

Calendar No. 291

105TH CONGRESS
1ST Session
H. R. 2513

AN ACT

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NOVEMBER 10, 1997

Read the second time and placed on the calendar

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IN THE SENATE OF THE UNITED STATES

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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, and for other purposes.

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 HOLD-
5 ING COMPANY INCOME.—Section 954 of the Internal Rev-
6 enue Code of 1986 (as amended by subsection (d)) is
7 amended by adding at the end the following new sub-
8 section:

9 “(h) SPECIAL RULE FOR INCOME DERIVED IN THE
10 ACTIVE CONDUCT OF INSURANCE BUSINESSES AND
11 BANKING, FINANCING, OR SIMILAR BUSINESSES.—

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

15 “(A) derived in the active conduct by a
16 controlled foreign corporation of a banking, fi-
17 nancing, or similar business, but only if—

18 “(i) the corporation is predominantly
19 engaged in the active conduct of such busi-
20 ness, and

21 “(ii) such income is derived from
22 transactions with customers located within
23 the country under the laws of which the
24 corporation is created or organized,

1 “(B) received from a person other than a
2 related person (within the meaning of sub-
3 section (d)(3)) and derived from the invest-
4 ments made by a qualifying insurance company
5 of its reserves or of 80 percent of its unearned
6 premiums (as both are determined in the man-
7 ner prescribed under paragraph (4)), or

8 “(C) received from a person other than a
9 related person (within the meaning of sub-
10 section (d)(3)) and derived from investments
11 made by a qualifying insurance company of an
12 amount of its assets equal to—

13 “(i) in the case of property, casualty,
14 or health insurance contracts, one-third of
15 its premiums earned on such insurance
16 contracts during the taxable year (as de-
17 fined in section 832(b)(4)), and

18 “(ii) in the case of life insurance or
19 annuity contracts, 10 percent of the re-
20 serves described in subparagraph (B) for
21 such contracts.

22 “(2) PREDOMINANTLY ENGAGED.—For pur-
23 poses of paragraph (1)(A), a controlled foreign cor-
24 poration shall be deemed predominantly engaged in

1 the active conduct of a banking, financing, or similar
2 business only if—

3 “(A) more than 70 percent of its gross in-
4 come is derived from such business from trans-
5 actions with customers which are located within
6 the country under the laws of which the cor-
7 poration is created or organized, or

8 “(B) the corporation is—

9 “(i) engaged in the active conduct of
10 a banking business and is an institution li-
11 censed to do business as a bank in the
12 United States (or is any other corporation
13 not so licensed which is specified by the
14 Secretary in regulations), or

15 “(ii) engaged in the active conduct of
16 a securities business and is registered as a
17 securities broker or dealer under section
18 15(a) of the Securities Exchange Act of
19 1934 or is registered as a Government se-
20 curities broker or dealer under section
21 15C(a) of such Act (or is any other cor-
22 poration not so registered which is speci-
23 fied by the Secretary in regulations).

24 “(3) PRINCIPLES FOR DETERMINING INSUR-
25 ANCE INCOME.—Except as provided by the Sec-

1 retary, for purposes of paragraphs (1) (B) and
2 (C)—

3 “(A) in the case of any contract which is
4 a separate account-type contract (including any
5 variable contract not meeting the requirements
6 of section 817), income credited under such
7 contract shall be allocable only to such contract,
8 and

9 “(B) income not allocable under subpara-
10 graph (A) shall be allocated ratably among con-
11 tracts not described in subparagraph (A).

12 “(4) METHODS FOR DETERMINING UNEARNED
13 PREMIUMS AND RESERVES.—For purposes of para-
14 graph (1)(B)—

15 “(A) PROPERTY AND CASUALTY CON-
16 TRACTS.—The unearned premiums and reserves
17 of a qualifying insurance company with respect
18 to property, casualty, or health insurance con-
19 tracts shall be determined using the same meth-
20 ods and interest rates which would be used if
21 such company were subject to tax under sub-
22 chapter L.

23 “(B) LIFE INSURANCE AND ANNUITY CON-
24 TRACTS.—The amount of the reserve of a quali-
25 fying insurance company for any life insurance

1 or annuity contract shall be equal to the greater
2 of—

3 “(i) the net surrender value of such
4 contract (as defined in section
5 807(e)(1)(A)), or

6 “(ii) the reserve determined under
7 paragraph (5).

