

## CHAPTER 295

## RAILROAD, EXPRESS, FREIGHT LINE, SLEEPING CAR, TELEPHONE AND TELEGRAPH, AND TRUST COMPANIES

## 295.01 DEFINITIONS.

**HISTORY.** 1889 c. 235; 1897 c. 309 s. 1; R.L. 1905 ss. 1012, 1031; 1909 c. 454 s. 1; 1911 c. 377; Ex. 1912 c. 9 s. 2; 1913 c. 480 ss. 1, 3; G.S. 1913 ss. 2227, 2231, 2241, 2250 to 2254, 2256, 2258; 1919 c. 506 ss. 4, 8; G.S. 1923 ss. 2247, 2251, 2261, 2270, 2273, 2277, 2279, 2282; M.S. 1927 ss. 2247, 2251, 2261, 2270, 2273, 2277, 2279, 2282.

The cost price of the tangible property of a telegraph company together with reasonable deduction for natural deterioration, is not a proper basis for valuation of such property on general lists. Laws 1891, Chapter 8, as amended by Laws 1901, Chapter 180, provides for the taxation of the tangible and intangible property of telegraph companies situated within this state as a system and not merely for the taxation of items on tangible property only, and is constitutional. *State v Western Union*, 96 M 13, 104 NW 567.

Laws 1897, Chapter 314, provides for taxation upon the gross earnings of telephone companies; and the provision there in repealing all acts inconsistent with the provisions thereof is construed to be limited to the repeal of Laws 1891, Chapter 8, only so far as it applied to telephone companies. *State v Western Union*, 111 M 21, 124 NW 380, 126 NW 403.

The state has a right to impose a tax upon property within its borders regardless of the fact that such property may be employed in interstate commerce. Carriage of shipments by an express company from a point in the state to another point in this state does not constitute interstate commerce even where the shipments are forwarded over a line of road that for a part of its route lies outside the state. *State v U. S. Express Co.* 114 M 346, 131 NW 489, 223 US 335.

Taxes on all property which the appellant company uses for the operation of an interurban line wherever situated are paid by the tax on the gross earnings and such property is not subject to local taxation. A line of railway operated between St. Paul and the power house in the city of Stillwater is not a street railway but an interurban railway subject to the gross earnings tax, Laws 1909, Chapter 454. *State v Mpls. & St. P. Suburban*, 114 M 70, 130 NW 71.

From the corner of 31st Street and Hennepin Avenue to the city limits defendant operates its lines, not along the city streets but on a private right of way, which is not subject to an ad valorem tax, the lines not being a street railway after they leave the city streets and the defendant being subject to a tax on the gross earnings of the lines after they enter upon such private right of way. *State v Mpls. & St. P. Suburban*, 139 M 405, 166 NW 770.

System of gross earnings taxation as applied to transportation companies violates no provision of the state or federal constitution; and while a state may not tax commerce itself, it may in good faith tax property engaged in interstate commerce. *State v Wells-Fargo Co.* 146 M 452, 179 NW 221; *State v Pullman Co.* 146 M 458, 179 NW 224.

The appellant was incorporated under provisions of Special Laws 1862, Chapter 19, and Special Laws 1875, Chapter 50, provides that upon payment of a gross earnings tax its property of every nature shall be thereafter exempt from other forms of taxation. When such a railroad company sells its line of road and no longer receives earnings and ceases to pay a gross earnings tax any lands and property retained by it are no longer exempt, but must pay an ad valorem tax. *Winona & St. Peter v City of Marshall*, 151 M 331, 186 NW 791.

In transporting ore from the Missabe iron range to Allouez Bay, the Great Northern was the beneficial owner of the line of transportation from the mines

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to the boats and the haul was a line haul; and the freight received constituted gross earnings of the Great Northern, apportionable on a mileage basis in accordance with the provisions of the gross earnings act. State v G. N. Ry. 160 M 515, 200 NW 834; State v G. N. Ry. 174 M 3, 218 NW 167, 49 SC 191.

Rental of cars used outside of Minnesota by railroads having no tracks in the state are not a part of the railway's gross earnings. State v G. N. Ry. 163 M 88, 203 NW 453.

Method of determining railroad gross earnings tax and effect of overpayments. State v Illinois Central, 200 M 583, 274 NW 828, 275 NW-864.

The statutory method of apportioning earnings on interstate business passing through, into, or out of the state is exclusive. No power exists in any state department or agency, by contract or otherwise, to substitute another method. State v Northern Pacific, 217 M 127, 14 NW(2d) 232.

## RAILROADS

### 295.02 GROSS EARNINGS.

**HISTORY.** 1873 c. 111 ss. 1, 2; 1887 c. 11 ss. 1, 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 11 s. 129b; G.S. 1894 s. 1669; R.L. 1905 s. 1003; G.S. 1913 s. 2226; 1919 c. 533; G.S. 1923 s. 2246; M.S. 1927 s. 2246.

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#### 1. Generally

The purchase of a railroad subject to the one per cent tax by a company subject to the three per cent tax does not operate as a merger nor entitle the state to take into account the earnings of the former in estimating the gross earnings of the latter road. M. & St. L. v Koerner, 85 M 149, 88 NW 430.

