

Union Calendar No. 196

105TH CONGRESS
1ST Session

H. R. 2513

[Report No. 105-318, Part I]

A BILL

To amend the Internal Revenue Code of 1986 to restore and modify the provision of the Taxpayer Relief Act of 1997 relating to exempting active financing income from foreign personal holding company income and to provide for the non-recognition of gain on the sale of stock in agricultural processors to certain farmers' cooperatives.

OCTOBER 22, 1997

Committee on the Budget discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 1997

Mr. ARCHER (for himself, Mr. HULSHOF, Mr. RANGEL, Mr. THOMAS, Mr. HOUGHTON, Mr. NUSSLE, Ms. DUNN, and Mr. LEVIN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

OCTOBER 9, 1997

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

OCTOBER 9, 1997

Referral to the Committee on the Budget extended for a period ending not later than October 20, 1997

OCTOBER 20, 1997

Referral to the Committee on the Budget extended for a period ending not later than October 21, 1997

OCTOBER 21, 1997

Referral to the Committee on the Budget extended for a period ending not later than October 22, 1997

OCTOBER 22, 1997

Committee on the Budget discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy as introduced on September 23, 1997]

A BILL

To amend the Internal Revenue Code of 1986 to restore and modify the provision of the Taxpayer Relief Act of 1997 relating to exempting active financing income from foreign personal holding company income and to provide for the nonrecognition of gain on the sale of stock in agricultural processors to certain farmers' co-operatives.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EXEMPTION FOR ACTIVE FINANCING INCOME.**

4 *(a) EXEMPTION FROM FOREIGN PERSONAL HOLDING*
5 *COMPANY INCOME.—Section 954 of the Internal Revenue*
6 *Code of 1986 (as amended by subsection (d)) is amended*
7 *by adding at the end the following new subsection:*

8 *“(h) SPECIAL RULE FOR INCOME DERIVED IN THE AC-*
9 *TIVE CONDUCT OF INSURANCE BUSINESSES AND BANKING,*
10 *FINANCING, OR SIMILAR BUSINESSES.—*

11 *“(1) IN GENERAL.—For purposes of subsection*
12 *(c)(1), foreign personal holding company income shall*
13 *not include income which is—*

1 “(A) derived in the active conduct by a con-
2 trolled foreign corporation of a banking, financ-
3 ing, or similar business, but only if—

4 “(i) the corporation is predominantly
5 engaged in the active conduct of such busi-
6 ness, and

7 “(ii) such income is derived from
8 transactions with customers located within
9 the country under the laws of which the cor-
10 poration is created or organized,

11 “(B) received from a person other than a re-
12 lated person (within the meaning of subsection
13 (d)(3)) and derived from the investments made
14 by a qualifying insurance company of its re-
15 serves or of 80 percent of its unearned premiums
16 (as both are determined in the manner pre-
17 scribed under paragraph (4)), or

18 “(C) received from a person other than a re-
19 lated person (within the meaning of subsection
20 (d)(3)) and derived from investments made by a
21 qualifying insurance company of an amount of
22 its assets equal to—

23 “(i) in the case of property, casualty,
24 or health insurance contracts, one-third of
25 its premiums earned on such insurance con-

1 *tracts during the taxable year (as defined in*
2 *section 832(b)(4)), and*

3 *“(ii) in the case of life insurance or*
4 *annuity contracts, 10 percent of the reserves*
5 *described in subparagraph (B) for such con-*
6 *tracts.*

7 *“(2) PREDOMINANTLY ENGAGED.—For purposes*
8 *of paragraph (1)(A), a controlled foreign corporation*
9 *shall be deemed predominantly engaged in the active*
10 *conduct of a banking, financing, or similar business*
11 *only if—*

12 *“(A) more than 70 percent of its gross in-*
13 *come is derived from such business from trans-*
14 *actions with customers which are located within*
15 *the country under the laws of which the corpora-*
16 *tion is created or organized, or*

17 *“(B) the corporation is—*

18 *“(i) engaged in the active conduct of a*
19 *banking business and is an institution li-*
20 *icensed to do business as a bank in the Unit-*
21 *ed States (or is any other corporation not*
22 *so licensed which is specified by the Sec-*
23 *retary in regulations), or*

