boutin*, 149 M 148, 182 NW 990:

Where a bequest is made to executives in trust to be invested and held until a stated date and then distributed, the succession tax takes effect upon the death of the decedent and is based upon present value and payable out of the fund. *Estate of Rice*, 164 M 139, 204 NW 543.

Under this section, the court is not required to find that the annual income from a legacy is five per cent when in fact the money was invested in government bonds producing three per cent. *Estate of Rice*, 191 M 292, 253 NW 768.

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A taxable succession takes place as from the donee rather than the donor of a power of appointment when a person succeeds to the property subject thereto by reason of the exercise of the power. Estate of Robinson, 192 M 39, 255 NW 86.

Where property increases in value between the time of the death of the intestate and the time of distribution to the heirs, the gain is not subject to a succession tax. Estate of Bigelow, 199 M 239, 271 NW 459.

An inheritance or transfer tax is imposed upon the proceeds of a life insurance policy above the exemption. This took effect upon the enactment of Ex. Laws 1937, Chapter 50. The relator is not entitled to have the tax reduced by the cash surrender value of the policy at the time of the death of the insured. DeCoster v Commissioner, 216 M 3, 11 NW(2d) 489.

Determination of value of annuities. 1938 OAG 428, March 28, 1938 (614h).

Minnesota inheritance tax procedure; distribution or beneficial interest. 23 MLR 125.

Minnesota inheritance tax procedure; order determining the inheritance tax. 23 MLR 134.

291.12 COLLECTION OF TAX BY ADMINISTRATOR, EXECUTORS, OR TRUSTEES.

HISTORY. 1905 c. 288 s. 4; G.S. 1913 s. 2274; G.S. 1923 s. 2295; M.S. 1927 s. 2295; 1939 c. 338 s. 4; 1943 c. 504 s. 6.

291.13 TAXES PAID TO COUNTY OR STATE TREASURER.

HISTORY. 1905 c. 288 s. 5; G.S. 1913 s. 2275; G.S. 1923 s. 2296; M.S. 1927 s. 2296; 1939 c. 338 s. 5; 1943 c. 593 s. 1.

291.14 INHERITANCE TAX A LIEN UPON PROPERTY.

HISTORY. 1905 c. 288 s. 6; G.S. 1913 s. 2276; G.S. 1923 s. 2297; M.S. 1927 s. 2297; 1933 c. 118.

As to construction of this section, see State ex rel v Probate Court, 100 M 192, 110 NW 865; State ex rel v Probate Court, 143 M 84, 172 NW 905; Estate of Boutin, 149 M 188, 182 NW 990 and section 291.11.

Laws 1931, Chapter 211, permits the attorney general to employ such assistants as he may deem necessary for the proper conduct of the state's legal business; and the so-called soldiers preference act is not controlling in respect of appointment to the position of inheritance tax examiner. State ex rel v Peterson, 194 M 60, 259 NW 696.

Under the statute providing that gift tax imposed shall be a lien "upon all gifts made during calendar year", and that if tax is not paid when due "donee of any gift shall be personally liable", the word "taxable" should not be read into the statute to limit the effect of the words "gifts" and "gift." Donee of a gift of un-taxable amount was liable to extent of value of gift for unpaid tax on gifts to others made by same donor in same calendar year. Winton v Reynolds, 57 F. Supp. 565.

•Conveyances under the probate code. 20 MLR 114.

291.15 INTEREST.

HISTORY. 1905 c. 288 s. 7; G.S. 1913 s. 2277; G.S. 1923 s. 2298; M.S. 1927 s. 2298; 1943 c. 504 s. 7.

In a controversy arising out of the right of the state to interest on inheritance taxes, where a former executor who had looted the estate had not been required by the probate court to account for the estate funds or to have the inheritance tax determined, the six per cent inheritance tax is effective regardless of the cause of delay in the determination and payments of the tax, and is not a penalty. Estate of Madison, 196 M 417, 265 NW 38.

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291.16 POWER OF SALE.

HISTORY. 1905 c. 288 s. 8; G.S. 1913 s. 2278; G.S. 1923 s. 2299; M.S. 1927 s. 2299.

291.17 LEGACY CHARGED ON PROPERTY.

HISTORY. 1905 c. 288 s. 9; G.S. 1913 s. 2279; G.S. 1923 s. 2300; M.S. 1927 s. 2300.

291.18 TAX ERRONEOUSLY PAID; REFUNDMENT.

HISTORY. 1905 c. 288 s. 10; G.S. 1913 s. 2280; G.S. 1923 s. 2301; M.S. 1927 s. 2301; 1943 c. 593 s. 2.

There is nothing unconstitutional about a legislative appropriation wherewith to refund inheritance taxes improperly collected by the state. It is but a recognition by the legislature of a just demand. Estate of Monfort, 193 M 594, 259 NW 564.

This section applies only to payments made in excess of proper amount and does not apply to those made under laws declared unconstitutional. OAG Jan. 25, 1933.

