525 S. West Street,
Wheaton, Illinois,
November 16, 1942.

Honorable Robert H. Jackson,
Associate Justice of the Supreme Court,
Washington, D. C.

Sir:

You will find enclosed a clipping of a news article from THE CHICAGO DAILY NEWS of November 9 and one from THE CHICAGO TRIBUNE of November 10 with reference to the Supreme Court's decision on the question of the 49¢ per bushel wheat tax under the AAA quotas. In both news articles one reason for your decision is reported to have been that the producer could have avoided the tax --- "had he chosen to cut his excess and cure it or feed it as hay, or to reap and feed it with the head and straw together, no penalty would have been demanded".

May I refer you to REGULATIONS PERTAINING TO WHEAT MARKETING QUOTAS FOR THE 1941 CROP OF WHEAT (Wheat 507), issued May 31, 1941 by the United States Department of Agriculture, Agricultural Adjustment Administration, Washington, D. C., and the revised issue of July 15, 1941. Under Section 403 the initial farm marketing excess is defined, with the exceptions in Sections 901, which exempted farms on which the acreage planted was not in excess of 15 acres, and 906 with reference to non-allotment farms. This was interpreted by the AAA to require the "excess acres" to be determined solely on the basis of the "planted acres" and not "harvested acres".

For example: If A and B were adjoining farmers with wheat allotments of 20 acres each and the normal yield was 15 bushels per acre, assuming that A planted, harvested, and produced 20 acres of wheat that averaged 15 bushels per acre and B planted 40 acres, plowed under 20 acres prior to maturity (or cut his excess of 20 acres and cured it, or fed it as hay, or reaped and fed it with the head and straw together) and harvested 20 acres that yielded 15 bushels per acre, the marketing privileges of each would have been as follows: A's entire crop would have been "free wheat", eligible for a wheat loan, or it could have been sold at any time without a tax. B would not have any "free wheat" and none of his crop would be eligible for the maximum wheat loan but could have been stored as "excess wheat" on which a loan of 60% of the maximum loan rate could have been made or it could have been sold by paying the tax of 49¢ per bushel.

In actual farming practices farmers like to avoid "patches" or "divisions in fields" and very often they sowed more small grain than they intended to harvest, using it as a nurse crop for clovers and alfalfa. To meet their general crop allotments so as to earn maximum payments under the AAA, they disposed of the excess small grain prior to maturity by such practices as "cutting the excess and curing it or feeding it as hay, or reaping and feeding it with the head and straw together". This had been permitted every year and it was natural for a farmer to assume when he planted his fall wheat in 1941 or spring wheat in 1942 in excess of the allotted acres that he

would have the same privilege in the spring of 1942 as he had had in previous years of disposing of the excess acres prior to maturity. However, with the voting of marketing quotas and the change in the Act with reference to the rate of tax on the excess acres, the only tolerance allowed was a reduction in the total tax if sufficient proof was furnished the county committee that the actual production was less than the normal yield assigned to the excess acres. He was not permitted to dispose of the excess acres and avoid the tax. Later in the year Congress made it possible for producers to apply for a tax refund if the production in bushels on the total planted acres (both allotment and excess acres) were less than the wheat marketing quota assigned to the farm (allotted acres times the normal yield). The position of the officials of the AAA was that Congress by the Act itself required the tax to be levied on the basis of the excess planted acres on every farm that did not come within the special provisions and exemptions of Sections 901 to 906, inclusive. These sections refer to small farmers.

The farms in which I am interested for the most part have been operated within the allotments and quotas of the AAA. I have no interest directly or indirectly in any farm on which a wheat penalty is involved, but it has always been my feeling that an injustice was done to the producer who over-planted when he was not permitted to dispose of the excess acres prior to maturity. According to the newspaper reports you justify your decision, at least partially, on the basis of practices which should have been permitted but which were denied the producer. It is for that reason that I call the matter to your attention.

Very truly yours,

L. J. Berry.