each assessment district, constitutes presumptive evidence of the relative assessed and true value of property in each assessment district. Peninsular P. Co. v. Tax Comm. 195 W 231, 218 NW 371.

A county judge cannot hold the office of supervisor of assessments. 1902 Atty. Gen. 168.

73.07 History: 1911 c. 658; Stats. 1911 s. 1087m—9; 1913 c. 487; 1921 c. 65 s. 10, 11; Stats. 1921 s. 71.08; 1925 c. 446 s. 2; 1927 c. 539 s. 7; 1929 c. 263 s. 6; Stats. 1929 s. 73.07; 1933 c. 222 s. 2; 1933 c. 367 s. 3; 1933 c. 450 s. 5; 1935 c. 414; 1939 c. 412; 1943 c. 20; 1947 c. 472, 600; 1951 c. 121; 1957 c. 15; 1959 c. 659 s. 79; 1965 c. 246; 1969 c. 276 ss. 582 (12), (15), 590 (1).

On consolidation of 2 or more income-tax assessment districts the income tax assessor for the consolidated district is entitled to possession of records and files, also of office furniture and equipment, in the offices of the assessors for the former districts. 18 Atty. Gen. 208.

73.08 History: 1951 c. 116; Stats. 1951 s. 73.08; 1969 c. 433.

CHAPTER 74.

Collection of Taxes.

74.01 History: 1850 c. 105 s. 3; R. S. 1858 c. 18 s. 160; 1859 c. 22 s. 31; 1872 c. 179; R. S. 1878 s. 1088; Stats. 1898 s. 1088; 1901 c. 190 s. 1; Supl. 1906 s. 1088; 1921 c. 17 s. 2; Stats. 1921 s. 74.01.

Taxes are debts due the state, and when charged on lands the latter constitute a fund out of which they are to be paid. Curtis v. Brown County, 22 W 167.

Taxes reassessed are a debt and a lien from the time the original assessment should have been a lien. Flanders v. Merrimack, 48 W 567, 4 NW 741.

A complaint, in an action by a trustee for mortgage noteholders against the mortgagor and the mortgagee of another tract owned by the mortgagor, alleging, among other things, that the trustee by mistake paid delinquent taxes on such other mortgaged tract, and praying that the trustee be adjudged to have a lien on such tract equivalent to the lien of a holder of a tax sale certificate, states a cause of action entitling the trustee by subrogation to the lien given by 74.01, Stats. 1935. Central Wisconsin T. Co. v. Swenson, 222 W 331, 267 NW 307.

A prior mortgage lien of the United States is superior to subsequent real estate tax liens of a county, village, and town. United States v. Davis Mining Enterprises, 187 F Supp. 911.

74.02 History: R. S. 1849 c. 15 s. 55; R. S. 1858 c. 18 s. 69, 71; R. S. 1878 s. 1089; 1881 c. 269 s. 2; Ann. Stats. 1889 s. 1089; Stats. 1898 s. 1089; 1899 c. 335 s. 4; Supl. 1906 s. 1089; 1921 c. 17 s. 3; Stats. 1921 s. 74.02; 1933 c. 426; 1935 c. 79, 456; 1937 c. 262, 323; 1939 c. 385; 1943 c. 133.

74.025 History: 1965 c. 63; Stats. 1965 s. 74.025.

74.03 History: 1850 c. 105 s. 2; R. S. 1858 c. 18 s. 70; 1861 c. 91; R. S. 1878 s. 1090; 1881 c. 269 s. 3; Ann. Stats. 1889 s. 1090; Stats. 1898 s. 1090; 1899 c. 335 s. 5; Supl. 1906 s. 1090; 1911 c. 273; Stats. 1911 s. 959—70o, 1090; 1913 c. 665; 1915 c. 1; 1921 c. 6; 1921 c. 17 s. 4, 5; 1921 c. 422 s. 35; 1921 c. 523; Stats. 1921 s. 74.03; 1927 c. 348; 1929 c. 441; 1933 c. 244, 426; 1935 c. 2, 396, 456; 1937 c. 294, 323; 1939 c. 385, 434; 1943 c. 15, 124, 133, 466; 1943 c. 553 s. 16; 1945 c. 151, 168, 588; 1951 c. 12, 358, 467, 482; 1953 c. 61; 1955 c. 10, 110, 249, 652, 694; 1957 c. 61, 97, 257; 1957 c. 610 s. 32, 33; 1959 c. 19, 565; 1963 c. 73, 572; 1965 c. 63; 1967 c. 92 s. 22; 1969 c. 486.

An illegal excess in the taxes, if known and separable, is no excuse for the nonpayment of the valid portion. Whittaker v. Janesville, 33 W 76.

One paying taxes has the right to rely upon the statement of the amount due made by the officer; and where the amount given was $14.21 when it should have been $14.46, a payment of the smaller amount was sufficient, on the maxim de minimis, etc. Randall v. Dailey, 66 W 285, 28 NW 352.

A county is not entitled to credit against the claim of a town for delinquent taxes collected by the county treasurer during a given period, for uncollected taxes returned by the town in the delinquent list of a subsequent period. Bell v. Bayfield County, 206 W 297, 239 NW 503.

A settlement between village and county treasurers, whereby the village was credited with a taxpayer's delinquent taxes unlawfully assessed by such village, constituted collection by the village treasurer entitling the taxpayer to recover from the village the taxes, but not penalties and accrued interest, paid to the county under protest. Fox Valley C. Co. v. Hortonville, 207 W 502, 242 NW 142.

The provisions of 74.15 (2), Stats. 1939, relating to the order of payment of collected taxes, do not prescribe or control the application of moneys after receipt thereof by a school district from such a treasurer, as against the contention that school funds of the defendant school district, on deposit in the garnishee bank, should not be subjected to garnishment or execution under 66.09 because such funds have a priority over the payment of judgments. State Bank of Florence v. School Dist. 233 W 307, 289 NW 612.

Ch. 294, Laws 1937, amended ch. 426, Laws 1933, even though the latter did not become effective until 1941. 30 Atty. Gen. 257.

Ch. 426, Laws 1933, providing for semi-annual payment of real estate taxes, became operative and effective on October 1, 1941; its effect upon provisions of ch. 1, Laws 1941 (74.037, Stats. 1941), 62.21 (1) (h) 1a, and 74.03 (1) and (2), Stats. 1939, was considered in 30 Atty. Gen. 370.

74.03, Stats. 1941, providing for payment of one-half of real estate taxes by January 31, refers to taxes on each parcel of land as separately assessed and taxed and does not require a taxpayer owning more than one parcel to pay one-half of aggregate taxes on all parcels. 31 Atty. Gen. 1.

The 6% maximum interest limitation provided by sec. 500 (4) of the soldiers' and sailors' civil relief act of 1940 (54 Stats. 1186, October 17, 1940, ch. 888) (50 USC, sec. 560) is applicable to delinquent real estate taxes fall-

ing due during a period of military service of the owner regardless of whether or not he had filed an affidavit under sec. 509 (2) to suspend or postpone a sale of property for taxes. 31 Atty. Gen. 273.

By "preceding year" in 74.03 (2) (a), Stats. 1957, is meant the year preceding the tax collection year. The provision in 74.03 (2) (c) that the minimum payment applies to the total tax requires the town treasurer to add the taxes on all parcels, whether or not contiguous, and the payment will have to be prorated where the total is less than $40. 47 Atty. Gen. 12.

74.031 History: 1943 c. 133; 1943 c. 553 s. 16; Stats. 1943 s. 74.031; 1945 c. 168, 380, 479, 588; 1951 c. 12; 1951 c. 358 s. 10 to 12; 1951 c. 482; 1955 c. 110, 249; 1957 c. 97, 316; 1959 c. 565; 1963 c. 572; 1965 c. 252; 1967 c. 92 s. 22.

74.035 History: 1933 c. 163; Stats. 1933 s. 74.035; 1935 c. 421 s. 3; 1943 c. 275 s. 30; 1965 c. 252.

74.04 History: R. S. 1849 c. 10 s. 110; R. S. 1849 c. 15 s. 56; R. S. 1858 c. 18 s. 72; R. S. 1878 s. 1091; Stats. 1898 s. 1091; 1921 c. 17 s. 6; Stats. 1921 s. 74.04; 1933 c. 199.

After the statute of limitations has run on a county order it is still available in payment of county taxes. Pelton v. Crawford County, 10 W 69.

A town treasurer is authorized to receive from a single taxpayer in county orders only a sum equal to the county tax due from him; and county orders thus received are paid and extinguished as evidences of debt. Marinette v. Oconto County, 47 W 216, 2 NW 314.

Unless express statutory authority is given nothing but money can be received in payment of taxes. Oneida County v. Tibbetts, 125 W 9, 102 NW 897.

Village treasurers must require a taxpayer to pay in cash the taxes outside of the village tax, but the village tax may be paid with village orders. 3 Atty. Gen. 856.

74.045 History: 1937 c. 172; Stats. 1937 s. 74.045.

74.05 History: R. S. 1849 c. 15 s. 57; R. S. 1858 c. 18 s. 73; R. S. 1878 s. 1092; Stats. 1898 s. 1092; 1921 c. 17 s. 7; Stats. 1921 s. 74.05.

74.06 History: R. S. 1849 c. 15 s. 65; R. S. 1858 c. 18 s. 88; R. S. 1878 s. 1093; 1893 c. 218; Stats. 1898 s. 1093; 1921 c. 17 s. 8; Stats. 1921 s. 74.06; 1945 c. 107.

74.06, Stats. 1937, does not give a taxpayer the right to pay part of his tax; but a local treasurer has discretion to accept part payment of a tax. 27 Atty. Gen. 100.

74.07 History: R. S. 1858 c. 18 s. 89; R. S. 1878 s. 1094; Stats. 1898 s. 1094; 1921 c. 17 s. 9; Stats. 1921 s. 74.07.

74.08 History: 1870 c. 14 s. 1, 2; 1873 c. 301; R. S. 1878 s. 1095; 1887 c. 140; Ann. Stats. 1889 s. 1095; 1895 c. 42; Stats. 1898 s. 1095; 1919 c. 259 s. 1; 1921 c. 17 s. 10; Stats. 1921 s. 74.08; 1923 c. 299; Spl. S. 1937 c. 1 s. 4; 1939 c. 377; 1941 c. 163; 1947 c. 240; 1949 c. 110, 600; 1963 c. 6.

Where certain figures had been erased from a tax certificate, it was admissible to show that they represented a special tax and were erased because it was not paid. Stringham v. Oshkosh, 22 W 326.

A tax receipt is admissible as evidence although the land be therein inaccurately described. Orton v. Noonan, 25 W 672.

A payment in good faith upon city lots described in the tax roll as the whole of such lots under an authorized plat, but really of parts thereof only, the taxpayer intending to pay the whole tax, must be treated as a payment of the taxes in full, and tax deeds issued upon a sale of such lots by the unauthorized descriptions in the roll are void. Merton v. Dolphin, 28 W 456.

A tax receipt issued to the grantor of land does not estop the taxing officers from reassessing a part of the taxes covered thereby, it appearing that the grantee did not know of the receipt when he purchased. Marco v. Fond du Lac, 63 W 212, 23 NW 419.

A tax receipt issued by the treasurer's clerk is valid. Randall v. Dailey, 66 W 285, 28 NW 352.

Where the tax roll offered in evidence had under the column marked "remarks," an entry showing payment on a certain date, it was competent evidence to show payment under sec. 1095, Stats. 1898. McIntosh v. Marathon L. Co. 110 W 296, 85 NW 976.

A town treasurer may accept part payment of taxes levied on real and personal property and give a receipt for the amount actually paid. 24 Atty. Gen. 61.

Where a taxpayer in good faith applies to the proper officer for the purpose of paying his taxes and is prevented from making payment, in whole or in part, by mistake, wrong or fault of such officer, the taxpayer is not thereby relieved of his duty to pay that portion of his taxes remaining unpaid. 26 Atty. Gen. 80.

