

## CHAPTER 74.\*

## COLLECTION OF TAXES.

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**\*Revisor's Note, 1941: SEMI-ANNUAL PAYMENT OF TAXES; PENALTIES AND INTERESTS.**

In view of the apparent conflict between ch. 294, Laws 1937 and ch. 426, Laws 1933, the revisor of statutes requested the advice of the attorney-general. In response to that request the attorney-general rendered an opinion, under date of July 22, 1941. The revisor, in printing the statutes, followed the attorney-general's opinion. A copy of the opinion follows:

Chap. 426, Laws of 1933, providing for a system of instalment payment of real estate taxes as enacted was to take effect October 1, 1935. By amendments thereto, passed 1935, 1937 and 1939, the effective date of said chapter was postponed for successive two year periods, so now it will go into effect on October 1, 1941. In view of the direct conflict between the provisions of Chap. 294, Laws of 1937, which provides that

"\*\*\*\* the two per cent penalty, advertising fee, selling fee, redemption fee and the interest charge of eight per cent per annum now in force are abolished. In lieu thereof a flat interest charge of eight-tenths of one per cent per month or fraction thereof on the principal sum of the tax from the first day of January succeeding the year of the tax levy shall be charged. All laws or parts of laws inconsistent herewith are repealed and the revisor of statutes is directed to amend the applicable sections of the statutes in accordance with this act."

and said Chap. 426, which literally carries the "2% penalty, advertising fee, selling fee, redemption fee", abolished by Chap. 294, and also has an interest charge of 1% per month, you have requested our opinion as to whether said Chap. 294 is controlling and you should proceed accordingly.

While some of the cases cited in 59 C. J. sec. 673, p. 1137 in support of the general rule that a statute speaks from the time it goes into effect and not otherwise use language that until the effective date of a statute it is no law at all, it must be read in light of the problems there considered. In our view, Chap. 426, Laws of 1933 has been a law ever since it was enacted even though no rights could or do arise under it until the date when the legislature says it shall be effective. At least it was a law to the extent that it could be amended expressly, for such was done when the provision thereof as to its effective

date was successively amended in 1935, 1937 and 1939. If it was a law to the extent that it could be expressly amended it was a law to the same extent for the purpose of implied amendment. Chap. 294 clearly implied that all laws subject to amendment were thereby amended by abolishing the previously existing penalty, charges and interest and substituting a flat interest charge of eight-tenths of one per cent per month.

But, the controlling rule of statutory construction would appear to be that the last expression of the legislature upon a subject shall be controlling. Surely, as between Chap. 426, Laws of 1933 and Chap. 294, Laws of 1937, the last expression of the legislature upon the question of interest, penalties and charges in relation to delinquent real estate taxes is Chap. 294, Laws of 1937. The legislature thereby intended, and the very language used and the adoption and choice of this all inclusive, general and unusual type of amendatory procedure shows that such was its object, to abolish the "system" or "plan" of penalties, charges, fees and interest then "in force" as embodied in the Wisconsin statutory scheme for collection of real estate taxes and to substitution therefor in such scheme an entirely new and different arrangement of just one flat interest charge all the way through. As so viewed the provisions of Chap. 426 in respect to the same are within the purview of the words "now in force" in said Chap. 294, and so within the abolition of the first sentence and the substituting effect of the second sentence. The last sentence of Chap. 294 is sweeping and unlimited, and clearly covers Chap. 426 if it is within the effect of the prior sentences, which we are of the opinion that it is.

In 25 R.C.L. 916 it is stated:

"It has been held that the later of two inconsistent statutes will prevail, although the prior one is not to take effect until a time subsequent to the passage and taking effect of the later one."

The California cases there cited are directly in point and support our conclusion that Chap. 294, Laws of 1937 amended Chap. 426, Laws of 1933, the former being the last expression of the legislature upon the subject involved. The latest case on the point is *Ex Parte Sohneke*, (Cal) 82 Pac. 956, which cites certain other California cases to the same effect which are directly in point and almost parallel to the instant situation.

You are therefore advised that it is our opinion that Chap. 294, Laws of 1937 amended Chap. 426, Laws of 1933, which will become effective October 1, 1941.

**74.01 Lien of taxes on land, and on timber; levy.** All taxes levied upon any tract or parcel of land and all costs, charges and interest thereon shall be a lien thereon until paid except as otherwise provided by law; and all costs and expenses which shall accrue jointly or in the aggregate on two or more tracts or parcels shall be apportioned in equal parts upon such several tracts or parcels; and all taxes levied upon any lands and all costs, charges and interest thereon shall also be a lien on all logs, wood and timber cut upon such lands subsequent to the first day of May in the year in which such taxes are levied; and it shall be the duty of the town treasurer, or if such taxes be returned uncollected, of the county treasurer, to pursue and levy upon such logs, wood or timber, wherever the same may be, and collect such tax by distress and sale of the same in the manner provided by law for the distress and sale of personal property for the payment of taxes.

**Note:** 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 this section; but the lien to be given in this case should not carry interest at the rate carried by tax sale certificates, but should carry interest from the date of payment of the taxes at the ordinary legal rate of six per cent per annum. *Central Wis. T. Co. v. Swenson*, 222 W 331, 267 NW 307.

**74.02 Notice of collection.** The treasurer of each town, city or village on the receipt of the tax roll for the current year, shall forthwith post notices in three or more public places in such town, city or village, that the tax roll for the same is in his hands for collection, and that the taxes charged therein are subject to payment at his office at any time prior to or on the thirty-first day of January in such year, and after the said thirty-first day of January, he shall proceed to collect the taxes charged in such roll and remaining unpaid as provided in section 74.03. [1933 c. 426; 1935 c. 79, 456; 1937 c. 262, 323; 1939 c. 385]

**Revisor's Note, 1941:** 74.02 is printed as amended by ch. 426, Laws 1933, which takes effect Oct. 1, 1941 (1939 c. 385) and as further amended by ch. 262, Laws 1937, which expressly amended said ch. 426.

**74.03 Semiannual payment of taxes.** (1) **PERSONALTY TAXES ANNUAL, REALTY SEMIANNUAL.** Commencing with the 1935 tax roll, all personal property taxes shall be paid on or before the thirty-first day of January and all real estate taxes may be paid in two instalments, as provided in this section.

(2) **SEMIANNUAL PAYMENTS.** Each and every person or corporation charged with real estate taxes on a tax roll in the hands of the city, town or village treasurer, shall pay to such treasurer the full amount thereof on or before the thirty-first day of January next following the receipt of such tax roll by such treasurer, or he may pay the same in two instalments as follows:

(a) Commencing with the 1935 tax roll and on the 1936 roll, in each case the first instalment shall be 60 per cent and the second instalment, 40 per cent; on the 1937 and 1938 rolls, in each case the first instalment shall be 55 per cent and the second instalment 45 per cent; on the 1939 roll, and each roll thereafter, each instalment shall be 50 per cent.

(b) The first instalment shall be paid to the town, city or village treasurer on or before the thirty-first day of January.

(c) The second instalment shall be paid to the county treasurer, except as provided

in subsection (10), without penalty or interest on or before the last day of July next succeeding.

(3) **SPECIAL ASSESSMENTS, OPTIONAL METHOD.** The payment of special assessments provided for in section 62.21 may be made in two instalments, as provided in subsection (2), if authorized by a two-thirds vote of the town or village board or city council. No other special assessments shall be subject to payment in instalments under this section.

(4) **DELINQUENT FIRST INSTALMENT; INTEREST.** When the first instalment of the real estate taxes so charged is not paid on or before the thirty-first day of January, the whole amount of such real estate taxes shall become due and payable and shall be collected, together with unpaid personal property taxes, on or before the last day of February by the town, city or village treasurer. All such taxes remaining unpaid on the first day of March shall be declared delinquent and returned to the county treasurer as provided in section 74.17. Thereafter such taxes shall be collected by the county treasurer with interest at the rate of eight-tenths of one per cent per month or fraction thereof from January first next preceding.

(5) **PAYMENTS BY LOCAL TREASURER.** Out of the general property taxes collected the town, city or village treasurer shall on or before the first Monday in March, first set aside and pay over to the county treasurer the full amount due on state trust fund loans of every character levied on the property in such town, city or village, unless the governing body thereof shall have extended such loan pursuant to subsection (5a) of section 74.03. The town, city or village treasurer shall then pay to each school district treasurer such proportions of the school levy of such district as the balance of the general property taxes collected in such town, city or village bears to the total general property tax levy therein for all purposes included in the tax roll, exclusive of levies for state trust fund loans not extended pursuant to law, and shall pay to the county treasurer a like proportion of the state taxes, state special charges, county school tax, other county taxes and county special charges and shall retain in his hands a similar proportion for the town, city or village. From the amounts so retained, the treasurer shall first set aside amounts levied for the payment of judgments, then amounts levied for the payment of principal and interest on the public debt and the remainder of the amount so retained shall be applied to the payment of all other lawful orders upon the town, city or village treasury.

(5a) **TRUST FUND LOAN PAYMENTS, EXTENSION, INTEREST.** The governing body of any city, village or town may, by resolution, extend the time for the payments due on state trust fund loans levied on the property in such municipality up to and including August fifteenth. A copy of said resolution shall be filed with the commissioners of public lands not later than February first of said year. Such total payment due on state trust fund loans shall bear interest from March fifteenth to August fifteenth at the rate currently received on loans by the commissioners of public lands.

(6) **DELINQUENT SECOND INSTALMENT; INTEREST.** The second instalment of real estate taxes remaining unpaid on the first day of August shall be declared delinquent and shall be subject to interest at the rate of eight-tenths of one per cent per month or fraction thereof from the said first day of January until paid or until the property upon which such taxes are levied is sold at the next tax sale as provided by law.

(7) **COUNTY RETAINS INTEREST.** All interest collected by the county treasurer exclusive of the interest and charges specified in subsection (8) shall be retained by the county for its use.

(8) **SETTLEMENT BY COUNTY TREASURER, COMPUTATION.** On or before August fifteenth, the county treasurer shall settle with the state and local treasurers for all collections on delinquent and postponed taxes and special assessments made by him up to and including the last day of July. Out of the proceeds of the taxes and special assessments collected for each town, city or village, the county treasurer shall first set aside and pay to the state treasurer the balance due on state trust fund loans, state taxes and state special charges levied on such town, city or village. Out of the collections as aforesaid, the county treasurer shall next set aside and pay over the balance due on the county school tax levied on each town, city or village. The county treasurer shall then apportion and pay the remainder of such collections as follows: First, the balance due on school and on town, city or village taxes on the tax roll and, last, the balance due on county taxes and charges on the tax roll. The amount to be paid first to the town, city or village treasurer shall be determined by deducting from the delinquent and postponed taxes returned in March an amount equal to the total of the balances due on state trust fund loans, state taxes, state special charges, county school tax, other county taxes and county special charges at the time of such return; provided, that if the amount of delinquent and postponed taxes and assessments remaining uncollected on the last day of July shall exceed the balance due on other county taxes and county special charges, such excess shall also be deducted from the amount to be paid to the town, city or village treasurer, except that no such payment shall be made to any city specified in subsection

(10) which returns to the county treasurer only a duplicate county tax roll not containing city taxes or city special assessments or charges. Such excess when collected, together with interest and charges thereon, shall be returned to the town, city or village after such balance due the county has been satisfied. Drainage taxes and assessments authorized by chapters 88 and 89 and special assessments inserted in the tax rolls to pay certificates under subsection (3) of section 62.20 shall be excluded from the foregoing computations. Where the county board of any county has authorized and directed the county treasurer to bid in and become the purchaser of all lands sold for taxes as provided in section 74.44, such purchases shall be deemed a collection for the purposes of settlement with the town, city or village treasurer as provided in this section. The amount of delinquent and postponed taxes and special assessments received from, bid in by, or struck off to any person other than the county on account of land sold for taxes at the tax sale held in such year prior to the first day of August, shall be deemed a collection within the meaning of this subsection. In the event the sale of lands for taxes in any year is not completed or held until subsequent to the last day of July, the county treasurer shall make a supplementary settlement with the town, city or village treasurer within thirty days after the close of the sale for all collections from such continued or adjourned sale.

(9) PAYMENT TO SCHOOL DISTRICTS. Out of the money received from the county treasurer in August, the town, city or village treasurer shall first set aside and pay over to the school district treasurers the balance due on school district levies.

(10) MILWAUKEE. In any city authorized by its charter to sell land for nonpayment of city taxes, the following provisions relating to the time and place of payment and returns and settlements of the taxes and charges in the duplicate county tax roll shall apply in order to conform as nearly as may be to the procedure prescribed and followed under such charter, but otherwise the provisions of this section shall govern:

(a) On or before the twenty-second day of March, the city treasurer shall return the duplicate county tax roll to the county treasurer and the delinquent city taxes and special assessments shall be collected by the city treasurer as provided in the city charter.

(b) On or before the twenty-second day of March, the city treasurer shall pay to the county treasurer all taxes and charges collected on the duplicate county tax roll, and all taxes and charges collected on the city tax roll shall be retained by the city treasurer.

(c) The amounts and time of payment of instalments of city taxes, special assessments and charges in the city tax roll shall be as provided in the charter of such city. [1933 c. 244, 426; 1935 c. 2, 396, 456; 1937 c. 294, 323; 1939 c. 385, 434]

**Revisor's Note, 1941:** 74.03, Stats. 1939, is omitted because it is expressly repealed by sec. 1 of ch. 426, Laws 1933, which takes effect Oct. 1, 1941 (1939 c. 385). 74.03 is printed as amended by said ch. 426, and as further amended by ch. 396, Laws 1935, expressly amending said ch. 426. In legal effect 74.03 was amended by ch. 294, Laws 1937. That was the last expression of the legislative will. Ch. 294 is applied to this section. See starred revisor's note at beginning of chapter 74, Stats.

For provisions relative to waiver and cancellation of interest, penalties, etc., by county boards and in Milwaukee, see chapters 128 and 330, Laws 1935, sections 74.045, 74.205 and 75.015, Stats. 1939. See also 74.79, created by ch. 287, Laws 1941, relative to instalment payment of taxes in Milwaukee.

