establish a complete system for the taxation of intangibles. Since pawnbrokers are neither building and loan associations nor banks, nor trust companies, it is reasonable to conclude that it was intended to tax their intangibles under the provisions of Chapter 81 of the Acts of 1933.

In my opinion, therefore, the intangibles evidencing loans made by the pawnbroker are taxable under the General Indiana Intangibles Tax Act.

MOTOR VEHICLE FUEL TAX: Cost-plus contractors not exempt from payment of fuel tax.

September 24, 1940.

Mr. Frank G. Thompson,
Auditor of State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of recent date wherein you submit the following facts and questions:

"The taxability under state laws of sales of motor fuels to contractors for use in connection with national defense work under cost-plus contracts with the Federal Government is an important question in need of clarification.

"In response to several inquiries regarding the application of federal excise taxes to sales to contractors engaged in similar work, the Bureau of Internal Revenue issued a ruling in which it is recognized that the sales under question were made for the use of the United States Government.

"In view of the importance of this matter, it will be appreciated if you will provide this Committee with rulings concerning the following questions:

"Question No. 1:

"Will the supplier of motor fuels to the purchasing contractor be justified in accepting, in lieu of your state gasoline tax, U. S. Form 1094 executed by the
designated contracting officer of the U. S. Government named in each contract?

"Note: The fuels are being sold to the contractor by the supplier for use by the contractor in the performance of work in accordance with the terms of the contract entered into by the contractor with the U. S. Government. It is understood the supplier will bill the contractor for the fuel and show on his bill for purposes of identification the 'government number' applied to each contract.

"Question No. 2:

"Since the contractor purchases the motor fuels for use in performance of the work specified in the contract for which he bills the U. S. Government in accordance with the terms thereof, would not the transaction be tax exempt as a sale for the use of the United States, inasmuch as the fuel is actually used by the contractor in his performance of the terms of the contract?"

Considering the statements contained in your letter prior to the presentation of the questions, I wish to say that the Attorney General of Indiana has not been advised of the terms of the so called "cost-plus" contracts of which you speak nor the rulings of the Bureau of Internal Revenue concerning Federal excise taxes. The provisions of the Indiana Motor Vehicle Fuel Tax Statute, Burns' 1933, Secs. 47-1501 to 47-1531 and decisions of the court's determining the scope of the State's taxing power are controlling in determining the answers to your two questions.

Considering the note appended to your first question the answer must obviously be in the negative. From the facts stated in such note the motor fuel in question is being sold by a supplier or dealer to the contractor. The contractor is not an agency, officer, department or bureau of the Federal Government and under the terms of limitation of U. S. Form 1094 the contractor would not be entitled to the exemptions allotted by such form. The contractor can hardly be classified as an agent of the federal sovereignty for if it were the so
called contract would be a needless and useless article between
the two parties thereto. Likewise, the delivery of the motor
fuel in question is to the contractor and not to the Federal
Government. In my opinion refunds pursuant to U. S. Form
1094 are limited only to federal officials on official business and
federal agencies. The provisions of the statute, Sec. 47-1501,
governing the payment of the tax require that the tax be
"collected by the dealer selling the motor vehicle fuel to pur-
chasers who purchase for purposes other than resale".

The general rule is that activities of the Federal Govern-
ment are exempt from direct taxation by the State govern-
ments. However, this rule does not preclude the enforcement
of tax obligations because the payment of such taxes may in-
directly or remotely affect the government.

Graves v. N. Y. ex rel. O'Keefe, 306 U. S. 466;
State Tax Commission v. VanColt, 306 U. S. 511;

The converse of this rule is also true; the Federal Govern-
ment may by taxation indirectly affect the procedure of State
governments. The limitation in either instance is that neither
the State nor Federal Governments may directly tax the instru-
mentalities or activities of the other to the extent that such
taxation would constitute a burden on the other government.

Helvering v. Gerkart, 58 S. Ct. 969.

Since Congress has not seen fit by statute to grant tax ex-
emptions to such cost-plus contractors, (if indeed it could),
it appears to me that this implied immunity of government and
its agencies as a principle of construction should be narrowly
construed. In my opinion if no facts warrant otherwise, the
motor fuel tax, here imposed on the contractor purchaser, can
not be considered a direct burden on the Federal Government.
The tax imposed by the Indiana statute is for the purpose of
constructing and maintaining the highways of the State, and
from the facts stated it appears that the fuel to be purchased
will be purchased by the contractor, as a corporate entity, and
will be used in its vehicles on the highways of this State. The
State should be compensated for such use of its highways,
regardless of the fact that the ultimate result of the use of the
cost-plus system is to indirectly affect the Federal Govern-
The result is too remote and indirect to constitute a
direct and forbidden tax burden imposed by one government
upon another.

In view of the foregoing it is my opinion that a supplier or
dealer in motor fuel would not be justified in accepting in lieu
of the motor vehicle fuel tax U. S. Form 1094. The question
of whether the contractor is entitled to use such form is one
of federal concern only, and one which cannot be considered
by me within the scope of my official duties.

Your second question likewise must be answered in the
negative. The State has in all instances in the past exempted
from the tax all fuel used in motor vehicles owned and
operated by the Federal Government. But on the other hand,
all fuel used in privately owned vehicles, even though the
vehicles have been used by governmental officers, has been
subjected to the tax. This has been true even though the
owner of the private vehicle was re-imbursed by the Federal
Government for the use of his vehicle and the expenses in-
curred in its operation. Such form of exemption and the
stated limitation are covered by your form “Schedule A-6”. It
appears to me that the position of the contractor here in
question is analogous to that of rural mail carrier or other
governmental employee who purchases motor fuel for use in
his own vehicle, which vehicle he is using in his work, and for
the use of which he is re-imbursed by the government. The
mail carrier has always been subject to the tax even though
it might be paid on a mileage basis. Since the contractor is
not an agency of the Federal Government its purchases of fuel
would not be exempt from the tax even though the fuel was
used in the performance of the contract. There appears to
be no more reason for this exemption than for an exemption
for the fuel of the rural mail carrier as in each instance the
purchaser is re-imbursed for the fuel purchased. In either
instance the effect of tax on the Federal Government is too
remote and indirect to constitute a burden upon that
government.