

CHAPTER 296

TAX ON GASOLINE AND GASOLINE SUBSTITUTES

296.01 DEFINITIONS.

Subd. 3, amended by L. 1947 c. 412 s. 1.

Subd. 5, amended by L. 1947 c. 412 s. 2.

Subd. 7, amended by L. 1947 c. 412 s. 3.

Subd. 12, amended by L. 1947 c. 412 s. 4.

Laws 1925, c. 297, as amended by L. 1937, c. 376, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits even though the gravel is used in road construction or maintenance. *Hallett v Spaeth*, 212 M 531, 4 NW(2d) 337.

"A railroad is not negligent for failure to warn a spectator, standing on a highway witnessing a fire caused by a wreck, of the danger that a tank car full of gasoline engulfed in the flames is likely to explode, since the risk is obvious and a warning under such circumstances would not communicate to the party knowledge which he did not already possess or apprise him of danger of which he was not aware." *Wiseman v Northern Pacific*, 214 M 101, 7 NW(2d) 672.

Contributory negligence is a defense to a cause of action based upon a claimed violation of statute with reference to sale and delivery of volatile oils allegedly resulting in an explosion which caused the death of plaintiff's decedent. *Dart v Pine Oil Co.* 223 M 526, 27 NW(2d) 555.

Excise taxes on petroleum products required by L. 1941, c. 495, to be paid by public corporations is a valid enactment. 1944 OAG 357, July 26, 1943 (324-M).

Gas and electricity in interstate commerce. 18 MLR 611.

296.02 EXCISE TAX ON GASOLINE.

"The fact that the distributor is "authorized" to charge to his vendee taxes so paid and that as to the vendee the distributor occupies a fiduciary relationship as to the sum collected does not change the distributor from a taxpayer to a taxgatherer, since the distributor is required to meet the tax irrespective of whether he collects from his vendee any portion of it. *Arneson v Barber*, 210 M 42, 297 NW 335.

Legislative determination of what should be allowed for "evaporation and loss" in determining the base upon which gasoline taxation should rest is, in view of the facts in the instant case, valid as against constitutional attack. *Arneson v Barber*, 210 M 42, 297 NW 335.

L. 1925, c. 297, as amended by L. 1937, c. 376, does not impose a tax on gasoline used in the machinery for processing gravel in gravel pits even though the gravel is used in road construction or maintenance. *Hallett v Spaeth*, 212 M 531, 4 NW(2d) 337.

An excise tax may be imposed upon gasoline consumed in municipally owned vehicles operated upon the public streets and highways for the purpose of constructing, repairing, or maintaining such streets and highways. The imposition of such tax does not offend against Minnesota Constitution, Article 9, Section 1, nor against the Federal Constitution, Amendment 14. *State v Spaeth*, 223 M 218, 26 NW(2d) 115.

The general purpose of the Hayden-Cartwright act providing that all taxes levied by any state on sales of motor fuels may be levied, in the same manner, on such fuels, when sold by post exchanges, located on United States military or other reservations, is to extend the program of highway improvement which had

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been initiated by federal aid highway act of 1916 through the matching of federal and state funds. *State v Keeley*, 126 F(2d) 863.

Based upon *State ex rel v King*, 184 M 250, and *Cory v King*, 214 M 535, L. 1947, c. 634, s. 58, is constitutional, and the legislature has power to transfer \$214,330.36, the cost of collecting the petroleum tax during 1945-1947 biennium, from the road and bridge and trunk highway funds to the general revenue fund. OAG June 17, 1947 (454-E).

Validity of a state sales tax on a sale to a federal government contractor. 26 MLR 408.

Continuity of interstate shipment as determining state's power to tax articles moving in interstate commerce. 29 MLR 40.

296.04 INSPECTION OF PETROLEUM PRODUCTS.

State gasoline taxes are not included in valuation of gasoline for personal property tax purposes on May 1. Federal gasoline taxes in hands of producer are not included in valuation for personal property taxes on May 1. Federal taxes on gasoline in hands of all others on May 1 are included in valuation for personal property taxes. 1944 OAG 381, April 5, 1944 (421-C).

296.05 SPECIFICATIONS.

Contributory negligence is a defense to a cause of action based upon a claimed violation of statute with reference to sale and delivery of volatile oils allegedly resulting in an explosion which caused the death of plaintiff's decedent. *Dart v Pure Oil Co.* 223 M 526, 27 NW(2d) 555.

296.06 DISTRIBUTORS MUST BE LICENSED.

Subd. 1, amended by L. 1947 c. 412 s. 5.

Subd. 2, amended by L. 1947 c. 412 s. 6.

State gasoline taxes are not to be included in the valuation of gasoline for personal property tax purposes. OAG April 5, 1944 (324).

296.08 BLENDERS MUST SECURE PERMITS.

Repealed by L. 1947 c. 412 s. 14.

296.09 INDUSTRIAL USER PERMIT.

Repealed by L. 1947 c. 412 s. 14.

296.13 INSPECTION FEES.

A state, under its police power, may enact laws for inspection of oils and gasoline, tending to promote public safety, or to protect public from frauds, and may charge a fee reasonably sufficient to pay cost of inspection, though property may be moving in interstate commerce; but, if charge is obviously and largely in excess of cost of inspection, act will be declared void as burden on interstate commerce.

Discretion of state legislature in determining amount of fee for inspection of oils and gasoline, prima facie reasonable, will not be lightly disturbed by federal courts in determining whether exaction for inspection of such products, moving in interstate commerce, constitutes burden thereon, on account of excessive character of charge, rendering state act a revenue, instead of an inspection, measure. *Pure Oil Co. v State of Minnesota*, 39 SC 35, 248 US 158.

