

1957

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## Recommended Citation

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<https://scholarship.law.umn.edu/mlr/1368>

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## ADMINISTRATIVE PROCEDURES IN THE MINNESOTA DEPARTMENT OF TAXATION

GEORGE R. JOHNSON\*

Many lawyers and tax practitioners are only vaguely familiar, if at all, with administrative tax procedures at the state level. All of the emphasis currently seems to be on federal taxation and for that reason a discussion of administrative procedures at the state level concerning problems of taxation should be of value to many lawyers. It is intended, therefore, that this article should be informative rather than analytical. It will consider generally the administrative procedures followed in the Minnesota Department of Taxation. It will also discuss collaterally many of the matters over which the Commissioner has jurisdiction to act, and the limits of his authority with regard to these matters. The nature of the topic precludes an exhaustive survey because procedures in the Department of Taxation are very informal and flexible and cannot always be delineated either specifically or precisely. It is hoped, however, that the procedures outlined in this article will provide a basic guide which can be used in or adapted to any matter concerning the Department in which the practitioner may have an interest.

At the state level there are in a broad sense two general areas of taxation, ad valorem or property taxes and taxes other than ad valorem, such as the excise tax, use tax, the occupation tax, etc. The procedures in the Department are basically similar, relative to the various taxes under the Commissioner's jurisdiction, when a problem is being considered at the Commissioner's level. There are, however, problems which are somewhat unique with regard to almost every tax, and consequently there are procedures peculiar to each tax. Also, although the extent to which appellate review is available is generally the same for all of the taxes administered by the Commissioner, there are, nevertheless, some variations.

### POWERS AND FUNCTIONS OF THE COMMISSIONER OF TAXATION AND ORGANIZATION OF THE DEPARTMENT OF TAXATION

In order to understand the procedures of the Department and to appreciate the ramifications of the Commissioner's authority, it is of value to consider the powers and functions of the Commissioner and the organization of the Department of Taxation.

The Commissioner has been vested by statute with the respon-

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sibility of administering almost all of the various forms of taxation which the state uses to obtain its revenue. The significant exceptions are liquor taxes, motor vehicle registration taxes and insurance gross premiums taxes. In order that the Commissioner may fulfill the duties of his office, the legislature has in most areas provided the necessary direction and specific authority. In addition, the Commissioner has been granted broad equitable powers which are exercised as a matter of discretion to alleviate inequities and hardships which can and do arise in the administration of the various tax laws.<sup>1</sup>

There are a variety of taxes under the jurisdiction of the Department. These are real and personal property taxes, including airflight<sup>2</sup> property taxes, income and franchise taxes, inheritance and gift taxes, the gross earnings tax, the occupation tax on mining, royalty taxes, petroleum taxes, cigarette and tobacco taxes, taconite taxes and the vessel tonnage tax. In connection with the petroleum, cigarette and tobacco taxes, the Commissioner has been granted exclusive licensing power as well as the concomitant power of revocation of such licenses. The Commissioner has general supervision of the administration of ad valorem taxes and specific and direct supervision over all of the other taxes. Even in ad valorem taxation, the Commissioner does have some direct responsibility, namely, the assessment of the Metropolitan Airports Commission properties, airflight property, public utilities transmission and distribution systems property outside of incorporated areas and assessment of all transportation pipelines both in and outside of incorporated areas. The Commissioner also sits as the State Board of Equalization,<sup>3</sup> which reviews assessments, and is a member of the Equalization Aid Review Committee,<sup>4</sup> which is responsible for determining the values which will serve as a basis for distribution of school aid funds.

Originally, Minnesota operated under the tax commission system, which was created in 1907. However, under the 1939 Reorganization Act, the Minnesota Tax Commission was abolished<sup>5</sup> and concurrently, the office of the Commissioner of Taxation was created.<sup>6</sup> At the same time, the Board of Tax Appeals was created,<sup>7</sup> the sole jurisdiction of which was to consider appeals from orders

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1. Minn. Stat. § 270.07 (1953).