24 *“(ii) engaged in the active conduct of*
25 *a securities business and is registered as a*

1 *securities broker or dealer under section*
2 *15(a) of the Securities Exchange Act of*
3 *1934 or is registered as a Government secu-*
4 *rities broker or dealer under section 15C(a)*
5 *of such Act (or is any other corporation not*
6 *so registered which is specified by the Sec-*
7 *retary in regulations).*

8 “(3) *PRINCIPLES FOR DETERMINING INSURANCE*
9 *INCOME.—Except as provided by the Secretary, for*
10 *purposes of paragraphs (1) (B) and (C)—*

11 “(A) *in the case of any contract which is a*
12 *separate account-type contract (including any*
13 *variable contract not meeting the requirements of*
14 *section 817), income credited under such contract*
15 *shall be allocable only to such contract, and*

16 “(B) *income not allocable under subpara-*
17 *graph (A) shall be allocated ratably among con-*
18 *tracts not described in subparagraph (A).*

19 “(4) *METHODS FOR DETERMINING UNEARNED*
20 *PREMIUMS AND RESERVES.—For purposes of para-*
21 *graph (1)(B)—*

22 “(A) *PROPERTY AND CASUALTY CON-*
23 *TRACTS.—The unearned premiums and reserves*
24 *of a qualifying insurance company with respect*
25 *to property, casualty, or health insurance con-*

1 *tracts shall be determined using the same meth-*
2 *ods and interest rates which would be used if*
3 *such company were subject to tax under sub-*
4 *chapter L.*

5 “(B) *LIFE INSURANCE AND ANNUITY CON-*
6 *TRACTS.—The amount of the reserve of a qualify-*
7 *ing insurance company for any life insurance or*
8 *annuity contract shall be equal to the greater*
9 *of—*

10 “(i) *the net surrender value of such*
11 *contract (as defined in section*
12 *807(e)(1)(A)), or*

13 “(ii) *the reserve determined under*
14 *paragraph (5).*

15 “(C) *LIMITATION ON RESERVES.—In no*
16 *event shall the reserve determined under this*
17 *paragraph for any contract as of any time ex-*
18 *ceed the amount which would be taken into ac-*
19 *count with respect to such contract as of such*
20 *time in determining foreign statement reserves*
21 *(less any catastrophe, deficiency, or similar re-*
22 *serves).*

23 “(5) *AMOUNT OF RESERVE.—The amount of the*
24 *reserve determined under this paragraph with respect*
25 *to any contract shall be determined in the same man-*

1 *ner as it would be determined if the qualifying insur-*
2 *ance company were subject to tax under subchapter L,*
3 *except that in applying such subchapter—*

4 *“(A) the interest rate determined for the for-*
5 *ign country in which such company is created*
6 *or organized and which, except as provided by*
7 *the Secretary, is calculated in the same manner*
8 *as the Federal mid-term rate under section*
9 *1274(d) shall be substituted for the applicable*
10 *Federal interest rate,*

11 *“(B) the highest assumed interest rate per-*
12 *mitted to be used in determining foreign state-*
13 *ment reserves shall be substituted for the prevail-*
14 *ing State assumed interest rate, and*

15 *“(C) tables for mortality and morbidity*
16 *which reasonably reflect the current mortality*
17 *and morbidity risks in the foreign country shall*
18 *be substituted for the mortality and morbidity*
19 *tables otherwise used for such subchapter.*

20 *“(6) DEFINITIONS.—For purposes of this sub-*
21 *section—*

22 *“(A) QUALIFYING INSURANCE COMPANY.—*
23 *The term ‘qualifying insurance company’ means*
24 *any entity which—*

1 “(i) is subject to regulation as an in-
2 surance company by the country under the
3 laws of which the entity is created or orga-
4 nized,

5 “(ii) derives at least 50 percent of its
6 net written premiums from the insurance or
7 reinsurance of risks located within such
8 country, and

9 “(iii) is engaged in the active conduct
10 of an insurance business and would be sub-
11 ject to tax under subchapter L if it were a
12 domestic corporation.

