

**OPINION  
51-183**

October 11, 1951           (OPINION)

**TAXATION**

RE: Election as to Proceeds of Federal Loan on Grain Final Without C  
Commissioner

In your letter of September 27, 1951, you seek an opinion on the construction of section 57-3817 of the 1949 Supplement to the 1943 Revised Code.

You ask whether a taxpayer, after making his election as to the proceeds of a particular loan, may in a later year of final payment of the loan change his election with respect to the proceeds of that same loan.

The section in question grants to producers of agricultural products who receive proceeds from loans on those products the right to elect to consider those proceeds as gross income either during the year in which the contract agreement or sale was entered into, or as gross income of the year in which any final payment is made thereon.

The income tax division of the office of tax commissioner has never permitted a taxpayer who has exercised his right of election to change that election without first securing the permission of the tax commissioner to do so. This is in harmony with the rule that a statutory right of election becomes binding on the one who exercises such a right.

As a practical matter of administration to hold otherwise would result in complications in the income tax division in processing amended returns and applications for refunds because of no apparent limit on the number of times a taxpayer might elect to change his method of reporting the proceeds from any one loan; in addition, such taxpayer would have the benefit of hindsight as well as foresight, a privilege which would not be available to taxpayers not having similar income.

The income tax division of the office of tax commissioner interprets the section to mean that the election permitted under subsection 1 is binding on the taxpayer not only as to proceeds from a specific loan, but once exercised as to the proceeds of his first such loan, becomes binding as to the proceeds from all such loans during the year of election and following years. A change must therefore be requested of and granted by the tax commissioner.

Since no indication is given in the statute that the election should be binding only for the taxable year, it is presumed that after the right is exercised it is binding on the taxpayer until permission to change is granted. This construction also recognizes legislative awareness of the income tax principles that the taxpayer should be reasonably consistent in his accounting treatment of items of income

and deductions and that a change in the accounting treatment of items of income and deductions and that a change in the accounting treatment of such items should be permitted only after obtaining the consent of the tax commissioner.

It is therefore our opinion, and we hold, that an election to report proceeds of a loan in one of the two specified ways must be made by the taxpayer in the first year in which he receives proceeds from such loan, and that this election after it is made is binding upon him as to proceeds of all other such loans during that year and following years, or until permission to change is granted by the tax commissioner.

ELMO T. CHRISTIANSON

Attorney General