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,
Burns Indiana Statutes, 1953 Replacement * * * is applicable to the estate of a decedent dying before June 25, 1957 or whether it applies only to estates of decedents dying after that date."

The section of the statute to which your question relates is the Acts of 1931, Ch. 75, Sec. 30, as last amended by the Acts of 1957, Ch. 204, as found in Burns' (1962 Supp.), Section 7-2430, which reads as follows:

"Every such tax imposed by this act shall be, and remain, a lien upon the property transferred until paid, and the person to whom the property is so transferred and the administrators, executors, or trustees of every estate so transferred, shall be personally liable for the payment of such tax: Provided, That the lien shall expire by limitation five [5] years after death and all property of the decedent shall be free and clear of the tax from that date. [Acts 1931, ch. 75, § 30, p. 192; 1937, ch. 159, § 1, p. 847; 1951, ch. 75, § 1, p. 195; 1957, ch. 204, p. 424.]" (Our emphasis)

The 1957 amendment contained no emergency clause, so that it became effective on June 25, 1957, the date upon which the Acts of 1957 were published and circulated in the several counties of this state, as provided by the Indiana Constitution, Art. 4, Sec. 28. Your question, then, is whether the 1957 amendment to this section of the Inheritance Tax Law applies to estates of decedents which were pending as of the effective date of the amendment, or wherein the decedent died prior thereto and his estate was opened thereafter.

A question so substantially similar, as to be practically the precise question which you have asked, was answered by the Indiana Supreme Court in the case of In re Batt's Estate (1942), 220 Ind. 193, 41 N. E. (2d) 365, 139 A. L. R. 1391. In fact, this case involved an earlier amendment of the same section of the same law, said amendment being the Acts of 1937, Ch. 159, Sec. 1. The 1937 version of this section is no longer reproduced in Burns' Indiana Statutes, Annotated, but provided as follows:

"Sec. 30. Every such tax imposed by this act shall be, and remain, a lien upon the property transferred
until paid, and the person to whom the property is so transferred and the administrators, executors, or trustees of every estate so transferred, shall be personally liable for the payment of such tax: Provided, That if no proceeding is taken to determine the inheritance tax on the property of any deceased person within ten years after his death, it shall be conclusively presumed that no inheritance tax is due and all property of decedent shall be free and clear therefrom."

In the Batt's case, the decedent had died in January of 1928, and on May 27, 1938, a petition was filed with the court alleging that no proceeding had ever been taken to determine the Indiana inheritance tax on the property of the decedent, and requesting an order to the effect that all of the property of the decedent be adjudged free and clear of any inheritance tax liability, and that no tax is payable by the estate, the administratrix, or the transferees of the property of the estate. The taxing officials, on the other hand, contended that the 1937 amendment did not apply to estates of decedents who had died prior to its enactment, which is substantially identical to the question which you have presented. On this issue, the Indiana Supreme Court stated, on page 199 of 220 Ind., the following:

"The appellants contend that the statute does not apply to, and does not afford relief from, taxes on property of decedents who died prior to its enactment.

"In construing statutes, the effort is to find the legislative intent. The statute here involved is clear and unambiguous. That part of the section above the proviso is a reenactment. Only the proviso is new. It is a statute of limitation and repose. It is in effect a time limitation on the prosecution of proceedings to collect inheritance taxes. From the earliest times it has been held by this court that such statutes operate retrospectively as well as prospectively. It was pointed out in State ex rel. Trimble v. Swope et al. (1855), 7 Ind. 91, 94, 95, that:

"* * * this is the whole current of the common law decisions. The assembly must, therefore, be presumed to have legislated with reference to that construction * * * In the absence of a legislative rule,
the decisions on the former act furnish the rule of construc-
tion for the latter.

"This view is greatly strengthened by the fact that it is customary for the legislature itself to limit the operation of such acts, where they are not intended to affect rights of action already accrued." (Our emphasis)

The holding of the court was that, under long-established precedent, the 1937 amendment must be treated as being applicable to the estate of the decedent who had died prior to its enactment. In view of the decision in In re Batt’s Estate, supra, it is obvious that, in the absence of any legislative directive to the contrary, the 1957 amendment to the same section of the statute must, likewise, be treated as being applicable to estates of decedents who died prior to its enactment.

Therefore, it is my opinion that the Acts of 1957, Ch. 204, as found in Burns’ 7-2430, supra, is applicable to the estate of a decedent dying before June 25, 1957, the effective date of said act, as well as to estates of decedents dying after that date.

OFFICIAL OPINION NO. 52

July 25, 1962

Mr. Eugene Garrison, Executive Secretary
Public Employes’ Retirement Fund
501 State Office Building
Indianapolis 4, Indiana

Dear Mr. Garrison:

This is in reply to your request for an Official Opinion regarding the effect of the Public Employes’ Retirement Fund law on certain employees of the City of Indianapolis. Your letter states that the City of Indianapolis filed a notice of withdrawal from the Public Employes’ Retirement Fund in accordance with Section 23 of Chapter 340 of the Acts of 1945. Subsequently, the board of sanitary commissioners of the City of Indianapolis elected to continue participation of their employees under the Public Employes’ Retirement Fund. Your letter further states that the fund is encountering many cases