supply the needs of the year 1940 and to levy a similar tax in
the succeeding years 1940, 1941 and 1942 for the needs re-
spectively of 1941, 1942 and 1943.

The provision that "such tax shall be levied as other state
taxes are levied and collected" has reference, I think, to the
mechanics of spreading the tax of record and collecting the
same, including the imposition of penalties for delinquencies
and matters of that sort. The language does not, in my opinion,
limit the clear statement in the first sentence of section 21 that
a tax is now levied to supply the needs of the years therein
designated. The only way in which that purpose can be
effectuated is to consider the first levy as having been made
and to be spread and extended of record as other taxes levied
in 1939 are extended and recorded.

TAX COMMISSIONERS, STATE BOARD OF: Act conferring
power to set aside or correct tax refunds, whether
unconstitutional as vesting judicial authority in admin-
istrative body.

April 5, 1939.

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

Dear Mr. Zoercher:

I wish to acknowledge your letter of April 4, asking for an
official opinion based upon your letter which is as follows:

"Chapter 159, Acts 1937, p. 846, provides in section
2, for refunds in certain cases, of inheritance taxes
where there has been a mistake made in determining
such taxes. In case of non-resident refunds this board
was petitioned to correct valuations made by it and
acted in certain instances. Another provision of this
section provides that petitions for refunds for mis-
taken assessments, etc., in resident estate can be filed.
This raises a question as to the constitutionality of this
statute which vests an administrative board of power
and authority to set aside the judgment of a court.

"It should be noted then that in resident estates
valuations are finally determined by the courts and
not by this board. We would like to have your official opinion on this question. Does this board have the power to set aside the decisions and findings of the court?"

Chapter 159 of the Acts of 1937 was an act to amend certain sections of an act approved March 6, 1931. Section 17 as amended by the Acts of 1937 provides in part as follows:

"The state board of tax commissioners is authorized and empowered to order the refund and repayment, without interest, of all taxes heretofore or hereafter erroneously, wrongfully or illegally imposed on estates, inheritances, bequests, legacies, devises, successions, gifts, or other similar transfers of property, and of all such taxes that are excessive in amount or in any manner wrongfully collected by the State of Indiana, whether such taxes were imposed through mistake of fact or mistake of law and whether or not such taxes were paid voluntarily and without protest, and notwithstanding any claim heretofore filed for such refund. From any order of the State Board of Tax Commissioners with reference to any such refund or repayment, the claimant shall have a right to appeal by filing an original action against such board; such action, in the case of a resident decedent, to be filed in the court which originally fixed and determined the amount of tax due the State of Indiana, and, in the case of a non-resident decedent, to be filed in the Probate Court of Marion County, Indiana. All such original actions shall be brought within ninety days after the entry of such order by said board. Upon such appeal, the court may determine the proper amount of refund due, if any, subject to the right of appeal to the Supreme Court as provided by law in the case of other civil actions."

When a court finds the amount of tax due in an estate it is acting ordinarily more in the nature of a ministerial capacity than a judicial one. A ministerial Act has been said to be:

"A duty is ministerial when the law exacting its discharge prescribes and defines a time, mode, and occasion of its performance with such certainty that nothing
remains for judgment or discretion. Official action, the result of performing a certain specific duty arising from fixed and designated facts, is a ministerial act. A ministerial act may, however, be performed by an officer whose office is essentially judicial, and whose acts are generally judicial ones; and when the acts required of such an officer are of such a nature as not to require exercise and discretion they are ministerial acts, despite the general nature of his office and of the duties which he ordinarily performs.”

When an inheritance appraisement is filed with the court all of the facts are contained, ordinarily, in the report itself and nothing remains for the court to do than to find the amount due according to fixed rates as prescribed by the statute, or in other words a mathematical calculation.

Such acts required of the court are of such a nature as not to require judicial exercise or discretion. He is merely performing an act in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act done.

So when the State Tax Board exercises the power given it under the foregoing statute, it is not in fact overruling or setting aside a judgment as we ordinarily understand it, and we do not think the act unconstitutional because of this power given the board.

Of course, if the taxpayer or claimant appeals from the State Tax Board from an order with reference to refund or repayment and a judgment is rendered upon such question, then, the board is bound by said judgment and could only have it set aside in the regular manner by an appeal from the judgment.