2. Minn. Stat. §§ 270.072 (1953).

3. Minn. Stat. § 270.12 (1953).

4. Minn. Stat. §§ 128.082(1) (1953).

5. Minn. Stat. §§ 270.05 (1953).

6. Minn. Stat. § 270.01 (1953).

7. Minn. Stat. § 271.01 (1953).

of the Commissioner. With the creation of the office of Commissioner of Taxation, all of the powers and duties previously vested in the Tax Commission were transferred to the office of the Commissioner. Under the 1955 Reorganization Act, the title of the Department was changed to Department of Revenue and the office of Commissioner to Commissioner of Revenue.<sup>8</sup> The act, which was subsequently held unconstitutional,<sup>9</sup> provided that the administration of the mortgage registry tax was to be added to the duties of the Commissioner.

The Department of Taxation is administered by the Commissioner with a Deputy Commissioner serving in an executive and liaison capacity between the Commissioner of Taxation and the various line divisions. There are four line divisions, each charged with the responsibility of administering a particular tax or taxes. These are the Income Tax Division, the Petroleum Division, the Cigarette and Tobacco Tax Division, and the Inheritance and Gift Tax Division. All of the other miscellaneous taxes are administered by the Administrative Division,<sup>10</sup> which consists principally of the Commissioner, the Deputy Commissioner and the Department of Taxation research staff.

The Commissioner in conducting hearings in the Department is in some respects a quasi-judicial body because he has power to subpoena witnesses, books and records and may cause depositions to be taken both within and without the state in accordance with the rules of the district court.<sup>11</sup> In hearings at the Commissioner's level, he sits as a trier of fact and law, and is required in certain instances to make written findings of fact as a basis for his decision.<sup>12</sup>

#### FUNCTIONS OF THE ATTORNEY GENERAL

The Office of the Attorney General has a very close relationship with the Department of Taxation in that the Attorney General is legal adviser to the Commissioner of Taxation and is charged with the responsibility of handling all of the litigation for the Department.<sup>13</sup> In his role as adviser to and representative of the Commis-

8. Minn. Laws 1955, c. 857, art. IV

9. State *ex rel.* Foster v. Naftahn, 246 Minn. 181, 74 N.W.2d 249 (1956).

10. General information with regard to the organization, operation and cost of administration of the department is available in the 1953-1954 Biennial Report of the Department of Taxation.

11. Minn. Stat. §§ 270.06, 290.56 (1953).

12. Minn. Stat. §§ 270.22, 290.50 (1953).

13. Minn. Stat. §§ 8.01, 8.023, 270.09 (1953).

sioner, the Attorney General has a dual responsibility. He is an adviser to the Commissioner in regard to interpretation of statutes, handling of litigation and preparation of legislation, and at the same time the Attorney General also represents the interests of Minnesota citizens in that many orders of the Commissioner must be approved by the Attorney General before they are valid.<sup>14</sup> The purpose of such requirement is, of course, fairly obvious. It is a check against arbitrary action on the part of the Commissioner. In this regard the Attorney General is also required to appeal from the Commissioner's order if he feels that it would be in the best interests of the State of Minnesota to do so.<sup>15</sup> Any interested party has the right of appeal from the Commissioner's order and any resident taxpayer has this right on behalf of the State of Minnesota if the Attorney General refuses, on request, to appeal.<sup>16</sup>

#### AD VALOREM TAX PROCEDURES

The scope of the Commissioner's equitable power with respect to ad valorem taxes is outlined in Minnesota Statutes, section 270.07, which provides that the Commissioner shall hear all matters of grievance relating to taxation, and further that the Commissioner shall have power to grant such reduction or abatement of assessed valuation or taxes and of any costs, penalties or interest as he deems just and equitable, and to order refundment of any taxes, penalties or interest as may be unjustly or erroneously paid. The Commissioner may not, however, entertain an application under this section with regard to ad valorem taxes unless the taxpayer first obtains the favorable recommendation of the county board and county auditor in the county where the taxes are levied.<sup>17</sup> This approval by the local taxing authorities is a jurisdictional prerequisite.<sup>18</sup> Also, if special assessments are involved, the approval of the municipality concerned is necessary.