8 “(C) LIMITATION ON RESERVES.—In no
9 event shall the reserve determined under this
10 paragraph for any contract as of any time ex-
11 ceed the amount which would be taken into ac-
12 count with respect to such contract as of such
13 time in determining foreign statement reserves
14 (less any catastrophe, deficiency, or similar re-
15 serves).

16 “(5) AMOUNT OF RESERVE.—The amount of
17 the reserve determined under this paragraph with
18 respect to any contract shall be determined in the
19 same manner as it would be determined if the quali-
20 fying insurance company were subject to tax under
21 subchapter L, except that in applying such sub-
22 chapter—

23 “(A) the interest rate determined for the
24 foreign country in which such company is cre-
25 ated or organized and which, except as provided

1 by the Secretary, is calculated in the same man-
2 ner as the Federal mid-term rate under section
3 1274(d) shall be substituted for the applicable
4 Federal interest rate,

5 “(B) the highest assumed interest rate
6 permitted to be used in determining foreign
7 statement reserves shall be substituted for the
8 prevailing State assumed interest rate, and

9 “(C) tables for mortality and morbidity
10 which reasonably reflect the current mortality
11 and morbidity risks in the foreign country shall
12 be substituted for the mortality and morbidity
13 tables otherwise used for such subchapter.

14 “(6) DEFINITIONS.—For purposes of this sub-
15 section—

16 “(A) QUALIFYING INSURANCE COMPANY.—
17 The term ‘qualifying insurance company’ means
18 any entity which—

19 “(i) is subject to regulation as an in-
20 surance company by the country under the
21 laws of which the entity is created or orga-
22 nized,

23 “(ii) derives at least 50 percent of its
24 net written premiums from the insurance

1 or reinsurance of risks located within such
2 country, and

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

7 “(B) LIFE INSURANCE OR ANNUITY CON-
8 TRACT.—For purposes of this section and sec-
9 tion 953, the determination of whether a con-
10 tract issued by a controlled foreign corporation
11 is a life insurance contract or an annuity con-
12 tract shall be made without regard to sections
13 72(s), 101(f), 817(h), and 7702 if—

14 “(i) such contract is regulated as a
15 life insurance or annuity contract by the
16 country under the laws of which the cor-
17 poration is created or organized, and

18 “(ii) no policyholder, insured, annu-
19 itant, or beneficiary with respect to the
20 contract is a United States person.

21 “(C) NONCANCELLABLE ACCIDENT AND
22 HEALTH INSURANCE CONTRACTS.—A
23 noncancellable accident and health insurance
24 contract shall be treated for purposes of this
25 subsection in the same manner as a life insur-

1 ance contract except that paragraph (4)(B)(i)
2 shall not apply.

3 “(D) LOCATED.—

4 “(i) IN GENERAL.—The determination
5 of where a customer is located shall be
6 made under rules prescribed by the Sec-
7 retary.

8 “(ii) SPECIAL RULE FOR QUALIFIED
9 BUSINESS UNITS.—Gross income derived
10 by a corporation’s qualified business unit
11 (within the meaning of section 989(a))
12 from transactions with customers which
13 are located in the country in which the
14 qualified business unit both maintains its
15 principal office and conducts substantial
16 business activity shall be treated as derived
17 from transactions with customers which
18 are located within the country under the
19 laws of which the controlled foreign cor-
20 poration is created or organized.

21 “(E) CUSTOMER.—

22 “(i) IN GENERAL.—The term ‘cus-
23 tomer’ means, with respect to any con-
24 trolled foreign corporation, any person

1 which has a customer relationship with
2 such corporation.

3 “(ii) EXCEPTION FOR RELATED, ETC.
4 PERSONS.—A person who is a related per-
5 son (as defined in subsection (d)(3)), an
6 officer, a director, or an employee with re-
7 spect to any controlled foreign corporation
8 shall not be treated as a customer with re-
9 spect to any transaction if a principal pur-
10 pose of such transaction is to satisfy any
11 requirement of this subsection.