13 “(B) *LIFE INSURANCE OR ANNUITY CON-*
14 *TRACT.—For purposes of this section and section*
15 *953, the determination of whether a contract is-*
16 *sued by a controlled foreign corporation is a life*
17 *insurance contract or an annuity contract shall*
18 *be made without regard to sections 72(s), 101(f),*
19 *817(h), and 7702 if—*

20 “(i) such contract is regulated as a life
21 insurance or annuity contract by the coun-
22 try under the laws of which the corporation
23 is created or organized, and

1 “(ii) no policyholder, insured, annu-
2 tant, or beneficiary with respect to the con-
3 tract is a United States person.

4 “(C) *NONCANCELLABLE ACCIDENT AND*
5 *HEALTH INSURANCE CONTRACTS.*—A
6 noncancellable accident and health insurance
7 contract shall be treated for purposes of this sub-
8 section in the same manner as a life insurance
9 contract except that paragraph (4)(B)(i) shall
10 not apply.

11 “(D) *LOCATED.*—

12 “(i) *IN GENERAL.*—The determination
13 of where a customer is located shall be made
14 under rules prescribed by the Secretary.

15 “(ii) *SPECIAL RULE FOR QUALIFIED*
16 *BUSINESS UNITS.*—Gross income derived by
17 a corporation’s qualified business unit
18 (within the meaning of section 989(a)) from
19 transactions with customers which are lo-
20 cated in the country in which the qualified
21 business unit both maintains its principal
22 office and conducts substantial business ac-
23 tivity shall be treated as derived from trans-
24 actions with customers which are located
25 within the country under the laws of which

1 *the controlled foreign corporation is created*
2 *or organized.*

3 “(E) *CUSTOMER.*—

4 “(i) *IN GENERAL.*—*The term ‘cus-*
5 *tomer’ means, with respect to any controlled*
6 *foreign corporation, any person which has a*
7 *customer relationship with such corpora-*
8 *tion.*

9 “(ii) *EXCEPTION FOR RELATED, ETC.*
10 *PERSONS.*—*A person who is a related per-*
11 *son (as defined in subsection (d)(3)), an of-*
12 *ficer, a director, or an employee with re-*
13 *spect to any controlled foreign corporation*
14 *shall not be treated as a customer with re-*
15 *spect to any transaction if a principal pur-*
16 *pose of such transaction is to satisfy any re-*
17 *quirement of this subsection.*

18 “(7) *ANTI-ABUSE RULES.*—*For purposes of ap-*
19 *plying this subsection and subsection (c)(2)(C)(ii),*
20 *there shall be disregarded any item of income, gain,*
21 *loss, or deduction with respect to any transaction or*
22 *series of transactions one of the principal purposes of*
23 *which is qualifying income or gain for the exclusion*
24 *under this section, including—*

1 “(A) any change in the method of comput-
2 ing reserves or any other transaction or series of
3 transactions a principal purpose of which is the
4 acceleration or deferral of any item in order to
5 claim the benefits of such exclusion through the
6 application of this subsection, and

7 “(B) organizing entities in order to satisfy
8 any same country requirement under this sub-
9 section.

10 “(8) COORDINATION WITH OTHER PROVISIONS.—

11 “(A) SECTION 901(k).—

12 “(i) IN GENERAL.—The amount of
13 qualified taxes (as defined in section
14 901(k)(4)) to which paragraphs (1) and (2)
15 of section 901(k) do not apply by reason of
16 paragraph (4) of such section 901(k) shall
17 be reduced by an amount which bears the
18 same ratio to such qualified taxes as the
19 amount of income from the active conduct
20 of a securities business which is not subpart
21 F income solely by reason of this subsection,
22 subsection (c)(2)(C)(ii), and subsection
23 (e)(2)(C) bears to the total income from the
24 active conduct of a securities business by a
25 controlled foreign corporation which is not

1 *subpart F income. The determination under*
2 *the preceding sentence shall be made by*
3 *treating all members of an affiliated group*
4 *as 1 corporation. For purposes of this*
5 *clause, the term ‘subpart F income’ has the*
6 *meaning given such term by section 952(a)*
7 *but determined without regard to section*
8 *952(c) and paragraphs (3) and (4) of sub-*
9 *section (b) of this section.*