Although the Commissioner may, under section 270.07, abate any penalty imposed by law relative to taxation, it is only in the case of real and personal property taxes that prior approval must be obtained from the county board and county auditor. In all other cases the application is made to the Commissioner subject to approval by the Attorney General. There has been in the past and still is some vacillation on the part of both the Department and the

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14. Minn. Stat. § 270.07 (1953).

15. Minn. Stat. §§ 270.07, 270.10, 290.53(6) (1953)

16. Minn. Stat. § 271.06 (1953).

17. Minn. Stat. § 270.07 (1953)

18. State *ex rel.* Foley Bros. & Kelly v. Minnesota Tax Comm'n, 103 Minn. 485, 115 N.W. 647 (1908)

Attorney General's Office as to the scope of the Commissioner's jurisdiction under this section, an example is the case of the insurance gross premiums tax,<sup>19</sup> for which no refund machinery has been specifically provided by statute or otherwise. At one time refunds were made by the Commissioner under this section,<sup>20</sup> but more recently it has been determined that such refunds should be made pursuant to Minnesota Statutes, chapter 6.136 which provides general machinery for refunds where money is paid to the state by mistake and no other provisions for refund have been made. Under this section the head of the state department concerned approves the verified claim and certifies it to the State Auditor for payment.

On any application pursuant to Minnesota Statutes, section 270.07, and after favorable action by the county board and county auditor, the taxpayer may, if he so desires, request a hearing before the Commissioner regarding the application. On any application for a reduction of over \$15,000 of assessed value, the Commissioner is required by section 270.19 to schedule a public hearing. Notification must be given to the officials of the taxing districts affected so that they have an opportunity to appear and be heard in opposition.<sup>21</sup>

Applications under Minnesota Statutes, section 270.07, account for a substantial number of hearings before the Commissioner. This procedure is used to secure a remedy in many situations; for example, where errors have been made in valuation, where both the old and new owners of property sold prior to May 1 (the assessment date) have been assessed for the property, where properties have been improperly classified, and where the assessed value of property included both land and improvements and the improvements have been moved or destroyed as of May 1. If a taxpayer has unprofitable property which has been overvalued and upon which delinquent taxes have accumulated, the taxpayer and the local authorities can compromise the total tax liability with the approval of the Commissioner. Application may also be made under section 270.07 for refund of taxes paid. Also, this section is frequently used to obtain exemption for property entitled to be exempt under article IX, section 1, of the Minnesota Constitution. To entitle such property to exemption the property must be owned by the applicant

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19. Minn. Stat. § 60.63 (1953).

20. Op. Att'y Gen., 254-D, Sept. 5, 1940. *But cf.* Op. Att'y Gen., 424-B, March 29, 1955. It is the current practice of the Department of Taxation to reject such applications.

21. See also Minn. Stat. § 273.16 (1953).

and it must be used for the purpose for which exemption is sought, in other words, there must be both ownership and use of a kind contemplated by the constitution. Ownership, of course, is a relatively simple matter to establish, but use is a question of fact and a hearing is frequently held for the purpose of determining the facts.

The Commissioner's power under section 270.07 is discretionary, however,<sup>22</sup> and as a matter of policy he will not act on an application where the matter is in litigation. Thus, if a taxpayer has petitioned the district court for a determination of value or exempt status, the Commissioner will not act unless and until the district court action is dismissed.<sup>23</sup>

In some matters, the Commissioner's action is *ex parte*, such as under Minnesota Statutes, section 270.16. There the Commissioner may, on verified complaint or by the finding of a court or legislature or any committee thereof, appoint a special assessor and cause a reassessment of property in a particular taxing district.<sup>24</sup>

As has been pointed out previously, the Commissioner also sits as the State Board of Equalization. The State Board meets on the first Tuesday of September and continues until not later than November 15, at which time the assessment books must be certified to the county auditors. As the State Board of Equalization, the Commissioner is subject to certain limitations set out by statute

1. The State Board may increase or decrease the aggregate valuation of real or personal property of a county by adding or subtracting such percent as will reflect true value.
2. The Board may make a percentage increase or decrease of the property in any town, village or district within a county, so as to reflect true value, without changing the valuation of other property in the county
3. The Board may increase the assessments of individuals, firms or corporations above the amount returned by the county board of equalization, if such property appears undervalued, but must first give notice of the intention to increase such property and fix a time and place for hearing.
4. The Board cannot reduce the valuation of property of individuals, firms or corporations.
5. The Board cannot reduce the aggregate valuation of all property in the state as returned by the county auditors, more than one per cent on the whole valuation.

