"It is a maxim of the law that statutes must be construed prospectively, unless they plainly import a different intention on the part of the legislature."

The other principle was equally well stated by Judge Hackney in the case of Board of Commissioners of Vigo County v. Davis, 136 Ind. 503 (1893):

"Rules of construction applicable to legislation, in which the public at large are interested, require liberality, while, with reference to legislation granting powers or privileges to individuals, for their own advantage, require strict construction as against the individuals."

In this case we are presented with a statute which grants privileges to certain individuals. Therefore, no matter how worthy the cause, the statute must be construed literally. By established case law the courts are prohibited from enlarging the privileges granted by a benevolent legislature. Since the statute does not plainly import a different legislative intent, it must be construed prospectively from March 10, 1943, the date of approval.

It is therefore my opinion those who have surrendered their permits are entitled to a pro rata refund of the fee for the unexpired period of the permit subsequent to March 10, 1943. Any other construction would be in violation of well established legal principles.

STATE BOARD OF TAX COMMISSIONERS: Inheritance Tax, liability of personal representative in case of transfers in contemplation of death.

April 5, 1943.

Mr. Isaac Kane Parks,
Inheritance Tax Administrator,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of March 24 in which you state that a resident of Indiana died intestate, leaving one heir at law;
that prior to death and in contemplation thereof, he gave to
various persons, resident and nonresident, sums of money
ranging from $125 to $2100. Your question then is:

"Under the Indiana Inheritance and Transfer Tax
Act, does any liability attach to the administrator of
the estate to account for any of the above transfer
taxes accruing from the seventeen donees?

"Or, does the lien merely follow the funds given in
each gift, and the separate donees themselves remain
solely liable for the payment of such transfer tax?"

If the donee has paid tax to the administrator, of course he
must account for it, otherwise not.

In arriving at that conclusion I have considered the follow-
ing sections of the Inheritance Tax Law:

Section 1 of Chapter 285 of the Acts of 1937 (amend-
ing Section 7 of Chapter 75 of the Acts of 1931 as
amended by Section 1 of Chapter 229 of the Acts of
1933); Section 6-2407, Burns' Supp., requires that all
executors, administrators, etc., shall file a complete and
detailed schedule of all property taxable under the
provisions of this act. The provision would seem to be
broad enough to include property given in contempla-
tion of death.

Section 13 of Chapter 75 of the Acts of 1931, Section
6-2413, Burns’ 1933, further provides that no executor
or administrator “shall be entitled to a final accounting
of an estate, nor be discharged from liability for the
amount of such tax, unless a receipt” for payment is
attached to his final report.

Section 1, Chapter 159, Acts 1937 (amending Sec. 30, Chap-
ter 75, Acts 1931) Section 6-2430, Burns’ Supp. provides:

“Every such tax imposed by this act shall be, and
remain, a lien upon the property transferred until
paid, and the person to whom the property is so trans-
ferred and the administrators, executors, or trustees
of every estate so transferred, shall be personally lia-
ble for the payment of such tax: Provided, That if no
proceeding is taken to determine the inheritance tax on
the property of any deceased person within ten (10) years after his death, it shall be conclusively presumed that no inheritance tax is due and all property of decedent shall be free and clear therefrom.”

Those sections would indicate that there is some responsibility upon the part of the representative involved to see that that tax is collected. The problem is to decide the extent of that responsibility and in so deciding due regard must be given to other provisions of the act and the general duties and obligations of administrators and executors.

It is now well settled in Indiana, as well as in most other states, that an inheritance tax is “not a tax upon property, but on the right of succession or transfer of property or some beneficial interest therein.”

See also 103 A. L. R., p. 81 and cases there cited.

That being true, although the personal representative is charged by statute as an agent of the State, to collect the tax upon specific bequests, devises, or inheritances before distribution, the primary responsibility for payment always falls upon the specific gift, devise, legacy or inheritance involved.

In Nation v. Green, Executor, 188 Ind. 697 (1919), the facts involved were quite similar to your question. There the Court said:

“The second stated by the court requires the residuary estate to pay all the inheritance taxes involved. The manner in which and the circumstances under which each transfer was made, whether by deed or will, are fully disclosed by the facts found; the relationship of each transferee to the decedent is found; the contingencies of the several estates taken are defined.