A tax receipt distribution statement must give the proportion or ratio for each of the stated kinds of taxes, and do so separately, notwithstanding 70.65 (2), Stats. 1945, specifies only "state, county and local taxes." 36 Atty. Gen. 131.

74.09 History: 1870 c. 14 s. 3, 4; 1872 c. 159; 1874 c. 205; R. S. 1878 s. 1096; Stats. 1898 s. 1096; 1921 c. 17 s. 11; Stats. 1921 s. 74.09; 1943 c. 275 s. 31; 1947 c. 349.

A stub book receipt showing payment of taxes for which a tax deed has been issued is competent evidence. (Pier v. Prouty, 67 W 218, distinguished.) McIntosh v. Marathon L. Co. 110 W 296, 85 NW 976.

74.10 History: R. S. 1849 c. 15 s. 59 to 64; R. S. 1858 c. 18 s. 75 to 80; 1861 c. 91; 1875 c. 294; R. S. 1878 s. 1097 to 1099; Stats. 1898 s. 1097 to 1099; 1919 c. 551 s. 45; 1921 c. 17 s. 12 to 14; Stats. 1921 s. 74.10; 1935 c. 79.

In an action by a taxpayer for the recovery of personal property sold to collect a tax the assessment roll and tax warrant are prima facie evidence of the facts therein stated; and if such records make out a prima facie defense the plaintiff has the burden of proof to show irregularities avoiding the tax. Standish v. Flowers, 16 W 110.

In replevin by a town treasurer for a chattel seized by him for a tax and taken by de-

fendant, a return by the latter and payment of the tax does not prevent a recovery of damages with costs for the detention. Thomas v. Wiesmann, 44 W 339.

A tax warrant regular upon its face is a complete protection to the treasurer, if he had no notice of irregularity or want of jurisdiction. Power v. Kindschi, 58 W 539, 17 NW 689.

One who has maintained an action to restrain the collection of a tax upon the ground that she was the owner of the land assessed and that it was illegally assessed to her husband is estopped in a subsequent action to recover property taken upon a warrant for the collection of such tax from claiming that her property was not liable to be taken upon the warrant because the land was so assessed. Kaehler v. Dobberpuhl, 60 W 256, 18 NW 841.

A town treasurer, for the purpose of making a levy upon certain white oak plank, lying in a millyard, went there and notified a man living near that he had levied upon the lumber, and requested him to notify any one concerned that he had levied upon it and that it must not be disturbed. He at once posted up notices in 3 public places in the town that he had levied upon the property and would sell, etc. He did not notify the owner of the property. His acts were sufficient, and a sale thereon was valid. New Richmond L. Co. v. Rogers, 68 W 608, 32 NW 700.

Wisconsin follows the doctrine that a real estate tax is not a "debt," since a landowner is not personally liable for the taxes imposed on his land and is not subject to an action in debt for their collection. 74.10, Stats. 1941, providing that where a person neglects to pay the "tax" imposed on him the "treasurer" may levy the same by distress and sell his goods or chattels does not establish a liability on the part of the landowner for real estate taxes returned to the county treasurer as delinquent, since the only right to distrain thereunder is in the town, village or city treasurer, and not in the county treasurer after return, and even the local treasurer is limited to distress and cannot reduce the claim to judgment. Calumet County v. Baumann, 243 W 317, 10 NW (2d) 190.

Mortgaged chattels in possession of the mortgagor may be seized and his interest sold under 74.10, Stats. 1921. The local treasurer must return as delinquent and the county treasurer must receive and receipt for taxes which the former has been unable to collect. 11 Atty. Gen. 179.

Unpaid taxes on real estate may be collected by distress and levy under this section. 15 Atty. Gen. 236.

Taxes are supposed to be paid in money; giving a check to a collector does not constitute payment of taxes until the check is actually paid. 16 Atty. Gen. 568.

In proceedings to collect delinquent personal property tax, property on which the tax is assessed, where subject to mortgages, is not exempt from sale but when sold should be sold subject thereto. 26 Atty. Gen. 448.

Except pursuant to this section, while in the hands of local treasurers unpaid real estate taxes are not collectible from an owner by assertion of personal liability against him by action of debt or otherwise or through distress or attachment proceedings. 29 Atty. Gen. 127.

Enforcing collection of personal and real property taxes. Stout, 16 MLR 83.

74.11 History: R. S. 1858 c. 18 s. 81 to 87; 1860 c. 198 s. 3 to 5; 1866 c. 91; 1869 c. 141 s. 1; R. S. 1878 s. 1100 to 1107; Stats. 1898 s. 1100 to 1107; 1903 c. 377 s. 1; Supl. 1906 s. 1102; 1921 c. 17 s. 15 to 22; Stats. 1921 s. 74.11; 1935 c. 79; 1951 c. 67; 1959 c. 226; 1963 c. 98; 1967 c. 276; 1969 c. 87.

The proceeding under ch. 18, R. S. 1858, may be instituted by the treasurer after the return of his warrant. The statute is remedial and to be liberally construed. Kellogg v. Oshkosh, 14 W 623.

On appeal, where the return shows a refusal, and no further evidence is offered, the fact that defendant has sufficient property to pay the tax is conclusively shown. A general verdict "for the plaintiff" sufficiently determines in the affirmative the issue of whether the defendant has such property. Wauwatosa v. Gunyon, 25 W 271.

In order to support a judgment under sec. 1105, Stats. 1898, it must appear that all the issues specified in the section were found for the plaintiff or that the defendant failed to appear and answer relevant questions. Washburn v. Washburn W. Co. 120 W 575, 98 NW 539.

A personal property tax is not a lien on any specific property; and a sale of such property by the owner passes an unincumbered title. 1902 Atty. Gen. 194.

The town treasurer cannot collect a personal property tax of a nonresident when there is no personal property within the state, and personal service cannot be had. The county treasurer can collect the said tax out of any real estate of the tax debtor under sec. 1126, Stats. 1919. 8 Atty. Gen. 203.

A local treasurer cannot proceed under 74.11, Stats. 1929, in case a person owing personal property tax has moved to another county. He may proceed under 74.12 or 74.10. If taxes are returned delinquent to the county treasurer such treasurer should, under 74.29, direct a warrant to the sheriff commanding collection of delinquent personal property tax. 18 Atty. Gen. 220.

74.12 History: 1903 c. 380 s. 1; Supl. 1906 s. 1107a; 1915 c. 604 s. 27; 1921 c. 17 s. 23; Stats. 1921 s. 74.12; 1929 c. 413; 1949 c. 231; 1953 c. 79, 540; 1955 c. 48; 1959 c. 226, 234; 1963 c. 98; 1967 c. 276; 1969 c. 87.

74.12, Stats. 1921, applies to taxes on personal property only. Nelson v. Gunderson, 189 W 139, 207 NW 408.

An action of debt under 74.12, Stats. 1933, to collect unpaid delinquent personal property taxes may be commenced independently of the question whether or not the county treasurer has delivered the delinquent tax schedule and warrant to the sheriff under 74.29 and 74.30. 22 Atty. Gen. 946.

74.13 History: 1913 c. 470; Stats. 1913 s. 1107b; 1921 c. 17 s. 24; Stats. 1921 s. 74.13; 1959 c. 226.

This statute is not applicable to special assessments, or to operating property of the utility; hence a county bidding in a delin-

quent sewer tax could not enforce a personal liability against a street railway. Milwaukee County v. Milwaukee E. R. & L. Co. 210 W 169, 246 NW 430.

Action will lie for collection of unpaid taxes on real property of a public service corporation and for collection of unpaid real property taxes on buildings on lands under lease or permit. 21 Atty. Gen. 102.

Personal property which has been turned over to a trustee for the benefit of creditors, under ch. 128, Stats. 1931, or to a receiver, under 268.13, cannot be taken to pay delinquent income taxes. 21 Atty. Gen. 532.

74.135 History: 1889 c. 326 s. 145; Ann. Stats. 1889 s. 925r sub. 145; Stats. 1898 s. 925—145; 1921 c. 17 s. 24a; Stats. 1921 s. 74.135; 1943 c. 253; 1953 c. 617.

74.14 History: 1913 c. 470; Stats. 1913 s. 1107c; 1921 c. 17 s. 25; Stats. 1921 s. 74.14.

74.16 History: R. S. 1858 c. 18 s. 89; R. S. 1878 s. 1111; Stats. 1898 s. 1111; 1921 c. 17 s. 27; Stats. 1921 s. 74.16.

74.17 History: R. S. 1849 c. 15 s. 70; R. S. 1858 c. 18 s. 93; 1865 c. 538 s. 66; R. S. 1878 s. 1112; Stats. 1898 s. 1112; 1913 c. 665; 1921 c. 17 s. 28; Stats. 1921 s. 74.17; 1923 c. 207 s. 2; 1933 c. 426; 1935 c. 456; 1937 c. 323; 1939 c. 189, 385; 1943 c. 15, 124, 133.

To sustain the defense of payment of the tax, in ejectment against the original owner, the fact that it had not been returned as unpaid is strong evidence of payment. Lewis v. Disher, 25 W 441.

The city treasurer should be credited by the county treasurer with delinquent special assessments in certain cases. 4 Atty. Gen. 136; 7 Atty. Gen. 323.

A county board has no authority to enforce its resolution directing the county treasurer to refuse to comply with 74.17 to 74.20, Stats. 1927, respecting the receipt of a statement of delinquent taxes and affidavit of the town, city or village treasurer attached thereto. 16 Atty. Gen. 674.

74.18 History: R. S. 1849 c. 15 s. 71; R. S. 1858 c. 18 s. 94; R. S. 1878 s. 1113; Stats. 1898 s. 1113; 1921 c. 17 s. 29; Stats. 1921 s. 74.18; 1923 c. 207 s. 5; 1943 c. 20; 1969 c. 276 s. 590 (1).

The omission of the word "not" from the return is immaterial. Scheiber v. Kaehler, 49 W 291, 5 NW 817.

The omission of the signature of the treasurer is not a fatal defect. Cole v. Van Ostrand, 131 W 454, 110 NW 884.

74.19 History: R. S. 1849 c. 15 s. 72; R. S. 1858 c. 18 s. 95; 1875 c. 162; R. S. 1878 s. 1114; Stats. 1898 s. 1114; 1913 c. 665; 1919 c. 551 s. 45; 1921 c. 17 s. 30; Stats. 1921 s. 74.19; 1923 c. 290; 1933 c. 426; 1935 c. 79, 327, 456, 504; 1937 c. 294, 323, 415; 1939 c. 385; 1947 c. 143; 1961 c. 197.

Editor's Note: Amendments to 74.19 (3) by ch. 504, Laws 1935, held unconstitutional in Whitefish Bay v. Milwaukee County, 224 W 373, 271 NW 416, because the subject of the bill was not expressed in the title, were reenacted by ch. 415, Laws 1937, which expressed the subject in the title.

Unless the treasurer's return is verified by affidavit the county treasurer has no authority to sell the land returned, and sales and deeds founded thereon will be void. Cotzhausen v. Kaehler, 42 W 332.

All taxes unpaid, including special assessments, are to be returned. The principle of sec. 1114, R. S. 1878, is that the county shall assume all delinquent taxes and reimburse itself out of the proceeds of sales or out of the lands in case it becomes the purchaser. Sheboygan County v. Sheboygan, 54 W 415, 11 NW 598.

A return of a town treasurer stating that he cannot find personal property out of which to collect the tax upon real property is conclusive upon the validity of a tax sale. Allen v. Allen, 114 W 615, 91 NW 218.

Sec. 1114, R. S. 1898, deals with the relation between cities and counties with respect to the collection of taxes and does not affect the relations between the holder of street certificates or street improvement bonds and the city as trustee for collection. The city in such a case is responsible for the execution of its trust but is not affected because of the methods of accounting provided by statute as between the city and the county. Jewell v. Superior, 135 F 19, certiorari denied, 198 US 583.