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22. *In re Calhoun Beach Holding Co.*, 205 Minn. 582, 287 N.W. 317 (1939), *In re People's Independent Telephone Co.*, 156 Minn. 87, 194 N.W. 317 (1923).

23. *But cf.* Op. Att'y Gen., 407-0, Jan. 7, 1944.

24. Compare § 274.10 which empowers the governor under the same circumstances to appoint an assessor to ascertain the correctness of valuations.

Thus, as State Board of Equalization, the Commissioner can take almost any action regarding valuation except to reduce the valuation of property of individuals, firms or corporations.<sup>25</sup>

Now, although there is no authority in the State Board of Equalization to act on individual applications for reduction of assessed value, and although prior approval of local authorities is a jurisdictional prerequisite to an application for reduction in assessed value under section 270.07, there is a procedure available by which an application for the reduction of assessed value of property of individuals, firms and corporations can be presented to the Commissioner even though prior approval of the county auditor and county board has not been obtained. Such an application is submitted under Minnesota Statutes, section 270.11. Under this section, the Commissioner of Taxation as such is vested with all the powers of the State Board of Equalization but acts in his capacity as Commissioner of Taxation. The Commissioner will not, however, entertain an application under this section except while the State Board of Equalization is in session. The reasoning underlying this limitation is that until the assessment books have been certified to the county auditors the assessment process is not complete and the Commissioner, therefore, can consider an application directly from the taxpayer without the approval of the county board and county auditor. Once the books are certified, however, the assessment process is complete and the State Board of Equalization no longer has power to act. Therefore, as the Commissioner's power as to valuation is coextensive with that of the State Board of Equalization, his power to act is limited to the time during which the State Board of Equalization could act. The question whether or not the Commissioner could act under this section other than during the period in which the State Board of Equalization is in session is not necessary to determine, because as a matter of policy he will not act on applications under this section except during the period stated.<sup>26</sup> Thus, the legislature has created a rather anomalous situation where the Commissioner on the one hand acts as State Board of Equalization subject to certain restrictions, and

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25. Minn. Stat. § 270.12 (1953).

26. The power vested in the Commissioner under Minn. Stat. § 270.11 (1953), is broader than the power vested in the State Board of Equalization because under § 270.11(6) the Commissioner can also lower the assessed valuations of individuals, firms and partnerships. It is interesting to consider just what the legislature did intend under § 270.11, for a literal reading of § 270.11(1) indicates that the Commissioner, as such, has been vested with authority to modify, review and revise all of his acts as State Board of Equalization. And the same section also clearly indicates the intention of the legislature to continue the State Board of Equalization.

on the other hand performs the same functions in his capacity as Commissioner without such limitations.<sup>27</sup> The significance of the distinction becomes important insofar as the right of appeal is concerned, for there is no general right of appeal from the orders of the State Board of Equalization<sup>28</sup> comparable to the right of administrative appeal from an order of the Commissioner.<sup>29</sup> The legislature, in vesting the Commissioner with this dual capacity, has granted to the Commissioner the power to decide, in some instances, whether his order shall be appealable. In the *Village of Tonka Bay* case the court said

"We are aware that the general grant of power to the commissioner in § 270.11, subd. 6, is broad enough to authorize the commissioner to issue orders identical to those which can be issued by the board and that, therefore, the commissioner by determining in which capacity to issue an order determines its appealability. While the propriety of allowing the deciding officer to determine subjectively the appealability of his own orders in this manner is somewhat questionable, this is a matter for legislative consideration and action."<sup>30</sup>

Although the State Board of Equalization is required to certify the equalized values to the county auditors not later than November 15, nevertheless, these orders may be amended subsequent to that date and prior to January 1 because the statute in this instance is directory rather than mandatory.<sup>31</sup>

