pursuant to the Acts of 1913, as amended by the Acts of 1927, a service station is defined to be:

"Any place of business where gasoline, or any highly volatile fuels for motor vehicles or internal combustion engines, are sold or offered for sale at retail."

It is further provided that at such station:

"Storage shall be underground and the combined capacity of all storage tanks shall not exceed 6,000 gallons."

In my judgment it would be in violation of the rules and regulations of the fire marshal's office to install storage tanks on the improvement proposed to be made and combined capacity of which exceeded six thousand (6,000) gallons.

TAX COMMISSION, STATE BOARD OF: Interest dividends, whether taxable under Bank Intangibles Tax Act.

September 12, 1939.

Hon. Philip Zoercher, Chairman,
State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following question:

"1. Is interest dividends paid to creditors (or depositors) of an insolvent national bank taxable under section 14, chapter 83, Acts of 1933?"

You state that the so-called “interest dividend” arises not by virtue of any contract between the depositor and the bank, or its receiver, but by virtue of federal law, and that such so-called “interest dividend” never becomes a part of the deposit. From prior discussions as well as from the foregoing explanation, the term “creditors” and the term “depositors” as used in the above question are treated as synonymous, and same will be so limited in this letter.

Before proceeding further with the examination of your question, I think, too, that a further definition of the so-called “interest dividend” is desirable. It is not the distributive share paid at any particular time of the several interests of
a group of persons in a larger fixed sum represented in this case by the total of all taxable deposits in the bank being liquidated at “the time of the taking effect of this Act, or the time of the taking charge by such liquidating agent, whichever may be later.” Acts of 1935, page 1462. Neither is it the interest which may be credited to a deposit account per agreement as in the case of interest bearing savings accounts. It is the payment of the interest, insofar as there are funds available therefor, on the deposits being liquidated from the time of the suspension of business by the bank to the time of the actual payment of the principal of such deposits, where there has been no prior express agreement to pay interest. See Richmond v. Irons, 121 U. S. 27, at page 64.

The question applies, therefore, to only cases where the principal of all deposits has been paid in full by prior dividends leaving assets out of which such interest thus derived may be paid.

At the 1933 session of the General Assembly, three acts for the taxation of intangibles were enacted. The first of these (chapter 81 of the Acts of 1933), is usually referred to as The General Intangibles Tax Act; the second (chapter 82 of the Acts of 1933), as the Building and Loan Intangibles Tax Act; and the third (chapter 83 of the Acts of 1933), as the Bank Intangibles Tax Act. These acts should be construed together as comprising a unified system for the taxation of intangibles and for the classification of such intangibles for taxation as the circumstances of the cases require.

Section 1 of chapter 81 of the Acts of 1933 makes it very clear that “deposits in banks and trust companies in the State of Indiana” are not intangibles as that term is used in chapter 81, supra (Acts of 1933, page 523), and that the term “intangibles as used in that Act does not mean or include such deposits. The terms “annual intangibles” and “current intangibles” as used in chapter 81, supra, have very little significance, therefore, as applied to bank deposits as to which, while retaining the rate, a very different procedure of assessment and collection is employed.

A few comparisons will serve to illustrate. It will be noted first of all that the tax in each case is levied against the owner of the intangible, but in the case of bank deposits, the bank may elect to pay the tax and if it does it cannot deduct such tax from the depositor’s account or in any other way charge
the same to the depositor. Acts of 1933, page 549. The rate per annum is the same as applied to an even one hundred dollars, but in the case of general intangibles it is broken down to five cents on each twenty dollars or fractional part thereof, and further is made so as to apply to fractional parts of years at the same rate without diminution. Acts of 1933, page 526. On the other hand, a bank deposit is taxable at the rate of twenty-five cents per annum upon each one hundred dollars or fractional part thereof, it being provided, however, that the tax shall accrue and be computed as of the last day in each month, upon which day it becomes a lien on such deposit. Acts of 1933, pages 546-547. As to general intangibles, an annual collection of the tax is contemplated upon the basis of the value of the intangible at the beginning of the period for which the tax is paid. Past due and unpaid interest would enter into the question of valuation of the intangible if it is otherwise collectible. But in the case of a bank deposit in an operating bank, the amount of the deposit is the measure at all times which, however, might include, of course, interest properly credited to the account, where the payment of interest has been legally contracted for.

But it is not this type of interest with which your question is concerned. This type of interest when credited to the account is just as much a part of the principal as if it had been paid over the counter when due and immediately deposited by the depositor to his account.

