

CHAPTER 271

BOARD OF TAX APPEALS

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271.01 CREATION. Subdivision 1. **Membership, appointment, qualifications.** There is hereby created a board of tax appeals, herein called the board, as an independent agency of the executive branch of the government, in the department of taxation, but not in any way subject to the supervision or control of the commissioner of taxation. The board shall consist of three members, each of whom shall be a citizen of the state, appointed by the governor, by and with the advice and consent of the senate. They shall be selected on the basis of their experience with and knowledge of taxation and tax laws. So far as practicable, they shall be non-partisan in their political affiliations, and not more than two of them shall be members of or affiliated with the same political party or organization. No member of the board shall hold any other office under this state or any of its political subdivisions, nor any other office or position the salary for which is paid, in whole or in part, from appropriations from the tax revenues of the state of Minnesota, nor any office under the government of the United States or any other state, nor be a candidate for an elective office under the laws of this state or of the United States or of any other state. No member of the board shall hold any position of trust or profit or engage in any occupation or business which would conflict with or be inconsistent with his duties as a member of the board, nor serve on or under any political committee or other organization interested in any election, nor take part, directly or indirectly, in any election campaign in the interest of any political party or other organization or any candidate or measure to be voted upon by the people. No member of the board shall act as attorney, counselor, or accountant in the matter of any tax, fee, or assessment imposed or levied under authority of this state or any political subdivision thereof.

Subd. 2. **Terms, vacancies.** Upon the taking effect of Laws 1939, Chapter 431, one member of the board shall be appointed to serve until March 1, 1941, one member to serve until March 1, 1943, and one member to serve until March 1, 1945, who shall act as chairman until another shall qualify, as hereinafter provided. Succeeding members shall be appointed for terms of six years, respectively, commencing at the expiration of the preceding terms. Any vacancy shall be filled by the governor for the unexpired term, subject to confirmation by the senate. The first board shall meet, organize, and adopt rules of procedure.

Subd. 3. **Removal.** A member of the board may be removed by the governor only for cause, after written notice of the charges against him and an opportunity to be heard publicly thereon.

Subd. 4. **Compensation.** Each member of the board shall receive \$25 per day for time spent in the performance of his duties, but not exceeding compensation for 150 days in any calendar year, or a proportionate amount for a fraction of a year. He shall also receive his actual and necessary expenses paid or incurred in the performance of his duties.

[1939 c. 431 art. 6 s. 10; 1943 c. 533 s. 1] (2362-10)

271.02 OFFICERS. The member of the board having for the time being the longest record of then continuous service as such shall be chairman of the board, and the member having the next longest record shall be vice-chairman. In case the

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periods of service of two members be equal, the board shall choose between them. The board shall appoint a clerk, who shall be custodian of its files and records, and it may appoint a deputy clerk and other necessary employees.

[1939 c. 431 art. 6 s. 11] (2362-11)

271.03 SEAL. The board shall have a seal, engraved with the words, "State of Minnesota, Board of Tax Appeals." Such seal may be used to authenticate the official acts of the board or any member thereof, but failure to use the seal shall not invalidate any such act.

[1939 c. 431 art. 6 s. 12] (2362-12)

271.04 HEARINGS. The board shall hold hearings and meetings at the call of the chairman or any two members, and otherwise as may be prescribed by the rules of the board. The principal office of the board shall be at the capitol, but it may sit or hold hearings at any other place within the state. A majority of the board shall constitute a quorum for making orders or decisions or transacting other official business, and may act though one membership be vacant. One or more members may hold hearings and take testimony, to be reported for action by the board, when authorized by rule or order of the board.

[1939 c. 431 art. 6 s. 13] (2362-13)

271.05 POWER TO REVIEW. The board of tax appeals shall have power to review and redetermine orders or decisions of the commissioner of taxation upon appeal therefrom in the cases authorized by law.

[1939 c. 431 art. 6 s. 14] (2362-14)

271.06 APPEALS FROM ORDERS. Subdivision 1. **Manner.** Except as otherwise provided by law, an appeal to the board may be taken, in the manner herein provided, from any official order of the commissioner of taxation respecting any tax, fee, or assessment, or any matter pertaining thereto, by any person directly interested therein or affected thereby, or by any political subdivision of the state, directly or indirectly, interested therein or affected thereby, or by the attorney general in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the attorney general, upon request, shall refuse to appeal.