Under Minnesota Statutes, sections 279.33 and 279.34 the Commissioner has the power under certain circumstances to cancel certificates of forfeiture where land is forfeited for non-payment of taxes. The circumstances under which the Commissioner may exercise this power are limited to instances where the land was owned by the federal government or the State of Minnesota and not subject to tax or where because of defective service of notice of forfeiture or for some other reason the land did not in fact forfeit.<sup>32</sup> Here too, however, approval of the county board and county auditor must first be obtained before submission of the application to the Commissioner of taxation.<sup>33</sup>

27. See *Village of Tonka Bay v. Commissioner of Taxation*, 242 Minn. 23, 26-27, 64 N.W.2d 3, 6 (1954).

28. Appeal from an order of the State Board of Equalization is limited by Minn. Stat. §§ 270.22, 270.23 (1953), Op. Att'y Gen., 192, April 26, 1954.

29. Minn. Stat. § 271.06 (1953). *But cf.* Minn. Stat. § 271.09 (1953)

30. *Village of Tonka Bay v. Commissioner of Taxation*, 242 Minn. 23, 27, 64 N.W.2d 3, 6 (1954).

31. A recent decision of the District Court for the 11th Judicial District, St. Louis County, *State ex rel. Government Research Bureau v. Borgen*, held that Minn. Stat. § 270.13 (1953) is directory rather than mandatory.

32. See, *e.g.*, Op. Att'y Gen., 425-C-1, June 25, 1946, Op. Att'y Gen., 130-B, Jan. 31, 1941.

33. Op. Att'y Gen., 425-C-1, June 25, 1946.

Another type of hearing held before the Commissioner in regard to real property is where tax-forfeited lands have been conveyed to a subdivision of the state pursuant to Minnesota Statutes, section 282.01, for a specific public use. The Commissioner may on petition determine whether or not the property has been used for the purpose specified or such use has been abandoned. In the event of a determination adverse to the subdivision, the Commissioner is required to declare a reversion of the property to the State of Minnesota.

#### INCOME TAX PROCEDURES

In areas of taxation other than ad valorem, the income tax probably presents the Department with more problems than all of the other taxes combined. It is difficult to say which aspect presents the most administrative problems, although a large area of uncertainty is, of course, constitutional questions insofar as multi-state corporations are concerned. In this connection, problems of statutory interpretation are generally heard on appeal before the Board of Tax Appeals, whereas constitutional questions are usually litigated in the district court. The reason for this is fairly obvious. In constitutional cases the taxpayer either does not pay and the Department must sue to obtain the tax, or the taxpayer pays the tax and sues in district court for a refund.

There are, of course, numerous situations under the Income Tax Act<sup>34</sup> when an occasion arises to request a Commissioner's hearing. Typical of these are the following:

- Where there has been disallowance of a deduction;
- In disputes over valuation of a stock;
- Where there has been a failure on the part of the Department to recognize a partnership;
- Where questions of residence, etc., arise.

Assuming, then, a situation where the auditors in auditing a return have discovered certain items which they question, the first step is the letter of inquiry to the taxpayer in which the taxpayer is asked to answer within twenty or thirty days. Usually thirty days is the time allowed. If no answer is received from the taxpayer, a follow-up letter is sent and if still no reply is received, a proposal of additional assessment is made. If an answer is made to the inquiry but it is unsatisfactory, then too, a proposal for an additional assessment is issued. Once the proposal is made, the taxpayer has thirty days to file a protest. The proposal letter contains instruc-

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34. Minn. Stat. c. 290 (1953).

tions for this procedure and specifically asks the taxpayer to request a hearing, if he so desires. Whether or not a hearing is requested, any conferences or hearings at this point are conducted at the division level. The taxpayer can, of course, on receipt of the letter of inquiry, always come in to discuss the matter with the division auditor, but once the protest is filed or a proposal of additional assessment is issued, the matter is out of the hands of the auditor and must be considered at the division level.

