Answering your fourth and final question, I call your attention to the well settled principle of law to the effect that where taxes are voluntarily paid they cannot be recovered except as provided by some statute.

Board, etc. v. Ruckman, 57 Ind. 96;
Spring, etc. v. State, 198 Ind. 620;
Culbertson v. Board, etc., 208 Ind. 22;
City of Indianapolis, etc. v. Morris, 25 Ind. App. 409;
Cincinnati, etc. v. Wayne Twp., 55 Ind. App. 533.

Your letter states that a charitable organization domiciled in Indiana has voluntarily and without protest paid an intangible tax, which tax has been distributed as provided by the Intangible Tax Act. Under such a state of facts and the law as declared by the foregoing authorities, it is my opinion that such tax cannot be refunded even though the taxpayer was exempt from the payment of intangible taxes, for the reason that there is no statute authorizing such a refund. Therefore, the proper answer to your last question is in the negative. To afford relief in such cases the legislature should provide the necessary relief.

STATE BOARD OF TAX COMMISSIONERS: Tax limitation Act of 1937; power of County Board of Tax Adjustment and State Board of Tax Commissioners.

August 24, 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 dated August 3, 1943, which reads as follows:

"We would appreciate the receipt of an official opinion concerning the following legal question.

"The Tax Limitation Act (Ch. 119 of Acts of 1937, Secs. 64-307 to 64-318, Supp. to Burns' R. S. 1933) limits the total tax rate for all purposes in incorporated
towns to $2.00 on each $100 of taxable property therein. Chapter 176 of the Acts of 1941 (Sec. 48-6806, Burns' R. S. 1933 Supp.) repeals all laws in conflict therewith and provides that the Town Board of every town shall have the power to levy and have collected annual taxes, not exceeding $1.25 on the $100 valuation on all property subject by law to taxation, and to appropriate from the funds provided by such levy, such amounts as they deem necessary for street and road expenses, light and water expense, and for general town purposes. Such act further provides that in case of an emergency the County Board of Tax Adjustment, subject to the approval of the State Board of Tax Commissioners, may fix such levy at a rate in excess of $1.25.

"We would appreciate an answer to the following question:

"What is the effect of Chapter 176 of the Acts of 1941 upon the power of the County Board of Tax Adjustment and the State Board of Tax Commissioners to reduce the tax levies made by the Board of Town Trustees of an incorporated town, under the provisions of Chapter 176 of the Acts of 1941, at page 532?"

Chapter 119, Acts 1937, Sections 64-307 to 64-318, Burns' 1943 Pocket Supplement, referred to in your letter, has the following title, to-wit:

"An act concerning tax levies, rates and budgets and providing for the fixing thereof, limiting the amount of the same and repealing all laws in conflict therewith, and declaring an emergency."

Section 2 of said Act reads:

"The term 'municipal corporations,' as used herein shall include counties, townships, school townships, cities, school cities, towns, school towns, school districts, sanitary districts, park districts and all taxing units within the state."

Section 3 of said Act provides that the total of all tax rates within any municipal corporation shall not exceed the following total rates to-wit:
(1) In territory outside of the corporate limits of incorporated cities and towns, the sum of $1.25 on each $100 of taxable property therein.

(2) In territory inside of the corporate limits of incorporated cities and towns, the sum of $2.00 on each $100 of taxable property therein, which rate shall include the state rate, the township levy and rate for poor relief.

Considering the title of Chapter 119, Acts 1937, in connection with the definitions contained in Section 2 and the provisions of Section 3 of said Act, it clearly appears that said Chapter 119, Acts 1937, is a general law applicable to all taxing units in the state.

Chapter 176, Acts 1941, has the following title, to-wit:

"An act concerning tax levies for towns."

