INDIANA TAX BOARD: Intangibles Tax—Taxability of certificates of indebtedness issues by rural electric membership corporations.

October 8, 1942.

Hon. Henry S. Murray, Chairman
Indiana Tax Board,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion regarding the taxability as an intangible of Certificates of Indebtedness issued by County Rural Electric Membership Corporations. A sample of the instrument issued by such corporations is as follows:

"$10.00
Application No. ______
No. 2099

CERTIFICATE OF INDEBTEDNESS

_______ County Rural Electric Membership Corporation

_______, Ind. _______ 193____

THIS CERTIFIES, That the undersigned corporation is indebted to__________________________
of__________, Indiana, in the sum of Ten Dollars which the undersigned, subject to the conditions hereinafter set forth, hereby agrees to pay, with interest, at the rate of five percentum (5%) per annum, not compounded.

Before the undersigned shall be obligated to pay any part of such principal or interest, the undersigned shall establish and maintain such reserve or reserves as shall be required to be established and maintained by it pursuant to the provisions of such mortgage or mortgages as have been or shall at any time be made by it to the United States of America or any agency thereof, and no part of such principal or interest shall be payable by the undersigned at any time when the under-
signed shall be in default under the provisions of any such mortgage, nor if any such payment would, in the sole discretion of its Board of Directors, cause such default, reduce any such reserve or reserves below the amount or amounts required by such mortgage or mortgages, or reduce the working capital of the undersigned below the amount necessary for the proper conduct of its business. No such payment shall be made until specifically authorized by resolution duly adopted by the Board of Directors of the undersigned.

"The unpaid principal, or any part thereof, or any unpaid interest thereon may at any time be applied by the undersigned to the payment or part payment of any overdue or unpaid charge, indebtedness or obligation owing to the undersigned by the above-named payee without prior notice to him. The payee, however, shall have no right to cause the undersigned to exercise such option.

"Neither this certificate nor the obligation evidenced hereby shall be assignable without the written consent of the undersigned.

"IN WITNESS WHEREOF, the undersigned has caused this certificate to be executed by its officers thereunto duly authorized, this ___ day of _______, 193___.

"_______County Rural Electric Membership Corporation.

"(Seal)
"Attest: ________________ By_______________
Secretary President."

In defining the words "intangible" or "intangibles" the statute provides in part 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 promissory notes, stocks in foreign corporations, bonds, debentures, final judgments from their date
of finality, postal savings certificates, excepting postal savings bonds, certificates and/or other evidences of indebtedness issued to any person other than certificates of deposit in any bank or trust company in this state; * * *." (Our italics.)

June, 1942, Cumulative Pocket Suppl., Burns' Indiana Statutes Annotated (1933), Section 64-901.

It will be noted that the instrument concerning which your question is asked is designated in terms as a "certificate of indebtedness." In the body of the instrument, however, after certifying that the undersigned corporation is indebted to the person to whom the instrument is issued, the agreement to pay is made subject to conditions thereafter set out, in the instrument. Examining these conditions I find that the first one mentioned is that the corporation shall not be obligated to pay any part of the principal or interest on the instrument unless the corporation has established and maintained such reserve or reserves as shall be required to be established and maintained by it pursuant to the provisions of any mortgage or mortgages as have been or shall at any time be made by it to the United States of America or any agency thereof.

The second condition is that no part of the principal or interest is payable by the corporation at any time when the corporation shall be in default under the provisions of such a mortgage. The third condition is that there is no obligation to pay upon the part of the corporation if the Board of Directors of the corporation believe that to pay such amounts would cause a default in the mortgage or reduce any of the reserves below the amount required by the mortgage, or reduce the working capital of the corporation below the amount necessary for the proper conduct of its business—all of which is to be determined upon the sole discretion of the Board of Directors.

Unfortunately there is nothing in the file furnished to me which would indicate that the conditions of obligation have been fully met so as to constitute the instrument an unqualified promise to pay. For that reason the value of the instrument is quite problematical. However, it does meet the requirements, in my opinion, required by the statute to make it a taxable intangible.