

assignment. If the assignment so provides, the receiver shall apply the excess cash in the manner set out herein from the date of his appointment through the entire redemption period from any foreclosure sale. Subject to the terms of the assignment, the receiver shall have the powers and duties as set forth in section 576.01, subdivision 2.

(b) If no provision is made for the appointment of a receiver in the assignment, the assignment shall be binding upon the assignor without regard to waste, adequacy of the security or solvency of the mortgagor, but only in the event of default in the terms and conditions of the mortgage, and only in the event the assignment requires the holder thereof to first apply the rents and profits received as provided in section 576.01, subdivision 2, in which case the same shall operate against and be binding upon the occupiers of the premises from the date of filing by the holder of the assignment in the office of the county recorder or the office of the registrar of titles for the county in which the property is located of a notice of default in the terms and conditions of the mortgage and service of a copy of the notice upon the occupiers of the premises. The holder of the assignment shall apply the rents and profits received in accordance with the terms of the assignment, and, if the assignment so provides, for the entire redemption period from any foreclosure sale. A holder of an assignment who enforces it in accordance with this clause shall not be deemed to be a mortgagee in possession with attendant liability.

Nothing contained herein shall prohibit the right to reinstate the mortgage debt granted pursuant to section 580.30, nor the right to redeem granted pursuant to sections 580.23 and 581.10, and any excess cash, as that term is used herein, collected by the receiver under clause (a), or any rents and profits taken by the holder of the assignment under clause (b), shall be credited to the amount required to be paid to effect a reinstatement or redemption.

Approved May 20, 1977.

CHAPTER 203—S.F.No.816

[Coded in Part]

An act relating to taxation; exempting the department of revenue from certain administrative procedure act requirements in certain inheritance, iron ore, and occupation tax proceedings; authorizing the commissioner of revenue to enter into administrative agreements with the secretary of the treasury and the governing bodies of certain Indian reservations; changing requirements for orders of the commissioner; allowing commissioner to dismiss certain confiscation procedures; providing penalties for cigarette tax violations; appropriating money; amending Minnesota Statutes 1976, Sections 270.06; 270.10, Subdivision 1; 273.1104; 291.09, Subdivisions 1 and 2; 297.08, Subdivision 4; 297.12, Subdivision 1; 298.09, Subdivision 2; and Chapter 270, by adding a section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1976, Section 291.09, Subdivision 1, is amended to read:

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291.09 DEPARTMENT OF REVENUE; ADMINISTRATIVE PROCEDURES; DETERMINATION OF TAX. Subdivision 1. (a) Every personal representative shall submit to the commissioner a copy of the inventory and appraisal prepared by him in accordance with sections 524.3-706 to 524.3-708 relating to the inventory and appraisal, and a true and complete schedule of non-probate assets, on a form prescribed by the commissioner, and copies of such other documents as the commissioner shall request, within 30 days of receipt of the inheritance tax return, for the proper valuation of assets and the determination of the amount of the tax which may be due.

(b) Every personal representative shall file with the commissioner, on a form prescribed by the commissioner, an inheritance tax return showing the values contained in the inventory and appraisal and schedule of non-probate assets and deductions and exemptions claimed by the representative, and containing a computation of the inheritance tax due under the provisions of this chapter.

(c) Except as hereinafter provided, such inheritance tax return shall be conclusive as to the valuation of both probate and non-probate assets, to all other matters relating to the taxability of probate assets, and to the computation of the tax, unless, within 90 days after such filing, the commissioner, or any other person from whom any portion of such tax is due, has filed with the personal representative (and with the commissioner if the person objecting is one other than a personal representative) written objections to any matter indicating the items to which the commissioner or any other person specifically objects with respect to the determination of the tax, and detailing the rights available to the personal representative under chapter 15. For purposes of this clause, the 90 day statute of limitations provided herein shall not begin to run until the documents required in clause (a) above and elsewhere in this chapter have been received by the commissioner. Except as provided in clause (f) of this subdivision, upon objection the commissioner shall fix the time and place of a hearing thereon no earlier than ten days and no later than 30 days after the date of the filing of the objection unless the personal representative shall elect to postpone or waive his rights as specified under chapter 15. At such hearing the commissioner shall consider all available material presented by the personal representative for the purpose of substantiating or verifying the matters subject to the objections. Not later than 30 days after such hearing the commissioner receives the report and recommendation of the hearing examiner or the written waiver by the personal representative, the commissioner shall issue an order indicating the adjustment, if any, of the computation of the inheritance tax due.