Section 1 of Chapter 176, Acts 1941, Burns' 1943 Pocket Supplement, Section 48-6806, reads as follows:

"For the purpose of providing funds to pay the expenses of any town, including the expenses of street and road repair, light and water and general town expenses, but not including, however, the support of schools, the town board of every town shall have the power to levy and have collected annual taxes, not exceeding one dollar and twenty-five cents ($1.25) on the hundred dollars ($100) valuation on all property subject by law to taxation and to appropriate from the funds provided by said levy such amounts as they deem necessary for street and road expenses, light and water expense, and for general town purposes: Provided, however, That in case of an emergency the county board of tax adjustment, subject to approval of the state board of tax commissioners, may fix such levy at a rate in excess of said one dollar and twenty-five cents ($1.25)."

Section 2 of said Act repeals all laws or parts of laws in conflict therewith.

The title of Chapter 176, Acts 1941, limits the provisions of the Act to incorporated towns and the provisions of Section 1, of said Act, are applicable only to fixing tax rates in incorporated towns, and do not purport to apply to territory in
the county, or township, outside of the corporate limits of incorporated towns, or to territory in incorporated cities in the state.

Thus, we have a general Act (Chapter 119, Acts 1937) and a special Act (Chapter 176, Acts 1941) purporting to fix the maximum tax rates, which may be established by the proper taxing authorities in incorporated towns, in the state of Indiana. It is a well settled rule of statutory construction that where there is a general law and a special law upon the same subject, the special Act is the one which governs and controls the procedure relating thereto.

Temperly v. City of Indpls., 189 Ind. 292-298;
Daly v. Carr, 206 Ind. 554;
Knox, etc. v. State ex rel., 217 Ind. 493-514;
Gibson v. State, 99 Ind. App. 106;
Monical v. Heise, 49 Ind. App. 302;
Hall v. Delphi, etc., 98 Ind. App. 409.

Furthermore, the fact that Section 2 of Chapter 176, Acts 1941, repeals all laws or parts of laws in conflict therewith, is an additional reason why it must be held that Chapter 176, Acts 1941, is the last expression of the Legislature upon the subject of fixing the maximum tax rates in territory within the corporate limits of incorporated towns in the state of Indiana, and it is the Act which controls.

Stiers v. Mundy, 174 Ind. 651 on 656, and cases therein cited.

It is well settled that a repealing clause in an Act is subject to rules of construction the same as any other part of the Act, and an express declaration of repeal will not be given that effect when it is apparent that the Legislature intended to limit the effect of the repealing clause.

State ex rel. Milligan v. Ritter Est. (1943), — Ind. —, 48 N. E. 993;
Arnett v. State ex rel. (1909), 168 Ind. 180;
Indianapolis, etc. v. Waddington (1907), 169 Ind. 448-453.

The fact that Section 48-6806 (Chapter 176, Acts 1941), contains the following language, to-wit:
"* * * Provided, however, That in case of an emergency the county board of tax adjustment, subject to approval of the state board of tax commissioners, may fix such levy at a rate in excess of said one dollar and twenty-five cents ($1.25)."

is evidence that the Legislature recognized the provisions of the Budget Act giving the county board of tax adjustment and the state board of tax commissioners the right to review all tax levies, rates and budgets, and therefore intended to limit the effect of the repealing clause of Chapter 176, Acts 1941, to the maximum rate limitations contained in Section 3 of Chapter 119, Acts 1937 (Section 64-309, Burns' Pocket Supp.) to rates in incorporated towns.

Burns' 1943, Pocket Supplement, Section 64-310 (Sec. 4, Chapter 119, Acts 1937), provides for the appointment of a county tax board of adjustment composed of seven members and provides that the budgets adopted and tax levies and rates fixed by the proper offices or bodies of each municipal corporation of the county shall be placed before said board at its annual meeting beginning on the second Monday of September of each year.

