such judgment out of any funds in the state treasury, not otherwise appropriated."

Section 12, Chapter 50, Acts 1933, p. 398-9; 11 Burns Indiana Statutes, 1933 Ed., 64-2612; Baldwin's Indiana Statutes, 1934 Ed., 15,992.

From a study of the foregoing section of the Gross Income Tax Act I am of the opinion that a taxpayer may institute an action for the recovery of any amount improperly paid and collected at any time after having given notice to the Department of Treasury of his claim at least thirty (30) days prior to the institution of the action, provided that the suit is not otherwise barred by the general statute of limitations.


In connection with the response to your inquiry it is interesting to note that the Appellate Court of Indiana has held in a recent case that Section 12 (a and b), of Chapter 50 of the Acts of 1933, affords the taxpayer a clear, complete and adequate remedy at law which will defeat an application to have the collection of the tax enjoined.

Department of Treasury et al. v. Iva B. Ridgely, etc., et. al., No. 15,544, ....Ind. App. ....

HIGHERWAY COMMISSION, STATE: Right of Commission to employ local counsel in condemnation proceedings.

February 5, 1936.

Hon. James D. Adams, Chairman,
State Highway Commission,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion concerning your authority to employ local counsel to assist the Attorney General in condemnation proceedings and other proceedings affecting your funds. Your letter in part is as follows:
"The Highway Commission finds that in the trial of condemnation cases before local juries it is greatly handicapped because of the fact that the Commission and the representative of your office trying the case, do not have local counsel to represent it. Without such counsel it is impossible to know about the personnel of the jury.

In practically every case the property owner is represented by a local attorney. Without local counsel, we are at a great disadvantage. In the few cases where counsel has been employed, the advantage of such employment can readily be seen by the award of the jury.

Therefore, we would like you to give your opinion as to whether or not the Highway Commission has authority to employ local counsel to represent it in condemnation and other cases affecting its funds, and if so, out of what particular appropriation the same should be paid."

It is provided by law that,—

"Thereupon the attorney-general shall commence an action in the name of the State of Indiana in the proper court for the condemnation of the real estate or right described in such resolution and shall take all necessary and proper steps to secure the condemnation of the real estate or right."


The foregoing provision seems to place the authority and duty upon the Attorney General to conduct condemnation proceedings as provided in the State Highway Commission Act and he undoubtedly has the right to have charge of and to manage such litigation. It does not necessarily follow, however, that the Commission is precluded from incurring expense in aiding the Attorney General where in its opinion and with the approval of the Attorney General it is deemed for the best interest of the fund to do so. I think the Commission is charged with the duty to furnish such assistance to the Attorney General as he reasonably may request in the preparation of the case and other details which may arise during a trial, which may well include the service described
in your letter. The relationship between the two departments in such matters is one of co-operation for the best interests of the Highway Commission Fund, and with that purpose in view I see no objection to the Commission’s employment of local counsel for the purposes stated in your letter, if agreeable to the Attorney General, and provided there is an appropriation available for the payment of the cost of such service.

The Commission is given by the 1935 Appropriation Act what may be termed a “blanket” appropriation for “operating expense, capital outlays and fixed charges”. Included in “operating expenses” is “personal service” which is defined by the Act as including “all payments made as and for salaries and wages to any and all officers and employees of the state, whether regular or temporary.”


In said appropriation for the Highway Commission, its general appropriation is further subdivided for the purpose of limiting expenditures for certain specified services. One of such subdivisions embraces expenditures for “miscellaneous services” in which is an item designated “special payments for personal service”. Acts of 1935, page 385. This seems to rather accurately describe the type of personal service described in your letter, and, in my opinion, is broad enough at least to include it. It is my conclusion, therefore, that such service should be paid for out of the appropriation for “miscellaneous services”.

ARCHITECTS, STATE BOARD OF REGISTRATION FOR:
Architects—Meaning of “retired architect”; fees to be charged for re-entering active practice of architecture.

February 5, 1936.

Hon. Leighton Bowers,
Secretary, Indiana State
Board of Registration
for Architects,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion dated January 21, 1936, regarding the following: Your proposti-