

MINNESOTA STATUTES 1994

DEPARTMENT OF REVENUE

Taxation, Supervision, Data Practices

CHAPTER 270

DEPARTMENT OF REVENUE

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270.01 DEPARTMENT CREATED.

The department of revenue shall be under the supervision and control of a commissioner of revenue.

History: (2362-1) 1939 c 431 art 6 s 1; 1965 c 698 s 3; 1973 c 582 s 3; 1976 c 134 s 78; 1977 c 307 s 29; 1979 c 50 s 25

270.02 DEPARTMENT OF REVENUE; COMMISSIONER OF REVENUE.

Subdivision 1. Powers and duties. The name of the department of taxation is changed to the department of revenue. The name of the commissioner of taxation is changed to the commissioner of revenue. Subject to the provisions of Laws 1973, chapter 582 and other applicable laws, the department of revenue with its commissioner and other officers shall continue to exercise all the powers and duties vested in, or imposed upon its commissioner as existing and constituted immediately prior to July 1, 1973.

Subd. 2. Terms. The commissioner of revenue shall be appointed by the governor under the provisions of section 15.06. The commissioner shall be selected on the basis of ability and experience in the field of tax administration and without regard to political affiliations.

Subd. 3. Powers, organization, assistants. Subject to the provisions of this chapter and other applicable laws the commissioner shall have power to organize the department with such divisions and other agencies as the commissioner deems necessary and to appoint one deputy commissioner, a department secretary, directors of divisions, and such other officers, employees, and agents as the commissioner may deem necessary to discharge the functions of the department, define the duties of such officers, employees, and agents, and delegate to them any of the commissioner's powers or duties, subject to the commissioner's control and under such conditions as the commissioner may prescribe. Appointments to exercise delegated power shall be by written order filed with the secretary of state.

Subd. 4. Department seal. The department of revenue shall have a seal engraved with the words, "State of Minnesota, Department of Revenue." Such seal may be used

to authenticate the official acts of the commissioner or any other members of the department, but the failure to use the seal shall not invalidate any such acts. Duplicate seals may be provided for the use of directors of divisions or other members of the department.

History: (2362-2) 1939 c 431 art 6 s 2; 1949 c 739 s 3; 1951 c 478 s 1; 1951 c 713 s 30; 1965 c 45 s 48; 1965 c 698 s 3; 1969 c 1129 art 8 s 8; 1973 c 582 s 1; 1976 c 134 s 78; 1977 c 305 s 32,33; 1977 c 307 s 29; 1979 c 50 s 26; 1986 c 444

270.021 EX-OFFICERS AND EX-EMPLOYEES NOT TO REPRESENT CLIENTS; PENALTY.

An officer or employee of the department of revenue may not, for a period of one year after the term of office has ended or employment has terminated, act as counsel, attorney, or agent for a taxpayer in connection with a claim or proceeding pending in the department. An officer or employee of the department of revenue may not act as counsel, attorney, or agent for a taxpayer at any time after termination of the office or employment in connection with a claim or proceeding of which the person has knowledge that was acquired during the term of office or employment. A violation of this section is a gross misdemeanor.

History: 1989 c 324 s 1

270.022 FILING OFFICERS.

The commissioner of revenue is the filing officer and custodian of the books, files, and records of the department of revenue. The commissioner may certify copies of the books, files, and records in the custody of the commissioner for all purposes in the same manner as other custodians of public records. The commissioner may authorize other officers or employees of the department of revenue to certify books, files, and records in the custody of the commissioner. The authorization must be made by a written order stating the documents that may be certified and must be filed with the secretary of state.

History: 1989 c 324 s 2

270.03 [Repealed, 1943 c 160 s 1]

270.04 OFFICE AND SUPPLIES FURNISHED; EXPENSES.

The commissioner of revenue shall be provided with suitable and necessary office furniture, supplies, stationery, books, periodicals, newspapers, maps, and financial and commercial reports; and all necessary expenses therefor shall be audited and paid as other expenses are audited and paid. The actual necessary expenses of the commissioner and the commissioner's secretary, clerks, and such experts and assistants as may be employed by the commissioner while traveling on the business of the department shall be paid by the state, such expenditures to be sworn to by the party who incurred the expense and approved by the commissioner of revenue.

History: (2363) 1907 c 408 s 10; 1973 c 582 s 3; 1986 c 444

270.05 MINNESOTA TAX COMMISSION ABOLISHED; POWERS AND DUTIES TRANSFERRED.

All the powers and duties now vested in or imposed upon the department of revenue and the Minnesota tax commission, except those herein or by other provisions of law transferred to the tax court, are hereby transferred to, vested in, and imposed upon, the commissioner of revenue. The Minnesota tax commission as heretofore constituted is hereby abolished.

History: (2362-3) 1939 c 431 art 6 s 3; 1965 c 698 s 3; 1973 c 582 s 3; 1976 c 134 s 78; 1977 c 307 s 29

270.051 [Repealed, 1984 c 502 art 14 s 20]

270.052 AGREEMENT WITH INTERNAL REVENUE SERVICE.

Pursuant to section 270B.12, the commissioner may enter into an agreement with the Internal Revenue Service to identify taxpayers who have refunds due from the department of revenue and liabilities owing to the Internal Revenue Service. In accordance with the procedures established in the agreement, the Internal Revenue Service may levy against the refunds to be paid by the department of revenue.

History: 1987 c 268 art 17 s 1; 1989 c 184 art 2 s 11; 1994 c 510 art 2 s 1

270.058 AUTHORITY TO PAY LOCAL TAXES; APPROPRIATION.

The commissioner may pay to any local government unit, any locally imposed sales taxes that may be assessed against the department of revenue. There is appropriated to the commissioner of revenue from the general fund the amount needed to make the payments.

History: 1987 c 268 art 14 s 7

270.059 REVENUE DEPARTMENT SERVICE AND RECOVERY SPECIAL REVENUE FUND.

A revenue department service and recovery special revenue fund is created for the purpose of recovering the costs of furnishing public government data and related services or products, as well as recovering costs associated with collecting local taxes on sales. All money collected under this section is deposited in the revenue department service and recovery special revenue fund. Money in the fund is appropriated to the commissioner of revenue to reimburse the department of revenue for the costs incurred in administering the tax law or providing the data, service, or product.

History: 1991 c 345 art 1 s 83

270.06 POWERS AND DUTIES.

The commissioner of revenue shall:

(1) have and exercise general supervision over the administration of the assessment and taxation laws of the state, over assessors, town, county, and city boards of review and equalization, and all other assessing officers in the performance of their duties, to the end that all assessments of property be made relatively just and equal in compliance with the laws of the state;

(2) confer with, advise, and give the necessary instructions and directions to local assessors and local boards of review throughout the state as to their duties under the laws of the state;

(3) direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the liability and punishment of public officers and officers and agents of corporations for failure or negligence to comply with the provisions of the laws of this state governing returns of assessment and taxation of property, and cause complaints to be made against local assessors, members of boards of equalization, members of boards of review, or any other assessing or taxing officer, to the proper authority, for their removal from office for misconduct or negligence of duty;

(4) require county attorneys to assist in the commencement of prosecutions in actions or proceedings for removal, forfeiture and punishment for violation of the laws of this state in respect to the assessment and taxation of property in their respective districts or counties;

(5) require town, city, county, and other public officers to report information as to the assessment of property, collection of taxes received from licenses and other sources, and such other information as may be needful in the work of the department of revenue, in such form and upon such blanks as the commissioner may prescribe;

(6) require individuals, copartnerships, companies, associations, and corporations to furnish information concerning their capital, funded or other debt, current assets and liabilities, earnings, operating expenses, taxes, as well as all other statements now required by law for taxation purposes;

(7) subpoena witnesses, at a time and place reasonable under the circumstances, to appear and give testimony, and to produce books, records, papers and documents for inspection and copying relating to any matter which the commissioner may have authority to investigate or determine;

(8) issue a subpoena which does not identify the person or persons with respect to whose liability the subpoena is issued, but only if (a) the subpoena relates to the investigation of a particular person or ascertainable group or class of persons, (b) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any law administered by the commissioner, (c) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the subpoena is issued) is not readily available from other sources, (d) the subpoena is clear and specific as to the information sought to be obtained, and (e) the information sought to be obtained is limited solely to the scope of the investigation. Provided further that the party served with a subpoena which does not identify the person or persons with respect to whose tax liability the subpoena is issued shall have the right, within 20 days after service of the subpoena, to petition the district court for the judicial district in which lies the county in which that party is located for a determination as to whether the commissioner of revenue has complied with all the requirements in (a) to (e), and thus, whether the subpoena is enforceable. If no such petition is made by the party served within the time prescribed, the subpoena shall have the force and effect of a court order;

(9) cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken, upon notice to the interested party, if any, in like manner that depositions of witnesses are taken in civil actions in the district court, in any matter which the commissioner may have authority to investigate or determine;

(10) investigate the tax laws of other states and countries and to formulate and submit to the legislature such legislation as the commissioner may deem expedient to prevent evasions of assessment and taxing laws, and secure just and equal taxation and improvement in the system of assessment and taxation in this state;

(11) consult and confer with the governor upon the subject of taxation, the administration of the laws in regard thereto, and the progress of the work of the department of revenue, and furnish the governor, from time to time, such assistance and information as the governor may require relating to tax matters;

(12) transmit to the governor, on or before the third Monday in December of each even-numbered year, and to each member of the legislature, on or before November 15 of each even-numbered year, the report of the department of revenue for the preceding years, showing all the taxable property in the state and the value of the same, in tabulated form;

(13) inquire into the methods of assessment and taxation and ascertain whether the assessors faithfully discharge their duties, particularly as to their compliance with the laws requiring the assessment of all property not exempt from taxation;

(14) administer and enforce the assessment and collection of state taxes and, from time to time, make, publish, and distribute rules for the administration and enforcement of assessments and fees administered by the commissioner and state tax laws. The rules have the force of law;

(15) prepare blank forms for the returns required by state tax law and distribute them throughout the state, furnishing them subject to charge on application;

(16) prescribe rules governing the qualification and practice of agents, attorneys, or other persons representing taxpayers before the commissioner. The rules may require that those persons, agents, and attorneys show that they are of good character and in good repute, have the necessary qualifications to give taxpayers valuable services, and are otherwise competent to advise and assist taxpayers in the presentation of their case before being recognized as representatives of taxpayers. After due notice and opportunity for hearing, the commissioner may suspend and disbar from further practice before the commissioner any person, agent, or attorney who is shown to be

incompetent or disreputable, who refuses to comply with the rules, or who with intent to defraud, willfully or knowingly deceives, misleads, or threatens a taxpayer or prospective taxpayer, by words, circular, letter, or by advertisement. This clause does not curtail the rights of individuals to appear in their own behalf or partners or corporations' officers to appear in behalf of their respective partnerships or corporations;

(17) appoint agents as the commissioner considers necessary to make examinations and determinations. The agents have the rights and powers conferred on the commissioner to subpoena, examine, and copy books, records, papers, or memoranda, subpoena witnesses, administer oaths and affirmations, and take testimony. In addition to administrative subpoenas of the commissioner and the agents, upon demand of the commissioner or an agent, the court administrator of any district court shall issue a subpoena for the attendance of a witness or the production of books, papers, records, or memoranda before the agent for inspection and copying. Disobedience of a court administrator's subpoena shall be punished by the district court of the district in which the subpoena is issued, or in the case of a subpoena issued by the commissioner or an agent, by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of the district court;

(18) appoint and employ additional help, purchase supplies or materials, or incur other expenditures in the enforcement of state tax laws as considered necessary. The salaries of all agents and employees provided for in this chapter shall be fixed by the appointing authority, subject to the approval of the commissioner of administration;

(19) execute and administer any agreement with the secretary of the treasury of the United States or a representative of another state regarding the exchange of information and administration of the tax laws;

(20) administer and enforce the provisions of sections 325D.30 to 325D.42, the Minnesota unfair cigarette sales act;

(21) authorize the use of unmarked motor vehicles to conduct seizures or criminal investigations pursuant to the commissioner's authority; and

(22) exercise other powers and perform other duties required of or imposed upon the commissioner of revenue by law.

History: (2364) 1907 c 408 s 1; 1943 c 199 s 1; 1945 c 599 s 1; 1971 c 670 s 1; 1973 c 123 art 5 s 7; 1973 c 582 s 3; 1974 c 406 s 66; 1977 c 203 s 5; 1979 c 303 art 10 s 4; 1980 c 423 s 2; 1982 c 523 art 2 s 2; 1983 c 180 s 1; 1985 c 248 s 70; 1986 c 444; 1989 c 277 art 1 s 6; 1990 c 480 art 2 s 1; 1993 c 375 art 10 s 7; 1994 c 510 art 6 s 2

270.0601 TAX COURT APPEALS.

The powers of examination, investigation, and subpoena, and the power to administer oaths and take testimony granted to the commissioner of revenue and officers and employees of the department of revenue in section 270.06 do not apply to a matter that has been appealed to the tax court.

History: 1989 c 324 s 3

270.0602 BASIS FOR EVALUATION OF DEPARTMENT OF REVENUE EMPLOYEES.

The department of revenue must not use tax enforcement results to impose individual revenue quotas with respect to employees or their immediate supervisors who are directly involved in assessment or collection activities. The department may, however, use individual performance with regard to number of cases completed and, in the case of collections employees, dollars collected, as factors in evaluating an employee and not be considered as failing to comply with this section.

History: 1990 c 604 art 1 s 1

270.0603 DISCLOSURE OF RIGHTS OF TAXPAYERS.

Subdivision 1. **In general.** The commissioner of revenue shall, as soon as practica-

ble, but not later than 180 days after the date of enactment of Laws 1990, chapter 604, prepare statements that set forth in simple and nontechnical terms:

- (1) the rights and obligations of the department of revenue and the taxpayer during an audit;
- (2) the procedures by which a taxpayer may appeal an adverse decision of the department, including administrative and judicial appeals;
- (3) the procedures for filing refund claims and filing of taxpayer complaints; and
- (4) the procedures that the department may use in enforcing the tax laws, including assessment, jeopardy assessment, levy and distraint, and the filing of liens.

Subd. 2. **Transmission to legislature.** The commissioner shall provide drafts of the statements required under subdivision 1 to the chairs of the house of representatives and senate tax committees for proposed revisions of the statements.

Subd. 3. **Distribution.** The appropriate statement prepared in accordance with subdivisions 1 and 2 must be distributed by the commissioner to all taxpayers contacted with respect to the determination or collection of a tax, other than the providing of tax forms. Failure to receive the statement does not invalidate the determination or collection action.

History: 1990 c 604 art 1 s 2

270.0604 REVENUE NOTICES.

Subdivision 1. **Authority.** The commissioner of revenue may make, adopt, and publish interpretive revenue notices. A "revenue notice" is a policy statement that has been published pursuant to subdivision 5 and that provides interpretation, details, or supplementary information concerning the application of law or rules. Revenue notices are published for the information and guidance of taxpayers, the department of revenue, and others concerned.

Subd. 2. **Effect.** Revenue notices do not have the force and effect of law and have no precedential effect, but may be relied on by taxpayers until revoked or modified. A notice may be expressly revoked or modified by the department, by the issuance of a revenue notice, but may not be revoked or modified retroactively to the detriment of the taxpayers. A change in the law or an interpretation of the law occurring after the revenue notice is issued, whether in the form of a statute, court decision, administrative rule, or revenue notice, results in revocation or modification of the notice to the extent that the change affects the notice.

Subd. 3. **Retroactivity.** Revenue notices are generally interpretive of existing law and therefore are retroactive to the effective date of the applicable law provision unless otherwise stated in the notice.

Subd. 4. **Issuance.** The issuance of revenue notices is at the discretion of the commissioner of revenue. The commissioner shall establish procedures governing the issuance of revenue notices and tax information bulletins.

Subd. 5. **Publication.** The commissioner shall publish the revenue notices in the State Register and in any other manner that makes them accessible to the general public. The commissioner may charge a reasonable fee for publications.

Subd. 6. [Repealed, 1994 c 510 art 1 s 13]

History: 1991 c 291 art 21 s 6

270.0605 TAX INFORMATION BULLETINS.

The commissioner of revenue may issue tax information bulletins. "Tax information bulletins" are informational guides to enable taxpayers and affected local governmental officials to become more familiar with Minnesota tax laws and their rights and responsibilities under the tax laws. Nothing contained in the tax information bulletins supersedes, alters, or otherwise changes any provisions of the Minnesota tax law, administrative rules, court decisions, or revenue notices.

History: 1991 c 291 art 21 s 7; 1994 c 510 art 1 s 3

270.061 SERVICE OF NOTICE BY MAIL.

Notwithstanding any other law to the contrary, the commissioner of revenue, if required to serve notices by registered or certified mail, may choose to make such services by regular mail, retaining a record of adequate proof of such service.

History: *Ex1967 c 48 s 96; 1969 c 1139 s 66; 1973 c 582 s 3; 1986 c 444*

270.062 ACCESS TO CRIMINAL JUSTICE DATA.

The commissioner of revenue may enter into an agreement with the commissioner of public safety allowing designated employees of the revenue department to have access to the criminal justice data communications network provided in section 299C.46. For purposes of that section, the special investigation unit of the revenue department is considered a criminal justice agency.

History: *1Sp1985 c 14 art 16 s 1*

270.063 COLLECTION OF DELINQUENT TAXES; COSTS.

For the purpose of collecting delinquent state tax liabilities, there is appropriated to the commissioner of revenue an amount representing the cost of collection by contract with collection agencies, revenue departments of other states, or attorneys to enable the commissioner to reimburse these agencies, departments, or attorneys for this service. The commissioner shall report quarterly on the status of this program to the chair of the house tax and appropriation committees and senate tax and finance committees.

Notwithstanding section 16A.15, subdivision 3, the commissioner of revenue may authorize the prepayment of sheriff's fees, attorney fees, fees charged by revenue departments of other states, or court costs to be incurred in connection with the collection of delinquent tax liabilities owed to the commissioner of revenue.

History: *1981 c 356 s 336; 1982 c 523 art 2 s 1; 1985 c 101 s 1; 1986 c 444; 1Sp1986 c 1 art 7 s 10; 1992 c 513 art 4 s 34; 1993 c 192 s 84*

270.064 REQUESTING ASSISTANCE IN CRIMINAL TAX INVESTIGATIONS.

If the commissioner of revenue has reason to believe that a criminal violation of the state tax laws or chapter 349 has occurred, the commissioner may request the attorney general or the prosecuting authority of any county to assist in a criminal tax investigation and may disclose information to the prosecuting authority relevant to the investigation.

History: *1Sp1985 c 14 art 16 s 2; 1989 c 184 art 2 s 12; 1990 c 594 art 1 s 62*

270.065 EQUALITY AND CONSISTENCY IN THE EXERCISE OF POWERS AND DUTIES.

Notwithstanding the provisions of any other law, the commissioner of revenue may use any and all information in possession, or to which the commissioner has access, to insure equal and consistent application and enforcement of all tax laws administered by the department. This section shall not be construed as granting to the commissioner of revenue any power to release any information outside the department.

History: *1971 c 431 s 1; 1973 c 582 s 3; 1986 c 444*

270.066 COMMISSIONER TO REQUIRE SOCIAL SECURITY OR IDENTIFYING NUMBERS ON FORMS.

Notwithstanding the provisions of any other law, the commissioner of revenue may require that a form required to be filed with the commissioner include the social security number, federal employer identification number, or Minnesota taxpayer identification number of the taxpayer or applicant.

History: *1978 c 767 s 2; 1987 c 268 art 17 s 2*

270.067 TAX EXPENDITURE BUDGET.

Subdivision 1. **Statement of purpose.** State governmental policy objectives are sought to be achieved both by direct expenditure of governmental funds and by the granting of special and selective tax relief or tax expenditures. Both direct expenditures of governmental funds and tax expenditures have an effect on the ability of the state and local governments to lower tax rates or to increase expenditures. As a result, tax expenditures should receive a regular and comprehensive review by the legislature as to (a) their total cost, (b) their effectiveness in achieving their objectives, (c) their effect on the fairness and equity of the distribution of the tax burden, and (d) the public and private cost of administering tax expenditure financed programs. This section is intended to facilitate a regular review of the state and local tax expenditure budget by the legislature by providing for the preparation of a regular biennial tax expenditure budget.

Subd. 2. **Preparation; submission.** The commissioner of revenue shall prepare a tax expenditure budget for the state. The tax expenditure budget report shall be submitted to the legislature as a supplement to the governor's budget and at the same time as provided for submission of the budget pursuant to section 16A.11, subdivision 1.

Subd. 3. **Period covered.** The report shall include estimates of annual tax expenditures for, at a minimum, a three-year period including the two-year period covered in the governor's budget submitted in the preceding January pursuant to section 16A.11.

Subd. 4. **Contents.** The report shall detail for each tax expenditure item the amount of tax revenue foregone, a citation of the statutory or other legal authority for the expenditure, and the year in which it was enacted or the tax year in which it became effective. The report may contain additional information which the commissioner considers relevant to the legislature's consideration and review of individual tax expenditure items. This may include, but is not limited to, statements of the intended purpose of the tax expenditure, analysis of whether the expenditure is achieving that objective, and the effect of the expenditure device on the distribution of the tax burden and administration of the tax system.

Subd. 5. **Revenue estimates; legislative bills.** Upon reasonable notice from the chair of the house or senate tax committee that a bill is scheduled for hearing, the commissioner of revenue shall prepare an estimate of the effect on the state's tax revenues which would result from the passage of a legislative bill establishing, extending, or restricting a tax expenditure. These revenue estimates shall contain the same information as provided in subdivision 4 for expenditure items contained in the tax expenditure budget, as appropriate.

Subd. 6. **Definitions.** For purposes of this section, the following terms have the meanings given:

(1) "Tax expenditure" means a tax provision which provides a gross income definition, deduction, exemption, credit, or rate for certain persons, types of income, transactions, or property that results in reduced tax revenue.

(2) "Tax" means any tax of statewide application or any tax authorized by state law to be levied by local governments generally. It does not include a special local tax levied pursuant to special law or to a special local tax levied pursuant to general authority that is no longer applicable to local governments generally.

History: 1983 c 301 s 176; 1986 c 444; 1Sp1989 c 1 art 17 s 1,2; 1991 c 291 art 21 s 8,9 .

270.068 REVISION OF MINNESOTA ASSESSORS' MANUAL.

In accordance with the provisions of section 270.06, clause (14), the commissioner of revenue shall prepare a revised Minnesota assessors' manual by July 1, 1986, and thereafter shall revise the manual in a timely manner.

History: 1Sp1985 c 14 art 3 s 15

270.0681 TAX INFORMATION SAMPLE DATA.

Subdivision 1. **Preparation of samples.** The commissioner of revenue shall prepare microdata samples of income tax returns and other information useful for purposes of (1) estimating state revenues, (2) simulating the effect of changes or proposed changes in state and federal tax law on the amount of state revenues, and (3) analyzing the incidence of present or proposed taxes.

Subd. 2. **Coordinating committee.** A coordinating committee is established to oversee and coordinate preparation of the microdata samples. The committee consists of (1) the director of the research division of the department of revenue who shall serve as chair of the committee, (2) the state economist, (3) the chair of the committee on taxes of the house of representatives or the chair's designee, and (4) the chair of the committee on taxes and tax laws of the senate or the chair's designee. The committee shall consider the analysis needs and use of the microdata samples by the finance and revenue departments and the legislature in designing and preparing the samples, including the type of data to be included, the structure of the samples, size of the samples, and other relevant factors.

Subd. 3. **Contents of samples.** The samples must consist of information derived from a random sample of federal and Minnesota individual income tax returns. The samples prepared in odd numbered years must be augmented by additional information from other sources as the coordinating committee determines is feasible and appropriate. The coordinating committee shall consider inclusion of (1) information derived from property tax refund returns, (2) the estimated market value of the taxpayer's home from the homestead declaration, and (3) information from other sources, such as the surveys conducted by the United States departments of commerce and labor.

Subd. 4. **Consultation on analysis models.** The coordinating committee shall facilitate regular consultation among the department of revenue, the department of finance, and house and senate staffs in development and maintenance of their respective computer models used to analyze the microdata samples. The committee shall encourage efforts to attain more commonality in the models, greater sharing of program development efforts and programming tasks, and more consistency in the resulting analyses.

History: 1988 c 719 art 19 s 10

270.0682 TAX INCIDENCE REPORTS.

Subdivision 1. **Biennial report.** The commissioner of revenue shall report to the legislature by March 1 of each odd-numbered year on the overall incidence of the income tax, sales and excise taxes, and property tax. The report shall present information on the distribution of the tax burden (1) for the overall income distribution, using a systemwide incidence measure such as the Suits index or other appropriate measures of equality and inequality, (2) by income classes, including at a minimum deciles of the income distribution, and (3) by other appropriate taxpayer characteristics.

