STATE BOARD OF TAX COMMISSIONERS: Mortgage exemption, whether anyone except owner may legally apply for exemption.

July 23, 1943.

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

Dear Judge Bedwell:

This will acknowledge receipt of your letter of July 21, 1943, which reads as follows:

"We would like for you to render an official opinion as to the right of a mortgage exemption under the following circumstances:

"A, a corporation, erected an office building upon certain lots located in the city of Indianapolis, Indiana. A, does not hold the fee of the land, but does have a 99 year lease thereon. The building erected by A, is encumbered with a mortgage in the amount of $497,700.00 as of March 1, 1943, and Leasehold Bonds have been issued in such amount by A, the mortgagor, to be a banking institution as Trustee for the bondholders.

"C, a Trust Company, is Trustee for the owner of the fee in the particular lots upon which such building has been erected, and the real estate appears upon the tax duplicates in the name of C, as Trustee.

"In 1942, A, at proper time made application for a mortgage exemption in the amount of $1,000.00, but same was disallowed by the Board of Review of Marion County upon the ground that A was not the owner of the real estate and was not entitled to a mortgage exemption.

"A, is contending that since it holds a 99 year lease upon the real estate, that it is for all practical purposes the owner thereof, and as lessee under a 99 year lease, it is entitled to claim and obtain a mortgage exemption. So the question for determination is as follows:
"Is a lessee under a 99 year lease, who executes a mortgage upon the leasehold interest, entitled to receive a mortgage exemption or deduction under our statutes?"

The answer to your question is determined by the Indiana Statutes governing taxation. Burns' R. S. 1933, Section 64-104, reads as follows:

“For the purposes of taxation, real property shall include all lands and lots within the state and all buildings and fixtures thereon and appurtenances thereto, except as otherwise expressly provided by law; and whenever, distinct from the ownership of the surface thereof, by deed, contract, reservation in any conveyance or otherwise, an estate is created in such land or the mines or minerals therein, any and all such subsurface interests or rights shall be deemed real estate and each such subsurface estate shall be separately listed and taxed as such. All property of any nature or kind other than that above in this section specified shall be deemed personal property, and shall be listed and taxed as such, except in cases otherwise expressly provided for in this act.”

Section 64-209, providing for mortgage indebtedness exemption reads as follows:

“Any person being a resident of the state of Indiana, being the owner of real estate liable for taxation within the state of Indiana, and being indebted in any sum secured by mortgage upon any such real estate, may have the amount of such mortgage indebtedness, not exceeding one thousand dollars ($1,000) existing and unpaid upon the first day of March of any year, deducted from the assessed valuation of his or her said mortgaged premises for that year, and the amount of such valuation remaining after such deduction shall have been made shall form the basis for assessment and taxation for said real estate for said year: Provided, That no deduction shall be allowed greater than one-half of such assessed valuation of said real estate.”
Section 64-210 provides that:

"All persons desiring to avail themselves of the provisions of this act shall, between the first day of March and the first Monday of May, inclusive, of each year, file with the auditor of the county wherein said real estate is situated, on forms prescribed by the state board of tax commissioners, a sworn statement which shall be in duplicate when such person owns real estate in more than one (1) county or in more than one (1) taxing district in the same county, which statement shall set forth the amount of such mortgage indebtedness existing and unpaid on the first day of March of that year, the assessed valuation of said real estate, the full name and complete residence address of the applicant and of the mortgagee, * * *. If the applicant is not the sole owner of such real estate the statement shall set forth his exact share of interest therein, * * *.”

The pertinent question involved is—"Is a lessee in possession under a ninety-nine year lease an owner of real estate within the meaning of the Indiana Statute granting exemption from taxation because of a mortgage indebtedness?"

A careful research fails to disclose any Indiana Statute dealing specifically with the taxation of leasehold interest in real estate or leases for a period of ninety-nine years or any less definite term of year. If the right to exemption exists, it must be by virtue of some statute.

In the case of Mullikin v. Reeves, Treasurer, 71 Ind. 281, the Supreme Court of Indiana expressly held that real estate must be assessed in the name of the owner of the legal title to such real estate as of March 1st of any calendar year. In construing the tax statutes, then in force, as to the proper person in whose name the real estate should be assessed, the Supreme Court, on pages 284 and 285 of 71 Ind., used the following language:

"* * * The statutes of this State, as we construe them, clearly contemplate that there shall be no transfer of real property for the purposes of taxation, except upon a change of title and the production of the
evidence thereof to the proper county auditor. 1 R. S. 1876, p. 760.

"We think, therefore, that the real estate first given to Uriah was improperly assessed in his name, but that it ought to have been assessed, in the name of the appellant, with the taxes thereon for the years 1876 and 1877, notwithstanding his parol gift to Uriah of such real estate. In section 102 of the assessment law of December 21st, 1872, it is expressly provided, 'That no assessment of real property shall be considered as illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof.' 1 R. S. 1876, p. 97.

"It is clear, we think, that the appellant continued to be the legal owner of the real estate first given by parol to Uriah, during the years mentioned, notwithstanding such parol gift. In section 103 of said assessment law, it is provided, that 'The owner of property on the 1st day of April in any year, shall be liable for the taxes of that year.' 1 R. S. 1876, p. 98.

"Under this provision of the statute, it seems clear to us, that the appellant, as the legal owner of the real estate first given to Uriah, during the said years, was personally liable for the taxes assessed thereon in those years, although such real estate was then in the possession of Uriah, under said parol gift, and although the said taxes had been improperly assessed in Uriah's name, instead of in the appellant's name, as such owner. * * *

It now must be determined as to the character of a ninety-nine year lease and whether it is real estate or personal property within the meaning of the Indiana Tax Statutes.

In the case of Meni v. Rathbone, 21 Ind. 454, on page 467, the Supreme Court of Indiana held:

"A lease for years is a chattel real, and, being less than a freehold, is considered as personal estate or property, and, in statutory interpretation, is not included under the word 'land,' or the phrase 'real estate' or 'real property,' but is included in the phrase 'personal property' or the word 'chattel.' "
Again in the case of City of Santa Barbara v. Maher, Cal. App., 77 P. 2d 306, it is expressly held:

"A 99 year lease is an 'estate for years' and as such is a 'chattel real' and is 'personal property' rather than 'real property' or 'real estate.'"

Under the above authorities it is clear that a lessee in possession under a ninety-nine year lease is not the owner of the legal title to the real estate held under such a lease, and for this reason, is not an owner of real estate within the purview of Section 64-209, Burns' 1942 Pocket Supplement, entitling such person to file a claim for a mortgage indebtedness exemption.

Therefore, it is my opinion the proper answer to your question is in the negative.

REPORTER OF SUPREME AND APPELLATE COURTS:

Distribution of reprint copies of the Supreme and Appellate Court Reports, whether same may be made free to municipal courts.

Mrs. Marjorie Gunderson, Reporter, Supreme and Appellate Courts, State House, Indianapolis, Indiana.

Dear Mrs. Gunderson:

I have your letter of July 14 in which you request my opinion whether or not you may furnish free to municipal courts reprint copies of the Supreme and Appellate Court Reports.

The answer to your question requires an historical analysis of our present statutes concerning distribution of Reports. The original Act for distribution of Reports is Chapter 170 of the Acts of 1891. Section 6 of that Act provided for the publication of fifteen hundred copies of the Supreme Court Reports and further provided, in Section 7, that five hundred of those copies were to be retained by the Secretary of State and distributed free as set forth in the statute. Upon distrib-