Ch. 294, Laws 1937, abolishing statutory 2 per cent penalty, fees and 8 per cent interest charge and substituting a flat interest charge of eight-tenths of one per cent per month on the principal sum of the tax from the first day of January succeeding the year of the levy of the tax "in order to simplify the administration of the collection of delinquent taxes," is not retrospective in operation so as to apply to the computation of interest and penalties on taxes which became delinquent before the enactment of ch. 294. *Munkwitz R. & I. Co. v. Diederich Schaefer Co.*, 231 W 504, 286 NW 30.

The provisions of 74.15 (2), Stats. 1939, relating to the order of payment of collected taxes by the "treasurer," are applicable only to payments made by town, city or village treasurers, and do not prescribe or control the application of moneys after receipt thereof by a school district from such a treasurer, as against the contention, based on such statute, 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 District*, 233 W 307, 289 NW 612.

County board resolution under chapter 330, Laws 1935, waiving payment of interest on face of tax certificates for delinquent real estate taxes for year 1931, does not authorize any change of amount of face of certificate. 25 Atty. Gen. 666.

When municipality is part of two school districts, one common school district and other union free high school district and insufficient taxes are collected to satisfy levies of both districts, there is no preference in distribution to common school district under 74.15 (2), Stats. 1937, but amount available for payment to two levies should be prorated between two in proportion to amounts of respective levies. 28 Atty. Gen. 322.

**74.035 Taxes paid in advance.** (1) The governing body of any town, village or city may authorize the treasurer thereof to accept payment of taxes in advance, in instalments of not less than ten dollars and in any multiple of five dollars; provided, that such treasurer, prior to the determination of the tax roll, shall accept such deposits on the anticipated tax on any tract or description of taxable property only to the extent of eighty per cent of the previous year's tax on such property. Such payment may be accepted between the last date for the payment of taxes and the succeeding third Monday in December. Deposits upon taxes on any property made under this section, upon completion of the tax roll, shall be credited to the tax assessed against such property. Funds so deposited by

taxpayers are hereby declared to be trust funds and no part of such funds shall be available for expenditure by such city, town or village until such taxes become due.

(2) The part-time treasurer of any town, city or village may designate banks to which taxpayers may pay such advance deposits. Notice of such banks shall be made in manner provided in subsection (4) of section 74.03. Receipt from such banks shall protect the taxpayer to same extent as a receipt signed by treasurer in person. [1933 c. 163; 1935 c. 421 s. 3]

**74.037 Extending time for payment of taxes.** (1) The governing body of any city, village or town may by a two-thirds vote of the members-elect authorize the treasurer to extend the time for the payment of the taxes on real estate for the years 1940 and 1941 up to and including July 1, 1941, and July 1, 1942 respectively, of such classes of taxpayers and upon such conditions as it shall determine. Taxpayers desiring to take advantage of any such extension shall file an affidavit in duplicate showing need with the treasurer to establish their right to such extension and the treasurer shall, by entering in red ink on the tax roll opposite the name of such party extend the time for the payment of such taxes without penalty up to and including July 1, 1941 and 1942 respectively. All such taxes which shall not have been paid prior to March 22, 1941 and 1942 respectively, when local treasurers are required to settle with the county treasurer, shall be returned delinquent together with original individual affidavits, and, unless paid before the fourth Monday of July thereafter, the lands covered thereby shall be advertised for sale and sold at the same time and in the same manner and treated in all respects as other delinquent taxes, except that the owners of such lands shall be entitled to pay such taxes at the amount extended upon the local tax roll without penalty, interest or other charges at any time on or before July 1, 1941 and 1942 respectively. If the owner shall pay such taxes as herein provided to the local treasurer before delinquent return or to the county treasurer after that date and on or before the July 1 following, the treasurer to whom such payment is made in each case shall issue a tax receipt in full for the payment thereof, which shall have the same force and effect as if such payment had been made at the regular time for payment of taxes. But if such taxes shall not have been paid on or before July 1941 and 1942 respectively, they shall be enforced by tax sale and shall be subject to the same interest, penalties and charges as other delinquent taxes except that interest shall run from the said January 1.

(2) Of any taxes on which affidavits for extension of time of payment have been filed pursuant to this section that are paid to any county treasurer up to and including July 1, 1941 and 1942 respectively, such county treasurer, out of each individual payment of taxes, shall retain the amount that shall be due the county as county taxes and shall return all of the balance to the treasurer of such town, city or village, provided, that the collections so returned shall not exceed the delinquent taxes in said city, village or town in excess of the amount eligible for credit in the settlement of county taxes and charges. Such computation for each parcel of property shall be made on the percentage basis that the total county tax for such town, city or village shall bear to the total tax roll of such town, city or village. Such return shall be made by the county treasurer to the town, city or village treasurer on or before July 15, 1941 and 1942 respectively. [1937 c. 10; 1939 c. 7, 455; 1941 c. 1, 9]

**Note:** Subsection (1) is not unconstitutional as class legislation or in violation of constitutional rule of uniformity in taxation. 26 Atty. Gen. 274.

Amount county treasurers should retain out of taxes paid them before July 1, 1937, for which affidavits for extension have been filed under 74.037, enacted by chapter 10, Laws 1937, is determined by computation made on percentage that total county tax of

city, town or village bears to total city, town or village tax roll. 26 Atty. Gen. 274.

Taxpayer to avail himself of any of benefits of chapter 10, Laws 1937, creating 74.037 (1), must strictly comply with all provisions thereof. Tax sale and penalties are governed by other sections of statutes in force at time of passage of said chapter 10. 26 Atty. Gen. 450.

See note to 74.19, citing 26 Atty. Gen. 495.

**74.04 Payment in orders.** Town, city and village orders shall be receivable for taxes in the town, city or village where issued, and shall be allowed the treasurer on settlement of such taxes; and county orders, scrip and accrued interest and jurors' certificates shall be receivable for taxes in the county where issued, and shall be allowed the treasurer on settlement of county taxes with the county treasurer; but no town, city or village treasurer shall receive orders in payment for taxes to a larger amount than the town, city or village taxes included in his tax roll, exclusive of all taxes for school purposes, nor county orders, scrip and accrued interest and jurors' certificates to a greater amount than the county tax included therein. County scrip and accrued interest thereon shall be accepted by the county issuing the same in payment of all delinquent county taxes where the county holds the tax certificate, and any such county may, when authorized by its county board, accept such scrip in payment of any delinquent taxes where the county holds the tax certificate. [1933 c. 199]

**74.045 Use of scrip.** Whenever any city, village or town shall have an interest in the delinquent general property taxes for any prior year, the city, village or town may retain any county scrip received pursuant to section 74.04 and may use such scrip as any other holder thereof, with the consent of the county board, provided that the amount of such scrip to be retained shall not exceed the share of such municipality in the delinquent taxes. [1937 c. 172]

**74.05 Officers not to buy orders.** No town, city, village or county treasurer, or other town, city, village or county officer shall, either directly or indirectly, purchase or receive in exchange or in payment for taxes or otherwise, in any manner whatever, any county, city, village or town order, or any demand against his county, city, village or town for a claim allowed by the proper board or council during his term of office for a less amount than that expressed on the face of such order or demand; and any such person so offending shall for each offense forfeit not less than twenty-five dollars nor more than two hundred and fifty dollars.

**74.06 Payment on part; undivided interests.** The treasurer shall receive the tax on any part of any lot or parcel of land or on any undivided share or interest therein which the person paying the tax will clearly define; and if the tax on the remainder of such lot or parcel of land shall remain unpaid such treasurer shall return such remainder and the tax due thereon as delinquent to the county treasurer; and if the part on which the tax is so paid shall be an undivided share the person paying the same shall state to the treasurer the name of the owner of such share, that it may be excepted in case of sale for the tax on the remainder, for which purpose the treasurer shall enter the name of such owner and a specification of such share in his account of uncollected taxes; and the balance of the taxes on any such land shall be a lien on the residue only of such lot or parcel of land; provided, that when an application is made to the treasurer for the payment of the taxes upon any part or portion of any lot or parcel of land assessed as a whole, but which is owned in severalty, the treasurer, before making a receipt for the taxes upon any part or portion thereof, may ascertain from affidavits or by actual view the true proportion of taxes chargeable to the part on which the tax is sought to be paid and the amount so found shall be deemed to be the amount of the taxes chargeable thereto.

**Note:** This section does not give taxpayer treasurer has discretion to accept part payment of his tax but local payment of tax. 27 Atty. Gen. 100.

**74.07 How tax paid.** When any land has been assessed more than once for the same year the treasurer shall collect only the tax justly due thereon and shall make return to the county treasurer of the balance as a double assessment, and he shall be credited therefor by such treasurer.

**74.08 Blank tax receipts; use thereof.** (1) The county clerk of each county, unless a different official is designated by the county board, shall prepare and cause to be printed and furnished to each town, city and village treasurer of his county a book of tax receipts for each current year, with stubs to be a duplicate of the receipts; which receipts shall be printed in a form containing separate and distinct columns labeled respectively to show column by column the following taxes: namely, state taxes, county taxes, town, city or village taxes, and all other taxes; and every town, city and village treasurer shall use only the receipts so furnished. Notwithstanding any other provisions of law, all city treasurers, and town and village treasurers, except where the information has already been placed in the receipt by the county, shall enter in each receipt given by him for the payment of taxes the name of the person, firm, company or corporation paying the same, the date thereof, the description of the property, the valuation and the aggregate amount of taxes paid and in separate and distinct columns labeled as herein provided the several amounts paid respectively for state taxes, county taxes, town, city or village taxes, and all other taxes, if any, appearing on the tax roll opposite the valuations to be charged therewith. In the alternative the governing body of any city, village or town may direct that the aggregate amount of state, county, local, school and other taxes shall be carried in a single column on the tax receipt, in which case there shall be printed or stamped on the tax receipt the separate proportion or rate of taxes levied for state, county, local, school and other purposes.

(2) Whenever it appears from the tax roll that the taxes for the previous year remain unpaid upon any tract of land he shall enter in such receipt, under the head of "taxes unpaid for previous year," opposite such tract, the year for which such unpaid tax is due. Such receipts shall be signed by the treasurer and a duplicate thereof made upon the stub thereof to be left in the book, and after noting the payment of such taxes upon the tax roll he shall deliver said receipt to the person entitled thereto. No city, county, village or town treasurer or tax collector shall collect or receive any taxes in any room where malt or intoxicating liquors are sold, given away or otherwise disposed of. Any person violating this provision shall be punished by a fine of not less than twenty-five dol-

lars, nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than thirty days. [*Spl. S. 1937 c. 1 s. 4; 1939 c. 377; 1941 c. 163*]

**Note:** Town treasurer may accept part payment of taxes levied on real and personal property and give receipt for amount actually paid. 24 Atty. Gen. 61.  
Where taxpayer in good faith applies to proper officer for purpose of paying his taxes and is prevented from making payment, in whole or in part, by mistake, wrong or fault of such officer, taxpayer is not thereby relieved of his duty to pay that portion of his taxes remaining unpaid. 26 Atty. Gen. 80.

**74.09 Comparison of stub book with tax roll; book as evidence.** Every such treasurer shall each year compare the stub book of receipts with the tax roll of his town, city or village as to the description of land or other property upon which taxes have or have not been paid and as to the amount of money received for taxes; and the said treasurer shall certify on such stub book that he has made such comparison, and that the stub book and tax roll correspond; and the stub book thus certified shall be returned with the tax roll to the county treasurer, who shall file the same with the county clerk, to be by such clerk preserved in his office. Such stub book or a certified copy thereof shall have the same effect as evidence as the original receipt.

**Note:** See 74.47 for later law on filing of stub book by county treasurer.

**74.10 Collection.** (1) **BY DISTRESS.** In case any person shall refuse or neglect to pay the tax imposed upon him the treasurer may in his discretion levy the same by distress and sale of any goods and chattels belonging to such person, wherever the same may be found within his town, city or village; and if a sufficient amount of such property cannot be found in such town, city or village the treasurer may levy the same by distress and sale of the goods and chattels belonging to such person, wherever the same may be found in the county or in any adjoining counties, and shall receive therefor the fees allowed by law to constables for levy and sale of goods upon execution.

(2) **NOTICE AND SALE.** The treasurer shall give public notice of the time and place of such sale at least six days previous thereto by advertisement, containing a description of the property to be sold, to be posted up in three public places in the town where the sale is to be made. The sale shall be at public auction in the daytime and the property sold shall be present; such property may be released by the payment of the taxes and charges for which the same is liable to be sold; if the purchase money on such sale shall not be paid at such time as the treasurer shall require he may again, in his discretion, expose such property for sale or sue in his name of office the purchaser for the purchase money, and recover the same with costs and ten per centum damages.

(3) **RETURN OF SURPLUS; PROCEEDINGS IF NO SALE.** If the property so levied upon shall be sold for more than the amount of the tax and costs the surplus shall be returned to the owner thereof; and if it cannot be sold for want of bidders the treasurer shall return a statement of the fact and return the property to the person from whose possession he took the same; and the tax, if unsatisfied, shall be collected in the same manner as if no levy had been made. [*1935 c. 79*]

**Note:** Personal property which has been turned over to trustee for benefit of creditors, under chapter 128, Stats. 1931, or to receiver, under 268.13, cannot be taken to pay delinquent income taxes. 21 Atty. Gen. 532.  
In proceedings to collect delinquent personal property tax, property on which tax is assessed, where subject to mortgage, is not exempt from sale but when sold should be sold subject thereto. 26 Atty. Gen. 448.  
Except pursuant to 74.10, while in hands of local treasurers unpaid real estate taxes are not collectible from owner by assertion of personal liability against him, by action of debt or otherwise or through distress or attachment proceedings. 29 Atty. Gen. 127.

**74.11 Action to collect tax on personal property.** (1) **HOW BROUGHT.** In case the treasurer is unable to collect any tax assessed upon personal property he may in his discretion make and file with some justice of the peace of his county an affidavit showing that there is such tax upon personal property, the amount thereof and the name of the person against whom assessed, that he has demanded payment thereof and is unable to collect the same. Such justice shall thereupon issue a summons directed to such person, commanding him to appear forthwith to answer under oath and show cause why he does not pay said tax. Such summons may be served by said treasurer or any constable in said county by reading the same to such person or in his hearing; upon its appearing by the affidavit of the officer or person serving such summons that the same was duly served upon such person to whom the same was directed, and that he has failed or neglected to appear before said justice for twenty-four hours after the service of the summons, the said justice shall issue a warrant, directed to the sheriff or any constable of the county, commanding him to forthwith arrest and bring such person before him.