A grant containing tax exemptions, made before the adoption of the constitution, is not affected by the provisions of that document. Hence the requirements of section 3 are not applicable. First Div. St. P. & P. Ry. Co. v Parcher, (1869) 14 M 297 (224); State v Win. & St. P. Ry. Co. (1875) 21 M 315, 472; City of St. P. v St. P. & S. C. Ry. Co. (1877) 23 M 469; County of Stevens v St. P. M. & Man. Ry. Co. (1887) 36 M 467, 31 NW 942; County of Traverse v St. P. M. & Man. Ry. Co. (1898) 73 M 417, 76 NW 217. Whether such grants formerly were valid or not is immaterial in view of the amendment of 1871 (Article 4, Section 32) which validated a gross earnings tax in lieu of other taxation; thus allowing such exemptions as had been granted in territorial days. State ex rel v Luther, (1894) 56 M 156, 57 NW 464; County of Traverse v St. P. M. & Man. Ry. Co. (1898) 73 M 417, 76 NW 217.

The gross earnings tax laws passed after the adoption of the constitution and before the amendment of 1871 (Article 4, Section 32a) were contrary to section 3. State ex rel v Stearns, (1898) 72 M 200, 75 NW 210. See also State v G. N. Ry. Co. (1908) 106 M 303, 119 NW 202.

Stocks and bonds of terminal companies, used by defendant as part of its railway system, are property owned and used for railroad purposes within the meaning of the gross earnings statute, and likewise bonds of a milling company

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taken in payment of freight and only held temporarily. *State v C. St. P. M. & O. Ry. Co.* 139 M 514, 167 NW 298; *State v N. P. Ry. Co.* 139 M 473, 167 NW 294.

That part of its corporate franchise which a railroad corporation exercises outside the scope of railroad ownership or operation is subject to provisions of section 290.02. *State v Dul. Missabe & Northern*, 207 M 618, 292 NW 401.

Lien given by gross earnings tax law for delinquent taxes arises as to earnings omitted from returns of previous years only when they have been assessed and the taxes thereon certified by the tax commissioner to the state auditor; and where there has been a transfer in connection with receivership proceedings of the ownership of the railroad, the law does not permit a retroactive effect, and the successor road is not liable except as to taxes certified prior to the time of purchase. *State v C. M. & St. P. Ry. Co.* 210 M 484, 299 NW 212.

While the so-called Burlington formula for computing credit balances from the interchange of freight cars between railroads is approved, where a railroad has for a period of years kept accounts of gross earnings and made reports prescribed by the public examiner and approved by the tax commissioner, and has paid a tax based thereon, it is not subject to penalties resulting in the use of the Burlington formula. *State v Ill. Central*, 205 M 1, 284 NW 360, 205 M 621, 286 NW 359; *Ill. Central v Minnesota*, 309 US 159, 60 SC 419.

In the levy and imposition of taxes state acts in its sovereign capacity, and in an act for the collection thereof cannot be subject to an equitable estoppel. *State v Ill. Central*, 200 M 583, 274 NW 838, 275 NW 854.

Laws 1903, Chapter 253, increasing the gross earnings percentage was legally submitted to the electors and is constitutional. *State v Dul. & Northern*, 102 M 26, 112 NW 897; *State v Minn. & North Wisconsin*, 102 M 506, 112 NW 899; *State v G. N. Ry. Co.* 106 M 303, 119 NW 202; *State v C. & G. W. Ry. Co.* 106 M 290, 119 NW 211.

Laws 1919, Chapter 533, effective upon the adoption of a referendum amendment, subjected abutting lands of a railroad company to special assessments, but the law in force at the time of making the assessment controls and the railroad company can only be charged on improvements made subsequent to the adoption of the amendment. *Minn. Trsfr. v City of St. Paul*, 165 M 8, 205 NW 609, 207 NW 320.

Under the facts in the instant case the state is not entitled to collection of interest. *State v G. N. Ry. Co.* 160 M 515, 200 NW 834.

Minnesota corporate franchise tax as excise or property tax. 24 MLR 595.

Power to immunize federal instrumentalities from state taxation. 26 MLR 414.

## 2. Historical policy of state; commuted system

It has been the policy of Minnesota from the beginning to tax all railroads by a commuted system; that is, on the basis of a percentage of their gross earnings. Prior to the adoption of the constitutional amendment in 1871, any gross earnings tax collected was based upon territorial charter contracts. *First Division v Parcher*, 14 M 297(224); *Chauncey v Wass*, 35 M 1, 25 NW 457, 30 NW 826; *State ex rel v Luther*, 56 M 156, 57 NW 464; *County v St. P. M. & Man.* 73 M 417, 76 NW 217.

The commuted system, applicable to the taxation of railroads on the basis of a percentage of their gross earnings, is not an exemption from all taxation but is an exemption from the ordinary mode of assessment. *City of St. P. v St. P. & S. C. Ry.* 23 M 469; *County v St. P. M. & Man. Ry.* 33 M 534, 24 NW 196; *Co. of Ramsey v C. M. & St. P. Ry.* 33 M 537, 24 NW 313; *County of Todd v St. P. M. & Man. Ry.* 38 M 163, 36 NW 109.

Prior to the constitutional amendment of 1871 the state legislature had no authority to adopt a commuted system, but statutes previously passed providing for such a system were validated by that amendment. The legislature has no authority to adopt a commuted system except in accordance with the 1871 amendment. *State ex rel v Luther*, 56 M 156, 57 NW 464; *State ex rel v Stearns*, 72 M 200, 75 NW 210; *State v Dul. & Iron Range*, 77 M 433, 80 NW 626.

The commuted system is applicable to a railroad company although the road is only three miles in length and the cars are operated partly by a steam loco-

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motive and partly by cable. The system applies to all commercial railroads regardless of their length or the volume of their business. State ex rel v District Court, 54 M 34, 55 NW 816.

The commuted system does not apply to street railways. State v Dul. St. Ry. 76 M 96, 78 NW 1032.

