

CHAPTER 279

DELINQUENT REAL ESTATE TAXES

**279.01 PENALTY AND INTEREST ON REAL ESTATE TAXES.**

Attorney general's opinions relating to persons in military service: OAG May 27, 1944 (310); OAG June 22, 1944 (310); OAG July 11, 1944 (310); OAG Jan. 23, 1946 (412-A-9).

Payment of taxes by check. 12 MLR 673.

Payment to avoid penalties of the taxing statute as involuntary payment. 13 MLR 629.

Liability of life tenant for the payment of taxes on unproductive property. 16 MLR 724.

**279.03 INTEREST ON DELINQUENT REAL ESTATE TAXES.**

Fixing second Monday in May for interest applies only to taxes for 1942 and subsequent years. See, L. 1943, c. 281. 1944 OAG 345, May 18, 1943 (412-A-9).

Taxes as applying to members of the armed forces. See, soldiers and sailors civil relief act of 1940 as amended. See also, L. 1943, cc. 565 and 641. 1944 OAG 349, July 11, 1944 (412-A-9).

Purchaser of tax judgment certificate, upon redemption, may collect interest on the total of taxes, penalties, and costs, but not interest on interest. OAG Sept. 22, 1945 (412-a-9).

In addition to the payment of all delinquent taxes, the owner in case of redemption is required to pay "all amounts paid by such holder and owner for interest and principal upon such land sale certificate, with interest at 12 per cent per annum." The statutes amending the rate of interest prescribed for delinquent taxes apply only to delinquent taxes, penalties, interest, and costs. OAG May 14, 1947 (412-A-9).

**279.05 DELINQUENT LIST; FILING; EFFECT.**

**Delinquent list**

1. Auditor to prepare
2. Taxes included
3. Lands bid in by state not included
4. Statement of amount
5. Errors
6. Evidential value
7. Verification

**Description of real estate**

1. Test of sufficiency
2. Description according to common repute
3. Description according to plats
4. Description according to government survey
5. Description, aid of tabular forms
6. Exactness required
7. Extrinsic evidence, when admissible
8. Amendment of description

9. Variance
10. Stages of proceedings
11. Held sufficient
12. Held insufficient

#### Filing of list

1. Effect of as commencement of action
2. Jurisdictional
3. Date of filing
4. Filing, what constitutes

#### Description of real estate

##### 1. Test of sufficiency

The tax list where publication is made for two weeks with one week intervening between two publications is invalid. Taxes for two or more years may be included in the list but should be stated separately. 1944 OAG 352, Oct. 4, 1943 (412-A-13).

Statutes relative to tax title proceedings which result in the owner's foreclosure of his property require a more strict construction than those relating to mortgage foreclosure proceedings, which is merely a creditor's proceeding to recover debt. *McHardy v State*, 215 M 132, 9 NW(2d) 427.

Grouping of contiguous parcels of land in tax delinquency proceedings. 23 MLR 991.

#### Description of real estate

##### 3. Description according to plats

Defendant was the owner in fee of "all of section 27" in a given township wholly vacant and unoccupied. In 1927 the sixteen 40-acre tracts were separately assessed for taxes by the assessor. The taxes were not paid. The auditor in preparing the delinquent list included all these subdivisions in one section, "all of section 27" with proper designation of township, range, and county; and upon that basis the involved taxes went to judgment and the land thereafter sold pursuant thereto. No appearance was made by the owner of the land at any stage of the proceedings. In an action brought by the state to quiet title it was held that: (1) the objections are unavailing which might have been interposed by answer except such as go to the jurisdiction of the court and excepting also defense of payment and exemption; (2) the court acquired jurisdiction of the res since the land as described in the delinquent list and by subsequent proceedings had correctly identified the area in its entirety; (3) the discrepancy of the assessment and the delinquent list does not go to jurisdiction as it is a mere irregularity not appearing upon the face of the court proceedings and as such could be reached only by appropriate answer in that proceeding; (4) the court having acquired jurisdiction of the res, the resulting judgment is conclusive of everything essential to the right to sell the land for the amount specified therein, absent showing of payment or exemption. *State v Aitkin Co. Land Co.* 204 M 495, 284 NW 64.

#### Description of real estate

##### 11. Held sufficient

A tax title is a new and original grant from the state as sovereign of title in fee which is paramount as against the world and which supersedes and bars all other titles, claims, and equities. Under the provisions of section 272.10 the statute of limitations has no application to proceedings for the enforcement of taxes on real estate. *Hacklander v Parker*, 204 M 260, 283 NW 406.