(2) **JURISDICTION; COMPLAINT; REMOVAL; ARREST.** The justice before whom such person shall appear or is brought shall have jurisdiction of the subject matter to the full amount of the tax against such person, with interest, charges and costs; and he shall enter the cause in his docket as an action wherein the town, city or village in which such tax

is assessed shall be plaintiff and the person against whom the same is assessed shall be defendant; and the affidavit of the treasurer shall be deemed the complaint. Such defendant may, on his appearing or being brought before such justice and before submitting to an examination as hereinafter provided, remove such action to the next nearest justice in the same county upon making and filing with such justice an affidavit stating that from prejudice or other cause he believes such justice will not decide impartially in the matter; and thereupon the justice shall transmit all the papers, with a copy of his docket entries in such action, to such nearest justice; and if the defendant be under arrest the officer having him in charge shall take him before such nearest justice. Such nearest justice shall enter the action in his docket and proceed in the manner hereinafter provided; if such defendant be not under arrest and shall fail to appear before such last-named justice within one hour after the receipt of the papers in such action he may issue his warrant, directed to the sheriff or any constable of his county, commanding him to forthwith arrest such defendant and bring him before such justice.

(3) PROCEEDINGS; COSTS; EXECUTION. When the defendant shall appear or be brought before the justice before whom such proceedings were commenced, or if the cause shall have been removed to another justice, before such last-named justice, such justice shall cause the defendant to be examined on oath, and hear the testimony of any witnesses or other evidence presented by either party upon the following questions:

(a) Whether the defendant had any personal property liable to taxation at the time the assessment was made.

(b) Whether he has money or property, real or personal, of any description sufficient to pay such tax or any part thereof.

(c) Whether he is justly liable for the payment of such tax or any part thereof; and if any of said questions shall be established in the negative the defendant shall be discharged with his costs; but if the defendant shall refuse to answer such relevant questions as shall be put to him or if he shall fail to establish either of said questions in the negative, judgment shall be entered against the defendant for the amount of such tax which he ought to pay, with costs of such proceedings. No stay of execution shall be allowed on any such judgment except in case of appeal; and no property of such defendant shall be exempt from levy and sale upon execution issued thereon. The justice shall reduce the examination of the defendant and of all witnesses produced and examined by either party to writing, and cause the same to be signed by the persons so examined.

(4) TRANSCRIPT OF JUDGMENT; LIEN; EXECUTION. The treasurer may file a transcript of any such judgment rendered against the defendant in any such action in the office of the clerk of the circuit court of any county, and the same shall be docketed by such clerk in the same manner as other transcripts of justices' judgments, and when so docketed it shall be a lien on all the real estate of the defendant in every county in which the same is docketed. The clerk of any circuit court in which any such transcript is filed and docketed may issue execution thereon, and no real or personal estate of the defendant shall be exempt from seizure and sale on such execution; and upon the sale of any real estate of the defendant by virtue of such execution the sheriff selling the same shall make, execute and deliver to the purchaser thereof a deed of the same, and the defendant shall have no right to redeem the said real estate after the sale thereof; and such deed shall be absolute to convey all the interest of the defendant in such real estate so sold as aforesaid, and the sheriff shall proceed in the sale of such real estate as upon sale on execution in other cases.

(5) APPEAL AND RETURN. The defendant may, within twenty days after the entry of any such judgment, appeal to the circuit court by executing and delivering to the justice an undertaking to the town, city or village, with one or more sureties to be approved by such justice, conditioned to pay any judgment the said circuit court may render against him in such action; and upon the receipt of such undertaking the justice shall return the same with the examinations and evidence taken by him and all other papers and proceedings in such action, duly certified by him, to the said circuit court. The plaintiff may also appeal from any such judgment or from any judgment discharging such defendant to the said circuit court in the same manner that a plaintiff to a civil action in a justice's court may appeal from a judgment rendered therein; and upon taking such appeal the justice shall make a like return to the circuit court as upon an appeal by the defendant.

(6) TRIAL; DUTY OF DISTRICT ATTORNEY. Upon filing the return of the justice by the clerk of the circuit court such action shall be tried in such court as other actions therein; and the district attorney of the county shall appear for and try such action on behalf of the plaintiff whenever requested by the treasurer so to do. Upon the trial in such court either party may read as evidence the examinations taken by the justice and returned by him to such court and produce such other proofs as they may deem necessary. The issues

shall be the same as before the justice; and if upon the trial in the circuit court neither of said issues shall be established in the negative, or if the defendant shall neglect or refuse to appear on such trial and answer all relevant questions which shall be put to him the judge or jury by whom such action is tried shall assess the amount of the tax which the defendant ought to pay, and judgment shall be rendered against him and his sureties in said undertaking for the amount so assessed and for all costs, fees and disbursements before the justice and the circuit court; and execution shall issue upon such judgment against the property of all the defendants in such judgment, and no property belonging to the defendant in the action shall be exempt from seizure and sale on such execution; but if either of such issues shall be established in the negative the action shall be dismissed and the defendant shall recover his costs.

(7) **SUPPLEMENTARY PROCEEDINGS.** In case execution in any such action upon a judgment rendered upon an appeal or upon a transcript of a judgment of such justice shall be returned unsatisfied in whole or in part, the proper treasurer is hereby authorized to institute proceedings supplementary to execution to collect such judgment; and all laws applicable to supplementary proceedings upon other judgments are made applicable to the judgment above mentioned.

(8) **EFFECT OF JUDGMENT.** A final judgment in such action upon the ground that the defendant had no personal property liable to taxation at the time the assessment was made or that he is not justly liable to pay any portion of such tax shall be a bar to any further proceedings of any kind for the collection of such tax; and every such judgment against the defendant, fixing the amount of tax which he ought justly to pay, shall be conclusive as to the extent of his liability; and in fixing the amount which the defendant ought justly to pay, all irregularities, mistakes and errors in the assessment and proceedings which do not affect the justice and equity of such tax or some part thereof shall be disregarded. [1935 c. 79]

**Note:** In an action brought by an educational corporation to recover a tax on the ground that its property was exempt, an allegation that the property was devoted primarily to the educational purpose did not render the complaint demurrable, although there was no allegation as to the extent which such use fell short of being exclusive. *Cardinal P. Co. v. Madison*, 205 W 334, 237 NW 265.

**74.12 Action of debt to collect tax; duty of district attorney.** (1) In addition to the other remedies provided in this chapter an action of debt or an action of attachment shall lie in the name of the town, city or village, and, after the tax is returned as delinquent, in the name of the county, for any tax assessed against any person upon personal property remaining unpaid after the last day of January. Summons or warrants in such action shall issue at the request of the treasurer of the town, city, village or county as the case may be and shall be subject to all the rules of law and practice applicable to actions of debt or attachment, except that the warrant of attachment shall be issued on the making and filing of an affidavit by the proper treasurer or district attorney that such taxes are delinquent. Such summons or warrant when issued by a justice of the peace may in addition to the other methods of service provided by law in justice's court be served as provided in subsection (1) of section 74.11, or 262.09. Such summons or warrant shall state that it is issued for the collection of a tax and judgment may be entered and execution issued as provided in this chapter. It shall be the duty of the district attorney upon request to attend and prosecute any action or proceeding commenced under any of the provisions of this chapter for the collection of a tax.

(2) Whenever the treasurer of any town, village or city files with a proper justice of the peace an affidavit, setting forth that a certain person, naming him, owns certain personal property duly assessed in such municipality, and that such person is about to abscond from the state, or is about to dispose of such property, or is about to remove such property from the municipality, such justice shall issue a warrant of attachment as provided in subsection (1) of this section.

(3) Taxes collected in the manner provided by this section prior to the time they become due shall be figured at the rate of the previous year, but in the event that such rate shall exceed the rate for the current year any excess collected due to such difference in rate shall be refunded with interest at the rate of six per cent per annum on such excess covering the period from the date of collection to the first day of February next following such collection.

**Note:** Action of debt under this section to collect unpaid delinquent personal property taxes may be commenced independently of whether or not county treasurer has delivered delinquent tax schedule and warrant to sheriff under 74.29 and 74.30. 22 Atty. Gen. 946.

**74.125 Compromise of delinquent personal property tax.** (1) Any taxpayer who is delinquent in the payment of his personal property tax on or before July 1, 1939, may petition the board of any town or village, or the common council of any city to which such

amount is due, or he may petition the treasurer of such city, town or village, to compromise the amount of such tax and the penalties and interest thereon. Such petition shall set forth a verified financial statement of the taxpayer and shall be in such form as shall be prescribed by the tax compromise board.

(2) Such town or village board or council may provide by ordinance, for the creation of a tax compromise board composed of three members who are officers or employes of such city, town or village. The board or council shall appoint said members. Compensation of the members of said board, unless otherwise prohibited, may be fixed by such town or village board or council. Such petitions shall be referred to the tax compromise board for investigation and recommendations. The tax compromise board may examine the petitioner under oath concerning the matters set forth in said petition and statement. The treasurer, in case the petition has been made to him, shall indorse on said petition, his recommendations concerning the proposed compromise and shall transmit it to the tax compromise board. The tax compromise board, if it finds that the taxpayer is unable to pay the tax and penalties and interest in full, shall determine the amount of tax said petitioner is able to pay and report its determination to the town or village board or the common council of the city, as the case may be.

(3) Such town or village board or council may by resolution approve such determination. The resolution shall contain an order that such compromised amount shall be effective only if paid within ten days from the date of the adoption of the resolution. The treasurer shall accept payment of the tax in accordance with such resolution. If he is a county treasurer, upon receipt of a copy of the resolution and payment of such amount, he shall enter the unpaid portion of the delinquent tax on the next credit roll. If he is not a treasurer, he shall make the necessary entries with reference to such order and compromise.

(4) If within three years of such compromise and the entry of the order thereon the tax compromise board or treasurer ascertains that the taxpayer has an income or property sufficient to enable such taxpayer to pay the remainder of the tax and penalties and interest thereon computed to the date of the order, the tax compromise board may, notwithstanding such previous compromise, reopen said tax matter and order payment in full of said tax, penalty and interest. Said order of said board shall be forwarded to the taxpayer by registered mail and a copy of such order shall be furnished to the treasurers involved. Upon receipt of the copy of such order the officers charged with making out the tax rolls of such city, town or village shall make an entry of such taxes so ordered to be paid so that the same shall be on the next tax of the current year. [1939 c. 380]

**74.13 Action for collection of taxes against public utilities.** In addition to the other remedies provided by law for the collection of taxes against real estate, an action of debt shall lie in the name of the town, city or village, and, after the tax is returned as delinquent, in the name of the county, for any tax heretofore or hereafter levied upon and extended against the property of any public service corporation as defined in section 184.01, which property is subject to taxation like the property of individuals, and which tax remains unpaid after the last day of January in any year. Summons in such action shall issue at the request of the treasurer of the town, city, village or county, as the case may be; shall be served as provided in section 262.09, and such action shall be subject to all of the rules of law and practice in this state applicable to actions of debt. The complaint in such action shall be served with the summons. Judgment in such action shall be entered and execution issued thereon as in other actions of debt. The judgment shall bear interest at the rate of ten per cent per annum from the date of entry until paid.

**Note:** This statute is not applicable to liability against street railway. Milwaukee special assessments, or to operating property County v. Milwaukee E. R. & L. Co., 210 W of the utility; hence county bidding in delin- 169, 246 NW 430. quent sewer tax could not enforce personal

**74.135 Taxes, cancellation of.** After the tax roll shall have been thus delivered to the treasurer it shall not be lawful for the council to remit, annul or cancel any tax specified therein except in the following cases:

(1) When a clerical error has been made in the description of the property or in the extension of the tax.

(2) When improvements on lots were considered in making the assessment roll, where the improvements did not exist at the time fixed by law for making the assessment.

(3) When the property is exempt by law from taxation.

(4) When a person has been assessed the same year for the same property in more than one ward or place.

**74.14 Procedure.** In any action brought pursuant to section 74.13 it shall be sufficient to entitle plaintiff to judgment in said action to allege and prove that the tax was regularly levied and extended upon the tax roll and that the same has not been paid; provided, that the defendant may defend against such action by first paying the amount of

the tax with interest, penalties and charges into the county, town, city or village treasury. The defendant in such action shall be entitled to recover judgment for the amount, if any, so paid in excess of the amount the court shall finally determine it ought to have paid on the property involved in said action, with interest from the date of such payment. Payment of any judgment so recovered by the defendant, shall be made forthwith by the treasurer of any such county, town, city or village, upon presentation of a certified copy thereof, without other or further order. He shall preserve said copy of such judgment as his warrant for such payment and shall require the satisfaction of record of such judgment upon the making of such payment.

**74.15 Payment of state and county taxes.** [*Repealed by 1933 c. 426, effective Oct. 1, 1941*]

**74.16 Treasurer's receipts, how countersigned.** Whenever any town, city or village treasurer shall pay any money to the county treasurer such county treasurer shall deliver to him duplicate receipts for the amount of money so paid, specifying in such receipts the sum paid, date of payment and on what account the same is paid; and the town, city or village treasurer shall present such receipts to the county clerk, who shall countersign one of said receipts and return the same to such treasurer, and shall retain and safely keep the other in his office; and no receipt of the county treasurer given to a town, city or village treasurer for money paid by such town, city or village treasurer shall be any evidence of such payment in favor of such town, city or village treasurer unless the same be first countersigned by the county clerk.

