

**OPINION
69-540**

June 23, 1969 (OPINION)

Mr. Paul E. R. Abrahamson

Administrator

State Wheat Commission

RE: Wheat Commission - Tax Levy Deduction - Who Makes

This is in response to your letter in which you ask for an opinion on the effect of House Bill No. 480 which was passed by the Forty-first Legislative Assembly in 1969. Your letter reads, in part, as follows:

"House Bill 480 has reference to the wheat tax levy to be collected at the maturity of the lien, pledge or mortgage instead of at the time that the lien, pledge or mortgage was executed. We have in mind in this case the so called federal entity identified at the Commodity Credit Corporation and in the state administered by the county and state ASCS committees. In the past the said organization, assuming the wheat producer meets the qualifications to secure either a farm stored, public warehouse or terminal elevator loan, to remit the wheat tax levy to the Wheat Commission office. To be very direct, whose responsibility is it under the above statutes and amendments to make the wheat tax levy deduction and remit it to the North Dakota State Wheat Commission as per amendment House Bill 480?"

House Bill No. 480 amends section 4-28-07, which now reads as follows:

"* * * There is hereby levied and imposed, effective July 1, 1959, a tax of two mills per bushel by weight upon all wheat grown in this state and sold through commercial channels by a producer to a first purchaser, such tax to be levied and assessed at the time of sale, or final settlement in the case of a lien, pledge, or mortgage if title to the wheat is transferred, and deducted by the purchaser from the price paid. At the time of sale or final settlement, the purchaser shall issue and deliver to the producer a record of the transaction in such manner as the commission may prescribe. * * *."
(Emphasis supplied.)

It also creates subsection 6 to section 4-28-02 of the North Dakota Century Code, which reads as follows:

6. The term final settlement shall mean the date the wheat upon which a loan was obtained is sold to the elevator or to a private person or is assigned or transferred to an agency of the United States government; or the date upon which the payment for the wheat is made in instances when wheat is sold but payments are deferred."

The underscored language constitutes the significant changes made by the legislature. In this respect the term "final settlement" is defined in subsection 6 quoted above. The net result of this change is that the tax is imposed and must be collected at the time the wheat is sold to a first purchaser where the sale is through commercial channels. The tax is levied and assessed at the time of sale or when final settlement is made. If a loan is taken out on the wheat and assuming the wheat is measured in, the loaning agency is not required to remit any tax on such wheat, but when final settlement is made at a later date the purchaser is required to remit the amount of tax on the wheat. If the loaning agency becomes the purchaser as the result of final settlement by assignment or transfer the loaning agency is required to assess, collect and remit the tax.

It would be our assumption that a loan on wheat usually is never on a one hundred percent basis. It is our further assumption that a sufficient amount is withheld to cover any incidental expenses arising out of the loan and any administrative or other costs that might accrue as a result of the loan.

As a matter of practical administration, and to avoid absorption of the tax, the loaning agency may deduct from the proceeds of the loan a sufficient amount to cover the tax which will be imposed if the wheat is transferred, assigned or sold to the loaning agency.

It is our opinion that as a result of the passage of House Bill No. 480 the tax is levied, assessed and collected either at the time of sale or final settlement. It is our further opinion that if the producer delivers the wheat to a designated place for storage and secures a loan thereon, that the tax is not imposed at that time, but if the producer later transfers, assigns or sells the wheat to the person or agency that made the loan, the tax is imposed and the loaning agency is required to remit the tax of two mills per bushel by weight. It is the responsibility of the loaning agency to make sure that the tax is collected and remitted and the loaning agency should take the necessary precautions to withhold a sufficient amount to cover the taxes which will be imposed in the event there is a sale, transfer or assignment of the wheat to the loaning agency.

Where there is an outright sale, there should be no question that the tax is imposed, assessed, and collected at the time the sale occurs.

With reference to the tax on flaxseed sold, we note that the legislature has by reference incorporated the same language and procedures which apply to wheat. Consequently, the time when the tax is imposed, collected and remitted and the manner in which such law is administered will be the same as the law which applies to wheat, except the tax on flax is at the rate of one-fourth cent per bushel by weight.

HELGI JOHANNESON

Attorney General