

CHAPTER 275

LEVY AND EXTENSION OF TAXES

275.01 LEVY IN SPECIFIC AMOUNTS.

1. "Levy" defined and distinguished
2. Valid levy essential to a valid tax
3. Specific levies

1. "Levy" defined and distinguished

Upon dissolution of an enterprise based upon a joint-adventure contract, the amount of personal property, money and credits, and capital stock taxes for which such enterprise became liable as of May 1, should be paid as a liability. Standard v Wolf, 219 M 133, 17 NW(2d) 330.

2. Valid levy essential to a valid tax

A valid levy is essential to a valid assessment or tax. An assessment for ditch repairs under the statute authorizing a county board to levy an annual assessment for ditch repairs at a return not exceeding 30 mills of the assessed benefits as confirmed in the original proceedings for the establishment and construction of the ditch is void where the county board fails to determine a definite return of assessment. Saxhaug v County of Jackson, 215 M 490, 10 NW(2d) 722.

The authority to levy taxes under the war emergency powers bill, L. 1943, c. 600, s. 18, subd. 3, permitting taxes and excess of tax limitations expired on July 1, 1945. OAG Sept. 17, 1945 (519-c).

275.03 COUNTY TAXES.

The county board under the guise of a levy for other purpose must not create a surplus to be transferred to the road and bridge fund. OAG Oct. 2, 1944 (519-D).

The limitations in section 275.03 relate to the entire tax levy made by the board and not to a single item which goes to make up the total. OAG Aug. 5, 1946 (519-D).

275.07 CITY, VILLAGE, TOWN, AND SCHOOL DISTRICT TAXES.

The auditor and treasurer of a county, acting under recommendation of the state public examiner, may not refuse in violation of law to pay over to a town the amount of current taxes collected for it upon the ground that the town is liable to the county for its proportionate share in prior losses caused by the insolvency of certain county depositories. Mandamus is the proper remedy to compel the members of the board to perform their statutory duties. State ex rel v County of Pennington, 211 M 569, 2 NW(2d) 41.

In a newly created village where the 1946 assessments of lands in the village had been made by the township assessor, the moneys for the taxes so levied would be sent to the town treasurer and not to the new village treasurer. OAG May 24, 1946 (484-E-4).

The provision that tax levies be made before Oct. 10 is directory, not mandatory. OAG Dec. 4, 1946 (519-m).

Officers who in good faith certify as to the taxes levied under section 363.01 at the annual town meeting should not be held liable under sections 620.02 and 620.05 or otherwise in a case where the taxes were levied by the electors without authority. OAG April 29, 1947 (519-O).

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275.075 OMISSION BY INADVERTANCE; MANNER OF CORRECTION.

HISTORY. 1947 c. 71 s. 1.

Where the county board has failed to levy taxes to full extent under L. 1945, c. 404, the board may not include the difference between the amount authorized under chapter 404 in its current levy under L. 1947, c. 71. OAG June 30, 1947 (519-D).

275.08 AUDITOR TO FIX RATE.

Where there has been a tax settlement or apportionment of taxes collected, whereby the amount due to each taxing district for taxes levied by it is determined, each taxing district is entitled to its full apportioned share, and acceptance of a less amount over a period of years does not operate as a waiver or estoppel to claim the balance of its share. *Township of Normania v County of Yellow Medicine*, 205 M 451, 286 NW 881.

The county auditor in calculating the rate, under the provisions of section 275.08, must keep it within legal bounds basing his calculation on the taxes voted by a town board as certified to him under section 275.07. *State ex rel v County of Pennington*, 211 M 569, 2 NW(2d) 41.

The county auditor must base his calculations on the levies and assessments made as certified to him. He has no power to levy taxes or make assessments. *Saxhaug v County of Jackson*, 215 M 490, 10 NW(2d) 722.

Where the auditor in spreading the taxes against a certain township for school purposes instead of fixing a rate of 33 mills in error fixed the rate at 23 mills, after the books had been turned over to the county treasurer could not be corrected the following year by the school board adding an additional 10 mills. OAG May 28, 1945 (21-B).

275.09 RATE OF LEVY.

Amended by L. 1947 c. 168 s. 1.

For general revenue purposes of the county, the tax levy is limited to five per cent of the assessed valuation. 1944 OAG 378, July 26, 1943 (519-D).