#### 279.06 COPY OF LIST AND NOTICE.

"Where the notice required to be published and attached to the list of delinquent real estate taxes for 1932 included the paragraph provided by L. 1927, c. 119, s. 3, to

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the effect that five years after the sale of the land for taxes the real estate would become the absolute property of the purchaser, the state or its assigns, without any further right of redemption and without any notice of the expiration of the time to redeem, such notice did not vitiate the district court's jurisdiction, even though section 281.15 provided that the right of redemption from any sale for delinquent taxes continued for a period of 12 months after proof of service of a notice of expiration of the time within which redemption could be made had been filed in the county auditor's office, because it merely related to the redemption from the tax judgment and not to the court's acquisition of jurisdiction. Where judgment had been entered for 1932 delinquent real estate taxes, delinquent taxes for subsequent years were properly attached to the tax judgment and omitted from subsequent tax lists." *Singer v Village of Goodridge*, 210 M 324, 298 NW 35.

## **279.07 BIDS FOR PUBLICATION.**

The county board having accepted a valid bid for publication of a delinquent tax list, the contract is complete and could not be rescinded except for a cause similar to that which would legally constitute ground for the rescission of any other contract. Section 279.07 constitutes a continuing call for bids. OAG Jan. 26, 1945 (125-A-17).

## **279.08 DESIGNATION OF NEWSPAPER.**

This section controls over section 331.08. OAG Feb. 17, 1945 (412a-13).

## **279.09 PUBLICATION OF NOTICE AND LIST.**

Statutory specification of time for publication of delinquent tax lists is not mandatory but only directory. OAG April 1, 1947 (412-a-13).

## **279.14 WHAT DEFECTS JURISDICTIONAL.**

1. General statement
2. Presumption in favor of
3. Presumption of jurisdiction
4. Evidence to show want of jurisdiction
5. Collateral attack, general statement
6. Collateral attack, list of grounds for
7. Collateral attack, list of defects not ground for

### **2. Presumption in favor of**

A tax title is a new and original grant from the state as sovereign of title in fee, which is paramount as against the world and which supersedes and bars all other titles, claims, and equities. Under provisions of section 272.10, the statute of limitations has no application to proceedings for the enforcement of taxes on real estate. *Hacklander v Parker*, 204 M 260, 283 NW 406.

The court having jurisdiction and barring the statutory exceptions as to payment and exemption the judgment of the court is conclusive of everything essential to the right to sell the land. *State v Aitkin County Land Co.* 204 M 495, 284 NW 63.

### **7. Collateral attack, list of defects not ground for**

The entry of a tax judgment six days before the time for answering expired is an irregularity not fatal in a collateral attack on the judgment, a tax judgment not being subject to collateral attack except for jurisdictional defects appearing on the face of the record. *Chouteau v Hunt*, 44 M 173, 46 NW 341; *Miner v Buzick*, 206 M 341, 288 NW 582.

## **279.15 WHO MAY ANSWER; FORM.**

1. Form of answer; verification
2. Demurrer

3. Why may appear and answer
4. Special appearance; waiver of general appearance
5. Burden of proof
6. No right of jury trial
7. Waiver of defenses by failure to answer
8. General statement as to defenses admissible
9. Partial defenses
10. Defense of unfair, unequal, partial or excessive assessment
11. When prejudice must be shown
12. List of admissible defenses
13. List of inadmissible defenses

1. Form of answer; verification

The entry of a tax judgment six days before the time for answering expired is an irregularity not fatal in a collateral attack on the judgment, a tax judgment not being subject to collateral attack except for jurisdictional defects appearing on the face of the record. *Chouteau v Hunt*, 44 M 173, 46 NW 341; *Miner v Buzick*, 206 M 341, 288 NW 582.

A petition which alleged that the described real estate "has been unlawfully assessed for taxation and that the whole tax levied against the same is illegal" is sufficient in view of sections 278.02 and 278.05 and the liberal construction of section 278.01 contemplated by the legislature, to permit evidence that said real estate constituted a public hospital and as such was exempt under Minnesota Constitution, Article 9, Section 1, and section 272.02 of the statutes. *Fairmont Hospital v State* 221 M 107, 21 NW(2d) 251.

Our court has approved the inclusion of prior taxes in the delinquent list by stating the taxes for such prior years separately. The refunded taxes must not be lumped with current taxes. The name of the owner must be given, the property correctly described, the prior years for which taxes were sought to be enforced must be distinctly set forth, and the amount against each tract for each year correctly stated. The safe course is to follow the rule laid down in *Obst v Board*, 95 M 123, 103 NW 893, by obtaining separate judgments. 1944 OAG 352, Oct. 4, 1943 (412-A-13).

Proceedings for abatement of assessment under chapter 278, do not deprive the taxpayer of the privilege of application under section 272.07. 1944 OAG 386, Jan. 7, 1944 (407-O).

279.16 JUDGMENT WHEN NO ANSWER; FORM; ENTRY.

1. Statutory form
2. Recitals as to default
3. Entries only on left-hand page
4. Date
5. Must follow delinquent list
6. Description of land
7. Statement of amount due
8. Continuity of entry; signature of clerk
9. Premature entry
10. Interest
11. Amendment
12. Effect as a lien

1. Statutory form

It is not the policy of the law that any man should forfeit his property because from inability, or even neglect, he has failed to meet his tax engagements punctually.

