

CHAPTER 75.

LAND SOLD FOR TAXES.

75.01	Redemption from tax sale.	75.36	Deeds to county.
75.015	Condition of waiver of tax penalties.	75.365	Agreements as to delinquent taxes.
75.02	Redemption from city tax sales.	75.37	Waste on land sold; distress; claim against county or city.
75.03	Redeeming lands of minors, incompetents.	75.38	Fees for deeds and certificates.
75.04	Redemption receipt and entries.	75.39	Actions, when barred.
75.05	Disposition of redemption money.	75.40	Action, where and how brought.
75.06	Payment on lost certificates.	75.41	Complaint.
75.07	Redemption notices; publication.	75.42	Defense, answer.
75.09	Notice, how posted.	75.43	Election to receive deposit; costs.
75.10	Mistake in notice.	75.44	Release.
75.11	Compensation of printer.	75.45	Deed as evidence.
75.12	Deed, notice of application for.	75.46	Trial; defendant's interest.
75.13	Curative act.	75.47	Separate trials.
75.14	Deeds, execution of; rights under; evidence.	75.48	Effect of judgment.
75.145	Correction of description by action.	75.49	Judgment for defendant.
75.15	Deed on lost certificate.	75.50	Unknown owners, minors, incompetents.
75.16	Deed, by whom executed; form.	75.51	Action dismissed as to minors, incompetents.
75.17	Execution of deeds by city or village.	75.52	Judgment a bar, when.
75.18	New deeds in place of void ones.	75.53	Reassessment of special assessments.
75.19	Foreclosure of certificates.	75.54	Reassessment of taxes by order of court.
75.20	Limitation on actions and issue of deeds.	75.55	Application of section 75.54.
75.21	Limitation on special certificates.	75.56	Reassessment of void special assessments.
75.22	Tax sales; void; refund; immaterial errors.	75.57	Stay of proceedings; new assessment; judgment; costs.
75.23	Canceled deeds, certificates of county clerk.	75.58	Setting aside stay; continuance.
75.24	Limitation, claims under illegal deed or certificate.	75.59	Issue; condition of relief.
75.25	Reassessment for money refunded.	75.61	Tax sales.
75.26	Limitation.	75.62	Tax sales; actions to set aside.
75.27	Limitation on former owner.	75.63	Ejectment, as to public lands; conditions.
75.28	Application of section 75.27.	75.64	No jurisdiction; issue of deed postponed; deposit.
75.285	Action; condition precedent.	75.65	Special assessments for local improvements.
75.29	Actions of ejectment, when barred.	75.66	Duty of officers; action to collect tax.
75.30	Action by original owner where deed void, when barred.	75.67	Tax sales, certificates and deeds in Milwaukee city and county.
75.31	"Possession" defined.	75.68	Consideration in sale of land for non-payment of taxes.
75.32	Taxation and sale of lands held by counties.		
75.34	Sale of certificates by counties.		
75.35	Terms of sale.		

75.01 Redemption from tax sale. (1) The owner or occupant of any land sold for taxes or other person may, at any time within five years from the date of the certificate of sale, redeem the same or any part thereof or interest therein by paying to the county treasurer of the county where such land was sold, for the use of the purchaser, his heirs or assigns, the amount of the taxes for which such land was sold and all subsequent charges thereon authorized by law, or such portion thereof as the part or interest redeemed shall amount to with interest on the amount of said taxes at eight-tenths of one per cent per month or fraction thereof from January first after the tax year, and all other taxes and charges thereon imposed subsequent to such sale and paid by such purchaser or his assigns prior to such redemption, with interest thereon at said rate, vouchers or other evidence of the payment of which shall have been deposited with the county clerk or produced to such person seeking to redeem; and in all cases any such person may, in like manner, redeem any such lands or any part thereof or interest therein at any time before the tax deed executed upon such sale is recorded, and when so redeemed, such deed shall be void; provided, that when an application is made to the county treasurer to redeem from any tax sale any part or portion of any lot or parcel of land which was sold for taxes as a whole, but which is owned in severalty, said treasurer, before making a receipt for the redemption of such part or portion thereof, may ascertain by affidavits or by actual view the true proportion of taxes chargeable to the part or portion sought to be redeemed, and the amount so found shall be deemed to be the amount required for the redemption thereof. The provisions of this chapter relating to redemption, conveyance, rights of action, limitation and other proceedings shall apply to all swamp and overflowed lands which have been or may be contracted for sale by any county board.

(1m) The county board may fix the interest rate to be paid upon redemption of tax certificates held by the county, but such interest rate shall not be more than eight-tenths of one per cent per month or fraction thereof. The board may require that a given interest rate chargeable upon such redemption of such certificates shall apply only upon condition that such certificates are redeemed within a period of time fixed by the board.

(3) Nothing herein contained shall be construed to entitle any holder of a tax certificate against any land in Wisconsin to pay subsequent taxes on such land before the date of sale of such lands for any such tax; and in event such tax certificate holder shall pay such subsequent taxes he shall not be entitled to charge or recover any sum as the principal of or interest on any amount paid as taxes on any lands before such lands have been sold for such taxes. Provided that when a county owns and holds a tax certificate on any land, the county treasurer may attach to such certificate subsequent delinquent taxes without publication and sale as otherwise provided by law.

(4) Redemption of land sold for taxes may be made in partial payments of not less than ten dollars and in any multiple of five dollars. Each partial payment shall be applied first in payment of the redemption fee provided by law, then the interest accrued to the date of payment and the balance shall be applied on the principal of the tax. Interest shall be computed only on the unpaid balance of the principal. No payment of any instalment shall be made to the holder of any certificate unless such certificate is produced for the indorsement thereon of the instalment payment.

(5) The eight per cent interest rate upon tax certificates provided by sections 75.01 (1m), 75.42 (1), 75.61 (1), 75.63 (1) and 75.64, as provided by chapter 24 of the laws of 1935, shall not affect the interest rates on tax certificates issued prior to the effective date of said chapter. [1933 c. 73, 87, 146; 1933 c. 244 s. 1, 2; 1933 c. 334; 1935 c. 24; 1935 c. 477; 1937 c. 294]

Note: As to rights of the state by escheat and of the holder of a tax sale certificate, see note to sec. 3, art. IX, Const., citing State v. Gether Co., 203 W 311, 234 NW 331.

Chapter 294, Laws 1937, abolishing the two per cent penalty and changing the interest rate on delinquent taxes to eight-tenths of one per cent per month was not to have retrospective operation. *Munkwitz Realty & Inv. Co. v. Diederich Schaefer Co.*, 231 W 504, 286 NW 30.

The provision, added by amendment of 1893, that when an application is made to redeem any part of a lot or parcel the county treasurer "may ascertain, by affidavits or by actual view," the true proportion of taxes chargeable to the part sought to be redeemed, was intended to add a choice of methods rather than to take anything away from existing practices, and the word "may" as used in the clause "may ascertain, by affidavits or by actual view," is construed as permissive and not mandatory, so that a county treasurer, in accordance with established prior practice, could grant a valid redemption of a part of a lot on the basis of information supplied by the assessor or the clerk of the local municipal units as to the true proportion of taxes chargeable to the part sought to be redeemed. *State ex rel. Dorst v. Sommers*, 234 W 302, 291 NW 523.

The distinction between general property taxes and special assessments ceases after the tax sale at least so far as redemption from the tax sale is concerned, and (1), although mentioning only land sold for "taxes," applies to partial redemption of property sold for special assessments as well as that sold for general taxes. *State ex rel. Dorst v. Sommers*, 234 W 302, 291 NW 523.

In that part of (1) providing that on an application to redeem any part of a lot or parcel which was sold for taxes as a whole, but which is "owned in severalty," the term "owned in severalty" refers to single ownership, so as to permit a person who is the sole owner of a lot to redeem a part thereof, as against the contention that the quoted term refers to ownership by more than one person. *State ex rel. Dorst v. Sommers*, 234 W 302, 291 NW 523.

The essence of the partial-redemption plan is that on the payment of a just proportion of the tax lien the part of the property thereby redeemed will revert to the owner free of the tax lien, and the lien remaining must be collected out of the remaining property. *State ex rel. Dorst v. Sommers*, 234 W 302, 291 NW 523.

In 75.01 (1) the term "owned in severalty" means held by one person in his own right only, and hence a determination made by the county treasurer, where the land in question was originally owned by tenants in common, and other persons, in addition to the applicant for partial redemption, were by reason of voluntary partition and purchases owners

of portions, was unauthorized and void. And such a determination by the county treasurer, without giving due notice of the application therefor and affording an opportunity to be heard to all who, as owners of any part or interest in the land, would be directly affected by such determination, would be invalid as a denial of due process of law. *State ex rel. Anderton v. Sommers*, 242 W 484, 8 NW (2d) 263.

Money received by county treasurer in redemption of tax certificates held by a bank must be paid in full to banking department in charge of liquidating bank, notwithstanding county funds are on deposit in defunct bank. 20 Atty. Gen. 837.

Chapter 244, Laws 1933 applies to all redemptions to be made after passage of act and is not unconstitutional impairment of contracts. 22 Atty. Gen. 571.

County board may waive most of redemption interest on any tax certificates held by it but county cannot accept less than face value of tax certificate. Some redemption interest must be charged, but rate thereof may be fixed very low. 23 Atty. Gen. 529, 24 Atty. Gen. 32.

Rights of landowner and holder of tax certificate in case where county has waived penalty and interest on certificate discussed. 24 Atty. Gen. 86.

When owner redeems land sold for taxes holder of certificates is entitled to taxes paid plus interest and sums allowed by 75.12 (2) for notices served. Certificate holder cannot recover attorney's fees. 24 Atty. Gen. 527.

Under (4) county treasurer may accept part payments on delinquent taxes from owners of land after sale and issuance of tax certificates to county. If land is not redeemed by owner tax certificates may be sold to person other than owner who has made some partial payments. 24 Atty. Gen. 566.

1933, subsequently paid into general fund Redemption moneys, under 75.01, Stats. 1933, subsequently paid into general fund pursuant to 75.05, do not belong to county but are held by county for use of certificate holder. 25 Atty. Gen. 19.

Single tax certificate containing several lots should be divided to permit redemption of individual lots. 25 Atty. Gen. 546.

Subsection (1), providing for apportionment of delinquent taxes upon application for redemption, applies only where property is owned in severalty. 26 Atty. Gen. 537.

Section 75.01 (1m), Stats. 1935, is not repealed by chapter 294, Laws 1937, but subsequent to June 27, 1937, flat interest rate prescribed by chapter 294 applies. 27 Atty. Gen. 6.

County treasurer has no duty to notify holder of tax certificate that such certificate has been redeemed except as such notice is conveyed in tax redemption notice. Neither county nor county treasurer is liable to holder of tax certificate for interest on redemp-

tion money from time of redemption. 27 Atty. Gen. 691.

Under (1m) resolution of county board authorizing county treasurer to accept original amount of tax plus expenses of sale and interest at one per cent per annum, all penalties being waived, in full of county-owned tax sale certificates is invalid. 27 Atty. Gen. 749.

Property owner seeking to redeem tax certificate is not required by (1) to pay subsequent certificates of sale held by owner of certificate. 30 Atty. Gen. 184.

Last sentence of 75.01 (2), Stats. 1939, as

added by ch. 503, Laws 1939, is applicable and valid as applied to reduction in valuation under said subsection taken after it went into effect but in reference to taxes assessed and returned delinquent prior thereto. 30 Atty. Gen. 253.

Resolution of county board fixing interest rate payable upon delinquent taxes and certificates of sale of tax year 1940 is invalid as beyond power of county. 30 Atty. Gen. 259.

Under (1) interest is computed to end of calendar month in which payment is made, even though payment is made during month and before end thereof. 30 Atty. Gen. 316.

75.015 Condition of waiver of tax penalties. Beginning with the 1937 levy, no county shall waive interest and penalties on delinquent taxes which have accrued during the two-year period following delinquency but may waive interest and penalties on delinquent taxes accruing after such two-year period. [1937 c. 172]

75.02 Redemption from city tax sales. (1) The owner or occupant of any land sold for city taxes by the city treasurer of any city in this state, or any other person, may at any time within five years from the date of the certificate of sale, redeem the same, or any undivided interest therein, by paying to the city treasurer of the city where such land was sold, for the use of the purchaser, his heirs or assigns, the amount of the taxes for which such land was sold, and all subsequent charges thereon authorized by law, or such portion thereof as the interest redeemed shall amount to, with interest on the amount of the taxes at eight-tenths of one per cent per month or fraction thereof from January first after the tax year, and all other taxes and charges thereon imposed subsequent to such sale and paid by such purchaser, or his assigns prior to such redemption, with interest thereon at said rate; and in all cases any such person may in like manner, redeem any such lands, or undivided interest therein at any time before the tax deed executed upon such sale is recorded; but when so redeemed such deed shall be void.

(3) All acts or parts of acts, including the provisions of any city charter, which are contrary to the provisions of this section are repealed. [1933 c. 73; 1933 c. 244 s. 2; 1935 c. 24; 1937 c. 294]

75.03 Redeeming lands of minors, incompetents. (1) The lands of minors or any interest they may have acquired in lands prior to or after the sale of said lands sold for taxes may be redeemed at any time before such minors come of age and during one year thereafter if such lands were not sold for nonpayment of taxes for five or more consecutive years prior to or after such acquisition; but no such redemption shall be construed as redeeming the interest of any other person in such lands. And the lands of idiots and insane persons so sold or any interest they may have in the same which they acquired prior to such sale and which were not sold for nonpayment of taxes for five or more consecutive years prior to or after such acquisition, may be redeemed at any time during disability and during one year thereafter, and such redemption shall, in all the cases herein mentioned, be made in the manner provided in the preceding section. The heirs of any such minor who shall die after his title to such lands shall accrue and before the expiration of the time when, if he had lived, he might have redeemed the same, may also, if minors, redeem the interest of such minor in such lands within the time in which such minor could, if living, have redeemed the same; and if not minors they may redeem within one year from the time their title so accrues and within the time in which such minor could, if living, have redeemed the same.

(2) The redemption of lands or any interest therein of minors, idiots or insane persons, which they acquired prior or subsequent to the date of sale of the lands and which lands were sold for nonpayment of taxes for five or more consecutive years, prior to or after such acquisition, shall be made in the manner provided in section 75.01 or 75.02.