Subd. 2. **Time; notice; intervention.** Except as otherwise provided by law, within 30 days after notice of the making and filing of such order of the commissioner, and in any case within 60 days after the making and filing of such order, the appellant, or his attorney, shall serve a notice of appeal upon the commissioner and file the original, with proof of such service, with the board; provided, that any member of the board, for cause shown, may by written order extend the time for appealing for an additional period, not exceeding 30 days. The notice of appeal shall refer to the order appealed from, state specifically the points of both law and fact which are questioned by the appellant, and state an address within the state at which service of notice and other papers in the matter may be made upon the appellant; provided, that the board may, upon a showing of proper cause, permit an amendment of the notice of appeal. Every appellant shall be deemed to have waived all defenses and objections not specified in the notice of appeal. Within five days after receipt, the commissioner shall transmit a copy of the notice of appeal to the attorney general in all cases where the amount at issue exceeds \$100. The attorney general shall represent the commissioner, if requested, upon all such appeals except in cases where the attorney general has appealed in behalf of the state, or in other cases where he deems it against the interests of the state to represent the commissioner, in which event the attorney general may intervene or be substituted as an appellant in behalf of the state at any stage of the proceedings.

Subd. 3. **Pleadings.** Within 20 days after the service and filing of the notice of appeal, unless the appeal be theretofore dismissed, the commissioner shall make, certify, and file with the board a return comprising a copy of any application or petition by which the proceeding was instituted and of any other material paper preceding the order of the commissioner, a copy of the order appealed from, a statement of each finding of fact and ruling of law made by the commissioner in the matter, and a denial, admission, or explanation with respect to each allegation of fact in the notice so far as not covered by the order or findings; provided, that any member of the board, for cause shown, may extend the time for filing such return for an additional period not exceeding 30 days. Where the commissioner is required to transmit a copy of the notice of appeal to the attorney general, he shall, within ten days after service of the notice of appeal upon the commissioner,

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transmit to the attorney general a complete copy of all papers required for the return. Allegations of new matter in the return shall be deemed to be denied by the appellant.

Subd. 4. **Appeal fee.** At the time of filing the notice of appeal the appellant shall pay to the clerk of the board an appeal fee equal to ten cents for each \$100 or fraction thereof of the amount at issue in the proceedings; provided, that the minimum fee shall be \$5 and the maximum fee \$15 and that no appeal fee shall be required of the commissioner of taxation, the attorney general, the state or any of its political subdivisions. In any case where the foregoing provisions for determination of the appeal fee are inapplicable the amount of the fee shall be \$10.

Subd. 5. **Modification or rescission of orders.** At any time before final determination of an appeal by the board, the commissioner may, upon notice to the appellant and with the approval of the attorney general, offer to modify or rescind the order appealed from and, if such action be satisfactory to the appellant and to all other parties appearing in the proceeding, if any, and they shall stipulate thereto in writing, the proposed modification or rescission shall be made by the commissioner, and the appeal shall thereupon be dismissed, with such adjustment of costs as may be agreed upon between the commissioner and the appellant and specified in the stipulation.

Subd. 6. **Hearings; determination of issues; default.** The board shall hear, consider, and determine every appeal de novo upon the issues made by the notice and the return. The board shall hold a public hearing in every case, of which ten days' notice shall be given by mail to all parties to the proceeding. All such parties shall have an opportunity to offer evidence and arguments at the hearing; provided, that the order of the commissioner in every case shall be prima facie valid. In case no appellant shall appear the board shall enter its order affirming the order of the commissioner of taxation from which the appeal was taken.

[1939 c 431 art 6 s 15; 1943 c 174 s 3; 1945 c 604 s 23, 24; 1957 c 770 s 1] (2362-15)

271.07 STENOGRAPHIC REPORT; TRANSCRIPT. The board shall provide for a verbatim stenographic report of all proceedings had before it upon appeals, in like manner as required by the laws relating to proceedings in district court so far as applicable. In case of a review by the supreme court of an order of the board, transcripts of the proceedings before the board shall be furnished to the board, the commissioner, and the attorney general upon request, and the cost thereof shall be paid out of funds appropriated therefor upon such terms as the board may prescribe. Transcripts shall be furnished to other parties by the reporter at the same legal rates applicable at the time to the district court reporters of Ramsey county, but no transcript shall be made for or delivered to such other party unless he shall deposit the estimated cost thereof, in advance, with the clerk, subject to payment of the actual cost therefrom as soon as determined.

[1939 c. 431 art. 6 s. 16] (2362-16)

271.08 FINDINGS OF FACT; DECISION, ENTRY OF JUDGMENT. Subdivision 1. The board shall determine every appeal by written order containing findings of fact and the decision of the board. A memorandum of the grounds of the decision shall be appended. A certified copy of the order shall be transmitted to the commissioner of taxation and filed in his office. Notice of the entry of the order and of the substance of the decision shall be given by mail to all other parties who have appeared, and also, in all cases where the amount at issue exceeds \$100, to the attorney general.

