would require, or necessarily imply, that the word "deputies," as therein used, did not include all deputies which the county assessor has the authority to appoint. Consequently, I find it necessary to construe the word "deputies," as used in the Inheritance Tax Law, as including a first or chief deputy of a county assessor. From this it follows that, although the minimum salary for a deputy county assessor is prescribed by Burns' 49-1002, supra, and for Lake County in the sum of $200 per month, nevertheless, the maximum salary for a deputy county assessor of Lake County is prescribed by Burns' 49-1002a, supra, and is in the sum of $700 per month. Thus, for answer to your question, it is my opinion that the maximum salary which the Circuit Court of Lake County may set for the inheritance tax deputy for that county is the sum of $700 per month.

OFFICIAL OPINION NO. 50

July 20, 1962

Mr. Richard L. Worley, Chairman
State Board of Tax Commissioners
201 State Office Building
Indianapolis 4, Indiana

Dear Mr. Worley:

This is in response to your request for my Official Opinion in answer to a number of questions occasioned by reason of the Acts of 1961, Ch. 319, Sec. 1303, which provides for the addition of certain sums for failure to file property tax returns within the time required by statute. Because there are a number of such problems presented by your letter, all of which are based on that section, before referring to them, it is deemed helpful that that section be set forth, prior to a statement and consideration of the particular questions. That section, as found in Burns' (1961 Repl.), Section 64-1103, provides as follows:

"When any person fails to file a return, statement, or other document, as required by this act, the assessor shall inform the county auditor who shall add the sum of ten dollars [$10.00] to the tax instalment next payable by such person. In addition, when any person fails
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to file a return within thirty [30] days after such return is due, or fails to give in his personal property return the information required by sec. 812, the assessor shall inform the county auditor who shall add to the tax payable by such person an amount equal to twenty-five per cent [25%] of the tax finally determined to be payable with reference to the property which should have been reported on such return. No return shall be considered due within the meaning of this section until the elapse of the period of any extension of time which may have been granted pursuant to the provisions of this act. This section shall not be construed to repeal, amend or alter any penalty now provided by law for failure to pay any tax.” (Our emphasis)

Having quoted above the section to which all of your questions refer, they will be stated and considered singly, your first question reading as follows:

“(1) With respect to the $10.00 to be added under this section, the act speaks of adding the amount ‘to the tax installment next payable by such person.’ To what installment would this amount be added under the following circumstances:

“(a) Where the sum is certified prior to the date the current year’s November installment of tax is payable, but the taxpayer does not appear on the current year’s tax duplicate?

“(b) Where the sum is certified prior to the date the current year’s November installment of tax is payable, but the taxpayer has previously paid both installments of the current year’s tax?”

In subdivisions (a) and (b) of your first question are illustrations of situations in which the $10.00 penalty provided by Section 1303 cannot be added to the November installment of taxes payable in the current year. In your first illustration, because the taxpayer does not appear on the current year’s tax duplicate, and, for instance, may not have liability payable

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in the current year by reason of previous nonresidency, there is no installment of the principal amount of tax payable by such person until that which will be payable in the following year. For example, a person who does not have tax liability for the year 1961, payable on or before the first Monday in May and November in 1962, “the tax installment next payable by such person” will be the first installment of 1962 taxes, payable on or before the first Monday in May of 1963.

Likewise, in your second illustration, because the taxpayer has previously paid both installments of his tax liability, payable in the current year, “the tax installment next payable by such person” will be the first installment of 1962 taxes, payable on or before the first Monday in May of 1963.

The fact patterns demonstrated by each of your two hypothetical situations are illustrative of the proposition that what the Legislature meant, by adding such penalty to “the tax installment next payable by such person,” was that such should be added to “the tax installment next payable by such person pursuant to such return.” While it is true, with respect to persons paying their tax liability on the installment basis, that “the tax installment next payable” could refer to the second installment of the tax payable in the same year in which the return is to be filed, as for example, now, to the taxes payable on or before the first Monday in November of 1962, —your illustrations demonstrate the confusion which would occur if that practice were to be attempted. Referring to Section 1303, supra, you will note that, in addition to the $10.00 penalty, there is a provision for another penalty equal to 25% of the tax finally “determined to be payable with reference to the property which should have been reported on such return.” (Our emphasis) It is clear from reading this section as a whole that, whenever a person fails to file a return within thirty (30) days after such return is due, both the $10.00 penalty and the 25% penalty are to be added. Since the 25% penalty provision explicitly refers to such being added to the tax payable by such person, and in an amount equal to 25% of the tax finally “determined to be payable with reference to the property which should have been reported on such return,” it is apparent that the Legislature intended each of these penalties to be added to the tax liability arising by reason of the property listed, or which should be listed, in such return. The
Legislature itself has, in the second sentence in Section 1303, supra, defined what it means by the term "payable," as used in said section, by stating that it has reference to the tax "finally determined to be payable with reference to the property which should have been reported on such return." (Our emphasis) Therefore, in answer to your first question, the $10.00 penalty is to be added with respect to 1962 taxes payable in 1963, to the May, 1963 installment and this is to be done in all instances, not only in those particular illustrations presented by your letter, but in all situations where such $10.00 penalty is due.