Money paid as a transfer tax on shares of stock in a Minnesota corporation belonging to a deceased non-resident, is not recoverable under this section. 1934 OAG 808, Feb. 20, 1933 (242a-16).

Recovery by taxpayer of portion of special assessment levied to discharge judgment liability. 24 MLR 701.

291.19 TRANSFER BY FOREIGN EXECUTORS; PERSONAL PROPERTY OF NON-RESIDENT DECEDENT.

HISTORY. 1905 c. 288 s. 11; 1911 c. 209 s. 2; 1913 c. 565 s. 1; G.S. 1913 s. 2281; G.S. 1923 s. 2302; M.S. 1927 s. 2302; 1935 c. 128; 1943 c. 593 s. 3.

Capital stock in a domestic corporation represents the interest of its owner in the corporation, and the rights of such owner rest on the laws of the state which created the corporation, and a transfer by will of the capital stock of a domestic corporation is subject to the inheritance tax of this state although the testator, a resident of another state, was in possession of certificates of stock and subject to the jurisdiction of the courts of that state. The situation of a stockholder differs from that of a bondholder. This distinguishes State v Chadwick, 133 M 117. State ex rel v Probate Court, 142 M 415, 142 NW 318; Benson v State, 183 M 368, 236 NW 626.

Whatever form of adjudication may be made in the district court, that must be treated as a final order for purposes of appeal to the supreme court, and an appeal taken more than 30 days after receipt of written notice of the decision is not effective. Estate of Bridgham, 158 M 467, 197 NW 847; Johnson v City of Mpls., 209 M 71, 295 NW 406.

The failure of a personal representative of a deceased non-resident mortgagee to procure the certificate of the attorney general and to pay an inheritance tax does not deprive the court of jurisdiction to render a judgment for the foreclosure of a mortgage. Canty v Bokenstedt, 170 M 383, 212 NW 905.

A waiver for transfer of corporate stock is only required when decedent is a Minnesota resident. OAG Feb. 13, 1936 (242a-11).

Reciprocal and retaliatory legislation. 21 MLR 371.

291.20 SAFETY DEPOSIT COMPANIES NOT TO TRANSFER FUNDS.

HISTORY. 1905 c. 288 s. 12; G.S. 1913 s. 2282; G.S. 1923 s. 2303; M.S. 1927 s. 2303; 1939 c. 338 s. 6; 1943 c. 504 s. 8.

County treasurer may collect through the county board, expenses incurred in performance of his duties under section 291.20. OAG April 26, 1944 (450f-3).

291.21 COMMISSIONER OF TAXATION TO RECEIVE LIST OF PROPERTY.

HISTORY. 1905 c. 288 s. 13; 1911 c. 209 s. 3; G.S. 1913 s. 2283; G.S. 1923 s. 2304; M.S. 1927 s. 2304; 1939 c. 338 s. 7; 1939 c. 431 art. 6 s. 6; 1943 c. 504 s. 4; 1943 c. 593 s. 9.

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291.22 TAXES ON INHERITANCES, DEVISES, AND BEQUESTS

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The legislature intends to impose a succession tax in all cases in which it has the power to do so; and a non-resident decedent's personal property having a situs in this state is subject to the succession tax of this state; and the reciprocal tax amendment in our inheritance tax law, Laws 1911, Chapter 209, applies only where the laws of another state impose an inheritance tax upon "transfers of personal property of decedents" but "exempt or do not impose a tax upon transfers of personal property of residents of Minnesota having its situs in such state". *State ex rel v Probate Court*, 128 M 374, 150 NW 1004.

The practice of officials in the enforcement of a tax law should be given weight by the court in construing the law. *Estate of Boutin*, 149 M 149, 182 NW 990.

Gain in market value of property during the time of administration is not subject to the succession tax. *Estate of Bigelow*, 199 M 239, 271 NW 459.

291.22 APPRAISERS.

HISTORY. 1905 c. 288 s. 14; 1911 c. 209 s. 4; G.S. 1913 s. 2284; G.S. 1923 s. 2305; M.S. 1927 s. 2305.

291.23 INHERITANCES, HOW APPRAISED.

HISTORY. 1905 c. 288 s. 15; 1911 c. 209 s. 5; G.S. 1913 s. 2285; G.S. 1923 s. 2306; M.S. 1927 s. 2306.

The tax is computed on the value at the time of decedent's death of the right to receive the amount actually paid on the date of its payment. *State ex rel v Probate Court*, 100 M 192, 110 NW 865; *State ex rel v Probate Court*, 112 M 279, 128 NW 18; *Estate of Bigelow*, 199 M 239, 271 NW 459.

Creditor's claim against homestead. 21 MLR 212.

Minnesota inheritance tax procedure; the estate. 23 MLR 121.