12 “(7) ANTI-ABUSE RULES.—For purposes of ap-
13 plying this subsection and subsection (c)(2)(C)(ii),
14 there shall be disregarded any item of income, gain,
15 loss, or deduction with respect to any transaction or
16 series of transactions one of the principal purposes
17 of which is qualifying income or gain for the exclu-
18 sion under this section, including—

19 “(A) any change in the method of comput-
20 ing reserves or any other transaction or series
21 of transactions a principal purpose of which is
22 the acceleration or deferral of any item in order
23 to claim the benefits of such exclusion through
24 the application of this subsection, and

1 “(B) organizing entities in order to satisfy
2 any same country requirement under this sub-
3 section.

4 “(8) COORDINATION WITH OTHER PROVI-
5 SIONS.—

6 “(A) SECTION 901(k).—

7 “(i) IN GENERAL.—The amount of
8 qualified taxes (as defined in section
9 901(k)(4)) to which paragraphs (1) and
10 (2) of section 901(k) do not apply by rea-
11 son of paragraph (4) of such section
12 901(k) shall be reduced by an amount
13 which bears the same ratio to such quali-
14 fied taxes as the amount of income from
15 the active conduct of a securities business
16 which is not subpart F income solely by
17 reason of this subsection, subsection
18 (c)(2)(C)(ii), and subsection (e)(2)(C)
19 bears to the total income from the active
20 conduct of a securities business by a con-
21 trolled foreign corporation which is not
22 subpart F income. The determination
23 under the preceding sentence shall be
24 made by treating all members of an affili-
25 ated group as 1 corporation. For purposes

1 of this clause, the term ‘subpart F income’
2 has the meaning given such term by sec-
3 tion 952(a) but determined without regard
4 to section 952(c) and paragraphs (3) and
5 (4) of subsection (b) of this section.

6 “(ii) ELECTION NOT TO HAVE SUB-
7 SECTION AND CERTAIN OTHER PROVISIONS
8 APPLY.—Clause (i) shall not apply for any
9 taxable year of a foreign corporation if
10 such corporation (and all members of the
11 affiliated group of which such corporation
12 is a member) elect not to have this sub-
13 section, subsection (e)(2)(C)(ii), and sub-
14 section (e)(2)(C) apply for such taxable
15 year.

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

24 “(9) APPLICATION.—This subsection, sub-
25 section (e)(2)(C)(ii), and subsection (e)(2)(C) shall

1 apply only to the first full taxable year of a foreign
2 corporation beginning after December 31, 1997, and
3 before January 1, 1999, and to taxable years of
4 United States shareholders with or within which
5 such taxable year of such foreign corporation ends.”

6 (b) SPECIAL RULES FOR DEALERS.—Section
7 954(c)(2)(C) of such Code is amended to read as follows:

8 “(C) EXCEPTION FOR DEALERS.—Except
9 as provided by regulations, in the case of a reg-
10 ular dealer in property (within the meaning of
11 paragraph (1)(B)), forward contracts, option
12 contracts, or similar financial instruments (in-
13 cluding notional principal contracts and all in-
14 struments referenced to commodities), there
15 shall not be taken into account in computing
16 foreign personal holding income—

17 “(i) any item of income, gain, deduc-
18 tion, or loss (other than any item described
19 in subparagraph (A), (E), or (G) of para-
20 graph (1)) from any transaction (including
21 hedging transactions) entered into in the
22 ordinary course of such dealer’s trade or
23 business as such a dealer, and

24 “(ii) if such dealer is a dealer in secu-
25 rities (within the meaning of section 475),

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

19 (c) EXEMPTION FROM FOREIGN BASE COMPANY
20 SERVICES INCOME.—Paragraph (2) of section 954(e) of
21 such Code (as amended by subsection (d)) is amended by
22 striking “or” at the end of subparagraph (A), by striking
23 the period at the end of subparagraph (B) and inserting
24 “, or”, and by adding at the end the following:

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

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

5 then the gain (if any) on such sale which would be recog-
6 nized as long-term capital gain shall be recognized only
7 to the extent that the amount realized on such sale exceeds
8 the cost to the taxpayer of such qualified replacement
9 property. The preceding sentence shall not apply to a sale
10 by an eligible farmers’ cooperative.