Your second question reads as follows:

"(2) Will the 25% penalty provided for in this section be added to the total tax and be payable with such tax in two (2) equal semiannual installments, or will it be payable in full with the first installment?"

For answer to this question, it is noticeable that the Legislature has provided that the $10.00 penalty, provided by the first sentence, shall be added to one "tax installment," which means that such $10.00 penalty is all to be paid at one and the same time, whereas a comparable provision is not found in the second sentence providing for the 25% penalty. In the second sentence, it is merely stated that the county auditor "shall add to the tax payable by such person,"—not that the county auditor "shall add to the tax installment next payable." Thus, for answer to question No. 2, it is my opinion that the 25% penalty is to be payable along with the personal property tax payable on a semiannual installment basis as provided by the Acts of 1935, Ch. 166, Sec. 1, as found in Burns' (1961 Repl.), Section 64-2015, and is not required to be paid in full with the first installment.

Your third question is as follows:

"(3) Will the amounts added to the tax duplicate under Section 1303 be subject to the penalties provided in Burns 1961 Replacement Volume 11, Part 3, Sections 64-2015 and 64-2016, for failure to pay such amounts when due?"
For answer to this question, please note that the last sentence of Section 1303, supra, explicitly provides:

"* * * This section shall not be construed to repeal, amend or alter any penalty now provided by law for failure to pay any tax." (Our emphasis)

This clearly means that the penalties provided by the Acts of 1935, Ch. 166, Sec. 1 and Sec. 3, as found in Burns’ (1961 Repl.), Sections 64-2015 and 64-2016, are to be administered for failure to pay any tax due in the same manner as prior to the enactment of the Acts of 1961, Ch. 319, for said sentence provides that such penalties as provided by Burns’ 64-2015 and 64-2016, supra, for failure to pay any tax are not only not repealed, but such are not amended nor altered in any way. Thus, it is clear that the penalties provided by Burns’ 64-2015 and 64-2016, supra, are not to be imposed upon the penalties provided by Section 1303, supra, but are to be imposed as previously computed only upon actual amount of tax due exclusive of any penalties imposed for failure to file a return within the time required by law. In other words, penalties are not to be imposed upon penalties.

Your fourth question is as follows:

“(4) What disposition is to be made of the amounts collected under Section 1303?”

For answer to this question, it is appropriate to make a few observations concerning the nature of the amounts to be added to the tax pursuant to Burns’ 64-1103, supra. At no place in the section are such sums designated as fines or penalties, yet it is clear that each such sum, in effect, constitutes a penalty for failure to perform an act within the time required by statute. Further, Article XIII, of which Section 1303, supra, is a part, is entitled “Penalties” and Section 1301 expressly refers to “penalties.” That these amounts are, in one sense of the word, to be considered penalties is implied from the last sentence of the section which makes reference to penalties now provided by law for failure to pay any tax when due. I believe that this lack of designating either of such amounts as a penalty affords confirmation of the proposition that the Legislature intended such amounts, not only to be added to
the tax, but also to be distributed as tax collections are distributed.

The penalties imposed by this section clearly do not constitute a fine for breach of the penal laws of the state which are required to be paid into the Common School Fund, pursuant to the Indiana Constitution, Art. 8, Sec. 2. Further, such additional amounts do not constitute penalties which are payable into some particular fund pursuant to special statute.