Subd. 2. Upon the filing of the order of the board, described in subdivision 1, with the clerk of the district court of Ramsey county, within six months after such order has become final, judgment shall be entered thereon in the same manner as in the case of an order of the district court, as provided in section 546.27.

[1939 c. 431 art. 6 s. 17; 1945 c. 604 s. 25] (2362-17)

271.09 APPEALS AND REVIEWS. Subdivision 1. **No right of appeal in inheritance cases; appeal an exclusive remedy.** The right of appeal to the board herein provided shall not apply in the determination of inheritance taxes in cases wherein such taxes are now determinable by the probate courts, in which cases proceedings shall be had as otherwise provided by law, subject to the substitution of the commissioner of taxation for the attorney general, as herein provided. In all other cases, except as otherwise provided herein, the right of appeal herein pro-

vided shall be the exclusive remedy for reviewing the action of the commissioner of taxation respecting any tax, assessment, or other obligation. Upon any appeal taken by a taxpayer, and upon any other appeal when the taxpayer shall so agree in writing filed with the clerk of the board the decision of the board of tax appeals, or the decision of the supreme court upon review thereof, as the case may be, shall be final and conclusive upon all parties to the proceedings as to all matters at issue determined by such decision. In all cases the decision of the board upon appeal, or of the supreme court upon review, as the case may be, shall stand in lieu of the order of the commissioner from which the appeal was taken, and shall have like force and effect, subject to the provisions hereof.

Subd. 2. Review by board conclusive. Except as otherwise hereinafter provided, in all cases other than those wherein the taxpayer has appealed to the board or has agreed in writing, as herein provided, that the decision upon appeal or review shall be conclusive, all rights of action or defenses in the courts of the state respecting any tax, fee, or assessment, now afforded the taxpayer by law shall be preserved; provided, that no action by a taxpayer for a refund shall be instituted, proceeded with, or determined pending the determination of any appeal or review by the supreme court hereunder, except as hereinafter expressly authorized. Except as otherwise hereinafter provided, in any case wherein an appeal has been taken by a person other than the taxpayer and the taxpayer has not agreed that the decision upon appeal or review shall be conclusive, the running of the time limited by law for the bringing of an action by the taxpayer shall be suspended from the filing of the notice of appeal to the board until the final determination of the matter by the board or the supreme court, as the case may be, and for 60 days thereafter.

Subd. 3. Limitations; exceptions. In any case where, at the time of the taking of an appeal to the board by any person or agency other than the taxpayer, the taxpayer has an existing right of action in the district court for the determination of any issue or issues determinable upon the appeal, such right of action shall be barred, and the determination of such issue or issues upon the appeal, or upon review by the supreme court, shall be conclusive upon the taxpayer, unless within ten days after the service of the notice of appeal upon him the taxpayer shall commence an action for the determination of such issue or issues in the proper district court, upon a verified complaint, shall pay at least the amount of the tax or other obligation conceded by the complaint to be due, if any, shall file with the clerk of such court a bond, approved by the court, in at least such additional amount as might be adjudged against him, including interest, penalty, and costs, conditioned to prosecute the action with diligence and effect and to pay any amount required by or pursuant to any judgment that may be awarded against him therein, and shall serve upon the appellant and file with the clerk of the board a notice of the commencement of such action, with a copy of the summons and complaint therein, and of the bond required, as hereinbefore provided; provided, that this shall not relieve the taxpayer from complying with any other requirements of law. Thereupon further proceedings upon the appeal shall be stayed with respect to the issue or issues involved in the action until final determination of the action; provided, that this shall not stay the appeal as to any other issues. Upon final determination of the action the appeal shall be dismissed as to any issue or issues thereby determined. If the action be dismissed or finally disposed of in any way without final determination of any issue or issues involved in the appeal, the appeal shall be reinstated and may be proceeded with as to such issue or issues with like effect as if the action had not been commenced, and the determination upon the appeal, or upon review by the supreme court, shall be final and conclusive upon the taxpayer. The running of any period of time limited by law for enforcement of any obligation against the taxpayer shall be suspended for such time as the appeal is stayed under the provisions of this subdivision and for 60 days thereafter.