Where a city has turned over as delinquent certain special assessments levied for the payment of improvement bonds, the county is not a trustee for the bondholder in such a way that an action in equity may be brought against the county for an accounting. Olmsted v. Superior, 155 F 172.

The county treasurer has no authority to advance any part of the delinquent taxes to the town treasurer. 3 Atty. Gen. 862.

Taxes upon real estate must, if possible, be collected from the personal property of the owner or occupant. A treasurer, who fails to make such effort to collect any taxes which he returns delinquent, commits perjury in making the affidavit required by 74.19, Stats. 1921. 11 Atty. Gen. 95.

The entire tax roll is the property of the county when returned, and credit must be given the local treasurer therefor. The county treasurer must collect delinquent taxes, if possible, in a statutory way. Neither treasurer can look outside the tax roll and tax warrant to determine the validity of taxes. 11 Atty. Gen. 276.

Where a town treasurer returns delinquent taxes to the county in excess of the county levy and the county is required to bid in the property for lack of bids, the county is not required to pay the excess of the delinquent roll to towns until such money is actually collected. 16 Atty. Gen. 673.

Where a town treasurer died before the time specified by law for making a delinquent tax return and no person was appointed for the residue of the unexpired term, the town treasurer elected at the spring election of April 4, 1933, should make a return and verify the same by affidavit as required by this section. 22 Atty. Gen. 459.

Since forest crop lands are subject to the weed-cutting tax the county treasurer should credit the town treasurer with the amount of such tax where the same has been returned delinquent. 24 Atty. Gen. 801.

The county treasurer should credit the town, city or village treasurer with the amount of taxes returned as unpaid pursuant to 74.19 (1), Stats. 1935, regardless of whether the time for payment has been extended by affidavit pursuant to 74.037. As to taxes the time for payment of which has been extended under 74.037, the county treasurer must return the balance to the city, town or village treasurer when paid on or before July 1, 1937, after deducting county taxes and the amount due for advertising at tax sale, provided the amount so returned shall not exceed delinquent taxes eligible for credit in settlement of county taxes and charges. It is not the purpose of 74.037 (2) to compel municipalities to carry their own delinquent taxes. 26 Atty. Gen. 495.

A county is not accountable to a municipality for the excess of proceeds of sale by the county of tax-deed lands over the redemption value of outstanding tax liens against the land. (26 Atty. Gen. 572 overruled.) 30 Atty. Gen. 29.

74.20 History: R. S. 1858 c. 18 s. 99; R. S. 1878 s. 1115; Stats. 1898 s. 1115; 1921 c. 17 s. 31; Stats. 1921 s. 74.20; 1933 c. 426; 1935 c. 456; 1937 c. 323; 1939 c. 385.

74.21 History: R. S. 1849 c. 15 s. 73; R. S. 1858 c. 18 s. 96; R. S. 1878 s. 1116; Stats. 1898 s. 1116; 1921 c. 17 s. 32; Stats. 1921 s. 74.21; 1933 c. 426; 1935 c. 396, 456; 1937 c. 323; 1939 c. 385.

74.22 History: R. S. 1849 c. 15 s. 124; R. S. 1858 c. 18 s. 170; R. S. 1878 s. 1117; Stats. 1898 s. 1117; 1921 c. 17 s. 33; Stats. 1921 s. 74.22.

Where a town treasurer makes a return as to the amount of taxes actually paid and such return is for an amount in excess thereof, such excess being made up of certain certificates which were improperly accepted by the treasurer in lieu of taxes, and such return does not indicate what taxes such certificates were accepted in lieu of, the treasurer cannot deny the receipt of the taxes returned as paid, and is liable with the sureties for the penalty imposed by sec. 1117, Stats. 1898. Oneida County v. Tibbetts, 125 W 9, 102 NW 897.

The 5% penalty which the county treasurer is required to charge up against a town treasurer for failure to pay over taxes at the proper time is intended as a penalty, but should not be imposed upon a city treasurer when county highway taxes have been withheld by him in obedience to the direction of the city council in order that the validity of the law authorizing the tax which was being tested could be determined—the constitutional question being of sufficient gravity to justify the delay. Rinder v. Madison, 163 W 525, 158 NW 302.

A city treasurer's liability for penalties for nonpayment of moneys to the county is personal, for which his successor is not liable and for which the statutory remedy is exclusive; in mandamus to compel a city treasurer to pay over county moneys to the county treasurer, the statutory penalties may not be enforced. State ex rel. Sheboygan County v. Telgener, 199 W 523, 227 NW 35.

A city collecting coal dock taxes and failing to pay over to the county the share of such taxes specified in 70.42 (3), Stats. 1923, is liable to the county for the penalty provided in 74.72. The city treasurer is liable for damages and interest provided in 74.22. A county failing to pay to the state treasurer the state's share of such coal dock taxes is liable to the state for interest specified in 74.27. 13 Atty. Gen. 57.

An action to enforce turning over to the county the tax levied by the county for highway purposes and collected in part by a city in the county should be commenced in the name of the county against the city treasurer and his bondsmen for the amount of such tax, penalties, damages and interest, as provided in 74.22, Stats. 1927. 17 Atty. Gen. 485.

A local treasurer who deposits tax money in a duly designated depository and is unable to pay over such money to the county treasurer on the date due by reason of closing of such depository is not to be charged with penalties imposed by this section for failure to make settlement with the county treasurer. 22 Atty. Gen. 1000.

74.23 History: R. S. 1849 c. 15 s. 78; R. S. 1858 c. 18 s. 105, 106; R. S. 1878 s. 1118; Stats. 1898 s. 1118; 1921 c. 17 s. 34; Stats. 1921 s. 74.23.

Failure of a county treasurer to issue his warrant to the sheriff and otherwise to perform duties imposed upon him by this section, on failure of the town treasurer to pay over the amount of county taxes collected by him and deposited in a bank which was not a town depository and which failed, resulting in loss of funds so deposited, is a breach of the county treasurer's official bond, in an action on which it need not be shown affirmatively that performance of that duty would have resulted in collection of the amount due from the town treasurer; insolvency of the town treasurer and sureties on his official bond, and that performance of the duty imposed by statute upon the county treasurer would have been vain, is a matter of defense. 15 Atty. Gen. 208.

74.24 History: R. S. 1849 c. 15 s. 81, 82; R. S. 1858 c. 18 s. 108, 109; R. S. 1878 s. 1119; Stats. 1898 s. 1119; 1921 c. 17 s. 35; Stats. 1921 s. 74.24.

74.25 History: R. S. 1849 c. 15 s. 125; R. S. 1858 c. 18 s. 171; R. S. 1878 s. 1120; Stats. 1898 s. 1120; 1921 c. 17 s. 36; Stats. 1921 s. 74.25.

74.25, providing that any person injured by the false return or false act of any town treasurer shall recover double damages on action brought on the bond of such treasurer, has reference to the town treasurer's official bond required by 60.48, and has no application to the bond executed and delivered to the county treasurer under 70.67 (1). Akan v. Kanable, 18 W (2d) 615, 119 NW (2d) 419.

74.26 History: R. S. 1849 c. 15 s. 129; 1858 c. 152 s. 3; R. S. 1858 p. 250; R. S. 1858 c. 18 s. 176; 1859 c. 14, 50; 1875 c. 290; R. S. 1878 s. 1121 to 1123; 1879 c. 202; Ann. Stats. 1889 s. 1121 to 1123; 1895 c. 43; Stats. 1898 s. 1121 to 1123; 1899 c. 164; 1899 c. 335 s. 8; Supl. 1906 s. 1121; 1915 c. 140; 1917 c. 628 s. 19; 1921 c. 17 s. 37, 38, 39; Stats. 1921 s. 74.26; 1927 c. 539 s. 24; 1933 c. 367, 426; 1935 c. 396,

456; 1937 c. 323; 1939 c. 385; 1943 c. 124, 133; 1945 c. 168.

See note to 74.66, citing Petition of the State, 210 W 9, 245 NW 844.

74.27 History: 1872 c. 158; R. S. 1878 s. 1124; Stats. 1898 s. 1124; 1921 c. 17 s. 40; Stats. 1921 s. 74.27; 1947 c. 472; 1959 c. 659 s. 79.

It does not follow as an incident of the county's ownership of delinquent taxes that the county board can remit or give them away. Crandon v. Forest County, 91 W 239, 64 NW 847.

Sec. 1124, Stats. 1898, prescribes the remedy for a failure of a county clerk to include the state tax in the annual levy against a certain town. 1904 Atty. Gen. 158.

The county treasurer must certify and collect the amount certified by the secretary of state when it includes the amount certified the previous year but not paid to the state treasurer. 22 Atty. Gen. 931.

Where time for payment of real estate taxes is extended by cities, villages or towns pursuant to ch. 7, Laws 1935, so that the county does not receive its taxes until after July 1, 1936, the county must pay the state interest as provided by this section. 25 Atty. Gen. 215.

It is the duty of the county treasurer to pay to the state treasurer, out of tax moneys collected either before tax sale or by sale of tax certificates, the instalments of principal and interest due on the trust fund loans of all municipalities in the county, even though the money to pay such instalments has not been turned over to him by the town treasurers. 28 Atty Gen. 509.

74.28 History: 1854 c. 95 s. 1; R. S. 1858 c. 18 s. 169; R. S. 1878 s. 1125; Stats. 1898 s. 1125; 1921 c. 17 s. 41; Stats. 1921 s. 74.28; 1935 c. 504; 1937 c. 415; 1945 c. 33.

Editor's Note: Amendments to this section by ch. 504, Laws 1935, held unconstitutional in Whitefish Bay v. Milwaukee County, 224 W 373, 271 NW 416, because the subject of the bill was not expressed in the title, were reenacted by ch. 415, Laws 1937, wherein the subject is expressed in the title.

Where taxes collected by a town due to the county were deposited by the town in a bank and the town is unable to collect the same from the bank because of a stabilization plan having been entered into, the county treasurer may retain any moneys due to the town as an offset against such obligation of the town to the county. 21 Atty. Gen. 487.

Under this section a county may offset the amount of a special tax owed to the county by a town under 49.37 against any amount of taxes that the county owes to the town, regardless of the year and regardless of whether the taxes were collected by the county because of affidavits extending the time of payment pursuant to 74.037. 28 Atty. Gen. 496.

74.29 History: R. S. 1858 c. 18 s. 100; 1866 c. 93 s. 1; 1877 c. 228; R. S. 1878 s. 1126; Stats. 1898 s. 1126; 1913 c. 665; 1921 c. 17 s. 42; Stats. 1921 s. 74.29; 1933 c. 244 s. 2; 1937 c. 294; 1969 c. 55.

74.30 History: R. S. 1858 c. 18 s. 101; 1861 c. 38; 1867 c. 174; R. S. 1878 s. 1127; 1887 c. 325; Ann. Stats. 1889 s. 1127; Stats. 1898 s. 1127; 1921 c. 17 s. 43; Stats. 1921 s. 74.30.

A tax warrant regular on its face protects the sheriff who executes it. McLean v. Cook, 23 W 364.

It is otherwise if he have notice that it is void, though prima facie regular. Grace v. Mitchell, 31 W 533.

As to the power of a sheriff under sec. 1127, Stats. 1898, see State ex rel. Ashland W. Co. v. Wharton, 115 W 457, 463, 91 NW 976, 979.

A warrant of the county treasurer accompanying delinquent income tax schedules is sufficient process for execution. The sheriff is not entitled to demand a bond from the county. 21 Atty. Gen. 133.

74.31 History: 1866 c. 93 s. 1; 1871 c. 97; R. S. 1878 s. 1128; Stats. 1898 s. 1128; 1921 c. 17 s. 44; Stats. 1921 s. 74.31; 1951 c. 112.

74.32 History: R. S. 1858 c. 18 s. 110; 1862 c. 71 s. 1, 2; R. S. 1878 s. 1129; 1893 c. 218; Stats. 1898 s. 1129; 1921 c. 17 s. 45; Stats. 1921 s. 74.32; 1933 c. 244 s. 2; 1937 c. 294; 1943 c. 277; 1945 c. 107.