**74.17 Delinquent taxes returned.** The treasurer shall on or before the first Monday in March return the tax roll to the county treasurer together with a statement of the taxes so remaining unpaid, distinguishing, by setting down separately, postponed real estate, delinquent real estate and delinquent personal property, with a full and perfect description of such real estate from his tax roll, and the name of the person taxed, if therein specified, and by setting down separately all public lands which are held on contract and all lands mortgaged to the state, and submit the same to the county treasurer; he shall also include in such statement a description of any land doubly assessed and the amount of tax thereon, and also the specification and entry required by section 74.06. The county treasurer shall carefully compare such statement, when submitted, with the tax roll and ascertain that it is correct. The taxes included in such return shall be accepted by the county treasurer for collection pending settlement thereon as provided in subsection (8) of section 74.03. Whenever the county treasurer shall discover any error or inadequacy in the description of any parcel of land on the tax roll he may at any time before giving notice of sale of lands for delinquent taxes, correct such description on the tax roll. When such correction is made the county treasurer shall make a marginal note in the tax roll opposite such correction stating when made and subscribe his name thereto. [*1933 c. 426; 1935 c. 456; 1937 c. 323; 1939 c. 189, 385*]

**Revisor's Note, 1941:** 74.17 is printed as amended by ch. 426, Laws 1933 (effective Oct. 1, 1941). In addition, the amendment made by ch. 189, Laws 1939, is printed. That amendment is *not* repugnant to the amendment made by ch. 426, Laws 1933. Implied repeals are not favored; and extend only so far as the acts cannot be reconciled. Hence both amendments stand.

**74.18 Form of return.** The return of the town, city or village treasurer to the county treasurer of delinquent taxes shall be made in the form prescribed by the tax commission pursuant to section 70.09.

**74.19 Local treasurer's affidavit, forfeiture; collection of delinquent taxes.** (1) The town, city or village treasurer shall then make an affidavit to be annexed to such statement, before the county treasurer or before any officer authorized to administer oaths, that the facts set forth in said statement are correct, that the sums therein returned as unpaid taxes have not been paid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the persons charged with such unpaid taxes whereon he could levy the same, which statement and affidavit shall be filed with the county treasurer; and he shall be allowed by the county treasurer, in settlement \$4, and 6 cents for each mile traveled both ways to deliver the same.

(2) If any actions have been commenced by him for the recovery of any personal property tax he shall also state that fact and what proceedings have been had therein. And any town, city or village treasurer who shall render his return without duly making, annexing, subscribing and making oath to the affidavit as above required shall forfeit \$100; and every county treasurer who shall receive such return, without first requiring such return to be duly verified by affidavit as above required shall forfeit \$200; and neither said town, city or village nor county treasurer shall be permitted to offer such unverified statement in evidence in any settlement made by them with their respective boards of supervisors or auditing officers, nor in any action brought against them on their respective official bonds, nor in any prosecution against them for embezzlement.

(3) All taxes so returned delinquent and postponed shall be collected by the county

treasurer, with the interest thereon; and all actions and proceedings commenced and pending for the collection of any personal property tax shall be thereafter prosecuted and judgments therein be collected by the county treasurer. Any town, city or village may retain for collection the delinquent personal property taxes by including the same as fully paid in arriving at the proportions to be paid as provided for in subsection (5) of section 74.03. All laws applicable to the collection of personal property taxes prior to the return of the tax roll to the county treasurer, shall apply to the collection of the delinquent personal property taxes so retained.

(4) (a) Any town, city or village may retain for collection the delinquent personal property taxes. All laws applicable to the collection of personal property taxes prior to the return of the tax roll to the county treasurer shall apply to the collection of the delinquent personal property taxes so retained.

(b) Subsequent to the charging back of the delinquent personal property taxes pursuant to section 74.31, any town, city or village may proceed to collect such delinquent taxes under sections 74.10, 74.11 and 74.12 by commencing a new action, or by proceeding with an action already commenced in which case the town, city or village shall be substituted as the party plaintiff. [1933 c. 426; 1935 c. 79, 327, 456, 504; 1937 c. 294, 323, 415; 1939 c. 385]

**Revisor's Note, 1941:** 74.19 is printed as amended by ch. 426, Laws 1933 (effective Oct. 1, 1941), but subsection (4) (created by ch. 327, Laws 1935) is also printed, for the reasons given in the note to 74.17. See also starred revisor's note to chapter 74, Stats.

A county is not entitled to credit upon 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 the county under protest. *Fox Valley C. Co., v. Hortonville*, 207 W 502, 242 NW 142.

Amendments to (3) by 1935 c. 504, held unconstitutional in *Whitefish Bay v. Milwaukee County*, 271 NW 416, because the subject of the bill was not expressed in the title, were reenacted by 1937 c. 415, which expressed the subject in the title.

See note to 74.03, citing *Munkwitz R. & I. Co. v. Diederich Schaefer Co.*, 231 W 504, 286 NW 30.

Where town treasurer died before time specified by law for making delinquent tax return and no person was appointed for residue of unexpired term, town treasurer elected at spring election of April 4, 1933,

**74.20 Certificate of delinquent taxes.** The county treasurer shall, at the time the town, city or village treasurer makes his return to him of the delinquent and postponed taxes aforesaid, make and deliver to such town, city or village treasurer a certificate of the amount of the delinquent and postponed taxes so returned by such town, city or village treasurer, specifying separately the amount delinquent and postponed on real estate and the amount delinquent on personal property; and it shall be the duty of the town, city or village treasurer to whom such certificate is given forthwith to deliver the same to the county clerk, who shall file the same in his office; and no county treasurer shall indorse the bond of such town, city or village treasurer, filed in his office, as satisfied and paid until such certificate shall be delivered to the county clerk and filed in his office as above specified. [1933 c. 426; 1935 c. 456; 1937 c. 323; 1939 c. 385]

**Revisor's Note, 1941:** 74.20 is printed as amended by ch. 426, Laws 1933, effective Oct. 1, 1941 (1939 c. 385).

**74.205 Waiver of interest and penalties.** By a vote of two-thirds or more of the members-elect, the governing body of any county, or city of the first class may, but is not required to, waive the payment of all or any part of the interest, penalty, publication, redemption or other fees upon the original amount of delinquent real estate taxes, other than special assessments, for the years, 1931, 1932, 1933, 1934, 1935, 1936, 1937 and 1938 for which such county or city holds tax certificates not pledged as security, provided the full amount of such original tax thereon is paid on or before April 1, 1943. [1937 c. 60; 1939 c. 119; 1941 c. 160]

**Note:** Resolution of county board which purports to authorize county treasurer to collect real estate taxes for years up to and including year 1936 less penalty, interest

should make return and verify same by affidavit as required by this section. 22 Atty. Gen. 459.

Since forest crop lands are subject to weed-cutting tax county treasurer shall credit town treasurer with amount of such tax where same has been returned delinquent. County may issue tax certificates on such delinquent weed tax property. 24 Atty. Gen. 801.

Action of attachment by town to recover valid 1933 delinquent personal property tax is permissible under (4) (b), Stats. 1935. 25 Atty. Gen. 581.

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

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

and other charges from date of enactment of resolution (November 20, 1940) to June 1, 1941, is void. 28 Atty. Gen. 113 and 29 Atty. Gen. 457.

**74.21 Satisfaction of treasurer's bond.** Upon filing said certificate by the town, city or village treasurer and upon payment to the county treasurer of the full amount of state trust fund loans, unless extended as provided in subsection (5a) of section 74.03, and the proportionate amounts of state taxes, state special charges, county school tax, other county taxes and county special charges, the county treasurer shall indorse the bond of such town, city or village treasurer, filed in his office, as satisfied and paid; and the indorsement so made shall operate as a full discharge of such town, city or village treasurer and his sureties from the obligations of such bond unless it shall afterwards appear that the return of such town, city or village treasurer was false; in which case such bond shall continue in force, and such treasurer and his sureties shall be liable to be prosecuted thereon for all deficiencies and for all damages occasioned by such false return. [1933 c. 426; 1935 c. 396, 456; 1937 c. 323; 1939 c. 385]

**Revisor's Note, 1941:** 74.21 is printed as amended by ch. 426, Laws 1933 (effective Oct. 1, 1941) and by ch. 396, Laws 1935, expressly amending said ch. 426.

**74.22 Penalty for failure to settle taxes.** If any town, city or village treasurer shall fail to make settlement of the taxes included in his tax roll within the time required by law the county treasurer shall charge such town, city or village treasurer five per centum damages and ten per centum interest per annum from the day payment should have been made on the balance of unsettled taxes due from him; and if any town, city or village treasurer shall withhold the payment of any public moneys collected or received by him, after the same should be paid and shall have been demanded, he shall pay ten per cent damages and ten per cent interest, as above specified, on such moneys; which moneys, damages and interests may be collected by action upon such town, city or village treasurer's bond.

**Note:** Local treasurer who deposits tax money in duly designated depository and is unable to pay over such money to county treasurer on 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 county treasurer. 22 Atty. Gen. 1000.

**74.23 Warrant; levy; breach of bond.** If any town, city or village treasurer shall neglect or refuse to pay to the county treasurer the sums in his hands required by law to be paid to him, or if he shall neglect or refuse to account for moneys required by law to be collected and paid by him to the county treasurer, such county treasurer shall issue a warrant under his hand, directed to the sheriff of the county, commanding him to levy such sum, specifying the amount thereof, as shall remain unpaid or unaccounted for, with interest and damages as specified in the preceding section, together with his fees for collecting the same, of the goods and chattels, lands and tenements of such town, city or village treasurer, and pay the same to the county treasurer, and return such warrant within sixty days from the date thereof and deliver the same to the sheriff, who shall immediately cause the same to be executed and make return thereof within the time therein specified, and pay to such county treasurer the amount required by such warrant or so much thereof as he shall have collected thereon; and such sheriff shall be entitled to collect and receive the same fees as are allowed by law to sheriffs on execution. Nothing in this section shall prohibit prosecution of such treasurer's bond in case of a breach thereof.

**74.24 False or negligent return.** If any sheriff shall neglect to return any such warrant or to pay the money collected thereon within the time limited for the return of such warrant, or shall make a false return thereto, the county treasurer shall forthwith proceed to collect of him the whole sum directed to be levied by such warrant in the same manner as such sheriff might be proceeded against for neglecting to return an execution in a civil action; and if he shall fail to collect such money of the sheriff he shall forthwith cause a prosecution to be commenced against him and his sureties on his official bond for the sum due on such warrant, which sum, when collected, shall be paid into the county treasury.

**74.25 Damages.** If any person shall be injured by the false return or fraudulent act of any town, city or village treasurer such person shall recover upon action brought on the bond of such treasurer, of him and his sureties, double damages and costs of suit.

**74.26 Payments by county treasurer.** (1) TO STATE TREASURER AND LOCAL TREASURERS. The several county treasurers shall pay to the state treasurer, the amount of state trust fund loans charged to their respective counties, unless extended as provided in subsection (5a) of section 74.03, and the proportion of state taxes and state special charges collected from the towns, cities and villages under subsection (5) of section 74.03, on or before the second Monday of March in each year. They shall pay to the state treasurer and to the local treasurers the amount of income taxes collected by their respective counties under the provisions of chapter 71, within 50 days after the first day upon which the same became due and payable. The several county treasurers shall, if extensions as provided in subsection (5a) of section 74.03 were made, pay to the state treasurer, the full balance due of state trust fund loans charged to their respective counties, and the balance due on state taxes and state special charges, on or before August fifteenth in

each year, as provided in subsection (8) of section 74.03.

(2) **AFFIDAVIT AND LIABILITY OF COUNTY TREASURER.** Every county treasurer shall, at the time for making such payment, file with the state treasurer an affidavit stating that he has returned and paid into the state treasury the whole amount of state trust fund loans and the proportionate amount of state taxes, and state special charges which have come into his hands, and specifying the amount received from each town, city and village; and if any such county treasurer shall fail to make and file such affidavit and pay into the state treasury the whole amount of state taxes and charges which shall have come into his hands he shall, in addition to other penalties prescribed by law, forfeit \$1000, which shall be collected for the benefit of the state upon the official bond of such treasurer.

(3) **ADDITIONAL LIABILITY.** Whenever any county treasurer shall fail to pay into the state treasury any moneys in his hands for that purpose at the time prescribed by law he shall, in addition to other penalties, be liable to the following: If he shall so fail for the space of ten days he shall forfeit to the state twenty per cent on the amount withheld, and if he shall fail to pay over such moneys for the space of thirty days after such specified time he shall forfeit his office of treasurer. [1933 c. 367, 426; 1935 c. 396, 456; 1937 c. 323; 1939 c. 385]

**Revisor's Note, 1941:** 74.26 is printed as amended by ch. 426, Laws 1933, effective Oct. 1, 1941 (1939 c. 185) and by ch. 396, Laws 1935, expressly amending said ch. 426. See note to 74.66, citing Petition of the State, 210 W 9, 245 NW 844.

**74.27 Penalties upon counties.** When any county shall fail, neglect or refuse to pay to the state treasurer the whole or any part of the state tax lawfully apportioned to and levied upon such county at the time and in the manner required by law such county shall pay to the state treasurer, in addition to the amount so due and unpaid on such tax, interest at the rate of ten per centum per annum from the time such tax was due and payable, until the same, together with such interest thereon, shall be fully paid. The secretary of state shall annually, at the time he is by law directed to apportion the state tax, add to the amount charged to each county respectively all amounts which may be due the state and unpaid from such county on any former tax, together with interest thereon at the rate aforesaid up to the first day of January following such apportionment; and the amount so found shall be the amount of the state tax to be paid by such county for the year, and shall be certified, levied, collected and paid into the state treasury as provided by law; and any money in the state treasury or which may come therein at any time prior to the payment of such delinquent tax by such county, on account of any appropriation made to such county by the legislature or otherwise, except money belonging to the school fund income, shall be retained by the state treasurer, and he shall apply the same, or such part thereof as may be necessary, to fully pay such delinquent tax, with interest thereon.

**Note:** County treasurer must certify and collect amount certified by secretary of state when it includes amount certified previous year but not paid to state treasurer. 22 Atty. Gen. 931.

Where time for payment of real estate taxes is extended by cities, villages or towns pursuant to chapter 7, Laws 1935, so that county does not receive its taxes until after July 1, 1936, county must pay state interest

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.

**74.275** [Repealed by 1937 c. 181 s. 2]

**74.28 Payments to local treasurers.** Each county treasurer shall pay to the several town, city or village treasurers in his county, on demand, all money collected or received by him and belonging to such town; but he may retain in the county treasury all amounts due from any town, city or village to the county except as otherwise provided in subsection (3) of section 74.19 of the statutes of 1931 as amended by this act for counties containing a population of five hundred thousand or more. [1935 c. 504; 1937 c. 415]

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

Amendments to this section by 1935 c. 504, held unconstitutional in *Whitefish Bay v. Milwaukee County*, 271 NW 416, because

the subject of the bill was not expressed in the title, were reenacted by 1937 c. 415, wherein the subject is expressed in the title.