(3) When the purchaser of such lands at tax sale or the owner of tax certificates thereon is the owner and holder of all of the delinquent tax certificates issued upon tax sales for five or more consecutive years, and the time for issuance of a deed upon any of such certificates has not expired and the aggregate amount of such certificates with interest, fees and penalties exceeds the assessed value of such lands, the owner and holder of such certificates may foreclose by action pursuant to section 75.19. In such action the minor, idiot or insane person must appear by guardian ad litem as provided by law, and his guardian, if he has one, shall be joined as a party defendant. [1939 c. 453]

75.04 Redemption receipt and entries. Upon the redemption of any lands sold for taxes by payment to the county treasurer, such treasurer shall execute to the person so redeeming a receipt specifying therein the name of the purchaser, the land redeemed and the amount of the redemption money paid on each parcel separately; and such treasurer shall also enter on the sale list kept by him the name of the person redeeming, the sum paid therefor, and the time when paid; but the county treasurer shall not be required to

include in the same receipt of redemption lands sold in different years. [1935 c. 167; 1937 c. 294]

75.05 Disposition of redemption money. All tax certificate redemption money shall, after the expiration of six years from the date of such redemption of the property, become a part of the general fund and be disbursed as other moneys belonging thereto. The legal holder of any tax sale certificate which has been redeemed may thereafter present the same to the county treasurer who shall pay to such person the amount paid upon such redemption. [1935 c. 167]

75.06 Payment on lost certificates. Whenever any person claiming to be the owner of any certificate given by the county treasurer for lands sold for taxes shall have lost the same, or the same shall be wrongfully detained from him and the land therein described shall have been redeemed, he may exhibit to the county treasurer evidence of such ownership, loss or detention; and upon his making it satisfactorily appear to such treasurer that he is such owner and that the same is lost or wrongfully detained, and executing to such treasurer a bond with sufficient sureties, to be approved by the treasurer, conditioned that he will refund such redemption money, with eight per cent interest thereon if any other person shall thereafter show his right thereto, such treasurer shall pay such redemption money to such person. [1933 c. 244 s. 2; 1935 c. 167]

75.07 Redemption notices; publication. (1) Each county treasurer shall, at least six and not more than ten months before the expiration of the time limited for redeeming lands sold as aforesaid, cause to be published once a week for two successive weeks in a newspaper printed in the county in which said lands are located, a list of all unredeemed lands, specifying each tract or lot, the name of the person to whom assessed, if to any, and the amount of taxes, charges and interest, calculated to the last day of redemption, due on each parcel, together with a notice that unless such lands be redeemed on or before the day limited therefor, specifying the same, they will be conveyed to the purchaser; but it shall not be lawful for any such treasurer to publish any such list and notice in any newspaper in which the county treasurer is prohibited from publishing the list and notice he is required by section 74.33 to cause to be published. The county treasurer, for the purpose of such list, may condense such descriptions when such condensed description will reasonably describe the premises.

(2) Before publishing such list such treasurer shall carefully compare the county treasurer's advertised list of lands to be sold for delinquent taxes with such treasurer's list of the same lands in his book of sales, and if upon such examination there be found any omission or erroneous description in said list, such parcel of land in the description of which the omission or error shall occur shall not be advertised for redemption, but he shall cancel the certificate of sale of said parcel and shall readvertise and sell the same at the next ensuing sale of land for unpaid taxes; provided, however, that if the number of the descriptions in the lists of lands to be advertised for redemption by the county treasurer shall exceed three thousand, he shall then 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 printed as aforesaid, at least ten days prior to the time at which such contract shall be let; and any county treasurer who shall wilfully refuse or neglect to perform any duty required by this section or who shall keep back and not report any unredeemed lands for the purpose of evading its provisions shall forfeit the full amount of the penalty of his official bond, one-half of which, when collected, shall be paid to the person prosecuting therefor and the residue into the treasury of the county for the use of the school fund; provided further, that no county treasurer shall be liable to any penalty for causing such publication to be made in a weekly newspaper published in such county for the length of time hereinbefore named prior to the date of his notice, when by reason of accident or other cause more than one week has intervened between the dates of the actual issue of such newspaper to subscribers, if such delay at any one time shall not have exceeded three days; but every such newspaper, for the purpose of this section shall be deemed to have been regularly published once in each week as hereinbefore provided. [1933 c. 306]

Note: 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.

County treasurer is required to publish notice of expiration of redemption period of special assessments, pursuant to (1), notwithstanding county has title to land under previous tax deed. 29 Atty. Gen. 146.

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

75.09 Notice, how posted. If no newspaper be published in such county the county treasurer shall also, at least three months previous to the time limited for the redemption of any lands sold for taxes, cause to be posted up copies of the list and notice specified

in the preceding section in at least four public places in his county, one of which copies shall be posted up in some conspicuous place in his office.

75.10 Mistake in notice. Whenever, by mistake or otherwise, such treasurer neglects or fails to include in his published list any such tract or tracts of land or to publish such list in accordance with the requirements of law, the same may be published at any time within two years after the expiration of said five years; such publication shall be made in the same manner and for the same time as prescribed in the preceding sections, and such treasurer shall specify in his notice accompanying such published list when the time for making redemption of such lands from such sale will expire, which time shall not be less than six nor more than ten months from the expiration of the full two weeks required for the aforesaid publication; and all deeds made upon such tracts of land after the expiration of said five years, shall after the expiration of such extended period of redemption, be as valid and effectual as if such publication had been made at the time required in such section. [1933 c. 244 s. 2; 1933 c. 306; 1933 c. 450 s. 6]

75.11 Compensation of printer. (1) The printer who shall publish the list and notice of the time when the redemption of land sold for the nonpayment of taxes will expire shall receive for all the insertions not to exceed twenty cents for each lot or tract of land in such list not exceeding one thousand, and ten cents for each lot or tract of land in such list exceeding one thousand, except that when the same is published under contract, as provided by law, 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]

75.12 Deed, notice of application for. (1) No tax deed shall be issued on any lot or tract of land which has been or shall hereafter be sold for the nonpayment of taxes, unless a written notice of application for tax deed shall have been served upon the owner, or one of the owners of record in the office of register of deeds of the county wherein the land is situated. If such lot or tract be improved by a dwelling house, or building used for business purposes, or a building used for agricultural purposes, and in any of said cases, such building has been actually occupied for the purpose specified for 30 days immediately prior to the date of service of the notice of application for tax deed, or if such lot or tract of land has been occupied and cultivated for agricultural purposes for 30 days within the period of 6 months immediately prior to the date of service of the notice of application for the tax deed, then notice of application for tax deed shall be served upon the occupant or one of the occupants thereof. If the records of the office of register of deeds in the county where such land is situated show that such lot or tract of land is incumbered by an unsatisfied mortgage or mortgages, such notice of application for tax deed shall be served upon at least one of the mortgagees in each such mortgage, or upon the last assignee or one of the last assignees of each such mortgage, if the assignment is recorded.

(2) Such notice shall state the name of the owner and holder of the tax sale certificate, and the date thereof, the description of the lands involved, the amount for which the lands were sold and that such amount will bear interest as provided by law, and shall give notice that after the expiration of 3 months from the date of service of such notice a tax deed will be applied for. Every notice served upon an occupant shall contain a statement of the language of section 234.18. The owner and holder of such tax sale certificate may include in said notice all the certificates he holds upon the same tract of land as to which certificates more than 5 years from the date of each has elapsed.

(3) Such notice of application for tax deed may be served by the owner and holder of any tax sale certificates sold by any county treasurer or by any city treasurer authorized by law to sell lands for nonpayment of city taxes or assessments, or by any person acting for such owner and holder. Such notice shall be served in the manner that service of a summons in a court of record is made, or by registered mail, with return receipt of the addressee only demanded. In the event that such notice cannot be given by use of either of the foregoing methods, the owner and holder of said tax sale certificate or his authorized agent shall make an affidavit setting forth the effort to make such service, the inability to do so, and shall file such affidavit with the county clerk as to county tax sale certificates, or in cities authorized by law to sell lands for nonpayment of city taxes or assessments with the city treasurer as to such city tax sale certificates. Thereupon the notice hereinabove provided shall be published by such owner and holder once a week for 3 successive weeks in a newspaper of general circulation published in the county wherein such lands are located, or if there be none then in a newspaper published in an adjoining county. If there is no newspaper in the same or an adjoining county then such notice shall be published in the official state paper. The affidavit of the owner and holder of the tax

sale certificate, together with proof of publication of the notice, shall be deemed completed service of the notice of application for tax deed.

(4) At the time application for tax deed is made to the officer authorized by law to issue the same, but before such deed shall be issued, proof of service, or the returned registered mail receipt, or proof of publication shall be filed with such officer, and a copy of such proof of service, returned registered mail receipt, or proof of publication with evidence of the cost thereof shall be filed with the county treasurer as to county tax sale certificates and with such city treasurer as to city tax sale certificates. After such copies shall have been filed with the county treasurer or with such treasurer it shall be necessary to pay, in order to redeem such lot or tract of land, or any part or interest therein, in addition to the redemption value of the tax sale certificates, the sum of \$1 for each person served with such notice plus the cost of publication of the notice, if any. If there is no occupant of such lands as hereinbefore defined, the applicant for tax deed shall file an affidavit to that effect with the officer authorized by law to issue the tax deed.

(5) The grantee in any tax deed, his heirs or assigns, shall never recover or be entitled to receive from any county or city of the first class the amount due on any tax sale certificate or certificates upon which such deed is issued, or any part thereof, if such deed be set aside or declared void solely upon the ground that the notice required by this section was not duly served or that the proof of such service was insufficient, or that the affidavit as to nonoccupancy was not duly made or was insufficient.

(6) No tax deed shall be taken upon any notice of application therefor after 6 months from the last date of service of such notice.

(7) This section shall supersede all provisions of law, including the provisions of any city charter, which are in conflict with it. [1931 c. 449; 1935 c. 167; 1939 c. 284, 485; 1943 s. 250; 1943 c. 552 s. 17a]

Note: Under (1) the acts of dominion must be adapted to the particular land, its condition, locality, and appropriate use; the evidence in an action to set aside a tax deed is held sufficient to support the conclusion that the land was occupied for such purposes as its character permitted, but insufficient to sustain a finding that notice was served on the occupant as required by the statute. *Bebb v. McGowan*, 208 W 400, 243 NW 460.

Where the defendants after conveying lands with reservation of flowage rights maintained a dam across a river so that a portion of the lands so conveyed and also described in a tax deed were flooded and other portions were affected by seepage, the occupancy of the defendants was of such a character as to require the service of a notice of application for a tax deed. *Shemick v. Menominee River Boom Co.*, 227 W 190, 278 NW 465.

The use for which land is adaptable is the only use that need be made by the owner to entitle him to the statutory notice before issuance of a tax deed. *Klug v. Soldner*, 228 W 348, 280 NW 350.

The purpose in requiring notice to be served on the occupant or person in possession of land before the taking of a tax deed thereon, is to make it possible for the owner

or the occupant to redeem the premises from the tax lien. The words "actual occupancy" are used in opposition to the term "constructive occupancy" or possession. *Clouse v. Ruplinger*, 233 W 626, 290 NW 133.

Provisions of (1) requiring service of notice of intention to apply for tax deed upon plaintiff or his attorney in mortgage foreclosure action where plaintiff has filed copy of lis pendens with county clerk, do not apply after confirmation of foreclosure sale and issuance of sheriff's deed. 24 Atty. Gen. 293.

Whether premises are occupied so as to require serving of notice under (1) is question of fact in each case. 24 Atty. Gen. 499.

Under (2) no tax deed shall be issued except upon proof of service as shown by affidavit filed with officer who issues tax deed and duplicate of affidavit filed with county clerk. 24 Atty. Gen. 543.

Service on owner of land whose address is unknown may be by publication; affidavit should be filed as in last sentence of (1). 25 Atty. Gen. 32.

Notice of application for tax deed given by county during its ownership of certificate subsequently sold is substantial compliance with this section, so purchaser of certificate may be issued tax deed. 28 Atty. Gen. 443.

75.13 Curative act. If a proper affidavit of service of notice of land sold for taxes or a proper proof of nonoccupancy, in due form, as provided in section 75.12, has heretofore been filed either with the county clerk or with the county treasurer, the fact that such affidavit of service of notice or affidavit of nonoccupancy or such proof has not been otherwise filed shall not, after six months after the passage and publication hereof, be alleged or raised in any action or proceeding attacking or questioning the title of the person claiming an interest in said land growing out of the certificate of sale set forth in such notice or proof.

75.14 Deeds, execution of; rights under; evidence. (1) If any land sold for nonpayment of taxes shall not be redeemed as aforesaid the city or village treasurer or county clerk shall, after the expiration of the time prescribed by law for the redemption thereof, on presentation to him of the certificate of such sale and proof of service of notice, execute in the name of the state and of his city, village or county, as such officer thereof, under his hand and the seal of the city, village or county, to the purchaser, his heirs or assigns, a deed of the land so remaining unredeemed, and shall acknowledge the same which shall vest in the grantee an absolute estate in fee simple in such land subject, however, to all unpaid taxes and charges which are a lien thereon and to recorded restrictions and redemption as provided in this chapter; and such deed duly witnessed and acknowledged shall be presumptive evidence of the regularity of all the proceedings, from the valuation

of the land by the assessor up to and including the execution of the deed, and may be recorded with the like effect as other conveyances of land.

(2) The county clerk shall not issue a deed of any parcel of land until by carefully comparing the advertised sale list of lands for unpaid taxes and the advertised list of the same for redemption with the treasurer's list of said lands in his book of sales he shall find that the description of such parcel of land so to be conveyed has been correctly and fully published, both in such advertised list of sales and redemptions; and if upon such examination the county clerk shall find any error or omission in any such advertised description he shall enter opposite the description of said land in his book of sales a statement of the fact of such error or omission; and the county board shall in all such cases cause such certificate to be canceled and direct the county treasurer to correct the description thereof and readvertise and sell the same at the next ensuing sale of lands for unpaid taxes.

(3) Whenever an application for a tax deed is made pursuant to law to the county clerk of any county having a population of five hundred thousand or more inhabitants, such county clerk before issuing any such tax deed conveying title to the lands or parts of lands described in such application shall require the applicant or applicants, excepting such county and any city authorized by law to sell its own delinquent taxes or assessments at public auction, to produce and submit proof, showing that all unredeemed delinquent general or special tax certificates of a tax levy year the same or prior to the tax levy year of the tax certificate on which such applicant is applying for a tax deed upon taxes or assessments theretofore assessed and levied against such lands or parts of lands by any city located in such county and by law authorized to sell its own delinquent taxes or assessments at public auction, upon which the time limitations of section 75.20 shall not have expired, have been purchased by and the tax certificates therefor assigned to the applicant for such tax deed or purchased by and assigned to some other person. Whenever an application for a tax deed is made pursuant to law to the city treasurer of any city within such county authorized by law to sell lands for the nonpayment of city taxes or assessments, such city treasurer before issuing any such tax deed conveying title to the lands or parts of lands described in such application shall require the applicant or applicants, excepting such city or the county within which such city is located, to produce and submit proof, showing that all unredeemed delinquent general or special state and county tax or county special assessment tax sale certificates of a tax levy year the same or prior to the tax levy year of the tax certificate on which such applicant is applying for a tax deed upon taxes or assessments theretofore assessed and levied against such lands or parts of lands by said county, upon which the time limitations of section 75.20 shall not have expired, have been purchased by and the tax certificates therefor assigned to the applicant for such tax deed or purchased by and assigned to some other person.

