no authority to demand that all boxes be sealed and the contents checked by taxing authorities in the absence of facts showing the presence of property belonging to the decedent in the box. Responsibility for non-disclosure of such fact is placed on those into whose hands the custody of the property, if any, subsequently passes.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Retail installment sales. Right to re-finance such contracts.

April 6, 1938.

Hon. Ross H. Wallace,
Director, Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of March 31, 1938, in which you submit the following questions:

"There are a number of licensees under the Retail Installment Sales Act who do a substantial volume of so-called 'refinancing.' Under this type of business a contract held by 'A' finance company is taken over or paid off by 'B' finance company and the purchaser continues to pay the second licensee on modified terms. Transactions such as these usually arise at the instigation of the purchaser who desires a change in finance companies, or change in terms and conditions or both.

"(1) Can the above refinancing by 'B' finance company be accomplished legally under the Retail Installment Sales Act?

"(2) What rate of charge governs in the above refinancing?"

In regard to your questions, your attention is directed to chapter 231 of the Acts of the Indiana General Assembly of 1935, section 1 of which defines the term "retail installment sale" and reads as follows:

"The term 'retail installment sale,' or the plural thereof, means and includes every retail contract to
sell specific goods and every retail sale of specific goods to any person:

“(a) In which the cash price of the goods is not in excess of $1,500, and may be paid in installments over a period of time, and,

“(b) In which the seller has taken or retained a security interest in the goods.”

This same section further provides that the term “retail” means to dispose of specific goods to, or to acquire specific goods by, a person who may consume such goods for his personal use.

Section 4 of the Act stipulates the provisions which shall be embodied in a written instrument evidencing a retail installment sale. This contract may then be assigned, sold and transferred to a licensee who is authorized to purchase these retail installment contracts. Having been so assigned to a finance company, the question arises as to the legal relationship which arises when another finance company seeks to pay off the lien against the subject matter of the sale and refinance such new loan. As a matter of practice, such a transaction is in effect merely a loan of money by the second finance company, secured by mortgage on the property. If this is true, then the provisions of the Retail Installment Sales Act would have no application to the second transactions. It is possible, however, that the provisions of the Retail Installment Sales Act might apply to the second transaction in the event title to the property could be made to vest in the second finance company.

In other words, a second retail installment sales contract can not be entered into by the second finance company unless they are selling the merchandise. Clearly, they can not sell this merchandise unless they have title to it.

It would be necessary for me to have the facts in complete detail before I could answer your questions more specifically. The above rules of law, however, will doubtless enable you to properly analyze each transaction as it is presented to you.