Under 74.28, Stats., county may offset the amount of special tax owed county by town under 49.37 against any amount of taxes that county owes town, regardless of year and regardless of whether the taxes were collected by county because of affidavits extending time of payment pursuant to 74.037. 28 Atty. Gen. 496.

**74.29 Delinquent personal tax.** (1) The county treasurer shall annually, within thirty days after the several town treasurers shall have made their returns of the delinquent taxes as provided by law, make a schedule of all the taxes on personal property in his

county so returned delinquent and which shall remain unpaid at the time of making such schedule. Such schedule shall also contain all taxes on personal property in said county returned by said town treasurers as unpaid for the two years next preceding those last returned and which shall have remained uncollected at the date thereof, and may be in the following form, to wit:

Schedule of taxes assessed on personal property for the years 19.., 19.. and 19.., and which were returned as provided by law by the several town treasurers of the county of ....., as delinquent and unpaid and which remain unpaid on this .... day of ....., A. D. 19..:

NAMES OF PERSONS TAXED.	Amount of taxes due.	Years for which taxes are due.
A. B. ....	\$10.50	19..
C. D. ....	7.50	19..
E. F. ....	12.50	19..
G. H. ....	10.50	19..

(2) The county treasurer shall, within the time aforesaid, annex to such schedule a warrant under his hand, directed to the sheriff of his county, commanding him to collect from each of the persons and corporations named in said schedule the amount of the unpaid taxes set down in such schedule opposite to their respective names, with interest at eight-tenths of one per cent per month or fraction thereof from the first day of January next preceding the time when such taxes were returned unpaid, together with his fees for collecting the same, of the goods and chattels, lands and tenements of said persons and corporations respectively, and to pay the same to the county treasurer, and to make return of such warrant within sixty days after the date thereof; and such treasurer may issue a special warrant or warrants, in any convenient or proper form, to the sheriff of any other county commanding the collection of the delinquent personal property tax of any one person or of several persons in the discretion of the treasurer; and such last-named warrants may be issued at any time while such tax remains unpaid. The county treasurer may renew, by indorsement thereon, such general or special warrants from time to time, either before or after the return thereof, for sixty days at one time and not longer than one year after the date thereof. [1933 c. 244 s. 2; 1937 c. 294]

**74.30 Powers of sheriff; actions; attachment; garnishment.** (1) The sheriff to whom any such warrant shall be delivered shall proceed in the same manner and with the same power to collect the unpaid taxes specified in the schedule or warrant as he would upon execution issued out of a court of record. And the county treasurer or any person in his behalf who is interested in the collection of said tax may make the necessary affidavit for garnishee proceedings or attachment, and thereupon any competent court shall have jurisdiction of the same. Such affidavit need not state that such indebtedness or property is not exempt by law from sale on execution, but shall state that the indebtedness is for a delinquent personal property tax instead of stating that it is on contract or judgment. Such affidavit may be amended as in other cases.

(2) In case any of such taxes shall be returned unpaid in whole or in part the said treasurer may, at any time within six years thereafter, bring an action or actions in the name of his county to recover such unpaid taxes and the costs and charges thereon against the persons or corporation charged therewith in any court of competent jurisdiction; and no law exempting any goods and chattels, lands and tenements from forced sale under execution shall apply to a levy and sale under any of said warrants or upon any execution issued upon any judgment rendered in any such action; and upon the return of such general warrant the county treasurer is also authorized to institute against any person charged with any personal tax which remains uncollected supplementary proceedings for the collection thereof; and all laws applicable to such supplementary proceedings upon judgments are made applicable to the proceedings hereby authorized, except that if such delinquent is a resident of this state such proceedings shall be instituted before some proper officer of the county in which the person proceeded against resides, otherwise in any county in the state.

(3) The tax roll and town treasurer's warrant and return, or abstracts therefrom, certified by the county treasurer under his seal of office, shall, upon the trial of any such action or proceedings authorized by this section, be presumptive evidence of such tax, of its being unpaid and of the amount unpaid, and in supplementary proceedings the same presumptions shall be entertained in favor of the validity of the tax and tax proceedings as in favor of a judgment and execution.

**Note:** Warrant of county treasurer accompanying delinquent income tax schedules is sufficient process for execution. The sheriff is not entitled to demand bond from county. 21 Atty. Gen. 133.

**74.31 May be charged to towns.** The county treasurer, after one year from the time any delinquent personal property tax shall have been returned to his office by the treasurer of any town and upon filing in his office the affidavit of the sheriff, his deputy or undersheriff, stating that such tax is uncollectible, shall charge the same back to such town, city or village and certify the same to the county clerk, who shall add the same to the next county tax apportioned thereto; but if any such tax shall be thereafter collected by the county treasurer the amount so collected shall be credited to such town, city or village.

**74.32 Payment on undivided share; apportionment.** Any person may discharge the taxes on any parcel of land returned to the county treasurer as delinquent or on any part thereof or undivided share therein, by paying the same, with interest at eight-tenths of one per cent per month or fraction thereof from the first day of January succeeding the year of the tax levy, and all lawful charges thereon, to such county treasurer at any time before the same shall be sold as hereinafter provided; and upon such payment the treasurer shall execute duplicate receipts therefor, countersigned by the county clerk, showing the name of the person paying the same, the date of the receipt, the description of the property on which the tax was paid and the aggregate amount of taxes, interest, costs and charges paid, one of which shall be delivered to such person and the other filed by the county clerk; provided, that when an application is made to the county treasurer for the payment of the taxes upon any part or portion of any lot or parcel of land assessed as a whole, but which is owned in severalty, such treasurer, before making a receipt for the taxes upon such part or portion thereof, may ascertain by affidavits or by actual view the true proportion of taxes chargeable to the part on which the tax is sought to be paid, and the amount so found shall be deemed to be the amount of taxes chargeable thereto. [1933 c. 244 s. 2; 1937 c. 294]

**Note:** County treasurer may, in his discretion, accept delinquent real estate tax without penalty or interest and issue receipt so stating. Penalty and interest will remain owing and lien on land, unless legislature remits it. 21 Atty. Gen. 736.

Tax deed may be taken to undivided interest. 22 Atty. Gen. 212.

Proportion of delinquent taxes chargeable to part of parcel of land assessed as whole and owned in severalty may be ascertained and discharged in accordance with method provided by this section. 22 Atty. Gen. 837.

**74.325 Delinquent taxes; payment in instalments.** The tax on any parcel of land returned to the county treasurer as delinquent may be paid in instalments of not less than ten dollars and in any multiple of five dollars. Each instalment shall be applied first in discharging the interest and other lawful charges accrued to the date of payment and the balance applied on the principal of the tax. Interest shall be computed only on the unpaid balance of the principal and taxes shall be sold for the amount of such unpaid balance plus interest and other lawful charges thereon. [1933 c. 244 s. 1]

**74.33 List of delinquent lands; notice of sale; illegal publication.** (1) (a) The county treasurer shall, on the second Monday of September in each year, list all lands upon which the taxes have been returned as delinquent and which then remain unpaid, except public lands held on contract and lands mortgaged to the state, with an accompanying notice stating that so much of each tract described in said list as may be necessary therefor will, on the third Tuesday in October next and the succeeding days, be sold by him at public auction at a named public place, at the county seat, for the payment of taxes and interest thereon. He shall cause such list and notice to be published in a newspaper printed in his county, and if there be none, then in a newspaper printed in an adjoining county. If there is no newspaper printed in the same or an adjoining county, then such list and notice shall be published in the official state paper. Such list and notice shall be published once in each week for two successive weeks prior to said third Tuesday in October. The treasurer shall also, at least two weeks previous to said day, cause copies of said list and notice to be posted in at least four public places in such county, one of which copies shall be posted in some conspicuous place in his office.

(b) The treasurer shall not publish such list and notice in any newspaper in his county that has not been regularly and continuously published in such county once in each calendar week for at least two years immediately before the date of such notice, if there be a newspaper which has been so published.

(c) Any county treasurer who violates this section shall forfeit a sum equal to the fees allowed by law for such publications, one-half of such penalty to be paid to the informant and the other half into the school fund.

(2) And it is hereby made the duty of the district attorney of the proper county, on complaint being made, to prosecute such action; provided, no county treasurer shall be liable to any penalty or to the forfeiture of any sum whatever for causing such publication to be made in a weekly newspaper published in such county for two years or more next prior to the date of said treasurer's statement and notice when, by reason of accident or other cause, more than one week has intervened between the dates of its actual issue to subscribers, if such delay at any time shall not have exceeded three days, but every such news-

paper, for all the purposes of this section, shall be deemed to have been regularly published once in each week as hereinbefore provided; provided further, that when any new county shall have been formed and organized the provisions of this section concerning the competency of newspapers to publish the county treasurer's statement and notice herein provided for shall apply to any newspaper or newspapers which shall have been regularly and continuously published within the territorial limits of such county for two years previous to its formation and organization. [1933 c. 306; 1935 c. 7, 209, 234; 1939 c. 434]

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

Ch. 234, Laws 1935, amending 74.33 (1) does not affect the provisions of Ch. 7, Laws 1935.

Where city treasurer accepted note for taxes and, upon default in payment of note, city reassessed property and included reassessment in delinquent roll, county may

offer property for sale, issue delinquent tax certificates thereon and after sale of certificates turn over to city moneys received. 24 Atty. Gen. 388.

It is duty of county treasurer to omit from delinquent tax list lands owned by federal government. 25 Atty. Gen. 481.

Newspaper mailed and distributed from place of business within county is printed within county within meaning of 74.33 and 75.07, though actual printing may be done elsewhere. 29 Atty. Gen. 138, 225.

**74.34 Contract; bids; bond; forfeiture.** (1) In every county where the number of the descriptions in the list of lands to be advertised for sale for the nonpayment of taxes by the county treasurer shall exceed four thousand the county treasurer shall let by contract the publication of such list to the lowest bidder, upon a notice written or printed, to be delivered to and left with the publisher or one of the publishers of each newspaper in his county at least five days prior to the time at which such contract shall be let; but no such contract shall be made to publish such list in any newspaper which has not been regularly and continuously published once in each week in such county for at least two years prior to the time at which such publication shall be by law required to be made unless there be no such newspaper so published in such county; and the contract price for the publication of such list shall in no case exceed the amount now or which shall be hereafter prescribed by law as the maximum price for publishing such list.

(2) All bids shall be written and sealed and accompanied by a good and sufficient bond, in the sum of at least five thousand dollars, conditioned that the work will be promptly performed. Any county treasurer who shall wilfully refuse or neglect to perform any duty enjoined by this section or who shall keep back and not report any delinquent lands for the purpose of avoiding the provisions of this section shall forfeit the full amount of his official bond, one-half of which when collected shall be paid to the person prosecuting therefor and the residue shall be paid into the treasury of the county for the use of the school fund; provided, that when any new county shall have been formed and organized the provisions of this section shall apply to any newspaper or newspapers which may have been regularly and continuously published within the territorial limits of such new county for two years previous to the formation and organization of such new county.

**Note:** When lowest bidder failed to accompany his bid with bond but furnished it almost immediately after bids were opened,

statute was substantially complied with and county treasurer may award bidder contract. 20 Atty. Gen. 221.

**74.345 Error in notice; subsequent sale.** If the county treasurer, through error, fails to comply with the provisions of section 74.33, the notice of sale may in such case be posted and published and the sale held at a time to be fixed by him, not later than December fifteenth, of the year in which said error occurred, with like effect as if the provisions of said section had originally been complied with. If any land is omitted from the list of lands advertised for tax sale, such land may be included in such list the following year. [1935 c. 153; 1939 c. 434]

**Note:** Where city treasurer accepted note in payment of real estate taxes and upon default in payment of note city reassessed property and included reassessment in delinquent tax roll, county may under (2), Stats. 1937,

sell property and issue delinquent tax certificate thereon and county must refund to city moneys erroneously paid to county. 24 Atty. Gen. 750.

**74.35** [Repealed by 1921 c. 485 s. 2 and 1921 c. 590 s. 101]

**74.36 Affidavits of publication and posting.** Every printer who shall publish such statement and notice shall, immediately after the last publication thereof, transmit to the treasurer of the proper county an affidavit of such publication made by some person to whom the fact of publication shall be known; and no printer shall be paid for publishing any such statement and notice who shall fail to so transmit such affidavit on or before the date fixed for such sale; and the county treasurer shall also make or cause to be made an affidavit or affidavits of the posting of such statement and notice as above required, which affidavits together with the affidavit of publication, shall be carefully preserved by him and deposited as hereinafter specified.

**74.37 Fee for advertising.** (1) The printer who shall publish the list and notice of sale of lands for taxes shall receive for all insertions not to exceed twenty cents for each tract or lot of land in such list not exceeding one thousand and ten cents for each tract or lot of land in such list in excess of one thousand, except that when the same is published under contract, as provided in section 74.34, he shall receive the compensation fixed by such contract and no more.

(2) When the list of lands above referred to shall not exceed one hundred parcels in number then the compensation for the publication of the same shall be at the rate of sixty cents per folio for the first insertion and thirty-five cents per folio for each subsequent insertion. [1933 c. 306; 1937 c. 294]

**74.38 Officers not to be interested.** It shall be unlawful for any town or county officer or county board to make any contract or agreement with the printer or any other person by which the said fees or compensation or any part thereof, or the fees and compensation hereinafter provided for the publication of the notice of the time when redemption of lands sold for taxes will expire or any part thereof, may or shall, directly or indirectly, inure to the use or benefit of any such town or county officer; and if any such officer or printer shall violate the provisions of this section he shall forfeit not less than two hundred and fifty nor more than one thousand dollars.

**74.39 Sale of real estate.** On the day designated in the notice of sale the several county treasurers shall commence the sale of those lands on which the taxes and interest shall not have been paid and shall continue the same from day to day, Sundays excepted, until so much of each parcel thereof shall be sold as shall be sufficient to pay the taxes, interest at eight-tenths of one per cent per month or fraction thereof upon the amount of such taxes from the first day of January next succeeding the year of the tax levy, and all moneys received on such sale shall be paid into the county treasury; but if the treasurer shall discover before the sale that on account of irregular assessment or for any other error any of said lands ought not to be sold, he shall not offer the same for sale, and report the lands so withheld from sale to the county board at the next session thereof with his reasons for withholding the same. [1933 c. 244 s. 2; 1937 c. 294]

**Note:** County treasurer's practice of commencing sale of land for delinquent taxes on the statutory date, but selling only one tract daily and continuing sale from day to day until February first, and proposed practice to commence, on February first, selling daily as many tracts as practicable held legal. State v. Milwaukee, 210 W 336, 246 NW 447.