In the event that the director does not allow the protest, the taxpayer may request a hearing before the Commissioner, or if the question is doubtful, the director may ask for a Commissioner's hearing. After the Commissioner's hearing is held, an order will issue either assessing the tax or providing for modification of the proposal depending upon the Commissioner's decision. At this point the taxpayer can either appeal directly to the Board of Tax Appeals or he can petition the Commissioner for a rehearing. If he appeals, the appeal is from the order issued by the director. Of course, if the issue which the auditor raises is clearcut, such as a \$200 deduction for cigarette taxes which is not allowable on an individual's return, then the division order assessing the tax is issued and the taxpayer must appeal directly to the Board of Tax Appeals. As a practical matter, however, the taxpayer can always be heard at the division level. Once an appeal is taken from the order of the Commissioner, the case is referred to the Attorney General's staff and can no longer be resolved without the concurrence of the Attorney General.

With regard to income taxes, of course, questions of law are never resolved by the division auditors but rather are immediately referred to the division director. The auditor's authority is limited to fact questions.

The Commissioner is required by law to assess a penalty for late payment of income taxes<sup>35</sup> and also is vested with the discretion to assess a fraud penalty where the facts warrant it.<sup>36</sup> In addition, the Commissioner is required to assess interest on any late payment of tax.<sup>37</sup> The Commissioner is vested with discretionary power to abate both fraud penalties and other penalties;<sup>38</sup> he does not, however, have any authority to abate interest or taxes under the Income Tax Act, except to persons described in Minnesota Statutes, section 290.65.

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35. Minn. Stat. § 290.53 (1953).

36. *Ibid.*

37. *Ibid.*

38. Minn. Stat. § 290.53(6) (1953).

Even though an unpaid account has been certified to the Attorney General for collection, the Commissioner, at any time prior to entry of judgment, can amend or modify his order, or in cases where there is disagreement, the Commissioner has authority to enter into a closing agreement by which the total tax liability of the taxpayer may be settled for less than the amount of the proposal or order.<sup>39</sup> But once judgment has been entered only the Executive Council, which includes the Governor, Secretary of State, State Auditor, State Treasurer and the Attorney General, has authority to abate or modify the liability. In the event that a taxpayer wishes additional time within which to file a return, the Commissioner has authority to grant an extension of time to file the return without penalties accruing to the taxpayer.<sup>40</sup> Interest accrues whether the extension is of the time to file or of the payment of the tax.<sup>41</sup>

With regard to a claim for refund, after the claim is filed and if it is allowed in its entirety, an order issues requiring refundment. If the claim for refund is not allowed in its entirety or is disallowed or modified, then a proposal is made by the Department as to the extent of allowance, and the procedure is the same as that for a proposal of additional assessment in its various stages of consideration. It should be noted, however, that if no order issues within six months from the date the claim is filed, the taxpayer may then litigate the issue of refund in the district court. But filing of a claim for refund is a jurisdictional prerequisite to maintaining an action in the district court for refund of income taxes which have been paid.<sup>42</sup>

#### INHERITANCE AND GIFT TAX PROCEDURES

In regard to inheritance taxes, the procedure is somewhat different from that in income tax cases if the problem involves an estate in probate. Assuming that you have a stock valuation question and the inventory and appraisal, as well as the inheritance tax return, have been filed in the probate court and copies filed with the Department, the probate court will make a tax determination based upon the inventory and appraisal. If the Department does not agree on the determination, the division files a protest with the probate court, a copy of which is served upon the administrator, or perhaps the administrator may object to the court's determina-

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39. Minn. Stat. § 290.51 (1953).

40. Minn. Stat. § 290.42(5) (1953).

41. Income Tax Regulations (1953) Articles 53-4, 53-5.

42. Minn. Stat. § 290.50(2) (1953).

tion and file a protest.<sup>43</sup> Ordinarily, at this point the matter would be considered at the division level. If agreement cannot be reached either of the parties can ask for a Commissioner's hearing if they wish an administrative determination. In practice, this is done by the director more frequently than by the taxpayer. After the Commissioner's hearing, if the matter is not resolved to the satisfaction of the Commissioner, he orders the director to petition the probate court for a hearing on the valuation question. If an agreement is reached in the hearing before the Commissioner, the order instructs the director to cancel the protest. The probate court makes the final determination regarding valuation and if the court's determination is not agreeable, either party may appeal to the district court for a trial *de novo* on the issue involved.<sup>44</sup>