The commuted system does not change subject of the tax. The tax is still imposed upon the property of the railroad company and not upon the company itself. Mpls. & St. Louis Ry. v Koerner, 85 M 149, 88 NW 430.

### 3. Exemption under charters

The plaintiff is entitled to hold the lands in controversy exempt from taxation until the same are sold and conveyed by it; and is entitled to this holding and exemption under the territory act of congress, March 3, 1857. First Division v Parcher, 14 M 297 (224).

On Sept. 28, 1850, congress granted to Minnesota the swamped and overflowed lands within the state. Other grants were subsequently made subject to be taxed only as the land should be sold. The exemptions from ordinary taxation granted to railroads by the legislature after the adoption of the constitution but prior to the amendment of 1871 were unconstitutional but they were validated by that amendment and are contracts which cannot be impaired by subsequent legislation. Overruling or modifying State ex rel v Stearns, 72 M 200, 75 NW 210, and State v Dul. & Iron Range, 77 M 433, 80 NW 626; Stearns v Minnesota, 179 US 223, 21 SC 73.

Territorial charters; state constitution not applicable. First Division v Parcher, 14 M 297 (224); State v Win. & St. P. Ry. 21 M 315; City of St. Paul v St. P. & S. C. Ry. Co. 23 M 469; County of Stevens v St. P. Mpls. & Man. 36 M 467, 31 NW 942.

### 4. Immunity and obligation to pay are appurtenant to road

The exemption from ordinary taxation granted to railroad companies under territorial charters was not simply a personal privilege conferred on the original companies, but was appurtenant to the line of road and existed in favor of any company which in consideration of the land grant assumed the construction and maintenance of the road to which it was applicable. This immunity was in no way affected by change of ownership and exists today in those companies which are operating those lines, no matter by what method of transfer they have succeeded to the rights and immunities of the original companies. First Division v Parcher, 14 M 297(224); State v Win. & St. P. Ry. 21 M 315; City of St. Paul v St. P. & S. C. Ry. 23 M 469; County of Nobles v S. C. & St. Paul, 26 M 294, 3 NW 701; State v St. P. Mpls. & Man. 30 M 311, 15 NW 307; State v N. P. Ry. 32 M 294, 20 NW 234; County of Hennepin v St. P. Mpls. & Man. 33 M 534, 24 NW 196; Ramsey County v C. M. & St. P. Ry. 33 M 537, 24 NW 313; Stevens County v St. P. Mpls. & Man. 36 M 467, 31 NW 942; Traverse County v St. Paul, Mpls. & Man. 73 M 417, 76 NW 217; State v S. C. & St. Paul, 82 M 158, 84 NW 794.

This immunity embraces not only the lands included in the original grant, but also lands subsequently granted. County of Traverse v St. P. Mpls. & Man. Ry. 73 M 417, 76 NW 217.

The immunity from ordinary taxation and the obligation to pay a percentage of gross earnings are reciprocal and appurtenant to the road. State v St. P. Mpls. & Man. Ry. 30 M 311, 15 NW 307; State v N. P. Ry. 36 M 207, 30 NW 663; County of Traverse v St. P. Mpls. & Man. 73 M 417, 76 NW 217.

Companies operating a fraction of roads immune from ordinary taxation and liable for a percentage of their gross earnings, are liable to pay a percentage of their gross earnings on such fraction. C. M. & St. P. Ry. v Pfaender, 23 M 217; State v N. P. Ry. Co. 32 M 294, 20 NW 234.

### 5. Land devoted to railroad purposes

The theory of the commuted system is based upon the exemption of railroad property from ordinary taxation on the assumption that it will be held and used

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for the purposes for which the corporation was created and through such use yield to the corporation an income and to the state a percentage of that income in lieu of direct taxation. The property of railroad companies not used for railroad purposes is taxable in the ordinary way where the charter does not expressly provide for an exemption of all property. The above stated rule has been applied to lands which have ceased to be used for railroad purposes and are either allowed to remain vacant or are rented to others. *County of Ramsey v C. M. & St. P. Ry.* 33 M 537, 24 NW 313; *Whitcomb v Ramsey County*, 91 M 238, 97 NW 879.

The rule applies to land held for railroad purposes in the indefinite future. *County of Ramsey v C. M. & St. P. Ry.* 33 M 537, 24 NW 313; *City of St. Paul v St. P. Mpls. & Man.* 39 M 112, 38 NW 925; *State ex rel v District Court*, 68 M 242, 71 NW 27; *Whitcomb v Ramsey County*, 91 M 238, 97 NW 879.

The rule applies to large tracts of timber lands affording timber for railroad ties and lumber for railroad purposes. *County of Todd v St. P. Mpls. & Man.* 38 M 163, 36 NW 109; *St. P. Mpls. & Man. v Todd County*, 142 US 282, 12 SC 281.

The rule applies to logs cut from exempt railroad land. *State v N. P. Ry. Co.* 39 M 25, 38 NW 635.

The rule as applied to the Lafayette hotel at Minnetonka. *County of Hennepin v St. Paul, Mpls. & Man.* 42 M 238, 44 NW 63.

Rule as applied to a wharf at Duluth built on railroad land and leased to a private company. *County of St. Louis v St. P. & Duluth*, 45 M 510, 48 NW 334.

The occupancy of a portion of a building by the express company did not deprive the property of its character as property owned and held in connection with and incidental to the operation and maintenance of a railway. *State v G. N. Ry. Co.* 142 M 173, 171 NW 317.