A county treasurer may, in his discretion, accept delinquent real estate tax without penalty or interest and issue a receipt so stating. The penalty and interest will remain owing and a lien on land, unless the legislature remits it. 21 Atty. Gen. 736.

A tax deed may be taken to an undivided interest. 22 Atty. Gen. 212.

The proportion of delinquent taxes chargeable to part of a parcel of land assessed as a whole and owned in severalty may be ascertained and discharged in accordance with the method provided by 74.32, Stats. 1933. 22 Atty. Gen. 837.

74.325 History: 1933 c. 244 s. 1; Stats. 1933 s. 74.325; 1945 c. 380; 1957 c. 316.

74.33 History: 1859 c. 22 s. 2, 3; 1861 c. 34; 1872 c. 167; 1873 c. 240, 242; 1874 c. 47; 1876 c. 55; R. S. 1878 s. 1130; 1879 c. 95 s. 1, 2; 1879 c. 150; 1881 c. 214; 1887 c. 103; Ann. Stats. 1889 s. 1130, 1131; Stats. 1898 s. 1130; 1915 c. 140; 1921 c. 17 s. 46; Stats. 1921 s. 74.33; 1933 c. 306; 1935 c. 7, 209, 234; 1939 c. 434; 1943 c. 133, 502; 1947 c. 280; 1951 c. 50; 1957 c. 316; 1961 c. 57, 622; 1965 c. 252.

An insufficient notice of sale is not a defect going to the groundwork of the tax (Urquhart v. Westcott, 65 W 135, 26 NW 552), so as to bring persons claiming under the original owner within the statute of limitations. McConnell v. Hughes, 83 W 25, 53 NW 149.

The county board has no power to absolve the treasurer from the performance of any duty imposed upon him by sec. 1130, R. S. 1878; he must proceed to advertise and sell lands returned as delinquent, notwithstanding the board has assumed to remit the taxes thereon. For failing so to do he is liable to persons injured. Crandon v. Forest County, 91 W 239, 64 NW 847.

The list can be published only in qualified newspapers and publication of such list in English in a newspaper published in German is unauthorized, where no authority has

been given under 59.09 for the publication of the list in a newspaper not published in English. State ex rel. Goebel v. Chamberlain, 99 W 503, 75 NW 62.

A notice of the sale of land for taxes, which stated that the sale would be in a certain town but without stating where such sale would take place, does not name the public place where the sale is to be made as required by sec. 1130, Stats. 1898. Midlothian I. M. Co. v. Dahlby, 108 W 195, 84 NW 152.

It is not necessary that the county treasurer keep the original of the notice in his office. Chippewa River L. Co. v. J. L. Gates L. Co. 118 W 345, 94 NW 37, 95 NW 954.

Where an affidavit does not state in what county the notices were posted, the affidavit is defective. "In a conspicuous place" as described in the affidavit, and being a street corner, is not necessarily a public place within the meaning of sec. 1130, Stats. 1898. Myrick v. Kahle, 120 W 57, 97 NW 506.

The notice of sale required by sec. 1130, Stats. 1915, must be posed as well as published, and a tax deed issued pursuant to tax proceedings that did not include such posting is invalid, even though the publication was sufficient. Pedro v. Grootemaat, 174 W 412, 183 NW 153.

A taxpayer has sufficient interest in the subject matter to qualify him to maintain an action to enjoin the publication of a delinquent tax list in a newspaper not authorized by sec. 1130, Stats. 1919, to make such publication. Dawley v. Callahan, 178 W 1, 189 NW 149.

Notice of a delinquent tax sale may be published in a newspaper in which the county treasurer is a stockholder. 14 Atty. Gen. 145.

The remedy of a county against a county treasurer who has omitted certain lands from the list of those to be sold for delinquent taxes is an action on the county treasurer's bond, joining the treasurer and his sureties as codefendants. 23 Atty. Gen. 841.

It is the duty of the county treasurer to omit from delinquent tax lists lands owned by the U. S. government. 25 Atty. Gen. 481.

See note to 75.07, citing 29 Atty. Gen. 138, 225.

74.345 History: 1921 c. 508; 1921 c. 590 s. 99; Stats. 1921 s. 74.345; 1935 c. 153; 1939 c. 434; 1957 c. 316; 1965 c. 252.

Where a city treasurer accepted a note in payment of real estate taxes and upon default in payment of the note the city reassessed the property and included the reassessment in the delinquent tax roll, the county may sell the property and issue a delinquent tax certificate thereon and the county must refund to the city moneys erroneously paid to the county. 24 Atty. Gen. 750.

74.36 History: 1859 c. 22 s. 4, 5; R. S. 1878 s. 1132; Stats. 1898 s. 1132; 1905 c. 35 s. 1; Supl. 1906 s. 1132; 1921 c. 17 s. 49; Stats. 1921 s. 74.36; 1957 c. 316.

An affidavit stating the places of posting as a store and post office, but not in terms stating that they were public places, is good, as it will be presumed that the places described are public. Hart v. Smith, 44 W 213.

An affidavit stating that one of the notices was posted "at" the county treasurer's office instead of "in" the office does not show a lawful posting and the sale is void. Hilgers v. Quinney, 51 W 62, 8 NW 17.

The affidavit should show how long before the sale the notice was posted. Hewitt v. Butterfield, 52 W 384, 9 NW 15.

An affidavit which sets forth the places of posting and then adds, "the same being 4 public places in the village of Neillsville," is defective in not showing that the notice was posted in 4 public places in the county. The statute is mandatory and must be strictly observed. Ramsey v. Hommel, 68 W 12, 31 NW 271.

An affidavit that the treasurer posted notices of sale in 4 public places in the county, without showing the time or place of posting, does not show a valid notice and the sale is void. Wisconsin C. R. Co. v. Wisconsin River L. Co. 71 W 94, 36 NW 837.

Parol evidence to supply the loss must show that the proper affidavits were in fact filed and that they stated the facts required by law to be therein stated. Hiles v. Cate, 75 W 91, 43 NW 802.

The affidavit must show that one of the notices was posted in the treasurer's office or the sale will be void. Jarvis v. Sillman, 21 W 599; Morrow v. Lander, 77 W 77, 45 NW 956.

The want of an affidavit of posting cannot be supplied by parol, though the posting was actually done according to law. Hewitt v. Wisconsin River L. Co. 81 W 546, 51 NW 1016.

The want of a proper affidavit is not a defect going to the validity of the assessment and affecting the groundwork of the tax, and the sale is not affected by the limitation of ch. 309, Laws 1880. Morris v. Carmichael, 68 W 133, 31 NW 483; McConnell v. Hughes, 83 W 25, 53 NW 149.

If no affidavit of the posting is made the sale is void. Pier v. Oneida County, 93 W 463, 67 NW 702.

Failure to file an affidavit until 10 days after the last publication does not invalidate the sale. Allen v. Allen, 114 W 615, 91 NW 218.

When there was a failure to transmit the affidavit of publication within the time required, the inclusion of a printer's fee of 25 cents rendered the sale void. Chippewa River L. Co. v. J. L. Gates Co. 118 W 345, 94 NW 37, 95 NW 954; Pinkerton v. J. L. Gates Co. 118 W 514, 95 NW 1089.

An affidavit of the county treasurer under this section, which omitted to state in which county the notices were posted, and which stated that the notices were posted in a conspicuous place at certain street corners, was defective for the failure to state the county and because a conspicuous place was not necessarily a public place. Myrick v. Kahle, 120 W 57, 97 NW 506.

The rule laid down in Chippewa L. Co. v. J. L. Gates L. Co. 118 W 345, 94 NW 37, 95 NW 954, that the inclusion of the printer's fee where the date of publication was not transmitted within 6 days after the fourth publication invalidated the tax deed, was not changed by the amendment of 1905 as to deeds existing before its enactment. Cole v. Van Ostrand, 131 W 454, 110 NW 884.

Where affidavits relative to a tax sale had been properly filed but not preserved in the county clerk's office, parol evidence is sufficient to support the validity of a tax deed. Caseville I. Co. v. Berg, 201 W 144, 229 NW 532.

74.38 History: 1859 c. 22 s. 55; 1872 c. 167; R. S. 1878 s. 1134; Stats. 1898 s. 1134; 1921 c. 17 s. 51; Stats. 1921 s. 74.38.

74.39 History: 1859 c. 22 s. 6, 26; 1870 c. 68; R. S. 1878 s. 1135; Stats. 1898 s. 1135; 1921 c. 17 s. 52; Stats. 1921 s. 74.39; 1933 c. 244 s. 2; 1937 c. 294.

As to what evidence is necessary to show an illegal excess of charges see Mills v. Johnson, 17 W 598.

A municipal corporation has no implied power to sell lands for taxes, but only that expressly conferred by statute, and this must be strictly construed and pursued. Knox v. Peterson, 21 W 247.

The statute of limitations cures the illegality of exacting an excessive amount of taxes. Ruggles v. Fond du Lac County, 63 W 205, 23 NW 416.

A county treasurer's practice of commencing the sale of land for delinquent taxes on the statutory date, but selling only one tract daily and continuing the sale from day to day until February 1, and thereafter selling daily as many tracts as practicable, is legal. State v. Milwaukee, 210 W 336, 246 NW 447.

The county treasurer cannot correct an erroneous description in the delinquent tax list. The remedy is to refuse to sell the land and charge the tax back to the town. Where mineral rights are assessed separately, and the land is assessed, but the terms "except mineral rights" does not follow the description, it is impossible to tell whether the mineral rights were valued with the land, and the tax is void. 4 Atty. Gen. 230.

A tax certificate containing a clerical error may be recalled by the county treasurer, and a proper certificate may be issued in place thereof. 12 Atty. Gen. 401.

A county treasurer must sell lands for delinquent taxes even if it is claimed that the taxes are illegal. 14 Atty. Gen. 148.

When it is impossible to determine from the face of the tax roll whether the assessor included in the assessment of adjoining land the value of a railroad right of way, the assessment is irregular and the county treasurer should not offer the land for sale for delinquent taxes but should report it to the county board. 18 Atty. Gen. 136.

Statutes confer no express authority to a county to offer for sale in 1933 lands upon which taxes remained unpaid in 1928, where the county treasurer withheld such lands from sale upon receipt of a portion of the tax. 22 Atty. Gen. 371.

74.40 History: 1859 c. 22 s. 7; R. S. 1878 s. 1136; Stats. 1898 s. 1136; 1921 c. 17 s. 53; Stats. 1921 s. 74.40.

A municipal corporation cannot purchase certificates at a tax sale without special statutory authority. Eaton v. Manitowoc County, 44 W 489.

A tax deed was set aside where a tenant in common, who was obligated by agreement with his cotenant to pay the taxes, neglected to do so, but furnished money to a third person to purchase at the tax sale, and then procured an assignment of the certificate to his mother-in-law, who furnished no consideration and was cognizant of the facts. Mitchell v. Lyons, 163 W 399, 158 NW 70.

74.41 History: 1859 c. 22 s. 8; R. S. 1878 s. 1137; Stats. 1898 s. 1137; 1921 c. 17 s. 54; Stats. 1921 s. 74.41.

74.42 History: 1859 c. 22 s. 9; R. S. 1878 s. 1138; Stats. 1898 s. 1138; 1921 c. 17 s. 55; Stats. 1921 s. 74.42.

The statutory authority of the county or other municipal corporation to purchase at tax sale must be strictly pursued. It cannot purchase jointly with an individual. A deed showing a sale to the county and an individual is void on its face. Sprague v. Coenen, 30 W 209.

The statute clearly gives the county treasurer authority to purchase for the use of the county. Jenks v. Racine, 50 W 318, 6 NW 818.

The county treasurer can bid only when there are no other bidders. Baldwin v. Ely, 66 W 171, 28 NW 392.

