two leading newspapers in the county where such institution is located, whereas, under the provisions of Section 49-706, supra, the notice is required to be given in two newspapers published within the county where a state institution maintains its office, and also in each of two daily newspapers published in the city of Indianapolis. Therefore, when notice is given in compliance with the provisions of Section 49-706, compliance is also made with the provisions of Section 22-105, supra.

Therefore, in answer to your letter, it is my opinion that the notice should be given in accordance with the provisions of Section 49-706 and the contract awarded in compliance with the provisions of Section 22-105, supra.

STATE BOARD OF TAX COMMISSIONERS: Intangibles; whether contract for the erection and maintenance of an electric sign of special design is taxable as an intangible.

July 3, 1943.

Hon. Charles H. Bedwell, Chairman,
State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Mr. Bedwell:

I have before me your request for an official opinion based upon the following facts as stated by your letter:

"An electric company uses a written contract with its customers, by which it agrees to furnish, erect, connect and maintain at its own cost, signs which remain the property of the electric company. The customer agrees to keep the sign for a period of 36 months and to pay a specified sum for 36 months, monthly in advance, during the life of the agreement, payments to be made when the sign is erected.

"The customer further agrees to pay a specified sum upon the signing of the agreement, which is an advance payment at the monthly rate, for the last three months of the term of the agreement, and in the event of a breach of the lease on the part of the customer,
such advanced payment is retained by the electric company to apply as part of the damages provided for.

"The customer agrees not to remove the sign from the address specified in the contract and to promptly pay when due all taxes, assessments, or other public charges which may be levied upon the sign. The agreement further provides that if the customer defaults in the payment at the monthly rate, or discontinues his business, or refuses or neglects to accept the sign when tendered by the company, that the customer shall pay to the company a specified sum for each month of the unexpired portion of the agreement, which sum is agreed to be the actual loss which would be suffered by the company in any event, and not as a penalty. The contract also contains a clause by which the payment of the bills of the customer is guaranteed."

The question submitted is as to whether such a written agreement is taxable as an intangible under the Intangibles Tax Act. As defined in the statute, as originally written, the term "intangible" included among other things the following:

"As used in this act, and unless a different meaning appears from the context:

"* * * written instruments evidencing and/or securing a debt not otherwise evidenced, including mortgages, chattel mortgages, bills of sale and conditional sales contracts; written contracts for the payment of money, excepting contracts for personal services and/or for manufacturing or processing merchandise;

* * *"

Burns' Indiana Statutes Annotated 1933, Sec. 64-901.

The above language was changed by amendment in 1935 to read as follows, Section 64-901, Burns' Supplement:

"As used in this act, and unless a different meaning appears from the context:

"(a) Property Covered. The term 'intangible' and/or 'intangibles' shall apply to, mean, and include * * *
written instruments evidencing and/or securing a debt not otherwise evidenced, including mortgages, chattel mortgages, bills of sale, conditional sales contracts; written instruments evidencing an exchange of goods or property where the intent of the parties is the ultimate transfer of title excepting contracts for the sale of real estate or leases or (of) real estate with option to purchase; written contracts for the payment of money, excepting contracts for personal services and/or for manufacturing or processing merchandise; * * *

I find no other provision in the definition which seems to have any application to the question. The answer to your question, therefore, is to be obtained by an application of the facts as stated to the above definition.

In the construction of statutes, it is often misleading to isolate language from its general setting, and I think that the first clause above quoted is an example of that fact. The language “written instruments evidencing and/or securing a debt not otherwise evidenced”, if isolated from the language immediately following, might be so construed as to include an instrument such as is described in your letter. However, when considered in connection with the illustrative cases declared to be within the class, I think it is evident that an instrument such as you describe in your letter would not come within the first clause quoted above. I am referring to the expression “written instruments evidencing and/or securing a debt not otherwise evidenced including mortgages, chattel mortgages, bills of sale, conditional sales contracts.” For example, the language “including mortgages, chattel mortgages” evidently has in contemplation a debt such as might very well be evidenced by a promissory note but which is not so evidenced. The language “bills of sale, conditional sales contracts” evidently contemplates cases where goods or other property is sold and part of the purchase price remains unpaid. The following language, “written instruments evidencing an exchange of goods or property where the intent of the parties is the ultimate transfer of title excepting contracts for the sale of real estate or leases or (of) real estate with option
to purchase”, strengthens the conclusion which I have just expressed. It will be noted here, however, that contracts for the sale of real estate or leases or (of) real estate with option to purchase are not included. None of these instruments, however, are such as you describe in your letter and so if such instrument is not included in the remaining language above quoted, it would not be a taxable intangible. The remaining language, which would appear to have a bearing upon the question, reads as follows:

“As used in this act and unless a different meaning appears from the context:

“(a) Property Covered. The term ‘intangible’ and/or ‘intangibles’ shall apply to, mean, and include * * * written contracts for the payment of money, excepting contracts for personal services and/or for manufacturing or processing merchandise; * * *.”

Section 64-901, Burns’ Indiana Statutes Annotated Supplement, 1933.

I think it is clear that the contract which you describe in your letter meets the conditions of being a written contract for the payment of money, and it remains to be determined as to whether it is included within any of the exceptions.

On the subject of the construction of revenue laws, I find the following statement of the principle in Cooley, On Taxation, 4th Edition, Section 503:

“Ambiguity in a statute imposing a tax must always be resolved in favor of the taxpayer.”

See in this connection the case of State ex rel. v. Continental Insurance Co., 67 Ind. App. 536, where the Court, in construing a tax statute, had this to say on page 556:

“Statutes like the one under consideration, imposing a special tax on corporations, are within the rule that a statute providing for imposition of taxes shall be strictly construed and that all reasonable doubts in respect thereto shall be resolved against the government and in favor of the citizen.”
Strictly speaking, I think the above rule is very logically applicable in determining whether any particular subject is in the taxable class, the presumption being just the contrary after the taxability of the subject has been determined. Examining now the contract, a copy of which has been furnished, I find that paragraphs 1 and 2 of the contract proceed as follows:

“This agreement, made and entered into this ______ day of __________, 194__, between the Federal Electric Company, Inc., hereinafter called the Company, and __________, hereinafter called the Customer:

WITNESSETH:

“This company agrees to furnish, erect, connect and maintain at its own cost the Federal Electrical Advertising Display and accessories, hereinafter called the sign, which is and shall remain the property of the Company, at No. ___ Street, City______ State______, in accordance with Sign and Maintenance Specifications as follows:”

Hereafter follows a statement of the specifications covering the making and erecting of the above sign. It will be noted, however, that this sign remains the property of the electric company so that there is no sale of such sign to the customer as to which the payments to be made might be considered as an unpaid balance. After all, the consideration for the payments is the rendering of certain personal services in connection with building and thereafter maintaining a specially designed electric sign, title to which never passes from the company. I think, therefore, that, within the meaning of the Intangibles Tax Act, the contract described herein is a contract for personal services and excepted under Subdivision (a) of Section 64-901 of Burns’ Indiana Statutes Annotated, 1933, as subsequently amended.