(4) Whenever a deed in the chain of title shall contain valid and enforceable restrictions and covenants running with the land, as hereinafter defined and limited, said restrictions and covenants shall survive and be enforceable after the issuance of a tax deed or a deed upon foreclosure of tax certificate to the same extent that they would be enforceable against a voluntary grantee of the owner of the title immediately prior to the delivery of the tax deed. This subsection shall apply to the usual restrictions and covenants limiting the use of property, the type, character and location of building, the character, race or nationality of owners, covenants against nuisances and what the former parties deemed to be undesirable conditions, in, upon and about the property, covenants to contribute to the cost of maintaining private roads, and other similar restrictions and covenants; but this subsection shall not protect covenants creating any debt or lien against or upon the property, or that will require the grantee to expend money for any purpose, except such as may require said grantee to keep the premises in sanitary or slightly condition, contribute to the cost of maintaining private roads, or to abate nuisances or undesirable conditions. Provided that while any county is the owner of lands so acquired it shall not be required to expend any money to keep the premises in sanitary or slightly condition or to contribute to the cost of maintaining private roads or to abate nuisances or undesirable conditions, but its successors in title shall be subject thereto and to covenants and restrictions as provided in this section. Any rights the former owner had to enforce the restrictions and covenants to which this subsection is applicable against the grantor and other parties owning property subject to such restrictions and covenants, except forfeitures, right of reentry, or reverter, shall likewise survive to the grantee in said tax deed or deed upon foreclosure of tax certificate, and to his or its heirs, successors and assigns. [1931 c. 177; 1939 c. 20, 388; 1943 c. 539]

Note: Tax deeds issued in the year 1913 are validated by Laws 1913 c. 773 s. 117.

The redemption of land sold for taxes is not a payment of the tax, even if the land is acquired by the state or a municipality

on such sale, the tax having been canceled by the sale. *Perles v. Milwaukee*, 213 W 232, 251 NW 255.

Under statutory provisions relating thereto, a tax deed (including tax deeds executed

in 1872 and 1873) fair upon its face is at least prima facie a marketable title unless some irregularity, rendering it unmarketable, is shown. *Haumersen v. Sladky*, 220 W 91, 264 NW 653.

The husband of an owner who purchases at a tax sale is deemed to have acted for his wife, and a tax deed issued to him on the sale does not cut off the lien of a prior mortgage, and the taking of a tax deed by the husband of a co-owner under an agreement to purchase for the benefit of his wife and her co-owners does not cut off the lien of a pre-existing mortgage. *Bankers Farm M. Co. v. Christofferson*, 221 W 148, 266 NW 220.

Where the city took a deed on a tax certificate and the county claimed a lien against the land as owner of a county tax certificate for unpaid county state taxes levied for the same year as those for which the city taxes were levied but which were purchased by the county prior to the date of the city tax certificate, the county's interest in the realty was cut off by the tax deed issued to the city. *Milwaukee v. Roberts*, 229 W 325, 282 NW 21.

Under the definition of "real property" or "land" for purposes of taxation in 70.03 flowage rights of the owner of a developed water power in lands of another "appertained" to, and were to be valued and assessed under 70.12, 70.17 and 70.32 (1), with the dominant estate or the lands on which the dam was constructed, not the servient estate or the lands overflowed, and a tax deed of the lands overflowed did not operate to extinguish such flowage rights, which were duly recorded, but the tax deed grantee took subject thereto, although the lands overflowed had been assessed and the tax deed issued without referring to the flowage rights. *Union Falls Power Co. v. Marinette County*, 238 W 134, 298 NW 598.

Where land located in a town is returned for delinquent taxes and the county purchases the land on the tax sale and takes a tax deed, the county takes an absolute title in fee simple and it does not hold as a trustee charged with a duty to sell the land, but its duty, under 75.36, is only to account to the town for the town's share of the delinquent taxes when a sale of the land is made, and the matter of when a sale shall be made is left to the discretion of the county, which discretion is a legislative discretion, and not a legal discretion which can be controlled by the courts. *Remington v. Wood County*, 238 W 172, 298 NW 591.

75.145 Correction of description by action. Any tax deed issued by a county containing an incomplete, indefinite or incorrect real estate description, and which description follows that set forth in the tax certificate upon which such tax deed issued, may be corrected in an action brought in the circuit court in the same manner as actions for the reformation of instruments. Such deed so corrected shall be valid as of the date of the first issue. [1937 c. 237]

75.15 Deed on lost certificate. Whenever any certificate given by the county treasurer for lands sold for taxes shall be lost or wrongfully withheld from the owner and such land shall not have been redeemed the county board may receive evidence of such loss or wrongful detention, and on satisfactory proof of the fact may cause a deed as aforesaid to be executed to such person as may appear to them to be the rightful owner of such certificate of the lands described therein; but no such deed, if wrongfully or improperly granted, shall be binding on the county in respect to any of its covenants, nor shall it vest any right, title or interest in the grantee or his assigns.

75.16 Deed, by whom executed; form. All deeds of lands sold for the nonpayment of taxes hereafter executed shall be executed by the proper officer authorized by law to execute the same in the name of the state of Wisconsin, and of the proper county, city or village as the grantors therein, and shall be substantially in the following or other equivalent form:

To all to whom these presents shall come, greeting:

Whereas, (or assignee of) has deposited in the office of the county clerk of the county of , in the state of Wisconsin, a certificate (or certificates) of the (here name the officer making the sale) of said county, whereby it appears, as the fact is, that the following described piece (or pieces) or parcel (or parcels) of land lying and being situated in the county of , to wit: (Here describe the lands) was (or were) for the nonpayment of taxes, sold by the (here name the officer making the sale) at public

* A tax deed is an independent source of title, and whatever may be the effect of a restriction in deeds of private persons against sale, to anyone not a member of the Caucasian race, on a grantee holding under a title stemming from the original grantor who imposed the restriction, such restriction can have no effect to defeat the title of one to whom the state may sell for failure to pay taxes, since the state may sell at tax sale to whomsoever may bid, and the bidder will take whatever was assessed. *Doherty v. Rice*, 240 W 389, 3 NW (2d) 734.

A tax deed passes the title of the deeded land subject to all easements to which the land is subjected. The value of an easement is in the dominant estate and assessable therewith and not as a part of the servient estate, and if the easement were cut off by a tax sale of the servient estate the owner of the dominant estate would be deprived of his property without due process. *Doherty v. Rice*, 240 W 389, 3 NW (2d) 734.

A tenant of a mortgagor, by purchasing tax certificates outstanding against the mortgaged premises and taking a tax deed thereon, acquired a tax title as against the mortgagor landlord, and as against the mortgagee who bid in the premises on foreclosure of the mortgage, there being no duty on the part of the tenant to pay the taxes and no facts tending to establish fraud or any breach of duty on his part. *Keller v. Friedrichs*, 241 W 8, 4 NW (2d) 169.

A judgment setting aside a tax deed to a cotenant, on the ground that a cotenant cannot by taking a tax deed affect the legal title of his cotenants, although res adjudicata as to the title, had no effect or bearing on the rights of a good-faith grantee of the tax-deed grantee by virtue of improvements made on the land, where such rights were not determined nor in issue in the action to set aside the tax deed. *Kubina v. Nichols*, 241 W 644, 6 NW (2d) 657.

Person holding tax certificate on land for taxes of 1926 is entitled to a tax deed on such certificate, although tax deed has already been issued on tax certificate for taxes of 1927. 20 Atty. Gen. 409.

County board has no power to prescribe that tax deeds shall contain provisions restricting cutting of timber on property thereby conveyed. 27 Atty. Gen. 106. [But see chapter 274, Laws 1939, amending 75.35, as to quit claim deeds by county.]

auction at , in the county of , on the day of , in the year of our Lord one thousand nine hundred and , to the said for the sum of dollars and cents, in the whole, which sum was the amount of taxes assessed and due and unpaid on said tract (or several tracts) of land, together with the costs and charges of such sale due therewith at the time of making such sale, the whole of which sum of money has been paid by the aforesaid purchaser (or purchasers); and whereas it further appears, as the fact is, that the owner (or owners) or claimant (or claimants) of said land has (or have) not redeemed from said sale the lands which were sold as aforesaid, and said lands are now unredeemed from such sale, whereby said described lands have become forfeited and the said purchaser, his (her or their) heirs or assigns is (or are) entitled to a conveyance thereof:

Now, therefore, know all men by these presents that the county of , in said state, and the state of Wisconsin, in consideration of the said money aforesaid and the premises, and in conformity to law, have given and hereby do give, grant and convey the tract (or several tracts) of land above described, together with the hereditaments and appurtenances, to the said and to his (or her or their) heirs and assigns, to their sole use and benefit forever.

In testimony whereof, I,, the (here designate the officer) of the county of , have executed this deed pursuant to and in virtue of the authority in me vested by the statutes of the state of Wisconsin, and for and on behalf of said state and the county of aforesaid, and have hereunto subscribed my name officially and affixed the seal of the said (name it), at in said county of , this day of , in the year of our Lord one thousand nine hundred and

[L. s.]

A. B.

(Here give official designation.)

Done in presence of

.
.

75.17 Execution of deeds by city or village. In all cases hereafter of conveyance of land for nonpayment of taxes due to any incorporated city or village in this state, under the provisions of the act or acts authorizing such city or village to assess and collect taxes, the deed executed shall conform as near as may be to the above form; shall be executed in the name of the state of Wisconsin and in the corporate name of such city or village as grantor, and shall be sealed with the corporate seal of such city or village.

75.18 New deeds in place of void ones. When any deed or instrument in writing intended to be a deed shall have been made for the nonpayment of taxes no other deed shall be issued or made therefor to any person except upon the following conditions: If such taxes shall remain unpaid and such deed shall be void for noncompliance with section 75.12, or informal and insufficient, and the grantee therein named, his heirs or assigns shall, within three years after the recording thereof and before any other deed upon a subsequent sale of the same land for the nonpayment of taxes shall have been issued to some other person, present such void, informal or insufficient deed or a certified copy of the record thereof together with sufficient proof that he is such grantee, heir or assignee, and that he has not conveyed such land the proper county clerk or other proper officer shall execute to such grantee, his heir or assignee another deed of said land which shall recite the fact of the issuing of such void, informal or insufficient deed, with a statement of the volume and page wherein recorded and that the taxes on account of the nonpayment of which it was issued remain unpaid; and such deed duly acknowledged and recorded shall be presumptive evidence of title to the land therein described; but no such new deed shall be issued until notice of the application therefor shall be published in a newspaper printed in the county wherein such lands are situated or until personal service of such notice upon all persons interested in such lands, at least thirty days before such deed shall be issued; and the issuing of such new deed shall not extend in favor of the grantee therein, or his heirs or assignees the limitation which would have begun to run against him on such first deed if it had not been void, informal or insufficient.

75.19 Foreclosure of certificates. The holder of any tax certificate may, at his option, in lieu of taking a tax deed, at any time after five years from the date of such certificate, and before he would be debarred from demanding a tax deed thereon, foreclose the same by action as in a case of a mortgage upon real estate; and all the laws and rules of practice relating to the foreclosure of mortgages, as to the persons necessary and proper to be made parties, as to pleading and evidence, the judgment of foreclosure and sale thereunder, the right of the plaintiff to be subrogated to the benefit of all liens upon the premises by him necessarily satisfied in order to save the lien of his certificate, the right of the defendants or any of them, to redeem the premises at any time before sale,

and as to costs and disbursements, including the necessary expenses for an abstract of title, shall, so far as they are applicable, prevail in such actions; provided, that when costs are allowed to the plaintiff, such costs, exclusive of disbursements, shall be discretionary with the court, but shall not exceed the amount of the face of the certificate or certificates embraced in such action, and such costs when allowed, shall be an additional lien upon the property described in such certificates, provided further, that the defendant may in all cases within the time limited by law for answering the complaint, execute and deliver to the plaintiff or his attorney a quitclaim deed of the lands described in the complaint, conveying all the right, title and interest of such defendant at the time of the commencement of the suit; or may, within such time, either after having delivered such deed or without such delivery, answer disclaiming any title to the lands in question at the time of the commencement of the suit, in either of which cases the plaintiff shall not recover costs personally against any such defendant who quitclaims as aforesaid or who shall establish such disclaimer upon the trial of such action. The plaintiff in such action, may include in one action, all the certificates he holds upon the same tract of land; and the sale in such actions shall be conducted, certificates thereon made and filed, the report made and confirmed and a deed thereon executed and delivered, in like manner and with like effect as in case of actions for foreclosure of mortgages; but a foreclosure and sale under the provisions of this section, shall not limit or in any manner affect the right of redemption by a minor, idiot or insane person, as provided in section 75.03. [1933 c. 244 s. 2]

Note: A warehouse company which was located on railroad property, and which had been erroneously assessed for taxes under 78.16 and had paid the amount into the state treasury, was not relieved from the foreclosure of tax certificates for taxes locally and rightfully assessed and levied by the city of Milwaukee; and the warehouse company

was not entitled to any credit against the taxes locally assessed, in the absence of any showing that some portion of the taxes erroneously paid into the state treasury had been remitted to the city. *Milwaukee v. Chicago, M., St. P. & P. R. Co.*, 223 W 73, 269 NW 688.

75.20 Limitation on actions and issue of deeds. Except as to certificates owned by counties and municipal corporations, from and after 6 years from the day of sale of any lands or lots heretofore or hereafter sold for the nonpayment of taxes by any officer of any county, or city of the first class no deed shall be issued on the certificate or certificates issued on such sale and no action shall be commenced thereon; but such limitation shall not apply to certificates issued to and owned by counties or municipal corporations or to their assigns until the expiration of 6 years from the date of the assignment of such certificate by such county or municipal corporation. No deed shall be issued or action maintained on any certificate whatever after 15 years from the day of sale and the lien of such certificate shall terminate and the county treasurer or treasurer of the city of the first class as the case may be shall cancel all such unredeemed tax sale certificates and shall make an entry in his record of unredeemed tax sales evidencing such cancellation. This section shall apply to all tax certificates now or hereafter outstanding. When the issuing of a deed on a tax certificate or certificates or the commencement of an action thereon shall be stayed by injunction the time of the continuance of such injunction shall not be a part of the time above limited for the issuing of such deed or for the commencement of such action. [1939 c. 302; 1943 c. 151]

75.21 Limitation on special certificates. From and after 6 years from the date of any street commissioner's certificate or comptroller's certificate or other special tax certificate issued or to be issued by the proper officer or officers of any city, town or village in this state, and denoting a charge against any lot or parcel of land in such city, town or village for a special tax or assessment thereon, no action, either at law or in equity, shall be maintained on such certificate, but certificates of sale of lands for nonpayment of such special taxes or assessments shall not be limited by section 75.21 but the limitations provided by section 75.20 shall be applicable thereto. [1933 c. 68; 1943 c. 151]

Note: Under this section, fifteen year limitation applies to tax certificate issued to and owned or held in trust by county, provided deed is taken or action commenced by

assignee of county within six years from date of assignment. 23 Atty. Gen. 534, 24 Atty. Gen. 353.