The purchase of land at a tax sale required by sec. 1138, Stats. 1898, is merely a step toward collection, but is not a collection of taxes. Iron River v. Bayfield County, 106 W 587, 82 NW 559.

A county which acquires land at a tax sale need not settle with other taxing districts for any excess above county taxes until the money is actually in the county's hands as a result of redemption or resale. A county is not liable to pay delinquent farm drainage or drainage district assessments irrespective of how the county became the owner of the land. Lewiston Drainage Dist. v. Diehl, 227 W 372, 279 NW 45.

When lands assessed for taxes are returned delinquent and are advertised for sale as a whole and on the day of, but before sale, the owner of an undivided interest in such land tenders payment of his share of the tax and such payment is accepted, it is the duty of the county treasurer to sell or bid off for the county the remaining undivided interest for the balance of unpaid taxes. 12 Atty. Gen. 159.

74.43 History: 1915 c. 475; Stats. 1915 s. 1138a; 1921 c. 17 s. 56; Stats. 1921 s. 74.43; 1929 c. 158; 1933 c. 244 s. 2; 1941 c. 287.

Towns cannot purchase at tax sales or acquire tax titles. Eaton v. Manitowoc County, 44 W 489.

74.44 History: 1917 c. 268; Stats. 1917 s. 1138m; 1921 c. 17 s. 57; 1921 c. 96; 1921 c. 422 s. 32, 50; 1921 c. 590 s. 12; Stats. 1921 s. 74.44; 1923 c. 89; 1931 c. 120; 1941 c. 185; 1955 c. 696 s. 17c.

Where the county purchases land sold for delinquent drainage district assessments or farm drainage assessments the county acts merely as a trustee and is not liable for those special assessments. Lewiston Drainage Dist. v. Diehl, 227 W 372, 279 NW 45.

The county treasurer, acting by direction of the county board pursuant to 74.44, Stats. 1921, is the exclusive bidder, and becomes the purchaser for the county for all lands sold for

taxes for the amount of the taxes, interest and charges remaining unpaid thereon. 11 Atty. Gen. 436.

A resolution of the county board adopted under the provisions of this section, authorizing and directing the county treasurer to bid in and become the purchaser of all lands sold for taxes, but which excepts from such direction lands incumbered by mortgage and permits the mortgagee at his election to become the purchaser at the tax sale, is void. 13 Atty. Gen. 372.

Where the county board has directed the county treasurer to bid in for the county all lands sold for taxes, the county treasurer is the exclusive purchaser at all tax sales thereafter while such resolution is in effect; and sales to private bidders and tax certificates issued thereon, even though made and issued in obedience to a writ of mandamus commanding the same, such writ having been subsequently quashed pursuant to a mandate of the supreme court, are void. 18 Atty. Gen. 250.

Where the county board directs the county treasurer to become the purchaser of all lands offered for sale at tax sale a third party may not become a bidder. 20 Atty. Gen. 432.

A county treasurer, bidding in tax and drainage assessment certificates by direction of the county board, should not pay drainage assessments to the district. 20 Atty. Gen. 969.

A county board may purchase all tax delinquent lands or only lands for which there are no other bidders, but may not impose other restrictions upon the sale of tax certificates to the county. 24 Atty. Gen. 119.

A county has authority to become the exclusive bidder for tax certificates. Owners of tax certificates are "lien holders" as that term is used in a county board resolution authorizing the county treasurer to sell tax certificates to "lien holders." 27 Atty. Gen. 491.

A resolution of a county board instructing the county treasurer as to whom he shall sell tax certificates does not make the county the exclusive purchaser at a tax sale under 74.44 (1), Stats. 1941. 31 Atty. Gen. 346.

74.45 History: 1859 c. 22 s. 13; R. S. 1878 s. 1139; Stats. 1898 s. 1139; 1921 c. 17 s. 58; Stats. 1921 s. 74.45.

74.455 History: 1935 c. 281; Stats. 1935 s. 74.455.

74.455, Stats. 1937, applies where an erroneous description of real estate appears in a tax certificate only and does not extend to certificates containing erroneous descriptions where such errors prevail throughout the entire tax assessment and collection proceedings. 26 Atty. Gen. 488.

74.456 History: 1943 c. 149, 169, 574; Stats. 1943 s. 74.456; 1945 c. 53, 505; 1965 c. 252.

74.46 History: 1859 c. 22 s. 14, 54; R. S. 1878 s. 1140; 1883 c. 104; Ann. Stats. 1889 s. 1140, 1140a; Stats. 1898 s. 1140; 1915 c. 614; 1921 c. 17 s. 59; Stats. 1921 s. 74.46; 1933 c. 244 s. 2; 1935 c. 64; 1937 c. 409; 1945 c. 100, 567; 1949 c. 262, 540; 1951 c. 358; 1963 c. 572.

Revisor's Note, 1949: This amendment to (1) eliminates obsolete material and writes into the tax or master tax certificate form the "3 years" which now (since 1947) has to be inserted each time a certificate is made out. This makes the certificate now say that the purchaser or the county will "be entitled to a deed of conveyance of said lands in 3 years from this date" unless redeemed. [Bill 483-S]

A certificate in which the description is so uncertain that it is impossible to tell what land is meant is void upon its face. It is an incumbrance upon the land. Pillsbury v. Mitchell, 5 W 17.

The only assignment which the clerk is authorized to act upon is one on the back or upon an attached paper. State ex rel. White v. Winn, 19 W 304.

Municipal corporations or quasi-corporations cannot purchase at tax sales or become assignees of tax certificates without express statutory authority. Counties, cities and villages have such authority; but an assignment of a tax certificate to a town is void. A writing is necessary to the validity of the assignment because the certificate is evidence of the sale of an interest in land. Eaton v. Manitowoc County, 44 W 489.

The treasurer cannot sell or assign certificates except for cash. An executory contract for their sale is void and does not bind the county. Smith v. Barron County, 44 W 686.

An assignment by the words "assigned May 19, 1877, J. P. C., county clerk," partly written and partly printed across one end of the face of a certificate, is sufficient. Potts v. Cooley, 56 W 45, 13 NW 682.

An assignment by indorsement of the name and official character of a county clerk impressed by him upon a certificate by means of a stamp is sufficient. State ex rel. Carel v. Nelson, 56 W 290, 14 NW 442; Dreutzer v. Smith, 56 W 292, 14 NW 465.

A certificate of sale for taxes is not a negotiable instrument, and an assignment passes only the interest of the holder. Wright v. Zettel, 60 W 168, 18 NW 760.

A certificate of sale imports an absolute and paramount right subject only to redemption. In foreclosure the former owner should be a party. Coe v. Manseau, 62 W 81, 22 NW 155.

Where an act setting off a new county required all tax certificates on the land set off to be assigned to the new county and they were not assigned, but were afterwards agreed to be retained by the original county, they were not assigned by the act, and the agreement was valid. Hall v. Baker, 74 W 118, 42 NW 104.

Acceptance of a bid does not amount to an assignment in praesenti. Hotson v. Wetherby, 88 W 324, 60 NW 423.

One who purchases a certificate pendente lite acquires no better right than his assignor had. Hixon v. Oneida County, 82 W 515, 52 NW 445.

The purchaser of a tax certificate is not protected as a bona fide purchaser, but takes it subject to all defects and infirmities. Brown v. Cohn, 95 W 90, 69 NW 71.

An assignee must be made a party before the limitation of sec. 1210h, Ann. Stats. 1889, has run or he will be protected thereby. Levy v. Wilcox, 96 W 127, 70 NW 1109.

Inclusion in the certificate of the certificate fee of 25 cents is an immaterial irregular-

ity and not ground for setting aside the certificate. Chippewa River L. Co. v. J. L. Gates Co. 118 W 345, 94 NW 37, 95 NW 954.

Where a tax certificate issued to a county in 1910 and assigned in 1917 to an individual was indorsed after his death by his administratrix, "Annie R. Estabrook, Administratrix of the Estate of D. J. Estabrook, deceased," and delivered to one who took out a tax deed thereon, and no other assignment was made, it was ineffectual to pass title to the certificate. (This decision was controlled by secs. 1140 and 1187, Stats. 1919, before they were amended and renumbered to be 74.46 and 75.26, Stats. 1921.) Textor v. Estabrook, 177 W 135, 187 NW 998.

A county treasurer is authorized to sign tax certificates based upon a sale held during the term of his predecessor. 24 Atty Gen. 300.

A tax certificate incorrectly dated is valid; a county treasurer may recall such certificate and issue a proper one. 24 Atty. Gen. 403.

A county board may, by resolution pursuant to chs. 128 and 330, Laws 1935, provide for waiving of interest and penalties upon tax certificates on homes and farms held by the county where certificates have not been previously pledged as security. 25 Atty. Gen. 463.

Interest payable under 74.46, Stats. 1939, is computed to the end of the month in which payment is made at the rate of eight-tenths of one per cent per month. 30 Atty. Gen. 314.

74.47 History: 1859 c. 22 s. 15; R. S. 1878 s. 1141; Ann. Stats. 1889 s. 1096, 1141; Stats. 1898 s. 1141; 1921 c. 17 s. 60; Stats. 1921 s. 74.47; 1935 c. 167.

The object of the statutory provisions is to enable persons to ascertain whether the law has been complied with; and the files and records are the only evidence which can be admitted to show the facts. Iverslie v. Spaulding, 32 W 394.

The sales book is prima facie evidence of the facts stated in it, but not of the validity of the taxes. Eaton v. Lyman, 33 W 34.

Where there is no record proof of the publication of the advertisement of tax sales a court of equity will take cognizance of the defect. Hebard v. Ashland County, 55 W 145, 12 NW 437.

There is no presumption of the advertisement of a tax sale in the absence of proof in the office of the proper county officer of the publication and posting of the notices thereof. Hiles v. Cate, 75 W 91, 43 NW 802.

Certificates are invalid if no statement is deposited as required by sec. 1141, R. S. 1878. Pier v. Oneida County 93 W 463, 67 NW 702.

Sec. 1141, Stats. 1898, is directory and not mandatory; where it appeared that the treasurer did not make or file the statements required, but the list of the land sold was kept in the county clerk's office in a book called the sales book but not signed by the treasurer, the deed was not thereby invalidated. (Pier v. Oneida County, 93 W 463, 67 NW 702 distinguished.) Allen v. Allen, 114 W 615, 91 NW 218.

The object of secs. 1130, 1132 and 1141, Stats. 1898, is to preserve the evidence of posting notices of sale for the protection of interested parties. Myrick v. Kahle, 120 W 57, 97 NW 506.

The fact that the treasurer filed the printer's affidavit of publication after the last publication, but before, instead of after, the sale did not avoid the sale or the tax deed based thereon. Baker L. & T. Co. v. Bayfield County L. Co. 162 W 471, 156 NW 459.

Failure to record affidavits and notices did not defeat a tax deed, where all other requirements had been met. Caseville I. Co. v. Berg, 201 W 144, 229 NW 532.

74.49 History: 1864 c. 335; R. S. 1878 s. 1142; Stats. 1898 s. 1142; 1921 c. 17 s. 62; Stats. 1921 s. 74.49; 1933 c. 114.

The dismissal of an injunction against a tax sale is not a bar to a suit to set aside the tax certificates, after reassessment, by the same plaintiff. Spear v. Door County, 65 W 298, 27 NW 60.

74.50 History: 1864 c. 276 s. 1, 3; R. S. 1878 s. 1143; 1881 c. 268 s. 2; Ann. Stats. 1889 s. 1143; Stats. 1898 s. 1143; 1921 c. 17 s. 63; Stats. 1921 s. 74.50.

Ch. 276, Laws 1864, is highly penal and must be strictly construed. It does not prohibit the treasurer or his deputy from purchasing a certificate from a party other than the county and taking a deed thereon. Coleman v. Hart, 37 W 180.

