any public highway of this state for the purpose of transporting persons or property, but shall not mean nor include any truck, tractor, trailer or semi-trailer owned by the United States or the State of Indiana or any political sub-division thereof or any department of any of them nor shall it mean or include any passenger motor vehicle other than motor busses."

It will be noted from a reading of the above section that the motor vehicles to which the Weight Tax Act applies are only those trucks, tractors, trailers, semi-trailers or motor busses used for the purpose of transporting persons or property. I doubt if the term "truck" or "tractor" is sufficiently broad in its terms to include well-drilling machinery. However, it is clear that such equipment is not being used on the highways for the purpose of transporting persons or property within the definition of the term.

The fact that chapter 271, Acts of the Indiana General Assembly of 1937, in defining the term "motor vehicle" for the purpose of registration and licensing expressly excludes well-drilling machinery, traction engines, road rollers, fire engines, etc., is also persuasive toward the conclusion that the machinery above described is not within the meaning of the term "motor vehicle" as used in the Weight Tax Act.

It is my opinion that your question should be answered in the negative.

INHERITANCE TAX DIVISION: Estate by entireties in personal property—taxability of same.

January 21, 1938.

Hon. Isaac Kane Parks,
Inheritance Tax Administrator,
231 State House,
Indianapolis, Indiana.

Dear Mr. Parks:

On November 22, 1937, I prepared and submitted an official opinion to you upon the question of the taxability under the Inheritance Tax laws of the state of the transfer to the survivor of personal property held jointly by a husband and wife. It was assumed in that case that all such property was ac-
quired by decedent and his wife, who was his sole heir, by their joint efforts and that no part thereof had ever been claimed as the separate estate of either. It was also assumed that the real estate which was used in part in acquiring such personal property belonged to the husband.

I am now advised that the assumed facts are in error to the extent that the real estate was held by the entireties and you request an opinion upon the facts as thus modified. Authorities are cited to sustain the proposition that personal property acquired as the fruit of an estate by entireties in real estate is held in the same way.

See


In the first case above cited the court held that a crop raised on land held by husband and wife by entireties is held by them in the same manner as the land itself is held and that such crop is not subject to levy and sale on an execution against the husband. The second case cited involved a different question but in the course of the opinion the court referred to the above case accepting the rule above stated as settled. It is apparent, therefore, that personal property acquired as the fruit of an estate by entireties in real estate is likewise held by the entireties upon the authority of the above cited cases.

In determining the question of the taxability under the Inheritance Tax laws of such an estate in personal property, however, I think the method in which the real estate was acquired should be taken into consideration. If it represents an accumulation from the joint efforts of the husband and wife and is held by the entireties and the fruit of that real estate is likewise the accumulation of the joint efforts of the two, I do not think it would be subject to an inheritance tax. There may be cases where property so held would be subject to such a tax upon the death of one of the tenants, but same should be established by proof of the conditions under which the property was acquired and was held.