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All of the last paragraph of Burns § 27-1562, *supra*, was added by the 1967 amendment and seems to further support the concept that the charges against the land, as authorized by this section, constitute an improvement assessment based upon benefits to the land from such improvement.

Thus, for answer to your second question, it is my further opinion that the "special benefits tax" should be imposed upon *all real estate* which has an assessed valuation, irrespective of whether such real estate may be exempt by statute from the payment of a general tax levy.

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OFFICIAL OPINION NO. 58

December 28, 1967

**TAXATION—Gross Income Tax Liability Realized from  
Operation of Marina.**

Opinion Requested by Mr. James E. Vine, Chairman, Michigan City Port Authority.

This is in reply to a letter from Mr. Marcellus Meyer, Attorney for the Port Authority of Michigan City, requesting an Official Opinion in regard to the following question:

Is the Michigan City Port Authority liable for the payment of Indiana Gross Income Tax on income realized from the operation of a marina in Washington Park Basin?

Acts 1959, ch. 343, as amended, the same being Burns §§ 68-1001—68-1020, authorizes a municipal corporation, a county or a combination of municipal corporations and coun-

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ties to create a port authority. The functions, powers and duties of a port authority, as prescribed in the Act, indicate that a port authority is an agency and instrumentality of the political subdivision on subdivisions which create it, and of the state. As such, a port authority is subject to Acts 1933, ch. 50, § 6C, the same being Burns § 64-2606c, which provides:

“Notwithstanding any provisions of this act, the gross income received by the State of Indiana, its agencies and instrumentalities, all counties, townships and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions, including state colleges and universities, received on or after July 1, 1963, in the performance of private or proprietary activities or business shall be subject to the gross income tax.”

Although Sec. 6C was added to the Gross Income Tax Act in 1963, municipal corporations and other political subdivisions of the state have been liable for gross income tax on income from private or proprietary activities since 1937. Section 2 of the Gross Income Tax Act, the same being Burns Ind. Stat. Ann. § 64-2602, levies a tax on the gross income of all “persons” engaged in any activity or business within the state. Section 1 (a), since its 1937 amendment by Acts 1937, ch. 117, § 1, the same being Burns § 64-2601 (a) (as last emended by Acts 1963, ch. 335, § 1), provides, in part:

“When used in this act, the term ‘person’ or the term ‘company’ herein used interchangeably, means and includes any . . . municipal corporation or any other political subdivision of the state engaged in private or proprietary activities or business. . . .”

On May 14, 1945, the Supreme Court of Indiana decided four companion cases, in which they held that such municipal facilities as a market, a golf course, cemeteries, an airport and a public wharf were private and proprietary activi-

ties, and that a city's receipts from these activities were subject to gross income tax. These cases are: *Department of Treasury v. City of Linton*, 223 Ind. 363, 60 N.E. 2d 948 (1945); *Department of Treasury v. City of Tipton*, 223 Ind. 337, 60 N.E. 2d 957 (1945); *Department of Treasury v. City of Michigan City*, 223 Ind. 432, 60 N.E. 2d 947 (1945); *Department of Treasury v. City of Evansville*, 223 Ind. 435, 60 N.E. 2d 952 (1945).

However, in the Port Authority Act of 1959, the Legislature has expressly categorized the authorized activities of a Port Authority as essential governmental functions. Section 2 of the Act, the same being Burns § 68-1002, provides in part:

“. . . The exercise by such port authority of the powers conferred upon it shall be deemed to be *essential governmental functions* of the State of Indiana, but no port authority shall be immune from liability by reason thereof.” (Emphasis added.)

In view of the distinction made in the above statutes and cases between governmental and proprietary activities, I must conclude that Section 2 of the Port Authority Act was intended to exempt port authorities from the payment of Indiana Gross Income Tax.

In *Orbison v. Welsh*, 242 Ind. 385, 409, 179 N.E. 2d 727, 739 (1962), the Supreme Court of Indiana upheld the constitutionality of a similar exemption provision in the Indiana Port Commission Act, Acts 1961, ch. 11, § 27, p. 14, the same being Burns § 68-1225, which provides in part:

“The exercise of the powers granted by this act will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a port project by the commission will constitute the performance of essential governmental functions, the commission shall not be required to pay any taxes or assessments upon any port project or

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any property acquired or used by the commission under the provisions of this act, or upon the income therefrom. . . .”

In view of all the foregoing, it is my opinion that the Port Authority of Michigan City is not liable for the payment of Indiana Gross Income Tax on income realized from the operation of a marina.

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## OFFICIAL OPINION NO. 59

December 29, 1967

### **LOCAL HEALTH DEPARTMENTS—Local Health Officers as Being Permitted to Retain Fees for Issuance of Certificates —Department Considering Such Remuneration When Determining Salaries.**

Opinion Requested by Mr. Richard L. Worley, Chief Examiner, State Board of Accounts.

I am in receipt of your inquiry concerning the right of local health officers to retain, as their personal property, fees collected for furnishing certificates of birth, death or stillbirth. Your letter asks two specific questions:

“1. May local health officers continue to retain as their personal property fees collected for furnishing certificates of birth, death, or stillbirth registration, under Acts 1949, ch. 157, s. 1236 (Burns 35-2102), as held in Official Opinion No. 117 (1945) of the Attorney General, or is this act superseded by Acts 1949, ch. 157, s. 423, as added by Acts 1965, ch. 358, s. 11 (Burns’ Supp. 35-524), to the extent that such