10 *“(i) ELECTION NOT TO HAVE SUB-*
11 *SECTION AND CERTAIN OTHER PROVISIONS*
12 *APPLY.—Clause (i) shall not apply for any*
13 *taxable year of a foreign corporation if such*
14 *corporation (and all members of the affili-*
15 *ated group of which such corporation is a*
16 *member) elect not to have this subsection,*
17 *subsection (c)(2)(C)(i), and subsection*
18 *(e)(2)(C) apply for such taxable year.*

19 *“(B) TREATMENT OF INCOME TO WHICH*
20 *SECTION 953 APPLIES.—Subparagraphs (B) and*
21 *(C) of paragraph (1) shall not apply to invest-*
22 *ment income allocable to contracts that insure*
23 *related party risks or risks located in a foreign*
24 *country other than the country in which the*

1 *qualifying insurance company is created or or-*
2 *ganized.*

3 “(9) *APPLICATION.*—*This subsection, subsection*
4 *(c)(2)(C)(ii), and subsection (e)(2)(C) shall apply*
5 *only to the first full taxable year of a foreign corpora-*
6 *tion beginning after December 31, 1997, and before*
7 *January 1, 1999, and to taxable years of United*
8 *States shareholders with or within which such taxable*
9 *year of such foreign corporation ends.”*

10 (b) *SPECIAL RULES FOR DEALERS.*—*Section*
11 *954(c)(2)(C) of such Code is amended to read as follows:*

12 “(C) *EXCEPTION FOR DEALERS.*—*Except as*
13 *provided by regulations, in the case of a regular*
14 *dealer in property (within the meaning of para-*
15 *graph (1)(B)), forward contracts, option con-*
16 *tracts, or similar financial instruments (includ-*
17 *ing notional principal contracts and all instru-*
18 *ments referenced to commodities), there shall not*
19 *be taken into account in computing foreign per-*
20 *sonal holding income—*

21 “(i) *any item of income, gain, deduc-*
22 *tion, or loss (other than any item described*
23 *in subparagraph (A), (E), or (G) of para-*
24 *graph (1)) from any transaction (including*
25 *hedging transactions) entered into in the or-*

1 *dinary course of such dealer's trade or busi-*
2 *ness as such a dealer, and*

3 “(ii) if such dealer is a dealer in secu-
4 *rities (within the meaning of section 475),*
5 *any interest or dividend or equivalent*
6 *amount described in subparagraph (E) or*
7 *(G) of paragraph (1) from any transaction*
8 *(including any hedging transaction or*
9 *transaction described in section*
10 *956(c)(2)(J)) entered into in the ordinary*
11 *course of such dealer's trade or business as*
12 *such a dealer in securities, but only if em-*
13 *ployees of the dealer which are located in*
14 *the country under the laws of which the*
15 *dealer is created or organized (or in the case*
16 *of a qualified business unit described in sec-*
17 *tion 989(a) which both maintains its prin-*
18 *cipal office and conducts substantial busi-*
19 *ness activity in a country, employees of*
20 *such unit which are located in such coun-*
21 *try) materially participate in such trans-*
22 *action.”.*

23 *(c) EXEMPTION FROM FOREIGN BASE COMPANY SERV-*
24 *ICES INCOME.—Paragraph (2) of section 954(e) of such*
25 *Code (as amended by subsection (d)) is amended by striking*

1 “or” at the end of subparagraph (A), by striking the period
2 at the end of subparagraph (B) and inserting “, or”, and
3 by adding at the end the following:

4 “(C)(i) a transaction by the controlled for-
5 eign corporation if the income from the trans-
6 action is not foreign personal holding company
7 income by reason of subsection (h), or

8 “(ii) a transaction by the controlled foreign
9 corporation if subsection (c)(2)(C)(i) applies to
10 such transaction.”.

11 (d) *REPEAL OF CANCELED PROVISIONS.*—Section
12 1175 of the Taxpayer Relief Act of 1997, and the amend-
13 ments made by such section, are hereby repealed, and the
14 Internal Revenue Code of 1986 shall be applied and admin-
15 istered as if such section (and amendments) had never been
16 enacted.

17 (e) *BUDGETARY TREATMENT.*—For purposes of section
18 10213 of the Balanced Budget Act of 1997, the provisions
19 of this section shall be considered to have been enacted as
20 part of the Taxpayer Relief Act of 1997.