(d) If the court upon a hearing on a personal representative's account allows a deduction different in amount than that used in the determination of the inheritance tax return as provided in the preceding subparagraph (b), or if the court determines:

(i) such property passes to a person or persons other than the person or persons reported on the inheritance tax return; or

(ii) such property passes to the person or persons reported on the inheritance tax return in amounts or shares different than those reported thereon; or

(iii) the relationship between the decedent and any person to whom property passes

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is other than the relationship reported on the inheritance tax return.

the commissioner not later than 90 days after receipt of a copy of the court's order or decree may issue an order adjusting the computation of the inheritance tax due in accordance therewith.

(e) The court may waive the filing of any inheritance tax return required by subparagraph (b) where it appears that no inheritance tax is due, but such waiver shall not limit the right of the commissioner to file a return pursuant to subdivision 3 hereof.

(f) If objections have been filed as provided in clause (c) of this subdivision, the personal representative or any other objector, in lieu of the hearing prescribed in clause (c) or subsequent to the hearing, may elect to have a formal proceeding under chapter 524 to determine the disputed matters.

(g) Any determination made by the commissioner may be appealed to the Minnesota tax court of appeals as provided in section 271.09.

Sec. 2. Minnesota Statutes 1976, Section 291.09, Subdivision 2, is amended to read:

Subd. 2. (a) When no representative has been appointed by the probate court, every person from whom a tax is due under the provisions of this chapter shall file with the commissioner, on forms prescribed by the commissioner, a schedule of non-probate assets listing the transfers on account of which such tax is due and an inheritance tax return showing the values contained in such schedule and all claimed deductions and exemptions and containing a computation of such tax.

(b) When no representative has been appointed by the probate court, and in cases where a representative has been appointed, as to matters reflected in the inheritance tax return which are not to be determined as prescribed in subdivision 1, subparagraph (c) hereof, the tax as computed on the return shall be the inheritance tax imposed by this chapter upon the transfers reported therein unless within 90 days after such filing, the commissioner or any other person from whom any portion of such tax is due mails a written notice to the commissioner, to the person so filing such return, and to each person from whom any part of such tax is due, objecting to such matters indicating the items to which the commissioner or any other person specifically objects and detailing the rights available to the taxpayer or personal representative under chapter 15 and fixing the time and place of a hearing thereon at least 30 days subsequent to the date of such notice unless the taxpayer or personal representative shall have elected in writing to postpone or waive his rights as specified under chapter 15. At such hearing the commissioner shall hear such objections, and within 30 days after such hearing receiving the report and recommendation of the hearing examiner or the waiver by the taxpayer or personal representative, shall make his order determining the inheritance tax imposed by this chapter.

(c) The filing of an inheritance tax return shall not be required under the preceding subparagraph (a) where the transfers resulting in the tax were included in a schedule of non-probate assets and an inheritance tax return previously filed with the commissioner.

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(d) For purposes of clause (b) the 90 day statute of limitations provided in this subdivision shall not begin to run until copies of all documents as the commissioner shall request, within 30 days of receipt of the inheritance tax return, for the proper valuation of assets and determination of the amount of the tax which may be due have been received by the commissioner.

Sec. 3. Minnesota Statutes 1976, Section 273.1104, is amended to read:

273.1104 **IRON ORE, VALUE.** Subdivision 1. The term value as applied to iron ore in section 273.13, subdivision 2 and in section 273.15 shall be deemed to be three times the present value of future income notwithstanding the provisions of section 273.11. The present value of future income shall be determined by the commissioner of revenue in accordance with professionally recognized mineral valuation practice and procedure. Nothing contained herein shall be construed as requiring any change in the method of determining present value of iron ore utilized by the commissioner prior to the enactment hereof or as limiting any remedy presently available to the taxpayer in connection with the commissioner's determination of present value, or precluding the commissioner from making subsequent changes in the present worth formula.

Subd. 2. On or before October 1 in each year, the commissioner shall send to each person subject to the tax on unmined iron ores and to each taxing district affected, a notice of the assessed valuation of the unmined ores as determined by the commissioner. Said notice shall be sent by mail directed to such person at the address given in the report filed by him and the assessor of such taxing district, but the validity of the tax shall not be affected by the failure of the commissioner of revenue to mail such notice or the failure of the person subject to the tax to receive it.