In the instant case the real property owned by the railroad company was not "owned or operated for railway purposes" and was therefore subject to an ad valorem tax and to special assessments. *State v C. St. P. M. & O. Ry.* 140 M 440, 168 NW 180.

Where substantially all of the tract is used for railroad purposes, small fractions of the tract not in such use are nevertheless exempt. *State ex rel v District Court*, 68 M 242, 71 NW 27.

A portion of the building used by a railway company is not exempt from ad valorem tax where the greater portion of the building is used by another company even though the railroad owns one half of the stock in the holding company owning the building. OAG Nov. 21, 1933.

Property owned by a private corporation is not exempt from taxation because it has access to railroad service. OAG Jan. 5, 1938 (414d).

## 6. Sale of exempted lands

Where the land grant charter provides that the exemption shall cease upon a sale of the lands, what constitutes a sale depends not upon the form of the instrument of conveyance but upon its operation and effect. If the company parts with all its beneficial interest in the land, the retention of the naked legal title does not prevent the transaction from being a sale. *State v Win. & St. Peter*, 21 M 315; *Minn. Central v Melvin*, 21 M 339; *State v Trustees*, 21 M 344; *State v Win. & St. Peter*, 21 M 472; *County of Cass v Morrison*, 28 M 257, 9 NW 761; *St. P. & S. C. v McDonald*, 34 M 182, 25 NW 57; *St. Paul & Chgo. v McDonald*, 34 M 195, 25 NW 453; *County of Brown v Winona & St. Peter*, 38 M 297, 37 NW 949; *County of Brown v Win. & St. Peter*, 39 M 380, 40 NW 166; *St. P. & S. C. v Robinson*, 40 M 360, 42 NW 79; *S. C. & St. P. v Robinson*, 41 M 452, 43 NW 326; *County of Chipewa v St. P. Stillwater & Taylors Falls*, 42 M 295, 44 NW 70; *Pine County v Tozer*, 56 M 288, 57 NW 796.

A transfer to another company which continues the operation of the road is not a sale within the meaning of these provisions; but if a company transfers its franchises to another company but retains all or a portion of its lands, the lands so retained become subject to taxation unless the legislature ratifies the transaction in such a way as to preserve the exemption. See annotations under analysis 4. *State ex rel v St. P. & S. C. Ry.* 35 M 222, 28 NW 245; *State ex rel v Minn. Central*, 36 M 246, 30 NW 816; *State v S. C. & St. P. Ry.* 82 M 158, 84 NW 794.

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Exempt land sold before May 1st is taxable for the then current year; but otherwise if sold after May 1st. This overrules *County of Hennepin v St. P. Mpls. & Man.* 33 M 534. *County of Martin v Drake*, 40 M 137, 41 NW 942.

Non-exempt land purchased by a railroad after May 1st is taxable in the ordinary way for that year. *State v N. W. Telephone Co.* 80 M 17, 82 NW 1090.

## 7. Exemption a franchise

The immunity being a franchise is lost by non-user. *State ex rel v Minn. Central*, 36 M 246, 30 NW 816.

The facts do not establish sale or conveyance or contract to sell so as to cause loss of right of exemption. *Minn. Central v Melvin*, 21 M 339; *State ex rel v St. P. & S. C. Ry.* 35 M 222, 28 NW 245; *Minn. Central v Donaldson*, 38 M 115, 35 NW 725; *State v S. C. & St. P.* 82 M 158, 87 NW 794.

Granted lands are exempt from taxation in the ordinary way as long as they continue to be owned by the company. *State ex rel v Luther*, 56 M 156, 57 NW 464.

Railroad land grant lands reserved and retained by the state and subsequently sold by the state are subject to taxation in the hands of the grantees. *County of Morrison v St. P. & N. P.* 42 M 451, 44 NW 982.

Indemnity lands are not taxable by the state until they are pointed out and ascertained and the selection approved by the secretary of the interior. *State v Sage*, 75 M 448, 78 NW 14.

Land grant lands earned but not patented, nevertheless give good title to the Northern Pacific railway. *County of Cass v Morrison*, 28 M 257, 9 NW 761.

Riparian rights are merely incidents to and part of the abutting shore property, and when incidental to railroad lands are exempt from ordinary taxes. *State v St. P. & Duluth*; 81 M 422, 84 NW 302.

## 8. Union stations, elevators

A grain elevator standing on the lands of a railroad company, owned by it and constituting a part of its real estate, is not taxable as personal property of the corporation. *C. M. & St. P. Ry. v County of Houston*, 38 M 531, 38 NW 619.

Payment of a percentage on their gross earnings by the railway company which owns all of the stock and uses the terminal facilities of the depot, constitutes payment of taxes on all of the property of the latter; and the St. Paul Union Depot Company is not liable to pay, as taxes, a percentage of its gross earnings. *State v St. P. Union Depot*, 42 M 142, 43 NW 840.

Checkroom receipts handled by the depot company as agent for the roads using the depot may be included in taxable gross income. *State v Chgo. R. I. Ry.* 181 M 615, 232 NW 105, 233 NW 866.

## 9. What are gross earnings

"Gross earnings" do not include the compensation paid to a railroad by another company for the right to run trains over its lines. *State v St. P. Mpls. & Man.* 30 M 311, 15 NW 307; *State v N. P. Ry.* 32 M 294, 20 NW 234.

Gross earnings do not include earnings from that part of the railroad outside of the boundaries of the state. *State v N. P. Ry. Co.* 32 M 294, 20 NW 234.

"Gross earnings" are not limited to earnings derived from the operation of trains but include all earnings received by such railway companies while performing work incidental to or connected with the business of transportation. *State v Minn. & International*, 106 M 176, 188 NW 679, 1070; *State v N. W. Tel. Exchange*, 107 M 390, 120 NW 534.