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

**74.40 Who to be purchaser; order of sale.** The person offering at such sale to pay the taxes, interest and charges on any tract of land for the least quantity thereof shall be the purchaser of such quantity, which shall be taken from the north side or end of such tract, and shall be bounded on the south by a line running parallel with the northerly line thereof, if such line be a single straight line, otherwise the south line of the portion so sold shall run due east and west; and in case no bid be made for the payment of the taxes, interest and charges on any such tract of land for a portion thereof then the whole of such tract shall be sold.

**74.41 Payment.** The county treasurer may, in his discretion, require immediate payment of every person to whom any such tract or parcel thereof shall be struck off; and in all cases where the payment is not made within twenty-four hours after the bid he may declare such bid canceled and sell the land again or may sue the purchaser for the purchase money and recover the same, with costs and ten per cent damages; and any person so neglecting or refusing to make payment shall not be entitled after such neglect to have any bid made by him received by the treasurer during such sale.

**74.42 When treasurer to buy.** If any tract of land cannot be sold for the amount of taxes, interest and charges thereon it shall be passed over for the time being, but shall, before the close of the sale, be re-offered for sale; and if the same cannot be sold for the amount aforesaid the county treasurer shall bid off the same for the county for such amount.

**Note:** A county which acquires land at a tax sale need not settle with other taxing districts for any excess above county taxes until 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.

**74.43 Cities bidding in at tax sales.** (1) If, at any sale in any city in this state, whether organized under general law or special charter, of real or personal property for taxes or assessments, no bid shall be made for any parcel of land, or for any goods and chattels, the same shall be struck off to the city, and thereupon the city shall receive in its corporate name a certificate of the sale thereof, and shall be vested with the same rights as other purchasers are. Whenever such city shall hold any certificate of sale for any

land sold for the nonpayment of city taxes, the common council of such city, to protect such interest, may authorize and direct the city treasurer to bid in and to become exclusive purchaser in the corporate name of such city of such lands at any sale of the same by the county treasurer for the county and state taxes, and such city shall be vested with the same rights as are other purchasers; provided that such city shall, before becoming the exclusive purchaser for said lands for said county taxes, purchase any outstanding county certificates of sale held by the county which are subsequent to the city certificates of sale, or in case such land has been sold by the county to a private purchaser subsequent to the city certificate of sale such city shall first secure an assignment of the certificate of sale from the owner thereof or redeem the lands from such sale. When a tax deed shall be issued to the city, the land covered by said tax deed shall be exempt from further taxation until the same is sold by the city. The city treasurer shall annually, before the first day of May, furnish to the assessors of such city, a list of the lands in such city exempt under this subsection. If the city shall be purchaser of any personal property by virtue of this chapter, the treasurer shall have the power to sell the same at public sale, and in case the city shall become the purchaser of any real estate at any tax sale, the treasurer is authorized to sell the certificates issued therefor for the amount of such sale and interest at eight per centum per annum, and to indorse and transfer such certificates to the purchasers.

(2) All acts or parts of acts, including the provisions of any city charter, which are contrary to the provisions of this section are repealed.

(3) Notwithstanding the provisions of subsection (1) of this section the common council in any such city may by ordinance authorize and direct the city treasurer to bid in and become the purchaser of all lands sold for taxes, except such as to which section 75.67 is applicable, for the amount of taxes, interest and charges remaining unpaid thereon, and all such lands sold shall be struck off to the city, and thereupon the city shall receive in its corporate name a certificate of sale thereof, and shall be vested with the same rights as other purchasers. Such tax sale certificate shall be assigned by the city treasurer by direction of the common council of such city. [1933 c. 244 s. 2; 1941 c. 287]

**74.44 County may purchase on tax sales; cutting county timber, penalty.** (1) The county board of any county may authorize and direct the county treasurer to bid in and become the purchaser of all lands sold for taxes for the amount of taxes, interest and charges remaining unpaid thereon. Any certificate of sale, except as to drainage assessments, owned by any county, shall constitute collateral security for any loan to such county to an amount equal to one-half the face value of such certificate when negotiated by the county clerk and treasurer. All laws relating to the sale or purchase of lands sold for the nonpayment of such taxes, and to the redemption of such lands, shall apply and be deemed to relate to the sale or purchase of such lands by the county.

(2) Unless expressly authorized by resolution of the county board or by the governing body of any city authorized by law to sell its own delinquent taxes or assessments, any person who cuts, destroys or removes, or directs on contracts for the cutting, destruction or removal of any logs, wood, timber, bushes or shrubs, or any buildings, fixtures and other improvements assessed as real property from lands owned by any county or such city or from any lands upon which any county or such city holds a tax certificate shall be liable to such county or such city for the value thereof, and any person who wilfully cuts, destroys or removes or directs or contracts for such cutting, destruction or removal shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment in the county jail for not less than 10 days nor more than 90 days, or by both such fine and imprisonment.

(3) Any person who receives, conceals or aids in the concealment of any such logs, wood, timber, bushes or shrubs, or any such buildings, fixtures and other improvements or materials salvaged therefrom, knowing the same to have been wilfully severed or removed from the lands of any county or such city or on which any county or such city has a tax lien, shall be liable to the county or such city for the value thereof and shall be guilty of the offense of receiving stolen property and upon conviction shall be punished as provided in section 343.19. [1931 c. 120; 1941 c. 185]

**Note:** 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.

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

County treasurer, bidding in tax and drainage assessment certificates by direction

of county board, should not pay drainage assessments to district. 20 Atty. Gen. 969.

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 sale of tax certificates to county. 24 Atty. Gen. 119.

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

**74.45 Mistake not to affect sale.** When any land is offered for sale for any taxes it shall not be necessary to sell the same as the property of any particular person; and if it should be sold as the property of any such person no misnomer of the owner or supposed owner or other mistake respecting the ownership of such land shall ever affect the sale or render it void or voidable.

**74.455 Correction of tax certificates.** Any tax certificate held by a county containing an incorrect real estate description may be corrected by an action brought in the circuit court in the same manner as actions for the reformation of instruments. Such certificates so corrected shall be valid as of the date first issued. [1935 c. 281]

**Note:** This section applies where erroneous description of real estate appears in tax certificate only and does not extend to certificates containing erroneous descriptions where such errors prevail throughout entire tax assessment and collection proceedings. 26 Atty. Gen. 488.

**74.46 Certificate of sale; may be assigned and recorded.** (1) The county treasurer shall give to each purchaser on the payment of his bid, and if the same be struck off to the county, then to the county, a certificate dated the day of the sale, describing the lands purchased, stating the original amount of the tax, the rate of interest thereon and the date from which such interest accrues, and the time when the purchaser will be entitled to a deed; which certificate shall be substantially in the following form, to wit:

STATE OF WISCONSIN, }  
 ....County. }ss.

County Treasurer's Office, ...., A. D. 19..

I, ...., county treasurer of the county of ...., in said state, do hereby certify that I did at public auction, pursuant to notice given as by law required, on this .... day of ...., sell to A. B. (or the county of ....) the lands herein described for the sum of .... dollars and .... cents, said sum being the amount due and unpaid for taxes, on said land for the year of our Lord one thousand nine hundred and ....; that said A. B., his heirs or assigns (or said county or assigns), will, therefore, be entitled to a deed of conveyance of said lands in five years from this date, unless sooner redeemed from such sale according to law, and the rate of interest in case of such redemption shall be eight-tenths of one per cent per month or fraction of a month from date of January first, 19... Said lands are described as follows, with sums for which each tract was sold set opposite to each description, that is to say: (Here insert description, and separately the amount bid on each tract).

A. B., County Treasurer.

The purchaser at any tax sale and any person taking tax certificates from the county by assignment shall pay therefor the principal of the tax and interest thereon from January first of the year following the tax levy to the date on which he pays for his certificate.

Whenever in any county lands are bid in for delinquent taxes for the county, the county treasurer may in lieu of executing separate tax certificates on every parcel of land to the county, prepare and execute one master certificate to include lands in each town, city or village sold for delinquent general taxes, metropolitan sewerage district taxes, special assessments, special improvement bonds and trust items, which certificate shall be in substantially the form as hereinafter provided and shall incorporate by reference to appropriate numbering in the treasurer's tax sales record the description of each separate parcel and the amount of delinquent tax and charges intended to be included in said tax certificate. Thereafter when any person shall desire to purchase the tax certificate on any individual parcel included in either of said master certificates the county treasurer shall execute a single tax certificate to the county in the form as hereinabove prescribed in this subsection which certificate shall be indorsed by the county treasurer with his official character added and thereafter the procedure prescribed in subsection (2) of this section shall apply. Whenever one or more single certificates are executed on parcels included in a master certificate such fact shall be forthwith noted on the master certificate by reference to the item number of said parcel. If after the issuance of any master certificate, any delinquent tax item therein included shall be redeemed, the fact, date and amount of such redemption shall be noted forthwith on such master certificate by reference to the items of said parcel. The form of such master certificate shall be substantially as follows:

STATE OF WISCONSIN, }  
 ....County. }ss.

County Treasurer's Office, ...., A. D. 19..

I, ...., county treasurer of the county of ...., in said state, do hereby certify there was sold at public auction, pursuant to notice given as by law required, on the .... day of ...., A. D. 19.., to the county of ...., the lands described and listed in volume number ...., town of ...., record of sales and assignments the specific item numbers whereof are hereinafter set forth, said record being on file in the office of county treasurer of .... county and which is hereby made a part of this certificate. Said sum listed below

represents the amount due and unpaid for taxes on said lands for the year of our Lord 19...; that the said county of ... or assigns will therefore be entitled to a deed of conveyance of said lands in five years from this date unless redeemed from such sale according to law, and the rate of interest in case of redemption shall be eight-tenths of one per cent per month or fraction of a month from date of January first, 19... The said lands together with the sum for which the same is sold are more particularly shown in volume number ..., town of ..., record of sales and assignments numbers ..., ..., and ....  
 ..., County Treasurer.

(2) Any such certificate may be assigned by the purchaser by writing his name in blank on the back thereof, and by the county treasurer or county clerk in like manner, with his official character added, or any person's interest therein may be transferred by a written assignment indorsed upon or attached to the same. Any assignment of such certificate after the first may be made by the delivery of the certificate without any writing or other indorsement. A deed may be issued on such assigned certificate, though indorsed or delivered to the owner and holder thereof, and possession of the same, together with the affidavit now required by law, shall be sufficient evidence of the ownership of such certificate. And the county treasurer or county clerk, whichever of them shall, by the county board in pursuance of section 75.35, be authorized to sell and assign any tax certificates owned by such county, shall make and keep on file in his office a careful and accurate list of all such tax certificates struck off to or owned by such county, and he shall note upon such list, at the time of the sale or assignment of any such certificate, the time when and the person to whom the same is assigned. All such certificates and assignments thereof, when such assignments are duly sealed, duly attested by two subscribing witnesses and acknowledged, may be recorded in the office of the register of deeds of the proper county with the same effect as other records therein. [1933 c. 244 s. 2; 1935 c. 64; 1937 c. 409]

**Note:** County treasurer is authorized to sign tax certificates based upon sale held during term of his predecessor. 24 Atty. Gen. 300.

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

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

**74.47 Papers, stub book and rolls to be filed.** Every county treasurer shall, immediately after the close of the sale of any lands for taxes file and carefully preserve in his office all affidavits, notices and papers in relation to such tax sale; also a statement containing a particular description of each tract or parcel thereof, of lands so sold by him, specifying the name of the person to whom sold, the amount for which the same was sold and the name of the owner, if known. Said treasurer shall also file and carefully preserve in his office the stub book, tax roll and delinquent return. Every county treasurer shall, at the expense of the county, procure a record book and record therein all affidavits and notices hereinabove mentioned and the record of such affidavits and notices shall be received in evidence in all courts and proceedings as proof of the matters therein contained with like effect as such original notices or affidavits. [1935 c. 167]

**74.48** [Repealed by 1935 c. 167]

**74.49 Sale after injunction dissolved.** Whenever any officer shall have been enjoined from selling any lands subject to sale for unpaid taxes or assessments of any kind or nature and such injunction shall have been dissolved, if such taxes or assessments, with interest and charges thereon, shall remain unpaid for thirty days after the dissolution of such injunction such officer or his successor shall, immediately after the expiration of said thirty days, give notice of the time and place of the sale of such lands, and thereupon sell the same for such unpaid taxes or assessments, interest and charges; and interest shall be charged thereon to the time of sale at the rate provided by law for interest on such taxes and assessments at the time of granting such injunction; and in any city authorized to sell land for nonpayment of taxes at the rate provided in tax certificates of such city at the time the tax sale would have been made except for such injunction, the same to be computed from the date of delinquency of the tax; and in giving such notices and in making such sale he shall be governed in all respects by the provisions of law which may then be in force concerning sales of lands for taxes so far as the same may be applicable. The effect of such sale shall be the same as of other sales of lands for taxes by such officer; and the land sold may be redeemed from such sale, and if not redeemed, deeded in like manner and with like effect as may be provided in other cases of lands sold for taxes. [1933 c. 114]

**74.50 Disqualification of officers.** It shall not be lawful for any county treasurer, county clerk, any of their deputies or clerks or any other person for them or any of them to purchase, directly or indirectly, property sold for taxes at any tax sale, or to purchase any tax certificate or tax title held by the county or by any person or persons whomsoever, except for and on behalf of the county as provided by law; nor shall any such treas-

urer, clerk, any of their deputies or clerks or any other person for them or either of them be directly or indirectly interested in the purchase of any property sold as aforesaid at any tax sale or in the purchase of any tax certificate or tax title except as hereinbefore provided; and any such certificate or title purchased or issued or any purchase of property made contrary to this section shall be null and void; and no money received into the county treasury for any such tax certificate shall be refunded to the purchaser or to any person on his behalf.