If the estate is not in probate, or if non-probate assets (ordinarily those assets not subject to the jurisdiction of the probate court) are involved, then the matter is processed similarly to income tax matters—the Commissioner enters his order assessing the tax<sup>45</sup> and appeal is directly to the Board of Tax Appeals. Here again, the taxpayer may request a hearing before the Commissioner. There is an important distinction between probate assets and non-probate assets for where probate assets are involved the probate court makes the determination and the Department takes positive steps, *i.e.*, protesting the determination and petitioning the district court just as the taxpayer may also do if he is aggrieved.

Insofar as gift tax problems are concerned, the taxpayer files an information return with the Department<sup>46</sup> and the division auditors, in examining the return, use a set of valuation standards which have been worked up by the Department. These standards are used in valuing future interests, trusts, etc. If the values in the return of the taxpayer are acceptable, the division issues its order assessing the tax and the taxpayer has the usual thirty days to appeal to the Board of Tax Appeals. If the gifts as stated in the return are not acceptable according to the auditor's valuation standards, then the procedure is the same as in income tax matters, namely, the proposal, division hearing, Commissioner's hearing, petition for rehearing and appeal to the Board of Tax Appeals.

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43. Minn. Stat. § 291.21(4) (1953).

44. Minn. Stat. §§ 525.71(16), 525.72 (1953)

45. Minn. Stat. § 291.01(4) (1953), under which the Commissioner is required to determine the tax on jointly owned property, presents a typical non-probate problem.

46. Minn. Stat. § 292.08 (1953)

## PETROLEUM, CIGARETTE AND TOBACCO TAX PROCEDURES

License revocation proceedings concerning petroleum taxes and cigarette and tobacco taxes are heard before the Commissioner.<sup>47</sup> The procedure followed here is that the Commissioner will cite the taxpayer in on an order to show cause why the license should not be revoked and the matter is heard in the first instance at the Commissioner's level, at which time the taxpayer will offer evidence as to why the revocation should not be ordered. In this type of hearing an order is issued by the Commissioner either revoking or suspending the license, or providing that the licensee has shown cause why the license should not be revoked, should not be suspended or should be renewed, as the case may be.

## HEARING AND APPEAL

With regard to the nature of the hearings at the various levels, the hearing at the division level is actually an office conference with the division director, his assistant, the auditor and the division attorney usually in attendance. There is no record made of this conference except such notes as the participants may make. It should be kept in mind that because of the secrecy provision in the Income Tax Act,<sup>48</sup> the Department is not authorized to deal with any taxpayer's representative in regard to an income tax matter unless a power of attorney has first been filed.

The hearings before the Commissioner are quasi-judicial in nature. The Commissioner sits as a trier of fact and law, a transcript is made of the proceeding, the parties present documentary evidence and introduce testimony of witnesses, there is opportunity for examination and cross-examination, and although the exclusionary rules of evidence are rarely brought into the picture, there have been occasions when objections to evidence have been made and ruled on. These hearings are very similar to the hearings before the referee on a workmen's compensation matter.

Appeal to the Board of Tax Appeals must be taken within thirty days from the date of the Commissioner's order, but there is provision for an extension of an additional thirty days or a total period not to exceed sixty days.<sup>49</sup> There is no authority to extend the time within which to appeal beyond this limit. The hearing

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<sup>47</sup> Minn. Stat. § 296.11 (1953) (petroleum taxes); Minn. Stat. § 297.04(9) (1953) (cigarette tax), Minn. Laws 1955, E. S., c. 2, art. V § 3(11) (tobacco products tax).

<sup>48</sup> Minn. Stat. § 290.61 (1953).