[1939 c. 431 art. 6 s. 18] (2362-18)

271.10 REVIEW BY SUPREME COURT. **Subdivision 1. Certiorari.** A review of any final order of the board of tax appeals may be had upon certiorari by the supreme court upon petition of any party to the proceedings before the board. Such review may be had on the ground that the board was without jurisdiction, that the order of the board was not justified by the evidence or was not in conformity with law, or that the board committed any other error of law.

Subd. 2. **Service of writ.** Within 20 days after notice of the making and filing of the order of the board, and in any case within 60 days after the making and filing of such order, the petitioner for review shall obtain from the supreme court a writ of certiorari, and shall serve the same upon the commissioner of taxation and upon all other parties appearing in the proceedings before the board, also upon the attorney general, unless he is the petitioner, and shall file the original, with proof of such service, with the clerk of the board. Every petitioner, except the attorney general, the commissioner of taxation, the state and its political subdivisions, shall also pay to the clerk a fee of \$15 and file a bond or make a deposit in like manner and amount as in case of an appeal from the district court. The fee shall be disposed of as in such case. Return upon the writ shall be made to the supreme court and the matter shall be heard and determined by the court as in other certiorari cases, subject to the provisions hereof and to such rules as the court may prescribe for cases arising hereunder.

[1939 c. 431 art. 6 s. 19; 1943 c. 174 s. 4] (2362-19)

271.11 ORDERS TO BE PRIMA FACIE EVIDENCE OF FACTS. In all cases determinable by order of the commissioner of taxation, the order of the commissioner, or in case of appeal therefrom, the order of the board of tax appeals or the decision of the supreme court, as the case may be, shall be prima facie evidence of all facts therein stated and shall be prima facie evidence that all precedent requirements of the law were complied with, and shall be prima facie valid, and such order or decision shall be conclusive as to all matters therein determined upon every appellant or petitioner for review and upon all parties to the proceedings who shall have so agreed, in writing, as herein provided.

[1939 c. 431 art. 6 s. 20] (2362-20)

271.12 WHEN ORDER EFFECTIVE. No order for refundment by the commissioner of taxation or the board of tax appeals shall take effect until the time for appeal therefrom or review thereof by all parties entitled thereto has expired. Otherwise every order of the commissioner or the board shall take effect immediately upon the filing thereof, and no appeal therefrom or review thereof shall stay the execution thereof or extend the time for payment of any tax or other obligation unless otherwise expressly provided by law; provided, that in case an order which has been acted upon, in whole or in part, shall thereafter be set aside or modified upon appeal, the determination upon appeal or review shall supersede the order appealed from and be binding upon all parties affected thereby, and such adjustments as may be necessary to give effect thereto shall be made accordingly, subject to any rights of action or defense of the taxpayer, as herein provided. If it be finally determined upon such appeal or review that any person is entitled to refundment of any amount which has been paid for a tax or other obligation, such amount, unless otherwise provided by law, shall be paid to him by the state treasurer, or other proper officer, out of funds derived from taxes of the same kind, if available for the purpose, or out of other available funds, if any, with interest at six per cent, unless a different rate of interest is otherwise provided by law, in which case such other rate shall apply, upon certification by the commissioner of taxation. If any tax, assessment, or other obligation be increased upon such appeal or review, the increase shall be added to the original amount, and may be enforced and collected therewith or in separate proceedings in like manner as the original amount.

[1939 c. 431 art. 6 s. 21; 1945 c. 604 s. 26] (2362-21)

271.13 MAY COMPEL ATTENDANCE OF WITNESSES. The commissioner of taxation, the board of tax appeals, and the several members of the board shall, respectively, have power to subpoena and compel the attendance of witnesses and the production of books, records, papers, and documents at any hearing or investigation at any place within the state in any matter within the scope of their authority, and shall also have power to administer oaths to witnesses and to take testimony under oath. Disobedience of any such subpoena or refusal by any witness to be sworn or to testify upon any material matter at any such hearing or investigation shall be punishable in like manner as a contempt of the district court, in proceedings instituted upon complaint of the authority issuing the subpoena in the district court of the county where the subpoena was made returnable. Subpoenas for witnesses or the production of documentary evidence shall be issued at the request of any party to the proceeding. Subpoenas may be signed by the commissioner or by

any member of the board or by the secretary of the department in behalf of the commissioner or by the clerk of the board in behalf of the board, as the case may be.

[1939 c. 431 art. 6 s. 22] (2362-22)

271.14 DEPOSITIONS. Depositions may be taken for use before the commissioner or the board upon notice, commission, or stipulation, as in civil actions, and the commissioner and the board shall, respectively, have power to issue commissions to take depositions.