75.22 Tax sales; void; refund; immaterial errors. If after the sale or conveyance of any lands sold for the nonpayment of taxes and within the time hereinafter prescribed it shall be discovered that the sale or the certificate issued thereon was invalid, the county board shall make an order, briefly stating the reason therefor, directing that the money paid for such certificate on the sale, and all subsequent charges thereon, and all subsequent taxes paid on the lands described therein by the purchaser or his assigns, be refunded with interest to such purchaser or his assigns, upon the delivery of the certificate or deed to be canceled; and if the county treasurer shall, in pursuance of such order, offer to the person entitled thereto his money as aforesaid, and he shall refuse to receive the same and cancel the certificate or deed, he shall not be entitled to receive any interest on the money so paid by him after the day of such offer and refusal; nor shall any recovery ever be

otherwise had against the county on such deed or certificate. But no sale, certificate, or conveyance shall be deemed invalid within the meaning of this section by reason of any mistake or irregularity in any of the tax proceedings not affecting the groundwork of the tax; nor shall any county be liable to pay or refund any moneys by reason of any such mistake or irregularity.

Note: Money refunded for void tax can be paid only upon surrender of certificate. County treasurer and bondsmen are liable for money paid on void tax certificates which are not surrendered for cancellation. 20 Atty. Gen. 348.

County having void tax deed and quitclaiming to purchaser is not liable for timber cut by grantee. 21 Atty. Gen. 616.

Refunds made by county to purchasers of invalid drainage assessment certificates of amounts paid therefor should be with interest at six per cent. 21 Atty. Gen. 973.

Statutes do not prescribe any limitation upon time within which county board may

charge back illegal real estate taxes to municipality, except as necessarily implied from operation of express limitation in 75.24 that county board may not grant refund on invalid tax certificates after six years from date of certificates. 22 Atty. Gen. 16.

County board has no right to cancel tax certificates, reimburse purchaser of certificates, and charge present value of certificates back as special tax, except in cases where there is invalidity in sale of certificates. 23 Atty. Gen. 763, 24 Atty. Gen. 19.

County may not sell to town tax certificates which are invalid because of improper description. 27 Atty. Gen. 696.

75.23 Canceled deeds, certificates of county clerk. Whenever the county board shall order the cancellation of any tax deed, the county clerk shall furnish to the owner of the lands described in such deed, upon request therefor, a certificate in writing, executed under his hand and official seal, stating the fact of such cancellation, the date thereof, the description of the lands as to which such deed is canceled, the date of such deed, the date of the sale upon which such deed is based and the reason for such cancellation. Such certificate may be recorded in the office of the register of deeds of the county where the lands therein described are located, and such record shall be prima facie evidence of the facts therein stated and of the cancellation of the tax deed therein mentioned as to the lands therein described.

75.24 Limitation, claims under illegal deed or certificate. Every action brought or claim presented against any county or other municipal corporation for the recovery of any sum of money on account of any defective or void tax certificate or tax deed made or issued by any such county or municipality shall be commenced or presented within six years from the date of such certificate on which such deed was issued; but such limitation shall not begin to run on a certificate issued to such counties or municipalities until the date of the assignment made by them; and whenever an action relating to the validity of a tax certificate or tax deed shall have been commenced within the time above limited and a final judgment shall not be rendered in such action until after the expiration of the time so limited, in such case an action may be commenced or claim presented on account of such certificate or deed within one year after final judgment declaring the same void.

75.25 Reassessment for money refunded. If the county board, on making an order directing the refunding of money on account of the invalidity of any tax certificate or tax deed, shall be satisfied that the lands described in such certificate or deed were justly taxable for such tax or some portion thereof; or, when the treasurer shall have withheld from sale any delinquent lands under the provisions of section 74.39, they shall be satisfied that such lands were justly taxable for such tax or some portion thereof, they shall fix the amount of such tax justly chargeable thereon on each parcel thereof, and direct the same to be assessed in the next assessment of county taxes, with interest thereon at the same rate that would have applied had the tax been collected before the tax sale or redeemed from the tax sale, from the time when such tax was due and payable to the end of the tax levy year in which such tax will be placed on the tax roll as a reassessment; and the county clerk, in his next apportionment of county taxes, shall charge the same as a special tax to the town, city or village in which such lands are situated, specifying the particular tract of land upon which the same are to be assessed and the amount chargeable to each parcel and the year when the original tax was assessed, and certify the same to the clerk of the proper town, city or village; and the clerk receiving such certificate shall enter the same on the tax roll accordingly. [1933 c. 244 s. 2; 1943 c. 277]

Note: The power of the county board to direct a reassessment when the original assessments were invalid because of irregularities in the tax proceedings embraced all cases under 75.22 if the description was sufficient to enable the board to ascertain what land was actually attempted to be assessed. *Roberts v. Waukesha County*, 140 W 593, 123 NW 135.

Where county levies upon logs for taxes due on lands and such levy is held to be unwarranted and tax payment made as result thereof to be under duress, and court orders refund thereof, tax may be relieved with interest at ten per cent. 19 Atty. Gen. 515.

County may collect in next assessment

of county taxes amount of taxes illegally assessed plus interest at rate of eight per cent since date when such taxes were due and payable, where it appears that assessment was illegal by reason of fact that lands sought to be taxed were erroneously described. 25 Atty. Gen. 57.

County may employ surveyor to determine correct description of assessable property. 26 Atty. Gen. 6.

Amount charged back and reassessed under this section is tax plus interest at eight per cent per period specified in statute. 26 Atty. Gen. 593, 28 Atty. Gen. 281.

Tax certificates issued in 1921 owned by county and void because of insufficient de-

scription may be canceled by county board twelve years after tax certificates were issued. Taxes for such years may be subsequently assessed by county board, charged back to municipality, placed upon assessment roll and tax certificates subsequently

issued for failure to pay such subsequently assessed taxes are valid, there being no statute of limitations with reference to 75.25 and such procedure being authorized by said section. 27 Atty. Gen. 499. See also 28 Atty. Gen. 281.

75.26 Limitation. (1) **GRANTEE IN DEED.** No action shall be maintained by the grantee or any one claiming under him to recover the possession of any land or any interest therein which shall have been conveyed by deed for the nonpayment of taxes unless such action shall be brought within three years next after the date of the execution of such deed; or if such land demanded shall be, when so conveyed, vacant and unoccupied and so remain, unless such action be brought within three years next after the date of the recording of such deed, or unless such grantee or those claiming under him shall have been in actual, not constructive, possession of the land so demanded for three successive years during the five years next after the recording of such deed; provided, however, that if the former owner takes possession of any such land at any time within three months of the expiration of three years from the date of the execution of such deed, then and in such case the grantee in such tax deed or those claiming under him may bring and maintain an action to recover possession of said land at any time within three months next after the expiration of said three years.

(2) **TAX DEED VOID, WHEN.** Whenever the original owner, or any one claiming under him, of lands which have been conveyed by deed for the nonpayment of taxes, shall continue to pay the taxes upon such lands, and shall pay the taxes assessed against said lands continuously for five years next after the execution of such tax deed, without actual notice of the existence of such tax deed, said tax deed shall be void and of no effect.

75.27 Limitation on former owner. No action shall be maintained by the former owner or any person claiming under him to recover the possession of any land or any interest therein which shall have been conveyed by deed for the nonpayment of taxes or to avoid such deed against any person claiming under such deed unless such action shall be brought within three years next after the recording of such deed. Whenever any such action shall be commenced upon any tax deed heretofore or hereafter issued after the expiration of three years from the date of the recording of such deed, unless such action shall be brought by a person who was a minor at the time the right of action shall accrue as aforesaid, providing the redemption rights of such minor shall not have been foreclosed pursuant to sections 75.03 and 75.19, such deed, if executed substantially in the form prescribed by law for the execution of tax deeds, shall be conclusive evidence of the existence and legality of all proceedings from and including the assessment of the property for taxation up to and including the execution of such deed. [1939 c. 453]

Note: That a lot was assessed as a whole and taxes paid thereon as a whole did not affect tax title to parcel thereof based on assessment and taxation of parcel, as against owner of lot. *Kidder v. Pueschner*, 211 W 19, 247 NW 315.

In case where single tax deed only has been issued and former owner before issuance thereof paid all taxes levied against

land for three years ensuing after year for which land was returned delinquent and sold, limitation provided by this section, upon commencement of action by former owner to recover land sold on tax deed applies only where such owner has been served with notice mentioned in 75.28. 27 Atty. Gen. 67.

75.28 Application of section 75.27. (1) The limitation for bringing actions as provided in section 75.27 shall not apply to any person who shall be a minor at the time the right of such action shall accrue, but such minor may bring such action or actions after the time limited at any time during his minority and within one year thereafter, unless the redemption rights of such minor have been foreclosed pursuant to sections 75.03 and 75.19; nor shall such limitation nor any other limitation in favor of a tax deed or a tax certificate, except in case of actual possession founded on a tax deed, apply where the taxes, for the nonpayment of which the land was sold and the tax deed executed, were paid prior to the sale, or where the land was redeemed from the operation of such sale as provided by law or where the land was not liable to taxation; nor shall such limitation apply where a single tax deed only has been issued and the original owner has, before the issuance of such tax deed, paid all taxes levied against the land for the three years ensuing after the year for which the land was returned delinquent and sold, except as herein provided.

(2) The tax deed grantee or his assigns may, at any time after the tax deed is issued and recorded, serve a notice on the owner of record of the original title, stating that he holds a tax deed on the land of such original owner and giving a description of the land so deeded and a reference to the volume and page where such deed is recorded, which notice shall be served in the same manner as a summons in a court of record or by registered mail, addressed to such owner of record and proof of which service shall be filed in the office of the county clerk of the county in which the lands are situated. If the post-office address of the owner of record of the original title is unknown, such tax deed grantee,

or his assigns, may, upon filing in the office of such county clerk his affidavit that he is unable, with due diligence, to make personal service of such notice or to ascertain the post-office address of such former owner, publish such notice in a newspaper published in the county where the land described in the tax deed is located, once a week for 6 successive weeks and proof of such publication shall be filed in the office of such county clerk.

(3) If such notice be served and filed or such notice published and proof of publication filed thirty days or more before the expiration of three years from the date of recording the tax deed, the limitation provided by section 75.27 shall apply. If such notice is not so served and filed, or published and proof filed, the limitation provided by said section 75.27 shall be extended until the expiration of thirty days from and after the day such notice is served and filed or published and proof filed. In any action brought by the original owner to set aside such tax deed after the service or publication and filing of the notice aforesaid, the original owner, in case he prevails, shall as a condition of relief pay to the tax deed claimant the sum of five dollars for each description and the costs of serving or publishing the aforesaid notice, in addition to all other costs and charges now provided for by law. The provisions of law regulating costs and charges for the service of a summons in a court of record shall apply to and govern the amount that may be charged for the service or publication of such notice. [1939 c. 453; 1941 c. 93; 1943 c. 275 s. 32]

75.285 Action; condition precedent. No action or proceeding shall be maintained by the former owner or any person claiming under him, based upon the invalidity of any tax certificate or tax deed due to the failure of the county treasurer heretofore or hereafter to publish or post any notice for the sale of delinquent taxes on land, unless within thirty days prior to the commencement of such action, tender shall be made to the owner of such tax certificate or tax deed, of the amount of the taxes, charges and interest due and the owner of such certificate or deed shall fail to release or transfer same. If the owner of any certificate or deed shall give notice in the manner prescribed in the preceding section and the original owner shall fail to redeem after a period of sixty days by depositing with the owner of such certificate or deed or the county treasurer, for the benefit of such tax certificate or tax deed owner, the amount of the taxes with interest and charges together with the costs of executing a release or transfer of such certificate or deed, then the limitation prescribed in section 75.27 shall apply and no action or proceeding herein referred to shall be maintained.

75.29 Actions of ejectment, when barred. No action to quiet title, remove a cloud on title, to cancel, annul or set aside any tax deed, nor of ejectment, trespass, waste or for other injury to land shall be brought as to lands purporting to be conveyed by tax deed void on its face after the expiration of three years from the time of the recording of such deed. Provided, that the limitation herein declared shall not apply unless the original owner or those claiming under him shall have failed to pay or redeem all the taxes levied upon such lands from the time of the levy of the tax for the nonpayment of which the tax deed was issued to the time of the recording of the tax deed, nor unless the grantee in the tax deed or those claiming under him shall have paid or redeemed all the taxes levied upon such lands for three successive years next after such recording.

75.30 Action by original owner where deed void, when barred. No action shall be brought by the original owner for the recovery of lands purporting to be conveyed for the nonpayment of taxes by a deed void on its face after the expiration of five years from the date of the recording of the tax deed, in cases where the grantee in the tax deed shall have taken actual possession of such land within two years after such recording and shall have actually and continuously maintained such possession to the end of such period of five years.

75.31 "Possession" defined. What shall constitute a possession of lands within the meaning of sections 75.26 to 75.30 and the extent of such possession shall be governed by the rules prescribed for determining an adverse possession by a person claiming title founded upon a written instrument.

75.32 Taxation and sale of lands held by counties. Real property upon which the county holds any certificate of tax sale shall continue liable to taxation and to sale for unpaid taxes, and the county shall be the exclusive purchaser at the sale; but when a tax deed shall be issued to the county and it shall hold tax certificates of sale unredeemed on the same property for two successive years subsequent to the date of the sale on which such deed shall issue, including certificates of sale made prior to the passage of these statutes, such property shall thereafter be exempt from taxation until the same is sold by the county. The county clerk shall annually, before the first day of June, furnish to the assessors of each town a list of the lands in such town exempt under this section. Nothing in this section shall be so construed as to apply to lands owned by minors, idiots or insane persons.