Concerning the effect of adding a penalty to the tax, in the case of Board of Commissioners of Hancock County v. The State ex rel. Michener, Attorney General (1889), 119 Ind. 473, at 476, 22 N. E. 10, the Indiana Supreme Court stated:

“As to whether the State is entitled to the money named in the complaint depends upon whether the penalties referred to in the different sections of our tax law above cited attach to and become a part of the taxes assessed, or whether they are to be regarded as a mere punishment of the delinquent taxpayer, and remain separate and apart from the taxes. As will be observed by reading these provisions of our tax law, in each instance, except in section 6457, where the penalty is provided for, it is declared that such penalty shall be added to the tax. The words ‘add to’ are generally understood to mean, ‘to increase.’ Webster defines the word, ‘add’ as meaning to join or unite, as one thing, or some to another, so as to increase the number, or augment the quantity, enlarge the magnitude, or so as to form one aggregate. So, when the Legislature speaks of adding to a tax a penalty of ten per cent., it would generally be understood that it was intended to increase such tax in that amount.” (Court’s emphasis)

Further, it is noticeable that at the time the 1957 statute concerning county officer salaries was enacted, Acts of 1957, Ch. 319, as amended, as found in Burns’ (1962 Supp.), Section 49-1053 et seq., it was provided by Section 16 of that Act that penalties received by all officers included in that act, which included the county treasurer, were to be “accounted for and paid into the county general fund * * *.” This section was amended by the Acts of 1959, Ch. 270, Sec. 1, as found in
Burns' (1962 Supp.), Section 49-1068, which provides as follows:

“It is the intent of this act that all fees, per diems, penalties, costs, interests, forfeitures, percentages, commissions, allowances, mileage, and any and all other remuneration of whatever kind or character now received by all officers included in this act for official services, or involving official authority, except as herein otherwise provided, shall be collected, accounted for and paid into the county general fund: Provided, that nothing in this act contained shall be construed as an abolition of the fees allowed by law to sheriffs for the feeding of prisoners: Provided, further, that the six per cent [6%] on delinquent personal property and poll taxes collected shall be excepted from payment into the county general fund and ALL SUCH COLLECTIONS shall be distributed to the respective taxing units.”

(Our emphasis)

The proviso above-emphasized constitutes the only change to said section effected by the 1959 amendment. The above-mentioned “six per cent on delinquent personal property and poll taxes collected” has reference to a former provision (no longer effective), being Acts of 1933, Ch. 21, Sec. 6, as amended, as found in Burns' (1951 Repl.), Section 49-1006, pursuant to which county and city treasurers, required to collect real, personal and poll taxes, were previously entitled to receive as their property, and in addition to their salary, “six [6] per cent of delinquent taxes, but not including penalties on delinquent taxes, collected on personal property and poll taxes during each calendar year * * *.” Such six per cent, payable to such treasurers, was not an additional sum collected by them from the taxpayer as a penalty, but constituted a commission based upon the amount of the delinquent tax, exclusive of penalties, which the law authorized to be paid to them for such collections.

Therefore, because the six per cent was not an additional sum collected from the taxpayer, but rather a commission, the subsequent words in said proviso, “all such collections” (above-capitalized), have reference to the total amount of collections from “delinquent personal property and poll taxes,” which
would include penalties collected in addition to the tax, and “added thereto,” as provided by Burns’ 64-2015 and 64-2016, supra. Thus, the effect of providing that “all such collections shall be distributed to the respective taxing units,” is that all such collections, inclusive of penalties, shall be distributed as other tax collections. Because the principal of tax collections is distributable to the respective taxing units anyway, the above-emphasized proviso added in 1959 would be unnecessary and without effect, unless it were to mean that “penalties” are to be added to the principal of the tax and the aggregate distributed to the respective taxing units.

It seems to me that the legislative intent, evidenced expressly by the last proviso in Burns’ 49-1068, supra, carries over and applies equally to penalties added to the tax for failure to file personal property tax returns within the time prescribed. This may explain the reason for the Legislature not having specifically designated such amounts as “penalties,” but rather having referred to such amounts as being added to the tax payable, as specifically provided by Burns’ 64-1103, supra.

Therefore, in the absence of any express statutory direction to the contrary, it is my opinion that the amounts collected pursuant to Burns’ 64-1103, supra, are to be considered as tax collections for distribution to the respective taxing units, to be handled in the same manner as the tax collections themselves.

OFFICIAL OPINION NO. 51

July 24, 1962

Mr. T. Michael Smith, Administrator
Inheritance Tax Division
Indiana Department of State Revenue
106 State Office Building
Indianapolis 4, Indiana

Dear Mr. Smith:

This is in response to your request of July 16, 1962, for my Official Opinion in answer to the following question:

“Will you please advise me in the form of an Official Opinion as to whether the proviso of Section 7-2430,