Mr. Frank J. Noll, Jr., Administrator
Intangibles Tax Division
Indiana Department of State Revenue
141 South Meridian Street
Indianapolis, Indiana

Dear Mr. Noll:

This is in reply to your inquiry concerning the following:

"Is money deposited by a subsidiary, The Commonwealth Loan Company of Indiana, in Chicago and New York banks for the sole purpose of maintaining lines of credit for the parent corporation, Beneficial Loan Corporation of New Jersey, exempt from intangible tax?"

It is my understanding that The Commonwealth Loan Company, an Indiana corporation, maintains sizable bank deposits, which it states are "placed on deposit for the sole purpose of maintaining lines of credit for the benefit of the Beneficial Loan Corporation, a New Jersey corporation." Beneficial Loan Corporation owns all, or at least a majority, of the common stock of Commonwealth Loan Company, and, in effect, exercises control over the operation of Commonwealth Loan Company; it is stated that Commonwealth Loan Company has no authority to withdraw said deposits, except with the consent of Beneficial Loan Corporation.

The particular provision of the Intangibles Tax Law applicable to this situation, is that portion of the Acts of 1943, Ch. 134, Sec. 1 (b), as found in Burns' Indiana Statutes (1951 Repl.), Section 64-901 (b), which provides as an exclusion from the term "intangible" or "intangibles" the following:

"* * * accounts arising out or (of) transactions involving deposits or loans of money in any bank or trust company which the person owning, holding in trust or having the beneficial interest therein is not entitled to withdraw in money because such deposit or account by agreement of the parties is required to continue as a
compensating balance for a loan or loans made or to be made by the bank or trust company to the depositor or owner, holder or person beneficially interested in such account; * * *.*" (Our emphasis)

Your particular attention is directed to 1942 O. A. G., page 154 for the reason that said opinion is no longer determinative as to intangibles tax liability on compensating balances. Said opinion, which formerly held that compensating balances retained in connection with loans made by banks are taxable as intangibles to the owners of such balances, was issued on July 8, 1942. The Acts of 1943, Ch. 134, Sec. 1 (b), *supra*, added the above quoted section, which now excludes such compensating balances as intangibles, so that the official opinion of the Attorney General, rendered in 1942, is no longer controlling.

The accounts herein involved are stated to be deposited "for the sole purpose of maintaining lines of credit," which means that said accounts are to be used as a compensating balance for loans made or to be made by the bank or trust company in which said accounts are deposited. Your request tacitly admits that such accounts are compensating balances within the meaning of the above quoted section of the Intangibles Tax Law, for, as stated in your request:

"The question involved in this case, is whether the exemption allowed a depositor of that portion of said deposit which must remain in the bank in order to maintain said depositor's line of credit with the bank, extends to the parent corporation in this case or person beneficially interested in such account?"

In other words, does the fact that this compensating balance is to be used by the Beneficial Loan Corporation, rather than by the Commonwealth Loan Company, make the statutory exclusion inoperative?

In my opinion, the answer to your question is found in the Intangibles Tax Law itself, in the Acts of 1943, Ch. 134, Sec. 1 (d), as found in Burns' Indiana Statutes (1951 Repl.), Section 64-901 (d), which provides as follows:

"(d) The term 'person' shall include a fiduciary and a firm, partnership, company, association, corporation
and/or any and every multiple group that may have the capacity to own or hold property or the custody thereof.” (Our emphasis)

The above definition of the term “person” is broad and specifically includes “any and every multiple group that may have the capacity to own or hold property or the custody thereof.” This clearly means that the provisions of the act apply not only to individual persons, fiduciaries, firms, partnerships, companies, associations and corporations, but to multiple groups thereof, which have the capacity to own or hold property, or the custody thereof.

In the fact pattern herein, since Beneficial Loan Corporation owns all, or at least a majority of the common stock of Commonwealth Loan Company, they own or hold said accounts or the custody thereof, either individually or as a multiple group, so that said provision of the act would apply to either one of said companies, or to them collectively.

Having shown that the definition of the term “person” is extended to include “any and every multiple group,” it is important to note further that the exclusion applies to a “person owning, holding in trust or having the beneficial interest therein.” Even though it be conceded that the legal title to said accounts may be in Commonwealth Loan Company, the Indiana Corporation, the facts in your letter disclose that said accounts are used by Beneficial Loan Corporation for the sole purpose of maintaining its lines of credit; also, the Indiana Corporation has no authority to withdraw said accounts except with the consent of Beneficial Loan Corporation. Clearly, therefore, as these accounts are used by Beneficial Loan Corporation and under its control, it cannot be denied that in reality Beneficial Loan Corporation does have “the beneficial interest therein” within the meaning of the statute.

It is therefore my opinion that money deposited by a subsidiary, The Commonwealth Loan Company of Indiana, in Chicago and New York banks for the sole purpose of maintaining lines of credit for the parent organization, Beneficial Loan Corporation of New Jersey, is exempt from intangible tax.