11 “(b) LIMITATION.—

12 “(1) IN GENERAL.—If subsection (a) applies to
13 the sale of any stock by the taxpayer in a qualified
14 agricultural processor, the aggregate amount of gain
15 taken into account by the taxpayer under subsection
16 (a) with respect to stock in such processor shall not
17 exceed the amount of the limitation under paragraph
18 (2) which is allocated to such sale by the eligible
19 farmers’ cooperative.

20 “(2) ALLOCATION.—The amount allocated
21 under this paragraph by any cooperative with re-
22 spect to stock acquired by such cooperative during
23 any taxable year of such cooperative shall not exceed
24 \$75,000,000.

1 “(3) AGGREGATION RULES.—All eligible farm-
2 ers’ cooperatives which are under common control
3 (within the meaning of subsection (a) or (b) of sec-
4 tion 52) shall be treated as 1 cooperative for pur-
5 poses of paragraph (2), and the limitation under
6 such paragraph shall be allocated among such co-
7 operatives in such manner as the Secretary shall
8 prescribe.

9 “(c) REQUIREMENTS TO QUALIFY FOR NON-
10 RECOGNITION.—A sale of qualified agricultural processor
11 stock meets the requirements of this subsection if—

12 “(1) SALE TO ELIGIBLE FARMERS’ COOPERA-
13 TIVE.—Such stock is sold to an eligible farmers’ co-
14 operative.

15 “(2) SPECIAL RULE FOR CERTAIN COOPERA-
16 TIVES.—

17 “(A) IN GENERAL.—In the case of a sale
18 of such stock to an eligible farmers’ cooperative
19 described in subparagraph (B), the processor
20 purchased, during at least 3 of the 5 most re-
21 cent taxable years of such processor ending on
22 or before the date of the sale, more than one-
23 half of the agricultural or horticultural products
24 to be refined or processed by such processor

1 from such cooperative or farmers who are mem-
2 bers of such cooperative.

3 “(B) COOPERATIVES DESCRIBED.—A coop-
4 erative is described in this subparagraph with
5 respect to any sale if, for any taxable year end-
6 ing before the date of such sale—

7 “(i) such cooperative had gross re-
8 ceipts of more than \$1,000,000,000, or

9 “(ii) such cooperative sold more than
10 a de minimis amount of specialty produce.

11 “(C) SPECIALTY PRODUCE.—For purposes
12 of subparagraph (B), the term ‘specialty
13 produce’ means any agricultural or horticultural
14 product other than wheat, feed grains, oil seeds,
15 cotton, rice, cattle, hogs, sheep, or dairy prod-
16 ucts.

17 “(D) SPECIAL RULES.—

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

23 “(ii) PREDECESSOR.—Any reference
24 in this paragraph to a cooperative or proc-

1 essor shall be treated as including a ref-
2 erence to any predecessor thereof.

3 “(3) COOPERATIVE MUST HOLD 100 PERCENT
4 OF STOCK AFTER SALE.—The eligible farmers’ coop-
5 erative owns, immediately after the sale, all of the
6 qualified agricultural processor stock of the corpora-
7 tion.

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

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

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

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

23 “(3) ELIGIBLE FARMERS’ COOPERATIVE.—The
24 term ‘eligible farmers’ cooperative’ means an organi-
25 zation to which part I of subchapter T applies and

1 which is engaged in the marketing of agricultural or
2 horticultural products.

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

8 “(5) QUALIFIED REPLACEMENT PROPERTY.—

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

13 “(B) EXCEPTION.—The term ‘qualified re-
14 placement property’ shall not include any secu-
15 rity issued by the taxpayer or by any corpora-
16 tion controlled by the taxpayer immediately
17 after the purchase. For purposes of the preced-
18 ing sentence, the term ‘control’ has the mean-
19 ing given such term by section 304(c) (deter-
20 mined by substituting ‘10 percent’ for ‘50 per-
21 cent’ each place it appears in paragraph (1)
22 thereof).

23 “(e) SPECIAL RULES.—

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

1 paragraphs (5) and (6) of section 1042(c), sub-
2 sections (d), (e), and (f) of section 1042, section
3 1016(a)(22), and section 1223(13) shall apply for
4 purposes of this section.