21 **SEC. 2. NONRECOGNITION OF GAIN ON SALE OF STOCK TO**
22 **CERTAIN FARMERS’ COOPERATIVES.**

23 (a) *IN GENERAL.*—Part III of subchapter O of chapter
24 1 of the Internal Revenue Code of 1986 (relating to non-

1 taxable exchanges) is amended by inserting after section
2 1042 the following new section:

3 **“SEC. 1042A. SALES OF STOCK TO CERTAIN FARMERS’ CO-**
4 **OPERATIVES.**

5 “(a) *NONRECOGNITION OF GAIN.*—If—

6 “(1) the taxpayer elects the application of this
7 section with respect to any sale of qualified agricul-
8 tural processor stock,

9 “(2) the taxpayer purchases qualified replace-
10 ment property within the replacement period, and

11 “(3) the requirements of subsection (c) are met
12 with respect to such sale,

13 then the gain (if any) on such sale which would be recog-
14 nized as long-term capital gain shall be recognized only to
15 the extent that the amount realized on such sale exceeds the
16 cost to the taxpayer of such qualified replacement property.
17 The preceding sentence shall not apply to a sale by an eligi-
18 ble farmers’ cooperative.

19 “(b) *LIMITATION.*—

20 “(1) *IN GENERAL.*—If subsection (a) applies to
21 the sale of any stock by the taxpayer in a qualified
22 agricultural processor, the aggregate amount of gain
23 taken into account by the taxpayer under subsection
24 (a) with respect to stock in such processor shall not
25 exceed the amount of the limitation under paragraph

1 (2) *which is allocated to such sale by the eligible*
2 *farmers' cooperative.*

3 “(2) *ALLOCATION.*—*The amount allocated under*
4 *this paragraph by any cooperative with respect to*
5 *stock acquired by such cooperative during any taxable*
6 *year of such cooperative shall not exceed \$75,000,000.*

7 “(3) *AGGREGATION RULES.*—*All eligible farmers'*
8 *cooperatives which are under common control (within*
9 *the meaning of subsection (a) or (b) of section 52)*
10 *shall be treated as 1 cooperative for purposes of para-*
11 *graph (2), and the limitation under such paragraph*
12 *shall be allocated among such cooperatives in such*
13 *manner as the Secretary shall prescribe.*

14 “(c) *REQUIREMENTS TO QUALIFY FOR NONRECOGNI-*
15 *TION.*—*A sale of qualified agricultural processor stock meets*
16 *the requirements of this subsection if—*

17 “(1) *SALE TO ELIGIBLE FARMERS' COOPERA-*
18 *TIVE.*—*Such stock is sold to an eligible farmers' coop-*
19 *erative.*

20 “(2) *SPECIAL RULE FOR CERTAIN COOPERA-*
21 *TIVES.*—

22 “(A) *IN GENERAL.*—*In the case of a sale of*
23 *such stock to an eligible farmers' cooperative de-*
24 *scribed in subparagraph (B), the processor pur-*
25 *chased, during at least 3 of the 5 most recent*

1 *taxable years of such processor ending on or be-*
2 *fore the date of the sale, more than one-half of*
3 *the agricultural or horticultural products to be*
4 *refined or processed by such processor from such*
5 *cooperative or farmers who are members of such*
6 *cooperative.*

7 “(B) *COOPERATIVES DESCRIBED.*—*A coop-*
8 *erative is described in this subparagraph with*
9 *respect to any sale if, for any taxable year end-*
10 *ing before the date of such sale—*

11 “(i) *such cooperative had gross receipts*
12 *of more than \$1,000,000,000, or*

13 “(ii) *such cooperative sold more than a*
14 *de minimis amount of specialty produce.*

15 “(C) *SPECIALTY PRODUCE.*—*For purposes*
16 *of subparagraph (B), the term ‘specialty produce’*
17 *means any agricultural or horticultural product*
18 *other than wheat, feed grains, oil seeds, cotton,*
19 *rice, cattle, hogs, sheep, or dairy products.*

20 “(D) *SPECIAL RULES.*—

21 “(i) *GROSS RECEIPTS.*—*For purposes*
22 *of subparagraph (B)(i), rules similar to the*
23 *rules of paragraph (2), and subparagraphs*
24 *(B) and (C) of paragraph (3), of section*
25 *448(c) shall apply.*

1 “(ii) *PREDECESSOR*.—Any reference in
2 this paragraph to a cooperative or processor
3 shall be treated as including a reference to
4 any predecessor thereof.