The Pullman company having paid a gross earnings tax, excess receipts paid to the railway company are not a part of the railway company's gross income. *State v Chgo. R. I. Ry.* 181 M 615, 232 NW 105, 233 NW 866.

Debit balances accruing in the adjustment of per diem charges on the exchange of freight car equipment, are not deductible from gross earnings tax returns. *State v M. & St. L. Ry.* 204 M 250, 283 NW 244.

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Rental for cars used entirely outside Minnesota by railroads having no tracks in the state, is not part of the railway's gross earnings for purposes of taxation. *State v G. N. Ry. Co.* 163 M 88, 203 NW 453.

The amount apportioned to the suburban companies represents their gross earnings and their liability to the payment of the earnings tax. *State v Mpls. & St. P. Sub.* 122 M 106, 142 NW 19.

Where two carriers enter into an arrangement by which one becomes the hiring and disbursing agent of the other with no intention of gaining revenue or making profit out of the transaction, such moneys are not subject to a gross earnings tax. *State v N. P. Ry.* 130 M 377, 153 NW 850.

Where a railroad company operates two lines between points within the state, one intrastate and the other partly interstate, its report of gross earnings from interstate traffic must be "based upon the proportion of the mileage over which such business is done." It cannot be required to report earnings from such traffic on the basis of assumed movements, notwithstanding a long-continued practice of so doing. *State v Northern Pacific*, 217 M 113, 14 NW(2d) 232.

See as to railroads right of way; easements; relating to gross earnings taxes. 1942 OAG 304, June 16, 1942(216-I).

The operation of a recreation center in the St. Paul union depot is so disconnected from the transportation business that income therefrom is not subject to gross earnings tax. The personal property of the center is subject to the ad valorem tax. 1942 OAG 331, Aug. 6, 1942 (216-I-3).

## 10. Special assessments

In the instant case the railway company under its charter was not liable to pay a gross earnings tax; and whether a railroad is exempt from special assessment depends on its charter and the use of the land by the company. *First Division v City of St. P.* 21 M 526; *City of St. P. v St. P. & S. C. Ry.* 23 M 469.

Trial court sustained in holding that the land was not used for "railroad purposes" so as to render it exempt from special assessments. *State ex rel v District Court*, 68 M 242, 71 NW 27.

An assessment clearly in excess of any special benefit to the property is invalid; but an assessment in the absence of fraud or mistake is conclusive upon the courts and the burden of proving fraud, mistake, or illegality is upon the objector. *Re Assessment for Superior Street*, 172 M 554, 216 NW 318.

The Minnesota tax on railroads based on gross earnings is a property tax and is constitutional when the statutory mileage prorate is applied to the iron ore tonnage originating in Minnesota. *State v G. N. Ry.* 174 M 3, 218 NW 167, 278 US 503, 49 SC 191.

Warrants of the type involved in this suit being purely contractual constituted a charge or claim only against the particular fund out of which promised payment was to be made. *Judd v City of St. Cloud*, 198 M 590, 272 NW 577.

Prior to the enactment of Laws 1919, Chapter 533, a city had no power to assess the cost of street paving against a railroad corporation which had paid a gross earnings tax. *Chgo. & N. W. Ry. v City of Marshal*, 151 M 96, 186 NW 137.

The evidence warrants a finding that part of a tract was owned and operated for railway purposes and was exempt from a ditch assessment, and the part not so operated was not exempt. *State v Rock Island*, 141 M 472, 170 NW 613.

A village owning a highway easement of railroad right of way subject to reversion if not used for highway purposes, may pave such property and assess the cost thereof against abutting owners including the railway company. OAG Aug. 22, 1939 (396g-12).

## 11. Classification; graduation of percentage

The percentage required to be paid to the state is to be graduated with reference to the time of the completion and operation of a road, based upon the authority granted by statute. *C. M. & St. P. Ry. v Pfaender*, 23 M 217; *State v N. P. Ry.* 36 M 207, 30 NW 663.

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The classification of the relators as freight line companies subject to taxation under sections 295.01, subdivision 5, and 295.23 to 295.28 does not contravene the uniformity and equality guaranteed by the state and federal constitutions. *Almer Co. v Commissioner*, 213 M 63, 5 NW(2d) 637.

### 295.03 CERTAIN LAWS MADE APPLICABLE.

HISTORY. Ex. 1912 c. 9 s. 3; G.S. 1913 s. 2228; G.S. 1923 s. 2248; M.S. 1927 s. 2248.

### 295.04 COLLECTION BY CIVIL ACTION.

HISTORY. Ex. 1912 c. 9 s. 4; G.S. 1913 s. 2229; G.S. 1923 s. 2249; M.S. 1927 s. 2249.

### 295.05 VALIDITY CONTESTED; CONDITIONS PRECEDENT.

HISTORY. Ex. 1912 c. 9 s. 5; G.S. 1913 s. 2230; G.S. 1923 s. 2250; M.S. 1927 s. 2250.

### 295.06 APPORTIONMENT OF TAXES.

HISTORY. 1909 c. 454 s. 2; G.S. 1913 s. 2232; G.S. 1923 s. 2252; M.S. 1927 s. 2252.

Applied to suburban lines distinguished from city street railways. *State v Mpls. & St. P. Suburban*, 122 M 106, 142 NW 19.

### 295.07 ANNUAL REPORT; REQUISITES.

HISTORY. 1909 c. 454 s. 3; G.S. 1913 s. 2233; G.S. 1923 s. 2253; M.S. 1927 s. 2253.