On the first secular day following the tenth day of October, the commissioner of revenue shall hold a hearing at his office in St. Paul which may be adjourned from day to day. All relevant and material evidence having probative value with respect to the issues shall be submitted at the hearing and such hearing shall not be a "contested case" within the meaning of section 15.0411, subdivision 4. Every person subject to such tax may at such hearing present evidence and argument on any matter bearing upon the validity or correctness of the tax determined to be due from him, and the commissioner of revenue shall review his determination of such tax.

Sec. 4. Minnesota Statutes 1976, Section 298.09, Subdivision 2, is amended to read:

Subd. 2. On the first secular day following the fourteenth day of May, the commissioner of revenue shall hold a hearing at his office in St. Paul which may be adjourned from day to day. All relevant and material evidence having probative value with respect to the issues shall be submitted at the hearing and such hearing shall not be a "contested case" within the meaning of section 15.0411, subdivision 4. Every person subject to such tax may at such hearing present evidence and argument on any matter bearing upon the validity or correctness of the tax determined to be due from him, and the commissioner of revenue shall review his determination of such tax.

Sec. 5. Minnesota Statutes 1976, Section 270.06, is amended to read:

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270.06 POWERS AND DUTIES. It shall be the duty of the commissioner of revenue and he shall have power and authority:

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

(2) To confer with, advise and give the necessary instructions and directions to local assessors and local boards of review throughout the state as to their duties under the laws of the state, and to that end call meetings of local assessors of each county, to be held at the county-seat of such county, for the purpose of receiving necessary instructions from the commissioner as to the laws governing the assessment and taxation of all classes of property, which meetings at least one member of each local board of review shall attend.

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

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

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

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

(7) To summon witnesses to appear and give testimony, and to produce books, records, papers and documents relating to any tax matter which he may have authority to investigate or determine;

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

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

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

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

(12) To visit at least one-half of the counties of the state annually and every county in the state at least once in two years and inquire into the methods of assessment and taxation and ascertain whether the assessors faithfully discharge their duties, particularly as to their compliance with the laws requiring the assessment of all property not exempt from taxation;

(13) To exercise and perform such further powers and duties as may be required or imposed upon the commissioner of revenue by law;

(14) The commissioner of revenue may promulgate rules and regulations for the administration and enforcement of the property tax. Such rules and regulations shall have the force and effect of law;

(15) To execute and administer any agreement with the secretary of the treasury of the United States regarding the exchange of information and administration of the tax laws of both the United States and the state of Minnesota.

Sec. 6. Minnesota Statutes 1976, Section 270.10, Subdivision 1, is amended to read:

270.10 ORDERS, DECISIONS, REPORTS. Subdivision 1. **IN WRITING; APPROVAL BY ATTORNEY GENERAL.** All orders and decisions of the commissioner of revenue, or any of his subordinates, respecting any tax, assessment, or other obligation, shall be in writing, filed in the offices of the department. No order or decision increasing or decreasing any tax, assessment, or other obligation by a sum exceeding ~~\$300~~ \$500 on real or personal property, or the assessed valuation thereof, or other obligation relating thereto, the result of which is to increase or decrease the total amount payable including penalties and interest, by a sum exceeding ~~\$500~~ \$1,000, and no order or decision increasing or decreasing any other tax by a sum exceeding ~~\$300~~ \$1,000 exclusive of penalties and interest, shall be made without the written ~~approval~~ signature or facsimile signature of the commissioner ~~or his, a deputy commissioner, assistant commissioner, division director, or acting division director~~ in each case. Written notice of every order granting a reduction, abatement, or refundment exceeding ~~\$500~~ \$1,000 of any tax

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exclusive of penalties and interest, shall be given within five days to the attorney general. The attorney general shall forthwith examine such order, and if he deems the same proper and legal he shall approve the same in writing, and may waive the right of appeal therefrom in behalf of the state; otherwise he shall take an appeal from the order in behalf of the state as herein provided; but written approval of the commissioner or his deputy and written notice to the attorney general, shall not be required with respect to the following orders: (1) orders reducing assessed valuation of property by reason of its classification as a homestead; (3) orders not involving refunds which have the effect only of correcting income and franchise tax assessments to conform to the amounts shown on final returns filed as provided by section 290.42, clause (5); (4) original orders for the refundment of gasoline and special fuel taxes.