5 “(3) *COOPERATIVE MUST HOLD 100 PERCENT OF*
6 *STOCK AFTER SALE*.—The eligible farmers’ coopera-
7 tive owns, immediately after the sale, all of the quali-
8 fied agricultural processor stock of the corporation.

9 “(4) *WRITTEN STATEMENT AND HOLDING PE-*
10 *RIOD*.—Requirements similar to the requirements of
11 paragraphs (3) and (4) of section 1042(b) are met.

12 “(d) *DEFINITIONS*.—For purposes of this section—

13 “(1) *QUALIFIED AGRICULTURAL PROCESSOR*
14 *STOCK*.—The term ‘qualified agricultural processor
15 stock’ means stock (other than stock described in sec-
16 tion 1504(a)(4)) issued by a qualified agricultural
17 processor.

18 “(2) *QUALIFIED AGRICULTURAL PROCESSOR*.—
19 The term ‘qualified agricultural processor’ means a
20 domestic C corporation substantially all of the assets
21 of which are used in the active conduct of the trade
22 or business of refining or processing agricultural or
23 horticultural products in the United States.

24 “(3) *ELIGIBLE FARMERS’ COOPERATIVE*.—The
25 term ‘eligible farmers’ cooperative’ means an organi-

1 *zation to which part I of subchapter T applies and*
2 *which is engaged in the marketing of agricultural or*
3 *horticultural products.*

4 “(4) *REPLACEMENT PERIOD.*—*The term ‘replace-*
5 *ment period’ means the period which begins 3 months*
6 *before the date on which the sale of qualified agricul-*
7 *tural processor stock occurs and which ends 12*
8 *months after the date of such sale.*

9 “(5) *QUALIFIED REPLACEMENT PROPERTY.*—

10 “(A) *IN GENERAL.*—*Except as provided in*
11 *subparagraph (B), the term ‘qualified replace-*
12 *ment property’ has the meaning given such term*
13 *by section 1042(c)(4).*

14 “(B) *EXCEPTION.*—*The term ‘qualified re-*
15 *placement property’ shall not include any secu-*
16 *rity issued by the taxpayer or by any corpora-*
17 *tion controlled by the taxpayer immediately after*
18 *the purchase. For purposes of the preceding sen-*
19 *tence, the term ‘control’ has the meaning given*
20 *such term by section 304(c) (determined by sub-*
21 *stituting ‘10 percent’ for ‘50 percent’ each place*
22 *it appears in paragraph (1) thereof).*

23 “(e) *SPECIAL RULES.*—

24 “(1) *IN GENERAL.*—*Except as otherwise provided*
25 *in this subsection, rules similar to the rules of para-*

1 *graphs (5) and (6) of section 1042(c), subsections (d),*
2 *(e), and (f) of section 1042, section 1016(a)(22), and*
3 *section 1223(13) shall apply for purposes of this sec-*
4 *tion.*

5 “(2) *CERTAIN PROVISIONS NOT TO APPLY.—*

6 “(A) *RECOGNITION ON COMPLETE LIQUIDA-*
7 *TION.—Section 332 shall not apply to the liq-*
8 *uidation into the cooperative or any related per-*
9 *son of a qualified agricultural processor if the*
10 *cooperative or related person acquired the stock*
11 *in such processor in a sale to which subsection*
12 *(a) applied.*

13 “(B) *DEEMED SALE ELECTION NOT AVAIL-*
14 *ABLE.—No election may be made under section*
15 *338(h)(10) with respect to a sale to which sub-*
16 *section (a) applies.*

17 “(f) *RECAPTURE OF TAX BENEFIT WHERE LACK OF*
18 *CONTINUITY.—*

19 “(1) *IN GENERAL.—If there is a recapture event*
20 *during any taxable year with respect to any sale to*
21 *an eligible farmers’ cooperative to which this section*
22 *applied, such cooperative’s tax imposed by this chap-*
23 *ter for such taxable year shall be increased by an*
24 *amount equal to—*

1 “(A) the recapture percentage of the amount
2 allocated under subsection (b) to such sale, mul-
3 tiplied by

4 “(B) the highest rate of tax imposed by sec-
5 tion 11 for such taxable year.