### 295.08 ORDER FOR APPORTIONMENT.

HISTORY. 1909 c. 454 s. 4; G.S. 1913 s. 2234; G.S. 1923 s. 2254; M.S. 1927 s. 2254.

### 295.09 CERTIFICATION OF APPORTIONMENT.

HISTORY. 1877 c. 105 s. 2; G.S. 1878 c. 11 s. 140; G.S. 1894 s. 1679; R.L. 1905 s. 1006; 1909 c. 454 s. 5; G.S. 1913 s. 2235; G.S. 1923 s. 2255; M.S. 1927 s. 2255.

Minnesota Constitution, Article 9, Section 9, has no application to the issuance by the state auditor of a warrant on the state treasury for the distribution of the gross earnings tax imposed upon and collected from suburban railroad companies as authorized by Laws 1909, Chapter 454. *State ex rel v Iverson*, 125 M 67, 145 NW 607.

### 295.10 STREET RAILWAYS AND COMMERCIAL STEAM RAILROADS EXCEPTED.

HISTORY. 1909 c. 454 s. 6; G.S. 1913 s. 2236; G.S. 1923 s. 2256; M.S. 1927 s. 2256.

### 295.11 STATE TREASURER, COLLECTOR.

HISTORY. 1873 c. 104 ss. 1, 2; G.S. 1878 c. 11 ss. 132, 133; G.S. 1894 ss. 1671, 1672; R.L. 1905 s. 1004; G.S. 1913 s. 2237; G.S. 1923 s. 2257; M.S. 1927 s. 2257.

### 295.12 DISTRAINT; SALE; FEES.

HISTORY. 1873 c. 104 ss. 3, 7; G.S. 1878 c. 11 ss. 134, 138; G.S. 1894 ss. 1673, 1677; R.L. 1905 s. 1008; G.S. 1913 s. 2238; G.S. 1923 s. 2258; M.S. 1927 s. 2258.



# MINNESOTA STATUTES 1945 ANNOTATIONS

## 295.13 RAILROAD COMPANIES; EXPRESS COMPANIES; ETC.

1830

### 295.13 WHAT ARE CHATTELS WHICH MAY BE DISTRAINED.

HISTORY. 1873 c. 104 s. 5; G.S. 1878 c. 11 s. 136; G.S. 1894 s. 1675; R.L. 1905 s. 1010; G.S. 1913 s. 2239; G.S. 1923 s. 2259; M.S. 1927 s. 2259.

### 295.14 LANDS SOLD TO BE RETURNED.

HISTORY. 1877 c. 105 s. 3; G.S. 1878 c. 11 s. 141; G.S. 1894 s. 1680; R.L. 1905 s. 1011; G.S. 1913 s. 2240; G.S. 1923 s. 2260; M.S. 1927 s. 2260.

## EXPRESS COMPANIES

### 295.15 ANNUAL STATEMENT.

HISTORY. 1878 c. 1 s. 9; G.S. 1878 c. 11 s. 9; G.S. 1894 s. 1517; 1897 c. 309 s. 2; R.L. 1905 s. 1013; 1913 c. 454 s. 1; G.S. 1913 s. 2242; G.S. 1923 s. 2262; M.S. 1927 s. 2262.

The legislature has the power since the constitutional amendment of 1906 to impose a commuted form of taxation upon an express company and the tax commissioner has no power to abate any part of the percentage as fixed by statute. *State v Wells-Fargo*, 146 M 444, 179 NW 221.

Express shipments originating in Minnesota for points in Canada and transferred to Canadian express companies are included in "business done within this state" for the purpose of computing the Minnesota gross earnings tax. *State v American Ry. Express*, 183 M 244, 236 NW 321.

The receipts of an express company derived from "transfer" and "pick up and delivery" services rendered to railroad companies under contract, are part of its gross earnings for purposes of taxation. *State v Ry. Exp. Agency*, 210 M 556, 299 NW 657.

### 295.16 FAILURE TO MAKE ANNUAL REPORT.

HISTORY. 1897 c. 309 s. 3; R.L. 1905 s. 1014; G.S. 1913 s. 2243; G.S. 1923 s. 2263; M.S. 1927 s. 2263.

### 295.17 AUDITOR TO DETERMINE GROSS RECEIPTS.

HISTORY. 1897 c. 309 s. 4; R.L. 1905 s. 1015; G.S. 1913 s. 2244; G.S. 1923 s. 2264; M.S. 1927 s. 2264.

### 295.18 FAILURE OF COMPANY TO REPORT.

HISTORY. 1897 c. 309 s. 5; R.L. 1905 s. 1016; G.S. 1913 s. 2245; G.S. 1923 s. 2265; M.S. 1927 s. 2265.

### 295.19 FAILURE OF LOCAL AGENT TO MAKE STATEMENT.

HISTORY. 1897 c. 309 s. 5; R.L. 1905 s. 1017; G.S. 1913 s. 2246; G.S. 1923 s. 2266; M.S. 1927 s. 2266.

### 295.20 POWER OF AUDITOR.

HISTORY. 1897 c. 309 s. 5; R.L. 1905 s. 1018; G.S. 1913 s. 2247; G.S. 1923 s. 2267; M.S. 1927 s. 2267.

Where the state has the legal right to call upon companies for information as to their business, they cannot be permitted to determine for themselves whether or not they will answer on the ground that it is not possible for them to do so. It is their duty in such cases to answer so far as reasonably possible and state facts which they claim excuse them for not making further answer. *State ex rel v U. S. Express Co.* 81 M 87, 83 NW 465.