Sec. 7. Minnesota Statutes 1976, Section 297.08, Subdivision 4, is amended to read:

Subd. 4. **DISPOSAL.** The property described in subdivision 1, clause 5 shall be confiscated after conviction of the person from whom it was seized, upon compliance with the following procedure: the commissioner or his agents, shall file with the court a separate complaint against the property, describing it and charging its use in the specified violation, and specifying substantially the time and place of the unlawful use. A copy of the complaint shall be served upon the defendant or person in charge of the property at the time of seizure, if any. If the person arrested is acquitted, the court shall dismiss the complaint against the property and order it returned to the persons legally entitled to it. Upon conviction of the person arrested, the court shall issue an order directed to any person known or believed to have any right or title or interest in, or lien upon, any of the property, and to persons unknown claiming any right, title, interest or lien in it, describing the property and stating that it was seized and that a complaint against it, charging the specified violation, has been filed with the court, and requiring the persons to file with the clerk of the court their answer to the complaint, setting forth any claim they may have to any right or title to, interest in, or lien upon the property, within thirty days after the service of the order as herein provided, and notifying them in substance that if they fail to file their answer within the time, the property will be ordered sold by the commissioner or his agents. The court shall cause the order to be served upon any person known or believed to have any right, title, interest or lien as in the case of a summons in a civil action, and upon unknown persons by publication, as provided for service of summons in a civil action. If no answer is filed as and within the time prescribed, the court shall, upon affidavit by the clerk of the court, setting forth the fact, order the property sold by the commissioner or his agents, and the proceeds of the sale, after deducting the expense of keeping the property and fees and costs of sale, paid into the state treasury, to the general fund. If answer is filed as and within the time provided, the court shall fix a time for hearing, which shall be not less than ten nor more than 30 days after the time for filing answer expires. At the time fixed for hearing, unless continued for cause, the matter shall be heard and determined by the court, without a jury, as in other civil actions. If the court shall find that the property, or any part thereof, was used in the violation specified in the complaint, he shall order the property unlawfully used, sold as herein provided, unless the owner shall show to the satisfaction of the court that he had no notice or knowledge or reason to believe that the property was used or intended to be used in the violation. The officer making a sale after deducting the expense of keeping the property, the fee for seizure, and the costs of the sale, shall pay all liens according to their priority, which are

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established at the hearing as being bona fide and as existing without the lienor having any notice or knowledge that the property was being used or was intended to be used for or in connection with the violation specified in the order of the court, and shall pay the balance of the proceeds into the state treasury to the general fund. Any sale under the provisions of this section shall operate to free the property sold from any and all liens thereon. Appeal from the order of the district court will lie to the supreme court as in other civil actions. At any time after seizure of the articles specified in this subdivision, and before the hearing herein provided for, the property shall be returned to the owner or person having a legal right to possession thereof, upon execution by him of a good and valid bond to the state of Minnesota, with corporate surety, in the sum of not less than \$100 and not more than double the value of the property seized, to be approved by the court in which the case is triable, or a judge thereof, conditioned to abide any order and the judgment of the court, and to pay the full value of the property at the time of seizure. The proceedings outlined in this subdivision may be dismissed by the commissioner when he deems it to be in the best interests of the state to do so.

Sec. 8. Minnesota Statutes 1976, Section 297.12, Subdivision 1, is amended to read:

297.12 **OFFENSES.** Subdivision 1. **FELONY.** (a) Any person violating section 297.11, subdivision 1, shall be guilty of a felony.

(b) Any person violating section 297.11, subdivision 2 or subdivision 5 by possessing, receiving, or transporting more than 20,000 cigarettes not stamped in accordance with the provisions of sections 297.01 to 297.13 shall be guilty of a felony.

Sec. 9. Minnesota Statutes 1976, Chapter 270, is amended by adding a section to read:

[270.60] TAX REFUND AGREEMENTS WITH INDIANS. The commissioner of revenue is authorized to enter into a tax refund agreement with the governing body of any Sioux or Chippewa reservation in Minnesota. The agreement may provide for a mutually agreed upon amount as a refund to the governing body of any sales or excise tax paid by the Indian residents of a reservation into the state treasury after June 14, 1976, notwithstanding any other law which limits the refundment of taxes.

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

Sec. 10. **EFFECTIVE DATE.** Section 6 shall be effective for all orders and decisions issued after September 1, 1974. The remainder of this act shall be effective the day following final enactment.

Approved May 20, 1977.

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