State of Illinois has levied and is entitled to a levy of gasoline tax under its laws, I would report as follows:

An examination of the statutes of Indiana fail to disclose any authority for the giving of credit in future reports upon gasoline tax improperly or erroneously paid in the past.

However, section 5 of chapter 68 of the Acts of the General Assembly at the special session of 1932 (Acts 1932, page 256), amends section 5 of the original act, by providing among other things, that any person who shall purchase any motor vehicle fuel for any other commercial use, except for propelling motor vehicles operated in whole or in part upon any of the public highways of the state, shall be reimbursed and repaid the amount of such license fee paid by him, etc.

In construing the language of this section, it is my opinion that gasoline purchased for resale to the ultimate consumer in the State of Illinois, comes under the provisions of this section and would not be subject to tax.

In other words, it is my opinion that the place of sale to the ultimate consumer would indicate in what state of the Union, the gasoline is to be used, and since this gasoline was to be sold at a retail station in the State of Illinois to various persons coming to such station for the same, it would be presumed that the gasoline was not to be used for propelling motor vehicles operated in whole or in part upon any of the public highways of the State of Indiana.

Hence, it is my opinion that the proper method of securing reimbursement from the State of Indiana for such gasoline so delivered for sale in Illinois, would be by filing a necessary statement and supporting invoices and evidence required under the section of law referred to above.

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AUDITOR OF STATE: Procedure in case of Mid-Continent Petroleum Corp., who overpaid kerosene tax by failing to turn in "certificates of use."

January 10, 1933.

Hon. Floyd E. Williamson,
Auditor of State of Indiana,
Indianapolis, Indiana.

Dear Sir:

In reply to your request for an opinion upon the procedure to be followed in the case of the Mid-Continent Petroleum
Corporation, who have overpaid their kerosene tax in the sum of $4,022.56 by reason of having failed to turn in and take credit for "certificates of use" in the past, it is the opinion of this department that they would have no right to deduct this amount from the general tax due the state, for the reason, as stated in your letter, that kerosene tax and gasoline tax are handled in two distinct accounts.

On the other hand, it would be improper for them to file an application for a refund, since they are not the ultimate consumers as required by section 5 of page 68 of the Acts of 1932, covering the tax on motor vehicle fuel.

At the present, the only method by which they could secure the return of its money would be by crediting these "certificates of use" against kerosene tax, which may be due during the coming months, but in view of the fact that the sale of kerosene as a fuel for motor vehicles is comparatively small and the amount of credit to which they are entitled, requiring over 100,000 gallons for this purpose, this plan would be rather impracticable.

The other remedy that this department could advise would be the preparation and passage of a special act of the legislature authorizing the return of this amount. Certainly, the State of Indiana has no desire to keep money which does not belong to it; yet the method of the return of that money can only be in accordance with the laws of the state and hence, the special act plan is the only practical one which suggests itself to me at this time.

BANKING DEPARTMENT: Whether building and loan associations are liable for tax provided by chapter 41, Acts 1932, when filing mortgages on real estate; whether said associations are liable to tax provided in said act on mortgages placed of record before January 1, 1933.

January 11, 1933.

Hon. H. J. Hanes,
Clerk, Building and Loan Division,
Banking Department,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter submitting the following questions:

"Are building and loan associations liable for the tax provided by chapter 41 of the Acts of 1932 when filing mortgages on real estate?"