# MINNESOTA STATUTES 1945 ANNOTATIONS

1831

**RAILROAD COMPANIES; EXPRESS COMPANIES; ETC. 295.25**

## **295.21 EXPRESS COMPANIES TO PAY NINE PER CENT ON GROSS EARNINGS.**

**HISTORY.** 1897 c. 309 s. 6; 1899 c. 317; 1901 c. 124; R.L. 1905 s. 1019; 1913 c. 454 s. 2; G.S. 1913 s. 2248; G.S. 1923 s. 2268; M.S. 1927 s. 2268; Ex. 1937 c. 3 s. 3; Ex. 1937 c. 9 s. 3

See annotations under section 295.15.

Motor vehicles owned and used by corporations paying a gross earnings tax in the operation of their business are not subject to the tax imposed by section 168.01, et seq. *Amer. Ry. Express v Holm*, 169 M 323, 211 NW 467.

The tax imposed by this section is a lieu property tax measured by gross earnings and the motor vehicle registration tax in addition thereto is invalid. *Amer. Ry. Express v Holm*, 173 M 72, 216 NW 542.

An express company which has paid a gross earnings tax and a motor vehicle tax is entitled to a refund on the moneys paid in registration of motor vehicles. *Amer. Ry. Express v Holm*, 173 M 98, 216 NW 541.

Laws 1929, Chapter 361, imposing motor vehicle tax on cars taxed on gross earnings basis is unconstitutional. *Railway Express Agency v Holm*, 180 M 268, 230 NW 815.

Minnesota Constitution, Article 16, Section 3, was amended in 1932 and pursuant to that amendment the legislature in 1933 enacted Laws 1933, Chapter 360, Section 1, since which time exacting a motor vehicle tax from an express company in addition to a gross earnings tax is not a denial of equal protection or due process of law. *State ex rel v Holm*, 209 M 9, 295 NW 297.

Liability of leased property for ad valorem tax where lessee pays gross earnings tax. 26 MLR 413.

## **295.22 DISTRAINT.**

**HISTORY.** 1897 c. 309 s. 6; 1899 c. 317; 1901 c. 124; R.L. 1905 s. 1021; G.S. 1913 s. 2249; G.S. 1923 s. 2269; M.S. 1927 s. 2269.

## **FREIGHT LINE COMPANIES**

### **295.23 PROPERTY; SITUS; VALUE.**

**HISTORY.** 1911 c. 377 s. 2; G.S. 1913 s. 2251; 1919 c. 506 s. 2; G.S. 1923 s. 2271; M.S. 1927 s. 2271.

The classification of the relators as freight line companies subject to taxation under sections 295.23 to 295.28 does not contravene the uniformity and equality clauses of the state and federal constitutions. *Almer Ry. Equip. Co. v Commissioner of Taxation*, 213 M 62, 5 NW(2d) 637.

### **295.24 FREIGHT LINE COMPANIES TO PAY SEVEN PER CENT ON GROSS EARNINGS.**

**HISTORY.** 1911 c. 377 s. 5; G.S. 1913 s. 2254; 1919 c. 506 s. 3; G.S. 1923 s. 2272; M.S. 1927 s. 2272; Ex. 1937 c. 3 s. 1; Ex. 1937 c. 9 s. 1.

The classification of relators as freight line companies subject to taxation under Sections 295.23 to 295.27 does not contravene the uniformity and equality guaranteed by the state and federal constitutions. *Almer v Commissioner*, 213 M 63, 5 NW(2d) 637.

### **295.25 STATEMENT TO BE FILED BY RAILROADS USING OR LEASING CARS OF FREIGHT LINE COMPANIES.**

**HISTORY.** 1911 c. 377 s. 3; G.S. 1913 s. 2252; 1919 c. 506 s. 5; G.S. 1923 s. 2274; 1925 c. 329; s. 1; M.S. 1927 s. 2274; Ex. 1937 c. 3 s. 1; Ex. 1937 c. 9 s. 1.

Debit balances accruing in the adjustment of per diem charges on the exchange of freight car equipment, are not deductible from gross earnings tax returns by a railroad company. *State v M. & St. L. Ry.* 204 M 250, 283 NW 244.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 295.26 RAILROAD COMPANIES; EXPRESS COMPANIES; ETC.

1832

### 295.26 ASSESSMENT OF TAXES AGAINST FREIGHT LINE COMPANIES; HEARINGS; CERTIFICATION OF AMOUNT OF TAX; DRAFTS ON RAILROAD COMPANIES.

HISTORY. 1919 c. 506 s. 6; G.S. 1923 s. 2275; 1925 c. 329 s. 2; M.S. 1927 s. 2275.

### 295.27 PENALTY FOR NON-PAYMENT; ENFORCEMENT.

HISTORY. 1911 c. 377 s. 6; G.S. 1913 s. 2255; 1919 c. 506 s. 7; G.S. 1923 s. 2276; 1925 c. 329 s. 3; M.S. 1927 s. 2276.

## SLEEPING CAR COMPANIES

### 295.29 ANNUAL STATEMENT OF SLEEPING CAR COMPANIES; SIX PER CENT TAX ON GROSS EARNINGS.

HISTORY. 1913 c. 480 s. 2; G.S. 1913 s. 2257; G.S. 1923 s. 2278; M.S. 1927 s. 2278; Ex. 1937 c. 3 s. 2; Ex. 1937 c. 9 s. 2.

A corporation operating a sleeping car business need not be taxed as a railroad company, but is subject to a franchise tax based on income. Pullman Co.; Board of Tax Appeals, Sept. 5, 1944 (152).