<sup>49</sup> Minn. Stat. § 271.06(1)(2) (1953).

before the Board is a de novo hearing rather than one of review<sup>50</sup> and the Board's order is similar in effect to a decision of the district court.<sup>51</sup> By statute, the Commissioner's order on appeal to the Board is prima facie valid.<sup>52</sup> The prima facie rule, however, does nothing more than shift the burden of going ahead with the proof.<sup>53</sup>

The form of the appeal to the Board is by petition which is much like a complaint in the district court, except that it sets forth not only the facts but the points of law which the appellant questions. The petition must also state an address within the state at which service of notice and other papers may be made upon the appellant.<sup>54</sup> The Commissioner must, within twenty days after filing of the appeal, make, certify and file with the Board a return consisting of a copy of any application or petition by which the proceeding was instituted and any other material paper preceding the order of the Commissioner, a copy of the order appealed from, and an answer,<sup>55</sup> which is comparable to an answer to a complaint in the district court. Practice before the Board of Tax Appeals follows the rules of practice of the district court except that practice before the Board is not quite as formal in decorum and the application of the rules of evidence is less rigid. Practice here is similar to practice before the Minnesota Industrial Commission.<sup>56</sup>

Appeal from the Board of Tax Appeals is to the Minnesota Supreme Court by certiorari, and only on the grounds specified in the statute that the Board was without jurisdiction, that the order of the Board was not justified by the evidence or was not in conformity with the law, or that the Board committed any other error of law.<sup>57</sup> Application for writ of certiorari to review an order of the Board of Tax Appeals must be made within thirty days after notice of the making and filing of the order of the Board unless an extension of time is allowed, but in any case within sixty days after such date.<sup>58</sup>

On appeal to the Supreme Court the findings and order of the

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50. *Id.* at (6).

51. See Roberts, *Tax Valuation of Minnesota Iron Ore*, 34 Minn. L. Rev. 389, 424-25 (1950), for a discussion of the jurisdiction of the Board of Tax Appeals on questions of assessment and valuation.

52. Minn. Stat. § 271.06(6) (1953).

53. *Stronge & Lightner Co. v. Commissioner of Taxation*, 228 Minn. 182, 36 N.W.2d 800 (1949).

54. Minn. Stat. § 271.06(2) (1953).

55. *Id.* at (3).

56. Copies of the rules of practice before the Board of Tax Appeals are available upon request to the Board, which is located in the State Capital.

57. Minn. Stat. § 271.10(1) (1953).

58. *Id.* at (2).

Board are prima facie correct<sup>59</sup> and generally speaking, the Supreme Court will not reverse the order of the Board of Tax Appeals unless the order was clearly without basis in law or in fact.<sup>60</sup>

#### SUMMARY

As a summary of the procedures of administrative review available, a taxpayer has in regard to ad valorem taxes equalization proceedings at the local level, county level and State Board of Equalization level. He may also proceed under section 270.07, namely, the Commissioner's equitable power, assuming that he first received the favorable recommendation of the county board and auditor. While the State Board of Equalization is meeting the taxpayer may petition directly to the Commissioner for reduction of assessed value under section 270.07. The taxpayer always has available, of course, his remedy at law, *i.e.*, petition to the district court on the question of value, as well as other defenses in regard to property taxes.

With respect to taxes other than ad valorem, the taxpayer may be heard at the division level, Commissioner's level and by the Board of Tax Appeals. In this regard, the taxpayer in most instances can select the method of determination he desires, that is, administrative review or district court adjudication. The taxpayer may pursue his administrative remedy through the Commissioner's hearing. At this point the taxpayer has several alternatives. He may appeal to the Board of Tax Appeals, he can defend an action against him in the district court by the Commissioner for the collection of the tax; or he may pay the tax and sue for refund in the district court. Thus, the taxpayer may have a determination by way of the administrative process and still litigate in district court, if he so desires.

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59. Minn. Stat. § 271.11 (1953).

60. *Oliver Iron Mining Co. v. Commissioner of Taxation*, 247 Minn. 6, 21-22, 76 N.W.2d 107, 117 (1956); *Western Auto Supply Co. v. Commissioner of Taxation*, 245 Minn. 346, 367-68, 71 N.W.2d 797, 809-10 (1955). See Roberts, *Tax Valuation of Minnesota Iron Ore*, 34 Minn. L. Rev. 389, 433 (1950), for a discussion of the scope of review of an order or decision of the Board of Tax Appeals.



# MINNESOTA LAW REVIEW

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Volume 41

March, 1957

No. 4

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