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In rendering this opinion I must nevertheless recognize the forward march of the banking industry. Automation and novel machinery are now changing the world of banking. Computer systems that no small unit of government could afford to own or operate are being brought into use. The local units of government should be able to avail themselves of these savers of time and money, as government must stay abreast of modern techniques to handle the increasingly complicated structure of our society.

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OFFICIAL OPINION NO. 47

December 30, 1966

**TAXATION—Financial Institutions—Allowable Tax Credits  
to Banks, Trust Companies, and to Building, Savings,  
and Loan Associations.**

Opinion Requested by Hon. William L. Fortune, Commissioner,  
Indiana Department of State Revenue.

This is in response to your request for my Official Opinion  
in answer to the following questions :

“1. Is the State Gross Retail Tax paid by banks and trust companies on purchases, under the provisions of Chapter 30 of the 1963 Special Session which amends Chapter 50 of the Acts of 1933, an allowable credit which can be taken by banks and trust companies when reporting and remitting to County Treasurers the tax assessed under Chapter 83 of the Acts of 1933 as amended?

“2. Is the State Gross Retail Tax paid by building and loan associations on purchases, under the provisions of Chapter 30 of the 1963 Special Session which

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amends Chapter 50 of the Acts of 1933, an allowable credit which can be taken by building and loan associations when reporting and remitting to County Treasurers the tax assessed under Chapter 82 of the Acts of 1933 as amended?"

With respect to banks and trust companies, the authorization for the credit to which your first question refers is found in Acts 1933, Ch. 83, Sec. 11, as last amended by Acts 1939, Ch. 158, Sec. 1, as found in Burns IND. STAT. ANN., § 64-2811, which provides, in part, as follows:

" . . . Provided, That any bank or trust company required to pay gross income taxes imposed by the laws of the state of Indiana shall be entitled to a credit for the amount of *gross income taxes* so paid, against the amount of deposit taxes assumed by such bank or trust company, which credit may be claimed in any return for deposit taxes filed after actual payment of such gross income taxes." (Emphasis added.)

This proviso was added by the 1939 amendment, referred to above.

With respect to building and loan associations, the authorization for the credit to which your second question refers is founds in Acts 1943, Ch. 68, Sec. 1, as last amended by Acts 1965, Ch. 21, Sec. 2, as found in Burns IND. STAT. ANN., § 64-2826, which provides, in part, as follows:

" . . . Provided, That any association required to pay gross income taxes or taxes on tangible personal property imposed by the laws of the state of Indiana shall be entitled to a credit for the amount of *gross income taxes* and *tangible personal property taxes* so paid against the amount of its excise tax, which credit may be claimed in any return or returns for such excise tax filed after payment of such taxes for which a credit is allowed by this section." (Emphasis added.)

That part of the above proviso authorizing the credit for the amount of gross income taxes paid was contained within the

1943 enactment, above, and the provision extending the authorization to include tangible personal property taxes paid was added by the 1965 amendment.

In both 1939 (when Burns § 64-2811, *supra*, was last enacted) and in 1943 (when Burns § 64-2826, *supra*, was first enacted), the authorization contained in said sections for a credit of "gross income taxes" paid by banks and trust companies and by building and loan associations obviously then had reference to the tax imposed by Acts 1933, Ch. 50, as amended, and known by statute as the "Gross Income Tax Act of 1933."

1. In each of your questions you have properly designated the tax later imposed by Acts 1963 (Spec. Sess.), Ch. 30, as the "state gross retail tax." By the terms of the Sales Tax Act itself, Acts 1963 (Spec. Sess.), Ch. 30, Sec. 1, as found in Burns IND. STAT. ANN., § 64-2651, said tax is denominated "an additional excise tax, *to be known* as the *state gross retail tax*," and the Legislature stated that such state gross retail tax is imposed by the Act:

*"In addition to the gross income tax imposed by this Act. . . ."* (Emphasis added.)

Although the state gross retail tax is measured by the gross income received by the *seller*, the tax is imposed upon the purchaser on those transactions which are defined by Acts 1963 (Spec. Sess.), Ch. 30 to be taxable transactions. Said 1963 Act also imposes a use tax by Sec. 6 as found in Burns § 64-2656.

