member thereof may exercise any function other than those stated in the section; and that the initial period to be served by the committee member appointed by the Indiana Licensed Nursing Home Association is four years.

OFFICIAL OPINION NO. 19

April 13, 1964

Mr. James C. Courtney, Commissioner
Indiana Department of State Revenue
202 State Office Building
Indianapolis 4, Indiana

Dear Mr. Courtney:

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

1. "A taxpayer has entered into a conditional sales contract for the sale of real estate prior to January 1, 1963, and receives resulting payments for each month in the year 1963. Would the taxpayer be subject to Indiana Gross Income Tax on the payments, as received, for the first six months of said year, and subject to Adjusted Gross Income Tax for the year 1963 on a profit or loss basis, as defined by the applicable section of the Federal Code?"

2. "Secondly, assuming that the contract for the sale of real estate was entered into after July 1, 1963, would the provisions of the Federal Code apply?"

3. "Assuming in both of the above cases that the seller was a corporation, would it be required to pay tax by way of the purchase of stamps in the event the Gross Income Tax liability was in excess of that under the Adjusted Gross Income Tax Act?"

For the reason that your inquiry relates to two separate and distinct excise taxes, whenever reference is hereinafter made to the "gross income tax," such term refers to the tax imposed by Section 2 of the "Gross Income Tax Act of 1933," being the Acts of 1933, Ch. 50, Sec. 2, as amended, as found in Burns'
(1961 Repl.), Section 64-2602; however, whenever reference is hereinafter made to the "adjusted gross income tax," such term refers to the tax imposed by the "Adjusted Gross Income Tax Act of 1963," being the Acts of 1963 (Spec. Sess.), Ch. 32, as found in Burns' (1963 Spec. Supp.), Section 64-3201 et seq.

The Acts of 1963 (Spec. Sess.), Ch. 32, Sec. 701, as found in Burns' (1963 Spec. Supp.), Section 64-3249, reads, in part, as follows:

"Any person who is liable for tax under this act and any corporation which is exempt from federal income tax under section 1372(b)(1) of the Internal Revenue Code and if all stockholders of such corporation are residents of this state, shall not be liable for any tax on gross income received subsequent to June 30, 1963, as imposed by Sections 2 and 3 of the Gross Income Tax Act of 1933 as amended (Chapter 50 of the Acts of 1933, as amended) * * *"

Thus, under the above section, any person who is liable for the payment of adjusted gross income tax imposed by the "Adjusted Gross Income Tax Act of 1963" will not be liable for the payment of any gross income tax on gross income received subsequent to June 30, 1963. However, every taxpayer is liable for the payment of gross income tax on any gross income received prior to June 30, 1963. Therefore, in answer to your first question, a taxpayer who has entered into a conditional sales contract for the sale of real estate prior to January 1, 1963 and who receives resulting payments for each month in the year 1963, is liable for the payment of gross income tax on gross income received as a result of the receipt of said payments up to and including June 30, 1963.

In addition, a taxpayer who has entered into a conditional sales contract for the sale of real estate prior to January 1, 1963, who receives resulting payments for each month in the year 1963, is liable for the payment of adjusted gross income tax on any adjusted gross income resulting from the receipt of said payments in the year of 1963 pursuant to the terms and provisions of Sections 201, 202 and 203 of the "Adjusted Gross Income Tax Act of 1963" (Acts of 1963 [Spec. Sess.], Ch. 32, Secs. 201, 202 and 203, as found in Burns'
In the case of taxable years beginning after June 30, 1963, a tax at the rate of two per cent (2%) of the adjusted gross income is hereby imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within the State of Indiana of every corporation and non-resident person.

In the case of a taxable year beginning on January 1, 1963, and ending on December 31, 1963, a tax of one-half (½) of the rate set forth in section 201 upon adjusted gross income is hereby imposed upon the adjusted gross income of every resident person and on that part of the adjusted gross income derived from sources within the State of Indiana of every corporation and non-resident person.