291.24 NOTICE OF APPRAISAL; POWERS AND DUTIES OF APPRAISERS.

HISTORY. 1905 c. 288 s. 16; 1911 c. 209 s. 6; G.S. 1913 s. 2286; G.S. 1923 s. 2307; M.S. 1927 s. 2307.

See annotations under section 291.21.

291.25 REPORT; POWERS OF COURT.

HISTORY. 1905 c. 288 s. 17; G.S. 1913 s. 2287; G.S. 1923 s. 2308; M.S. 1927 s. 2308.

291.26 PROBATE COURT TO REPORT TO COMMISSIONER OF TAXATION AND STATE AUDITOR.

HISTORY. 1905 c. 288 s. 18; 1911 c. 209 s. 7; 1913 c. 574 s. 1; G.S. 1913 s. 2288; G.S. 1923 s. 2309; M.S. 1927 s. 2309; 1939 c. 338 s. 9; 1939 c. 431 art. 6 s. 6; 1943 c. 593 s. 5.

291.27 UNPAID TAX; OMITTED PROPERTY.

HISTORY. 1905 c. 288 s. 20; 1913 c. 574 s. 3; G.S. 1913 s. 2290; G.S. 1923 s. 2311; M.S. 1927 s. 2311; 1939 c. 388 s. 10; 1939 c. 431 art. 6 s. 6.

The probate court has no jurisdiction to determine title to real estate, but in the exercise of its jurisdiction to ascertain and impose an inheritance tax upon real property belonging to the estate, but not inventoried therein, it may determine the fact of ownership as a fact upon which to impose a tax. *State ex rel v Probate Court*, 140 M 342, 168 NW 14.

The district court has jurisdiction of a suit to enforce the lien of an inheritance tax upon property omitted from the appraisal and inventory in the probate court. The action in the district court is not barred by the statute of limitations, and neither laches nor estoppel may be invoked against the state. *State v Brooks*, 183 M 251, 236 NW 316.

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TAXES ON INHERITANCES, DEVISES, AND BEQUESTS 291.40

An instrument purporting to "assign, set over, and transfer" rights in realty coming to the assignor as heir of a certain estate construed to be a mortgage, with a defeasance clause, and subject to the mortgage registration tax. OAG June 13, 1939 (373b-9).

291.29 REPORTS BY PROBATE JUDGE AND REGISTER OF DEEDS.

HISTORY. 1905 c. 288 s. 21; 1913 c. 565 s. 2; G.S. 1913 s. 2291; G.S. 1923 s. 2312; M.S. 1927 s. 2312; 1943 c. 504 s. 10.

291.30 WHEN ESTATE OF NON-RESIDENT NOT PROBATED.

HISTORY. 1905 c. 288 s. 21A; 1911 c. 209 s. 9; G.S. 1913 s. 2292; G.S. 1923 s. 2313; M.S. 1927 s. 2313; 1939 c. 431 art. 6 s. 6; 1943 c. 593 s. 6; 1945 c. 554 s. 1.

291.31 POWERS OF COMMISSIONER OF TAXATION.

HISTORY. 1905 c. 288 s. 21B; 1911 c. 209 s. 9; G.S. 1913 s. 2293; G.S. 1923 s. 2314; M.S. 1927 s. 2314; 1939 c. 431 art. 6 s. 6.

291.32 REFUNDMENT OF TAX.

HISTORY. 1905 c. 288 s. 21C; 1911 c. 209 s. 9; G.S. 1913 s. 2294; G.S. 1923 s. 2315; M.S. 1927 s. 2315; 1939 c. 431 art. 6 s. 6; 1943 c. 593 s. 7.

291.33 PAYMENTS TO COUNTIES.

HISTORY. 1905 c. 288 s. 21D; 1911 c. 209 s. 9; G.S. 1913 s. 2295; G.S. 1923 s. 2316; M.S. 1927 s. 2316; 1943 c. 593 s. 8; 1945 c. 498 s. 1.

291.34 ESTATE TAX.

HISTORY. 1931 c. 332 s. 1; M. Supp. s. 2321-1.

The statutes forming complementary parts of a death tax plan for the District of Columbia must be construed together. District v Safe Deposit & Trust Co. 116 F(2d) 21.

291.35 WHEN PAYABLE.

HISTORY. 1931 c. 332 s. 2; M. Supp. s. 2321-2.

291.36 TO BECOME VOID, WHEN.

HISTORY. 1931 c. 332 s. 3; M. Supp. s. 2321-3.

291.37 INTENT.

HISTORY. 1931 c. 332 s. 4; M. Supp. s. 2321-4.

291.38 APPLICATION.

HISTORY. 1931 c. 332 s. 5; M. Supp. s. 2321-5.

291.39 OTHER LAWS.

HISTORY. 1931 c. 332 s. 6; M. Supp. s. 2321-6.

291.40 APPORTIONMENT OF TAX.

HISTORY. 1931 c. 332 s. 7; M. Supp. s. 2321-7.