The words "tax certificate" mean certificates issued by the county of which the person prohibited is an officer, whether issued during the incumbency of the office or previously thereto, and whether purchased of the county or its vendee. Where an act creating a new county provides that tax certificates held by the old county on lands situated in the new should be assigned to the latter by the county treasurer of the former such treasurer may, after such assignment, purchase such certificates. Gilbert v. Dutruit, 91 W 661, 65 NW 511.

A deed from a county based on county tax titles was valid, the findings and evidence showing that the deputy county treasurer was not interested in the purchase from the county. Maxcy v. Simonson, 130 W 650, 110 NW 803.

Funds realized by a county under provisions of 74.50, Stats. 1955, in excess of the delinquent tax and interest on any particular tract of land involved become part of the general fund. 24 Atty. Gen. 302.

A county board member has an official duty to perform in relation to the sale of lands to which the county has title by tax deed and is therefore prohibited from purchasing said lands or acquiring a pecuniary interest therein by express provisions of 348.28, Stats. 1939. (16 Atty. Gen. 633 overruled). 29 Atty. Gen. 197.

74.57 History: 1917 c. 572; Stats. 1917 s. 1149a; 1921 c. 17 s. 70; Stats. 1921 s. 74.57; 1935 c. 479; 1947 c. 9; 1959 c. 659 s. 79; 1969 c. 392 s. 87(13).

Ch. 572, Laws 1917, is not retroactive. The state acquires merely the right to redeem lands which escheated after the tax sale. State v. Gether Co. 203 W 311, 234 NW 331.

The state must pay taxes on lands purchased after the tax lien has attached. Such taxes should be collected by the county treasurer, and paid out of the general fund of the state. No interest or fees should be paid by the state. 9 Atty. Gen. 587.

Where the state acquires lands by forfeiture of a land contract for failure of the purchaser to make payment, it takes title subject to valid liens and outstanding tax certificates, and must redeem such certificates in order to protect its title. 15 Atty. Gen. 223.

Where state swamp lands have been sold under contract to be paid for in instalments they are properly assessable under provisions of 70.07, Stats. 1927; but if they are returned delinquent the county treasurer should report to the state treasurer a list of such lands and the amount of taxes assessed thereon. 18 Atty. Gen. 319.

Lands owned by the state are exempt from taxation except state lands sold on contract. In case of failure to pay any interest, principal or tax on such contracted land, the contract becomes void and the land becomes state land, exempt from taxation while the forfeiture is effective. A purchaser may redeem from such forfeiture by paying interest, principal and tax due; if said land has been omitted from the tax roll during such forfeiture, it should be entered on the next roll once additionally for each omitted year. 18 Atty. Gen. 343.

Lands acquired in the name of a county for a state-federal highway after the first Monday in August are subject to taxes for that year. Such lands are "acquired by the state." They cannot be sold for taxes but such taxes are collectible from the state. 22 Atty. Gen. 83.

To determine whether taxes presented for payment under 74.57 (1), Stats. 1933, are just and legal, the commissioners of public lands must obtain such information, in addition to the certification presented by the county treasurer, as will satisfy them and enable them to make a determination. The phrase "just and legal" taxes means legally valid taxes, that is, taxes based upon legal levy and legal assessment. 22 Atty. Gen. 617.

A forestation tax collected pursuant to 70.58 (2), Stats. 1935, is a state tax within the meaning of 74.57 (2). 26 Atty. Gen. 85.

When a parcel of land is conveyed by easement to the county for state trunk highway purposes, delinquent taxes are payable by the state as a part of the cost of acquisition of such right of way easement. 37 Atty. Gen. 258.

74.59 History: R. S. 1849 c. 15 s. 117; R. S. 1858 c. 18 s. 162; R. S. 1878 s. 1151; Stats. 1898 s. 1151; 1921 c. 17 s. 72; Stats. 1921 s. 74.59; 1933 c. 187 s. 4.

Where, after the annual meeting at which taxes are levied, territory is detached from a school district and attached to another district, the taxes so levied should be collected as if no change in the district had been made, and a proper division of the money so collected should be made as other credits of the district are divided. 3 Atty. Gen. 878, 879.

74.60 History: 1850 c. 175 s. 1; R. S. 1858 c. 18 s. 64; R. S. 1878 s. 1152; Stats. 1898 s. 1152; 1921 c. 17 s. 73; Stats. 1921 s. 74.60.

74.61 History: 1917 c. 337; Stats. 1917 s. 1152a; 1921 c. 17 s. 74; Stats. 1921 s. 74.61; 1931 c. 195.

The duty imposed by 74.61, Stats. 1927, upon the county treasurer of a county containing less than 150,000 population continues after the tax roll is delivered to him until expiration of the right of redemption. 16 Atty. Gen. 515.

74.62 History: R. S. 1849 c. 15 s. 130; R. S. 1858 c. 18 s. 177; R. S. 1878 s. 1153; Stats. 1898 s. 1153; 1909 c. 293; 1913 c. 541; 1921 c. 17 s. 75; Stats. 1921 s. 74.62; 1945 c. 495; 1955 c. 422; 1969 c. 339.

As to the effect of an agreement between vendor and vendee that the former shall pay taxes, see Eaton v. Tallmadge, 22 W 526.

Sec. 130, ch. 15, R. S. 1849, applies only to the taxes of the year in which the conveyance is made. Peters v. Myers, 22 W 602.

The statute goes upon the theory that the taxes are not a specific lien upon real estate until the tax roll is completed and the taxes extended thereon. A grantor is not liable upon a covenant against taxes unless they have been extended upon the roll at the date of the conveyance. Spear v. Door County, 65 W 298, 27 NW 60.

Where possession is surrendered by the vendor to the vendee, and the former covenants to give a warranty deed free of all incumbrances when the purchase money is paid or secured, the vendee is liable for the taxes assessed upon the land after taking possession thereof under the contract. Williamson v. Neeves, 94 W 656, 69 NW 806.

Where land was conveyed after the date of the tax warrant, it was the duty of the grantor to pay the taxes then assessed if there was no express agreement to the contrary; no one can acquire a valid title founded upon a sale for taxes which it was his duty, either legally or equitably, to pay, and enforce it against one prejudiced by his neglect. Baldwin v. Barber, 164 W 622, 160 NW 1052.

In the absence of agreement the burden of paying the taxes on a right of way is on the servient owner. Schroeder v. Moeley, 182 W 484, 196 NW 843.

No lien for taxes can be placed on land purchased by the state after such purchase. Sec. 1153, Stats. 1913, is not applicable to the state, so that a grantor of the state is liable on his covenants against incumbrances in case there are tax liens against the lands at the time of the conveyance, whether before or after December 1. 2 Atty. Gen. 836.

Pitfalls in the standard offer-to-purchase form. Mayew, 46 MLR 499, 515.

74.63 History: R. S. 1849 c. 15 s. 120; R. S. 1858 c. 18 s. 165; R. S. 1858 c. 19 s. 31; 1863 c. 155 s. 73; R. S. 1878 s. 1154; Stats. 1898 s. 1154; 1921 c. 17 s. 76; Stats. 1921 s. 74.63; 1933 c. 244 s. 2; 1937 c. 294.

74.64 History: 1859 c. 22 s. 30; R. S. 1878 s. 1155; Stats. 1898 s. 1155; 1921 c. 17 s. 77; Stats. 1921 s. 74.64.

The power of the county board to remit taxes is denied in Crandon v. Forest County, 91 W 239, 64 NW 847.

Refunds on delinquent taxes made by the county board were properly credited to the county in an action for an accounting between the town and the county. The action of the county board in compromising or canceling unpaid delinquent taxes, or ordering that outstanding certificates be transferred at less

than their face value, is without authority under sec. 1155, 1184, or 1210g, Stats. 1898. Spooner v. Washburn County, 124 W 24, 102 NW 325.

74.65 History: 1859 c. 22 s. 57; R. S. 1878 s. 1156; Stats. 1898 s. 1156; 1921 c. 17 s. 78; Stats. 1921 s. 74.65; 1935 c. 167.

74.66 History: R. S. 1858 c. 18 s. 164; R. S. 1878 s. 1157; Stats. 1898 s. 1157; 1921 c. 17 s. 79; Stats. 1921 s. 74.66.

County taxes collected by a town treasurer do not belong to the town of which he is an officer, nor is he an agent of the town for their collection, but an agent of the county. Hence, where taxes were collected upon lands and the town treasurer returned them as delinquent, the lands sold, the certificates of sale declared void by the county board and the money paid for them returned, the amount refunded being charged back to the town, added to its county taxes for the next year and collected and paid to the county treasurer, the town could not recover the amount, though it was wrongfully collected. Westboro v. Taylor County, 90 W 355, 63 NW 287.

The word "default" in 74.66, Stats. 1931, refers to an act of dishonesty. The rule that loss of trust funds, deposited by a trustee in his own account in a bank which fails, falls on the trustee does not apply to a county treasurer. He may deposit state moneys, received by him in his official capacity, in any depository, regardless of ownership thereof. The county is not responsible for moneys lost through a county treasurer's lawful acts. The statute declaring personal property tax laws, not in conflict with income tax law, applicable to income taxes, does not make the county responsible for the state's portion of income taxes collected by the county treasurer. The county treasurer acts as the state's agent in collecting the state's portion of income taxes. Petition of the State, 210 W 9, 245 NW 844.

74.66, Stats. 1923, provides that losses sustained by the default of any county officer in the discharge of the duties imposed by the tax laws shall be chargeable to the county and added by the county board to the next year's taxes. 12 Atty. Gen. 158.

74.67 History: R. S. 1849 c. 15 s. 115; R. S. 1858 c. 18 s. 161; 1860 c. 123 s. 1; R. S. 1878 s. 1158; Stats. 1898 s. 1158; 1921 c. 17 s. 80; Stats. 1921 s. 74.67; 1933 c. 244 s. 2; 1937 c. 294.

A mortgagee cannot pay taxes on lands not covered by the mortgage, though adjacent to or connected with them, and add the amount to the mortgage debt. Crane v. Aultman T. Co. 61 W 110, 20 NW 673.

Where land was bid off by the mortgagee and certificates issued to him, and he afterwards assigned them to a third person, who took a tax deed, and then conveyed the land to the mortgagee's son, this operated as a payment of the taxes, and the mortgagee had no lien upon the land against the owner thereof. Burchard v. Roberts, 70 W 111, 35 NW 286.

A purchase on mortgage foreclosure sale obtains the interest of both mortgagor and mortgagee, including any tax title on the property held by either. Ames v. Storer, 98 W 372, 74 NW 101.

A purchase of a tax certificate amounts to a payment of the taxes for the protection of the estate, and the purchaser simply acquires the "further lien" upon the land as against a mortgagor and all persons claiming under him. Hill v. Buffington, 106 W 525, 82 NW 712.

Where the mortgagee had purchased certificates of tax sales of the mortgaged premises in order to protect his lien under the mortgage his action for foreclosure cannot be defeated by prior tender of the amount due on the mortgage with interest only. Hackett v. Van Dusen, 132 W 204, 111 NW 1097.

74.67, Stats. 1925, operates to give a second mortgagee, who has paid the taxes, merely an addition to his mortgage lien and not a lien prior to a first mortgage. Johnson v. Bank of New Richmond, 188 W 620, 206 NW 871.

One paying taxes on land in the mistaken belief of ownership or in the mistaken belief that he is paying them on his own land when he is in fact paying them on the land of another or paying them on land on which he has no lien under the mistaken belief that he is paying the taxes on land on which he has a lien, is not a "volunteer" so as to be barred from relief under the equitable doctrine of subrogation. Central Wisconsin T. Co. v. Swenson, 222 W 331, 267 NW 307.

Rights of junior lienholder in Wisconsin. Becker, 43 MLR 89.