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

6 “(A) RECOGNITION ON COMPLETE LIQ-
7 UIDATION.—Section 332 shall not apply to the
8 liquidation into the cooperative or any related
9 person of a qualified agricultural processor if
10 the cooperative or related person acquired the
11 stock in such processor in a sale to which sub-
12 section (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
20 event during any taxable year with respect to any
21 sale to an eligible farmers’ cooperative to which this
22 section applied, such cooperative’s tax imposed by
23 this chapter for such taxable year shall be increased
24 by an amount equal to—

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

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

6 “(2) RECAPTURE EVENT.—For purposes of this
7 subsection, a recapture event shall be treated as oc-
8 curring 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 proc-
13 essor in a sale to which this section applied
14 and, as of the close of such portion, there is a
15 decrease in the direct or indirect percentage
16 ownership of such stock held by such coopera-
17 tive which was not previously taken into ac-
18 count under this subsection, or

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

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

3 “(3) RECAPTURE PERCENTAGE.—For purposes
4 of 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
10 percentage 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
16 bears to all qualified agricultural processor
17 stock 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
22 the 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

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

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 recap-
22 ture of tax benefit where lack of continuity in
23 certain 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
4 this section shall apply to sales after December 31, 1997.

5 **SEC. 3. DISPOSAL OF PALLADIUM AND PLATINUM IN NA-**
6 **TIONAL DEFENSE STOCKPILE.**

7 (a) DISPOSAL REQUIRED.—(1) During fiscal year
8 1998, the President shall dispose of not more than
9 130,000 troy ounces of palladium and not more than
10 20,000 troy ounces of platinum contained in the National
11 Defense Stockpile so as to result in receipts to the United
12 States in an amount equal to \$17,000,000 during fiscal
13 year 1998.

14 (2) During each of the fiscal years 1999 through
15 2002, the President shall dispose of not more than 60,000
16 troy ounces of palladium contained in the National De-
17 fense Stockpile so as to result in receipts to the United
18 States in an amount equal to \$4,000,000 during each of
19 the fiscal years 1999 through 2002.

20 (b) DEPOSIT OF RECEIPTS.—Notwithstanding sec-
21 tion 9 of the Strategic and Critical Materials Stock Piling
22 Act (50 U.S.C. 98h), funds received as a result of the dis-
23 posal of materials under subsection (a) shall be deposited
24 into the general fund of the Treasury for the purpose of
25 deficit reduction.

1 (c) RELATIONSHIP TO OTHER DISPOSAL AUTHOR-
2 ITY.—The disposal authority provided in subsection (a) is
3 new disposal authority and is in addition to, and shall not
4 affect, any other disposal authority provided by law re-
5 garding palladium or platinum contained in the National
6 Defense Stockpile.

7 (d) TERMINATION OF DISPOSAL AUTHORITY.—The
8 disposal authority provided in subsection (a) shall termi-
9 nate with regard to a fiscal year specified in such sub-
10 section on the date on which the total amount of receipts
11 to the United States during that fiscal year from the dis-
12 posal of materials under such subsection equals the
13 amount specified in such subsection for that fiscal year.

14 (e) DEFINITION.—The term “National Defense
15 Stockpile” means the stockpile provided for in section 4
16 of the Strategic and Critical Materials Stock Piling Act
17 (50 U.S.C. 98c).

18 **SEC. 4. RECOVERY OF COSTS OF HEALTH CARE SERVICES.**

19 (a) AUTHORITIES.—Section 904 of the Foreign Serv-
20 ice Act of 1980 (22 U.S.C. 4084) is amended—

21 (1) in subsection (a)—

22 (A) by striking “and” after “employees,”

23 and

1 (B) by inserting before the period “, and
2 (for care provided abroad) such other persons
3 as are designated by the Secretary of State”;

4 (2) in subsection (d), by inserting “, subject to
5 subsections (g) through (i)” before “the Secretary”;
6 and

7 (3) by adding at the end the following new sub-
8 sections:

9 “(g)(1)(A) In the case of a covered beneficiary who
10 is provided health care under this section and who is en-
11 rolled in a covered health benefits plan of a third-party
12 payer, the United States shall have the right to collect
13 from the third-party payer a reasonable charge amount
14 for the care to the extent that the payment would be made
15 under such plan for such care under the conditions speci-
16 fied in paragraph (2) if a claim were submitted by or on
17 behalf of the covered beneficiary.