Note: Holder of tax title based on 1924, 1925 and 1926 taxes held to have priority over county purchasing realty at tax sale based on 1930 reassessment of 1923 taxes. Nicolet Securities Co. v. Outagamie County, 217 W 439, 259 NW 621.

75.33 [Renumbered section 372.08 by 1933 c. 436 s. 9]

75.34 Sale of certificates by counties. (1) The several county treasurers, when no order to the contrary shall have been made by the county board, shall sell and transfer, by assignment, any tax certificates held by the county to any person offering to purchase the same for the amount for which the land described therein was sold, with interest thereon at the rate specified in the certificates; but every such sale shall include all certificates in the hands of such treasurer on the same lands.

(2) No county board shall, at any session thereof, sell, convey or transfer, or order or direct the sale, conveyance or transfer of any tax certificates owned or held by the county at less than the face value thereof unless such board shall have previously directed the county clerk to give notice of their intention so to do by publication thereof for four successive weeks in some newspaper published in the English language in such county and having a general circulation therein, and such notice has been so given. Any and all sales, conveyances or transfers of such tax certificates made in violation of these provisions shall be null and void. [1933 c. 244 s. 2; 1937 c. 294]

Note: Owner of special assessment bonds, coupons of which were unpaid and had been returned delinquent, could compel county treasurer to transfer tax sale certificate representing delinquent assessment, held by county "in trust," in exchange for corresponding coupons without purchasing outstanding general tax sale certificates held by county on same real estate. Gross v. Sommers, 225 W 266, 271 NW 11.

County board may, in exercise of good business judgment, put up for sale at less than face value only portion of certificates held by it. 20 Atty. Gen. 1192.

County may not limit sale of its tax certificates to owners of real estate. 22 Atty. Gen. 635.

Proposed county ordinance which purports to authorize sale of general tax certificates at ten per cent of face value upon condition that certain drainage district

bonds be surrendered and canceled would be invalid. 25 Atty. Gen. 216.

County board resolution directing that county purchase all tax certificates at tax sales does not prevent county board from directing county treasurer subsequently to sell and assign part of such certificates to private purchaser. 27 Atty. Gen. 342.

Sale for face value in 1939 by county treasurer of county-owned 1931 tax certificates of sale of 1932 was valid under general authority of unrevoked or modified resolution of county board passed in 1931 and purchaser is entitled to interest thereon at fifteen per cent from date of certificate and not just from date of his purchase. 28 Atty. Gen. 314.

Town may not, by payment of delinquent taxes, interest and penalties, compel county to convey to such town tax deed or tax certificate held by county on lands located in such town. 31 Atty. Gen. 113.

75.35 Terms of sale. The county board may, by an order to be entered in its records prescribing the terms of sale, authorize the county clerk or the county treasurer to sell and assign the tax certificates held or owned by the county. [1939 c. 274; 1941 c. 5]

Cross Reference: See 59.67 (2) for power of county to direct county clerk to sell or contract for sale and conveyance of land owned by county, whether acquired by tax deed or otherwise.

Note: County board may authorize county treasurer to sell separately earliest tax certificate held by county on particular parcel of land without at same time and as part of same sale selling also subsequent tax certificates held by county on same parcel. 22 Atty. Gen. 430.

Assignee of one who purchases land on execution sale after homestead exemption has been selected can redeem lands so purchased from lien of tax certificate in manner provided by 75.01 (1) but cannot secure assignment of part of tax certificate held by county. 26 Atty. Gen. 95.

County ordinance which repeals ordinance authorizing sale of county-held tax certificates and tax deeds without payment of interest is valid. Sales made after passage of new ordinance are to be made upon payment of principal and interest from time of issuance of certificate. 26 Atty. Gen. 115.

Person who wilfully, maliciously or wantonly removes buildings from lands which have been sold for nonpayment of taxes is criminally liable under 348.426. County injured by such removal of buildings is entitled to injunction to prevent further removal and also to accounting for property already removed, so long as it does not exceed amount of taxes, penalties and interest due less value of remaining premises. 26 Atty. Gen. 306.

Under 75.35 county board has full power to prescribe terms of sale of county-owned tax delinquent lands and under 59.08 (19), this power may be delegated to committee consisting of officials therein named. In absence of restrictions by county board, committee may sell privately or publicly, with or without sealed bids, and by parcels or otherwise. 27 Atty. Gen. 572.

Resolution of county board directing county treasurer not to sell or assign county-owned tax certificates to other than former owners of land and lienholders thereon is invalid as not authorized by this section and wholly ineffective. 31 Atty. Gen. 239.

75.36 Deeds to county. When any lands upon which the county holds a tax certificate shall not be redeemed as provided by law the county clerk shall execute to the county, in his name of office, a deed therefor, witnessed, sealed and acknowledged and in like form as deeds to individuals; and such deeds shall have the same force and effect as deeds executed by such clerk to individuals for lands sold for the nonpayment of taxes; but no such deed shall be issued until the county board shall, by resolution, order the same. The county taking such deed shall not be required to pay any delinquent or outstanding taxes on such land, the redemption value of any outstanding tax certificates, or interest or charges until the land is sold by the county, or in the case of lands registered as forest crop lands, until the forest crop is taken off. If the sum realized on such sale or from the severance of such forest crop is insufficient to pay all of the said taxes, delinquent taxes, certificates, or in-

terest or charges, the amount realized shall be applied thereto and there shall be no further liability upon the county for the same.

Note: Chapter 405, Laws 1929, amending this section by providing that counties taking tax deeds shall not be required to pay delinquent taxes on the land until it is sold, is construed to apply to tax deeds taken before the amendment. In the absence of demand for payment the claim of a town for the amount of tax certificates against land to which a county had taken tax deeds was not property within the protection of the Fourteenth amendment so as to invalidate the amendment of this section. *Bell v. Bayfield County*, 206 W 297, 239 NW 503.

Whether good public policy requires that a county be obliged to make sale of lands held by it under tax deeds, so as to give interested municipalities a right to an accounting for the delinquent taxes, presents a question for the legislature and not for the courts. *Remington v. Wood County*, 238 W 172, 298 NW 591.

County can cancel only invalid tax certificates. Purchaser of land from county against which land there is special assessment does not buy property discharged from lien of assessment. Purchaser of land acquired by county on tax deed may purchase for less than face of tax and is not liable for balance of tax. 24 Atty. Gen. 19.

Sections 75.12 and 75.14, requiring notice to be given to persons interested in land before tax deed thereto may be issued, apply to counties as well as to individuals. 24 Atty. Gen. 398.

County board is not authorized to give land obtained by tax deed to state or any agency thereof for military purposes without compensation. 26 Atty. Gen. 182.

Where county sells land to which it has tax deed for less than total of outstanding tax certificates, all of which are owned by county, under this section, purchase price should be allocated to tax certificates upon ratio which purchase price bears to total amount of outstanding tax certificates and these amounts so allocated will belong to county or city, depending upon status of county levy for the particular year. If county has collected its entire levy for particular year amount allocated belongs to town, city or village and vice versa. Where there are outstanding certificates subsequent to certificate upon which tax deed is issued owned other than by county, proceeds should be first allocated to pay-

ment of such certificates in full and balance then prorated to other years upon ratio that such balance bears to total of outstanding taxes for such years. 28 Atty. Gen. 74.

Under 75.36 county secures fee simple title to lands acquired by tax deed where proper steps are followed in the taking of the tax deed. County may refuse to sell such lands to private owners and may lease the same to the conservation commission under 59.01 and 23.09 (7) (d). 28 Atty. Gen. 398.

Issuance of a tax deed to a county in replacement of a void tax deed is governed by 75.18. 74.455 is applicable to certificates to a county and exclusive. County may take tax deed upon valid subsequent certificate where tax deed on prior certificate is void. 28 Atty. Gen. 408.

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

Tax deed taken by county under general tax certificate is subject to lien of outstanding special assessment certificates owned by village and issued subsequent to certificate upon which county's deed was taken. Last two sentences of 75.36 do not relieve such property from lien of outstanding certificates not owned by county or held by it for collection. If county desires to convey clear title to land on which it has taken tax deed, it must pay in full amount due on certificates owned by village and constituting lien as above described. 30 Atty. Gen. 157.

County is liable to local municipality under this section upon any excess rolls involved for proceeds realized from sale of timber or stumpage from tax deed lands. 30 Atty. Gen. 435.

Where county does not take possession of lands on which it holds tax deed and does not bring any action to recover possession within period prescribed in 75.36, results are: (1) County's tax title is extinguished if possession of lands was held during prescribed period by former owner or persons claiming under him; (2) County's title becomes absolute if lands are unoccupied during entire period of three years after execution and recording of deed and no action is brought during that period to test its validity. 31 Atty. Gen. 101.

75.365 Agreements as to delinquent taxes. (1) **COUNTIES MAY ENTER.** Written agreements may be entered into and be operative between a county and any town, city or village therein, upon prior authorization and approval thereof by the governing bodies thereof, providing for the disposition of liabilities of the county to such municipality upon or arising out of the return of said county of delinquent special assessments, delinquent general taxes, or both; the disposition of special assessment tax sale certificates, general tax sales certificates, or both, of which the county may be the holder or owner; the liabilities of the county arising by virtue of its acquiring any or all of such tax certificates, and the disposition of such liabilities; the taking of tax deeds by the county or any or all of such tax sales certificates; the liabilities of the county arising out of the taking of any or all of such tax deeds and the disposition of such liabilities; the disposition and distribution of the proceeds of the sale of any or all of such tax sales certificates, the sale of the lands upon which such tax deeds are so taken, or both; and the determination and disposition of any and all liabilities of the county in respect to any of the foregoing.

(2) **LIABILITY OF COUNTY LIMITED.** Such agreements may include provisions that the county upon acting pursuant to such agreement and the provisions thereof shall not be accountable or liable for any amount greater than that realized by it upon the sale of any of such certificates or upon the sale of said lands to which it takes tax deed thereunder or the amounts set forth in said agreement, and that in acting pursuant to such agreement the county shall not incur or be subjected to any liability to anyone except as therein set forth and that if such county should by reason of acting thereunder incur or be subjected to any other or different liability to pay or account in respect to such delinquent special assessments, general taxes, or both, then such local municipality will reimburse the county for such excess liability and indemnify it against any loss or damage that the county may sustain by reason of acting pursuant to such agreement; provided, that the

city, town or village entering into such agreement may make payment, settlement or compromise of special assessment certificates or bonds to preclude or relieve the county from being subjected to liability thereon.

(3) **SALE UNDER AGREEMENT.** In the event of such agreement the county may sell any of the land to which it takes tax deed pursuant thereto, and that the title conveyed by the county upon such sale shall be in fee simple and free and clear from all tax liens or claims arising out of delinquent special assessments, delinquent general taxes, or both, except delinquent special assessments, delinquent or unpaid general taxes, or both, returned to the county after such sale by the county. Such agreement may provide that the county may sell any land, to which it has taken tax deed thereunder, at private or public sale. The county or the local municipality in which the land is situated may purchase such land when sold by the county pursuant to such agreement.

(4) **APPLICABILITY.** This section shall be controlling and operative only in respect to delinquent general property taxes and special assessments which were authorized prior to July 1, 1943, by the proper governing body to be imposed against lands, whether heretofore or hereafter returned delinquent, and the provisions hereof shall be applicable to such assessments and taxes, the general statutes to the contrary notwithstanding, but all provisions of the general statutes not in conflict herewith shall be applicable, except that it does not repeal any of the provisions of the general statutes nor affect the applicability thereof to situations not covered herein. [1943 c. 361]

75.37 Waste on land sold; distress; claim against county or city. (1) It shall be unlawful for any person or corporation to cut, destroy or remove any logs, wood or timber or any buildings, fixtures and other improvements assessed as real property from any land sold for the nonpayment of taxes while such taxes remain unpaid; and if any person shall cut, destroy or remove the same from such lands during the time aforesaid the county treasurer of the county or the city treasurer of any city which is authorized by law to sell its own delinquent taxes or assessments in which such lands are situated, in cases where the tax certificate is held by the county or such city, shall issue a warrant under his hand and seal to the sheriff, giving therein a description of such lands, the amount of such taxes, with interest and charges thereon then remaining unpaid and the years for which the same are unpaid, commanding such sheriff forthwith to seize such logs, wood, timber, buildings, fixtures and improvements, or materials salvaged therefrom, wherever the same may be found and to sell the same or a sufficient amount thereof to satisfy such taxes, with the interest and charges thereon and the costs of such seizure and sale.

(2) The sheriff shall receive such warrant and execute the same as therein directed, as in case of levy and sale on execution, and make return thereof with his doings thereon to the county treasurer or such city treasurer, as the case may be, within 60 days after the receipt of the same, and pay over all money collected thereon to such treasurer; provided, however, that no certificates shall be sold by the county treasurer or such city treasurer, in cases where warrants have been issued, unless the party applying to purchase the same shall pay all costs and charges incurred in the issuing and execution of said warrant. In case the tax certificate is not held by the county or such city the owner thereof shall have a lien upon any and all logs, wood, timber, buildings, fixtures and improvements assessed as real property, or materials salvaged therefrom, so cut, destroyed or removed from the lands to the amount of the tax certificate held by him against the same, together with all interest and charges thereon then remaining unpaid, and shall have the right to seize such logs, wood, timber, buildings, fixtures and improvements, or materials salvaged therefrom, wherever the same may be found and to sell the same, or a sufficient amount thereof to satisfy such taxes, with interest and charges thereon and the cost of seizure and sale, rendering any surplus upon such sale to the owner of the lands. No tax certificate holder who shall so cut, destroy or remove any logs, wood or timber, or any buildings, fixtures and other improvements assessed as real property upon any lands described in his certificate shall have any claim against the county or such city under the provisions of section 75.22. [1941 c. 185]

Cross Reference: For criminal waste statute, see 348.426.

75.38 Fees for deeds and certificates. The county clerk shall collect as fees for every deed of land issued upon a tax sale, when such deed shall include lands in contiguous tracts not exceeding one hundred and sixty acres, seventy-five cents; and for every additional tract therein described, five cents, to be paid by the person to whom such deed is issued, and the clerk issuing such deed shall include therein so many parcels of land bid off, owned or redeemed by any person as he may desire. [1935 c. 64; 1937 c. 294]

75.39 Actions, when barred. The grantee named in any deed made by a county clerk or the treasurer of any incorporated city or village on the sale of lands for the nonpayment of taxes as provided by law, his heirs, executors, administrators or assigns may,

at any time within three years after the date of such conveyance, commence an action against the person or persons owning the lands described in such conveyance at the time of making the sale upon which such conveyance was made, or any parcel thereof or interest therein, or against any person or persons claiming under such owner or owners, for the purpose of barring such former owner or owners and those claiming under them of all right, title, interest or claim in such lands; but no such action shall be commenced on any such deed issued in lieu of a void, informal or insufficient deed unless the same be commenced within three years after the date of such void, informal or insufficient deed.