[1939 c. 431 art. 6 s. 23] (2362-23)

271.15 WHO MAY ADMINISTER OATHS. The commissioner of taxation, the members of the board of tax appeals, the secretary of the department, the clerk of the board, and all other officers and employees of the department shall, respectively, have power to administer oaths and to take and certify acknowledgments so far as they may deem necessary to the proper discharge of their respective duties, and may authenticate the same with the seal of the department or the board, as the case may be.

[1939 c. 431 art. 6 s. 24] (2362-24)

271.16 RULES AND REGULATIONS. The commissioner of taxation and the board of tax appeals shall, respectively, have power to make and amend rules and regulations, not inconsistent with law, governing the procedure in cases arising before them and other matters within the scope of their respective functions, and such rules and regulations shall have the force and effect of law; provided, that all rules and regulations affecting persons other than members of the department of taxation shall be filed with the secretary of state, and shall not be binding upon any other persons until so filed; provided, further, that the provisions of this section shall not prejudice or abridge any power to make rules or regulations otherwise conferred upon the commissioner or the board by law, or the effect of any rules or regulations made thereunder.

[1939 c. 431 art. 6 s. 25] (2362-25)

271.17 SECRETARY OF DEPARTMENT AND CLERK OF BOARD SHALL BE FILING OFFICERS. The secretary of the department of taxation and the clerk of the board of tax appeals shall be the filing officers and custodians of the books, files, and records of their respective agencies. The secretary and clerk and their deputies shall, respectively, have power to certify and authenticate copies of the books, files, and records in their custody for all purposes in like manner and with like effect as other custodians of public records. The commissioner of taxation, his deputy, and any other officer or employee of the department thereto authorized by the commissioner by written order filed with the secretary of state shall have like power to certify and authenticate copies of any books, files, and records of the department specified in the order, other than those of the board. The chairman and vice-chairman of the board and any other officer or employee of the board thereto authorized by the board by written order filed with the secretary of state shall also have like power to certify and authenticate copies of any books, files, and records of the board specified in the order.

[1939 c. 431 art. 6 s. 26] (2362-26)

271.18 EX-OFFICERS AND EX-EMPLOYEES NOT TO REPRESENT CLIENTS; EXCEPTION; VIOLATION. Except those holding office or employment prior to the passage of Laws 1939, Chapter 431, no officer, member, or employee of the department of taxation, including the board of tax appeals, shall, within one year after his office or employment has terminated, act as counsel, attorney, or agent for a taxpayer or be associated with any other person so acting in connection with any claim or proceeding pending in the department, and no officer or employee, whether appointed or employed before or after the passage of Laws 1939, Chapter 431, shall, at any time after the termination of his office or employment act as counsel, attorney, or agent, or be associated with any person so acting, in connection with any claim or proceeding of which he has knowledge which was acquired in the course of his term of office or employment in the department. Any violation of the provisions of this section shall be a gross misdemeanor.

[1939 c. 431 art. 6 s. 27] (2362-27)

271.19 COSTS AND DISBURSEMENTS. Upon the determination of any appeal under this chapter before the board of tax appeals, or of any review hereunder by the supreme court, the costs and disbursements may be taxed and allowed

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in favor of the prevailing party and against the losing party as in civil actions. In any case where a person liable for a tax or other obligation has lost an appeal or review instituted by him, and the board or court shall determine that he instituted the same merely for the purposes of delay, additional costs, commensurate with the expense incurred and services performed by the agencies of the state in connection with the appeal, but not exceeding \$500 in any case, may be allowed against him, in the discretion of the board or court. Costs and disbursements allowed against any such person shall be added to the tax or other obligation determined to be due, and shall be payable therewith. Costs and disbursements allowed against the state or other public agencies shall be paid out of funds received from taxes or other obligations of the kind involved in the proceeding, or other funds of the agency concerned appropriated and available therefor. Witnesses in proceedings under this chapter shall receive like fees as in the district court, to be paid in the first instance by the parties by whom the witnesses were called, and to be taxed and allowed as herein provided.

[1939 c. 431 art. 6 s. 28] (2362-28)

271.20 DECISIONS FILED WITHIN THREE MONTHS. All questions of fact and law and all matters submitted to the members of the board of tax appeals shall be disposed of and their decision filed with the clerk of the board within three months after such submission, unless sickness or casualty shall prevent, or the time be extended by written consent of the parties. No part of the salary of any member of the board of tax appeals shall be paid unless the voucher therefor be accompanied by certificate of the member that he has fully complied with the requirements of this section.

[1939 c. 431 art. 6 s. 30] (2362-30)