Subd. 2. **Bill analyses.** At the request of the chair of the house tax committee or the senate committee on taxes and tax laws, the commissioner of revenue shall prepare an incidence impact analysis of a bill or a proposal to change the tax system which increases, decreases, or redistributes taxes by more than \$20,000,000. To the extent data is available on the changes in the distribution of the tax burden that are affected by the bill or proposal, the analysis shall report on the incidence effects that would result if the bill were enacted. The report may present information using systemwide measures, such as Suits or other similar indexes, by income classes, taxpayer characteristics, or other relevant categories. The report may include analyses of the effect of the bill or proposal on representative taxpayers. The analysis must include a statement of the incidence assumptions that were used in computing the burdens.

Subd. 3. **Income measure.** The incidence analyses shall use the broadest measure of economic income for which reliable data is available.

History: 1990 c 604 art 10 s 9

270.069 COMMISSIONER TO COLLECT CERTAIN LOCAL TAXES.

Subdivision 1. Costs deducted; appropriation. If the commissioner of revenue agrees to collect a locally imposed tax, the local unit of government must agree that all the direct and indirect costs of the department of revenue for collecting the tax and any other statewide indirect costs will be deducted from the amounts collected and paid to the local unit of government. The amounts deducted must be deposited in the state treasury and credited to the general fund.

Subd. 2. Development costs. If the commissioner determines that a new computer system will be required to collect the locally imposed taxes, the costs of development of the system will be charged to the first local units of government to be included in the system. Any additional local units of government that by agreement are added to the system will be charged for a share of the development costs. The charge will be determined by the commissioner who shall then refund to the original local units of government their portion of the development costs recovered from the additional users.

History: *1Sp1986 c 1 art 8 s 6; 1989 c 335 art 4 s 69*

270.07 POWER TO ABATE; CORRECTION OF ERRORS.

Subdivision 1. Powers of commissioner; application for abatement; orders. (a) The commissioner of revenue shall prescribe the form of all blanks and books required under this chapter and shall hear and determine all matters of grievance relating to taxation. Except as otherwise provided by law, the commissioner shall have power to grant such reduction or abatement of net tax capacities or taxes and of any costs, penalties or interest thereon as the commissioner may deem just and equitable, and to order the refundment, in whole or in part, of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid. Application therefor shall be submitted with a statement of facts in the case and the favorable recommendation of the county board or of the board of abatement of any city where any such board exists, and the county auditor of the county wherein such tax was levied or paid. In the case of taxes other than gross earnings taxes, the order may be made only on application and approval as provided in this paragraph. No reduction, abatement, or refundment of any special assessments made or levied by any municipality for local improvements shall be made unless it is also approved by the board of review or similar taxing authority of such municipality.

(b) The commissioner has the power to grant reductions or abatements of gross earnings tax. An application for reduction of gross earnings taxes may be made directly to the commissioner without the favorable action of the county board and county auditor. The commissioner shall direct that any gross earnings taxes that may have been erroneously or unjustly paid be applied against unpaid taxes due from the applicant.

(c) The commissioner shall forward to the county auditor a copy of the order made by the commissioner in all cases in which the approval of the county board is required.

(d) The commissioner may refer any question that may arise in reference to the true construction of this chapter to the attorney general, and the decision thereon shall be in force and effect until annulled by the judgment of a court of competent jurisdiction.

(e) The commissioner may by written order abate, reduce, or refund any penalty or interest imposed by any law relating to taxation, if in the commissioner's opinion the failure to timely pay the tax or failure to timely file the return is due to reasonable cause. The order shall be made on application of the taxpayer to the commissioner.

(f) If an order issued under this subdivision is for an abatement, reduction, or refund of over \$5,000, it shall be valid only if approved in writing by the attorney general.

(g) An appeal may not be taken to the tax court from any order of the commissioner of revenue made in the exercise of the discretionary authority granted in paragraph (a) with respect to the reduction or abatement of real or personal property taxes in response to a taxpayer's application for an abatement, reduction, or refund of taxes, net tax capacities, costs, penalties, or interest.

Subd. 1a. Examination of application; reductions; appeals. The commissioner shall examine all applications submitted by a county board pursuant to section 375.192, subdivision 3. If the applicant has previously submitted a claim for property tax relief pursuant to chapter 290A based on the property taxes payable prior to receiving the abatement, the commissioner may approve the application in an amount reduced by the relief provided pursuant to chapter 290A.

An appeal may be taken to the tax court from an order of the commissioner made pursuant to this subdivision.

Subd. 2. Correction of errors. The commissioner of revenue, on application of the county auditor with the approval of the county board, may order the correction of any administrative and clerical errors in the assessment, levy and extension of ad valorem taxes other than valuation.

Subd. 3. Additional powers of commissioner. Notwithstanding any other provision of law the commissioner of revenue may,

(a) based upon the administrative costs of processing, determine minimum standards for the determination of additional tax for which an order shall be issued, and

(b) based upon collection costs as compared to the amount of tax involved, determine minimum standards of collection, and

(c) based upon the administrative costs of processing, determine the minimum amount of refunds for which an order shall be issued and refund made where no claim therefor has been filed, and

(d) cancel any amounts below these minimum standards determined under (a) and (b) hereof, and

(e) based upon the inability of a taxpayer to pay a delinquent tax liability, abate the liability if the taxpayer agrees to perform uncompensated public service work for a state agency, a political subdivision or public corporation of this state, or a nonprofit educational, medical, or social service agency. The department of corrections shall administer the work program. No benefits under chapter 176 or 268 shall be available, but a claim authorized under section 3.739 may be made by the taxpayer. The state may not enter into any agreement that has the purpose of or results in the displacement of public employees by a delinquent taxpayer under this section. The state must certify to the appropriate bargaining agent or employees, as applicable, that the work performed by a delinquent taxpayer will not result in the displacement of currently employed workers or layoff from a substantially equivalent position, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits. The program authorized under this paragraph terminates June 30, 1998.

Subd. 4. Erroneous remittances. If a remittance is erroneously made payable to the commissioner of revenue and the commissioner had knowledge that the proper payee is a state or local official of this state, the commissioner may endorse such remittance to the proper state or local official. The commissioner of revenue is also authorized to return a remittance if the records indicate that it has been erroneously submitted.

Subd. 5. Credit of overpayment to delinquent tax liabilities. Notwithstanding any other provision of law to the contrary, in the case of an overpayment of any tax collected by the commissioner of revenue, the commissioner may credit the amount of such overpayment against any uncontested delinquent tax liability on the part of the taxpayer who made the overpayment. An overpayment may be credited under this subdivision only if the uncontested delinquent liability has been assessed within ten years of the date on which the overpayment is credited. However, this limitation shall not be applicable if the delinquent liability has been entered into judgment or if legal action is pending for collection of the liability or for renewal of the judgment. An amount paid as tax shall constitute an overpayment even if in fact there was no tax liability with respect to which such amount was paid.

Subd. 6. Abatement of penalty. (a) A request for abatement of penalty under subdivision 1, under section 289A.60, subdivision 4, or under paragraph (c), must be filed with the commissioner within 60 days of the date the notice was mailed to the taxpayer's last known address, stating that a penalty has been imposed.

(b) If the commissioner issues an order denying a request for abatement of penalty, the taxpayer may, except as limited under subdivision 1, file an administrative appeal as provided in section 289A.65 or appeal to tax court as provided in section 271.06.

If the commissioner does not issue an order on the abatement request within 60 days from the date the request is received, the taxpayer may appeal to tax court as provided in section 271.06.

(c) The commissioner shall abate any part of a penalty or additional tax charge under section 289A.25, subdivision 2, or 289A.26, subdivision 4, attributable to erroneous advice given to the taxpayer in writing by an employee of the department acting in an official capacity, if the advice:

(1) was reasonably relied on and was in response to a specific written request of the taxpayer; and

(2) was not the result of failure by the taxpayer to provide adequate or accurate information.

History: (1983) RL s 801; 1909 c 96 s 1; 1911 c 339 s 1; 1923 c 145 s 1; 1941 c 454; 1949 c 45 s 1; Ex1959 c 59 s 1; 1965 c 357 s 1; 1965 c 506 s 1; 1969 c 97 s 1; 1971 c 479 s 1; 1973 c 457 s 1; 1973 c 582 s 3; 1975 c 377 s 1,2; 1976 c 134 s 78; 1977 c 307 s 29; 1978 c 767 s 3; 1982 c 523 art 2 s 3; 1986 c 444; 1988 c 719 art 5 s 84; 1989 c 324 s 4; 1989 c 329 art 15 s 20; 1990 c 604 art 1 s 3; 1992 c 511 art 9 s 4; 1993 c 375 art 17 s 6

270.071 DEFINITIONS.

Subdivision 1. **Applicability.** The following words and phrases, when used in sections 270.071 to 270.079, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

Subd. 2. **Air commerce.** (a) "Air commerce" means the transportation by aircraft of persons or property for hire in interstate, intrastate, or international transportation on regularly scheduled flights or on intermittent or irregularly timed flights by airline companies.

(b) "Air commerce" includes but is not limited to an intermittent or irregularly timed flight, a flight arranged at the convenience of an airline and the person contracting for the transportation, or a charter flight. It includes any airline company making three or more flights in or out of Minnesota during a calendar year.

(c) "Air commerce" does not include casual transportation for hire by aircraft commonly owned and used for private airflight purposes if the person furnishing the transportation does not hold out to be engaged regularly in transportation for hire.

Subd. 3. **Aircraft.** "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

Subd. 4. **Airline company.** "Airline company" means any person who undertakes, directly or indirectly, to engage in the business of air commerce.

Subd. 5. **Commissioner.** "Commissioner" means state commissioner of revenue.

Subd. 6. **Equated plane hours.** "Equated plane hours" means hours spent by aircraft in flight weighted according to the cargo capacity of each aircraft.

Subd. 7. **Flight property.** "Flight property" means all aircraft and flight equipment used in connection therewith, including spare flight equipment.

Subd. 8. **Person.** "Person" means any individual, corporation, firm, copartnership, company, or association, and includes any guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity therefor.

Subd. 9. **Small or medium sized community.** "Small or medium sized community" means a home rule charter or statutory city or town in Minnesota with a population of 100,000 or fewer that is not located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington counties.

History: 1945 c 418 s 1; 1953 c 672 s 1; 1973 c 582 s 3; 1976 c 334 s 2; 1986 c 444; 1987 c 268 art 14 s 8; 1989 c 277 art 2 s 8; 1993 c 375 art 3 s 2

270.072 TAXATION AND ASSESSMENT OF FLIGHT PROPERTY.

Subdivision 1. **Tax on real estate.** All real property of an airline company and all personal property thereof except flight property shall be taxed as otherwise provided by law.

Subd. 2. **Assessment of flight property.** The flight property of all airline companies operating in Minnesota shall be assessed annually by the commissioner in the manner prescribed by sections 270.071 to 270.079. Aircraft with a gross weight of less than 30,000 pounds and used on intermittent or irregularly timed flights shall be excluded from the provisions of sections 270.071 to 270.079.

Subd. 3. **Report by airline company.** Every airline company engaged in air commerce in this state shall file with the commissioner on or before the time fixed by the commissioner a report under oath setting forth specifically the information prescribed by the commissioner to enable the commissioner to make the assessment required in sections 270.071 to 270.079, unless the commissioner determines that the airline company or person should be excluded from filing because its activities do not constitute air commerce as defined herein. A penalty of five percent of the tax being assessed is imposed on a late filing of the annual report. If the report is not filed within 30 days, an additional penalty of five percent of the assessed tax is imposed for each additional 30 days or fraction of 30 days until the return is filed. The penalty imposed under this section must not exceed the lesser of \$25,000 or 25 percent of the assessed tax.

Subd. 4. **Extension of time.** The commissioner for good cause may extend for not to exceed 30 days the time for making a report.

Subd. 5. **Taxes imposed a personal debt.** The taxes imposed under the provisions of sections 270.071 to 270.079 shall be a personal debt of the airline company in whose name the property is assessed. Such taxes may be enforced by action in debt by the attorney general on behalf of the state.

History: 1945 c 418 s 2,3,7,10; 1976 c 334 s 3,4; 1986 c 444; 1989 c 277 art 2 s 9,10; 1993 c 375 art 3 s 3

270.073 EXAMINATIONS AND INVESTIGATIONS.

Subdivision 1. **Powers of commissioner.** For the purpose of determining the correctness of any statement, the commissioner shall have the power to examine or cause to be examined any books, papers, records, or memoranda relevant to the determination of the net tax capacity of flight property as herein provided, including the airline company's retained copy of any return or statement made to the United States of America or any state for any year, whether such books, papers, records, or memoranda are the property of or in the possession of the airline company or any other person. The commissioner shall have the right to inspect the originals of such reports with or without obtaining copies from the company. The commissioner shall have further power to require the attendance of any airline company or other person having knowledge or information in the premises, to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination and to administer oaths or affirmations.

Subd. 2. **Appointments of others; powers of subpoena.** For the purpose of making such examinations, the commissioner may appoint such persons as the commissioner may deem necessary. Such persons shall have the rights and powers with reference to the examining of books, papers, records, or memoranda, and with reference to the subpoenaing of witnesses, administering of oaths and affirmations, and taking of testimony, which are conferred upon the commissioner hereby. The court administrator of any court of record, upon demand of any such person, shall issue a subpoena for the attendance of any witness or the production of any books, papers, records, or memoranda before such person. The commissioner may also issue subpoenas for the appearance of witnesses before the commissioner or before such persons. Disobedience of subpoenas so issued shall be punished by the district court of the district in which the subpoena is issued as for a contempt of the district court.

Subd. 3. **Assessment on available information.** If any airline company shall refuse or neglect to make the statement required by this section to the commissioner, or shall refuse or neglect to permit an inspection and examination of its property, its records, books, accounts or other papers when requested by the commissioner, or shall refuse or neglect to appear before the commissioner or a person appointed under subdivision 2 when required so to do, the commissioner shall assess the tax provided for by sections 270.071 to 270.079 against the airline company according to the commissioner's best judgment on available information, and such airline company shall be estopped to question or impeach the action or determination of the commissioner, except upon proof of fraud on the part of the commissioner; and the commissioner may add to the assessment a penalty not exceeding ten percent of the assessment.

History: 1945 c 418 s 4; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20

270.074 VALUATION OF FLIGHT PROPERTY; METHODS OF APPORTIONMENT; RATIO OF TAX.

Subdivision 1. **Valuation.** The commissioner shall determine the market valuation of all flight property operated or used by every airline company in air commerce in this state. The valuation apportioned to this state of such flight property shall be the proportion of the total valuation thereof determined on the basis of the total of the following percentages:

(1) 33-1/3 percent of the percentage which the total tonnage of passengers, express and freight first received by the airline company in this state during the preceding calendar year plus the total tonnage of passengers, express and freight finally discharged by it within this state during the preceding calendar year is of the total of such tonnage first received by the airline company or finally discharged by it, within and without this state during the preceding calendar year.

(2) 33-1/3 percent of the percentage which, in equated plane hours, the total time of all aircraft of the airline company in flight in this state during the preceding calendar year, is of the total of such time in flight within and without this state during the preceding calendar year.

(3) 33-1/3 percent of the percentage which the number of revenue ton miles of passengers, mail, express and freight flown by the airline company within this state during the preceding calendar year is of the total number of such miles flown by it within and without this state during the preceding calendar year.

Subd. 2. **Other apportionment methods.** The method prescribed by subdivision 1 shall be presumed to determine fairly and correctly the value of the flight property of an airline allocable to this state. Any airline aggrieved by the valuation of the flight property or the application to its case of the apportionment methods prescribed by subdivision 1, may petition the commissioner for determination of the valuation or the apportionment thereof to this state by the use of some other method. Thereupon, if the commissioner finds that the application of the methods prescribed by subdivision 1 will be unjust to the airline, the commissioner may allow the use of the methods so petitioned for by the airline, or may determine the valuation or apportionment thereof by other methods if satisfied that such other methods will fairly reflect such valuation or apportionment thereof.

Subd. 3. **Tax capacity.** (a) The flight property of every airline company shall have a tax capacity of 70 percent of the value thereof apportioned to this state under subdivision 1, except that quiet aircraft shall have a tax capacity of 40 percent of the value determined under subdivision 1. Quiet aircraft shall include turboprops and aircraft defined as stage III by the Federal Aeronautics Administration. If, in the opinion of the commissioner, other aircraft may be qualified as quiet aircraft, the commissioner may adopt rules providing additional qualifications.

(b) The flight property of an airline company that owns or leases aircraft the majority of which are turboprops, and which provides, during six months or more of

the year that taxes are levied, scheduled passenger service to three or more airports inside or outside of this state that serve small or medium sized communities, shall be assessed at 50 percent of the assessment percentage otherwise set by paragraph (a).

History: 1945 c 418 s 5; 1953 c 672 s 2,3; 1971 c 427 s 15; 1986 c 444; 1987 c 268 art 14 s 9; 1988 c 719 art 5 s 84

270.075 TAX LEVY.

Subdivision 1. Rate of tax. The commissioner shall determine the rate of tax to be levied and collected against the net tax capacity as determined pursuant to section 270.074, subdivision 2, to generate revenues sufficient to fund the airlift property tax portion of each year's state airport fund appropriation, as certified to the commissioner by the commissioner of transportation. The property tax portion of the state airport fund appropriation is the difference between the total fund appropriation and the estimated total fund revenues from other sources for the state fiscal year in which the tax is payable. If a levy amount has not been certified by September 1 of a levy year, the commissioner shall use the last previous certified amount to determine the rate of tax.

Subd. 2. Notice of taxes; payment. As soon as practicable and not later than December 1 next following the levy of the tax, the commissioner shall give actual notice to the airline company of the net tax capacity and of the tax. The taxes imposed under sections 270.071 to 270.079 shall become due and payable on January 1 following the levy thereof. If any tax is not paid on the due date or, if an appeal is made pursuant to section 270.076, within 60 days after notice of an increased tax, a late payment penalty of five percent of the unpaid tax shall be assessed. If the tax remains unpaid for more than 30 days, an additional penalty of five percent of the unpaid tax is imposed for each additional 30 days or fraction of 30 days that the tax remains unpaid. The penalty imposed under this section must not exceed the lesser of \$25,000 or 25 percent of the unpaid tax. The unpaid tax and penalty shall bear interest at the rate specified in section 270.75 from the time such tax should have been paid until paid. All interest and penalties shall be added to the tax and collected as a part thereof.

Subd. 3. Certification of unpaid taxes; action to recover. If the taxes remain unpaid on the following 1st day of July, the commissioner shall certify the amount thereof to the attorney general, who shall bring an action to recover the amount of such taxes. The statement shall give the name and address of the airline company owing such tax, the amount thereof, the date of delinquency, and such other information as may be required by the attorney general.

Subd. 4. Commissioner's statement; prima facie evidence. The commissioner's certified statement to the attorney general of delinquent taxes shall for all purposes and in all courts be prima facie evidence of the facts therein stated and that the amount shown therein is due from the airline company named in the statement.

History: 1945 c 418 s 6; Ex1971 c 31 art 10 s 1; 1975 c 377 s 3; 1976 c 2 s 92; 1978 c 767 s 4; 1987 c 268 art 14 s 10; 1987 c 384 art 3 s 9; 1988 c 719 art 5 s 84; art 6 s 1; 1989 c 277 art 2 s 11; 1989 c 329 art 13 s 20; 1992 c 511 art 4 s 2

270.076 APPEAL.

Subdivision 1. Appeal. Any airline company against which a tax has been imposed under sections 270.071 to 270.079 shall have the right to appeal within 60 days from the date of notice of the levy of the tax to the tax court in the manner provided by law.

Subd. 2. Payment of tax under appeal. In case of appeal from the assessment and levy of the tax, the airline company shall currently pay when due 90 percent of the tax unless the payment is waived or otherwise adjusted by an order of the court. If the final determination of the litigation should result in sustaining the assessment and levy or in the finding that the amount paid by the airline company is insufficient, the difference between the amount paid and the amount which should have been paid shall be decreed delinquent taxes subject to interest, as hereinabove provided. If the final determination of the tax court or the supreme court shall result in increasing any assessment above

that which was made final by the order of the commissioner from which the appeal is taken, then the taxes on such increased assessment shall be delinquent 30 days after notice of the amount of the increased tax shall have been given to the airline company by the commissioner.

History: 1945 c 418 s 8; 1965 c 698 s 3; 1975 c 377 s 4; 1976 c 134 s 78; 1977 c 307 s 29; 1978 c 767 s 5; 1985 c 300 s 1

270.077 STATE AIRPORTS FUND CREATED.

There is hereby created in the state treasury a fund to be known as the state airports fund to which shall be credited the proceeds of all taxes levied under sections 270.071 to 270.079 and all other moneys which may be deposited to the credit thereof pursuant to any other provision of law. All moneys in the state airports fund are hereby appropriated to the commissioner of transportation for the purpose of acquiring, constructing, improving, maintaining, and operating airports and other air navigation facilities for the state, and to assist municipalities within the state in the acquisition, construction, improvement, and maintenance of airports and other air navigation facilities.

History: 1945 c 418 s 9; 1976 c 166 s 7

270.078 NOT TO CONFLICT WITH FEDERAL LAW.

Subdivision 1. **Conformance to federal law.** If any provision of sections 270.071 to 270.079 is contrary to any provision of any law of the United States of America, hereinafter enacted, providing for or relating to the ad valorem taxation by a state of aircraft or flying equipment of an airline company, such provision shall be of no effect and the commissioner is authorized and directed to prescribe by rule such provisions as may be necessary to make sections 270.071 to 270.079 conform to the federal act and to effectuate the purposes of sections 270.071 to 270.079, provided such rules do not prescribe a rate of taxation higher than that provided in section 270.075 or a net tax capacity based on a percentage higher than that provided in section 270.074, subdivision 2.

Subd. 2. **Federal act; attorney general certification.** No provision of any law of the United States of America providing for or relating to the ad valorem taxation by a state of aircraft or flying equipment of an airline company shall be effective for the purposes of subdivision 1 until the attorney general of Minnesota shall have certified to the commissioner that in the attorney general's opinion such federal act is a valid exercise of federal authority under the Constitution of the United States.

Subd. 3. **Applicability.** The provisions of this section shall not affect the validity of any tax imposed under sections 270.071 to 270.079 prior to the effective date of such federal law.

History: 1945 c 418 s 11; 1985 c 248 s 70; 1986 c 444; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20

270.079 RECIPROCAL ARRANGEMENT WITH OTHER STATES.

The commissioner may enter into an agreement with the commissioner or other tax officials of another state for the interpretation and administration of the acts of their several states providing for the taxation of flight property of airline companies for the purpose of promoting uniformity of taxation of such companies thereunder.

History: 1945 c 418 s 12

270.08 [Repealed, 1990 c 480 art 2 s 18]

270.083 COMMISSIONER OF REVENUE TO EXAMINE; ATTORNEY GENERAL TO INSTITUTE ACTIONS.

The commissioner of revenue, at least once a year, so far as practicable, shall visit all railroad and other corporations and companies which are required by law to pay taxes to the state upon a gross earnings basis, examine their books of account and all other records and papers bearing upon or evidencing their gross earnings upon which,

under the law, taxes should be paid in this state; and on discovery of errors and omissions in their gross earnings, as reported by such companies, the commissioner shall certify the amount of such omitted earnings, together with the additional taxes and penalties due for collection as provided by law. All evasions and violations of the law in respect to such gross earnings taxes that are discovered shall be reported to the governor and the attorney general. The commissioner of revenue and the attorney general shall institute such proceedings as the law and the public interest require.

History: (3282) 1913 c 555 s 9; 1945 c 348 s 1; 1973 c 582 s 3; 1986 c 444

270.084 TRANSFERS.

Subdivision 1. Transfer of duties. All the powers and duties and functions conferred by law upon the public examiner in respect to auditing railroads and other corporations for determining gross earnings tax liability, at the time of passage of Laws 1945, chapter 348, shall hereafter be exercised, performed, and administered by the commissioner of revenue.

Subd. 2. Transfer of records. The public examiner shall transfer and deliver to the commissioner of revenue all contracts, books, maps, plans, papers, records, and property of every description within the public examiner's jurisdiction or control, and shall also transfer thereto any or all employees engaged in the exercise of such functions, powers or duties pertaining to the auditing of railroads and other corporations paying gross earnings taxes. The commissioner of revenue is hereby authorized to take possession of said property, and shall take charge of said employees and shall employ them in the exercise of their respective functions, powers and duties transferred as aforesaid, without reduction of compensation, subject to change or termination of employment or compensation as may be otherwise provided by law.

History: 1945 c 348 s 2,3; 1973 c 582 s 3; 1986 c 444

270.09 OPINION OF ATTORNEY GENERAL; EFFECT.

The commissioner of revenue may in writing request the opinion of the attorney general upon any matter within the scope of the functions of the department of revenue as now or hereafter prescribed by law. Any written opinion of the attorney general upon any such matter rendered in response to such request shall have the force and effect of law unless and until overruled by a decision of the tax court or a court of competent jurisdiction.