6 “(2) *RECAPTURE EVENT*.—For purposes of this
7 subsection, a recapture event shall be treated as occur-
8 ring in any taxable year if—

9 “(A) any portion of such taxable year is
10 within the 3-year period beginning on the date
11 on which the eligible farmers’ cooperative ac-
12 quired stock in a qualified agricultural processor
13 in a sale to which this section applied and, as
14 of the close of such portion, there is a decrease
15 in the direct or indirect percentage ownership of
16 such stock held by such cooperative which was
17 not previously taken into account under this sub-
18 section, or

19 “(B) such taxable year is one of the first 5
20 taxable years ending after the date of such sale
21 and is the third of such taxable years during
22 which one-half or less of the agricultural or hor-
23 ticultural products refined or processed by the
24 qualified agricultural processor are purchased

1 *from the eligible farmers' cooperative or farmers*
2 *who are members of such cooperative.*

3 “(3) *RECAPTURE PERCENTAGE.*—*For purposes of*
4 *this subsection, the term ‘recapture percentage’*
5 *means—*

6 “(A) *in the case of a recapture event de-*
7 *scribed in paragraph (2)(A), the percentage*
8 *equal to a fraction—*

9 “(i) *the numerator of which is the per-*
10 *centage decrease described in paragraph*
11 *(2)(A), and*

12 “(ii) *the denominator of which is the*
13 *percentage which the qualified agricultural*
14 *processor stock acquired by the cooperative*
15 *in a sale to which this section applied bears*
16 *to all qualified agricultural processor stock*
17 *in the processor, and*

18 “(B) *in the case of a recapture event de-*
19 *scribed in paragraph (2)(B), 100 percent.*

20 *In no event shall the recapture percentage for any*
21 *taxable year exceed 100 percent minus the sum of the*
22 *recapture percentages for all prior taxable years.*

23 “(4) *EXCEPTIONS TO PURCHASE REQUIRE-*
24 *MENT.*—*The purchase requirement of paragraph*
25 *(2)(B) shall be treated as met for any taxable year if*

1 *the Secretary determines that such requirement was*
2 *not met due to 1 or more of the following: flood,*
3 *drought, or other weather-related conditions, environ-*
4 *mental contamination, disease, fire, or other similar*
5 *extenuating circumstances prescribed by the Sec-*
6 *retary.*

7 *“(g) COORDINATION WITH SECTION 1042.—No elec-*
8 *tion may be made under this section with respect to any*
9 *sale if an election is made under section 1042 with respect*
10 *to such sale.*

11 *“(h) REGULATIONS.—The Secretary shall prescribe*
12 *such regulations as are appropriate to carry out this sec-*
13 *tion, including regulations which treat 2 or more sales*
14 *which are part of the same transaction as 1 sale.”*

15 *(b) CONFORMING AMENDMENTS.—*

16 *(1) Paragraph (2) of section 26(b) of such Code*
17 *is amended by striking “and” at the end of subpara-*
18 *graph (P), by striking the period at the end of sub-*
19 *paragraph (Q) and inserting “, and”, and by adding*
20 *at the end the following new subparagraph:*

21 *“(R) section 1042A(f) (relating to recapture*
22 *of tax benefit where lack of continuity in certain*
23 *agricultural processors).”*

24 *(2) The table of sections for part III of sub-*
25 *chapter O of chapter 1 of such Code is amended by*

1 *inserting after the item relating to section 1042 the*
2 *following new item:*

“Sec. 1042A. Sales of stock to certain farmers’ cooperatives.”

3 *(c) EFFECTIVE DATE.—The amendments made by this*
4 *section shall apply to sales after December 31, 1997.*

5 *(d) BUDGETARY TREATMENT.—For purposes of section*
6 *10213 of the Balanced Budget Act of 1997, the provisions*
7 *of this section shall be considered to have been enacted as*
8 *part of the Taxpayer Relief Act of 1997.*