

CHAPTER 98

AN ACT to amend 74.11 (1), (2), (3) (intro. par.) and (c), (4), (5), (6) and (7), and 74.12 (1) and (2) of the statutes, relating to collection of tax on personal property.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 74.11 (1), (2), (3) (intro. par.) and (c), (4), (5), (6) and (7) of the statutes are amended to read:

74.11 (1) 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, *as defined in s. 990.01 (17m), or the county court* 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. *If commenced in the county court ch. 299 shall apply so far as applicable.* Such justice *or the judge of such county court* 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 on the person to whom the summons is directed in the manner and as required for the exercise of personal jurisdiction under ch. 262 in a civil action in a court of record; 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 *or judge* for 24 hours after the service of the summons, the said justice *or judge* 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) The justice *or judge* before whom such person * * * *appears* 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 *if a justice of the peace or if in county court in the manner provided in ss. 299.07 and 299.10*, 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 * * * *is* 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 * * * *is* not under arrest and * * * *fails* 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. *If the action is in county court the defendant may in like manner disqualify the county court judge and in such case another judge shall be required to at-*

tend and hold court in the matter, as provided in s. 299.05, and thereupon this section, relating to such nearest justice, shall apply to such other judge.

(3) (intro. par.) When the defendant * * * *appears or is brought before the justice or judge before whom such proceedings were commenced, or if the cause * * * has been removed to another justice, before such last-named justice, or referred to another judge, such justice or judge 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:*

(c) Whether he is justly liable for the payment of such tax or any part thereof; and if any of said questions * * * *are established in the negative the defendant shall be discharged with his costs; but if the defendant * * * refuses to answer such relevant questions as * * * are put to him or if he * * * fails 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 or judge 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) 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' or county court 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) The defendant may, within 20 days after the entry of any such judgment, appeal to the circuit court by executing and delivering to the justice or county court judge an undertaking to the town, city or village, with one or more sureties to be approved by such justice or judge, 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 or judge 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 or such county court may appeal from a judgment rendered therein; and upon taking such appeal the justice or judge shall make a like return to the circuit court as upon an appeal by the defendant.

(6) Upon filing the return of the justice or judge 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 county treasurer so to do. Upon the trial in such court either party may read as evidence the examinations taken by the justice or judge and returned by him to such court and produce such other proofs as they * * * deem necessary. The issues shall be the same as before the justice or judge; and if

upon the trial in the circuit court neither of said issues * * * *are established* in the negative, or if the defendant * * * *neglects or refuses to appear* on such trial and answer all relevant questions which * * * *are* 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 or county court judge* 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 * * * *are established* in the negative the action shall be dismissed and the defendant shall recover his costs.

(7) In case execution in any such action upon a judgment rendered upon an appeal or upon a transcript of a judgment of such *justice or judge* * * * *is 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.

SECTION 2. 74.12 (1) and (2) of the statutes are amended to read:

74.12 (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 February 28. 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 * * * that such taxes are delinquent. Such summons or warrant when issued by a justice of the peace *or county court judge* may in addition to the other methods of service provided by law in justice's court be served in the manner and as required for the exercise of personal jurisdiction under ch. 262. 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. * * *

(2) Whenever the treasurer of any town, village or city files with any justice of the peace *or county court judge* in any county an affidavit, setting forth that a certain person, naming him, owns, possesses, or is in charge of, certain personal property duly assessed in such municipality, and that such person is about to depart permanently from the municipality or state, or is about to dispose of such property, or is about to remove such property from the municipality, such *justice or judge* shall issue a warrant of attachment as provided in sub. (1). If such person has departed permanently from the municipality or state, or has disposed of such property, or has removed such property from the municipality, the personal property tax matures, and an action of debt or distress shall lie and s. 74.11 will be applicable, in the name of the municipality for its collection. Prior to filing such affidavit the treasurer shall make a demand upon such person for payment of the tax and if not collected, shall then file an affidavit under this section.

Approved June 4, 1963.