History: (2362-8) 1939 c 431 art 6 s 8; 1965 c 698 s 3; 1973 c 582 s 3; 1976 c 134 s 78; 1977 c 307 s 29

270.10 ORDERS; DECISIONS; APPEALS.

Subdivision 1. In writing; approval by attorney general. All orders and decisions of the commissioner of revenue, or any subordinates, respecting any tax, assessment, or other obligation, shall be in writing, filed in the offices of the department. Any order or decision increasing or decreasing any tax, assessment, or other obligation by a sum exceeding \$1,000 on real or personal property, or the net tax capacity thereof, or other obligation relating thereto, the result of which is to increase or decrease the total amount payable including penalties and interest, by a sum exceeding \$1,000, and any order or decision increasing or decreasing any other tax by a sum exceeding \$1,000 exclusive of penalties and interest, must bear the written signature or facsimile signature of the commissioner or the commissioner's delegate. Written notice of every order granting a reduction, abatement, or refundment exceeding \$5,000 of any tax exclusive of penalties and interest, shall be given within five days to the attorney general. The attorney general shall forthwith examine the order, and if proper and legal, approve it in writing. The attorney general may waive the right of appeal from the order on behalf of the state or may appeal from the order on behalf of the state as herein provided. Written approval of the commissioner or a delegate and written notice to the attorney general shall not be required with respect to the following orders: (1) orders reducing net

tax capacity of property by reason of its classification as a homestead; (2) orders not involving refunds which have the effect only of correcting income and franchise tax assessments to conform to the amounts shown on final returns filed as provided by section 289A.19, subdivisions 1 and 2; and (3) original orders for the refundment of gasoline and special fuel taxes.

Subd. 1a. Notification to taxpayer. At the same time that notice of the assessment, determination, or order of the commissioner is given to a taxpayer, the taxpayer must be notified in writing of the right to appeal to the tax court, and if applicable, to the small claims division. Except in the case of mathematical or clerical errors, the notice must contain a description of the basis for, including applicable law and other factors considered in the determination, and a listing of the amounts of tax due, interest, additions to tax, and penalties. Failure to provide all the required information does not invalidate the notice for purposes of satisfying statutory notice requirements if the notice contains sufficient information to advise the taxpayer that an assessment, order, or other determination has been made. The taxpayer may request further clarification within the time provided for appealing the determination. In any notice of assessment, determination, or order dealing with property valuation or assessment for property tax purposes by the commissioner of revenue or a local unit of government, the taxpayer must be notified in writing that a taxpayer must appeal to the town or city board of equalization and to the county board of equalization before appealing to the small claims division of the tax court, except for those taxpayers whose original assessments are determined by the commissioner of revenue.

Subd. 2. Only official actions of county board or other agency acted upon. No action requiring the recommendation or approval of any county board or other public agency shall be taken by the commissioner of revenue, or any other members of the department, unless such recommendation or approval shall have been made upon official action by such county board or other agency, entered upon the minutes or record of its proceedings as a public record, showing the names of the taxpayers and other persons concerned and the amounts involved, and so certified by the recording officer of such board or agency.

Subd. 3. Reductions, abatements, refunds; statement. The commissioner shall maintain as a public record in the department a statement of all abatements, reductions, and refunds of assessments, taxes, or other obligations granted by the department during the biennium, which require the written approval of the commissioner or a deputy, and of which written notice to the attorney general is required, under the provisions of subdivision 1; and, all reductions of net tax capacity of more than \$100,000 and all reductions, refunds, or abatements of real estate tax of more than \$1,000 shall be separately shown in such statement. Such statement shall show the names of all taxpayers or other persons concerned, the original amount of each assessment, tax, or other obligation, the amount of abatement, reduction, or refund allowed in each case, and the totals of the respective items, notwithstanding any provisions of law requiring secrecy to the contrary. The commissioner shall include in such statement the amount of all increases of taxes or assessments made by the department, classified in such manner as the commissioner may deem proper, but not showing the names of taxpayers or other persons concerned or the amounts in individual cases.

Subd. 4. [Repealed, 1990 c 480 art 2 s 18]

Subd. 5. Appeal; payment of order. No collection action may be taken, including the filing of liens under section 270.69, and no penalties may be imposed if an order of the commissioner, excluding orders relating to property tax matters, is paid:

(1) within 60 days after notice and demand for payment of the order have been mailed to the taxpayer; or

(2) if an administrative appeal or a tax court appeal under chapter 271 is timely filed, within 60 days following final determination of the appeal if the appeal is based upon a constitutional challenge to the tax, and if not, when the decision of the tax court is made.

History: 1939 c 431 art 6 s 9; 1943 c 174 s 1,2; 1943 c 652 s 1; 1951 c 611 s 1; 1965

c 102 s 1; 1969 c 97 s 2; 1973 c 582 s 3; 1976 c 239 s 85; 1977 c 203 s 6; 1979 c 50 s 27; 1982 c 523 art 2 s 4; 1983 c 180 s 2; 1983 c 222 s 1,2; 1986 c 444; 1987 c 268 art 14 s 11; art 17 s 3; 1988 c 719 art 5 s 84; 1989 c 324 s 5; 1989 c 329 art 13 s 20; 1990 c 480 art 1 s 46; 1990 c 604 art 1 s 4; 1994 c 510 art 4 s 1

270.101 PERSONAL LIABILITY.

Subdivision 1. Liability imposed. A person who, either singly or jointly with others, has the control of, supervision of, or responsibility for filing returns or reports, paying taxes, or collecting or withholding and remitting taxes and who fails to do so, or a person who is liable under any other law, is liable for the payment of taxes, penalties, and interest arising under chapters 296, 297, 297A, and 297C, or sections 290.92 and 297E.02.

Subd. 2. Person defined. The term "person" includes, but is not limited to, a corporation, estate, trust, organization, or association, whether organized for profit or not, an officer or director of a corporation, a member of a partnership, an employee, a third party (including, but not limited to, a financial institution, lender, or surety), and any other individual or entity.

Subd. 3. Procedure for assessment. The commissioner may assess liability for the taxes described in subdivision 1 against a person liable under this section. The assessment may be based upon information available to the commissioner. It must be made within the prescribed period of limitations for assessing the underlying tax. An order assessing personal liability under this section is reviewable under section 289A.65 and is appealable to tax court.

History: *1990 c 480 art 2 s 2; 1994 c 633 art 3 s 1*

270.102 SUCCESSOR LIABILITY OF BUSINESSES.

Subdivision 1. Definitions. (a) The following terms used in this section have the following meanings.

(b) "Successor" means a person who directly or indirectly purchases, acquires, is gifted, or succeeds to the business or stock of goods of any person quitting, selling, or otherwise disposing of a business or stock of goods. Successor does not include a personal representative or beneficiary of an estate.

(c) "Person" means an individual, partnership, corporation, sole proprietorship, joint venture, limited liability company, or any other type of business entity or association.

(d) "Withhold" means setting aside money or dealing with the payment of consideration in a manner that denies a transferring business the benefit of the transfer in an amount equal to the sales and withholding tax liability of the transferring business.

(e) "Purchase price" means the consideration paid or to be paid for the transfer by the successor to the transferring business, and includes amounts paid for tangible property or intangibles such as leases, licenses, or goodwill. Purchase price also includes debts assumed or forgiven by the successor, or real or personal property conveyed or to be conveyed by the successor to the transferring business.

(f) "Arm's length transaction" means a transfer for adequate consideration between independent parties both acting in their own best interests. If the parties are related to each other, a rebuttable presumption arises that the transaction is not at arm's length.

(g) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with a business or an interest in a business, or a stock of goods, whether by gift or for consideration. Transfer includes a change in the type of business entity or the name of the business, where one business is discontinued and a new one started. Transfer also includes the acquisition by a new corporation of the assets of a prior business in exchange for the stock of the new corporation.

Subd. 2. Bulk transfers; liability of successor; lien. (a) Whenever a business trans-

fers in bulk to a successor all or any part of the business assets, other than in the ordinary course of business, and a lien for unpaid sales and withholding taxes has been filed against the business by the commissioner under section 270.69 in the office of the secretary of state or in the office of the county recorder for the county in which the business is located, at least 20 days before taking possession of the assets or paying the purchase price, the successor shall notify the commissioner of the transfer and the terms and conditions related to it. The notice must include the tax identification number of the transferring business.

(b) If the successor fails to give the notice required in paragraph (a), the successor is liable for any unpaid sales and withholding taxes, interest, and penalties due from the transferring business to the extent of the purchase price. If the successor provides the notice required in paragraph (a) and, within 20 days after receipt of the notice, the commissioner notifies the successor that tax liabilities exist in addition to those included on the lien or there are sales and withholding tax returns due but not filed, the successor is, in addition to being liable for the amounts included on the lien, liable for all other uncontested sales and withholding taxes, interest, and penalties as stated in the commissioner's notice from the transferring business to the extent the successor pays the purchase price or takes possession of the assets without withholding and remitting the liability to the commissioner. The successor is liable whether the purchase price is paid or the assets are transferred prior to or after notification from the commissioner. The commissioner may also notify the successor that there are no sales or withholding tax liabilities or returns due from the transferring business other than the liabilities included on the lien, and of the current balance due to satisfy the lien.

(c) The commissioner shall have a first priority lien for all consideration paid or to be paid toward the purchase price when the requirements of this section have not been met.

(d) If, based upon the information available, the commissioner determines that a transfer was not at arm's length or was a gift, the successor's liability under this section equals the value of the assets transferred. For purposes of imposing the liability, the value of the property transferred is presumed to equal the unpaid sales and withholding taxes, interest, and penalties of the transferring business.

(e) In the case of a gift resulting in successor liability under this section, return of the gifted property by the donee to the donor releases the donee's successor liability.

(f) The liability imposed by this section does not include assignments for the benefit of creditors under chapter 577, foreclosures of mortgages under chapters 580 to 582 or of security interests arising under article 9 of the Uniform Commercial Code, or sales by trustees in bankruptcy.

(g) A successor who complies with the requirements of paragraphs (a) and (b) is not liable for any assessments of sales and withholding taxes of the transferring business made after the commissioner provides notice to the successor under paragraph (b), except for taxes assessed on returns filed to comply with the notice. If the commissioner fails to provide the notice and the 20-day period expires, the successor is not liable for any sales and withholding taxes of the transferring business other than those included on the lien.

Subd. 3. Assessment procedure; no stay on collection remedies. The commissioner may assess liability under this section within the time prescribed for collecting the underlying sales and withholding taxes, interest, and penalties. The assessment is presumed to be valid, and the burden is upon the successor to show it is incorrect or invalid. An order assessing successor liability is reviewable administratively under section 289A.65 and is appealable to tax court under chapter 271. Collection remedies available against the transferring business are available against the successor from the date of assessment of successor liability.

Subd. 4. Disclosure. Notification by the commissioner to the successor under subdivision 2, paragraph (b), that the transferring business owes sales and withholding taxes, interest, and penalties or has returns that are due, or that there are no outstanding liabilities or returns other than the liabilities included on the lien, or of the current balance due to satisfy the lien, is not a disclosure violation under chapter 270B.

History: 1994 c 510 art 4 s 2

270.11 POWERS; MEETINGS.

Subdivision 1. **To act as state board of equalization.** The commissioner of revenue shall have and exercise all the rights, powers and authority by law vested in the state board of equalization, which board of equalization is hereby continued, with full power and authority to review, modify, and revise all of the acts and proceedings of the commissioner in so far as they relate to the equalization and valuation of property assessed for taxation, as prescribed by section 270.12.

Subd. 2. **County assessor's reports of assessment filed with commissioner.** Each county assessor shall file by April 1 with the commissioner of revenue a copy of the abstract that will be acted upon by the local and county boards of review. The abstract must list the real and personal property in the county itemized by assessment districts. The assessor of each county in the state shall file with the commissioner, within ten working days following final action of the local board of review or equalization and within five days following final action of the county board of equalization, any changes made by the local or county board. The information must be filed in the manner prescribed by the commissioner. It must be accompanied by a printed or typewritten copy of the proceedings of the appropriate board.

The final abstract of assessments after adjustments by the state board of equalization and inclusion of any omitted property shall be submitted to the commissioner of revenue on or before September 1 of each calendar year. The final abstract must separately report the captured tax capacity of tax increment financing districts under section 469.177, subdivision 2, the metropolitan revenue contribution value under section 473F.07, and the value subject to the power line credit under section 273.42.

Subd. 3. **Special assessors, deputies; reassessments.** The commissioner of revenue shall appoint a special assessor and deputies and cause to be made, in any year, a reassessment of all or any real and personal property, or either, in any assessment district, when in the commissioner's judgment such reassessment is desirable or necessary, to the end that any and all property in such district shall be assessed equitably as compared with like property in the county wherein such district is situated.

Subd. 4. **Omitted property.** The commissioner of revenue shall require the county auditor to carefully place upon the assessment rolls omitted property which may be discovered to have escaped assessment and taxation in previous years.

Subd. 5. **Examination of complaints; proceedings.** The commissioner of revenue shall receive complaints and carefully examine into all cases where it is alleged that property subject to taxation has not been assessed or has been fraudulently or for any reason improperly or unequally assessed, or the law in any manner evaded or violated, and cause to be instituted such proceedings as will remedy improper or negligent administration of the taxing of the state.

Subd. 6. **Change of market values.** The commissioner of revenue shall raise or lower the market value of any real or personal property, including the power to raise or lower the market value of the real or personal property of any individual, copartnership, company, association, or corporation; provided, that before any such assessment against the property of any individual, copartnership, company, association, or corporation is so raised, notice of an intention to raise such market value and of the time and place at which a hearing thereon will be held shall be given to such person, by mail, addressed to the person at the place of residence listed upon the assessment book, at least five days before the day of such hearing.

All relevant and material evidence concerning the market value of the real or personal property shall be submitted at the hearing, and the hearing shall not be a "contested case" within the meaning of section 14.02, subdivision 3. The person notified of the hearing, or any other person having an interest in the property, may present evidence and argument bearing upon the market value of the property.

Subd. 7. **Appearances before the commissioner.** A property owner, other than a public utility or mining company, for which the original assessments are determined by the commissioner of revenue, may not appear before the commissioner for the pur-

poses provided in subdivision 5 or 6 unless a timely appearance in person, by counsel, or by written communication has been made before the county board of equalization as provided in section 274.13, to appeal the assessment of the property, or that the property owner can establish not receiving notice of market value at least five days before the local board of review meeting.

The commissioner may refuse to hear an appeal that is within the jurisdiction of the small claims division of the tax court as stated in section 271.21, subdivision 2. The property owner shall be notified by the commissioner of the right to appeal to the small claims division whenever an appeal to the commissioner is denied.

History: (2365) 1907 c 408 s 12; 1909 c 294 s 1,5; 1971 c 564 s 1,2; 1973 c 582 s 3; 1974 c 521 s 28; 1975 c 46 s 2; 1975 c 339 s 2; 1977 c 434 s 1; 1980 c 437 s 1; 1Sp1981 c 1 art 8 s 1; 1982 c 424 s 130; 1985 c 300 s 2; 1986 c 444; 1987 c 268 art 7 s 18,19; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20; 1Sp1989 c 1 art 9 s 8; 1991 c 291 art 12 s 2

270.12 STATE BOARD OF EQUALIZATION; DUTIES.

Subdivision 1. **Commissioner of revenue constitutes board.** The commissioner of revenue shall constitute the state board of equalization. The board may adjourn from day to day and employ necessary clerical assistance.

Subd. 2. **Meeting dates; duties.** The board shall meet annually between April 15 and June 30 at the office of the commissioner of revenue and examine and compare the returns of the assessment of the property in the several counties, and equalize the same so that all the taxable property in the state shall be assessed at its market value, subject to the following rules:

(1) The board shall add to the aggregate valuation of the real property of every county, which the board believes to be valued below its market value in money, such percent as will bring the same to its market value in money;

(2) The board shall deduct from the aggregate valuation of the real property of every county, which the board believes to be valued above its market value in money, such percent as will reduce the same to its market value in money;

(3) If the board believes the valuation for a part of a class determined by a range of market value under clause (8) or otherwise, a class, or classes of the real property of any town or district in any county, or the valuation for a part of a class, a class, or classes of the real property of any county not in towns or cities, should be raised or reduced, without raising or reducing the other real property of such county, or without raising or reducing it in the same ratio, the board may add to, or take from, the valuation of a part of a class, a class, or classes in any one or more of such towns or cities, or of the property not in towns or cities, such percent as the board believes will raise or reduce the same to its market value in money;

(4) The board shall add to the aggregate valuation of any part of a class, a class, or classes of personal property of any county, town, or city, which the board believes to be valued below the market value thereof, such percent as will raise the same to its market value in money;

(5) The board shall take from the aggregate valuation of any part of a class, a class, or classes of personal property in any county, town or city, which the board believes to be valued above the market value thereof, such percent as will reduce the same to its market value in money;

(6) The board shall not reduce the aggregate valuation of all the property of the state, as returned by the several county auditors, more than one percent on the whole valuation thereof;

(7) When it would be of assistance in equalizing values the board may require any county auditor to furnish statements showing assessments of real and personal property of any individuals, firms, or corporations within the county. The board shall consider and equalize such assessments and may increase the assessment of individuals, firms, or corporations above the amount returned by the county board of equalization when it shall appear to be undervalued, first giving notice to such persons of the intention

of the board so to do, which notice shall fix a time and place of hearing. The board shall not decrease any such assessment below the valuation placed by the county board of equalization;

(8) In equalizing values pursuant to this section, the board shall utilize a 12-month assessment/sales ratio study conducted by the department of revenue containing only sales that are filed in the county auditor's office under section 272.115, by November 1 of the previous year and that occurred between October 1 of the year immediately preceding the previous year and September 30 of the previous year.

The assessment/sales ratio study may separate the values of residential property into market value categories. The board may adjust the market value categories and the number of categories as necessary to create an adequate sample size for each market value category. The board may determine the adequate sample size. To the extent practicable, the methodology used in preparing the assessment/sales ratio study must be consistent with the most recent Standard on Assessment Sales Ratio Studies published by the assessment standards committee of the International Association of Assessing Officers. The board may determine the geographic area used in preparing the study to accurately equalize values. A sales ratio study separating residential property into market value categories may not be used as the basis for a petition under chapter 278.

The sales prices used in the study must be discounted for terms of financing. The board shall use the median ratio as the statistical measure of the level of assessment for any particular category of property; and

(9) The board shall receive from each county the estimated market values on the assessment date falling within the study period for all parcels by magnetic tape or other medium as prescribed by the commissioner of revenue.

Subd. 3. Jurisdictions in two or more counties. When a taxing jurisdiction lies in two or more counties, if the sales ratio studies prepared by the department of revenue show that the average levels of assessment in the several portions of the taxing jurisdictions in the different counties differ by more than five percent, the board may order the apportionment of the levy. When the sales ratio studies prepared by the department of revenue show that the average levels of assessment in the several portions of the taxing jurisdictions in the different counties differ by more than ten percent, the board shall order the apportionment of the levy unless (a) the proportion of total adjusted gross tax capacity in one of the counties is less than ten percent of the total adjusted gross tax capacity in the taxing jurisdiction and the average level of assessment in that portion of the taxing jurisdiction is the level which differs by more than five percent from the assessment level in any one of the other portions of the taxing jurisdiction; (b) significant changes have been made in the level of assessment in the taxing jurisdiction which have not been reflected in the sales ratio study, and those changes alter the assessment levels in the portions of the taxing jurisdiction so that the assessment level now differs by five percent or less; or (c) commercial, industrial, mineral, or public utility property predominates in one county within the taxing jurisdiction and another class of property predominates in another county within that same taxing jurisdiction. If one or more of these factors are present, the board may order the apportionment of the levy.

Notwithstanding any other provision, the levy for the metropolitan mosquito control district, metropolitan council, metropolitan transit district, and metropolitan transit area must be apportioned without regard to the percentage difference.

If, pursuant to this subdivision, the board apportions the levy, then that levy apportionment among the portions in the different counties shall be made in the same proportion as the adjusted gross tax capacity as determined by the commissioner in each portion is to the total adjusted gross tax capacity of the taxing jurisdiction.

For the purposes of this section, the average level of assessment in a taxing jurisdiction or portion thereof shall be the aggregate assessment sales ratio. Gross tax capacities as determined by the commissioner shall be the gross tax capacities as determined for the year preceding the year in which the levy to be apportioned is levied.

Actions pursuant to this subdivision shall be commenced subsequent to the annual meeting on April 15 of the state board of equalization, but notice of the action shall be given to the affected jurisdiction and the appropriate county auditors by the following June 30.

Apportionment of a levy pursuant to this subdivision shall be considered as a remedy to be taken after equalization pursuant to subdivision 2, and when equalization within the jurisdiction would disturb equalization within other jurisdictions of which the several portions of the jurisdiction in question are a part.

Subd. 4. Public utility property. For purposes of equalization only, public utility personal property shall be treated as a separate class of property notwithstanding the fact that its class rate is the same as commercial-industrial property.

Subd. 5. Equalization orders. The board of equalization may, pursuant to its responsibilities under subdivisions 2 and 3, issue orders to ensure that the results of local and county boards of equalization are consistent with the objective of state equalization. The board may issue, at its discretion, a supplemental order to amend, supersede, or correct a prior order of the board or an order of a local or county board. The supplemental order must be issued within 60 days of the order to be changed. The board may issue to a local or county board of equalization, within ten business days of the receipt of minutes of a local or county board of equalization, an order explaining the action that the state board believes will be necessary to effect the objective of state equalization.

History: (2366) *RL s 863; 1971 c 564 s 3; 1973 c 123 art 5 s 7; 1973 c 582 s 3; 1975 c 295 s 1; 1975 c 339 s 8; 1978 c 766 s 1; 1980 c 616 s 10; 1983 c 222 s 3; 1985 c 300 s 3; 1Sp1986 c 1 art 4 s 10; 1987 c 268 art 7 s 20,21; 1988 c 719 art 5 s 84; 1989 c 277 art 2 s 12; 1989 c 329 art 15 s 20; 1Sp1989 c 1 art 2 s 11; art 3 s 1; art 9 s 9,10; 1991 c 291 art 1 s 7; art 12 s 3; 1994 c 416 art 1 s 7*

270.13 RECORD OF PROCEEDINGS CHANGING GROSS TAX CAPACITY; DUTIES OF COUNTY AUDITOR.

A record of all proceedings of the commissioner of revenue affecting any change in the gross tax capacity of any property, as revised by the state board of equalization, shall be kept by the commissioner of revenue and a copy thereof, duly certified, shall be mailed each year to the auditor of each county wherein such property is situated, on or before June 30 or 30 days after submission of the abstract required by section 270.11, subdivision 2, whichever is later. This record shall specify the amounts or amount, or both, added to or deducted from the gross tax capacity of the real property of each of the several towns and cities, and of the real property not in towns or cities, also the percent or amount of both, added to or deducted from the several classes of personal property in each of the towns and cities, and also the amount added to or deducted from the assessments of individuals, copartnerships, associations, or corporations. The county auditor shall add to or deduct from such tract or lot, or portion thereof, of any real property in the county the required percent or amount, or both, on the gross tax capacity thereof as it stood after equalized by the county board, adding in each case a fractional sum of 50 cents or more, and deducting in each case any fractional sum of less than 50 cents, so that no gross tax capacity of any separate tract or lot shall contain any fraction of a dollar; and add to, or deduct from, the several classes of personal property in the county the required percent or amount, or both, on the gross tax capacity thereof as it stood after equalized by the county board, adding or deducting in manner aforesaid any fractional sum so that no gross tax capacity of any separate class of personal property shall contain a fraction of a dollar, and add to or deduct from assessments of individuals, copartnerships, associations, or corporations, as they stood after equalization by the county board, the required amounts to agree with the assessments as returned by the commissioner of revenue.

History: (2367) *1907 c 408 s 13; 1949 c 543 s 6; 1971 c 564 s 4; 1973 c 123 art 5 s 7; 1973 c 582 s 3; 1976 c 334 s 5; 1986 c 444; 1987 c 268 art 7 s 22; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20; 1Sp1989 c 1 art 9 s 11*

270.14 COUNTY AUDITOR TO CALCULATE TAX RATE.

The county auditor shall calculate the tax rate necessary to raise the required amount of the various taxes on the net tax capacity of all property as returned by the commissioner of revenue.

History: (2368) 1907 c 408 s 14; 1973 c 582 s 3; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20; 1Sp1989 c 1 art 2 s 11

270.15 WITNESSES, HOW SWORN; FAILURE TO TESTIFY OR PRODUCE.

Oaths to witnesses in any matter under the investigation or consideration of the commissioner of revenue may be administered by the commissioner's secretary. In case any witness shall fail to obey any summons or appear before the commissioner of revenue or refuse to testify or answer any material questions or to produce records, books, papers, or documents when required so to do, such failure or refusal shall be reported to the attorney general, who shall thereupon proceed in the proper court to compel obedience to any summons or order of the commissioner of revenue, or to punish witnesses for any such neglect or refusal.