While the distinctions may, in practical effect, not be of great circumstance to the layman, in the law of taxation it has always been recognized that there are substantial, though technical, differences in law between taxes imposed on the receipt of gross income and taxes imposed upon the act of sale or use.

2. Recognizing that the gross income tax, the sales tax and the use tax, theoretically are all tied together into one package under Acts 1933, Ch. 50 and the innumerable substantial amendments thereto, the taxable incident upon which

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the Act imposes each of said taxes is substantially different and the Legislature has gone to great pains to categorize these as: one levy for the gross income tax, another levy for the state gross retail tax and the other levy for the use tax.

3. It is noticeable in the enactment of Acts 1963 (Spec. Sess.), Ch. 30, that the amendment made to Acts 1933, Ch. 50 was not simply an authorization for retail merchants to add on (to the purchase price) the amount of gross income tax liability which they had theretofore had imposed upon them by the 1933 Gross Income Tax Law. It is clear, in the case of *Welsh v. Sells*, 244 Ind. 423, 192 N.E. 2d 753, 2 Ind. Dec. 143 (1963), that the Indiana Supreme Court considered that its opinion was concerning an act "imposing a sales tax and a use tax on certain retail transactions," as indicated in the first paragraph of that Court's opinion in said case.

4. It should also be noted that banks and building and loan associations are expressly exempted from the "Adjusted Gross Income Tax Act of 1963," Acts 1965, ch. 233, § 14, as found in Burns IND. STAT. ANN., § 64-3219a. Such financial institutions are still liable for the Gross Income Tax (on a gross earnings basis) imposed by Acts 1933, ch. 50, § 1(n), as amended, Burns § 64-2601(n), which is the effect of Burns § 64-3221. Such financial institutions still pay the old gross income tax upon a gross earnings basis, so that the credit provisions to which they are entitled in computing the liability for the bank tax and the building and loan tax still have meaning and effect since they still pay gross income taxes.

5. Moreover, referring to Acts 1965, ch. 21, § 2, as found in Burns § 64-2826, it will be seen (in the case of building and loan associations), that the statutory credit *was extended* so as to include not only "the amount of gross income taxes" paid by such associations, but also "tangible personal property taxes so paid." Had the Legislature intended building and loan associations to be entitled to a credit for sales taxes and use taxes paid, it is reasonable to assume, when it was amending said section by Acts 1965, ch. 21, § 2 so as to include specifically "tangible personal property taxes so paid," that the Legislature would have, at that time, also expressly in-

cluded the State Gross Retail Tax, and the use tax imposed by Acts 1963 (Spec. Sess.), ch. 30, if the Legislature had so intended to include such taxes in computing such credit.

6. Furthermore, if sales and use taxes paid were includable in the credit, from the practical standpoint of proof of the amount of sales and use taxes paid by such institutions, unless the word of the institution is always accepted as correct, such proof would necessitate checking the books of the institution, or requiring the submission of receipts, sales slips, purchase records etc., or the adoption of some schedule indicating the amount of sales and use taxes which could be used in computing the credit. On the other hand, if the credit for "gross income taxes" paid is confined strictly to taxes paid by such institutions under Burns § 64-2601(n), *supra*, the amount of such tax claimed to have been paid can easily be verified from records within the Department of Revenue, since the institution claiming the deduction will have filed a gross income tax return with that Department.

Based upon the above reasons, it is my opinion that the answer to each of your above-quoted questions must be in the negative. Applying applicable rules of statutory construction, I must conclude that the term "gross income taxes" in both Burns § 64-2811, *supra*, and § 64-2826, *supra*, was intended to refer only to the tax imposed upon the receipt of gross income, being the levy then in existence pursuant to Acts 1933, ch. 50, as amended. It is my further opinion that, if the Legislature should intend for such credit to extend to and include taxes created subsequent to the Act authorizing such credit, the statute should then be so amended to make certain what taxes are to be includable in such allowable credit.