While the limitation on the power of a town to levy taxes for road and bridge purposes based on R.L. 1905, s. 871, has not been changed and is found in section 275.09, subd. 3, its effect has been limited by L. 1921, c. 323, s. 33, coded as section 163.05. OAG March 8, 1946 (519-O).

Section 275.09, subd. 3, provides for the imposition by the electors at any town meeting of the tax for general purposes and must not exceed the rate stated in the section. Sections 275.09, subd. 3, and 163.05, are not inconsistent. OAG July 25, 1946 (519-K).

The maximum levy for general purposes is controlled by section 275.09. OAG July 25, 1946 (519-K).

275.10 TAX LEVY IN TOWNS.

In towns the maximum levy for road and bridge purposes is 15 mills plus emergency levy of five mills. 1944 OAG 379, July 21.

275.11 TAX LEVY FOR GENERAL PURPOSES LIMITED.

The per capita tax law does not limit the amount to be expended in any one year but does place a limitation on the amount of the levy. In order to arrive at the permissible levy any surplus on hand need not be deducted from the total amount authorized. OAG Nov. 8, 1943 (519-I).

Sections 275.11 to 275.16 regulate the power and duty of the county auditor in respect to expenditures keeping in mind the amount of taxes as modified by the limitations provided in the sections quoted above; but this limitation does not relate to levies by the county board. OAG Aug. 5, 1946 (519-D).

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275.12 TAX LEVY FOR SCHOOLS LIMITED.

Amended by L. 1947 c. 573 s. 1.

Under no circumstances may the county auditor make levies for school districts. OAG May 16, 1946 (519-M).

Taxes spread by the county auditor for services rendered under section 215.19 and spread pursuant to sections 215.23 and 215.24, may be over and above the tax limitation imposed upon school districts under sections 275.12 to 275.16. OAG Sept. 17, 1946 (519-m).

275.14 SPECIAL CENSUS MAY BE TAKEN.

Any census taken pursuant to section 275.14 is for special taxation purposes and the determined population through this special census cannot be used as a basis in issuing liquor licenses under the provisions of section 340.11. OAG May 6, 1946 (218-G-6).

275.26 EXCESSIVE LEVY; INJUNCTION.

Where there is \$70,000 in a fund, and a probable expenditure for the coming year of \$35,000, a levy of \$50,000 to reimburse the fund seems excessive, but the auditor has no power to reduce levies ordered by the county board. The only remedy is by injunction under this section. OAG Aug. 8, 1946 (519-D).

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

275.27 CONTRACTS IN EXCESS VOID; LIABILITY OF OFFICERS.

Unless the contract the village suggests will result in the incurring by the village of an obligation which will necessitate the levying of a tax in excess of the statutory rate, it is not unlawful. 1942 OAG 251, Jan. 29, 1942 (624-C-5).

A municipality has power to issue revenue warrants payable solely from the profits of a municipal liquor store. Section 275.27 is not applicable, because the obligation is payable solely out of the profits of the store. OAG March 28, 1947 (218-R).

275.28 TAX LISTS.

The auditor and treasurer of a county, acting under recommendations of the state public examiner, cannot refuse in violation of law to pay over to a town the amount of current taxes collected for the town upon the ground that the town is indebted to the county for the town's proportionate share in prior losses caused through the insolvency of certain county depositories. Mandamus is the proper remedy to compel the county officers to perform their statutory duties. *State ex rel v County of Pennington*, 211 M 469, 2 NW(2d) 41.

Tender of less than one-half of the real estate tax assessed prior to June 1, should be refused. The county treasurer is not authorized to accept less than one-half prior to the date on which one-half the tax must be paid to avoid penalty. OAG April 19, 1945 (450-F-1).

275.31 LIMITATION OF SECTIONS 275.31 to 275.35.

L. 1935, cc. 132, 133, and 134, were vetoed by the governor, and subsequently repassed over his veto. *Spensly v Oliver Iron Co.* 216 M 458, 13 NW(2d) 425.

275.44 CERTAIN VILLAGES AND CITIES, LIMITATION OF TAX LEVY.

See, 1942 OAG 251, Jan. 29, 1942 (624-C-5), noted under section 275.27.

A levy by a village of a tax for library purposes must be kept within the per capita tax limitation and the 20 mill limitation. OAG Sept. 24, 1946 (285-A).