Section 64-311 (Sec. 5, Chapter 119, Acts 1937) reads, in part, as follows:

"* * * It shall be the duty of such tax adjustment board to examine, revise, change or reduce, but not increase, any budget, tax levy or rate, and to hold such budget within the total of the amount of revenue to be raised therefor from any source whatsoever, to reduce such budget in accordance therewith. * * * Said board shall not revise, change or reduce the detailed items included in such budgeted classifications. The local tax adjustment board shall endeavor to limit the aggregate of the tax rates in accordance with the provisions of this act: Provided, however, That if said board shall, as a result of its analysis and review of the budget or budgets of any municipal corporation or corporations, come to the conclusion that the rate of taxation as limited by the provisions of this act is inadequate or that there be reasonable necessity for an increase of the aggregate rate, then, in that event
the tax adjustment board shall submit in writing such recommendations, including an analysis of the total aggregate rate and such other data as in its discretion will transmit to the state board of tax commissioners all the necessary facts and circumstances under which, in its opinion, the final aggregate rate should be broken down and distributed to the separate and several corporations, and such recommendations shall be filed in duplicate * * * one (1) copy of which shall be immediately forwarded to the state board of tax commissioners * * *. The state board of tax commissioners shall then proceed to review such budgets and proceed according to the provisions outlined in this act governing appeals."

Section 64-314, Burns’ Pocket Supp. (Sec. 8, Chapter 119, Acts 1937) provides that on or before October 15th of any year any municipal corporation as defined in said Act or ten or more taxpayers in any municipal corporation other than those who pay poll tax only, and who are affected by any budget levy or rate of any such municipal corporation as fixed by the county board of tax adjustment, may appeal therefrom to the State Board of Tax Commissioners, which board is then given full power to review the budget and rates within the unit from which the appeal is taken, and revise, change or increase any levy or rate as provided in said section.

It is a familiar rule of statutory construction that all laws upon the same subject must be construed in pari materia and full force and effect given to the intention and purpose of the Legislature in enacting said laws, if it is possible to so construe said Acts.

Fleenor v. State, 200 Ind. 165-170;
State ex rel. v. Grange, 200 Ind. 506-509.

Applying the above rules of construction to the Acts referred to in your letter, Section 48-6806, supra, is substituted in lieu of Section 64-309, as applied to territory inside of the corporate limits of incorporated towns in the state of Indiana, and then said Section 48-6806 is construed in pari materia with Sections 64-310, 64-311, 64-314, Burns’ 1943 Pocket Supplement.
Therefore, it is my opinion that the Board of Trustees of an incorporated town has the right to adopt its budget and fix its local tax levy and rate pursuant to the provisions and limitations contained in Sec. 48-6806, supra; that the County Board of Tax Adjustment has the right and duty to examine, revise, change, reduce, and in case of emergency and subject to the approval of the State Board of Tax Commissioners, increase the tax levy and rate as provided in Sections 48-6806 and 64-311; that upon recommendation of the County Board of Tax Adjustment, or upon an appeal by any municipal taxing unit, or by ten, or more, taxpayers, the State Board of Tax Commissioners is granted the power and authority under said Sections, 48-6806, 64-311 and 64-314, to review, revise, change, reduce or increase the total aggregate tax levy and rates within said municipal tax unit from which said appeal is taken, all as provided in said sections aforesaid.

Further, it is my opinion that the jurisdiction of the State Board of Tax Commissioners is limited to that of an appellate tribunal and that it does not have, or possess, any original jurisdiction to review, revise, reduce or increase, except as expressly granted by the sections of the statute above mentioned, and the appellate jurisdiction of said board is likewise prescribed and limited by the provisions of the statute granting the right of appeal.

STATE BOARD OF ACCOUNTS: Appearance bonds, procedure for the collection of forfeited appearance bonds in the municipal criminal courts of Marion County.

August 24, 1943.

Hon. Otto K. Jensen,
State Examiner,
Department of Inspection and Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

I have your letter of August 19, 1943, inquiring as to the procedure for the collection of forfeited appearance bonds in the Municipal Criminal Courts of Marion County.