TAX BOARD, INDIANA: Mortgage Deductions: Deduction allowable in case of estates by the entireties where one spouse owns encumbered property in his own right.

January 28, 1942.

Indiana Tax Board,
Edward D. Koenemann, Secy.,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in part as follows:

“A husband owns a piece of property in his own name.

“The husband and wife own property as tenants by entireties.

“Now the question is, if the wife files for a mortgage deduction on the property owned jointly for the amount of $500.00, can the husband file on the property he owns in his own name for $1,000.00, providing the assessed valuation is sufficient to cover these amounts?”

The above question requires a consideration of the provisions of Section 64-209 of Cumulative Pocket Supplement of Burns' Indiana Statutes Annotated of December, 1941, which section 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.”
It will be noted from the above quoted language that any person who is a resident of the State of Indiana and is the owner of real estate liable for taxation within the State of Indiana upon which there is a mortgage indebtedness may claim the benefits of the statute. Estates held by husband and wife by the entireties constitute a somewhat peculiar legal situation. The estate thereby created is as already indicated by the entireties, one of the distinguishing features of which is that each party owns the entire estate subject to the limitation that, in disposing of it both parties must act jointly and that neither party may encumber it without the consent of the other. However, in my opinion, this limitation is not sufficient to deprive the wife of her right to claim a mortgage exemption upon the property so held, for in point of fact she is as much the owner of the property as the husband is the owner of the property. If the husband may deprive her of claiming an exemption by himself taking a full exemption upon his own privately owned real estate, it would seem to me that the purpose of the statute is defeated since to do so would be to deprive an owner of real estate encumbered by mortgage of the right to claim such exemption.

Under the circumstances set out in your letter, it is my opinion that your question should be answered in the affirmative.

STATE BOARD OF ACCOUNTS: Whether special judges of the Marion County Municipal Court may be paid without appropriation.

Mr. Otto K. Jensen,  
State Examiner,  
State Board of Accounts,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter calling attention to the provisions of Section 4-2516 of Burns' Indiana Statutes Annotated 1933, which provides as follows:

"The judges of said municipal court may interchange and hold court for each other and perform each