History: (2369) 1907 c 408 s 15; 1973 c 582 s 3; 1986 c 444

270.16 PROPERTY OMITTED OR UNDERVALUED; REASSESSMENT.

Subdivision 1. Property omitted or undervalued. When it shall be made to appear to the commissioner of revenue, by complaint or by the finding of a court or of the legislature, or either body of the legislature, or any committee of the legislature, or any city council or county board, that any considerable amount of property has been improperly omitted from the tax list or assessment roll of any district or county for any year, or, if assessed, that the same has been undervalued or overvalued, as compared with like property in the same county or in the state so that the assessment for such year in such district or county is grossly unfair and inequitable, whether or not the same has been equalized by the county board of equalization or the commissioner of revenue, the commissioner of revenue shall examine into the facts in the matter and, if satisfied therefrom that it would be for the best interests of the state that a reassessment of such property be made, the commissioner shall appoint a special assessor and such deputy assessors as may be necessary and cause a reassessment to be made of all or any of the real and personal property, or either, in any such district or county as the commissioner may deem best, to the end that all property in such district or county shall be assessed equitably as compared with like property in such district or county.

Subd. 2. Failure to appraise. When an assessor has failed to properly appraise at least one-quarter of the parcels of property in a district or county as provided in section 273.01, the commissioner of revenue shall appoint a special assessor and deputy assessor as necessary and cause a reappraisal to be made of the property due for reassessment in accordance with law.

History: (2370) 1907 c 408 s 16; 1909 c 294 s 2; 1965 c 185 s 1; 1973 c 123 art 5 s 7; 1973 c 582 s 3; 1975 c 437 art 8 s 1; 1976 c 334 s 6; 1986 c 444

270.17 QUALIFICATION OF ASSESSORS; REASSESSMENT, HOW MADE.

Every special assessor and deputy appointed under the provisions of section 270.16 shall subscribe and file with the commissioner of revenue an oath to faithfully and fairly perform the duties of office. Such special assessor, assisted by deputies, shall thereupon proceed to carefully examine and reassess the property so to be reassessed and prepare duplicate lists of such reassessment in such form as the commissioner of revenue may prescribe, showing the property or person so reassessed, the amount of the original assessment thereof made in such year, and opposite the same the reassessment so made by such special assessor. The special assessor shall file both copies of such list with the commissioner of revenue; and the commissioner of revenue shall thereupon examine, equalize, and correct such reassessment so as to substantially conform with the assessment of like property throughout the state and transmit to the auditor

of the county wherein such reassessment was so made one copy of such reassessment by the commissioner so corrected and equalized. Such list shall for all purposes supersede and be in place of the original assessment made for such year upon such property and the county auditor, upon receipt thereof, shall extend and levy against such property so reassessed the taxes thereon for such year according to such reassessment in the same manner as though such list was the original assessment list of such property. Any person feeling aggrieved by an assessment so made against the person, or upon any property at that time owned by the person, may appeal therefrom to the district court of the county in which such assessment is made. To render the appeal effective for any purpose, the appellant shall file a notice of the appeal with the auditor of such county within 30 days after the making of the assessment, which notice shall specify the ground upon which the appeal was taken, and no other or different service shall be required to perfect it. Upon the filing of the notice the county auditor shall make and file in the office of the court administrator of the district court a certified copy of the notice and of the particular assessment appealed from and notify the county attorney of such county of the pendency of the appeal. Thereupon the district court shall be deemed to have acquired jurisdiction of the matter and proceed to hear and determine it in like manner as other tax matters are tried and determined in the district courts of this state. The county attorney of such county shall appear for and defend the interests of the state in such matter.

History: (2371) 1909 c 294 s 3; 1973 c 582 s 3; 1973 c 776 s 1; 1986 c 444; 1Sp1986 c 3 art 1 s 82

270.18 REASSESSMENT; COMPENSATION; REIMBURSEMENT BY COUNTIES.

The compensation of each special assessor and deputies, appointed under the provisions of sections 270.11, subdivision 3, and 270.16, and the expenses as such, shall be fixed by the commissioner of revenue and paid out of money appropriated for operation of the department of revenue. The commissioner of revenue on August 1 shall notify the auditor of each affected county of the amount thereof paid on behalf of such county since August 1 of the preceding year, whereupon the county auditor shall levy a tax upon the taxable property in the assessment district or districts wherein such reassessment was made sufficient to pay the same. One-half of such tax shall be levied in the year in which the commissioner of revenue so notifies the county auditor and the remaining one-half shall be levied in the following year. The respective counties shall reimburse the state by paying one-half of the tax so assessed on or before July 1 and the remaining one-half on or before December 1 in the year in which the tax is payable by owner, whether or not the tax was collected by the county. The reimbursement shall be credited to the general fund. If any county fails to reimburse the state within the time specified herein, the commissioner of revenue is empowered to order withholding of state aids or distributions to such county equal to the amount delinquent.

History: (2372) 1909 c 294 s 4; 1963 c 714 s 1; 1965 c 743 s 1; 1969 c 399 s 1; 1971 c 932 s 1; 1973 c 492 s 14; 1974 c 98 s 1; 1983 c 343 s 4; 1986 c 444; 1Sp1989 c 1 art 9 s 12

270.185 [Repealed, 1992 c 513 art 4 s 60]

270.19 MUNICIPALITIES TO BE PARTY TO TAX HEARINGS.

Any city, town, school district, or county (all of which governmental subdivisions shall be embraced in the word "municipality" as used hereinafter) may appear at and become a party to any proceedings before the commissioner of revenue held for the purpose of equalizing or assessing any real or personal property in such municipality, or reducing the net tax capacity of any such property. For that purpose any such municipality may employ counsel and disburse money for other expenses in connection with such proceedings, on duly itemized, verified claims, which shall be audited and allowed as now provided by law for the allowance of claims against a municipality. It shall be

the duty of the commissioner of revenue, at the time of such hearing, to grant the municipality, at its request, such further reasonable time as may be necessary for such municipality to prepare for further hearing. Before granting any reduction in net tax capacity exceeding \$100,000, it shall be the duty of the commissioner of revenue, when any taxpayer or property owner has applied to the commissioner after June 30, 1983, for a reduction of the net tax capacity of any real or personal property in an amount exceeding \$100,000, to give written notice to the officials of the municipality wherein such property is located and to permit such municipality to have reasonable opportunity to be heard at any proceedings concerning such reduction.

History: (2372-1) 1931 c 304 s 1; 1965 c 642 s 1; 1974 c 362 s 1; 1983 c 222 s 4; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20

270.20 HEARINGS, REQUEST FOR, NOTICE OF, PREPARATION FOR.

Any such municipality may, at any time within ten days after the final adjournment of the county board of equalization of the county in which such municipality is located or within ten days after the filing with the auditor of such county of any order of the commissioner of revenue reducing the net tax capacity of any property in such municipality, file a written request with the commissioner of revenue for a hearing upon the equalization or assessment of any property within such municipality, specifying the property and the name and address of the owner thereof, as they appear from the assessment books. The commissioner of revenue shall thereupon order a hearing thereon and mail a notice stating the time and place of such hearing to the municipality and to the owner of such property. It shall be the duty of the commissioner of revenue, at the time of such hearing, to grant the municipality, at its request, such further reasonable time as may be necessary for such municipality to prepare for further hearing.

History: (2372-2) 1931 c 304 s 2; 1973 c 582 s 3; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20

270.21 WITNESSES SUMMONED.

Upon any such hearing the commissioner of revenue shall, upon the request of such municipality or any party to such proceedings, issue subpoenas and summon witnesses to appear and give testimony, and to produce books, records, papers, and documents. For the purpose of preparing for and participating in such hearing the municipality shall have access to, and use of, all the data, records, and files of the commissioner of revenue pertaining to the property in question. Upon demand of any party a record shall be kept by the commissioner of revenue of all evidence offered or received upon such hearing, the cost thereof to be paid by the party making such demand.

History: (2372-3) 1931 c 304 s 3; 1973 c 582 s 3

270.22 FINDINGS OF FACT.

The commissioner of revenue shall determine the controversy upon the evidence produced at the hearing and shall make and file written findings of fact and an order determining the controversy. In the equalization and determination of net tax capacities, the findings and net tax capacities as given by the assessor of the local assessment district shall be considered as prima facie correct. Copies of the order and findings shall be mailed to all parties appearing at the hearing and to the auditor of the county in which the property is located. Any municipality which has appeared in the proceedings, and which is aggrieved by the order of the commissioner of revenue reducing the net tax capacity of any of the property, or failing to increase the net tax capacity, may have the order of the commissioner of revenue reviewed by appeal to the court of appeals, on either of the following grounds: (a) that the determination of the commissioner of revenue was not in accordance with the laws relating to the assessment of property, or that the commissioner of revenue committed any other error of law; or (b) that the findings of fact and determination of net tax capacity were unwarranted by or were contrary to the weight of the evidence.

Any owner of property who has appeared in the proceedings and who is aggrieved by the order of the commissioner of revenue raising the net tax capacity of the property, or failing to reduce the net tax capacity, may have the order of the commissioner of revenue reviewed on appeal to the court of appeals in like manner and upon the same grounds as provided for review on the appeal of any municipality.

History: (2372-4) 1931 c 304 s 4; 1973 c 582 s 3; 1983 c 247 s 115; 1986 c 444; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20

270.23 NOTICE OF APPEAL.

To secure review, the municipality shall, within 30 days after mailing of notice of the determination by the commissioner of revenue, serve upon the commissioner of revenue a notice of appeal to the court of appeals from the order of the commissioner of revenue and file the original, with proof of service, with the clerk of the appellate courts, paying the filing fee provided by law for appeals in civil actions. The filing of the notice of appeal shall vest the court with jurisdiction and the appeal shall be heard and disposed of as in other civil cases.

The court shall reverse or affirm the order of the commissioner of revenue or remand the cause to the commissioner of revenue for a new hearing or further proceedings or for other disposition, with further directions as the court deems proper.

History: (2372-5, 2372-6) 1931 c 304 s 5,6; 1973 c 582 s 3; 1983 c 247 s 116

270.24 APPEAL NOT TO STAY COLLECTION.

The institution of any such appeal from the order of the commissioner of revenue shall not operate to stay in any way proceedings for the assessment or collection of taxes against the property involved therein. Notwithstanding such appeal, the commissioner of revenue shall file with the auditor of the county in which such property is situated an order confirming, increasing, decreasing, or determining the net tax capacity thereof, and the county auditor shall extend and levy against such property, or the owner thereof, the taxes thereupon for such year according to such assessment, and all subsequent proceedings for the determination of the taxes and the collection thereof shall be taken as if no appeal from such order were pending. When the matter is finally determined on review a properly authenticated copy of the findings, order, or judgment shall be filed with the auditor of the county in which the land or property referred to in the proceedings is situated. If such order or judgment lowers the net tax capacity of the land or property referred to in the proceedings, the commissioner of revenue, upon petition of the owner, approved by the county board, shall abate so much of the taxes against such property as is attributable to the excessive net tax capacity thereof. If such tax has been paid, the county auditor, upon petition of the owner, approved by the county board and the commissioner of revenue, shall refund so much of such payment as is attributable to such excess net tax capacity. Upon such refund being made the county auditor shall charge the same to the state and the various governmental subdivisions thereof that participated in such excessive payment, in proportion to their respective shares therein, and deduct the same in the next tax apportionment.

History: (2372-7) 1931 c 304 s 7; 1973 c 582 s 3; 1986 c 444; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20

270.25 SHALL BE EXTENDED AS ADDITIONAL TAXES.

If such final order and judgment result in raising the net tax capacity of the property affected by the proceedings, the county officers shall, for the next ensuing year, in addition to the regular taxes levied for such ensuing year, levy, extend, and spread against such property, if real property, or against the owner thereof, if personal property, a tax equal to the difference between the taxes actually levied and extended against such property, or owner, for the year in question and the taxes which should have been levied or extended against such property, or owner, at the increased net tax capacity as finally determined.

History: (2372-8) 1931 c 304 s 8; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20

270.26 PROCEEDINGS TO DETERMINE NET TAX CAPACITY.

The proceedings provided in this section are for determining the net tax capacity upon the basis of which taxes are spread against property, or its owner, in the first instance. The order of the commissioner of revenue, or the final order for judgment of the court of appeals on it, shall not be a bar to any defense against the taxes interposed at the time of the proceedings for judgment on them. All defenses which may be set up against the proceedings for judgment upon the taxes may be asserted notwithstanding the determination of the commissioner of revenue or the court. If the taxes are levied or extended pending review of the order of the commissioner of revenue by the court, a judgment entered upon the taxes in the tax delinquency proceedings shall not be a bar to the spreading of further taxes against the property for that year, in the event the net tax capacity of the property is raised as herein provided. In the proceedings for the collection of any taxes which include an additional levy because of the raising of the net tax capacity of any property, the owner may answer separately to the proceedings to obtain judgment for the excess levy.

History: (2372-9) 1931 c 304 s 9; 1973 c 582 s 3; 1983 c 247 s 117; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20

270.27 DUE DATE ON SATURDAY, SUNDAY OR HOLIDAY.

When the last day prescribed by law for the payment of any tax to or the filing of any return, statement or document with the commissioner of revenue or the department of revenue falls on Saturday, Sunday or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday. For purposes of this section, the last day for the performance of the prescribed act shall be determined by including any authorized extension of time; the term "legal holiday" shall mean any day made a holiday in Minnesota by section 645.44, subdivision 5, or by the laws of the United States.

History: 1973 c 104 s 1; 1973 c 582 s 3

270.271 TIMELY MAILING TREATED AS TIMELY FILING AND PAYING.

Subdivision 1. Date of delivery. When a document, including a return, claim, or statement, is required to be filed, or a payment is required to be made to the commissioner within a prescribed period, or on or before a prescribed date, and if the document or payment is delivered by United States mail after the period or the date to the place prescribed for filing or payment, then the date of the United States postmark stamped on the cover in which the document or payment is mailed shall be considered the date of delivery or of payment, as the case may be.

Subd. 2. Mailing requirements. Subdivision 1 applies only if:

(1) the postmark date falls within the prescribed period or on or before the prescribed date,

(i) for filing (including any extension granted for the filing) of the document, or

(ii) for making the payment (including any extension granted for making the payment); and

(2) the document or payment was within the time prescribed in clause (1), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the office of the department of revenue with which the document is required to be filed or to which payment is required to be made.

Subd. 3. United States Postal Service postmark. Only the postmark of the United States Postal Service, rather than those of private postage meters, qualifies as proof of timely mailing under this section. If the document or payment is sent by United States registered mail, the date of registration shall be treated as the postmark date. If the document or payment is sent by United States certified mail and the sender's receipt is postmarked by the postal employee to whom the envelope containing such document or payment is presented, the date of the United States postmark on the receipt shall be treated as the postmark date of the document or payment.

Subd. 4. Receipt date otherwise governs. In any case in which the document or payment is not treated as timely filed or paid under this section, the date of receipt by the commissioner, and not the postmark date, shall govern for purposes of determining the amount of any penalties for late filing or payment.

History: 1987 c 268 art 17 s 4

270.272 PROCEDURES INVOLVING IN-PERSON TAXPAYER INTERVIEWS.

Subdivision 1. Recording of interviews. (a) In connection with an interview with a taxpayer relating to the audit or collection of a tax, and on advance request of the taxpayer, an employee of the department of revenue shall allow the taxpayer to make an audio recording of the interview at the taxpayer's expense and with the taxpayer's equipment.

(b) An employee of the department may record an interview described in paragraph (a) if the taxpayer is informed of the recording before the interview and a transcript or copy of the recording is made available to the taxpayer on the taxpayer's request, provided the department is reimbursed by the taxpayer for the cost of transcribing or copying the recording.

Subd. 2. Safeguards. (a) Before or at the start of an initial interview, an employee of the department shall provide to the taxpayer in the case of an audit interview an explanation of the audit process and the taxpayer's rights under that process and, in the case of a collection interview, an explanation of the collection process and the taxpayer's rights under that process.

(b) If a taxpayer requests to consult with an attorney, accountant, agent, preparer, or any other person permitted to represent the taxpayer before the department at any time during an interview, except an interview initiated by an administrative subpoena, the interview must be suspended for no more than 30 days.

Subd. 3. Representatives holding power of attorney. An attorney, accountant, agent, preparer, or any other person permitted to represent the taxpayer before the department who has a written power of attorney executed by the taxpayer may represent the taxpayer in an interview described in subdivision 1. The taxpayer may be required to accompany the representative only if an administrative subpoena is issued. In this instance, with the consent of an immediate supervisor and after ten days' notice to the representative, the department employee may notify the taxpayer directly that the employee believes the representative is unreasonably delaying the examination or investigation process.

Subd. 4. Not to apply to certain investigations. This section does not apply to criminal investigations or investigations relating to the conduct of an employee of the department.

History: 1990 c 604 art 1 s 5

270.273 TAXPAYER ASSISTANCE ORDERS; TAXPAYER'S RIGHTS ADVOCATE.

Subdivision 1. Authority to issue. On application filed by a taxpayer with the department of revenue taxpayer's rights advocate, in the form, manner, and in the time prescribed by the commissioner, and after thorough investigation, the taxpayer's rights advocate may issue a taxpayer assistance order if, in the determination of the taxpayer's rights advocate, the manner in which the state tax laws are being administered is creating or will create an unjust and inequitable result for the taxpayer.

Subd. 2. Terms of a taxpayer assistance order. A taxpayer assistance order may require the department to release property of the taxpayer levied on, cease any action, or refrain from taking any action to enforce the state tax laws against the taxpayer, until the issue or issues giving rise to the order have been resolved.

Subd. 3. Authority to modify or rescind. A taxpayer assistance order issued by the taxpayer's rights advocate under this section may be modified or rescinded by the commissioner.

Subd. 4. **Suspension of running of period of limitation.** The running of the period of limitation with respect to an action described in subdivision 2 is suspended from the date of the taxpayer assistance order until the expiration date of the order or, if modified, the expiration date of the modified order or, if rescinded, the date of the rescission.

Subd. 5. **Independent action of taxpayer's rights advocate.** This section does not prevent the taxpayer's rights advocate from taking action in the absence of an application under subdivision 1.

Subd. 6. **Taxpayer's rights advocate.** For purposes of this section, the term "taxpayer's rights advocate" includes a designee of the taxpayer's rights advocate. The taxpayer's rights advocate shall represent the interests of taxpayers who have grievances against the department in connection with an audit or collection activity, and shall report directly to the commissioner. A determination of the taxpayer's rights advocate under this section to issue or to not issue a taxpayer assistance order is final and cannot be appealed to the tax court or any other court.

History: 1990 c 604 art 1 s 6

270.274 REVIEW OF JEOPARDY ASSESSMENT AND LEVY PROCEDURES.

Subdivision 1. **Administrative review.** Within five days after a jeopardy assessment or jeopardy collection is made to assess or collect a tax administered by the commissioner of revenue, the commissioner shall provide the taxpayer with a written statement of the information relied on in making the assessment or levy. Within 30 days after the written statement is provided or, if not provided, within 35 days after the assessment or levy, the taxpayer may request the commissioner to review the action taken. After a request for review, the commissioner shall determine whether the assessment or levy is reasonable and whether the amount assessed or demanded as a result of the action is appropriate under the circumstances.

Subd. 2. **Judicial review.** A determination by the commissioner under subdivision 1 is appealable to the tax court in the manner provided by law, and the appeal must be expeditiously heard by the court. If the court determines that the making of the assessment or levy is unreasonable, or that the amount assessed or demanded is inappropriate, the court may order the commissioner to release the levy, abate the assessment, redetermine in whole or in part the amount assessed or demanded, or take other action. A determination by the court under this subdivision is final and may not be appealed by either party.

Subd. 3. **Burden of proof.** In a proceeding under subdivision 2, the burden of proving that the assessment or collection of the tax was jeopardized by delay is on the commissioner. Regarding the issue of whether the amount assessed or demanded as a result of the action is appropriate, the commissioner shall provide a written statement explaining the basis for determining the amount, and the burden is on the taxpayer to show that the statement is incorrect or invalid.

History: 1990 c 604 art 1 s 7; 1991 c 291 art 16 s 1

270.275 CIVIL DAMAGES FOR FAILURE TO RELEASE LIEN.

Subdivision 1. **In general.** (a) A taxpayer may bring a civil action for damages against the commissioner in district court when an employee or the department has knowingly or negligently:

- (1) failed to release a lien as required by section 270.69, subdivision 11; or
- (2) failed to release a lien within 30 days after satisfaction of the liability on which the lien is based.

(b) An action under paragraph (a), clause (2), must be preceded by 30 days written notice by the taxpayer to the commissioner and the taxpayer's rights advocate that the lien has not been released. An action under paragraph (a) must be commenced within two years after the date the right of action accrued.

Subd. 2. **Damages.** On a finding of liability on the part of the defendant in an action brought under subdivision 1, the defendant is liable to the plaintiff in an amount

equal to the sum of actual, direct economic damages sustained by the plaintiff due to the actions of the defendant, plus the costs of the action. Damages must be paid in accordance with section 3.736, subdivision 7.

Subd. 3. **Mitigation of damages.** Damages awarded must be reduced by the amount of the damages that could reasonably have been mitigated by the plaintiff.

History: 1990 c 604 art 1 s 8

270.276 CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS.

Subdivision 1. **In general.** If in connection with the collection of previously determined delinquent taxes from a taxpayer of a state tax administered by the commissioner of revenue, an employee of the department recklessly or intentionally disregards a state tax law or rule, the taxpayer may bring a civil action for damages against the commissioner in district court within two years after the date the right of action accrues.

Subd. 2. **Damages.** On a finding of liability on the part of the defendant in an action brought under subdivision 1, the defendant is liable to the plaintiff in an amount equal to the lesser of \$100,000, or the sum of (1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the employee and (2) the costs of the action. Damages must be paid in accordance with section 3.736, subdivision 7.

Subd. 3. **Limitations.** A judgment for damages must not be awarded under subdivision 2 unless the court determines that the plaintiff has exhausted the administrative remedies available to the plaintiff within the department. Damages awarded must be reduced by the amount of the damages that could reasonably have been mitigated by the plaintiff.

Subd. 4. **Penalties for procedures instituted primarily for delay.** When it appears to the district court that:

- (1) proceedings before it under this section have been instituted or maintained by the taxpayer primarily for delay;
- (2) the taxpayer's position in such proceeding is frivolous or groundless; or
- (3) the taxpayer unreasonably failed to pursue available administrative remedies, the district court, in its decision, may require the taxpayer to pay to the department of revenue a penalty not in excess of \$25,000. The penalty may be assessed and, upon notice and demand, may be collected in the same manner as a tax.

History: 1990 c 604 art 1 s 9

MINNESOTA TREE GROWTH TAX LAW

270.31 CITATION.

Sections 270.31 to 270.39 may be cited as the "Minnesota tree growth tax law."

History: 1957 c 639 s 1

270.32 PUBLIC POLICY.

The present general system of ad valorem taxes in the state of Minnesota as applied to forest lands does not provide an equitable basis of taxation and has resulted in inadequate taxes on some lands and excessive tax forfeiture on other lands.

Therefore it is the declared public policy of this state that the public interest would be best served by encouraging private forest landowners to retain and improve their holdings of forest lands upon the tax rolls of the state and to promote better forest management of such lands by appropriate tax measures, therefore, sections 270.31 to 270.39 are enacted for the purpose of permitting privately owned lands generally suitable for the planting, culture and growth of continuous forest products to be taxed on the basis of the annual increase in value in accordance with the following provisions.

History: 1957 c 639 s 2

270.33 DEFINITIONS.

Subdivision 1. **Applicability.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases for the purposes of sections 270.31 to 270.39 shall be given meanings as follows:

Subd. 2. **Forest type.** Forest type means a stand of trees characterized by the predominance of one or more key species, which make up 50 percent or more of the sawlog volume in sawlog stands; of cordwood in pole-timber stands; or of the number of trees in seedling and sapling stands.

Subd. 3. **Spruce fir type.** Spruce fir type means a mixed hardwood and coniferous stand of trees with white spruce and balsam-fir the most common species.

Subd. 4. **Swamp spruce type.** Swamp spruce type means a stand of trees in which swamp conifers predominate with black spruce the most common.

Subd. 5. **Other swamp conifers type.** Other swamp conifers type means a stand of trees in which conifers predominate with tamarack or cedar the most common.

Subd. 6. **Jack pine type.** Jack pine type means a stand of trees in which pine species predominate with jack pine the most common.

Subd. 7. **White and Norway pine type.** White and Norway pine type means a stand of trees in which pine species predominate with white or Norway pine the most common.

Subd. 8. **Aspen-Birch type.** Aspen-Birch type means a stand of trees in which a mixture of trembling or large-tooth aspen and paper birch predominates.

Subd. 9. **Upland hardwood type.** Upland hardwood type means a stand of trees in which northern hardwood species (sugar and red maple, yellow birch, basswood and oak) predominate.

Subd. 10. **Lowland hardwood type.** Lowland hardwood type means a stand of trees on poorly drained land in which the bottomland hardwood, such as ash, elm and Balm of Gilead predominate.

Subd. 11. **Stagnant spruce swamp type.** Stagnant spruce swamp type means a stand in which spruce predominates, but which will not produce standard pulpwood in 100 years, although it will produce Christmas trees of commercial value.

Subd. 12. **Commercial forest type.** Commercial forest type means any forest type which has three cords or more of standard pulpwood or sawlogs per acre or 500 stems or more of commercial tree species per acre.

Subd. 13. **Temporarily nonproductive type.** Temporarily nonproductive type means land capable of producing a commercial forest type but does not at present meet the standards of subdivision 11.