Having made these observations, we come now to an analysis of section 14 of the Bank Intangibles Tax Act. This section was amended in 1935 and for the purpose of comparison we desire to here copy in parallel columns the section as it appears in the Acts of 1933 and the section as it appears in the Acts of 1935. The section reads as follows:

Acts of 1933, page 551

Sec. 14. In the case of any bank in charge of a liquidating agent, the taxes upon the taxable deposits therein and upon the shares thereof shall be assessed, due and collected at the time of the actual payment of dividends to depositors and/or the distribu-

Acts of 1935, page 1462

Sec. 14. In the case of any bank in charge of a liquidating agent, the taxes upon the taxable deposits therein and upon the shares thereof shall be assessed, due and collected at the time of the actual payment of dividends to depositors and/or the distribu-
tion of liquidating dividends to stockholders. The lien of such taxes shall attach as of the time of the taking effect of this Act, or the time of the taking charge by such liquidating agent, whichever may be later. Such taxes shall be at the rate of twenty-five cents per annum on each one hundred dollars of dividends paid, computed from the lien date to the time of the payment of the dividends. A liquidating agent shall not be required to make monthly reports but he shall report to the auditor of the county wherein such bank or trust company is located, upon blanks prepared by the commission, the amount of the dividends proposed to be paid upon deposits which would be taxable by the provisions of this Act, and the amount proposed to be paid in distribution to stockholders. The liquidating agent shall pay to the treasurer the taxes chargeable to the taxable deposits and retain from his dividend payments the proportionate part applicable to each of such as would be taxable except for liquidation. The liquidating agent shall pay to the treasurer the taxes by this Act chargeable upon all the shares of the bank or trust company in his custody and retain from his dividend payments the proportionate part due from each share of stock. That the tax imposed by this Act shall be charged to expense of liquidation.
It will be noted that this section has to do with the taxation of deposits in a bank in charge of a liquidating agent, and is the only section which bears directly upon that subject. A few preliminary observations should be made. It will be noted first of all, that the section as originally enacted provided that the liquidating agent should pay to the treasurer the taxes chargeable to the taxable deposits and retain from his dividend payments the proportionate part applicable to each of such as would be taxable, except for liquidation. In the section as amended in 1935 this provision is entirely omitted and in lieu thereof it is provided that the tax imposed by this Act shall be charged to expense of liquidation. In other words, the section as originally enacted, while providing that the payments should be made by the liquidating agent, directed that they should be taken out and deducted from the depositors dividend so that in effect the tax was a tax against the depositor and neither the bank nor the liquidating agent was authorized to agree to pay the tax. This language, we think, is very clear and conclusive upon the question of the right of the liquidating agent or the bank to elect to have the depositor pay the tax. The statute made the liquidating agent the collector conduit through which the tax reached the treasurier, but the depositor actually paid the tax through the deductions from dividends which the liquidator was obliged to make.

Under the 1935 amendment this plan was changed, it being provided that the tax imposed was to be charged to expense of liquidation, a procedure resorted to doubtless for the purpose of insuring an equal distribution proportionately to all depositors, whether residents or non-residents. I doubt, however, whether this was necessary and I think the plan of the 1935 amendment in this particular may be open to objection as authorizing an unequal distribution, whereas the 1933 provision operated to provide an equal distribution. In other words, there can be no objection on the ground of unequal distribution where one deposit is subject to tax and another is not, if such tax is taken out at the source. The procedure set out in the 1933 Act did not, in my opinion, operate to create an unequal distribution.

Except for the above distinction, the section as it appears in the 1933 Act and as amended in 1935 is the same and our field of interpretive investigation is narrowed down to the
first four sentences of the above section 14. It will be noted first of all, that instead of being taxable on a monthly basis, as the account stood on the last day of the preceding month in the case of an operating bank, no tax was due until the time of the actual payment of the dividend. It is significant, however, that the section provides expressly that:

"The lien of such taxes shall attach as of the time of the taking effect of this Act, or the time of the taking charge by such liquidating agent, whichever may be later."


In other words, if a bank was already in charge of a liquidating agent at the time the Act became effective, the lien of the tax would attach as of that date, but in the case of all other banks going into liquidation after the effective date of the Act, the lien of the tax would attach as of the time the liquidating agent took charge. This we say is significant because at that time no interest of the type referred to in your question could possibly be due.

It would seem, therefore, to be difficult if not impossible to apply the above language to the interest referred to in your question, unless it is to be assumed that the deposit has an increase in value from that date by reason of interest which may be paid sometime, an assumption which is entirely contrary to the facts. On that account I am advised that the method proposed is to treat the time of the payment of the last dividend as the time when the lien attaches because at that time it can be definitely known the exact amount of interest due. This would seem at first blush to be a fair way of looking at the matter, but it is wholly unauthorized by the statute. In fact, the legislature seems not to have had in contemplation the possibility of the liquidation in full of a deposit account with funds left over with which to pay interest and no provision is made by the statute, in my opinion, for the taxation of such an interest item. It should be remembered in this connection that the tax is measured by the deposit of which this particular interest item never in fact becomes a part in the ordinary sense of the term, from which it follows that the item is not taxable under the Bank Intangibles Tax Act, the basis of which, so far as depositors are concerned, being the amount of the deposit.