“The statute clearly indicates that each of the transferees shall pay inheritance taxes; the exemptions and percentages applicable to each; the method of calculation, adjustment, and repayment in event contingencies happen, which lessen the estate taken by one and thereby increase the estate taken by another.”
Then the Court sets out the pertinent statutes:

"The executor, administrator, or trustee is not necessarily to act under this statute in his general capacity as such, but as an agent named by the state to act for the state in making such collection. He is made personally responsible for such collection. Sec. 10143e Burns' 1914, supra.

"The provisions quoted make it clear that the residuary estate is not chargeable generally with the inheritance tax upon other transfers. * * *

That proposition has the practically unanimous support of all states where similar inheritance tax statutes are found. Our Act was adopted from the New York statute and as stated in Eddy v. Short, 179 N. W. (Iowa), 818 at 821:

"We borrowed our statute from the New York statute, and the construction put upon such statute by the New York court properly commands consideration."

The question of construing the personal liability provisions, as well as that part of the statute dealing with receipts for payment upon final settlement, has been before the New York Court and other state courts having similar statutory provisions. Courts have adopted the rule which is most consistent with other rules regarding personal liability of administrators and executors, to-wit: that the personal liability of such representative extends to and is limited by bad faith or lack of diligence. Specifically upon the question of the personal liability of the executor or administrator irrespective of the funds in his hands, in In re Burroughs Estate, 244 N. Y. S. 640, the Court said:

"While this" (statutory) "language by its terms would seem to embody a personal obligation of payment on the executor irrespective of the presence of applicable funds in his hands, it has been authoritatively and, as this court believes, justly construed to the contrary."
That same construction has been adopted in other states having similar statutes. In Martin v. Bird, 8 Atl. 2d, 333 (N. J.) (1939) the Court said:

"Unquestionably it was not the intent of the legislature that executors and administrators should be personally liable for the payment of the tax if they had no means or power of accomplishing the payment of such tax out of the assets of the decedent,—and the statute should be so construed."

In re Meinert's Estate, 213 N. W. 938 (1927) Iowa, the court said at page 939:

"The tax is not upon the executor, or upon his property or upon his right. The tax is not his. If he is unable to collect, he is not personally liable. * * * The personal liability imposed upon the executor therefor is for breach of duty, and the amount of the tax with interest is compensation or indemnity fixed by the statute for such breach."

In re Powell's Estate, 101 Pacific, 2d, 54 (Mont.) (1940) bears considerable resemblance in its fact situation to your question. In that case the administrator was unable to pay the tax upon payments to beneficiaries under an annuity contract because the funds never went through his hands. It was claimed by the board of equalization that the payments were subject to tax and the administrator was personally liable. The Court said at page 57:

"Under statutes similar to ours, the universal holding has been that each specific share, interest or legacy passing upon the death of the decedent must bear its proportionate part of the inheritance tax, and that the share of one beneficiary cannot be used to pay the tax charged against that of another."

The Court further said in categorical language that the administrator could not be liable for payment of the tax where nothing came into his hands out of which the tax could be made.
There is the further consideration of the interpretation of that section of the statute requiring the executor or administrator to secure a receipt of payment of the tax on scheduled property prior to and as a condition to his right to discharge. The part of the inheritance tax law should be construed similarly—there should be no requirement that he secure a receipt for payment of tax which he was never in a position to collect. That interpretation was adopted in New York. In re Meyer, 103 N. E. p. 713, (1913) N. Y., at page 714 reads as follows:

“Every executor, administrator, or trustee is required to take from the state comptroller or a county treasurer, as the case may be, duplicate receipts for the payment of the tax (section 222) and is not entitled to a final accounting of an estate in settlement of which a tax is due unless he shall produce the receipt (section 236). An obvious contemplation and intention, expressed by the provisions, is that the money to be used by the executor, administrator, or trustee in the payment of the tax, and which through the payment is to produce and give him possession of the receipt, should be collected by him from the transferred property. When its collection has been impossible, the taking and production of the receipt is impossible, within the intent of the provisions, and the provision barring him from a final accounting is inapplicable.”

That interpretation of the Act is further strengthened by a reading of Section 15, Chapter 75, Acts of 1931 (Burns' 1933, Sec. 6-2415) which seems to contemplate the collection by an administrator or executor only from the specific legacy, devise, or inheritance.

It is my opinion, therefore, that the administrator is not bound to account for the tax accruing from the gifts. Further and corollary thereto the lien follows only the gifts and the donees are solely responsible for payment in this particular situation.