Cross Reference: For recovery in ejectment when tax title is defective, see 275.15. county in suits to quiet title to lands is waived if objection is not raised by demurrer or answer. 26 Atty. Gen. 18.

Note: Misjoinder of causes of action by

75.40 Action, where and how brought. Such action must be brought in the circuit court of the county in which the lands or some parcel of them, the title of which is sought to be barred by such action, are situated; and the plaintiff in such action may include in his complaint all the lands described in such conveyance, or any separate parcel, or as many separate parcels thereof as he shall see fit; and he shall make defendants all persons who were the former owners of the several parcels of land included in his complaint or those claiming under them or claiming any interest therein.

75.41 Complaint. The plaintiff in such action shall set forth in his complaint a description of all the lands the title to which is sought to be barred by such action; that he claims title to such lands under a deed made by a county clerk or the treasurer of an incorporated city or village, and set forth therein a copy of such deed; he shall also set forth the name or names of the former owner or owners of the several tracts of land described therein or the names of the persons claiming under such owner or owners, specifying the persons claiming each separate parcel thereof, and the amount of all taxes paid by him, including redemptions; and if such plaintiff have more than one such deed upon any parcel of land mentioned in such complaint, upon which he might bring such action, he shall set forth in such complaint a copy of each such deed, but as a separate cause of action.

75.42 Defense, answer. (1) The defendants in such action may answer severally, or such of them as are jointly interested in any separate parcel or parcels of land described in the complaint may answer jointly, either to the whole complaint or to any separate cause of action stated therein, that the action thereon was not commenced within the time limited by section 75.39; that the lands described in such complaint or some part or parts thereof to which the defendant or defendants so answering claim title or some interest therein were not liable to taxation at the time the tax for the nonpayment of which the land was sold and conveyed as specified in the complaint was levied; or that the tax for the nonpayment of which said lands purport to be sold was in fact paid before such sale; or that the land was redeemed from such sale as provided by law; or that the title to said land has become vested adversely to the plaintiff in the action under and by virtue of another tax deed; or that the deed, a copy of which is set forth in the complaint, was never executed by the officer whose name is subscribed thereto; or that the lands described in the complaint or some part thereof were in the actual occupancy or possession of the defendant, his agent or tenant, or of some other person through whom he claims title for the period of thirty days or more at some time within six months immediately preceding the expiration of redemption or the six months immediately preceding the time when the deed or deeds mentioned in the complaint were taken, and that no written notice was served on the defendant or owner or occupant of said lands by the holder of the tax certificate or certificates on which such tax deed or deeds were issued three months prior to the issuing of said deed, as required by section 75.12, and no other defense to such action shall be set up by any defendant or defendants unless the defendant or defendants setting up the same shall, at the time of filing the answer, deposit with the clerk of the court in which such action is pending, for the use of the plaintiff in such action, the sum for which the parcel or parcels of land as to which they defend were sold, together with interest thereon at the rate of eight per cent per annum from the date of the certificate of sale for taxes upon which such deed was issued; and also all such sums as shall have been paid by the plaintiff for subsequent taxes on such parcel or parcels, with interest thereon from the time of payment at the rate of eight per cent per annum to the time of making such deposit; and shall state in the answer the fact that such deposit has been made, and the amount thereof, and that such defendant is ready to pay such portion of the costs and disbursements in the action as shall be adjudged just and reasonable, in case the plaintiff shall elect to receive such deposit and release to said defendant or defendants the parcel or parcels of land on account of which such deposit is made; and any defendant or defendants making the deposit and offer aforesaid may set up in their answer any other matter of defense which will avoid such deed; but no answer merely alleging the defendant's title,

or denying the plaintiff's title to the lands described in such complaint, or any part or parcel thereof, or which merely alleges that the deed to the plaintiff is void shall be a sufficient answer; but every answer shall state specifically the grounds on which the defendant or defendants rely for avoiding the deed of the plaintiff.

(2) The defendant may, in all cases within the time limited by law for answering the complaint, execute and deliver to the plaintiff or his attorney a quitclaim deed of the lands described in the complaint, conveying all the right, title and interest of such defendant at the time of the commencement of the suit; or may, within such time, either after having delivered such deed or without such delivery, answer disclaiming any title to the land in question at the time of the commencement of the suit, in either of which cases the plaintiff shall not recover costs personally against any such defendant who quitclaims as aforesaid or who shall establish such disclaimer upon the trial of such action. In no case shall costs be taxed as a personal claim against any defendant for attorney's fees in excess of twenty-five dollars. [1935 c. 24]

75.43 Election to receive deposit; costs. The plaintiff may, at any time within twenty days after receiving an answer showing that a deposit has been made by any defendant or defendants as provided in the preceding section, give notice to such defendant or defendants that he elects to receive such deposit and that he will, at a time specified in such notice, apply to the clerk of the circuit court, circuit judge or a court commissioner to adjust the costs and disbursements which said defendant or defendants ought to pay, and that upon the payment of the costs and disbursements so adjudged he will release to such defendant or defendants all right, title and claim which he has to the parcel or parcels of land on account of which such deposit is made by virtue of any sale or deed made for the nonpayment of taxes; and unless such costs are paid within twenty days after the same shall have been so adjusted the clerk of the court shall, upon presentation to him of an affidavit showing the nonpayment thereof, enter judgment therefor in favor of the plaintiff and against the defendant, which shall be enforced as other money judgments.

75.44 Release. On the payment of the costs by such defendant or defendants or the collection thereof the said plaintiff shall execute a release to said defendant or defendants of all such right, title, interest or claim in said parcel or parcels of lands, duly acknowledging the same, and deliver it to the said defendant or defendants; and thereupon said action shall be discontinued as to the said parcel or parcels of land so released.

75.45 Deed as evidence. In any action maintained under the provisions of this chapter the production of a deed, a copy of which is set forth in the complaint substantially in the form prescribed by law or a certified copy of the record thereof, shall be presumptive evidence of an absolute title in fee simple in the grantee therein named, his heirs or assigns in and to the land therein described.

75.46 Trial; defendant's interest. All issues of fact and of law joined in any such action shall be tried by the court unless the court shall otherwise direct or unless a party to an issue of fact in any such action shall demand a trial by jury, in which case such issues shall be tried by jury as other issues of fact; and on the trial of every such action every defendant shall be deemed to have a redeemable interest in all the lands described in the plaintiff's complaint in respect to which any relief or judgment is sought against such defendant, unless it be otherwise alleged therein.

75.47 Separate trials. The trial of any issue of fact or of law in such action joined with any defendant or defendants claiming title to and defending as to any separate parcel or parcels of land shall be had separately and a separate judgment may be rendered on such issue.

75.48 Effect of judgment. If a judgment shall be rendered either for want of an answer or upon the trial of an issue of law or fact in favor of the plaintiff and against the defendants claiming such lands or against a defendant or defendants claiming any separate parcel or parcels thereof, such judgment shall forever bar such defendants and all others claiming under them, after the filing of a notice of the pendency of such action as provided by law, from all right, title or interest in said lands or in such separate parcel or parcels thereof.

75.49 Judgment for defendant. If in any such action judgment be rendered in favor of any defendant claiming any parcel or parcels of said lands or interest therein, such judgment shall adjudge that there be released to such defendant all the plaintiff's right, title or claim, at the time of the commencement of the action, by virtue of any sale or deed made for the nonpayment of taxes to the land or interest as to which such judgment is rendered, and that the defendant recover his costs and disbursements in the action;

and the money, if any, deposited by such defendant upon answering shall be applied in payment of such costs, and the surplus of such deposit, if any, shall be paid to the plaintiff.

75.50 Unknown owners, minors, incompetents. If the plaintiff in such action cannot ascertain who are the proper persons to make defendants as to any tract or parcel of land described in his complaint he may allege the fact in his complaint and they may be proceeded against as nonresident defendants and shall be described in the proceedings as unknown owners; but no judgment rendered against such unknown owners shall affect the right, title or interest of any minor, idiot or insane person whose right of redemption had not expired at the time of the commencement of such action.

75.51 Action dismissed as to minors, incompetents. If any defendant in any such action was the owner of any of the lands described in the plaintiff's complaint at the time the same was sold for nonpayment of taxes thereon and a minor, and he shall not have arrived at the age of twenty-two years, or an idiot or insane person and five years shall not have elapsed since the sale on which such deed was issued at the time of the commencement of such action, the same shall be dismissed as to such defendant; and no judgment in any such action shall bar the rights of any such minor, idiot or insane person so owning such lands.

75.52 Judgment a bar, when. No such action shall be commenced by any person under the provisions of this chapter after a judgment shall have been rendered against him in any action founded on such tax deed commenced by him or those under whom he claims for the recovery of the possession of the lands described in such deed or any part thereof, nor after a judgment shall have been rendered against him in an action brought by the former owner to recover possession of the lands described in such deed or any part thereof.

Note: A judgment declaring tax deeds invalid, in an action by the landowners in possession against the tax deed grantee, was not res adjudicata of the invalidity of later tax certificates held by the defendant in a subsequent action to foreclose a mortgage on the premises where the validity of the later tax certificates was not in issue or litigated or adjudicated in the prior action; nor

was the bar of judgment prescribed by 75.52 applicable, since that section relates back to 75.39 and applies to actions brought thereunder by a grantee under a tax deed within three years from its date for the purpose of barring former owners. [Bell v. Peterson, 105 W 607, distinguished.] Schrader v. Otto, 238 W 469, 300 NW 255.

75.53 Reassessment of special assessments. (1) If, in any action now pending or hereafter brought to set aside or vacate any special assessment made by the proper authorities of any city against property for opening, widening or extending any street or alley or part thereof, or for grading, graveling, macadamizing, paving or repaving any street or alley or part thereof, or making any other improvement thereof, or for constructing any sewer in any city, or to set aside or vacate any special assessment certificate, tax sale or tax-sale certificate based upon such special assessment, or in any appeal now pending or hereafter made from any such special assessment, the court shall be of the opinion, after a hearing in that behalf had, that such assessment is invalid by reason of a defective or void assessment of benefits and damages, or that such assessment for opening, widening or extending any street or alley or part thereof, or for completing the same, by any city under the provisions of any law, is invalid by reason of any failure to observe any provision of law prior to such assessment as to the taking or acquisition of any land for such purpose, or otherwise, and such land has been taken or acquired by the city, it shall stay all proceedings in such action until the cause of the invalidity is corrected and a new assessment is had in the manner hereinafter mentioned. Thereupon the proper authorities shall proceed to correct the cause of the invalidity and to make a new assessment of benefits and damages against the property in the assessment district or to form a new district and make a new assessment therein, as the case may require, in like manner as required by law in the case of such original assessment, and such plaintiff shall have the same right to appeal from such new assessment as he or his grantors would have had to appeal from such original assessment.

(2) If the plaintiff shall desire to contest the validity of such new assessment he shall, within ten days after its confirmation by the common council or other proper authority, file with the clerk of the court and serve upon the defendant's attorneys his objections in writing to such new assessment, and thereupon the court shall direct an issue to be made up involving the objections aforesaid, which issue shall be tried summarily by the court, and thereupon the court shall file an order sustaining or overruling such objections. When by such order such new assessment of benefits and damages shall be held invalid subsequent assessments may be had in the manner hereinbefore provided and the same proceedings may be resorted to to determine the validity of such assessments. When the amount to be assessed against the plaintiff's property has been finally determined by an assessment of benefits and damages to which no objections are filed as aforesaid, or which, if objections are so filed, the court shall sustain the assessment, or,

when an appeal is taken, upon such appeal the court shall make an order requiring the plaintiff to pay into court, within a time to be fixed by such order, for the use and benefit of the defendant or the parties entitled thereto the amount which, based upon such valid new assessment, he ought justly to pay or which should be justly and equitably assessed against the property in question, and the court shall, upon the plaintiff's complying with said order within the time so limited, order judgment for him with costs, and in default of compliance with such order within the time so limited the action shall be dismissed with costs in favor of the defendant. Such new assessment shall be prima facie evidence of the amount of benefits or damages justly chargeable or awarded to other lands in the same district in all actions and proceedings concerning the same, but shall not otherwise affect the previous assessment.

(3) If in any such action the validity of any special assessment certificate, tax sale or tax-sale certificate based upon an assessment for any of the purposes herein mentioned is attacked and sought to be set aside upon grounds other than those affecting the validity of the assessment of benefits and damages, or in addition thereto, the court, after a hearing in that behalf had, shall be of opinion that the same is void by reason of any failure to observe any provision of law, or by reason of any act or defect in the proceedings upon which such certificate or tax sale is based, which has intervened to the prejudice of the plaintiff, it shall immediately stay all proceedings in the action and cause an issue to be made up involving the extent of the injury which the plaintiff has suffered by reason of such failure or such act or defect, and such issue shall be tried summarily by the court.

(4) In the event that in such action the validity of the assessment of benefits and damages upon which such special assessment certificate, tax sale or tax-sale certificate is based is attacked, and such assessment shall be set aside, such issue shall only be tried after a new assessment has been had as herein provided. When such issue has been tried and determined the court shall make an order requiring the plaintiff to pay into court, within the time to be limited in such order, for the use and benefit of the defendant or parties entitled thereto, the amount which he ought justly to pay or which should be justly and equitably assessed against the property in question, based upon the finding of the court upon such issue, or in case a new assessment of benefits and damages is had, upon such new assessment and such new finding, and upon such payment being made within such time the court shall order judgment for the plaintiff with costs, but in the event that such payment is not so made the action shall be dismissed with costs in favor of the defendant. [1941 c. 149]

75.54 Reassessment of taxes by order of court. (1) In all actions pending or which may be brought in any court of this state, in which either party shall seek to avoid or set aside in whole or in part any assessment, tax or tax proceeding or reassessment made under the provisions of sections 70.75 to 70.85 and 73.05 to 73.07 of the statutes for any cause provided by law, if the court shall be of the opinion, after a hearing in that behalf had, that, for any reason affecting the groundwork of the tax and all the property in any assessment district said assessment, tax, or tax proceeding should be set aside, such court shall immediately stay all proceedings in such action and in all other such actions affecting the assessment, tax or tax proceedings in such district until a reassessment of the property therein can be made; and the proper officers of the municipality constituting such assessment district or in which such district is located shall immediately proceed to reassess such property in the manner specified in these statutes, and shall levy upon the same the amount of lawful taxes for the year in question. Such reassessment shall be made by the assessor of such municipality or assessment district or by such person as the said court may appoint and the assessment roll shall be submitted to and passed upon by the board of review thereof in the manner and after like notice as in case of the original assessment.