Subd. 14. **Permanently nonproductive type.** Permanently nonproductive type means land such as muskeg, marsh and rock outcrops, which is unsuitable for growing a commercial forest type.

Subd. 15. **Average annual growth rate.** Average annual growth rate means the estimated average amount of commercial forest product one acre of land will grow in one year.

Subd. 16. **Stumpage value.** Stumpage value means the monetary value placed on standing timber before it is cut expressed in terms of dollars per cord or dollars per thousand board feet. Conversion from board feet to cords for the purposes of sections 270.31 to 270.39 shall be 2-1/4 per thousand board feet.

Subd. 17. **Value of the annual growth.** Value of the annual growth means the average annual growth rate per acre for a type multiplied by the weighted average of the stumpage values of all species in the type. The proportions of the various species making up the type to be used in computing the weighted average of the stumpage values of all species in the type shall be determined with reference to the most recent official forest survey report for the county in which the land is located.

Subd. 18. **Governmental subdivision.** Governmental subdivision shall mean a government lot or a sixteenth of a section commonly known as a forty.

History: 1957 c 639 s 3; 1959 c 441 s 1

270.34 AVERAGE ANNUAL GROWTH RATES, DETERMINATION.

The average annual growth rates to be used in determining taxes applicable to property in each county under sections 270.31 to 270.39 shall be established by the county board of each county desiring to use the provisions of sections 270.31 to 270.39. The rates shall be established with due regard for the studies of average annual growth rates made by the division of lands and forestry for the state of Minnesota and the north central forest experiment station of the United States Department of Agriculture. The rates may be determined by each participating county after the passage of sections 270.31 to 270.39 and when determined and certified by the county board to the county auditor, shall remain in effect in each county without change until the calendar year 1966. In the calendar year 1966 and at the end of each ten-year period thereafter, the county board shall review and set such rates for the following ten-year period in the same manner, provided, however, that any mathematical or clerical errors in such rates may be corrected by the county board as soon as such error is discovered. Rates shall be certified by the county board to the county auditor and shall take effect with the calendar year following that in which the error is corrected. Any person aggrieved by a change of rate determination of the county board hereunder may appeal to the county board for readjustment. In the event of disagreement, the aggrieved person may test the correctness of the new rate or rates by applying directly to the commissioner of revenue within one year of such change in accordance with the provisions of section 270.07 and the commissioner shall have the power to grant the changes of any rate or rates as the commissioner may deem just and equitable and to order the refund in whole or in part of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid since the changed rate. In the event of any change in rates on appeal from the determination by the county board, the rate as so changed shall remain in effect until the next revision period.

History: 1957 c 639 s 4; 1959 c 441 s 2; 1967 c 905 s 9; 1971 c 25 s 29; 1973 c 582 s 3; 1986 c 444

270.35 STUMPAGE VALUE, USE IN COMPUTING TAX.

The stumpage value for each species to be used in computing the tax in any county shall be computed in each even numbered year and shall be the average sale price received by the state upon all of its sales of sound standing timber of the species during the previous two calendar years. In the event there have been no sales of the species or products within the county within the previous two calendar years, or less than 500 cords of the various products have been sold which is insufficient to estimate a fair and equitable stumpage price for the various products grown, the commissioner of natural resources shall set a stumpage price for such species, with the right of appeal by any aggrieved persons to the commissioner of revenue as set forth in section 270.34 in the event any such person is aggrieved by such determination.

History: 1957 c 639 s 5; 1963 c 418 s 3; 1969 c 1129 art 10 s 2; 1973 c 582 s 3; 1974 c 556 s 7; 1986 c 444

270.36 COMPUTATION OF TAX.

Subdivision 1. Order; publication; computation of values. After the county board has determined the average annual growth rates in accordance with section 270.34, they shall make an order and cause a resolution regarding such order to be published in the minutes of the county board meeting. The county board shall file the order with the county recorder. Thereafter the county auditor shall compute the values of the annual growth of the types of timber growing in the county as defined in section 270.33, subdivision 17, and shall post a tabulation of the values in the auditor's office and prepare copies of the same for dissemination to all persons who may request them.

Subd. 2. Rates of tax. The forest lands made subject to taxation under sections 270.31 to 270.39 shall be taxed at the following rates:

1. Lands growing commercial forest type shall be taxed each year in the amount

of 30 percent of the value of the estimated average annual growth as determined in accordance with sections 270.31 to 270.39.

2. Temporarily nonproductive forest type shall be taxed five cents per acre per year, providing the owner complies with an agreement for reforestation within the time specified in the agreement. In the event of noncompliance, the land shall thereafter be subject to a 15 cents per acre per year tax.

3. Permanently nonproductive lands shall be subject to a five cents per acre tax per year.

4. Lands described in this section and used for administrative or management purposes, such as roads, logging camps or worksites, and other harvest of timber, or for free public recreation shall be classified the same as adjoining lands under the tree growth tax law.

5. Camp buildings or any temporary buildings shall be taxed as personal property and taxed and classed for the purpose of taxation as class 3.

History: 1957 c 639 s 6; 1963 c 418 s 4; 1976 c 181 s 2; 1986 c 444

270.37 TAX CREDIT.

Subdivision 1. **Credit; application.** For each acre of land which shall have been planted and maintained with a minimum of 500 trees of commercial species, the owner may be allowed a credit against taxes on other lands within the same governmental subdivision on which the planting is made in the amount of 50 cents per acre per year. An application for such credit must accompany the annual report to the county board required by section 270.38, subdivision 3, and shall be handled in the same manner as other reclassification provided in said subdivision. The credit shall in no event exceed the amount of the tax due upon the land in such governmental subdivision. When the plantation is ten years old, the plantation shall be classified as a commercial forest type and taxed as such and the credit against tax set forth above shall cease.

Subd. 2. **Applicability.** This section shall not apply to lands devoted to growing trees for ornamental purposes. In the event any such trees are severed, all credits received shall be repaid plus triple the tax as would otherwise have applied.

History: 1957 c 639 s 7; 1959 c 441 s 3; 1986 c 444

270.38 APPLICATION TO COME UNDER TREE GROWTH TAX LAW.

Subdivision 1. **Application requirements.** Any owner of forest lands desiring to place any governmental subdivision or portion thereof containing not less than five acres of forest land of the owner under the provisions of sections 270.31 to 270.39, shall make application in triplicate to the county board of the county in which the land is located upon a form prescribed by the commissioner of revenue specifying the legal description or list of descriptions of the land desired to be taxed under sections 270.31 to 270.39 and listing the number of acres of each forest type and the dominant species of each type in each such governmental subdivision or portion thereof. The application shall contain the statement signed and sworn to by the applicant that "while the land is under the tree growth tax law it will be used exclusively for the growing of continuous forest crops in accordance with sustained yield practice and will be open to use by the public for hunting and fishing except within one-fourth mile of a permanent dwelling or during periods of high fire hazard as determined by the commissioner of natural resources." The application shall be accompanied by a forest type map and a statement concerning the owner's intentions with regard to reforestation of any temporarily nonproductive land. If a tract under the tree growth tax law has any acreage devoted to administrative or management purposes, such as roads, logging camps, free public recreational areas, as shown on the map accompanying the application, the lands so used shall be classified the same as adjoining lands under this law.

Subd. 2. **County review of application.** Within 90 days after the filing of any application the county board shall make an order approving or disapproving the application and file the order with the county auditor. The county board may appoint and set the

salary of a qualified investigator to examine and review the applications and report findings for their guidance. The application together with the county board's order approving the application or applications shall constitute the agreement herein referred to. The agreement shall be deemed a covenant running with the land and shall be recorded in the office of the county recorder by the county auditor within ten days after the approval thereof. The expense of such recording shall be paid by the owner. In the event an application is approved, the land shall be deemed subject to sections 270.31 to 270.39 beginning with the calendar year next succeeding the one in which the agreement is recorded with the county recorder. If no action is taken by the county board within 90 days after the filing of the application, the applicant may submit the application to the commissioner of revenue, who shall act on the application with all the powers of the county board relative to such application. An agreement may be amended or canceled without formal hearing by mutual agreement between the land owner and the county board or by the following procedures in the absence of mutual agreement. In the event the county board wishes to amend or cancel an agreement, it may do so after a hearing held by the county board, notice of which shall have been sent by certified mail to the last owner of record at least 30 days prior to the hearing. Failure of the owner to object to such amendment or cancellation shall be deemed to be agreement in the proposed amendment or cancellation. An owner who wishes to amend or cancel an agreement shall file an application with the county board. Within 90 days after the filing of an application for amendment or cancellation the county board shall make an order approving or disapproving such application and file the order with the county auditor. If no action is taken by the county board within 90 days of filing, the applicant may submit the application for amendment or cancellation to the commissioner of revenue who shall act on the application with all the powers of the county board relative to such application. Amendments or cancellations ordered by the county board over objections from the owner may be subject to review by the district court. Rejection by the county board of an application for amendment or cancellation may be subject to review by the district court. Amendments and cancellations of agreements shall be recorded in the office of the county recorder by the county auditor within ten days after action thereon by the county board, with the filing fee to be paid by the party originating the action, and changes shall become effective with the beginning of the calendar year next succeeding said recording.

Subd. 3. [Repealed, 1967 c 285 s 2]

Subd. 4. **Reclassification.** During the sixth year of each calendar decade in which any property is being taxed under sections 270.31 to 270.39, such lands so subject to taxation hereunder may be classified by the county board upon application of the owner with a proper showing of the reasons justifying such reclassification, or upon the initiative of the county board in cases where facts justifying such reclassification come to the attention of the county board.

Subd. 5. **Withdrawal.** The owner of any timber lands made subject to sections 270.31 to 270.39 may at any time apply to withdraw any governmental subdivisions from taxation under sections 270.31 to 270.39. Such application made in writing and giving the reasons for withdrawal may be approved by the county board subject to the payment of all back taxes and penalties on the basis of ad valorem taxes in the area giving due credit for taxes paid under sections 270.31 to 270.39; provided that after an agreement has been in effect for more than ten years, penalties and ad valorem taxes as above specified shall be assessed and the owner shall be required to pay such penalties and ad valorem taxes only for the ten years prior to the date of withdrawal from the agreement. If approved, the lands shall be deemed to be withdrawn from taxation under sections 270.31 to 270.39 and shall be returned to taxation under the general real property tax law beginning with the calendar year next immediately following the date upon which the withdrawal was approved by the county board.

Subd. 6. **Powers of assessor to examine; reclassification; penalty.** The county assessor or a duly authorized representative may enter and examine the forest lands brought under sections 270.31 to 270.39 for tax purposes and may examine into any informa-

tion submitted by the owner in connection with any application to enter any governmental subdivision for purposes of taxation under sections 270.31 to 270.39 whereby the county board has been deceived, and in the event any willful misrepresentation of facts is made in any such application under sections 270.31 to 270.39, the county shall be entitled to triple the amount of tree growth taxes which should have been paid for all previous years as well as the current year in which such misrepresentation is discovered. In the event that such examination indicates that any such lands should be reclassified, the county board shall reclassify such lands and make such reclassification effective with the year in which the agreement containing such misrepresentation became effective. If any owner shall fail to comply with the requirements of sections 270.31 to 270.39, the county board may withdraw the land of such owner from taxation under sections 270.31 to 270.39 after a hearing held by the county board, notice of which shall have been sent by registered mail to the last owner of record 30 days prior to the hearing, but such action may be subject to review by the district court. Any lands so withdrawn from under sections 270.31 to 270.39 shall be withdrawn from such taxes at the end of the calendar year in which the actual withdrawal is made and in the succeeding calendar year shall be returned to taxation under the general provisions of the Minnesota Statutes relating to the taxation of lands.

Subd. 7. Removal by joint agreement. If at any time the county board deems the lands entered under sections 270.31 to 270.39 more valuable for other purposes than the production of timber crops such lands may be removed from the provisions of sections 270.31 to 270.39 by joint agreement of the county board and the taxpayer. In the event of disagreement, such lands may be removed from under sections 270.31 to 270.39 by the county board upon the recommendation of a three member committee, one member each appointed by the county board, the taxpayer and the commissioner of revenue.

Subd. 8. Lien. All taxes imposed by sections 270.31 to 270.39 shall be a lien upon the land and all forest products growing thereon and severed therefrom until the tax is paid. The tax shall be annually extended by the county auditor and shall be collected and distributed in the manner provided by law for the collection and distribution of ad valorem taxes.

Subd. 9. Net tax capacity determination. In determining the net tax capacity of property within any taxing district the value of the surface of lands subject to the provisions of sections 270.31 to 270.39 therein, as determined by the county board under provisions of section 88.48, subdivision 3, shall, for all purposes except the levying of taxes on such lands, be deemed the market value thereof.

Subd. 10. [Repealed, 1959 c 441 s 9]

History: 1957 c 639 s 8; 1959 c 441 s 4-8; 1963 c 418 s 5,6; 1965 c 624 s 5; 1967 c 285 s 1; 1969 c 9 s 66; 1969 c 1129 art 10 s 2; 1973 c 582 s 3; 1974 c 556 s 8; 1975 c 339 s 8; 1976 c 181 s 2; 1978 c 674 s 60; 1986 c 444; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20

270.39 CONSTRUCTION.

Sections 270.31 to 270.39 shall be broadly construed to achieve the purpose stated in the policy section. The invalidity of any provision shall be deemed not to affect the validity of other provisions.

History: 1957 c 639 s 9

STATE BOARD OF ASSESSORS

270.41 BOARD OF ASSESSORS.

Subdivision 1. Creation; purpose; powers. A board of assessors is created. The board shall establish, conduct, review, supervise, coordinate, and approve courses in assessment practices, and establish criteria for determining assessor's qualifications. The board shall also consider other matters relating to assessment administration

brought before it by the commissioner of revenue. The board may grant, renew, suspend, or revoke an assessor's license.

Subd. 2. **Members.** The board shall consist of nine members, who shall be appointed by the commissioner of revenue, in the manner provided herein. The members shall include:

- (1) two from the department of revenue;
- (2) two county assessors;
- (3) two assessors who are not county assessors, one of whom shall be a township assessor;
- (4) one from the private appraisal field holding a professional appraisal designation; and
- (5) two public members as defined by section 214.02.

The appointment provided in clauses (2) and (3) may be made from two lists of not less than three names each, one submitted to the commissioner of revenue by the Minnesota association of assessing officers or its successor organization containing recommendations for the appointment of appointees described in clause (2), and one by the Minnesota Association of Assessors, Inc. or its successor organization containing recommendations for the appointees described in clause (3). The lists must be submitted 30 days before the commencement of the term. In the case of a vacancy, a new list shall be furnished to the commissioner by the respective organization immediately. A member of the board who is no longer engaged in the capacity listed above is disqualified from membership in the board.

The board shall annually elect a chair and a secretary of the board.

Subd. 3. **Licenses; refusal or revocation.** The board may refuse to grant or renew, or may suspend or revoke, a license of an applicant or licensee for any of the following causes or acts:

- (1) failure to complete required training;
- (2) inefficiency or neglect of duty;
- (3) "unprofessional conduct" which means knowingly neglecting to perform a duty required by law, or violation of the laws of this state relating to the assessment of property or unlawfully exempting property or knowingly and intentionally listing property on the tax list at substantially less than its market value or the level required by law in order to gain favor or benefit, or knowingly and intentionally misclassifying property in order to gain favor or benefit;
- (4) conviction of a crime involving moral turpitude; or
- (5) any other cause or act that in the board's opinion warrants a refusal to issue or suspension or revocation of a license.

Subd. 4. **Rules.** The board of assessors may adopt rules under chapter 14, defining or interpreting grounds for refusing to grant or renew, and for suspending or revoking a license under this section. An action of the board of assessors in refusing to grant or renew a license or in suspending or revoking a license is subject to review in accordance with chapter 14.

Subd. 5. **Prohibited activity.** An assessor, deputy assessor, assistant assessor, appraiser, or other person employed by an assessment jurisdiction or contracting with an assessment jurisdiction for the purpose of valuing or classifying property for property tax purposes is prohibited from making appraisals or analyses, accepting an appraisal assignment, or preparing an appraisal report as defined in section 82B.02, subdivisions 2 to 5, on any property within the assessment jurisdiction where the individual is employed or performing the duties of the assessor under contract. Violation of this prohibition shall result in immediate revocation of the individual's license to assess property for property tax purposes. This prohibition must not be construed to prohibit an individual from carrying out any duties required for the proper assessment of property for property tax purposes. If a formal resolution has been adopted by the governing body of a governmental unit, which specifies the purposes for which such

work will be done, this prohibition does not apply to appraisal activities undertaken on behalf of and at the request of the governmental unit that has employed or contracted with the individual. The resolution may only allow appraisal activities which are related to condemnations, right-of-way acquisitions, or special assessments.

History: *Ex1971 c 31 art 25 s 1; 1973 c 582 s 3; 1975 c 136 s 52; 1976 c 222 s 132; 1985 c 285 s 46; 1986 c 444; 1988 c 719 art 7 s 2; 1993 c 375 art 3 s 4; 1994 c 510 art 1 s 4*

270.42 MEMBERSHIP.

Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements shall be as provided in sections 214.07 to 214.09. The provision of staff, administrative services and office space; the review and processing of complaints; the setting of board fees; and other provisions relating to board operations shall be as provided in chapter 214.

History: *Ex1971 c 31 art 25 s 2; 1975 c 136 s 53; 1976 c 222 s 133; 1991 c 199 art 1 s 49*

270.43 COMPENSATION AND EXPENSES.

Members of the board shall receive no compensation but shall be entitled to actual expenses for the performance of their duties.

History: *Ex1971 c 31 art 25 s 3*

270.44 CHARGES FOR COURSES, EXAMINATIONS OR MATERIALS.

The board may establish reasonable fees or charges for courses, examinations or materials, the proceeds of which shall be used to finance the activities and operation of the board.

History: *Ex1971 c 31 art 25 s 4*

270.45 DISPOSITION OF FEES.

All fees so established and collected shall be paid to the state treasurer for deposit in the general fund. The expenses of carrying out the provisions of sections 270.41 to 270.53 shall be paid from appropriations made to the board of assessors.

History: *Ex1971 c 31 art 25 s 5; 1973 c 582 s 3; 1975 c 136 s 54*

270.46 TRAINING COURSES, ESTABLISHMENT; OTHER COURSES, REGULATION.

The board shall establish training courses on assessment practices and shall review and approve courses on assessment practices offered by schools, colleges and universities as well as courses that are offered by any units of government on techniques of assessment. Courses shall be established in various places throughout the state and be offered on regular intervals.

History: *Ex1971 c 31 art 25 s 6; 1973 c 641 s 1*

270.47 RULES.

The board shall establish the rules necessary to accomplish the purpose of section 270.41, and shall establish criteria required of assessing officials in the state. Separate criteria may be established depending upon the responsibilities of the assessor. The board shall prepare and give examinations from time to time to determine whether assessing officials possess the necessary qualifications for performing the functions of the office. Such tests shall be given immediately upon completion of courses required by the board, or to persons who already possess the requisite qualifications under the rules of the board. Rules adopted by the board before July 1, 1981 to accomplish the purposes of sections 270.41 to 270.53, including those relating to licensure, are valid without compliance with the administrative procedure act.

History: *Ex1971 c 31 art 25 s 7; 1973 c 641 s 2; 1976 c 222 s 134; 1Sp1981 c 1 art 10 s 3; 1985 c 248 s 70; 1986 c 444*

270.48 LICENSURE OF QUALIFIED PERSONS.

The board shall license persons as possessing the necessary qualifications of an assessing official. Different levels of licensure may be established as to classes of property which assessors may be certified to assess at the discretion of the board. Every person, except a local or county assessor, regularly employed by the assessor to assist in making decisions regarding valuing and classifying property for assessment purposes shall be required to become licensed within three years of the date of employment or June 1, 1975, whichever is later. Licensure shall be required for local and county assessors as otherwise provided in sections 270.41 to 270.53.

History: *Ex1971 c 31 art 25 s 8; 1975 c 339 s 3; 1976 c 222 s 135; 1986 c 444*

270.485 SENIOR ACCREDITATION.

The legislature finds that the property tax system would be enhanced by requiring that every senior appraiser in the department of revenue's local government services division obtain senior accreditation from the state board of assessors. Every senior appraiser, including the department's regional representatives, by January 1, 1990, and every county assessor within two years of the first appointment under section 273.061, or by January 1, 1992, whichever is later, must obtain senior accreditation from the state board of assessors. The board shall provide the necessary courses or training. If a department senior appraiser or regional representative fails to obtain senior accreditation by January 1, 1990, the failure shall be grounds for dismissal, disciplinary action, or corrective action. Except as provided in section 273.061, subdivision 2, paragraph (c), after December 30, 1991, the commissioner must not approve the appointment of a county assessor who is not senior accredited by the state board of assessors. No employee hired by the commissioner as a senior appraiser or regional representative after June 30, 1987, shall attain permanent status until the employee obtains senior accreditation.

History: *1987 c 268 art 7 s 23; 1988 c 719 art 7 s 3; 1989 c 277 art 2 s 13*

270.49 OPTION OF MUNICIPALITY TO CONTINUE EXISTING SYSTEM.

Notwithstanding any other provisions of law to the contrary, on or before April 1, 1972, the governing body of any township, city or statutory city of less than 10,000 population according to the latest federal census, which wishes to continue to employ an assessor must certify by resolution to the commissioner of revenue, in the form and containing the information the commissioner shall specify, its intention to employ or continue to employ, either singly or jointly with one or more other subdivisions, an accredited assessor and that they will bear the cost of any training courses on assessment practices and related expenses which are necessary to attain such certification. The commissioner of revenue shall notify, by January 1, 1972, the governing body of each affected township or city that they must file a certificate pursuant to sections 270.41 to 270.53 if they wish to maintain the assessing function. If the governing body of any township, city or statutory city fails to make such certification, that subdivision shall not employ an assessor after November 30, 1972, the assessor for the county in which the subdivision is located shall assume responsibility for the assessment of all real and personal property in the subdivision commencing December 1, 1972. The commissioner of revenue shall notify the county assessor of each county prior to June 1, 1972, as to which subdivisions of the county have certified such intent and which subdivisions have failed to certify such intent. Where a county assumes continuing authority and responsibility for the assessment of real and personal property under this subdivision, all assessment records of the local assessment district, shall become the property of the appropriate county assessor on December 1, 1972.

History: *Ex1971 c 31 art 25 s 9; 1973 c 123 art 5 s 7; 1973 c 582 s 3; 1986 c 444*

270.493 CERTAIN TOWNSHIPS AND CITIES OPTION TO CONTINUE EXISTING SYSTEM.

Notwithstanding the provisions of section 270.49, any township in this state and any city of the fourth class within a county whose population exceeds 650,000 which failed to certify by resolution to the commissioner of revenue its intention to employ or continue to employ a certified assessor on or before April 1, 1972, may if done prior to December 1, 1974, hire a certified assessor in which case the assessment function will be returned to the local assessor by the county assessor.

History: 1973 c 641 s 3; 1974 c 399 s 1

270.494 CERTAIN TOWNSHIPS AND CITIES OPTION TO ELECT TO REINSTATE THE OFFICE OF ASSESSOR.

Notwithstanding the provisions of sections 270.49, 270.493, and 273.05, subdivision 1, a city or township in which the office of assessor has been eliminated because of failure of the city or township to certify by resolution to the commissioner of revenue its intention to employ or continue to employ a certified assessor on or before April 1, 1972, pursuant to section 270.49, or failure to hire a certified assessor prior to June 15, 1975, pursuant to sections 270.493 and 270.50, or failure to fill a vacancy in the office within 90 days pursuant to section 273.05, subdivision 1, may elect, with the approval of the commissioner, to have the office of assessor reinstated by hiring a certified or accredited assessor. This section shall not apply to Ramsey county or to cities and townships located in counties which have elected a county assessment system in accordance with section 273.055.

History: 1977 c 434 s 2

270.50 EMPLOYMENT OF LICENSED ASSESSORS.

Commencing June 15, 1975, no assessor shall be employed who has not been licensed as qualified by the board, provided the time to comply may be extended after application to the board upon a showing that licensed assessors are not available for employment. The board may license that a county or local assessor who has not received the training, but possesses the necessary qualifications for performing the functions of the office by the passage of an approved examination or may waive the examination if such person has demonstrated competence in performing the functions of the office for a period of time the board deems reasonable. The county or local assessing district shall assume the cost of training of its assessors in courses approved by the board for the purpose of obtaining the assessor's license to the extent of course fees, mileage, meals and lodging, and recognized travel expenses not paid by the state. If the governing body of any township or city fails to employ an assessor as required by sections 270.41 to 270.53, the assessment shall be made by the county assessor.

A town shall pay its assessor \$20 for each day the assessor is attending approved courses or taking the examination. In addition, the town shall pay its assessor \$10 for each approved course successfully completed and \$20 upon licensure. The maximum payable to an assessor for successful completion of courses and licensure shall not exceed \$50.

In the case of cities incorporated or townships organized after April 11, 1974 except cities or towns located in Ramsey county or which have elected a county assessor system in accordance with section 273.055, the board shall allow the city or town 90 days from the latter of June 3, 1977 or the date of incorporation or organization to employ a licensed assessor.