74.68 History: 1860 c. 123 s. 2; R. S. 1878 s. 1159; Stats. 1898 s. 1159; 1921 c. 17 s. 81; Stats. 1921 s. 74.68.

74.69 History: 1860 c. 123 s. 3; R. S. 1878 s. 1160; Stats. 1898 s. 1160; 1921 c. 17 s. 82; Stats. 1921 s. 74.69.

74.695 History: 1925 c. 313; Stats. 1925 s. 74.695.

As to the lien of a second mortgagee who pays taxes see note to 74.67, citing Johnson v. Bank of New Richmond, 188 W 620, 206 NW 871.

74.70 History: 1861 c. 240 s. 1; R. S. 1878 s. 1161; Stats. 1898 s. 1161; 1921 c. 17 s. 83; Stats. 1921 s. 74.70.

Under ch. 240, Laws 1861, the mortgagee may sue to set aside a tax deed taken by the grantee of the mortgagor whether the conveyance to such grantee be recorded or not. Avery v. Judd, 21 W 262.

74.71 History: 1870 c. 110 s. 1, 2; R. S. 1878 s. 1162; Stats. 1898 s. 1162; 1921 c. 17 s. 84; Stats. 1921 s. 74.71; 1931 c. 167.

74.72 History: 1859 c. 96 s. 1 to 3; R. S. 1878 s. 1163; Stats. 1898 s. 1163; 1921 c. 17 s. 85; Stats. 1921 s. 74.72.

A town collecting and paying arrears of taxes in a village, with the penalty prescribed by sec. 1163, R. S. 1878, cannot collect the penalty from the village, where it was wrongfully charged back to the town by the county board, and was paid without request by the village. Milwaukee v. Whitefish Bay, 106 W 25, 81 NW 989.

74.73 History: 1870 c. 88 s. 1 to 3; 1878 c. 334; R. S. 1878 s. 1164; 1885 c. 341; Ann. Stats. 1889 s. 1164; Stats. 1898 s. 1164; 1913 c.

478; 1915 c. 410; 1921 c. 17 s. 86; Stats. 1921 s. 74.73; 1925 c. 288; 1927 c. 332; 1939 c. 503; 1941 c. 184; 1947 c. 314; 1953 c. 435; 1955 c. 440; 1967 c. 157.

Editor's Note: In connection with the amendatory legislation of 1967 see Associated Hospital Service, Inc. v. Milwaukee, 18 W (2d) 183, 118 NW (2d) 96, and note in 1964 WLR 158.

The voluntary payment of a peddler's license fee under a void law is not recoverable. Van Buren v. Downing, 41 W 122.

The defense of the statute in favor of counties, towns, etc., is favored; and a county may be allowed to set it up by amendment. Capron v. Adams County, 43 W 613.

An excessive tax exacted by misconduct and fraud of officers is recoverable. Such payment is not voluntary. A payment of an excessive tax under fraudulent misrepresentations that the amount was only half of the whole tax is not a voluntary payment. If payment of an unjust tax is made voluntarily, in the absence of fraud in enforcing its payment, it cannot be recovered. Harrison v. Milwaukee, 49 W 247, 5 NW 326.

A payment is not voluntary if the collector understands from the taxpayer that the taxes are regarded as illegal and that the suit will be brought to recover them back. Parcher v. Marathon County, 52 W 388, 9 NW 23.

A payment under threat to collect by distress after various unsuccessful efforts to defeat the tax is not voluntary. Ruggles v. Fond du Lac, 53 W 436, 10 NW 565.

Before an action under sec. 1164, R. S. 1878, can be maintained against a town the claim must be laid before the board as required by sec. 824. Wright v. Merrimack, 52 W 466, 9 NW 390; Chicago & Northwestern R. Co. v. Langlade, 55 W 116, 12 NW 357.

The deposit of the amount of an illegal tax, in a case where no deposit is necessary, is a voluntary payment. So is the payment of redemption money on void taxes. Powell v. St. Croix County, 46 W 210, 50 NW 1013; Babcock v. Fond du Lac, 58 W 230, 16 NW 625.

A redemption by one having no interest in the land for the purpose of preventing the issue of tax deeds, although the payment be made under protest, is voluntary. Rutledge v. Price County, 66 W 35, 27 NW 819.

As to voluntary payment of an excessive liquor license fee see Custin v. Viroqua, 67 W 314, 30 NW 515.

Sec. 1164, R. S. 1878, provides the only remedy for a person who wishes to test the validity of a tax for the collection of which his property has been seized under a tax warrant. He should pay the tax under protest, obtain his property and proceed to recover the money paid. Keystone L. Co. v. Pederson, 93 W 466, 67 NW 696.

Proof of illegal and void additions to plaintiff's assessment may show a prima facie case, but defendant may show, as a vindication of the equitableness of the tax and as a justification for retaining the money sued for, that had plaintiff made a fair and truthful return of his property he would have been properly taxed for the entire sum or a material portion of the alleged illegal tax. Day v. Pelican, 94 W 503, 69 NW 368.

As to voluntary payment of a special assessment, see Shirley v. Waukesha, 124 W 239, 102 NW 576.

An action in equity will not lie to restrain a municipal treasurer from collecting an illegal personal property tax. The proper remedy is to pay under protest under sec. 1164, Stats. 1898, and to sue to recover back. A. H. Stange Co. v. Merrill, 134 W 514, 115 NW 115.

Sec. 1164, Stats. 1898, relates to general taxes only, not to special assessments. Marine Co. v. Milwaukee, 151 W 239, 138 NW 640.

As to the recovery of taxes paid under a similar provision of the city charter of Milwaukee, see Burnham v. Milwaukee, 155 W 90, 143 NW 1067.

The remedies given by sec. 1164, R. S. 1898, may be invoked in cases of illegal income taxes. Montreal M. Co. v. State, 155 W 245, 144 NW 195.

The statutory remedy by appeal from the disallowance by a common council of a claim for repayment of income taxes paid under protest is not exclusive of the right to bring an action to recover such taxes; nor is the approval of the assessor of incomes or of the tax commission as provided in sec. 1087 m-22, Stats. 1911, a condition precedent to the maintenance of such action. Field v. Milwaukee, 161 W 393, 154 NW 698.

A public utility whose property and business extend into 2 or more taxing districts cannot maintain an action under sec. 1164, Stats. 1911, to recover a part of the taxes paid to one of them on the ground that there had been an improper apportionment among the districts of the assessed valuation of its property, unless it shall make it appear that it has paid to the defendant more than the latter's just portion of the whole tax, and also that the whole amount of the taxes paid in all the districts was increased by such apportionment. All of the taxing districts interested should be made parties to such an action. Burkhardt M. & E. P. Co. v. Hudson, 162 W 361, 156 NW 1011.

Where, by a clerical error an assessor unintentionally doubled the tax of a taxpayer and the latter paid the tax without knowledge of the overcharge, the taxpayer was not chargeable with constructive notice of the mistake, his payment was not a voluntary payment, and he might recover the excess payment under sec. 1164, Stats. 1913. State ex rel. Pabst Brew. Co. v. Kotecki, 163 W 101, 157 NW 559.

An action under sec. 1164, Stats. 1911, begun within the year limited therefor was not barred by an amendment of the complaint after the expiration of the year, the cause of action stated in the amended complaint being the same as that stated in the original complaint. Burkhardt M. & E. P. Co. v. Hudson, 165 W 412, 162 NW 429.

In an action to recover illegal tax exactions the court will not overturn the finding of the board of review unless it has no support within any reasonable view of the evidence. In such an action the defendant may introduce evidence supplementing that presented in the record to show that the plaintiff paid no inequitable amount of taxes. Lewis v. Racine, 179 W 210, 190 NW 476.

The word "fail" in 74.73, Stats. 1921 means neglect or default after opportunity to act. Hence an action brought before the next

meeting of the city council, after the filing of the claim, is premature. This section and 62.25, being in pari materia, must be construed together; and an action to recover an illegal tax must be begun within one year after the payment and after a refund claim has been disallowed or been on file for at least 60 days without action. Worthington P. & M. Corp. v. Cudahy, 182 W 8, 195 NW 717.

An action by the owner of lumber against the sheriff to recover damages for the unlawful sale of the lumber for taxes is not an action to recover a tax and 74.73 and 74.74, Stats. 1921, are not applicable. Although the sheriff was authorized to seize and sell the property, his failure to comply with the statute in making a sale rendered him liable to the owner for damages. Acceptance by the owner of the surplus proceeds on such unlawful sale does not estop him from suing for damages. Draper v. Rodd, 185 W 1, 200 NW 761.

The provision of 74.73, Stats. 1921, that a person seeking to recover illegal taxes paid by him shall not recover unless it shall appear that he has paid more than his equitable share of taxes, has no application in an action to recover on the ground that the entire levy was illegal. Wisconsin E. P. Co. v. Lake, 186 W 199, 202 NW 195.

By paying a tax under protest, a taxpayer preserves for himself his right to recover any tax illegally paid and to question the validity of the tax as fully as if he had questioned the tax prior to the time of its payment. State ex rel. Sheboygan v. Sheboygan County, 194 W 456, 216 NW 144.

Where the plaintiff paid the invalid special assessment under protest at the time he paid his general taxes and received a receipt stating that the special assessment was paid under protest, there was not a voluntary payment which barred a recovery. Welch v. Oconomowoc, 197 W 173, 221 NW 750.

Where the sale of the property of the delinquent taxpayer had been advertised and was about to be made, there was such duress as authorized recovery of the unlawfully assessed taxes paid under protest. Payment by the taxpayer under protest, followed by due filing of a claim for refund and commencement of an action to recover such taxes within a year after payment, preserved the taxpayer's right to recover under 74.73, Stats. 1927. Fox Valley C. Co. v. Hortonville, 207 W 502, 242 NW 142.

A taxpayer seeking to enjoin entry of assessment had an adequate remedy at law by paying the tax and suing for the excess under 74.73, Stats. 1931. Schlitz Realty Corp. v. Milwaukee, 211 W 62, 247 NW 459.

Certiorari is a proper proceeding to review the action of a board of review in refusing to reduce an assessment of improvements on land, where the writ was issued and judgment thereon was entered while the assessment roll remained in the hands of the city clerk, as against the contention that the remedy was to pay the tax under protest and sue to recover the excess. State ex rel. North Shore D. Co. v. Axtell, 216 W 153, 256 NW 622.

A difference of 12½ per cent between the valuation of property fixed by the assessor and that found by the trial court was not of itself sufficient to show that the owner had been required to pay more than his equitable share of taxes so as to be entitled to recover the excess. The finding of the trial court that the valuation was excessive, even if supported by the evidence, was not alone sufficient to establish a defect going to the groundwork of the tax, which refers to some serious jurisdictional defect. Krom v. Antigo, 220 W 542, 265 NW 716.

Where a taxpayer appealed from a decision of the village board of review to the department of taxation under 70.85, the valuation fixed by the department was conclusive, subject only to the right of the taxpayer to have the same reviewed in an action brought for that specific purpose, and the taxpayer could not instead maintain an action under 74.73, Stats. 1943, to recover from the village the tax paid by him. Burling v. Green Lake, 248 W 103, 20 NW (2d) 717.

A mere violation of 70.32, Stats. 1943, in making an assessment of real property at a valuation in excess of the full value which could ordinarily be obtained therefor at private sale, constitutes an illegal assessment, but this does not create a cause of action in the taxpayer under 74.73, to recover for taxes paid, unless the assessment is so out of line with the valuation of other property in the same locality as to impose an inequitable burden on the complaining taxpayer. The term "irregularity affecting the groundwork of the tax," as used by the supreme court in cases under this section to recover for taxes paid, means illegality or irregularity that results in an inequitable burden of taxation, not necessarily a defect serious enough to deprive the taxing authorities of jurisdiction. Highlander Co. v. Dodgeville, 249 W 502, 25 NW (2d) 76.

A taxpayer was entitled to recover a sum paid under protest to a town for a special assessment or tax levied for repairs made by the town on a private road on which the plaintiff's property abutted; it being conceded that there could be no legal tax levied for expenditures made by the town on a private road, and the town setting up only a sham defense that it was merely collecting a debt. Garfield Investment Co. v. Oconomowoc, 257 W 98, 42 NW (2d) 361.