(2) Upon the completion of the review by said board, the clerk of the town, village or city in which the reassessed district is situated shall extend upon such assessment roll the taxes lawfully levied upon and apportioned to the property described therein for such year, and such roll and tax so extended thereon shall be a public record and be prima facie evidence of the amount of tax justly chargeable against the party seeking to set aside or avoid the original assessment, tax or tax proceeding and upon the lot or lots, tract or tracts of land respecting which the said action is brought, and shall also be prima facie evidence of the amount of tax justly chargeable against any and every other person or corporation and every other lot, parcel or tract of land in such tax roll for such year in any legal proceeding that may arise respecting the same. Such reassessment and tax roll shall be completed and filed with the clerk of the municipality constituting such assessment district or in which such district is located within ninety days from the date of the entry of such order unless the court upon motion and cause shown shall extend the time therefor.

(3) Upon such completion and filing, notice thereof shall be given by such clerk to the clerk of the court in which such action is pending; and such last-mentioned clerk shall thereupon give notice thereof to the attorneys for the parties to such action and to the attorneys in all other actions pending in which the validity of such original assessment may be involved. If any party seeking to set aside or avoid the original assessment, tax or tax proceeding shall desire to contest the validity of such reassessment, he shall, within twenty days after notice of the completion and filing of such reassessment and tax roll, file with the clerk of the court where such action is pending objections in writing to such reassessment or tax roll, a copy of which objections shall within five days after such filing, be served upon the attorney for the opposite party and thereupon the court may direct an issue to be made up involving the objections aforesaid, which shall be tried summarily by the court, which shall make an order sustaining or overruling such objections. If by such order such reassessment or tax roll shall be held invalid subsequent reassessments of such tax may be had in manner and form as hereinbefore provided and similar proceedings may be resorted to, to determine the validity of any such reassessment; or the court in its discretion may upon sustaining objections made to any reassessment, determine and fix the amount of tax which ought justly to be paid by the party or parties contesting such original assessment, tax or tax proceeding, and for that purpose, with or without directing a further issue to be made up, the court may proceed to take such further evidence as may be necessary to make such determination.

(4) If such reassessment and tax roll be held by the court regular and valid or if no objections thereto shall be filed, the court shall make an order requiring the party or parties contesting the original assessment, tax or tax proceeding to pay into court, for the use and benefit of the party entitled thereto the amount which by such reassessment he or they justly ought to pay. If the amount of tax imposed upon the property of such contesting party by such valid reassessment, or by the subsequent determination and order of the court, shall equal or exceed the amount imposed thereon by the original assessment and tax roll, the party or parties contesting the validity of such assessment shall be adjudged to pay the costs of such suit; otherwise, upon complying with the order of the court last aforesaid, he or they shall be entitled to judgment with costs; provided, however, that no judgment rendered in any such action shall in any way affect the validity of any tax against any other person than the parties to such action or any tract or parcel of land or other property than that described in complaint therein.

(5) The value of the reassessed property shall be fixed, as nearly as may be, as of the day the original assessment was made, and the rules for determining the same shall be those provided by law. A like stay of proceedings and reassessment shall be ordered in all cases in which a tax which has been reassessed by any county, town or village board, or common council for one or more years shall be adjudged uncollectable or void for any reason affecting the groundwork of the tax so as to require a reassessment in order to determine the amount properly due. When such reassessed tax shall have been levied in different years it shall not be necessary to make separate assessment rolls for each year; but the valuations for each year respectively, may be placed opposite the description of the property on the assessment roll in columns headed with the figures of the year, so that the valuations for each year of reassessments shall be kept distinct from other years entered upon the tax roll. All the provisions of this section shall apply to the making and completion and to objections and further proceedings in respect to such assessment, and the same shall be treated with respect to each year which it purports to embrace as if it were a separate reassessment roll for that year. This section shall apply to all actions whether determined upon default or otherwise.

(6) 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. [1935 c. 414]

75.55 Application of section 75.54. The provisions of section 75.54 shall be construed to permit the reassessment, by or under the direction or authority of any city, of the property, real and personal, therein, which city, before and until the passage of these statutes, was authorized by law to make its own tax sales, tax certificates and tax deeds by its own proper officers. And in and for and in respect to every such city and the property, real and personal, therein the mayor and council thereof, the assessors thereof, the city clerk thereof, the board of equalization thereof, and the city treasurer thereof shall, as to any such city and the wards therein, respectively exercise all the powers and perform all the duties and proceed in the manner hereinbefore provided in respect to

towns, villages and other cities, and exercise the powers and perform the duties devolved upon the board of supervisors, upon the assessors, upon the town clerk, upon the board of review and upon the town treasurer, respectively, for the reassessment of taxes and the collection thereof.

75.56 Reassessment of void special assessments. (1) Where the work of constructing any sewer, house drain, water main or water service pipe, or grading, graveling, plank-ing, macadamizing, paving or repaving any street or alley, or part thereof, or the curbing of or sodding along any sidewalk or the paving of any gutter or the building or repair of any dock, or the making of any other public improvement in any street, alley or highway which is assessable in whole or in part against abutting property in any city has been done, or may hereafter be done, and any special assessment has been or may be made against any property for such work, and such special assessment or any special assessment certificates, tax sale, tax-sale certificate or special improvement bond based thereon is invalid because of such work having been done without authority of law, or for failure to make a proper assessment of benefits and damages, or to observe any provision of law, either in adopting any part of chapter 62, or otherwise, or because of any act or defect in the proceedings upon which such assessment, certificate, sale or bond is based, or because of any provision contained for doing such work not authorized by law, or because such contract was made by a foreign corporation without having first complied with the provisions of section 226.02, the city authorities shall proceed to make a new assessment of benefits and damages in the manner required by law.

(2) At the time of making such new assessment, in case where the contract under which such work was done contained any provision not authorized by law, and which tended to increase the contract price for doing the work, said authorities shall determine the proportion of such contract price justly chargeable against the property in question for such work and assess the same against such property. In any case where a new assessment is made under this act, the owner of property affected thereby may appeal from such assessment and determination. The cost of such work done pursuant to and at the price fixed in such contract or the proportion thereof determined as aforesaid to be justly chargeable on account of such work, not exceeding the amount of the excess of benefits over damages as ascertained by such new assessment, is hereby made a lien upon such property, and a certificate to that effect shall be issued by the proper city authorities to the holder of the invalid special assessment certificate or tax-sale certificate aforesaid upon surrender thereof or proof that it has been canceled, or where such special assessment certificate has not been issued or delivered then to the person, who would have been entitled to such special assessment certificate, if such valid assessment, contract or proceeding had been regular and valid, and the excess in the amount of such invalid certificate over such new certificate, if any, shall be paid to such holder, or person, out of the proper fund.

(3) And when under such original assessment special improvement bonds have been, or might be issued, and as soon as the amount chargeable to the property benefited is finally determined by such new assessment, notice shall be given as provided for in sub-section (1) of section 62.21, and when so given and thirty days have elapsed after the giving of such notice, the common council may issue new special improvement bonds in lieu of such original bonds, to the holder thereof upon surrender of the same, or where such original bonds have not been issued or delivered then to the person, who would have been entitled to such original bonds, if such invalid assessment, contract and proceeding had been regular and valid, for the amount of such new assessment remaining unpaid, such new bonds to bear interest at the same rate as the original bonds and to be redeemed, enforced and collected in the same manner as provided for in chapter 62, and the excess in the amount of such invalid special improvement bonds, if any, over such new bonds shall be paid to such holder or person out of the proper fund, and when new certificates are issued, the same shall be carried into the annual tax roll of city taxes levied against such property, collected as a tax and paid to the holder of such new certificate in the manner provided by law for the payment of special assessment certificates.

(4) In case of appeal from such new assessment or such determination, or both, the proceedings herein mentioned shall take place as if no appeal had been taken; but if the appellant succeed and the amount of such new assessment exceeds the amount finally adjudged on such appeal the city shall pay such excess with interest thereon from the time such new bond is issued. In all cases where the invalidity of any such special assessment, special assessment certificate, tax sale, tax-sale certificate or special improvement bond is caused by reason of such work having been done without authority of law or by the failure of the common council to pass a valid ordinance adopting any part of chapter 62, or by reason of having omitted from such ordinance any part or parts of said chapter 62,

no new assessment of benefits and damages as hereinbefore provided for shall be had or made unless an ordinance shall have been first duly passed, adopting as a part of the city charter all the essential provisions of said chapter 62, relating to city improvements, so as to be in force at the time of making such new assessment. After the passage of such ordinance, all proceedings taken for a new assessment of benefits and damages shall be as valid and effectual for all purposes as if taken before the doing of the work. No proceeding shall be had under the provisions of this section for the reassessment of any tax or assessment after the expiration of three years from the time the original tax or assessment was set aside or declared void. [1939 c. 257]

75.57 Stay of proceedings; new assessment; judgment; costs. (1) If in any action at law for the recovery of damages arising from a failure to make a proper assessment of benefits and damages, as provided by law, or failure to observe any provisions of law, or because of any act or defect in any proceeding in which benefits and damages are assessed, and in any action to set aside any special assessment against property for any of the purposes mentioned in section 75.56 or to set aside any special assessment certificate, special improvement bond, tax sale or tax-sale certificate based upon such special assessment, the court determines that such assessment is invalid by reason of a defective assessment of benefits and damages, or for any cause, it shall stay all proceedings in such action until a new assessment thereof be had in the manner hereinafter mentioned; thereupon the proper city authorities shall proceed forthwith to make a new assessment of benefits and damages against the property of the plaintiff as required by law in the case of such original assessment, and such plaintiff shall have the same right to appeal from such new assessment as he or his grantors would have had from such original assessment.

(2) If the plaintiff desire to contest the validity of such new assessment he shall, within ten days after its confirmation by the common council, file with the clerk of the court and serve upon the defendant's attorney his objections to such new assessment; and thereupon the court shall direct an issue to be made involving the objections aforesaid, try the same summarily and file an order sustaining or overruling the objections of the plaintiff. If by such order such new assessments be held invalid, subsequent assessments may be made in like manner and similar proceedings resorted to to determine the validity of such assessment. When the amount to be assessed against the plaintiff's property has been finally determined by an assessment of benefits and damages, which the court shall hold to be valid, or when an appeal is taken the court shall make an order, requiring the plaintiff to pay into court, within a time to be fixed by such order, for the benefit of the parties entitled thereto, the amount which, based upon such valid new assessment, he ought to justly pay, or which should be justly assessed against the property in question; upon compliance with said order, judgment shall be entered for the plaintiff with costs. If the plaintiff fails to comply with such order the action shall be dismissed with costs.

75.58 Setting aside stay; continuance. (1) Where, in any action at law or suit in equity for any of the purposes mentioned in sections 75.56 and 75.57, and the various acts amendatory thereof, and the court in which any such action or suit shall be pending shall have stayed proceedings therein, and ordered a new assessment of benefits and damages as therein provided, and a new assessment has been made pursuant thereto which is valid so far as the regularity of the proceedings is concerned, but wherein the plaintiff may feel aggrieved by reason of the amount assessed for benefits and damages, or either of them, such court shall, upon the verified petition of the plaintiff to that effect being presented to it, after notice of not less than ten days, to the opposite party or parties, set aside the stay of proceedings theretofore granted, and proceed with the hearing of said cause, in its regular order, as hereinafter provided.

(2) It shall not be necessary for the plaintiff in any such action to appeal from such assessment of benefits and damages in order to have a determination as to the proper amount thereof, but the court in which any such action or suit may be pending, as set forth in the preceding section hereof, shall have full power and jurisdiction to proceed with the hearing and determination thereof, with the same force and effect as if no stay of proceedings had been granted or a new assessment ordered, according to the law of the land and the procedure of the courts, and render final judgment between the parties. If, upon such hearing and determination the court shall find that the amount assessed for benefits against the property of the plaintiff is too great or the amount assessed for damages is too small, the plaintiffs shall be entitled to recover costs; otherwise the opposing party shall be entitled thereto. And if any balance be found due from the plaintiff upon such hearing and determination, the court shall make an order requiring the plaintiff to pay into court, for the benefit of the party entitled thereto, within the time in said order fixed, the amount which said court shall decide the plaintiff shall justly pay, as a condition for the entry of judgment in his behalf.

75.59 Issue; condition of relief. If in any action to set aside any special assessment certificate, special improvement bond, tax sale or tax-sale certificate based upon an assessment for any of the purposes mentioned in section 75.56, upon grounds other than those affecting the validity of the assessment of benefits and damages, the court shall determine that the same is void by reason of any failure to observe any provision of law or by reason of any act or defect in the proceedings upon which the same is based, it shall immediately stay all proceedings in the action, frame an issue therein and summarily try the same and determine the amount which the plaintiff justly ought to pay or which should be justly assessed against the property in question. Such amount shall be ordered to be paid into court for the benefit of the parties entitled thereto within a time to be fixed. Upon compliance with said order judgment shall be entered for the plaintiff with costs. If the plaintiff fail to comply with such order the action shall be dismissed with costs. In case a new assessment is made the same proceedings may be had thereon as provided by law.

75.60 [*Repealed by 1939 c. 503*]

75.61 Tax sales. (1) **ONE YEAR LIMITATION.** Every action enumerated in section 75.57, and every action or proceeding to set aside any sale of lands for the nonpayment of taxes, or to cancel any tax certificate, or to restrain the issuing of any tax certificate, or tax deed, for any error or defect going to the validity of the assessment, and affecting the groundwork of such tax, or on account of any void or defective special assessment, shall be commenced within one year from the date of such tax sale, and not thereafter. In every action brought to set aside any such sale, or to cancel any tax certificate, or to restrain the issuing of any tax deed upon any ground whatever not going to the validity of the assessment and affecting the groundwork of such tax or special assessment, the plaintiff, if he show himself otherwise entitled to judgment, shall, before the entry thereof within a reasonable time to be fixed by the court, pay into the court for the person or persons claiming under such tax sale or tax certificate the amount for which such land was sold, and the amount paid by such person or persons for taxes levied upon the premises subsequent to such sale, with interest on all such amounts at the rate of eight per cent per annum from the times of payment until the said money be so paid into court; and in default of such payment within the time so fixed the defendant shall have judgment in the action. This provision as to the payment into court to be made by the plaintiff shall apply to all actions brought to cancel any tax deed, or to remove the cloud upon any title created by any tax certificate or tax deed where the action impeaches the tax deed or tax certificate upon any grounds whatever not affecting the groundwork of the tax for the nonpayment of which such deed or tax certificate was issued.

