I think it must be clear, in answer to your first question, that the sale of merchandise shipped into the state for the purpose of sale in the State of Indiana, even though sold in the original package, is liable to the tax imposed by chapter 50, supra.

The previous discussion points very clearly to the answer to your second question. If the companies referred to are operating in Indiana and making sales in Indiana for delivery in Indiana, it makes no difference where they keep their books, they are liable to the tax. I call attention further to the fact that section 11 (a) of the act makes it the duty of every person subject to the tax "to keep and preserve suitable records of his gross income, and such other books or accounts as may be necessary to determine the amount of tax for which he is liable under the provisions of this act."


GOVERNOR: Appropriation—whether appropriation for structural outlay for interior remodeling of parts of state house is available to pay for services of architect for making plans and specifications.

March 28, 1933.

Hon. Wayne Coy,
Under Secretary to the Governor,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an opinion as to whether it is possible under certain provisions referred to by you in section 2 of the Biennial Appropriation Act of 1933, to place a man at work making plans and specifications for remodeling and decorating the present library quarters and for remodeling and redecorating certain rooms now occupied by court judges.

The language of the Appropriation Act referred to by you, is used in connection with the appropriation for the superintendant of buildings and property and is as follows:

"Structural outlay:
Structural improvement, available April 1, 1933, for the period ending September 30, 1934, for remodeling and decorating present library quarters and for re-
modeling and redecorating certain rooms now occupied by court judges, twenty-two thousand ($22,000) dollars."

Beginning with the session of the general assembly in the year 1925, and continuing to the present time, the general formal characteristics of the Biennial Appropriation Acts have been quite similar in the groupings of the respective appropriations. Generally speaking such appropriations are grouped under three principal divisions, namely:

1. OPERATING EXPENSE, which includes
   a. Personal Service and
   b. All other operating expenses
2. CAPITAL OUTLAYS, and
3. FIXED CHARGES.

This plan was followed generally by the recent session of 1933. Section 1 of the act, among other things, defines the above terms, and in the construction of the language referred to by you, if such definitions are applicable, I think I should be governed thereby.

It will be noted from an examination of the act that the term "personal service" is to be construed "to include all payments made as and for salaries and wages to any and all officers and employees of the state whether regular or temporary"; also that the term "all other operating expenses" is to be construed to include, among other things, "all payments made for the repair of buildings and all other general repairs." Acts of 1933, page 581. It appears at first blush that there may be some overlapping in the foregoing definitions, inasmuch as "personal service" includes all payments made for wages to employees, whether regular or temporary, and "all other operating expenses" also includes all payments made for the repair of buildings and all other general repairs, which ordinarily would include some payments in the nature of wages. That overlapping does not occur, however, except when repairs are made by one of the state's employees and in such a case, I think it is generally considered that the appropriation for "personal service" should be used for the payment of such wages.

If my conclusion above stated is correct, the work contemplated by you would ordinarily be paid for out of a "personal
service” appropriation, or as indicated, possibly out of the “all other operating expenses” appropriation in the absence of some other specific provision to the contrary. The appropriation referred to by you, which is available on April 1, 1933, is neither a “personal service” nor an “all other operating expenses” appropriation. Neither is it classified as a “capital outlay”; and certainly it is not a “fixed charge.” It is, on the other hand, an appropriation described as “structural outlay” and as “structural improvement” and is specifically “for remodeling and decorating present library quarters and for remodeling and redecorating certain rooms now occupied by court judges.”

The above terms “structural outlay” and “structural improvement” are not defined by the Appropriation Act, supra; neither can they be said to be technical phrases having a peculiar meaning in law. They, therefore, should be taken in their plain, or ordinary and usual sense. Burns Annotated Indiana Statutes of 1926, section 247. What is the ordinary and usual meaning of “outlay” as used above? Clearly it means “that which is expended.” Webster’s New International Dictionary. As applied to an improvement such as is described in the appropriation referred to, I think it is evident that the appropriation was intended to include “that which is expended” in making the improvement. It, therefore, would include, in my opinion, expenditures for making plans and specifications for the improvement.

The Biennial Appropriation Act of 1933, is now in full force and effect, and the appropriation referred to is available on April 1, 1933. 

PURDUE UNIVERSITY: County agent—whether legal to pay compensation of county agent for services rendered before approval of appointment in cases where appointment is later ratified.

March 29, 1933.

Hon. R. D. Stewart,
Controller Purdue University,
Lafayette, Indiana.

Dear Sir:

I have before me your letter of March 28, 1933, in which you request an opinion as to your right to release the salary checks of county agents who have been working under so-