History: Ex1971 c 31 art 25 s 10; 1974 c 449 s 1; 1976 c 222 s 136; 1977 c 347 s 42; 1977 c 434 s 3; 1986 c 444

270.51 PREVIOUSLY ACCREDITED ASSESSORS.

All assessors previously accredited by the commissioner of revenue shall be considered as qualified under sections 270.41 to 270.53 and shall be so licensed.

History: Ex1971 c 31 art 25 s 11; 1973 c 582 s 3; 1976 c 222 s 137

270.52 COSTS OF MAKING ASSESSMENTS.

The cost of making any assessment provided in sections 270.41 to 270.53 shall be charged to the assessment district involved. The county auditor shall certify the costs incurred to the appropriate governing body not later than September 1 of each year, and if unpaid as of October 10, the county auditor shall levy a tax upon the taxable property of such taxing district sufficient to pay such costs. The amount so collected shall be credited to the general revenue fund of the county.

History: *Ex1971 c 31 art 25 s 12*

270.53 EXISTING CONTRACTS FOR ASSESSMENT OF PROPERTY.

Sections 270.41 to 270.53 shall not supersede existing contracts executed pursuant to section 273.072 or 471.59 except to the extent that such contracts may conflict with section 270.49 or 270.50 nor preclude contracts between a taxing district and the county for the assessment of property by the county assessor.

History: *Ex1971 c 31 art 25 s 13*

270.60 TAX REFUND AGREEMENTS WITH INDIANS.

Subdivision 1. Taxes paid by Indians. The commissioner of revenue is authorized to enter into a tax refund agreement with the governing body of any federally recognized Indian reservation in Minnesota. The agreement may provide for a mutually agreed upon amount as a refund to the governing body of any sales or excise tax paid by the total resident Indian population on or adjacent to a reservation into the state treasury, or for an amount which measures the economic value of an agreement by the tribal government to pay the equivalent of the state sales tax on items included in the sales tax base but exempt on the reservation, notwithstanding any other law which limits the refundment of taxes. The total resident Indian population on or adjacent to a reservation shall be defined according to the United States Department of the Interior, Bureau of Indian Affairs, as determined and stated in its Report on Service Population and Labor Force.

Subd. 2. Sales, use, and excise taxes. (a) The commissioner of revenue is authorized to enter into a tax agreement with the governing body of any federally recognized Indian reservation in Minnesota, that provides for the state and the tribal government to share sales, use, and excise tax revenues generated from on reservation activities of non-Indians and off reservation activities of members of the reservation. Every agreement entered into pursuant to this subdivision must require the commissioner of revenue to collect all state and tribal taxes covered by the agreement.

(b) The commissioner of revenue is authorized to collect any tribal taxes imposed pursuant to any agreement entered into pursuant to this subdivision and to make payments authorized by the agreement to the tribal government from the funds collected.

(c) The commissioner shall pay to the tribal government its share of the taxes collected pursuant to the agreement, as indicated in the agreement, and grant the taxpayer a credit for the taxpayer's share of the amount paid to the tribal government against the taxpayer's Minnesota tax.

Subd. 3. Appropriation. There is annually appropriated from the general fund to the commissioner of revenue the amounts necessary to make the refunds provided in this section.

History: *1977 c 203 s 9; 1983 c 342 art 6 s 1; 1989 c 277 art 1 s 7; 1991 c 291 art 9 s 5; 1994 c 510 art 3 s 1,2*

270.65 DATE OF ASSESSMENT; DEFINITION.

For purposes of taxes administered by the commissioner, the term "date of assessment" means the date a return was filed or the date a return should have been filed, whichever is later; or, in the case of taxes determined by the commissioner, "date of assessment" means the date of the order assessing taxes; or, in the case of an amended return filed by the taxpayer, the assessment date is the date the return was filed with the commissioner.

History: *1985 c 101 s 2; 1990 c 480 art 2 s 3*

270.651 [Repealed, 1990 c 480 art 1 s 45]

270.652 ALLOCATION OF PAYMENT.

In the discretion of the commissioner of revenue, payments received for taxes may be credited first to the oldest liability not secured by a judgment or lien. For liabilities to which payments are applied, the commissioner may credit payments first to penalties, next to interest, and then to the tax due.

History: 1990 c 480 art 2 s 4

270.66 RIGHT OF SETOFF.

Subdivision 1. Certification by commissioner. Upon certification by the commissioner of revenue to the commissioner of finance, or to any state agency described in subdivision 3 which disburses its own funds, within ten years after the date of assessment of the tax, that a taxpayer has an uncontested delinquent tax liability owed to the commissioner of revenue, the commissioner of finance or the state agency shall apply to such delinquent tax liability funds sufficient to satisfy such unpaid tax liability from funds appropriated for payment of an obligation of the state or any of its agencies that are due and owing the taxpayer, provided however, that such credit shall not be made against any funds exempt under section 550.37 or those funds owed an individual taxpayer who receives assistance under the provisions of chapter 256.

Subd. 2. Setoff satisfies state obligation. All funds, whether general or dedicated, shall be subject to setoff in the manner herein provided. Transfer of funds as herein provided is payment of the obligation of the state or any of its agencies to such taxpayer and any actions for said funds, if any, shall be had against the department of revenue on the issue of such tax liability. Nothing in this section shall be construed to limit the previously existing right of the state or any of its agencies to setoff.

Subd. 3. Agencies shall maintain records. Notwithstanding any provision to the contrary, every person, organization, or corporation doing business (hereafter called vendor) with the state of Minnesota or any of its departments, agencies, or educational institutions including the University of Minnesota (all hereafter called agency) shall provide that agency with either their social security number, federal taxpayer identification number, or Minnesota tax identification number. The agency shall maintain records of this information, and shall make these records available, on request, to the commissioner for the sole purpose of identifying people who have not filed state tax returns or who have not paid uncontested state tax liabilities (hereafter called delinquent taxpayer). When an agency is notified by the commissioner that a vendor is a delinquent taxpayer, payments shall not be made by the agency to the vendor until the commissioner notifies the agency that the vendor no longer is a delinquent taxpayer. Furthermore, if the vendor has an uncontested delinquent tax liability, the setoff provided in subdivision 1 may be implemented. The commissioner shall determine that a vendor no longer is a delinquent taxpayer when the vendor has filed all delinquent state tax returns, paid all uncontested state tax liabilities or entered into an agreement with the commissioner which provides for the payment of these liabilities.

Subd. 4. Political subdivision debts. (a) As used in this subdivision, "political subdivision" means counties and home rule charter or statutory cities, and "debts" means a legal obligation to pay a fixed amount of money, which equals or exceeds \$100 and which is due and payable to the claimant political subdivision.

(b) If one political subdivision owes a debt to another political subdivision, and the debt has not been paid within six months of the date when payment was due, the creditor political subdivision may notify the commissioner of revenue of the debt, and shall provide the commissioner with information sufficient to verify the claim. If the commissioner has reason to believe that the claim is valid, and the debt has not been paid, the commissioner shall initiate setoff procedures under this subdivision.

(c) Within ten days of receipt of the notification from the creditor political subdivision, the commissioner shall send a written notice to the debtor political subdivision,

advising it of the nature and amount of the claim. This written notice shall advise the debtor of the creditor political subdivision's intention to request setoff of the refund against the debt.

The notice will also advise the debtor that the debt can be setoff against a state aid payment, and will advise the debtor of the right to contest the validity of the claim at a hearing. The debtor must assert this right by written request to the commissioner of revenue, which request the commissioner must receive within 45 days of the mailing date of the notice.

(d) If the commissioner receives written notice of a debtor political subdivision's intention to contest at hearing the claim upon which the intended setoff is based, the commissioner shall initiate a hearing according to contested case procedures established in the state administrative procedure act not later than 30 days after receipt of the debtor's request for a hearing. The costs of the hearing shall be paid equally by the political subdivisions that are parties to the hearing. The office of administrative hearings shall separately bill each political subdivision for one-half of the costs.

(e) If the debtor political subdivision does not object to the claim, or does not prevail in an objection to the claim or at a hearing on the claim, the commissioner of revenue shall deduct the amount of the debt from the next payment scheduled to be made to the debtor under section 273.1398 or chapter 477A. The commissioner shall remit the amount deducted to the claimant political subdivision.

History: 1975 c 377 s 5; 1981 c 356 s 337; 1982 c 523 art 2 s 5; 1985 c 101 s 3; 1986 c 444; 1989 c 184 art 2 s 13; 1991 c 291 art 16 s 2; 1993 c 375 art 17 s 7

270.67 AGREEMENTS REGARDING TAX LIABILITY OR EXTENSION OF PAYMENT OF TAX.

Subdivision 1. Liability agreements. The commissioner of revenue, or any officer or employee of the department of revenue authorized in writing by the commissioner, is authorized to enter into an agreement in writing with any taxpayer, or duly authorized agent or representative of the taxpayer, relating to the liability of the taxpayer in respect of any state tax administered by the commissioner for any taxable period ending prior to the date of the agreement. The agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon, or the agreement modified, by any officer, employee, or agent of the state; and, in any suit, action, or proceeding, the agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, shall not be annulled, modified, set aside, or disregarded.

Subd. 2. Extension agreements. When any portion of any tax payable to the commissioner of revenue together with interest and penalty thereon, if any, has not been paid, the commissioner may extend the time for payment for a further period. When the authority of this section is invoked, the extension shall be evidenced by written agreement signed by the taxpayer and the commissioner, stating the amount of the tax with penalty and interest, if any, and providing for the payment of the amount in regular weekly, semimonthly or monthly installments. The agreement shall contain a confession of judgment for the amount and for any unpaid portion thereof and shall provide that the commissioner may forthwith enter judgment against the taxpayer in the district court of the county of residence as shown upon the taxpayer's tax return for the unpaid portion of the amount specified in the extension agreement. The commissioner may accept other collateral the commissioner considers appropriate to secure satisfaction of the tax liability. The principal sum specified in the agreement shall bear interest at the rate specified in section 270.75 on all unpaid portions thereof until the same has been fully paid or the unpaid portion thereof has been entered as a judgment. The judgment shall bear interest at the rate specified in section 270.75. If it appears to the commissioner that the tax reported by the taxpayer is in excess of the amount actually owing by the taxpayer, the extension agreement or the judgment entered pursuant thereto shall be corrected. If after making the extension agreement or entering judg-

ment with respect thereto, the commissioner determines that the tax as reported by the taxpayer is less than the amount actually due, the commissioner shall assess a further tax in accordance with the provisions of law applicable to the tax. The authority granted to the commissioner by this section is in addition to any other authority granted to the commissioner by law to extend the time of payment or the time for filing a return and shall not be construed in limitation thereof.

Subd. 3. Consent agreement. A taxpayer shall have the right at any time, whether or not an order has been issued, to sign and deliver to the commissioner a written consent to a change in tax liability which waives the requirement of any additional notice and all rights of appeal to the tax court concerning the assessment and collection of any part or all of the tax liability.

History: 1982 c 523 art 2 s 6; 1985 c 210 art 1 s 6; 1986 c 444; 1990 c 480 art 2 s 5,6

270.68 LEGAL ACTION; CONFESSION OF JUDGMENT.

Subdivision 1. Legal action. In addition to all other methods authorized by law for the collection of tax, if any tax payable to the commissioner of revenue or to the department of revenue, including penalties and interest thereon, is not paid within 60 days after it is required by law to be paid, the commissioner of revenue may proceed under this subdivision. Within five years after the date of assessment of the tax, or, if the action is to renew or enforce a judgment, at any time before the judgment's expiration, the commissioner may bring an action at law against the person liable for the payment or collection of the tax, in the name of the state, for the recovery of the tax and interest and penalties due in respect thereof. The action shall be brought in the district court of the judicial district in which lies the county of the residence or principal place of business within this state of the taxpayer, or, in the case of an estate or trust, of the place of its principal administration, and for this purpose the place named as such in the return, if any, made by the taxpayer shall be conclusive against the taxpayer in this matter. If no place is named in the return, the action may be commenced in Ramsey county. The action shall be commenced by filing with the court administrator a statement showing the name and address of the taxpayer, if known, an itemized summary of the taxable periods and the type of tax, the tax due and unpaid and the interest and penalties due with respect thereto under the provisions of law applicable to the tax, and shall contain a prayer that the court adjudge the taxpayer to be indebted on account of the taxes, interest, and penalties in the amount specified in the statement; a copy of the statement shall be furnished to the court administrator therewith. The court administrator shall mail a copy of the statement by certified mail to the taxpayer at the address given in the return, if any; and to the taxpayer's last known address, within five days after the same is filed, except that, if the taxpayer's address is not known, notice shall be made by posting a copy of the statement for ten days in the place in the courthouse where public notices are regularly posted. To litigate the claim, or any part of it, the taxpayer shall serve an answer upon the commissioner on or before the 20th day after the date of mailing the statement; or, if notice has been given by posting, on or before the 20th day after the expiration of the period during which the notice was required to be posted. If no answer is served within the specified time, the court administrator, upon the filing of an affidavit of default, shall enter judgment for the state in the amount prayed for, plus costs of \$10. If an answer is filed, the issues raised shall stand for trial as soon as possible after the filing of the answer, and the court shall determine the issues and direct judgment accordingly; and, if the taxes, interest, or penalties are sustained to any extent over the amount rendered by the taxpayer, shall assess \$10 costs against the taxpayer. The court shall disregard all technicalities and matters of form not affecting the substantial merits. The commissioner may call upon the county attorney or the attorney general to conduct the proceedings on behalf of the state. If a proceeding is referred to a county attorney, and the county attorney fails to issue or cause to be issued an indictment or criminal complaint within 30 days after the referral by the commissioner, the attorney general may conduct the proceeding. Execution shall be issued upon the judg-

ment at the request of the commissioner, and the execution shall, in all other respects, be governed by the laws applicable to executions issued on judgments. Only the homestead and household goods of the judgment debtor shall be exempt from seizure and sale upon the execution.

In addition to the procedure in this subdivision, legal action may be commenced by the commissioner in district court in the same manner or venue as any other civil action.

Subd. 2. Appeals. Either party to an action or a judgment for the recovery of any taxes, interest, or penalties under subdivision 1 may appeal the judgment as in other civil cases.

Subd. 3. Tax presumed valid. The tax, as assessed by the commissioner, with any penalties included therein, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the taxpayer to show its incorrectness or invalidity. A statement filed by the commissioner showing the amount of the tax and penalties as determined or assessed by the commissioner, is admissible in evidence and shall establish prima facie the facts set forth therein.

Subd. 4. Confession of judgment. (a) The commissioner may, within 3-1/2 years after any return or report is filed, notwithstanding section 541.09, enter judgment on any confession of judgment contained in the return or report after ten days notice served upon the taxpayer by mail at the address shown in the return or report. The judgment shall be entered by the court administrator of district court upon the filing of a photocopy or similar reproduction of that part of the return or report containing the confession of judgment along with a statement of the commissioner or an agent that the tax has not been paid. The commissioner may prescribe the words for the confession of judgment statement contained on the return or report.

(b) Notwithstanding any other provision of the law to the contrary, the commissioner may, within five years after a written agreement is signed by the taxpayer and the commissioner under the provisions of section 270.67, subdivision 2, enter judgment on the confession of judgment contained within the agreement after ten days notice served upon the taxpayer at the address shown in the agreement. Such judgment shall be entered by the court administrator of district court upon the filing of the agreement or a certified copy thereof along with a statement of the commissioner or an agent that the tax has not been paid.

History: 1982 c 523 art II s 7; 1983 c 247 s 118; 1985 c 101 s 4,5; 1Sp1985 c 14 art 1 s 6; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1990 c 480 art 2 s 7,8; 1990 c 594 art 1 s 63; 1991 c 291 art 16 s 3

270.69 LIEN FOR TAXES.

Subdivision 1. Creation of lien. The tax imposed by any chapter administered by the commissioner of revenue, and interest and penalties imposed with respect thereto, including any recording fees, sheriff fees, or court costs that may accrue, shall become a lien upon all the property within this state, both real and personal, of the person liable for the payment or collection of the tax, except property exempt under subdivision 3, from and after the date of assessment of the tax.

Subd. 2. Filing of liens necessary for enforceability against certain persons; methods of filing; fees. (a) The lien imposed by subdivision 1 is not enforceable against any purchaser, mortgagee, pledgee, holder of a uniform commercial code security interest, mechanic's lienor, or judgment lien creditor whose interest has been duly perfected or is entitled to protection under applicable provisions of state law, until a notice of lien has been filed by the commissioner of revenue in the office of the county recorder of the county in which real property is situated, or in the case of personal property belonging to an individual who is not a resident of this state or to a corporation, partnership, or other organization, in the office of the secretary of state, or in the case of personal property belonging to a resident individual, in the office of the county recorder of the county of residence of the individual.

(b)(1) Notices of liens, and lien releases, transcriptions, and renewals, in a form prescribed by the commissioner of revenue, may be filed with the county recorder or the secretary of state by mail, personal delivery, or by electronic transmission by the commissioner or a delegate into the computerized filing system of the secretary of state authorized under section 336.9-411. The secretary of state shall transmit the notice electronically to the office of the county recorder, if that is the place of filing, in the county or counties shown on the computer entry. The filing officer, whether the county recorder or the secretary of state, shall endorse and index a printout of the notice in the same manner as if the notice had been mailed or delivered.

(2) County recorders and the secretary of state shall enter information relative to lien notices, transcriptions, renewals, and releases filed in their offices into the central database of the secretary of state. For notices filed electronically with the county recorders, the date and time of receipt of the notice and county recorder's file number, and for notices filed electronically with the secretary of state, the secretary of state's recording information, must be entered by the filing officer into the central database before the close of the working day following the day of the original data entry by the department of revenue.

The filing and indexing of all notices must be in accordance with the filing and indexing of notices of federal liens, certificates of release, and refiled notices under section 272.483.

(c) Notwithstanding any other law to the contrary, the department of revenue is exempt from payment of fees when a lien, lien renewal, or lien transcription is offered for recording. The recording fees must be paid along with the release fee at the end of the month in which the release of lien is recorded, after receipt of a monthly statement from a county recorder or the secretary of state. The department of revenue shall add the recording fees to the delinquent tax liability of the taxpayer. Notwithstanding any other law to the contrary, the fee for filing or recording a notice of lien, or lien release, transcription, or renewal is \$15.

(d) There is appropriated to the commissioner of revenue an amount representing the cost of payment of recording fees to the county recorders and the secretary of state. The commissioner shall keep a separate accounting of the costs and of payments for recording fees remitted by taxpayers, and make the records available to the legislature upon request.

Subd. 3. Exempt property. The lien imposed on personal property by this section, even though properly filed, is not enforceable: (1) against a purchaser with respect to tangible personal property purchased at retail in the ordinary course of the seller's trade or business, unless at the time of purchase the purchaser intends the purchase to or knows the purchase will hinder, evade, or defeat the collection of a tax; or (2) against the personal property listed as exempt in sections 550.37, 550.38, and 550.39.

Subd. 4. Period of limitations. The lien imposed by this section shall, notwithstanding any other provision of law to the contrary, be enforceable from the time the lien arises and for ten years from the date of filing the notice of lien, which must be filed by the commissioner within five years after the date of assessment of the tax or final administrative or judicial determination of the assessment. A notice of lien filed in one county may be transcribed to any other county within ten years after the date of its filing, but the transcription shall not extend the period during which the lien is enforceable. A notice of lien may be renewed by the commissioner before the expiration of the ten-year period for an additional ten years. The taxpayer must receive written notice of the renewal.

Subd. 5. [Repealed, 1985 c 101 s 17]

Subd. 6. Enforceability of lien. The lien imposed by this section shall be enforceable by levy as authorized in section 270.70, or by judgment lien foreclosure as authorized in chapter 550.

Subd. 7. Notice of mortgage foreclosure or contract termination. In the case of a mortgage foreclosure upon real property commenced under chapter 580, or a termina-

tion of contract of sale of real property commenced under section 559.21, if the commissioner has filed a lien under this section before the foreclosure sale or date of termination, notice of the mortgage foreclosure or termination of contract of sale shall be mailed to the commissioner not less than 25 days prior to the foreclosure sale or date of termination. Provided, notice need not be given pursuant to this subdivision if the lien of the commissioner has been filed within 30 days or less prior to the foreclosure sale or date of termination. The notice must contain the following information: (1) the name and address of the taxpayer; (2) a copy of the notice of mortgage foreclosure or contract for deed cancellation; (3) a copy of the lien filed by the commissioner; (4) the total unpaid balance of the mortgage or contract for deed; (5) a legal description of the property; and (6) the fair market value of the property.

Subd. 8. Filing entitlement. Execution of notices of liens or of other notices affecting state tax liens by the original or facsimile signature of the commissioner of revenue or a delegate entitles them to be filed, and no other attestation, certification, or acknowledgment is necessary. For purposes of this subdivision, transmission of notices under subdivision 2, paragraph (b), clause (1), constitutes execution.

Subd. 9. Lien search fees. Upon request of any person, the filing officer shall issue a certificate showing whether there is recorded in that filing office, on the date and hour stated in the certificate, any notice of lien or certificate or notice affecting any lien filed on or after ten years before the date of the search certificate, naming a particular person, and giving the date and hour of filing of each notice or certificate naming the person. The fee for a certificate shall be as provided by section 336.9-407 or 357.18, subdivision 1, clause (3). Upon request, the filing officer shall furnish a copy of any notice of state lien, or notice or certificate affecting a state lien, for a fee of 50 cents per page.

Subd. 10. Limitation for homestead property. A lien imposed under this section upon property defined as homestead property in chapter 510 may not be enforced against homestead property by levy under section 270.70, or by judgment lien under chapter 550.

Subd. 11. Erroneous liens. After the filing of a notice of lien under this section on the property or rights to property of a person, the person may appeal to the commissioner, in the form and at the time prescribed by the commissioner, alleging an error in the filing of the lien and requesting its release. If the commissioner determines that the filing of the notice of any lien was erroneous, within 14 days after the determination, the commissioner must issue a certificate of release of the lien. The certificate must include a statement that the filing of the lien was erroneous. In the event that the lien is erroneous and is not released within the 14-day period, reasonable attorney fees shall be paid. Damages must be paid in accordance with section 3.736, subdivision 7.

Subd. 12. Lien release fee. A fee of \$25 must be paid to the commissioner of revenue for each duplicate of an original release of lien.

Subd. 13. Forty-five day rule. A notice of tax lien filed under this section has priority over a security interest arising under article 9 of the Uniform Commercial Code, codified as sections 336.9-101 to 336.9-508, that is perfected before the date of filing of the lien imposed by this section, but only if:

(1) the perfected security interest secures property acquired by the taxpayer or advances made by the secured party after the notice of tax lien is filed; and

(2) the property is acquired or the advance is made after the 45th day following the day on which the notice of tax lien is filed, or after the secured party has actual notice or knowledge of the tax lien filing, whichever is earlier.

Subd. 14. Registered land. When a lien is filed with a county recorder under subdivision 2, the county recorder shall search the registered land records in that county and cause the lien to be memorialized on every certificate of title or certificate of possessory title of registered land in that county which can be reasonably identified as owned by the taxpayer who is named on the lien. The fees for memorializing the lien shall be paid in the manner prescribed by subdivision 2, paragraph (c). The county recorders, and their employees and agents, shall not be liable for any loss or damages arising from fail-

ure to identify a parcel of registered land owned by the taxpayer who is named on the lien.

Subd. 15. Assignment of liens. The commissioner may sell and assign to a third party the right of redemption in specific real property for liens filed under this section. The redemption in the hands of the assignee shall not be enforceable by any of the collection remedies provided to the commissioner by law. The assignee is limited to the same rights of redemption the commissioner would have in any mortgage foreclosure proceeding, but in any bankruptcy proceeding does not obtain the priority of the commissioner as a tax claimant. Should the taxpayer or its assigns exercise the right of redemption the assignment by the commissioner is extinguished.

History: 1982 c 523 art 2 s 8; 1983 c 180 s 3-6; 1985 c 101 s 6-9; 1985 c 281 s 2; 1986 c 444; 1Sp1986 c 1 art 7 s 11-14; 1989 c 324 s 6; 1990 c 480 art 2 s 9-13; 1990 c 604 art 1 s 10; 1991 c 291 art 16 s 4; art 18 s 2-4; 1992 c 511 art 9 s 5; 1994 c 510 art 4 s 3,4

270.70 LEVY AND DISTRAINT.

Subdivision 1. Authority of commissioner. If any tax payable to the commissioner of revenue or to the department of revenue is not paid when due, such tax may be collected by the commissioner of revenue within five years after the date of assessment of the tax, or if a lien has been filed, during the period the lien is enforceable, or if the tax judgment has been filed, within the statutory period of enforcement of a valid tax judgment, by a levy upon all property and rights to property, including any property in the possession of law enforcement officials, of the person liable for the payment or collection of such tax (except that which is exempt from execution pursuant to section 550.37 and amounts received under United States Code, title 29, chapter 19, as amended through December 31, 1989) or property on which there is a lien provided in section 270.69. For this purpose, the term "tax" shall include any penalty, interest, and costs properly payable. The term "levy" includes the power of distraint and seizure by any means; provided, no entry can be made upon the business premises or residence of a taxpayer in order to seize property without first obtaining a writ of entry listing the property to be seized and signed by a judge of the district court of the district in which the business premises or residence is located.