### 295.30 CERTAIN LAWS MADE APPLICABLE.

HISTORY. 1913 c. 480 s. 4; G.S. 1913 s. 2259; G.S. 1923 s. 2280; M.S. 1927 s. 2280.

### 295.31 COLLECTION BY CIVIL ACTION.

HISTORY. 1913 c. 480 s. 5; G.S. 1913 s. 2260; G.S. 1923 s. 2281; M.S. 1927 s. 2281.

## TELEGRAPH COMPANIES

### 295.32 GROSS EARNINGS TAX ON TELEGRAPH COMPANIES.

HISTORY. 1891 c. 8 ss. 1 to 4, 6; G.S. 1894 ss. 1682 to 1685, 1687; R.L. 1905 ss. 1032, 1033; G.S. 1913 s. 2262, 2263; G.S. 1923 ss. 2283, 2284; M.S. 1927 ss. 2283, 2284; Ex. 1937 c. 4 s. 1; M. Supp. s. 2282-1; 1945 c. 222 s. 1.

While not every well-grounded claim of over valuation is a valid defense in a judicial proceeding to collect a tax, yet over-valuation may be so excessive as to avail as a defense at least pro tanto. *State v Western Union*, 111 M 21, 124 NW 380.

As the state may in the first instance enact that taxes shall bear interest from the time they become due, so, without conflicting any provisions of the federal constitution, it may in like manner provide that taxes which have already become delinquent shall bear interest from the time when the delinquency commences. *State v Western Union*, 111 M 23, 126 NW 403.

Laws 1913, Chapter 483, classifying for purposes of taxation "all real and personal property subject to a general property tax and not subject to any gross earnings or other lieu tax" applies to property within the state of telegraph companies. *State ex rel v Minn. Tax Commission*, 132 M 93, 155 NW 1061.

### 295.33 ENFORCEMENT; REGULATIONS.

HISTORY. 1891 c. 8 s. 5; G.S. 1894 s. 1686; 1901 c. 180; R.L. 1905 s. 1034; G.S. 1913 s. 2264; G.S. 1923 s. 2285; M.S. 1927 s. 2285; Ex. 1937 c. 4 s. 3; M. Supp. s. 2282-3.

## TELEPHONE COMPANIES

### 295.34 TELEPHONE COMPANIES TO PAY TAX ON GROSS EARNINGS.

HISTORY. 1897 c. 314 s. 1; R.L. 1905 s. 1035; G.S. 1913 s. 2265; 1921 c. 348; 1921 c. 421; G.S. 1923 s. 2286; M.S. 1927 s. 2286; Ex. 1937 c. 7; Ex. 1937 c. 10 ss. 1, 2; M. Supp. s. 2286-1; 1945 c. 239 s. 1.

# MINNESOTA STATUTES 1945 ANNOTATIONS

1833

## RAILROAD COMPANIES; EXPRESS COMPANIES; ETC. 295.43

Use of property for telephone purposes and for other purposes cannot be apportioned so as to render it in part subject to ad valorem tax. Property owned by the telephone company paying a gross earnings tax is exempt from the ad valorem tax if it is principally devoted to telephone use. *State v Pequot Rural Tel. Co.* 188 M 520, 247 NW 695.

A telephone company which derives income from advertisements arranged so as to cause the patron to look at the advertisements rather than for the purpose of obtaining a telephone number, must return such income as gross income the same as the income derived from listing by display type. OAG April 7, 1930.

### 295.35 REPORT; EXAMINATION.

HISTORY. 1897 c. 314 s. 2; R.L. 1905 s. 1036; G.S. 1913 s. 2266; G.S. 1923 s. 2287; M.S. 1927 s. 2287.

### 295.36 TAX A LIEN.

HISTORY. 1897 c. 314 s. 2; R.L. 1905 s. 1037; G.S. 1913 s. 2267; G.S. 1923 s. 2288; M.S. 1927 s. 2288.

## TRUST COMPANIES

### 295.37 TRUST COMPANIES TO PAY GROSS EARNINGS TAX.

HISTORY. 1913 c. 529 s. 1; G.S. 1913 s. 2268; G.S. 1923 s. 2289; M.S. 1927 s. 2289; Ex. 1937 c. 3 s. 4; Ex. 1937 c. 9 s. 4.

Trust companies are not banks as defined in section 290.05 and are not exempt from income tax. 1934 OAG 807, June 20, 1934 (531d).

### 295.38 APPORTIONMENT AND DISTRIBUTION.

HISTORY. 1913 c. 529 s. 2; G.S. 1913 s. 2269; G.S. 1923 s. 2290; M.S. 1927 s. 2290; Ex. 1937 c. 3 s. 4; Ex. 1937 c. 9 s. 4.

### 295.39 REPORTS FILED BY TRUST COMPANIES WITH COMMISSIONER OF TAXATION.

HISTORY. 1925 c. 251 s. 1; M.S. 1927 s. 2290-1; Ex. 1937 c. 3 s. 4; Ex. 1937 c. 9 s. 4.

### 295.40 TAX DETERMINED.

HISTORY. 1925 c. 251 s. 2; M.S. 1927 s. 2290-2.

### 295.41 FAILURE TO REPORT; PENALTY.

HISTORY. 1925 c. 251 s. 3; M.S. 1927 s. 2290-3.

### 295.42 NON-PAYMENT OF TAX; PENALTY.

HISTORY. 1925 c. 251 s. 4; M.S. 1927 s. 2290-4.

### 295.43 LIEN OF TAX.

HISTORY. 1925 c. 251 s. 5; M.S. 1927 s. 2290-5.