296.14 REPORTS TO COMMISSIONER.

Subd. 2, amended by L. 1947 c. 412 s. 7.

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296.15 PENALTIES FOR NON-PAYMENT OF TAX.

The lien on the personal property of a distributor to assist the state in recovering gasoline taxes, inspection fees, and penalties does not arise until the date of the inspection and is not superior to a chattel mortgage on the distributor's personal property executed and recorded prior to the inspection. *State v Heskin*, 213 M 368, 7 NW(2d) 1.

296.16 GASOLINE DEEMED FOR USE IN MOTOR VEHICLES.

L. 1925, c. 297, as amended by L. 1937, c. 376, does not impose a tax on gasoline used in machinery for processing gravel in gravel pits even though the gravel is used in road construction or maintenance. *Hallett v Spaeth*, 212 M 533, 4 NW(2d) 337.

296.17 REPORTS OF GASOLINE ON HAND.

The selection and classification of subjects for taxation and exemption is an inherent legislative power subject only to constitutional restraints. It is for the legislature to fix the classification, and if a classification so made falls within the field where men of reason may reasonably differ, the legislature must have its way. Legislative determination of what should be allowed for "evaporation and loss" in determining the base upon which gasoline taxation should rest is, in view of the facts appearing in the instant case, valid against a constitutional attack. *Arneson v Barber*, 210 M 42, 297 NW 335.

296.18 REIMBURSEMENT IN CERTAIN CASES.

This section does not impose a tax on gasoline used in machinery for processing gravel in gravel pits though the gravel is used in road construction or maintenance. *Hallett v Spaeth*, 212 M 531, 4 NW(2d) 337.

296.22 SAFETY REQUIREMENTS.

Amended by L. 1947 c. 412 s. 8.

Contributory negligence is a defense to a cause of action based upon a claimed violation of statute with reference to sale and delivery of volatile oils allegedly resulting in an explosion which caused the death of plaintiff's decedent. *Dart v Pure Oil Co.* 223 M 526, 27 NW(2d) 555.

296.23 CERTAIN BLENDING PROHIBITED.

Amended by L. 1947 c. 412 s. 9.

The lessor of a gasoline pump and underground storage tank who installs it in a public street or alley and, in furtherance of his own business, assumes the duty of repairing and maintaining the equipment, is liable for his own negligence in maintaining it, notwithstanding that under the terms of his lease he was under no obligations to make repairs; and it is not necessary that he should have been able reasonably to anticipate the resulting injury in the precise form in which it in fact occurred. Contributory negligence vel non of a 14-year-old boy who dropped a lighted match near or in the field pipe of an abandoned underground gasoline storage tank is for the jury. *Fjellman v Weller*, 213 M 458, 7 NW(2d) 521.

296.24 CERTAIN ACTS DISDEMEANORS.

Amended by L. 1947 c. 412 s. 10.

296.25 VIOLATIONS; PENALTIES.

Amended by L. 1947 c. 412 s. 11.

296.33 FUNDS, BY WHOM APPORTIONED.

Amended by L. 1947 c. 173 s. 1.

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296.34 STATE AUDITOR TO DRAW WARRANT.

It is the duty of the county to construct and maintain all county aid roads. OAG Oct. 8, 1945 (379-c-4).

A county in matching or supplementing federal aid available for construction or improvement of state aid roads within its boundaries may use for that purpose any part of its share of the gas tax apportioned to the county. OAG Jan. 12, 1946 (324-D).

296.36 COUNTY BOARD TO DESIGNATE COUNTY AID ROADS.

Where platted portions had not been incorporated into villages the county may establish county aid roads in the platted areas and such roads, including curbs, sidewalks, and similar, may be constructed, improved, and maintained by the county. OAG Oct. 8, 1945 (379-C-4).

296.37 USE AND DISPOSITION OF GAS TAX.

L. 1941, c. 548, ss. 13, 14, 19, and 22, appropriating moneys from the trunk highway fund to the offices of auditor, treasurer, department of civil service, and commissioner of administration, respectively, to defray expenses reasonably attributable to highway matters is not violative of Minnesota Constitution, Article 16. The test whether an appropriation is toward a highway purpose within the meaning of the constitution is not whether each dollar appropriated is ear-marked for each particular item of highway expense, but rather whether the charge upon the highway fund accurately reflects highway expenses, as born by the four offices and departments, and does not exceed the amount of expense properly attributable to highway matters. *Cory v King*, 214 M 535, 6 NW(2d) 614.

The county board may issue warrants for the purchase of equipment for use in maintenance and construction of county aid roads. OAG Jan. 24, 1947 (324-D).

296.39 APPORTIONMENT TO CITIES AND VILLAGES IN CERTAIN CASES.

The county's part of the gas tax may be used to supplement federal aid available for construction or improvement of state aid roads within the county boundary. OAG Jan. 12, 1946 (324-D).

296.40 DISTRIBUTION OF GASOLINE TAX BY COUNTY BOARDS TO TOWNS.

Where the county desires to match or supplement federal aid available for improvement of state aid roads, it may use any part of the fifty per cent of the gas tax apportionment to it for use on county aid roads. OAG Jan. 12, 1946 (324-D).

296.48 VIOLATIONS; PENALTIES.

Subd. 1, amended by L. 1947 c. 412 s. 12.

296.49 SELLERS OF TRACTOR FUEL TO FILE MONTHLY STATEMENTS.

Amended by L. 1947 c. 412 s. 13.