In the case of taxable years, other than the year beginning January 1, 1963, beginning after June 30, 1962, and before July 1, 1963, a tax is hereby imposed upon the adjusted gross income of every resident person and upon that part of the adjusted gross income derived from sources within the State of Indiana of every corporation and non-resident person in an amount equal to that portion of the tax calculated in the manner set forth in section 201 which the number of days in such taxable year after June 30, 1963, bears to the total number of days in such taxable year.

Thus, pursuant to Section 202, supra, a taxpayer having a taxable year beginning on January 1, 1963, and ending on December 31, 1963, (a calendar year), will be liable for the payment of adjusted gross income tax on adjusted gross income resulting from the receipt of said conditional sales contract payments received throughout the entire year of 1963 at the rate of one per cent (1%). A taxpayer whose taxable year begins after June 30, 1963, as provided by Section 201, supra, will be liable for the payment of adjusted gross income tax on adjusted gross income resulting from the receipt of said conditional sales contract payments received after June 30, 1963, at
the rate of two per cent (2%). A taxpayer whose taxable year begins other than January 1, 1963, and after June 30, 1962, and before July 1, 1963, as provided by Section 203, supra, will be liable for the payment of adjusted gross income tax at the rate of two per cent (2%) on adjusted gross income resulting from payments under the conditional sales contract received after June 30, 1963, in an amount equal to that portion of the tax calculated in the manner set forth in Section 201, supra, which the number of days in the taxable year after June 30, 1963, bears to the total number of days in the taxable year.

In answer to your second question, in the event that the contract for the sale of real estate was entered into after July 1, 1963, any gain or loss therefrom will be subject to the provisions of the "Adjusted Gross Income Tax Act of 1963." Therefore, due to the applicability of that act and as a result of the fact that numerous sections of such act incorporate and adopt certain terms, definitions and provisions from specified sections of the Internal Revenue Code of 1954, as amended, and in effect on January 1, 1963, such provisions of the Federal Code so incorporated and adopted will apply. In addition, Section 117 of the "Adjusted Gross Income Tax Act of 1963" provides that the provisions of the Internal Revenue Code will apply to said act insofar as they are necessary to give full effect and implementation to the provisions of the Internal Revenue Code specifically referred to in said act.

Preliminary to a discussion of your third question, it should be noted that Section 701, supra, of the "Adjusted Gross Income Tax Act of 1963," which relieves persons and corporations which are exempt from Federal income tax under Section 1372(b)(1) of the Internal Revenue Code if all stockholders of such corporation are residents of Indiana, from liability under the "Gross Income Tax Act of 1933," does not relieve other corporations from such liability in that the definition of "person" in Section 114 of the "Adjusted Gross Income Tax Act of 1963," as found in Burns' (1963 Spec. Supp.), Section 64-3214, provides:

"SEC. 114. The term 'person' means an individual, trust or estate: Provided, That no corporation shall be considered to be a person." (Our emphasis)
for gross income tax on such receipts to and including June 30, 1963. Further, a taxpayer receiving payments under a conditional sales contract during any portion of 1963 would additionally be liable for adjusted gross income tax on any such adjusted gross income at the rates provided in the “Adjusted Gross Income Tax Act of 1963.”

2. When a conditional sales contract for the sale of real estate is executed after July 1, 1963, the applicable provisions of the Federal Internal Revenue Code, as incorporated and applied by the “Adjusted Gross Income Tax Act of 1963,” will apply to the receipt of income under the terms of said contract.

3. Nonexempt corporations are required to pay gross income tax on proceeds from the sale of real estate conditionally or otherwise; therefore, if such tax has not been entirely prepaid, the necessary stamps must be affixed to the deed of transfer.

OFFICIAL OPINION NO. 20

April 14, 1964

Mr. Richard L. Worley, Chairman
State Board of Tax Commissioners
201 State Office Building
Indianapolis, Indiana

Dear Mr. Worley:

This is in reply to your letter requesting an Official Opinion on the following questions:

“(1) At what point or under what circumstances do imports lose their characteristic as imports, thus making such property subject to assessment for ad valorem tax?

“(2) Is there any distinction made between imports held for different purposes, specifically with respect to the following property:

“(a) Materials held for use in a manufacturing process;