**Note:** Funds realized by county under provisions of this section in excess of delinquent tax and interest on any particular piece of land involved become part of general fund. While question is not free from doubt, county is advised to readvertise and sell land for delinquent taxes on which tax certificate has been issued but which is void under this section. 24 Atty. Gen. 302.

County board member has official duty to perform in relation to sale of lands to which county has title by tax deed and is therefore prohibited from purchasing said lands or acquiring pecuniary interest therein by express provisions of 348.23, 16 Atty. Gen. 633 overruled. 29 Atty. Gen. 197.

74.51 [Repealed by 1937 c. 294]

74.52 **State land not sold.** It shall not be lawful for any county, city or village treasurer to sell any public lands held on contract or any lands mortgaged to the state for delinquent taxes; but if the taxes on any such lands returned delinquent shall not be paid on or before the first day of April in each year, together with interest thereon at eight-tenths of one per cent per month or fraction thereof from the first day of January next preceding, the county treasurer shall immediately forward to the state treasurer a certified list of said lands and the amount of said taxes on each description, with interest and charges added. [1933 c. 244 s. 2; 1937 c. 294]

74.53 **Proceedings.** The treasurer shall charge such returned taxes, interest and charges against the lands upon which such taxes are assessed; and if the amount thereof is not paid on or before the first day of June next succeeding he shall add thereto fifteen per cent, and the same, with such fifteen per cent added, shall be collected with other charges against said lands, and when collected shall be added to the appropriate fund; and so much of the amount returned, together with the fifteen per cent added as aforesaid as shall have been collected, shall be entered to the credit of the proper county quarterly, and shall offset an equal amount of state tax charged to said county; but if the amount so collected in any quarter shall exceed the amount then due from such county for state tax the state treasurer shall pay to the county treasurer of such county such excess.

74.54 **State treasurer to furnish lists of taxes paid.** The treasurer shall forward quarter yearly to the several county treasurers a list of all public lands and lands mortgaged to the state, located in their respective counties, on which the taxes and interest and penalty on the taxes shall have been collected and paid into the state treasury; such list shall state the amount of taxes, interest and penalty paid on each separate tract of land contained therein, and shall designate each such lot or tract of land separately, and, when not included in any city or village plat, showing the sections, township and range in which the same is embraced.

74.55 **Taxes to be credited.** Immediately upon the receipt of such list by any county treasurer he shall ascertain the aggregate amount of such taxes, interest and penalty collected on such lands in each of the towns, cities and villages in his county; and when the amount of such taxes, interest and penalty shall have been credited to such county or paid over to such county treasurer as provided by law he shall credit the proper towns, cities and villages in his county with such part of said taxes, interest and penalty, collected on lands embraced therein, as shall then be due to them respectively.

74.56 **Return of public lands on which taxes unpaid.** If the taxes on any of the public lands held on contract or on lands mortgaged to the state, situated in any city or incorporated village any officer of which may be authorized to sell lands for the payment of taxes, shall not be paid during the time required by law therefor, the treasurer of such city or village shall return a list of such lands to the county treasurer, at the time and in the manner fixed by law for town treasurers to return lists of such delinquent lands, and the county treasurer shall include the same in his list returned to the state treasurer; and any provision to the contrary in any city or village charter or special act is hereby repealed.

74.57 **Lands acquired by state are not subject to tax sale.** (1) It shall not be lawful for any county, city or village treasurer to sell any lands which shall have been acquired by the state after the taxes become a lien thereon. When such lands shall have been returned delinquent to the county treasurer he shall certify to the commissioners of public lands a description thereof together with the amount of taxes charged against each separate description. The commissioners of public lands within ten days after the receipt of such certificate from the county treasurer shall consider the question of whether such taxes are just and legal, and if they so find shall order the same paid. They shall trans-

mit a certified copy of their order to the secretary of state, and upon his audit and warrant drawn upon the state treasurer the amount of said taxes shall be paid out of the appropriation provided for carrying out the purposes of this section.

(2) No tax deed shall be issued upon any land the title of which shall have been acquired by the state after the same shall have been sold for taxes and a tax certificate issued thereon. Upon the purchase by the state of any lands upon which there are tax certificates outstanding, the state department or agency making such purchase shall cause the amount of money required for the redemption thereof to be paid to the county treasurer. If such tax certificates shall not be so redeemed, the owner thereof may deposit the same with the county clerk who shall draw an order upon the county treasurer for an amount necessary to redeem the same and payable to the holder of the tax certificate. The amount of such order shall be paid by the county treasurer and deducted by him in his next settlement with the state treasurer for state taxes.

(3) Whenever, in any action brought by the state to set aside tax deeds outstanding on lands owned by the state, the court shall, as a condition of relief, order a certain amount to be paid by the state, the commissioners of public lands may order that the amount required by the order of the court as a condition of relief shall be paid from the state treasury. A certified copy of their order shall be filed with the secretary of state, and upon his audit thereof and his order drawn on the state treasurer the amount shall be paid to the clerk of the proper court or such other person as directed by the order of the court.

(4) The commissioners of public lands are authorized and empowered to negotiate with such parties as may hold tax deeds or tax certificates upon any of the public domain, and if the holder of such tax deed or deeds or tax certificate or certificates is willing to accept the amount of the taxes and interest thereon at the rate prescribed by section 75.01, or if lands are in counties where the rate has been changed at the rate fixed by the county board, and the legal charges paid out by him for the purpose of securing said tax deed or tax certificate, the commissioners of public lands may, by their order, direct that he be paid such sums for a quitclaim deed of such lands or for the surrender of such certificate or certificates. A certified copy of such order may be filed with the secretary of state, and upon his audit thereof and an order drawn on the state treasurer, the same shall be paid to the person or persons indicated in the order of the commissioners of public lands.

(5) The amount of any unpaid liens against property purchased for the state shall be considered a part of the purchase price and when paid shall be charged to the appropriation to which the purchase price is charged. Any such liens on property forfeited under the provisions of section 24.28 shall be paid out of the fund, and specific appropriation if any, to which payments in the contract have been credited. [1935 c. 479]

**Note:** This section 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.

Lands acquired in name of county for state-federal highway after 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 state. 22 Atty. Gen. 83.

To determine whether taxes presented for payment under (1) are just and legal, commissioners of public lands must obtain such information, in addition to certification

presented by county treasurer, as will satisfy them and enable them to make determination. Phrase "just and legal" taxes means legally valid taxes, that is, taxes based upon legal levy and legal assessment. Commissioners shall order paid according to (1) taxes which have become lien upon public lands sold under contract where such lands have been taken back by state after lien has been impressed. 22 Atty. Gen. 617.

Forestation tax collected pursuant to 70.58 (2) is state tax within meaning of 74.57 (2). 26 Atty. Gen. 85.

**74.58 Taxes in cities and villages, how collected.** The warrant for the collection of state and county taxes in any city or village which by its charter collects taxes independently shall, unless otherwise provided, be made out and signed by the clerk of such city or village, and annexed by him to the assessment or tax roll of such city or village, and delivered to the treasurer thereof for collection, who shall proceed in the collection of taxes therein specified in like manner as he is required by the charter of such city or village to collect city or village taxes; and he shall make returns thereof under oath, with the said assessment or tax roll of such city or village annexed, to the county treasurer, and pay over all state and county taxes collected by him at the time and in the manner, as near as practicable, that town treasurers are required to make their returns of uncollected taxes and pay over the state and county taxes collected by them; but the affidavit to be attached to his return shall conform to the duties required to be performed by him in the collection of taxes; and taxes for city, village or other local purposes may be collected together with the state and county taxes, when so ordered by the common council of such city or the board of trustees of such village or when so directed to be by law, and if so collected they shall be set down in one or more separate columns; but in all cases the tax for the support of the common schools in such city or village, imposed by the county board of supervisors, shall be levied and collected at the same time with the state and county taxes and retained by the treasurer of such city or village and paid over by him as

required by law; and the warrant issued to such treasurer shall be so modified as to conform to the provisions of this chapter; and every city and village treasurer acting as collector of taxes under the provisions of this chapter shall, so far as practicable, unless otherwise provided, exercise the same powers and perform the same duties as are herein conferred upon and required of town treasurers and be subject to the same penalties and liabilities as such town treasurers.

**74.59 Application of chapter to cities.** The provisions of this chapter relative to towns and town treasurers shall apply to cities and villages and the treasurers thereof, when the same are applicable, unless otherwise provided. When any territory shall be detached from any county, town, city, village or school district it shall in no manner invalidate or interfere with the collection of taxes in such territory, but they shall be collected and returns made as if the territory was not detached therefrom. [1933 c. 187 s. 4]

**74.60 Neglect to elect officers; how taxes collected.** Whenever the people of any territory which has been or shall hereafter be set off as a separate town shall neglect or refuse to elect the officers required by law to be chosen therein, by reason whereof the property of such town shall fail to be assessed in the manner provided by law, the county board shall issue their warrant to the assessor and to the treasurer of a town next adjoining, requiring them to assess and collect respectively the amount of taxes due from such town to the state and county till an election shall be held therein; and thereupon such assessor and treasurer shall severally discharge all the duties in regard to the assessment and collection of said taxes within said town that would have devolved upon them had they been duly elected assessor and treasurer respectively for said town; and for any malfeasance in respect thereof said treasurer shall be liable on his official bond, or said board of supervisors may, if they think necessary, require him to execute a new bond to the county treasurer in such sum and with such surety as they shall direct.

**74.61 Mailing statement of taxes due.** The treasurer of any town, village or city, while the tax roll therefor is in his possession, shall, upon request therefor from any taxpayer, forthwith deliver or forward by mail to such taxpayer a statement of the amount of taxes due upon each parcel or tract of land owned by such taxpayer and situated in such town, city or village, and in case the tax roll has been delivered to the county treasurer of any county, except those containing a population of one hundred fifty thousand inhabitants or more, then and in such case the county treasurer shall, upon request therefor, forthwith perform such service. Whenever, in any county having a population of five hundred thousand or more, any taxpayer shall make application by mail or in person to the treasurer of any town, village or city for a statement of the amount of taxes due on any parcel or tract of land owned by such taxpayer, such treasurer shall enter or cause to be entered upon the tax roll in his possession opposite the description of the proper parcel or tract of land thereon the name and address of the owner thereof as given to him by said taxpayer. [1931 c. 195]

**74.62 Taxes; payment by grantor and grantee.** As between grantor and grantee of any land, when there is no express agreement as to which shall pay the taxes assessed thereon for the year in which the conveyance is made, if such land is conveyed on or before the first day of December, then the grantee shall pay the same; but if conveyed after that date, then the grantor shall pay them.

**74.63 Rights of occupant who has paid taxes.** When a tax of any kind on any real estate shall have been paid by or collected of an occupant or tenant such occupant or tenant shall be entitled to recover from the person under whom he is such occupant or tenant the amount so paid by him, with interest thereon at eight-tenths of one per cent per month or fraction thereof, or he may retain the same from any rent due or owing from him to such person for the real estate on which such tax was paid, unless it be otherwise provided by agreement between such parties. [1933 c. 244 s. 2; 1937 c. 294]

**74.64 County to refund unjust tax.** If any person, within two years after the payment of any state or county tax by him, can satisfactorily show to the county board that the same was improperly assessed or was paid by mistake when it was not justly chargeable, the said board shall order the same to be repaid by the county treasurer; and if the taxes so refunded or any portion thereof be properly chargeable to any town, city or village it shall be so charged.

**74.65 Cancellation of sales.** If the county treasurer shall sell any parcel of land for taxes which shall have been paid before sale he shall, on presentation to him of a receipt of the town or county treasurer showing that such taxes have been so paid, enter in a sales book, opposite the description of the property so sold, that fact that such receipt had been presented, the date of the presentation and by whom the receipt was executed. [1935 c. 167]

**74.66 Loss by officers.** All losses that may be sustained by the default of any officer of any town, city or village in the discharge of the duties imposed by this title

shall be chargeable to such town, city or village; and all losses sustained by the default of any county officer in the discharge of such duties shall be chargeable to such county; and the county board shall add all such losses to the next year's taxes of such town, city or village, or county, as the case may require.

**Note:** Word "default" in statute charging county with losses sustained by county officer's default refers to act of dishonesty. The rule that loss of trust funds, deposited by trustee in his own account in bank which fails, falls on trustee does not apply to county treasurer. He may deposit state moneys, received by him in official capacity, in any depository, regardless of ownership thereof. The county is not responsible for

moneys lost through county treasurer's lawful acts. Statute declaring personal property tax laws, not in conflict with income tax law, applicable to income taxes, does not make county responsible for state's portion of income taxes collected by county treasurer. County treasurer acts as state's agent in collecting state's portion of income taxes. *Petition of the State, 210 W 9, 245 NW 844.*

**74.67 Rights of lienholder who pays taxes.** Whenever any person having any lien upon any real estate, obtained pursuant to law, shall have paid any taxes on such real estate or shall have redeemed such real estate, when the same shall have been sold for taxes, he shall have a further lien upon such real estate as against the person under whose title he claims such first lien and all other persons then claiming under him for the amount of money so paid, with interest at eight-tenths of one per cent per month or fraction thereof, and against all other persons claiming title to such real estate under such person accruing subsequently to the time of recording the notice hereinafter specified. [*1933 c. 244 s. 2; 1937 c. 294*]

**Note:** 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*

*Wis. T. Co. v. Swenson, 222 W 331, 267 NW 307.*

Tax certificate holder may pay subsequent taxes upon land after or before delinquency and acquire thereby further lien. Under 75.01 (1), Stats. 1931, subsequent taxes paid by tax certificate holder must be repaid by owner with ten per cent interest as condition of redemption. *21 Atty. Gen. 1115.*

**74.68 Record of notice of lien.** Any person paying money as aforesaid may cause to be recorded in the office of the register of deeds of the county where the real estate is situated a notice, signed and acknowledged by him, stating the land upon which the tax or redemption money was paid and the amount of the moneys thus paid.