Subd. 2. Notice and demand; collection by levy; jeopardy collection. (a) Before a levy is made, notice and demand for payment of the amount due must be given to the person liable for the payment or collection of the tax at least 30 days prior to the levy. The notice required under this paragraph must be sent to the taxpayer's last known address and must include a brief statement that sets forth in simple and nontechnical terms:

(1) the administrative appeals available to the taxpayer with respect to the levy and sale; and

(2) the alternatives available to the taxpayer that can prevent a levy, including installment payment agreements under section 270.67, subdivision 2.

(b) Notwithstanding the stay of collection provisions in sections 270.10, subdivision 5, and 289A.37, subdivision 1, paragraph (b), and the notice provisions in paragraph (a), if the commissioner has reason to believe that collection of the tax is in jeopardy, notice and demand for immediate payment of the tax may be made. If the tax is not paid, the commissioner may proceed to collect by levy.

Subd. 3. Manner of execution and sale. In making the execution of the levy and in collecting the taxes due, the commissioner shall have all of the powers provided in chapter 550 and in any other law for purposes of effecting an execution against property in this state. The sale of property levied upon, and the time and manner of redemption therefrom, shall, to the extent not provided in sections 270.701 to 270.709, be governed by chapter 550. The seal of the court, subscribed by the court administrator, as provided in section 550.04, shall not be required. The levy for collection of taxes may be made whether or not the commissioner has commenced a legal action for collection of such taxes.

Subd. 4. Stay of sale. (a) Where a jeopardy assessment or any other assessment has

been made by the commissioner, the property seized for collection of the tax shall not be sold until the time has expired for filing an appeal of the assessment with the tax court pursuant to chapter 271. If an appeal has been filed, no sale shall be made unless the taxes remain unpaid for a period of more than 30 days after final determination of the appeal by the tax court or by the appropriate judicial forum.

(b) Notwithstanding clause (a), seized property may be sold if

(i) the taxpayer consents in writing to the sale, or

(ii) the commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense.

The tax court has jurisdiction to review a determination made under clause (b)(ii). Review is commenced by motion of the commissioner or the taxpayer. The order of the court in response to the motion is reviewable in the same manner as any other decision of the tax court.

Subd. 5. Probate court jurisdiction. Where a levy has been made to collect taxes pursuant to this section and the property seized is properly included in a formal proceeding commenced under sections 524.3-401 to 524.3-505 and maintained under full supervision of the court, such property shall not be sold until the probate proceedings are completed or until the court so orders.

Subd. 6. Bond or security to release seizure. The property seized shall be returned by the commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the commissioner, or deposits with the commissioner security in such form and amount as the commissioner deems necessary to insure payment of the liability, but not more than twice the liability.

Subd. 7. Injunction. Notwithstanding any other provision to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in such property, the district court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

Subd. 8. Surrender of property subject to levy. Any person who fails or refuses to surrender without reasonable cause any property or rights to property subject to levy, upon demand by the commissioner, shall be liable personally to the state of Minnesota in an amount equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made. Any amount recovered under this subdivision shall be credited against the tax liability for the collection of which such levy was made. A financial institution need not surrender funds on deposit until ten days after service of the levy.

Subd. 9. Penalty. In addition to the personal liability imposed by subdivision 8, if any person required to surrender property or rights to property fails or refuses to surrender the property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 25 percent of the amount recoverable under subdivision 8. No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

Subd. 10. Person defined. The term "person" as used in subdivision 8 includes an officer or employee of a corporation or a member or employee of a partnership who, as such officer, employee or member is under a duty to surrender the property or rights to property or to discharge the obligation. The personal liability imposed by subdivision 8 and the penalty imposed by subdivision 9 may, after demand to honor a levy has been made, be assessed by the commissioner within 60 days after service of the demand. An assessing tax order under this subdivision shall be appealable to the tax court without payment of the tax, penalty, or interest in the manner provided by law, but an appeal shall not preclude the commissioner from exercising any collection action the commissioner deems necessary to preserve the interests of the state while the matter is pending.

Subd. 11. Optional remedy. Any action taken by the commissioner pursuant to this

section shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy.

Subd. 12. Equitable relief. After the commissioner has seized the property of any person, that person may, upon giving 48 hours notice to the commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the taxpayer upon such terms and conditions as the court may deem equitable.

Subd. 13. Levy and sale by sheriff. If any tax payable to the commissioner of revenue or to the department of revenue is not paid as provided in subdivision 2, the commissioner may, within five years after the date of assessment of the tax, delegate the authority granted by subdivision 1, by means of issuing a warrant to the sheriff of any county of the state commanding the sheriff, as agent for the commissioner, to levy upon and sell the real and personal property of the person liable for the payment or collection of the tax and to levy upon the rights to property of that person within the county, or to levy upon and seize any property within the county on which there is a lien provided in section 270.69, and to return the warrant to the commissioner and pay to the commissioner the money collected by virtue thereof by a time to be therein specified not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the person and to levy upon the rights to property of the person within the county (except the person's homestead or that property which is exempt from execution pursuant to section 550.37), or to levy upon and seize any property within the county on which there is a lien provided in section 270.69. For purposes of the preceding sentence, the term "tax" shall include any penalty, interest and costs properly payable. The sheriff shall then sell so much of the property levied upon as is required to satisfy the taxes, interest, and penalties, together with the sheriff's costs; but the sales, and the time and manner of redemption therefrom, shall, to the extent not provided in sections 270.701 to 270.709, be governed by chapter 550. The proceeds of the sales, less the sheriff's costs, shall be turned over to the commissioner, who shall then apply the proceeds as provided in section 270.708.

Subd. 14. Priority of levy. Notwithstanding section 52.12, a levy by the commissioner made pursuant to the provisions of this section upon a taxpayer's funds on deposit in a financial institution located in this state, shall have priority over any unexercised right of setoff of the financial institution to apply the levied funds toward the balance of an outstanding loan or loans owed by the taxpayer to the financial institution. A claim by the financial institution that it exercised its right to setoff prior to the levy by the commissioner must be substantiated by evidence of the date of the setoff, and shall be verified by the sworn statement of a responsible corporate officer of the financial institution. Furthermore, for purposes of determining the priority of any levy made under this section, the levy shall be treated as if it were an execution made pursuant to chapter 550.

Subd. 15. Effect of honoring levy. Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the commissioner, surrenders the property or rights to property (or who pays a liability under subdivision 8) shall be discharged from any obligation or liability to the person liable for the payment or collection of the delinquent tax with respect to the property or rights to property so surrendered or paid.

Subd. 16. Notice of levy. Notwithstanding any other provision of law to the contrary, the notice of any levy authorized by this section may be served by mail or by delivery by an employee or agent of the department of revenue.

Subd. 17. Uneconomical levy. No levy may be made on property if the amount of the expenses that the commissioner estimates would be incurred by the department with respect to the levy and sale of the property exceeds the fair market value of the property at the anticipated time of levy.

Subd. 18. Levy on appearance date of subpoena. No levy may be made on the property of a person on the day on which the person, or an officer or employee of the person, is required to appear in response to a subpoena issued by the commissioner to collect

unpaid taxes, unless the commissioner determines that the collection of the tax is in jeopardy.

History: 1975 c 377 s 6; 1976 c 134 s 78; 1977 c 307 s 29; 1982 c 523 art 2 s 9-16; 1983 c 180 s 7-9; 1985 c 101 s 10,11; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1988 c 719 art 19 s 11; 1990 c 480 art 2 s 14; 1990 c 604 art 1 s 11-16; 1991 c 291 art 16 s 5; 1993 c 375 art 10 s 8; 1994 c 510 art 4 s 5

270.7001 CONTINUOUS LEVY.

Subdivision 1. **Authority.** The commissioner may, within five years after the date of assessment of the tax, or if a lien has been filed under section 270.69, within the statutory period for enforcement of the lien, give notice to a person, officer, or political subdivision or agency of the state to withhold the amount of any tax, interest, or penalties due from a taxpayer, or the amount due from an employer or person who has failed to withhold and transmit amounts due from any payments to the taxpayer, employer, or person. The amounts withheld shall be transmitted to the commissioner at the times the commissioner designates.

Subd. 2. **Levy continuous.** The levy made under subdivision 1 is continuous from the date the notice is received until (1) the amount due stated on the notice has been withheld or (2) the notice has been released by the commissioner under section 270.709, whichever occurs first.

Subd. 3. **Amount to be withheld.** The amount required to be withheld under this section is the least of:

- (1) the amount stated on the notice;
- (2) if the taxpayer, employer, or person is not a natural person, 100 percent of the payment;
- (3) if the taxpayer, employer, or person is an individual, 25 percent of the payment.

Subd. 4. **Payments covered.** For purposes of this section, the term payments does not include wages as defined in section 290.92 or funds in a deposit account as defined in section 336.9-105. The term payments does include the following:

- (1) payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, and mineral or other natural resource rights;
- (2) payments or credits under written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise, if the payments are not covered by section 290.92, subdivision 23; and
- (3) any other periodic payments or credits resulting from an enforceable obligation to the taxpayer, employer, or person.

Subd. 5. **Determination of status; effect.** A determination of a person's status as an independent contractor under this section does not affect the determination of the person's status for the purposes of any other law or rule.

History: 1993 c 375 art 10 s 9

270.701 SALE OF SEIZED PROPERTY.

Subdivision 1. **Notice of seizure.** As soon as practicable after seizure of property, notice in writing shall be given by the commissioner of revenue to the owner of the property (or, in the case of personal property, the possessor thereof), and shall be served in like manner as a summons in a civil action in the district court. If the owner cannot be readily located, or has no dwelling or place of business within this state, the notice may be mailed to the last known address. The notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

Subd. 2. **Notice of sale.** The commissioner shall as soon as practicable after the seizure of the property give notice of sale of the property to the owner, in the manner of

service prescribed in subdivision 1. In the case of personal property, the notice shall be served at least 10 days prior to the sale. In the case of real property, the notice shall be served at least four weeks prior to the sale. The commissioner shall also cause public notice of each sale to be made. In the case of personal property, notice shall be posted at least 10 days prior to the sale at the post office nearest the place where the seizure is made, and in not less than two other public places. In the case of real property, six weeks' published notice shall be given prior to the sale, in a newspaper published or generally circulated in the county. The notice of sale provided in this subdivision shall specify the property to be sold, and the time, place, manner and conditions of the sale. Whenever levy is made without regard to the ten-day period provided in section 270.70, subdivision 2, public notice of sale of the property seized shall not be made within the ten-day period unless section 270.702 (relating to sale of perishable goods) is applicable.

Subd. 3. Sale of indivisible property. If any property liable to levy is not divisible, so as to enable the commissioner by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of the property shall be sold.

Subd. 4. Time and place of sale. The time of sale shall be after the expiration of the notice periods prescribed in subdivision 2. The place of sale shall be within the county in which the property is seized, except by special order of the commissioner.

Subd. 5. Manner and conditions of sale. (a) Before the sale the commissioner shall determine a minimum price for which the property shall be sold, and if no person offers for the property at the sale the amount of the minimum price, the property shall be declared to be purchased at the minimum price for the state of Minnesota; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the commissioner shall take into account the expense of making the levy and sale. The announcement of the minimum price determined by the commissioner may be delayed until the receipt of the highest bid.

(b) The sale shall not be conducted in any manner other than:

(i) by public auction, or

(ii) by public sale under sealed bids.

(c) In the case of seizure of several items of property, the items may be offered separately, in groups, or in the aggregate, and shall be sold under whichever method produces the highest aggregate amount.

(d) Payment in full shall be required at the time of acceptance of a bid, except that a part of the payment may be deferred by the commissioner for a period not to exceed 30 days.

(e) Other methods (including advertising) in addition to those prescribed in subdivision 2 may be used in giving notice of the sale.

(f) The commissioner may adjourn the sale from time to time for a period not to exceed 30 days.

(g) If payment in full is required at the time of acceptance of a bid and is not then and there paid, the commissioner shall forthwith proceed to again sell the property in the manner provided in this section. If the conditions of the sale permit part of the payment to be deferred, and if the part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or that part thereof as has not been paid, together with interest at the rate specified in section 549.09 from the date of the sale; or, in the discretion of the commissioner, the sale may be declared by the commissioner to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in this section. In the event of a readvertisement and sale, any new purchaser shall receive the property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by the defaulting purchaser shall be forfeited.

Subd. 6. Right to request sale of seized property within 60 days. The owner of property seized by levy may request that the commissioner offer to sell the property within

60 days after the request, or within a longer period requested by the owner. The request must be complied with unless the commissioner determines and notifies the owner within that period that compliance is not in the best interests of the state of Minnesota. A determination by the commissioner not to comply with the request is appealable to the tax court in the manner provided by law.

History: 1982 c 523 art 2 s 17; 1986 c 444; 1990 c 604 art 1 s 17

270.702 SALE OF PERISHABLE GOODS.

If the commissioner determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that the property cannot be kept without great expense, the commissioner shall appraise the value of the property, and if the owner of the property can be readily found, the commissioner shall give the owner notice of the determination of the appraised value of the property. The property shall be returned to the owner if, within the time specified in the notice, the owner (a) pays to the commissioner an amount equal to the appraised value, or (b) gives bond in the form, with the sureties, and in the amount as the commissioner prescribes to pay the appraised amount at the time the commissioner determines to be appropriate in the circumstances. If the owner does not pay the amount or furnish the bond in accordance with this section, the commissioner shall as soon as practicable make public sale of the property in accordance with section 270.701.

History: 1982 c 523 art 2 s 18; 1986 c 444

270.703 REDEMPTION OF PROPERTY.

Subdivision 1. Before sale. Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the commissioner at any time prior to the sale thereof, and upon payment the commissioner shall restore the property to the person, and all further proceedings in connection with the levy on the property shall cease from the time of payment.

Subd. 2. Redemption of real estate after sale. The owners of any real property sold as provided in this section, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of the property, at any time within six months, or in case the real property sold exceeds ten acres in size, at any time within 12 months, after the sale thereof. The property or tract of property shall be permitted to be redeemed upon payment to the purchaser (or if not found in the county in which the property to be redeemed is situated, then to the commissioner, for the use of the purchaser, or the purchaser's heirs or assigns) of the amount paid by the purchaser together with interest at the rate of 20 percent per annum.

Subd. 3. Record. When any lands sold are redeemed as provided in this section, the commissioner shall cause entry of the fact to be made upon the record required by section 270.706 and the entry shall be evidence of the redemption.

History: 1982 c 523 art 2 s 19; 1986 c 444; 1991 c 291 art 16 s 6

270.704 CERTIFICATE OF SALE.

In the case of property sold as provided in section 270.701, the commissioner shall give to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property the certificate shall set forth the real property purchased, for whose taxes the property was sold, the name of the purchaser, and the price paid. If real property is declared purchased by the state of Minnesota, the commissioner shall within ten days from the sale cause the certificate of sale to be duly recorded by the county recorder of the county in which the real property is located.

History: 1982 c 523 art 2 s 20

270.705 EFFECT OF CERTIFICATE OF SALE.

Subdivision 1. Personal property. (a) In all cases of sale pursuant to section 270.701

of personal property, the certificate of sale given pursuant to section 270.704 shall be prima facie evidence of the right of the commissioner to make the sale, and conclusive evidence of the regularity of the proceedings in making the sale. The certificate shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold.

(b) If the property consists of stocks, the certificate of sale shall be notice, when received, to any corporation, company, or association of the transfer, and shall be authority to the corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(c) If the subject of sale is securities or other evidences of debt, the certificate of sale shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of the securities or other evidences of debt.

(d) If the property consists of a motor vehicle, the certificate of sale shall be notice, when received, to the registrar of motor vehicles of this state of the transfer, and shall be authority to the registrar to record the transfer on the books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

Subd. 2. Real property. In the case of the sale of real property pursuant to section 270.701, the certificate of sale given pursuant to section 270.704 shall be prima facie evidence of the facts therein stated, and shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the state of Minnesota attached thereto.

Subd. 3. Junior encumbrances. A certificate of sale of personal property or real property given pursuant to section 270.704 shall discharge the property from all liens, encumbrances, and titles over which the lien of the state of Minnesota with respect to which the levy was made had priority.

History: 1982 c 523 art 2 s 21; 1986 c 444

270.706 RECORDS OF SALE.

The commissioner shall, for the department of revenue, keep a record of all sales of property under section 270.701 and of redemptions of real property. The record shall set forth the tax for which the sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making the sale, the amount of expenses, the names of the purchasers, and the date of the certificate of sale. A copy of the record, or any part thereof, certified by the commissioner shall be evidence in any court of the truth of the facts therein stated.

History: 1982 c 523 art 2 s 22

270.707 EXPENSE OF LEVY AND SALE.

The commissioner shall determine the expenses to be allowed in all cases of levy and sale.

History: 1982 c 523 art 2 s 23

270.708 APPLICATION OF PROCEEDS OF LEVY.

Subdivision 1. Collection of liability. Any money realized by proceedings under this chapter, whether by seizure, by surrender under section 270.70 (except pursuant to subdivision 9 thereof), by sale of seized property, or by sale of property redeemed by the state of Minnesota (if the interest of the state of Minnesota in the property was a lien arising under the provisions of section 270.69), shall be applied as follows:

(a) First, against the expenses of the proceedings; then

(b) If the property seized and sold is subject to a tax administered by the commis-

sioner of revenue which has not been paid, the amount remaining after applying clause (a) shall next be applied against the tax liability (and, if the tax was not previously assessed, it shall then be assessed); and

(c) The amount, if any, remaining after applying clauses (a) and (b) shall be applied against the tax liability in respect of which the levy was made or the sale was conducted.

Subd. 2. Surplus proceeds. Any surplus proceeds remaining after the application of subdivision 1 shall, upon application and satisfactory proof in support thereof, be credited or refunded by the commissioner to the person or persons legally entitled thereto.

History: 1982 c 523 art 2 s 24

270.709 AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.

Subdivision 1. Release of levy. The commissioner shall release a levy on all or part of the property or rights to property levied on and shall promptly notify the person on whom the levy was made that the levy has been released if: (1) the liability for which the levy was made is satisfied or has become unenforceable by lapse of time; (2) release of the levy will facilitate collection of the liability; (3) the taxpayer has entered into an installment payment agreement under section 270.67, subdivision 2, unless the agreement provides otherwise, or unless release of the levy will jeopardize the status of the department as a secured creditor; or (4) the fair market value of the property exceeds the liability, and release of the levy on a part of the property can be made without hindering collection. In the case of tangible personal property essential in carrying on the trade or business of the taxpayer, the commissioner shall provide for an expedited determination under this subdivision. A release of levy under this subdivision does not prevent a subsequent levy on the property released.

Subd. 2. Return of property. If the commissioner determines that property has been wrongfully levied upon, it shall be lawful for the commissioner to return:

(a) The specific property levied upon, at any time;

(b) An amount of money equal to the amount of money levied upon, at any time before the expiration of nine months from the date of the levy; or

(c) An amount of money equal to the amount of money received by the state of Minnesota from a sale of the property, at any time before the expiration of nine months from the date of the sale.

For purposes of clause (c), if property is declared purchased by the state of Minnesota at a sale pursuant to section 270.701, subdivision 5 (relating to manner and conditions of sale), the state of Minnesota shall be treated as having received an amount of money equal to the minimum price determined pursuant to section 270.701, subdivision 5 or, if larger, the amount received by the state of Minnesota from the resale of the property.

History: 1982 c 523 art 2 s 25; 1990 c 604 art 1 s 18

270.71 ACQUISITION AND RESALE OF SEIZED PROPERTY.

For the purpose of enabling the commissioner of revenue to purchase or redeem seized property in which the state of Minnesota has an interest arising from a lien for unpaid taxes, or to provide for the operating costs of collection activities of the department of revenue, there is appropriated to the commissioner an amount representing the cost of such purchases, redemptions, or collection activities. Seized property acquired by the state of Minnesota to satisfy unpaid taxes shall be resold by the commissioner. The commissioner shall preserve the value of seized property while controlling it, including but not limited to the procurement of insurance. For the purpose of refunding the proceeds from the sale of levied or redeemed property which are in excess of the actual tax liability plus costs of acquiring the property, there is hereby created a levied and redeemed property refund account in the agency fund. All amounts deposited into this account are appropriated to the commissioner of revenue. The commissioner shall report quarterly on the status of this program to the chairs of the house

taxes and appropriations committees and senate taxes and tax laws and finance committees.

History: 1982 c 523 art 2 s 26; 1986 c 444; 1992 c 513 art 4 s 35

270.72 TAX CLEARANCE; ISSUANCE OF LICENSES.

Subdivision 1. Tax clearance required. The state or a political subdivision of the state may not issue, transfer, or renew a license for the conduct of a profession, occupation, trade, or business, if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes or has not filed returns. If the applicant taxpayer does not owe delinquent taxes but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed. A licensing authority that has received a notice from the commissioner may issue, transfer, or renew the applicant's license only if (a) the commissioner issues a tax clearance certificate and (b) the commissioner or the applicant forwards a copy of the clearance to the authority. The commissioner may issue a clearance certificate only if the applicant does not owe the state any uncontested delinquent taxes, penalties, or interest and has filed all required returns.

Subd. 2. Definitions. For purposes of this section, the following terms have the meanings given.

(a) "Taxes" are all taxes payable to the commissioner including penalties and interest due on the taxes.

(b) "Delinquent taxes" do not include a tax liability if (i) an administrative or court action which contests the amount or validity of the liability has been filed or served, (ii) the appeal period to contest the tax liability has not expired, or (iii) the applicant has entered into a payment agreement and is current with the payments.

(c) "Applicant" means an individual if the license is issued to or in the name of an individual or the corporation or partnership if the license is issued to or in the name of a corporation or partnership. "Applicant" also means an officer of a corporation, a member of a partnership, or an individual who is liable for delinquent taxes, either for the entity for which the license is at issue or for another entity for which the liability was incurred, or personally as a licensee. In the case of a license transfer, "applicant" also means both the transferor and the transferee of the license.

Subd. 3. Notice and hearing. The commissioner, on notifying a licensing authority pursuant to subdivision 1, must send a copy of the notice to the applicant. If the applicant requests, in writing, within 30 days of the date of the notice a hearing, a contested case hearing must be held. The hearing must be held within 45 days of the date the commissioner refers the case to the office of administrative hearings. Notwithstanding any law to the contrary, the applicant must be served with 20 days' notice in writing specifying the time and place of the hearing and the allegations against the applicant. The notice may be served personally or by mail.

Subd. 4. Licensing authority; duties. All licensing authorities must require the applicant to provide the applicant's social security number and Minnesota business identification number on all license applications. Upon request of the commissioner, the licensing authority must provide the commissioner with a list of all applicants, including the name, address, business name and address, social security number, and business identification number of each applicant. The commissioner may request from a licensing authority a list of the applicants no more than once each calendar year.

Subd. 5. [Repealed, 1Sp1986 c 1 art 7 s 37]

History: 1984 c 502 art 8 s 2; 1984 c 655 art 2 s 10 subd 1; 1986 c 444; 1Sp1986 c 1 art 7 s 15-17; 1987 c 268 art 17 s 6,7; 1989 c 184 art 2 s 14; 1994 c 510 art 4 s 6

270.73 POSTING OF TAX DELINQUENCY; SALE OF LIQUOR OR BEER.

Subdivision 1. **Posting, notice.** Pursuant to the authority to disclose under section 270B.12, subdivision 4, the commissioner shall, by the 15th of each month, submit to the commissioner of public safety a list of all taxpayers who are required to withhold or collect the tax imposed by section 290.92 or 297A.02, or local sales and use tax payable to the commissioner of revenue, or a local option tax administered and collected by the commissioner of revenue, and who are 30 days or more delinquent in either filing a tax return or paying the tax.

The commissioner of revenue is under no obligation to list a taxpayer whose business is inactive. At least ten days before notifying the commissioner of public safety, the commissioner of revenue shall notify the taxpayer of the intended action.

The commissioner of public safety shall post the list in the same manner as provided in section 340A.318, subdivision 3. The list will prominently show the date of posting. If a taxpayer previously listed cures the delinquency by filing all returns and paying all taxes, the commissioner shall notify the commissioner of public safety within two business days that the delinquency was cured.

Subd. 2. **Sales prohibited.** Beginning the third business day after the list is posted, no wholesaler, manufacturer, or brewer may sell or deliver any product to a taxpayer included on the posted list.

Subd. 3. **Penalty.** A wholesaler, manufacturer, or brewer of intoxicating liquor or 3.2 percent malt liquor who violates subdivision 2 is subject to the penalties provided in section 340A.304.

History: *1Sp1986 c 1 art 7 s 29; 1987 c 268 art 17 s 26,41; 1989 c 184 art 2 s 15; 1990 c 480 art 10 s 1; 1990 c 480 art 2 s 15; 1991 c 249 s 31*

270.74 FINANCIAL TRANSACTION CARDS; PAYMENT OF STATE TAXES.

(a) The commissioner of revenue may allow taxpayers to use financial transaction cards, as defined in section 325G.02, subdivision 2, to pay any of the following which are payable to the commissioner:

- (1) state taxes;
- (2) estimated tax deposits;
- (3) penalties;
- (4) interest;
- (5) additions to taxes; and
- (6) fees.