Rather, it is for the welfare of every community that the law should favor the citizen in all reasonable measures for the preservation of his estate against losses which might result from his misfortunes or his faults, extending to him all the liberality that is consistent with justice to others and to a proper regard for the interest of the public. State ex rel v Hubbard, 203 M 111, 280 NW 9.

No constitutional right belonging to the taxpayer to redeem from tax sales nor any right to notice of expiration from redemptions to such sales exists in this state. Whatever rights the taxpayer has in respect thereof depends entirely upon statutory enactment. State v Aitkin County Land Co. 204 M 495, 284 NW 63.

#### **279.19 APPLICATION FOR JUDGMENT.**

Strict rules of pleading in an ordinary action do not apply in proceedings seeking to exempt property from taxation. Fairmont Hospital v State, 221 M 107, 21 NW(2d) 251.

#### **279.22 OPENING AND VACATING OF TAX JUDGMENTS.**

1. Opening default
2. Vacating and setting aside

##### **2. Vacating and setting aside**

If the taxes had been paid, and a delinquent tax judgment nevertheless was erroneously entered, the judgment may be vacated by the district court on motion of the county attorney based upon an affidavit of the county auditor; provided the land has not been forfeited to the state. 1944 OAG 347, Dec. 15, 1944 (412-a-10).

#### **279.24 CLERK'S FEES.**

Fees provided for in section 279.24 do not apply to clerks of court in counties having a population of between 9,000 and 21,000. OAG Feb. 15, 1946 (144-A-4).

#### **279.32 DELINQUENT TAXES; ENTRY ON JUDGMENT IN CERTAIN CASES.**

Under the provisions of L. 1943, c. 240, a new judgment may be taken for 1942 taxes although there is at the time an unpaid tax judgment for the 1932 taxes, and said 1942 judgment may be sold to an actual purchaser, who need not pay the prior taxes at the time of purchase. If the purchaser desires to pay the prior taxes, the auditor cannot issue an assignment certificate if the period of redemption has run. Chapter 240 specifically saves the rights of the state regarding enforcement of prior liens. 1944 OAG 348, Aug. 5, 1943 (412-A-10).

#### **279.33 CANCELANON OF CERTIFICATES OF FORFEITURE FOR LANDS WHICH WERE EXEMPT.**

Amended by L. 1947 c. 279 s. 1.

This section does not permit the cancelation of a certificate in part. A strict compliance with the law is required. OAG June 25, 1944 (425-C-1).

#### **279.34 APPLICATION BY OWNER.**

Amended by L. 1947 c. 279 s. 2.

Discussion of methods of invalidating or canceling certificates, and practice in those cases where forfeiture proceedings are void for indefiniteness of description. 1942 OAG 306, May 10, 1941 (412-A-13); 1942 OAG 311, June 5, 1941 (409-A-1).

#### **279.36 CONFESSION OF JUDGMENT FOR DELINQUENT TAXES.**

The procedure provided for termination of right of redemption under the provisions of L. 1935, c. 278 (coded as ss. 281.16 to 281.27), while different from the

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procedure described by section 281.13, falls within permissible legislative changes respecting the redemption and does not substantially impair any contract obligation. The confession of judgment statute, Ex. L. 1935, c. 72, as amended did not do away with the necessity on the part of a delinquent taxpayer to comply with notice of expiration of redemption issued and served pursuant to statute, where the taxpayer made no effort to bring himself within the provisions of either statute. *State v Aitkin County Land Co.* 204 M 495, 284 NW 63.

L. 1931, c. 91, did not affect or stay the authority of the county auditor under section 280.11 to sell and issue certificates for land bid in for the state and not assigned by it. *Adams v Atkinson*, 212 M 131, 2 NW(2d) 818.

Where there has been a confession of judgment, payment of only part of the owner's proportionate share of the current taxes constitutes a default. OAG May 22, 1943 (412-A-10).

When a landowner becomes in default on a confessed judgment for delinquent taxes, he may, under the provisions of section 279.36, make a new confession of judgment. OAG March 4, 1944 (412-A-10).

A confession of judgment for real estate taxes should not be docketed as it is not a personal judgment, nor should it be listed as a judgment on abstracts of title. OAG Aug. 23, 1944 (144-B-3).

Validity of tax bargain statutes. 18 MLR 849.

## 279.37 CONFESSION OF JUDGMENT FOR DELINQUENT TAXES. (1945 Act).

HISTORY. 1945 c. 121.

NOTE: The "emergency," "moratory," or "tax bargain" laws fall into three classes: (1) Repurchase act (section 282.35), based upon L. 1933, c. 407, sustained in *Beeth v Monick*, 201 M 635, 277 NW 211; (2) Redemption of forfeited lands (sections 281.16 to 281.27) based upon L. 1935, c. 278, and sustained and discussed in *State v Aitkin County Land*, 204 M 495, 284 NW 63; and (3) Confession of judgment act, (section 279.36), the base law being Ex. L. 1936, c. 72.

NOTE: L. 1945, c. 121, should have been codified as section 279.37, subdivisions 1, 2, 3, 4, 5, 6, 7.