An assessment of real property on any basis other than the full value ordinarily obtainable therefor at private sale is illegal as a violation of 70.32. If an excessive assessment is not merely a violation of 70.32 but is so substantially out of line with other assessments as to impose an inequitable tax burden, the taxpayer may invoke 74.73 to recover any excess paid by him. Yawkey-Bissell Corp. v. Langlade, 261 W 524, 53 NW (2d) 174.

Where personal property was taxed in 1954 at 100 per cent of value as compared to 58 per cent for real estate, in violation of 70.345, the personal property tax was unlawful and so out of line as to go to the groundwork of the tax, so that he was entitled to bring an action for the recovery of the tax under 74.73. Barker Lumber Co. v. Genoa City, 273 W 466, 78 NW (2d) 893.

See note to 75.62, citing Wisconsin Elec. P. Co. v. Milwaukee, 275 W 436, 82 NW (2d) 344.

Under 74.73 (1) the one-year limitation begins to run when a first instalment is paid, as

against a contention that it does not begin to run until the final instalment has been paid. A complaint for the recovery of an alleged unlawful property tax paid must allege that the tax was paid under protest. Waukesha Development Corp. v. Waukesha, 10 W (2d) 621, 103 NW (2d) 668.

In cases of illegal taxes based on 74.73 (4), involving an allegedly excessive assessment based on the amount or valuation of property, such assessment must first come before the board of review as provided in 70.47 (7) (a), as a condition precedent to bringing an action for the recovery of illegal taxes paid. The language "contested assessment," found in 74.73 (4), refers to the assessment contested before the board of review. In cases of illegal taxes not involving the amount or valuation of the property or excessive assessment, it is not necessary to comply with 70.47 (7) (a). Pelican Amusement Co. v. Pelican, 13 W (2d) 585, 109 NW (2d) 82.

Where taxpayers protesting overassessment of lakeshore property as compared to farms produced testimony as to assessments of only 6 farms, without showing that the 6 were representative or chosen at random, they have not supplied the proof required. Bauermeister v. Alden, 16 W (2d) 111, 113 NW (2d) 823.

74.73 (1), Stats. 1961, which establishes a limitation period of one year within which a person aggrieved by the levy and collection of any unlawful tax may file a claim or commence an action against a municipality to recover moneys so paid, affords municipalities a bulwark against uncertainty in that its object is to compel the prompt litigation of a claim against a municipal corporation where terms of office are short and personnel is constantly changing. Ash Realty Corp. v. Milwaukee, 25 W (2d) 169, 130 NW (2d) 260.

The provision relating to the time when settlement for taxes illegally assessed must be made between the county treasurer and the state treasurer is not a statute of limitation, but merely fixes the time when the right accrues. 7 Atty. Gen. 137.

An action to recover excess taxes must be commenced within a year after payment; no claim filed under sec. 1164, Stats. 1919, should be acted on when the claim is barred. 9 Atty. Gen. 132.

Where credits under sec. 1087—57, Stats. 1919, exceed the tax for the current year, the treasurer cannot pay the difference to a creditor taxpayer. But such net credit for excessive tax exactions, paid under protest, may be recovered under sec. 1164. 9 Atty. Gen. 179.

An illegal soldiers' bonus tax may be recovered from the political unit which collected it. When such tax is refunded, reimbursement is obtained by taking credit from the county, and the county from the state in next tax settlement. No recovery can be had of a tax voluntarily paid. 9 Atty. Gen. 272.

Towns, not counties, are liable for the refund of illegal taxes, and a claim therefor must be made within one year. No action may be based upon voluntary payment of an illegal tax. 9 Atty. Gen. 594.

A mistake in the county equalization does not create a cause of action in favor of a town. The remedy is by having a re-equalization or review. 11 Atty. Gen. 63.

Where an excessive tax is paid to a city under protest and recovered back from the city after settlement with the county and the state, the city is entitled to credit for county and state proportions of such illegal tax in adjustment with the county for the ensuing year, which should be levied back against the city in the next tax levy. 14 Atty. Gen. 162.

The fact that credit for the proportionate amount of state and county taxes included in a refund of unlawful taxes has been demanded by a municipal treasurer of the county treasurer does not prevent penalties prescribed by 74.22 from attaching to balance due from city treasurer after deducting lawful credits; elements of lawful credits stated. It seems that consent of the county to compromise or refund by a municipality of illegal taxes is not a condition of credit to the municipal treasurer in a tax settlement with the county treasurer. A claim for such credit need not be filed with the county board. The state treasurer is required to credit the county treasurer with the proportion of state taxes lawfully credited by him to the municipal treasurer in a tax settlement. 18 Atty. Gen. 153.

Credit for state and county taxes included in illegal taxes refunded by a municipality pursuant to this section not demanded and allowed in accordance with 74.73 (2) in a tax settlement between municipal treasurer and county treasurer for the year following the year of refund probably cannot be allowed in a subsequent year. 18 Atty. Gen. 232.

Where a judgment requiring repayment of taxes illegally assessed is rendered against a city and paid and seasonable demand for credit therefor made upon the county treasurer, credit must be given notwithstanding that the city did not avail itself in the suit of the defense afforded by the limitation of time within which such action may be brought. 19 Atty. Gen. 524.

Under 74.73, Stats. 1937, where no refund has been made to an individual taxpayer of taxes illegally assessed by a county on property within a city, the city has no claim for such taxes against the county. 27 Atty. Gen. 80.

Where, unknowingly, individuals placed improvements on unpatented government land and said improvements were erroneously assessed to the owners of adjoining land and taxes on said improvements were paid for the years 1927 to 1930 inclusive, voluntarily and without protest, said taxes may not now be recovered under either 74.64, 74.73 (1) or at common law. 28 Atty. Gen. 459.

74.74 History: 1878 c. 334 s. 4; R. S. 1878 s. 1164a; 1879 c. 255 s. 2, 3; 1881 c. 132; Ann. Stats. 1889 s. 1164a; Stats. 1898 s. 1164a; 1917 c. 659 s. 1, 2; 1921 c. 17 s. 87; Stats. 1921 s. 74.74.

If it appears that the assessment was void the court, before entering judgment, should continue the suit pending reassessment. Johnston v. Oshkosh, 65 W 473, 27 NW 320.

A reassessment is unnecessary when the amount which plaintiff ought to pay can be determined from the assessment roll. In this case the board of review arbitrarily increased plaintiff's assessment. Hixon v. Oneida County, 91 W 649, 65 NW 366.

74.76 History: 1925 c. 100; Stats. 1925 s. 74.76; 1933 c. 180; 1943 c. 203; 1963 c. 104; 1965 c. 186; 1967 c. 266.

Draftsman's notes, 1967: Subsection (1): In order to accommodate to commercial convenience so far as possible within the limitations of section 6323 of the internal revenue code, filing with the secretary of state is provided for the lien on tangible and intangible personal property of partnerships and corporations (as those terms are defined in section 7701 of the internal revenue code and the implementing regulations) thus including within "partnerships" such entities as joint ventures and within "corporations" such entities as joint stock corporations and business trusts.

Since most purchases and secured transactions involving personal property of natural persons would relate to consumer goods or farm personal property, searches for liens against such persons are more likely to be made at the local level. Thus, with few exceptions a search for corporation federal tax liens with the secretary of state and for natural persons with an officer in the county of residence will normally be in the same office as searches for security interests under the uniform commercial code.

Section 6323 of the internal revenue code "locates" all tangible and intangible personal property at the residence of the taxpayer even though it is physically located elsewhere in the same or in another state. State law cannot vary this requirement. State law does affect the result, however, in that state law determines the "residence" of a taxpayer. See IRC section 6323 (f) (2). Filing at the physical location of personal property of a taxpayer who is not a resident of the state of location of the property cannot be required.

Subsection (3): It is the practice of the internal revenue service to regard a "certificate of discharge" as primarily referable to specific pieces of property so that a certificate of discharge corresponds to a release under 409.406 of the uniform commercial code. A "certificate of release" in tax practice is equivalent to a "termination statement" in 409.404 of the commercial code in the sense that it is a general statement applicable to all property or types of property referred to in the termination statement.

Subsection (4): This requires the United States to pay for filing notices of liens and provides for monthly billing. The fee of $1 for filing the various instruments is the same as for filing financing statements, termination statements and releases of collateral under 409.403 to 409.406. [Bill 258-S]

Editor's Note: For foreign decisions construing the "Uniform Liens of Internal Revenue Taxes Act" consult Uniform Laws, Annotated.

There is an apparent conflict between the provision for a 75-cent fee in 74.76 (4), Stats. 1957, and the filing fee provision in 59.57 (1) (b) and (c), and the latter provisions will control. 46 Atty. Gen. 295.

74.77 History: 1919 c. 234; Stats. 1919 s. 937c; 1921 c. 396 s. 90; Stats. 1921 s. 49.015; Stats. 1925 s. 74.77.

74.78 History: 1925 c. 303; Stats. 1925 s. 40.22; 1927 c. 425 s. 103; Stats. 1927 s. 74.78.

One school district may recover from another school district taxes on property which have been erroneously assessed, levied and paid. There is no limitation as to the number of years for which such recovery may be had. 20 Atty. Gen. 1177.

74.79 History: 1941 c. 287; Stats. 1941 s. 74.79; 1965 c. 135.

CHAPTER 75.

Land Sold for Taxes.

75.01 History: 1859 c. 22 s. 18, 19; R. S. 1878 s. 1165; 1883 c. 296; 1889 c. 415; Ann. Stats. 1889 s. 1034a, 1165; 1891 c. 182; 1893 c. 218 s. 3; Stats. 1898 s. 1165; 1913 c. 266; 1915 c. 66, 614; 1921 c. 18 s. 2; Stats. 1921 s. 75.01; 1933 c. 73, 87, 146; 1933 c. 244 s. 1, 2; 1933 c. 334; 1935 c. 24; 1935 c. 477; 1937 c. 294; 1945 c. 100, 107, 567; 1955 c. 10; 1957 c. 316.

On impairment of contracts see notes to sec. 12, art. I; on legislative power generally see notes to sec. 1, art. IV; and on escheats see note to sec. 3, art. IX.

The owner must redeem or offer to do so before he has any right to the land conveyed so that he can bring an action against the tax claimant, though still entitled to redeem. Wright v. Wing, 18 W 45.

A redemption is not the payment of the tax. There is really no tax to be paid when land is thus redeemed. That has been canceled by the sale. It is the discharge of an incumbrance. Lindsay v. Fay, 28 W 177.

The offer to redeem must be unconditional. Where a tenant in common offered the requisite sum but requested the officer not to receive it, so that such tenant's right to redeem the whole might be tested in an action, there was no valid redemption. Woodbury v. Shackleford, 19 W 55.

When a tax deed is properly indexed it is "recorded," the same rule applying to a tax deed as to other deeds. Oconto Co. v. Jerrard, 46 W 317, 50 NW 591.

The tax deed must be so recorded as to be constructive notice. The grantee "must record it in the same way to set the statute of limitations running in his favor and against the plaintiff as he would be required to do in the case of a deed or mortgage. * * *" Lombard v. Culbertson, 59 W 433, 18 NW 399.

One who has been many years in possession and to whom the taxes have been assessed may redeem. Campbell v. Packard, 61 W 88, 20 NW 672.

The words "other person" in sec. 1165, R. S. 1878, do not mean one who has no interest in the land sold for taxes. Rutledge v. Price County, 66 W 35, 27 NW 819.

Where a tax deed void on its face is executed to the county a quitclaim deed by the county to a third person may perhaps be evidence of a payment or redemption of the tax, since the right of redemption still exists. Semple v. Whorton, 68 W 626, 32 NW 690.

A city charter which gives the right to redeem within 3 years from the day of the sale and at any time before a deed is executed is not inconsistent with nor repugnant to sec. 1165, R. S. 1878, since redemption is not prohibited