STATE BOARD OF TAX COMMISSIONERS: Excise tax; whether excise tax paid should be deducted from liquor dealer's inventory on March 1 of any year in establishing the value of any such liquor for purposes of taxation.

August 7, 1943.

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

Dear Mr. Bedwell:

I have before me your letter in which you state that there is pending before the Board an appeal from the County Board of Review of County, Indiana, in which is presented a question of valuation which you desire to submit for an official opinion. The inventory of a wholesale liquor dealer in this case amounts to $128,454.68. This taxpayer is claiming the right to deduct $102,763.74 from such inventory, upon the claim that that amount of excise tax has been paid upon the liquors involved. The County Board of Review and the taxing officials of the county contend that this deduction should not be made in valuing the liquor for taxation. The question as stated by you is:

"In the valuation of intoxicating liquors for taxation that are owned by a wholesaler or a retailer on March 1st of the year of assessment, should the amount of the tax that has been paid prior to the purchase thereof by the wholesaler or retailer be deducted from the cost in making an assessment?"

Section 64-103 of the June 1943 Cumulative Pocket Supplement of Burns' Annotated Indiana Statutes, 1933, provides as follows:

"All property within the jurisdiction of this state, not expressly exempted, shall be subject to taxation. All property of every kind and nature both real and personal and wherever situate, owned or possessed, and subject to taxation within the state of Indiana, shall be assessed and valued for taxation purposes, at a rate which is uniform and equal and on a just valua-
tion basis and at the true cash value as determined by the cost price, book value, the earning capacity of such property, replacement cost, depreciation, if any, and all other facts and circumstances which may give any information concerning such valuation, as of the first day of March in each year in which it is subject to assessment and valuation for taxing purposes."

I quote the above section of the statute because the same provides the method of arriving at a just valuation for taxation of taxable property within the state. Not all of the elements of valuation therein set out would be applicable to every case, but, insofar as different elements therein set out are applicable, it seems to me that that should be taken into consideration. It is obvious that nothing therein appears to admit taxes paid as a deductible item. I think, however, the difficulty with the case now under consideration does not grow out of the application of the principles above set out to the problem being considered, but rather the relation of the dealer to the taxing process involved in the laying of the excise levy. The dealer in such a case is not an agency of the state to collect the excise engaged in the collection of taxes for the state. The tax is not in any sense a tax upon the ultimate consumer although, of course, paid by him as the result of which the increased value of the article appears.

That the dealer or wholesaler in such a case is not an agent of the state engaged in the collecting of taxes for the state was very clearly held in the recent case of Department of Treasury et al. v. Midwest Liquor Dealers, Inc., decided April 30, 1943, and reported in 48 N. E. Advance Sheet (Ind. App.) at page 71. In that case the appellee had made the claim that it was an agency of the state engaged as a collector for the state rather than a taxpayer, and by reason of that claim, would be entitled to deduct from its gross receipts, under the Indiana Gross Receipts Tax Law, the amount which it had received and was represented by such tax. The court, however, disallowing this contention, said:

"In the light of opinions herein previously expressed and of the well settled rule of law that the rights, powers and duties of one charged with the collection of taxes extend and are limited to such as are conferred
or imposed by or under the authority of a statute we cannot, under the evidence here submitted, perceive
that appellee was in any wise an agent of the State of Indiana in and for the collection of the tax imposed by
the Liquor Control Act.”

In addition to the above authority and the authorities therein
cited, it appears to me that the case, after all, becomes quite
simple when we consider the fact that the money thus col-
lected by a sale of the article in no sense belongs to the state
but goes directly into the treasury of the liquor dealer or whole-
saler. It goes into such treasury rather than to the state upon
the simple proposition that it at all times belongs to the dealer
or wholesaler.

It seems to me, upon the basis of what has been said, it
must be apparent that such item should not be deducted from
the inventory in making an assessment.

DEPARTMENT OF FINANCIAL INSTITUTIONS: Industrial
Loan and Investment Companies, whether eligibility of
the director depends upon his ownership of stock.

August 11, 1943.

Hon. A. J. Stevenson, Director,
Department of Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

I have your letter of July 28th in which you request an
official opinion upon the following question:

“Is is necessary that the directors of an Indiana
Industrial Loan and Investment Company be stock-
holders in such corporation in order to qualify as such
directors?”

Upon examination of the pertinent Indiana Statutes, it be-
comes apparent that an industrial loan and investment com-
pany is a financial institution only to a limited extent. In
the definition of financial institutions as contained in the
original Act and its amendments—the last amendment is Sec-