INSURANCE, DEPARTMENT OF: Whether fire marshal tax applies to domestic insurance companies writing fire premiums.

November 17, 1939.

Mr. Geo. H. Newbauer,  
Commissioner of Insurance,  
Department of Insurance,  
Indianapolis, Indiana.

Dear Sir:

Your letter of November 7th asks the question "whether or not chapter 286 of the Acts of 1937 providing for a fire marshal tax applies to domestic insurance companies writing fire premiums."

I have referred your attention to an opinion from this office, dated February 24, 1937, upon the same subject about which you inquire, and which I believe answers your present question. There is no disposition to change or modify that opinion.

INHERITANCE TAX DIVISION: Acts of 1939, chapter 157, p. 733, amending inheritance tax law to require court to transmit schedule to county assessor or inheritance tax appraiser does not repeal chapter 285, section 1 of Acts of 1937.

November 20, 1939.

Hon. Isaac Kane Parks,  
Inheritance Tax Administrator,  
State Board of Tax Commissioners,  
State House, Room 231,  
Indianapolis, Indiana.

Dear Mr. Parks:

I have your letter of November 15, 1939, in which you state:

"The Indiana legislature passed Senate Bill No. 188 on the closing night of its session. This bill was approved March 9, 1939. The law appears in the 1939 Acts, page 733."

"The title of the Act recites that it is— 'An Act to amend section 1 of an Act entitled 'An Act to amend section 8 of an Act entitled 'An Act to provide for a tax
on inheritances, bequests, legacies, devises, successions, gifts, and transfers of property in certain cases, repealing all acts or parts of acts in conflict therewith and declaring an emergency, approved March 6, 1931, and declaring an emergency," approved March 8, 1933.

"Section 1 provides, inter alia, as follows: "The court, after the filing of said schedule by the executor, administrator, trustee or heir, SHALL within 10 days of the filing of same transmit said schedule to the county assessor or inheritance tax appraiser as the case may be of the county in which the court is sitting' * * *

"Section 2 of this Act reads as follows:

'Sec. 2. All laws or parts of laws in conflict here- with are hereby repealed.'

"The last sentence of the fourth literary paragraph of section 7 (originally passed at the 1937 session of the legislature) reads as follows:

"If it appears to the satisfaction of the court from said petition or upon the hearing that in no event could there be a tax payable on the estate, he shall enter a decree finding no inheritance tax payable in said estate; and this finding shall relieve the executor, administrator, trustee or heir from filing a petition to determine the inheritance tax as provided in this Act: Provided, however, That nothing in the foregoing provisions shall be construed as preventing any person, including the State Board of Tax Commissioners from petitioning the court for a rehearing upon said decree for a reappraisal of the estate as provided in this Act."

All italics herein are our own.

"The immediate question, is, DOES section 2 of the Act being chapter 157, above noted, repeal the italicized portion of section 7 above set out?"

In my judgment it is clear that section 2 of the Acts of 1939, page 733, does not repeal the italicized portion, as set out in your letter, of section 7 of the Acts of 1937, page 1310. Section 7 of the Acts of 1931, page 198, provided that: "If it appears then to the satisfaction of the court that in no event could there be a tax payable on the estate * * * he
shall * * * enter a decree finding no inheritance tax payable in said estate.” Said section 7 was amended by the Acts of 1933, page 1022. Said section as amended omitted that part above quoted as passed in 1931. Section 7 was again amended in 1937, page 1310, which provided, in language similar to that of the Acts of 1931. “If it appears to the satisfaction of the court from said petition or upon hearing that in no event could there be a tax payable on the estate, he shall enter a decree finding no inheritance tax payable in said estate * * *,” and there the law stands today.

The provision found in section 8 as amended in 1939, providing, “That the court, after the filing of said schedule by the executor, administrator, trustee or heir, shall within ten days from the filing of same, transmit said schedule to the county assessor or inheritance tax appraiser as the case may be of the county in which the court is sitting,” is not in conflict with section 7 of the Acts of 1937 and the same is not repealed.

ACCOUNTS, STATE BOARD OF: County sheriff entitled to charge only for actual mileage covered in transportation of persons to state institutions.

November 21, 1939.

Hon. H. P. Brennan, State Examiner,
Division of Accounting and Statistics,
State Board of Accounts,
Indianapolis, Indiana.

Dear Mr. Brennan:

I have your letter of November 17, 1939, in which you ask the following question:

“Can a sheriff transport one (1), two (2) or three (3) prisoners to the Indiana Reformatory, and one (1), two (2) or three prisoners to the Indiana State Prison, at the same time, by the same conveyance and legally charge the mileage to which he would be entitled under the statute, if they were transported in separate respective groups, and assuming, that at the time there were no more prisoners in the custody of such sheriff, awaiting transportation to the same penal institution.

“Example: If county sheriff of “A” county transports two prisoners to the Indiana Reformatory at