(b) The commissioner may impose a fee on each transaction under paragraph (a). The fee is equal to the fee the commissioner is required to pay for the taxpayer's use of the financial transaction card. This fee must be deposited in the general fund and is appropriated to the commissioner for the purpose of paying the transaction card fee.

(c) The types of financial transaction cards that will be accepted shall be determined solely by the commissioner. The selection of transaction card vendors shall be made through a request for proposals process. Before issuing a request for proposals, the commissioner shall review the request for proposals and any specifications with the commissioner of finance and the state treasurer. The commissioner shall select the transaction card vendors from among those which meet the operational and cost requirements of the department of revenue. The commissioner may limit the number of different types of financial transaction cards that will be accepted.

(d) If the commissioner allows taxpayers to pay taxes with financial transaction cards, the commissioner shall report quarterly on the status of this program to the chairs of the house tax and appropriations committees and the chairs of the senate tax and finance committees.

History: *1991 c 345 art 1 s 84*

270.75 INTEREST PAYABLE TO COMMISSIONER.

Subdivision 1. Interest; rate. If any tax payable to the commissioner of revenue or to the department of revenue is not paid within the time specified by law for payment, the unpaid tax shall bear interest beginning February 1, 1982 at the rate of 20 percent per annum from the date such tax should have been paid until the date that the tax was paid, unless otherwise provided by law.

Subd. 2. Extension of time. When an extension of time has been granted by the commissioner, interest shall be paid beginning February 1, 1982 at the rate of 20 percent per annum from the date such payment should have been made, if no extension had been granted, until the date of payment of such tax.

Subd. 3. Penalty. If any penalty payable to the commissioner of revenue shall by law bear interest, such penalty shall bear interest beginning February 1, 1982 at the rate of 20 percent per annum from the date the penalty was assessable until the date that such penalty was paid, unless a different rate of interest is otherwise provided by law.

Subd. 4. Underpayment of estimated tax. There shall be added to the amount of any underpayment of estimated income tax, computed pursuant to chapter 289A, an amount in lieu of interest. The amount in lieu of interest for that taxable year shall be the amount determined in subdivision 5 for January 1 on which begins the taxable year or precedes the beginning of the taxable year. The amount in lieu of interest does not bear interest after the due date of the return for that taxable year.

Subd. 5. Adjustment of rate. The rates of interest or amount in lieu of interest contained in subdivisions 1 to 4 shall be adjusted by the commissioner of revenue not later than October 15 of 1983 and any year thereafter if the adjusted prime rate charged by banks during the six-month period ending on September 30 of that year, rounded to the nearest full percent, is at least a full percentage point more or less than the interest rate which is then in effect. The adjusted rate of interest or amount in lieu of interest shall be equal to the adjusted prime rate charged by banks, rounded to the nearest full percent, and shall become effective on January 1 of the immediately succeeding year except as provided in subdivision 4. For purposes of this subdivision, the term "adjusted prime rate charged by banks" means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System. The determination of the commissioner pursuant to this subdivision shall not be considered a "rule" and shall not be subject to the Administrative Procedure Act contained in chapter 14.

Subd. 6. Unpaid judgment. Notwithstanding section 549.09, if judgment is entered upon any tax payable to the commissioner of revenue which has not been paid within the time specified by law for payment, the unpaid judgment shall bear interest at the rate specified in this section from the date judgment is entered until the date of payment.

Subd. 7. [Repealed, 1Sp1985 c 14 art 13 s 14]

Subd. 8. [Repealed, 1987 c 268 art 17 s 42]

History: 1975 c 377 s 7; 1Sp1981 c 1 art 3 s 1; 3Sp1981 c 2 art 3 s 1; 1982 c 523 art 1 s 67,68; art 2 s 27; art 26 s 1; 1983 c 207 s 1; 1985 c 210 art 1 s 7; 1Sp1985 c 13 s 306; 1991 c 291 art 16 s 7

270.76 INTEREST ON REFUNDS.

When any tax payable to the commissioner of revenue or to the department of revenue is overpaid and an amount is due the taxpayer as a refund of the overpayment, the overpayment shall bear interest from the date of payment of the tax until the date the refund is paid or credit is made, unless another period for computing interest is provided by law. The interest rate per annum on overpayments shall be the interest rate contained in section 270.75, subdivision 5; the rate shall be adjusted annually and become effective as provided in section 270.75, subdivision 5. The determination of the commissioner pursuant to this subdivision is not a "rule" and is not subject to the administrative procedure act contained in chapter 14.

History: 1Sp1985 c 14 art 15 s 3; 1Sp1986 c 1 art 7 s 18

270.77 [Repealed, 1990 c 480 art 1 s 45]

270.78 PENALTY FOR FAILURE TO MAKE PAYMENT BY ELECTRONIC FUNDS TRANSFER.

(a) In addition to other applicable penalties imposed by law, after notification from the commissioner of revenue to the taxpayer that payments for a tax administered by the commissioner are required to be made by means of electronic funds transfer, and the payments are remitted by some other means, there is a penalty in the amount of five percent of each payment that should have been remitted electronically. The penalty can be abated under the abatement procedures prescribed in section 270.07, subdivision 6, if the failure to remit the payment electronically is due to reasonable cause.

(b) The penalty under paragraph (a) does not apply if the taxpayer pays by other means the amount due at least three business days before the date the payment is due. This paragraph does not apply after December 31, 1997.

History: 1993 c 375 art 10 s 10; 1994 c 587 art 12 s 3

270.79 REFUNDS PAYABLE IN INSTALLMENTS.

Subdivision 1. **Law held unconstitutional.** Where there is (1) a final judicial determination that a tax law is unconstitutional, is in violation of state or federal law, or that a regulation or statute has been misinterpreted by the department; and (2) the determination is not limited to prospective application, the procedures in this section relating to refunds attributable to that determination apply.

Subd. 2. **Estimate of cumulative refunds.** The commissioner shall estimate the cumulative refunds due resulting from the judicial determination.

Subd. 3. **General refund provisions.** If the commissioner determines that the cumulative refunds due all affected taxpayers will not exceed \$50,000,000, the general provisions for refunding for the particular tax type apply.

Subd. 4. **Refund procedures.** (a) If the commissioner determines that the cumulative refunds due all affected taxpayers will exceed \$50,000,000, the refund procedures in this subdivision apply.

(b) The refunds due shall be paid in installments beginning after July 1 of the calendar year following the later of the filing of the refund claim or the final judicial determination and ending in the fifth calendar year or at the time that the return for that calendar year is filed.

(c) The refunds shall be paid in the form of refundable credits claimed on the tax return for the tax type giving rise to the refund.

(d) In the case of annual returns the credit allowable must be claimed on the annual return. When returns are filed on other than an annual basis, the allowable credit must be claimed on the first return due after July 1 of a calendar year.

(e) The credit allowed for each year equals 20 percent of the claimed refund unless the commissioner determines that the cumulative refunds due for a particular year under this section will exceed \$150,000,000. If the refunds payable will exceed that amount, the claimed refunds will be reduced pro rata with any balance remaining due payable with the final refund installment.

(f) Unless contrary to the provisions in this section, the provisions for refunds in the various tax types, including provisions related to the payment of interest, apply to the refunds subject to these provisions.

(g) The commissioner may establish a de minimis individual refund amount below which the installment provisions do not apply. The amount established under this paragraph is not subject to the provisions of chapter 14.

History: 1994 c 510 art 4 s 7

RAILROADS

270.80 DEFINITIONS.

Subdivision 1. **Applicability.** The following words and phrases when used in Laws 1979, chapter 303, article 7, sections 1 to 13, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

Subd. 2. **Railroad company.** "Railroad company" means:

(1) any company which as a common carrier operates a railroad or a line or lines of railway situated within or partly within Minnesota; or

(2) any company owning or operating, other than as a common carrier, a railway principally used for transportation of taconite concentrates from the plant at which the taconite concentrates are produced in shipping form to a point of consumption or port for shipment beyond the state; or

(3) any company that produces concentrates from taconite and transports that taconite in the course of the concentrating process and before the concentrating process is completed to a concentrating plant located within the state over a railroad that is not a common carrier and shall not use a common carrier or taconite railroad company as defined in clause (2) for the movement of the concentrate to a point of consumption or port for shipment beyond the state.

Subd. 3. **Operating property.** "Operating property" means all property owned or used by a railroad company in the performance of railroad transportation services, including without limitation franchises, rights-of-way, bridges, trestles, shops, docks, wharves, buildings and structures.

Subd. 4. **Nonoperating property.** "Nonoperating property" means and includes all property other than property defined in subdivision 3. Nonoperating property shall include real property which is leased or rented or available for lease or rent to any person which is not a railroad company. Vacant land shall be presumed to be available for lease or rent if it has not been used as operating property for a period of one year preceding the valuation date. Nonoperating property also includes land which is not necessary and integral to the performance of railroad transportation services and which is not used on a regular and continual basis in the performance of these services. Nonoperating property also includes that portion of a general corporation office building and its proportionate share of land which is not used for railway operation or purpose.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of revenue.

History: 1979 c 303 art 7 s 1; 1984 c 502 art 9 s 1; 1987 c 268 art 9 s 6

270.81 TAXATION AND ASSESSMENT OF RAILROAD COMPANY PROPERTY.

Subdivision 1. **Valuation of operating property.** The operating property of every railroad company doing business in Minnesota shall be valued by the commissioner in the manner prescribed by Laws 1979, chapter 303, article 7, sections 1 to 13.

Subd. 2. **Assessment of nonoperating property.** The nonoperating property of every railroad company doing business in Minnesota shall be assessed as otherwise provided by law.

Subd. 3. **Determination of type of property.** The commissioner shall have exclusive primary jurisdiction to determine what is operating property and what is nonoperating property. In making such determination, the commissioner shall solicit information and opinions from outside the department and afford all interested persons an opportunity to submit data or views on the subject in writing or orally. Local assessors may submit written requests to the commissioner, asking for a determination of the nature of specific property owned by a railroad and located within their assessing jurisdiction. Any determination made by the commissioner may be appealed by the assessor to the tax court pursuant to chapter 271.

Subd. 4. **Nontaxable property.** In no event shall property owned or used by a railroad, whether operating property or nonoperating property, be subject to tax hereunder

unless such property is of a character which would otherwise be subject to tax under the provisions of chapter 272.

Subd. 5. [Repealed, 1Sp1989 c 1 art 9 s 85]

History: 1979 c 303 art 7 s 2; 1982 c 424 s 130; 1984 c 640 s 32; 1986 c 444

270.82 REPORTS OF RAILROAD COMPANIES.

Subdivision 1. **Annual report required.** Every railroad company doing business in Minnesota shall annually file with the commissioner on or before March 31 a report under oath setting forth the information prescribed by the commissioner to enable the commissioner to make the valuation and equalization required by Laws 1979, chapter 303, article 7, sections 1 to 13.

Subd. 2. **Extension of time.** The commissioner for good cause may extend for up to 15 days the time for filing the report required by subdivision 1.

History: 1979 c 303 art 7 s 3; 1986 c 444; 1Sp1989 c 1 art 9 s 13

270.83 EXAMINATIONS AND INVESTIGATIONS.

Subdivision 1. **Powers of commissioner.** The commissioner shall have the power to examine or cause to be examined any books, papers, records, or memoranda relevant to the determination of the valuation of operating property as herein provided. The commissioner shall have the further power to require the attendance of any person having knowledge or information in the premises, to compel the production of books, papers, records, or memoranda by persons so required to attend, to take testimony on matters material to such determination and administer oaths or affirmations.

Subd. 2. **Appointment of persons; subpoenas.** For the purpose of making such examinations, the commissioner may appoint such persons as the commissioner may deem necessary. Such persons shall have the rights and powers of the examining of books, papers, records or memoranda, and of subpoenaing witnesses, administering oaths and affirmations, and taking of testimony, which are conferred upon the commissioner hereby. The court administrator of any court of record, upon demand of any such person, shall issue a subpoena for the attendance of any witness or the production of any books, papers, records, or memoranda before such person. The commissioner may also issue subpoenas for the appearance of witnesses before the commissioner or before such persons. Disobedience of subpoenas so issued shall be punished by the district court of the district in which the subpoena is issued for a contempt of the district court.

Subd. 3. **Failure to file report.** If any railroad company shall refuse or neglect to make the report required by this section to the commissioner, or shall refuse or neglect to permit an inspection and examination of its property, records, books, accounts or other papers when requested by the commissioner, or shall refuse or neglect to appear before the commissioner or a person appointed under subdivision 2 when required so to do, the commissioner shall make the valuation provided for by Laws 1979, chapter 303, article 7, sections 1 to 13 against the railroad company according to the commissioner's best judgment on available information.

History: 1979 c 303 art 7 s 4; 1986 c 444; 1Sp1986 c 3 art 1 s 82

270.84 ANNUAL VALUATION OF OPERATING PROPERTY.

Subdivision 1. **Annual valuation; rules.** The commissioner shall annually between March 31 and May 31 make a determination of the fair market value of the operating property of every railroad company doing business in this state as of January 2 of the year in which the valuation is made. In making this determination, the commissioner shall employ generally accepted appraisal principles and practices which may include the unit method of determining value. The commissioner may promulgate emergency rules adopting valuation procedures under sections 14.29 to 14.36.

Subd. 2. **Notice.** The commissioner, after determining the fair market value of the operating property of each railroad company, shall give notice to the railroad company of the valuation by first class mail, overnight delivery, or messenger service.

History: 1979 c 303 art 7 s 5; 1984 c 502 art 9 s 2; 1984 c 640 s 32; 1985 c 248 s 46; 1986 c 444; 1Sp1989 c 1 art 9 s 14

270.85 REVIEW OF VALUATION.

A railroad company may within ten days of the date of the notice of valuation file a written request for a conference with the commissioner relating to the value of its operating property. The commissioner shall thereupon designate a time and place for the conference which the commissioner shall conduct, upon commissioner's entire files and records and such further information as may be offered. The conference must be held no later than 20 days after the date of the commissioner's valuation notice. At a reasonable time after such conference the commissioner shall make a final determination of the fair market value of the operating property of the railroad company and shall notify the company promptly of the determination.

History: 1979 c 303 art 7 s 6; 1986 c 444; 1Sp1989 c 1 art 9 s 15

270.86 APPORTIONMENT AND EQUALIZATION OF VALUATION.

Subdivision 1. Apportionment of value. Upon determining the fair market value of the operating property of each railroad company, the commissioner shall apportion such value to the respective counties and to the taxing districts therein in conformity with fair and reasonable rules and standards to be established by the commissioner pursuant to notice and hearing, except as provided in section 270.81. In establishing such rules and standards the commissioner may consider (a) the physical situs of all station houses, depots, docks, wharves, and other buildings and structures with an original cost in excess of \$10,000; (b) the proportion that the length and type of all the tracks used by the railroad in such county and taxing district bears to the length and type of all the track used in the state; and (c) other facts as will result in a fair and equitable apportionment of value.

Subd. 2. Equalized valuation. After making the apportionment provided in subdivision 1, the commissioner shall determine the equalized valuation of the operating property in each county by applying to the apportioned value an estimated current year median sales ratio for all commercial and industrial property in that county. If the commissioner decides there are insufficient sales to determine a median commercial-industrial sales ratio, an estimated current year countywide median sales ratio for all property shall be applied to the apportioned value. No equalization shall be made to the market value of the operating property if the median sales ratio determined pursuant to this subdivision is within five percent of the assessment ratio of the railroad operating property.

History: 1979 c 303 art 7 s 7; 1984 c 502 art 9 s 3; 1986 c 444

270.87 CERTIFICATION TO COUNTY ASSESSORS.

After making an annual determination of the equalized fair market value of the operating property of each company in each of the respective counties, and in the taxing districts therein, the commissioner shall certify the equalized fair market value to the county assessor on or before June 30. The equalized fair market value of the operating property of the railroad company in the county and the taxing districts therein is the value on which taxes must be levied and collected in the same manner as on the commercial and industrial property of such county and the taxing districts therein.

History: 1979 c 303 art 7 s 8; 1984 c 502 art 9 s 4; 1986 c 444; 1987 c 268 art 7 s 24; 1Sp1989 c 1 art 9 s 16

270.88 PROCEEDINGS AND APPEALS.

The commissioner's final determination under section 270.85 and certification to county assessors under section 270.87 shall be final orders appealable to the tax court in accordance with chapter 271. Appeals by railroad companies under Laws 1979, Chapter 303 shall be taken against the commissioner and not against the county or taxing district to which payment is made. Upon the filing of any appeal by a railroad company, the commissioner shall give notice thereof by first class mail to each county which would be affected by the appeal.

History: 1979 c 303 art 7 s 9; 1986 c 444

270.89 [Repealed, 1987 c 268 art 4 s 25]

270.90 [Repealed, 1984 c 593 s 46]

CONTAMINATION TAX

270.91 CONTAMINATION TAX.

Subdivision 1. Imposition. A tax is annually imposed on the contamination value of taxable real property in this state.

Subd. 2. Initial tax rates. Unless the rates under subdivision 3 or 4 apply, the tax imposed under this section equals 100 percent of the class rate for the property under section 273.13, multiplied by the contamination value of the property.

Subd. 3. Tax rates, nonresponsible party. If neither the owner nor the operator of the taxable real property, in the assessment year, is a responsible person under chapter 115B or a responsible party under chapter 18D for the presence of contaminants on the property, unless subdivision 4 applies, the tax imposed under this section equals 25 percent of the class rate for the property under section 273.13, multiplied by the contamination value of the property. A determination under section 115B.177 or other similar determination by the commissioner of the pollution control agency or by the commissioner of agriculture for a release of agricultural chemicals is dispositive of whether the owner or operator is not a responsible person under chapter 18D or 115B for purposes of this section. To qualify under this subdivision, the property owner must provide the assessor with a copy of the determination by July 1 of the assessment year.

Subd. 4. Tax rates after plan approval. (a) The tax imposed under this subdivision applies for the first assessment year that begins after one of the following occurs:

(1) a response action plan for the property has been approved by the commissioner of the pollution control agency or by the commissioner of agriculture for an agricultural chemical release or incident subject to chapter 18D and work under the plan has begun; or

(2) the contaminants are asbestos and the property owner has in place an abatement plan for enclosure, removal, or encapsulation of the asbestos. To qualify under this clause, the property owner must (i) have entered into a binding contract with a licensed contractor for completion of the work, or (ii) have obtained a license from the commissioner of health and begun the work. An abatement plan must provide for completion of the work within a reasonable time period, as determined by the assessors.

(b) To qualify under paragraph (a), the property owner must provide the assessor with a copy of: (1) the approved response action plan; or (2) a copy of the asbestos abatement plan and contract for completion of the work or the owner's license to perform the work. The property owner also must file with the assessor an affidavit indicating when work under the response action plan or asbestos abatement plan began.

(c) The tax imposed under this subdivision equals 50 percent of the class rate for the property under section 273.13, multiplied by the contamination value of the property, unless paragraph (d) applies.

(d) The tax imposed under this subdivision equals 12.5 percent of the class rate for the property under section 273.13, multiplied by the contamination value of the property, if one of the following conditions is satisfied:

(1) the contaminants are subject to chapter 115B and neither the owner nor the operator of the taxable real property in the assessment year is a responsible person under chapter 115B;

(2) the contaminants are subject to chapter 18D and neither the owner nor the operator of the taxable real property in the assessment year is a responsible party under chapter 18D.

History: 1993 c 375 art 12 s 1; 1994 c 587 art 12 s 4

270.92 DEFINITIONS.

Subdivision 1. **Scope of application.** For purposes of sections 270.91 to 270.98, the following terms have the meanings given.

Subd. 2. **Assessment year.** "Assessment year" means the assessment year for purposes of general ad valorem property taxes.

Subd. 3. **Contaminant.** "Contaminant" means a harmful substance as defined in section 115B.25, subdivision 7a.

Subd. 4. **Contaminated market value.** "Contaminated market value" is the amount determined under section 270.93.

Subd. 5. **Presence of contaminants.** "Presence of contaminants" includes the release or threatened release, as defined in section 115B.02, subdivision 15, of contaminants on the property.

Subd. 6. **Response plan.** "Response plan" means: (1) a development action response plan, as defined in section 469.174, subdivision 17; (2) a response action plan under chapter 115B or a corrective action plan under chapter 18D; (3) a plan for corrective action approved by the commissioner of agriculture under section 18D.105; or (4) a plan for corrective action approved by the commissioner of the pollution control agency under section 115C.03.

History: 1993 c 375 art 12 s 2

270.93 TAX BASE; CONTAMINATION VALUE.

The contamination value of a parcel of property is the amount of the market value reduction, if any, that is granted for general ad valorem property tax purposes for the assessment year because of the presence of contaminants. The contamination value for a property may be no greater than the estimated cost of implementing a reasonable response action plan or asbestos abatement plan or management program for the property. These reductions in market value include those granted by a court, by a board of review, by the assessor upon petition or request of a property owner, or by the assessor. Reductions granted by the assessor are included only if the assessor reduced the property's market value for the presence of contaminants using an appraisal method or methods that are specifically designed or intended to adjust for the valuation effects of the presence of contaminants. The contamination value for a parcel with a reduction in value of less than \$10,000 is zero.

History: 1993 c 375 art 12 s 3

270.94 EXEMPTIONS.

(a) The tax imposed by sections 270.91 to 270.98 does not apply to the contamination value of a parcel of property attributable to contaminants that were addressed by a response action plan for the property, if the commissioner of the pollution control agency, or the commissioner of agriculture for a release subject to chapter 18D, has determined that all the requirements of the plan have been satisfied. This exemption applies beginning for the first assessment year after the commissioner of the pollution control agency, or the commissioner of agriculture determines that the implementation of a response action plan has been completed. To qualify under this paragraph, the property owner must provide the assessor with a copy of the determination by the commissioner of the pollution control agency or the commissioner of agriculture of the completion of the response action plan.

(b) The tax imposed by sections 270.91 to 270.98 does not apply to the contamination value of a parcel that is attributable to asbestos, if:

(1) the work has been completed under an asbestos abatement plan or the property owner is implementing a proactive in-place asbestos management program consistent with the rules, requirements, and formal policies of the United States Environmental Protection Agency; and

(2) the property owner provides the assessor with an affidavit stating the work

under the abatement plan has been completed, or the asbestos management plan is being implemented, and any other evidence or information the assessor requests.

History: 1993 c 375 art 12 s 4; 1994 c 587 art 12 s 5

270.95 PAYMENT; ADMINISTRATION.

The tax imposed under sections 270.91 to 270.98 is payable at the same time and manner as the regular ad valorem property tax. The tax is subject to the penalty, interest, lien, forfeiture, and any other rules for collection of the regular ad valorem property tax. If a reduction in market value that creates contamination value is granted after the ad valorem property tax has been paid, the contamination tax must be subtracted from the amount to be refunded to the property owner.

History: 1993 c 375 art 12 s 5

270.96 DUTIES.

Subdivision 1. Assessors. Each assessor shall notify the county auditor of the contamination value under section 270.91 by the separate tax rate categories under subdivisions 2, 3, and 4 for each parcel of property within the assessor's jurisdiction. The assessor shall provide notice of the contamination value to the property owner by the later of June 1 of the assessment year or 30 days after the reduction in market value is finally granted.

Subd. 2. Auditor. The county auditor shall prepare separate lists of the contamination values for all property located in the county that are taxed under section 270.91, subdivisions 2, 3, and 4. The commissioner shall prescribe the form of the listing. The auditor shall include the amount of the contamination taxes on the contamination value for the assessment year on the regular ad valorem property tax statement under section 276.04.

Subd. 3. Treasurer. (a) The county treasurer shall pay the proceeds of the tax imposed under section 270.91, subdivision 4, less the amount retained by the county for the cost of administration under section 270.98, to the commissioner at the same times provided for the ad valorem property tax distributions.

(b) The county treasurer shall pay the proceeds of the tax imposed under section 270.91, subdivisions 2 and 3, to the local taxing jurisdictions in the same manner provided for the distribution of ad valorem property taxes.

Subd. 4. Court ordered reductions in value. If a court orders a reduction in market value for purposes of the ad valorem property tax because of the presence of contaminants on the property, the court shall include in its order an offset for payment of the tax on contaminated value under section 270.91.

History: 1993 c 375 art 12 s 6; 1994 c 416 art 1 s 8

270.97 DEPOSIT OF REVENUES.

The commissioner shall deposit all revenues derived from the tax, interest, and penalties received from the county in the contaminated site cleanup and development account in the general fund.

History: 1993 c 375 art 12 s 7

270.98 LOCAL ADMINISTRATIVE COSTS.

The county may retain five percent of the total revenues derived from the tax imposed under section 270.91, subdivision 4, including interest and penalties, as compensation for administering the tax. The county board may reimburse municipalities for the services provided by assessors employed by the municipality in administering sections 270.91 to 270.98.

History: 1993 c 375 art 12 s 8