**74.69 Discharge of lien; rights of lienor.** The original lien, by virtue of which any person shall obtain such second lien, shall not be discharged as to the persons mentioned in section 74.67 until the money thus paid for taxes, charges, interest or redemption, with interest thereon as aforesaid, shall be first repaid. If the original lien be a mechanic's lien, or by attachment or mortgage; the amount of such second lien may be included in any judgment rendered in the suit by which such original lien shall be enforced; if it be by judgment, then upon the sale of such real estate the amount of such subsequent lien shall be paid before any surplus shall be paid to the owner of such real estate or to any such subsequent incumbrancer or claimant; and if it be by a sheriff's certificate of a sale on execution or by purchase at a mortgage foreclosure sale, then such real estate shall not be redeemed or repurchased from such sale or purchase until such second lien has been paid.

**74.695 Lienholder, acquisition of prior lien.** (1) Any person having a lien on real estate against which realty there is a prior lien may pay any or all of the items mentioned in subsection (2), and the amounts so paid shall be added to the payor's lien, bear interest from date of payment at the same rate as that borne when paid, or if no rate was provided for prior to such payment, at the legal rate of interest. All sums so paid shall be collected as a part of and in the same manner as is the lien by virtue of which said payments are made and be entitled to the same priority.

(2) The items, any or all of which may be paid under subsection (1), are as follows:

(a) Any past due or defaulted principal or interest of a prior lien.

(b) Any interest or amortized instalment due under a prior lien.

(c) Premiums and assessment on insurance policies necessary to protect the security of the lienor making such payments or of any prior lien and authorized under the terms of either such lien.

(d) Taxes or special assessments due and unpaid on any realty covered by the lien with interest, penalties and costs.

(e) Any portion of a prior lien.

(f) Any charge for improvements or any other item authorized by statutes or by the terms of any prior lien.

(3) Such payments shall be proved by the affidavit of the person making the same, his agent or attorney, giving the items paid, the dates when paid and the description of the

real estate on which the lien is claimed, shall have priority over any liens which were subsequent to the lien of the person making the payment at the date of such payments, and shall also have priority over any lien filed after such affidavit is recorded with the register of deeds of the county where the land is located. Said payments shall also be prior to any liens filed before the recording of such affidavit if such filing was made with knowledge of such payments.

(4) Said payments may be made during the period in which any lien is being enforced, or during the redemption period. An affidavit of such payments as provided in subsection (3) may be filed with the register of deeds, and a copy thereof shall be furnished by the sheriff at least five days before the expiration of the redemption period.

(5) If the lienor at the time of making such payment has an equal priority with other lienors, and the property securing such liens does not sell for a sufficient sum to pay all liens, the person making such payments shall be repaid the amounts thereof before the other equal lienors receive any share in the proceeds of such sale.

(6) The provisions of section 74.695 shall not apply to any lien in existence at the time said section takes effect.

**74.70 Lienholder may avoid tax.** Any person who is the holder of any such original lien upon any real estate shall have the same right of action that the owner of the land has to test the legality and validity of any tax, charge or assessment or tax sale, and to annul the same, and to enjoin the sale or deeding of the land on account thereof.

**74.71 Assessments may be settled for; effect of release.** Whenever any assessment has been or shall be made by the authorities of any city or village for the purpose of paying for any work done or improvement made upon any street or highway therein, the costs of which are liable to be or have been assessed against any lot or parcel of land, the owner or any person interested in any such lot or parcel of land may settle for such work or improvement with any contractor or his assigns having a claim against the same for any work done or to be done by him upon such street or highway under any contract with the authorities of such city or village; and a release, duly executed and acknowledged by such contractor or his assigns, shall be entitled to be recorded in the office of the register of deeds in the county and shall be an effectual release and discharge of all claims of such contractor or his assigns against the land described therein and against the owner thereof and the city or village which may be the contracting party for such work or improvement, but not of any claim of the city or village against such land for printing, surveying, engineering and other incidental expenses. In counties having a population of five hundred thousand or more the provisions of this section shall also apply to towns. [1931 c. 167]

**74.72 Neglect to levy taxes.** Whenever any town shall have failed to levy, collect or pay over to the county treasurer any state or county tax apportioned to and charged against such town in any year, or any part thereof, the county board of such county shall, in the next or any succeeding year, charge all such delinquent taxes and a penalty of twenty-five per cent to such delinquent town; and the county clerk shall add the same to the amount of the annual state and county tax apportioned to such town for such succeeding year.

**74.73 Recovery of illegal taxes; limitation.** (1) Any person aggrieved by the levy and collection of any unlawful tax assessed against him may file a claim therefor against the town, city, or village, whether incorporated under general law or special charter, which collected such tax in the manner prescribed by law for filing claims in other cases, and if it shall appear that the tax for which such claim was filed or any part thereof is unlawful and that all conditions prescribed by law for the recovery of illegal taxes have been complied with, the proper town board, village board, or common council of any city, whether incorporated under general law or special charter, may allow and the proper town, city, or village treasurer shall pay such person the amount of such claim found to be illegal and excessive. If any town, city, or village shall fail or refuse to allow such claim, the claimant may have and maintain an action against the same for the recovery of all money so unlawfully levied and collected of him. Every such claim shall be filed; and every action to recover any money so paid shall be brought within one year after such payment and not thereafter.

(2) In case any such town, city or village shall have paid such claim or any judgment recovered thereon after having paid over to the county treasurer the state and county tax levied and collected as part of such unlawful tax, or shall have paid any necessary expenses in defense of such action, such town, city or village shall be credited by the county treasurer, on the settlement with the proper treasurer for the taxes of the ensuing year, the whole amount of such state and county tax so paid into the county treasury and the county's and state's proportionate share of the taxable costs and expenses of suit, as the case may be, unless such claim or judgment shall be the result of an error or defect, other than an error or defect of law, caused by said town, city or village or

official thereof; and the county treasurer shall also be allowed by the state treasurer the amount of state tax so illegally collected and the state's proportionate share of such taxable costs and expenses of suit and paid in his settlement with the state treasurer next after the payment of such claim or the collection of such judgment. If any part of such unlawful tax shall have been paid over to any school district before the payment of such claim or judgment, such town shall charge the same to such district with the proportionate share of the taxable costs and expenses of suit, and the town clerk shall add the same to the taxes of such school district in the next annual tax; provided, however, that no claim shall be allowed and no action shall be maintained under the provisions of this section unless it shall appear that the plaintiff has paid more than his equitable share of such taxes.

(3) If any person shall within the time provided by law have paid an occupational tax upon any personal property, and by mistake of the assessing officer such person shall also have paid another tax assessed unlawfully against said property for state or municipal purposes during such period, such person may file a claim therefor and maintain an action for the recovery of all money so unlawfully levied and collected of him as provided in subsection (1) of this section, and every such claim shall be filed and every action to recover any money so paid shall be brought within six years after such payment and not thereafter. [1939 c. 503; 1941 c. 184]

**Note:** 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 claim for refund and commencement of action to recover such taxes within a year after payment, preserved the taxpayer's right to recover under (1). Fox Valley C. Co. v. Hortonville, 207 W 502, 242 NW 142.

Taxpayer seeking to enjoin entry of assessment had adequate remedy at law by paying tax and suing for excess. Schlitz R. Corp. v. Milwaukee, 211 W 62, 247 NW 459.

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

Under this section, where no refund has been made to individual taxpayer of taxes illegally assessed by county on property within city, city has no claim for such taxes against 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 Reassessment of plaintiff's taxes.** (1) In any action for the recovery of any money paid as and for taxes levied either upon real or personal property, or both, if upon the trial it shall appear that the assessment upon which the taxes were so paid is void, the court, before entering judgment, shall continue the action for a sufficient time to permit a reassessment of the property affected by such void assessment, and such reassessment shall thereupon be made in accordance with the provisions of law. If from such reassessment when so made it shall appear that the sum or sums paid for taxes by the plaintiff are no greater than his equitable and just share of the taxes as so reassessed, judgment shall be entered for the defendant; and if from such reassessment it shall appear that the plaintiff has paid more than his equal and just share of the taxes judgment shall be entered in his favor for the excess only over such share. The validity of the reassessment herein provided for may be attacked and determined, and subsequent reassessments may be had as provided by section 75.54; provided, that such reassessment shall in all cases be made by the assessor of the assessment district wherein the property to be reassessed is situated.

(2) If however, in any such action now pending or which may be begun hereafter the evidence enables the court to determine, with reasonable certainty, the amount of taxes which were justly chargeable against the lands involved in the action, the court, in its discretion, may proceed to judgment without staying proceedings or ordering a reassessment, if it finds that it is for the best interests of all parties to the action that it should do so.

**74.75 Assessment and collection of special taxes.** (1) FOR BRIDGES, TOWN HOUSES. Whenever the qualified electors of any town, at any legal meeting, shall have voted to raise money, for the purpose of building or repairing any bridge or town house or other special purpose, to the amount of one thousand dollars or upwards more than six months previous to the time for the completion and delivery to the town treasurer for collection

of the next regular annual tax roll of such town the supervisors of such town may, in their discretion, require the clerk of such town to make out a tax roll by copying the last regular annual tax roll of said town, excepting the taxes specified therein, and upon the roll so made out to apportion and carry out the special tax so voted to be raised. The said clerk shall attach to said roll, when completed, a warrant in the usual form, excepting that such warrant shall require the treasurer to retain and pay out as town treasurer, according to law, the whole of the taxes collected by him by virtue thereof, and to make return of said warrant, with said roll annexed, to said town clerk with his doings thereon within sixty days.

(2) **SPECIAL BOND.** The town treasurer shall execute a bond to the supervisors of the town in a sum double the amount of such tax, with sureties, to be approved by the chairman of said supervisors, conditioned that he will faithfully account for and pay over according to law all moneys that shall come into his hands as such treasurer under and by virtue of said warrant.

(3) **DUTY OF TREASURER.** The clerk shall thereupon deliver said tax roll and warrant to the treasurer; and the said treasurer shall proceed to collect the same in the same manner that general taxes are collected.

(4) **DELINQUENT TAXES, HOW COLLECTED.** If the treasurer shall be unable to collect any part of said taxes he shall return to the town clerk a list of such delinquent and uncollected taxes under oath in the usual form; and the said clerk shall add such delinquent taxes to the taxes against the same property and persons in the next regular annual tax roll of such town, and the same shall be collected in the same manner as other taxes in said annual tax roll.

**74.76 Liens of internal revenue taxes.** (1) Notices of liens for internal revenue taxes payable to the United States of America and certificates discharging such liens may be filed in the office of the register of deeds of the county or counties within which the property subject to such lien is situated.

(2) When a notice of such tax lien is filed, the register of deeds shall forthwith enter the same in an alphabetical federal tax lien index to be provided by the county board, showing on one line the name and residence of the taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax and penalty assessed. He shall file and keep all original notices so filed in numerical order in a file or files to be provided by the county board and designated federal tax lien notices.

(3) When a certificate of discharge of any tax lien, issued by the collector of internal revenue or other proper officer, is filed in the office of the register of deeds, where the original notice of lien is filed, said register of deeds shall enter the same with date of filing in said federal tax lien index on the line where the notice of the lien so discharged is entered, and permanently attach the original certificate of discharge to the original notice of lien.

(4) The register of deeds shall accept, file and record such notice without prepayment of any fee, but lawful fees shall be added to the amount of such lien and collected when satisfaction is presented for entry. Such lien shall be satisfied of record upon presentation of the collector's certificate of discharge thereof and payment of the fees.

(5) This section is passed for the purpose of authorizing the filing of notices of liens in accordance with the provisions of section 3186 of the Revised Statutes of the United States, as amended by the act of March 4, 1913, thirty-seven statutes at large, page one thousand sixteen and acts amendatory thereof. [1933 c. 180]

**74.77 Paid by municipality; lien.** (1) The council of any city and the board of any town or village may by resolution direct its treasurer to pay any tax legally assessed against the real estate of any worthy, indigent person resident therein.

(2) A copy of such resolution with a statement of the amount and date paid and description of the property, certified by the clerk of the paying municipality, may be recorded with the register of deeds of the proper county and the amount shall thereby become a lien upon such real property in favor of the paying municipality prior to any other lien than prior outstanding tax certificates or prior liens hereunder for the amount paid, with legal interest, and shall be enforceable after transfer of title of the property by sale, inheritance or will, in the manner provided by law for the enforcement of mechanic's liens.

(3) The owner of such property, his heirs, personal representatives or assigns may discharge such lien at any time by paying the amount of such lien with accrued interest to the treasurer of the proper municipality who shall execute a proper satisfaction piece which may be duly recorded with the said register of deeds.

(4) The holder of any subsequent lien may purchase such lien by payment of the amount thereof with accrued interest to the treasurer of the proper municipality who shall execute a proper assignment thereof to such payer, and on recording such assignment, such assignee shall have the same rights the assignor had.

**74.78 Recovery of taxes paid by wrong school district.** Whenever any debt or tax owing by a school district is assessed against and paid by another district, such tax plus six per cent shall be entered in the next tax roll against the taxable property in the debtor district, and when collected shall be paid to the treasurer of the district, against which the tax was so erroneously assessed.

**Note:** One school district may recover and paid to latter district. 20 Atty. Gen. from another taxes on property in former 1177. which have been erroneously assessed, levied

**74.79 Instalment tax payments.** (1) The common council of any city authorized by its charter to sell land for nonpayment of city taxes shall have power by ordinance to extend the time for payment without interest of all or a portion of the real estate taxes and special assessments of such city, except special assessments as to which no extension is allowed, for a period of time not exceeding 10 months from January 31 in one or more instalments under conditions set forth in said ordinance. If any instalment shall not be paid on the due date the city treasurer shall declare the unpaid balance to be delinquent; and such taxes and special assessments shall be collected together with interest thereon at eight-tenths of one per cent per month, or fraction thereof, from January 1 preceding. The treasurer shall, on the fifteenth day after the date that payment of the final instalment provided for in said ordinance is due, commence by public auction the sale of all tracts and lots or parcels upon which instalments of city taxes and special assessments shall remain unpaid in the same manner in which land is required to be sold for nonpayment of city taxes.

(2) The common council of such city shall have the power by ordinance to extend the time of payment without interest of a portion of all taxes and charges in the duplicate county tax roll for a period of time not exceeding 6 months from January 31 in one or more instalments; the time of payment, interest and delinquency to be the same as provided for such city instalments. [1941 c. 287]

**Note:** See 74.03, semiannual payment of taxes, and especially 74.03 (10), relative to special provisions for Milwaukee.