in favor of the state. Storen v. Jasper County Farm Bureau Cooperative Association (1936), 103 Ind. App. 77, 2 N. E. (2d) 432; Greenbush Cemetery Association v. Van Netta (1911), 49 Ind. App. 192, 94 N. E. 899. Without citing authority, Henry’s Probate Law and Practice states “To the extent that personality is held as tenants by the entireties it is taxable” 2 Henry’s Probate Law and Practice, p. 1886 (6th Ed. 1954).

In rendering this Opinion a previous Opinion of the Attorney General has not been ignored; however, in that Opinion the exact status of personality held by the entireties for inheritance tax purposes is not clear. 1938 O. A. G., p. 40.

In conclusion, therefore, it is my opinion that even though personal property may be held by the entireties in Indiana, such property is not exempt from inheritance tax under the provisions of Section 1 of the Indiana Inheritance Tax Law.

OFFICIAL OPINION NO. 51

September 4, 1964

Hon. Charles O. Hendricks
Secretary of State
201 State House
Indianapolis, Indiana

Dear Secretary Hendricks:

I am replying to your letter of August 18, 1964, wherein you ask the following question:

“Request an official opinion be issued this office to clarify the filing fees to be charged for the extension, renewal, amendment, continuation, marginal release, and written release affecting chattel mortgages recorded prior to July 1, 1964, the effective date of the Uniform Commercial Code, Acts 1963, Ch. 317, found in Burns’ (1964 Repl.), Section 19-1-101 et seq.”

As you note in your letter, the Uniform Commercial Code (hereinafter sometimes referred to as the Code), Acts 1963, Ch. 317, the same being Burns’ (1964 Repl.), Section 19-1-
101 et seq. specifically repealed the Acts of 1959, Ch. 147, Sec. 1, found in Burns' (1964 Supp.), Section 49-1308a(15), which provided for the recording and filing fees of instruments under the “Chattel Mortgage Act of 1935,” also repealed by the Code. However, in order to prevent the destruction of any rights accrued to parties under the provisions of the “Chattel Mortgage Act of 1935” and other such acts regulating commercial transactions which had been entered into prior to the effective date of the Code, the General Assembly enacted a savings clause, Section 10-106 of the Code, found in the Compiler's Notes to Burns' 19-1-101, supra. This section provides:

“Transactions validly entered into before the effective date specified in section 10-101 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such repeal or amendment had not occurred.”

Section 10-106, supra, preserves certain rights under the “Chattel Mortgage Act of 1935.” As a general rule, if a savings clause is not used in a repealing statute, the statute which is repealed must be considered, except as to matters past and closed, as if it had never existed.


Thus, the effect of appending a savings clause to an act which by express declaration or by necessary implication repeals another enactment is to continue in force, as to existing rights and pending actions, the law repealed.

In my opinion, the Legislature intended the filing fees found in Burns' 49-1308a(15), supra, to continue in full force and effect for all transactions authorized by the “Chattel Mortgage Act of 1935,” completed after the effective date of the Code, July 1, 1964, provided that the chattel mortgage instrument, upon which such transaction is based, was recorded prior to July 1, 1964. In this regard, it must be noted that the Code provides no fee schedule for the various transactions authorized by the “Chattel Mortgage Act of 1935”;
yet, it is clear that parties who have begun chattel mortgage transactions prior to July 1, 1964 (the effective date of the Code), have the right to do all things permitted by the “Chattel Mortgage Act of 1935” as though the same had not been repealed. Had the Code provided an interim fee schedule for such chattel mortgage transactions, then such provision, being inconsistent with the savings clause found in Section 10-106 of the Code, would have made Section 10-106, supra, inoperative and void in this regard. However, in the absence of such a provision, it can only be concluded the Legislature intended the fee applicable to the various chattel mortgage transactions authorized by the “Chattel Mortgage Act of 1935” to be those found in Burns’ 49-1308a(15), supra.

While it is true the Code does make a provision for releases and provides a fee therefor, it is my opinion the Legislature only had in mind the release of financing statements filed pursuant to Burns’ 19-9-401 et seq., supra, and not releases of chattel mortgages. The release provision of the Code is found in Burns’ 19-9-406, supra, and it provides:

“A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be one dollar [§1.00].”

By way of summary and conclusion, it is my opinion the savings clause found in Section 10-106 of the Code preserves and makes applicable the fee schedule found in Burns’ 49-1308a(15), supra, for chattel mortgage transactions such as extension, renewal, amendment, continuation, marginal release and written release affecting chattel mortgages recorded prior to July 1, 1964, the effective date of the Uniform Commercial Code.