(2) **TAX CERTIFICATES OF COUNTY, DISCOUNT ON.** Whenever the county owns and holds tax certificates upon real estate and the owner of said real estate or any person, firm, association or corporation holding a valid lien thereon shall claim the assessment of said real estate to be greater than the value that can ordinarily be obtained therefor at private sale, the respective town board, village board or city council where said real estate is situated may take proof under oath of the value of said real estate and make a finding thereon. Upon the filing of said finding with the county treasurer he shall accept from said owner or lienholder the proper proportional tax on said real estate based upon the value so found, together with the proper charges, as in the case of redemption of tax certificates, shall cancel said tax certificate, and shall give to said owner or lienholder a receipt for said tax. The difference between the tax as returned and the amount of such proportional tax, exclusive of charges, received by the county as a result of the compromise shall be charged to the town, village or city which returned the same and may be included by the county as a special charge in the next tax levy against such town, city or village. [*1935 c. 24; 1939 c. 503*]

Note: Loss occasioned by finding made by city council of valuation on delinquent real estate less than assessed value under (2) should be charged back by county to such city. 24 Atty. Gen. 399.

Owner of real estate seeking relief under (2) must pay such proportion of total taxes, interest and charges as found value of property bears to original assessment. 25 Atty. Gen. 65.

In so far as 18 Atty. Gen. 590 and 24 Atty. Gen. 399 hold that loss sustained by county in proceeding under (2) may be charged back to town, city or village and collected in next tax roll, they are overruled. In so far as

said opinions hold that county should charge itself only with amount actually collected under (2), in accounting to town, city or village for delinquent taxes collected, said opinions are adhered to. 27 Atty. Gen. 724.

Upon reduction in valuation under (2), amount to be paid is aggregate total of tax recomputed upon value found plus delinquent interest thereon and all penalties, fees and charges which are payable on redemption. Amount county may charge back is difference between tax returned and recomputed tax, exclusive of interest, penalties and other charges collected by county. 29 Atty. Gen. 476.

75.62 Tax sales; actions to set aside. (1) **CONDITIONAL PAYMENT.** Whenever any action or special proceeding is hereafter commenced to set aside any sale of lands for the

nonpayment of taxes, or to cancel any tax certificate, or to restrain the issuing of any tax certificate or tax deed, or to set aside any tax, for any error or defect going to the validity of the assessment and affecting the groundwork of such tax, within twenty days after the commencement of such action the plaintiff in such action, or special proceeding shall pay or cause to be paid to the county, town, city, or village officer entitled to receive the same, the amount of taxes, interest, and charges levied against the said lands involved in such action, as a condition of maintaining said action.

(2) REASSESSMENT; PROCEEDING. If in said action or proceeding a reassessment is ordered, the court shall, upon the completion of said reassessment made in the manner required by statute, determine the amount which, according to said reassessment, the plaintiff ought justly to have paid upon the lands involved in said action or special proceeding.

(3) JUDGMENT. The plaintiff in such action or special proceeding shall be entitled to recover judgment for the amount, if any, he so paid in excess of the amount the court shall finally determine he ought to have paid on the lands involved in said action or proceeding, with interest from the date of such payment.

(4) PAYMENT OF JUDGMENT. Payment of any judgment so recovered by the plaintiff, 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 said judgment as his warrant for such payment and shall require the satisfaction of record of said judgment upon the making of such payment. The amount of any judgment so paid by the county treasurer shall be charged to the proper town, city or village and may be included by the county as a special charge against such town, city or village if such judgment shall be the result of an error or defect caused by said town, city or village or official thereof. [1939 c. 503]

Note: Party suing to set aside tax certificates on sole ground that property described therein was exempt from taxation need not pay or cause payment of taxes, interest and charges within 20 days after commencement of action. Trustees of Clinton Lodge v. Rock County, 224 W 168, 272 NW 5.

In (1), providing that, in any action "to set aside any sale of lands for the nonpayment of taxes, or to cancel any tax certificate, or to restrain the issuing of any tax certificate or tax deed, or to set aside any tax, for any error or defect going to the validity of the assessment and affecting the groundwork of such tax," the plaintiff as a condition of maintaining the action shall pay the amount of taxes

levied against the lands involved, the italicized modifying clause refers back to an action "to restrain the issuing of any tax deed" as well as to an action "to set aside any tax," and hence the plaintiff in an action to restrain the issuing of a tax deed, not on the ground of any error or defect going to the validity of the assessment and affecting the groundwork of the tax, but solely on the ground that the issuance of a tax deed has become barred by the statute of limitations, sec. 75.20, is not required to pay the levied tax as a condition to maintaining such action. Service Investment Co. v. Dorst, 232 W 574, 288 NW 169.

75.63 Ejectment as to public lands; conditions. (1) No action shall be commenced, maintained or prosecuted by or on behalf of the original owner or any person claiming title through or under such owner to recover possession of or in any way involving the title to any lands conveyed to the state of Wisconsin by any county, or attempted to be so conveyed, and sold by said state to any person until all taxes levied and assessed thereon from the date of the sale thereof by the state, together with all legal charges for assessing and collecting the same and interest thereon at the rate of eight per centum per annum from the fifteenth day of May in each and every year during which the said lands were assessed, commencing with the May following the first assessment after such sale, shall have been paid into the treasury of the county in which such lands shall lie; nor until all delinquent taxes levied upon and returned against said lands and remaining unpaid when the same were so conveyed or attempted to be to the state, together with the like interest thereon, shall have been paid into such county treasury; which money shall be retained in said treasury to abide the event of such action and be returned to the party paying or depositing the same if he shall fail to maintain such action; otherwise, so much thereof as covers the delinquent taxes above mentioned and interest thereon at the rate aforesaid shall be retained by such county and the remainder shall be paid over to the person purchasing the same from the state or his legal representatives.

(2) In case the title to any such lands shall be adjudged to be in such original owner or party claiming title through or under him they shall be deemed to be and shall be subject to taxation during the time the same were held by the state in like manner as if they had not been conveyed to or held by it, and the taxes for such period shall be levied and assessed upon such lands and collected in like manner as other taxes upon real estate. In all such actions the court shall enter an order requiring the plaintiff therein, within a reasonable time to be fixed in the order, to comply with the provisions of this section by payment of the taxes, charges and interest as provided herein, and in default of compliance therewith the court shall dismiss the action. Nothing herein contained shall be construed as amending or repealing any of the provisions of sections 75.26, 75.27, 75.61 or 275.15. [1935 c. 24]

75.64 No jurisdiction; issue of deed postponed; deposit. (1) In all cases where action is now pending or shall hereafter be commenced for the setting aside of any sale of lands, or for the cancellation of any tax certificate, or for enjoining or restraining the issuing of a tax deed thereon upon the ground that the lands so sold or described in such certificate were not liable to taxation, or that the taxes on such lands were paid prior to such sale, or that such lands have been redeemed according to law, the owner of, or any person interested in, the lands covered by the lien of said certificate may, at any time before final judgment is entered in such action, deposit with the county clerk, or when such certificate shall have been issued by a city treasurer, then with such treasurer, the amount for which such lands were sold, with interest thereon from the date of such sale to the date of such deposit at eight-tenths of one per cent per month or fraction thereof, together with the legal charges thereon.

(2) The said clerk or treasurer shall retain such deposit until the final determination of the action, and in case such certificate shall be vacated and set aside or the issuing of such deed be permanently restrained, the money so deposited shall, at the time of entry of judgment or at any time thereafter, upon demand, be returned to the person depositing the same. In case final judgment shall be rendered in such action sustaining the validity of such sale and tax certificate the court shall compute the interest upon such certificate from the date of such deposit to the date of rendering judgment at eight-tenths of one per cent per month or fraction thereof and add the same to the costs and disbursements taxable in such action and the amount of such deposit, and shall enter judgment against the plaintiff therefor, and no tax deed shall be issued upon such certificate unless the plaintiff shall fail to pay to such clerk or treasurer, for the use of the owner of such certificate, the amount of such judgment within twenty days after the rendition thereof, together with interest thereon. [1935 c. 24; 1937 c. 294]

75.65 Special assessments for local improvements. The property of every county, city, village, town, school district, sewerage district or commission, sanitary or water district or commission, or any public board or commission within this state, and of every corporation, company or individual operating any railroad or street railway, telegraph, telephone, electric light or power system, or doing any of the business mentioned in chapter 76, and of every other corporation or company whatever, shall be in all respects subject to all special assessments for local improvements and certificates and improvement bonds therefor may be issued and the lien thereof enforced against such property in the same manner and to the same extent as the property of individuals. Provided that such assessments shall not extend to the right, easement or franchise to operate or maintain railroads, street railways, telegraph, telephone or electric light or power systems in streets, alleys, parks or highways. The amount represented by any certificate or improvement bond issued as aforesaid shall be a debt due personally from such corporation, company or individual, payable in the case of a certificate when the taxes for the year of its issue are payable, and in the case of a bond according to the terms thereof. [1941 c. 140]

Note: Cemetery lands are subject to special assessment. 20 Atty. Gen. 182.

75.66 Duty of officers; action to collect tax. (1) The officers now authorized by law to collect and receive the same from individuals shall have full power to receive and collect all such special assessments in the same manner as the same are now collected from individuals, and in addition thereto such officers shall have power at the direction of the proper authorities of the city or village making such special assessments, upon the non-payment of any such special assessments by any corporation, company, or individual mentioned in section 75.65 within the time now limited by law for the payment of such special assessments by individuals, or in the case of a county, city, village, town, and school district, after the time now prescribed by law in the case of other claims, to institute and prosecute an action to collect the same in the name and at the cost of such city or village. A like action may be maintained by the owner or holder of any special assessment certificate or improvement bond issued as aforesaid in his own name and at his own cost. In such action, when brought in the name of such city or village, it shall be sufficient to allege that the defendant is indebted upon a special assessment, specifying the amount due and the date of the warrant issued for the collection of the same, and when brought by such owner or holder, to set up a copy of such certificate or bond, specify the amount due and when payable, and allege that the defendant is liable therefor. On the trial of such action, when brought in the name of the city or village, the production of the proper warrant for the collection of such assessment together with the tax roll or list showing the amount thereof; and when brought by such owner or holder, the production of such certificate or improvement bond, tax roll, or list showing the amount thereof and warrant for its collection shall be prima facie evidence of the correctness and validity of such assessment, certificate, or improvement bond and of the liability of the defendant for the amount thereof and interest thereon from the time the same became payable. Any judgment re-

covered in such action shall be collected in the manner now prescribed for the collection of judgments against such defendant. In counties having a population of five hundred thousand or more the provisions of this section shall apply also to towns and town officers.

(2) Any county treasurer to whom special assessments for improvements have been or may be returned, in lieu of cash pursuant to the provisions of section 62.21, may likewise institute and prosecute an action to collect the same in the name of the county when authorized so to do by the county board of supervisors. [1931 c. 169; 1933 c. 280]

75.67 Tax sales, certificates and deeds in Milwaukee city and county. In counties containing a city authorized to sell land for nonpayment of its taxes, whenever either such county or city acquired, subsequent to January 1, 1933, any property by tax deed, foreclosure deed, deed in lieu of tax deed after expiration of the 5-year period of redemption provided by sections 75.01 and 75.02, or otherwise, upon its delinquent owned tax certificates, the assignment or sale of other tax certificates and the redemption and cancellation thereof shall be as provided by this section.

(2) All tax certificates issued upon a sale of such property by such county or city on the same day or subsequent to the date of sale of the certificate upon which such deed was acquired, and which certificates are owned by such county or city at the time of the acquisition of the property, shall only be sold by assignment or otherwise to such county or city so owning such property. On any tax sale subsequent to the acquisition of such property after the first Monday of August in any year, such county or city so owning such land shall be the exclusive purchaser of the tax certificates and the county or the city treasurer shall bid in and purchase the same. Any transfer or sale of a tax certificate in violation of these provisions shall be null and void. It is the duty of the city and the county treasurer to give the other, as the case may be, written notice of the acquisition of such property within twenty-four hours, Sundays and holidays excluded, after such tax deed, foreclosure deed, or other conveyance has been acquired; and upon receipt of such notice it is the duty of such treasurer, as the case may be, to make entry of such notice upon his sales records.

(3) (a) Whenever such property has been so acquired as a result of tax sale before or after the effective date of this act, the city treasurer shall notify the county clerk and the county treasurer, or the county clerk shall notify the city treasurer, as the case may be, in writing thereof within 24 hours thereafter, Sundays and holidays excluded. The county treasurer or the city treasurer upon receipt of such notice shall forthwith charge the amount, without interest or penalties, of all city, county, state and metropolitan sewerage district current and delinquent taxes, all unpaid instalments of special assessments and other assessments, charges and tax certificates which are liens upon the land, and which are owned or held by or due to such county or city, as the case may be, and upon which the time limitations of section 75.20 have not expired, to a "tax deed in force" account, and such taxes, assessments and certificates shall thereby be considered as paid or redeemed and such taxes shall be marked paid or redeemed on the tax roll, as the case may be; thereafter the amounts thereof owned by or due to such county shall be charged back against such city and such amounts thereof owned or held by or due to such city shall be credited to such city in the next tax levy upon such city by the county.

(b) On or before October 1 of each year, the city treasurer and the county treasurer shall respectively furnish the other with an itemized statement of the amounts so charged by him, as the case may be, to the city's or county's "tax deed in force" account as a result of tax deeds taken by the city or county. The county clerk shall include an itemized statement of such amounts in the apportionment filed by him. If any such tax deed is set aside, the city treasurer and the county treasurer shall respectively credit the other with the amounts so charged with respect to the deed set aside, and the amounts and entries by either treasurer with reference thereto, comprising said amounts shall be as though no charge had been made to a "tax deed in force" account; and the city treasurer and the county treasurer, respectively, shall, on or before October 1 of each year, advise the other of such credits due him.

(c) In the event that such property is so acquired by such city while the county tax roll is in the possession of its city treasurer, the latter shall consider such taxes as paid and mark the tax roll accordingly, and furnish the county treasurer with a statement thereof upon a form provided by the county. He shall return such records to the county treasurer with the delinquent county tax roll, and shall receive credit therefor the same as for delinquent taxes. The amount for which such credit is given shall be included in the amount to be charged back to such city in succeeding apportionment of county taxes. [1939 c. 422; 1941 c. 13; 1943 c. 115]

75.68 Consideration in sale of land for nonpayment of taxes. Any county or any city therein authorized by charter to sell and purchase land for nonpayment of taxes may sell or dispose of land acquired by it by tax deed or deed of foreclosure on tax certificates

and not needed by it for public use, for a consideration in amount the same as or more or less than the full value which could ordinarily be obtained therefor at a private sale. The amount of such consideration shall not affect the determination, in any other proceeding, of such full value of such property or of any comparable property similarly situated. [1939 c. 386]