18 “(B) Such a covered beneficiary is not required to
19 pay any deductible, copayment, or other cost-sharing
20 under the covered health benefits plan or under this sec-
21 tion for health care provided under this section.

22 “(2) With respect to health care provided under this
23 section to a covered beneficiary, for purposes of carrying
24 out paragraph (1)—

1 “(A) the reasonable charge amount (as defined
2 in paragraph (9)(C)) shall be treated by the third-
3 party payer as the payment basis otherwise allowable
4 for the care under the plan;

5 “(B) under regulations, if the covered health
6 benefits plan restricts or differentiates in benefit
7 payments based on whether a provider of health care
8 has a participation agreement with the third-party
9 payer, the Secretary shall be treated as having such
10 an agreement as results in the highest level of pay-
11 ment under this subsection;

12 “(C) no provision of the health benefit plan
13 having the effect of excluding from coverage or limit-
14 ing payment of charges for certain care shall operate
15 to prevent collection under subsection (a), including
16 (but not limited to) any provision that limits cov-
17 erage or payment on the basis that—

18 “(i) the care was provided outside the
19 United States,

20 “(ii) the care was provided by a govern-
21 mental entity,

22 “(iii) the covered beneficiary (or any other
23 person) has no obligation to pay for the care,

1 “(iv) the provider of the care is not li-
2 censed to provide the care in the United States
3 or other location,

4 “(v) a condition of coverage relating to uti-
5 lization review, prior authorization, or similar
6 utilization control has not been met, or

7 “(vi) in the case that drugs were provided,
8 the provision of the drugs for any indicated
9 purpose has not been approved by the Federal
10 Food, Drug, and Cosmetic Administration;

11 “(D) if the covered health benefits plan con-
12 tains a requirement for payment of a deductible, co-
13 payment, or similar cost-sharing by the bene-
14 ficiary—

15 “(i) the beneficiary’s not having paid such
16 cost-sharing with respect to the care shall not
17 preclude collection under this section, and

18 “(ii) the amount the United States may
19 collect under this section shall be reduced by
20 application of the appropriate cost-sharing;

21 “(E) amounts that would be payable by the
22 third-party payer under this section but for the ap-
23 plication of a deductible under subparagraph (D)(ii)
24 shall be counted towards such deductible notwith-
25 standing that under paragraph (1)(B) the individual

1 is not charged for the care and did not pay an
2 amount towards such care; and

3 “(F) the Secretary may apply such other provi-
4 sions as may be appropriate to carry out this section
5 in an equitable manner.

6 “(3) In exercising authority under paragraph (1)—

7 “(A) the United States shall be subrogated to
8 any right or claim that the covered beneficiary may
9 have against a third-party payer;

10 “(B) the United States may institute and pros-
11 ecute legal proceedings against a third-party payer
12 to enforce a right of the United States under this
13 section; and

14 “(C) the Secretary may compromise, settle, or
15 waive a claim of the United States under this sec-
16 tion.

17 “(4) No law of any State, or of any political subdivi-
18 sion of a State, shall operate to prevent or hinder collec-
19 tion by the United States under this section.

20 “(5) If collection is sought from a third-party payer
21 for health care furnished a covered beneficiary under this
22 section, under regulations medical records of the bene-
23 ficiary shall be made available for inspection and review
24 by representatives of the third-party payer for the sole

1 purpose of permitting the third-party payer to verify, con-
2 sistent with this subsection that—

3 “(A) the care for which recovery or collection is
4 sought were furnished to the beneficiary; and

5 “(B) except as otherwise provided in this sub-
6 section, the provision of such care to the beneficiary
7 meets criteria generally applicable under the covered
8 health benefits plan.

9 “(6) The Secretary shall establish (and periodically
10 update) a schedule of reasonable charge amounts for
11 health care provided under this section. The amount under
12 such schedule for health care shall be based on charges
13 or fee schedule amounts recognized by third-party payers
14 under covered health benefits plans for payment purposes
15 for similar health care services furnished in the Metropoli-
16 tan Washington, District of Columbia, area.

17 “(7) The Secretary shall establish a procedure under
18 which a covered beneficiary may elect to have subsection
19 (h) apply instead of this subsection with respect to some
20 or all health care provided to the beneficiary under this
21 section.

22 “(8) Amounts collected under this subsection, under
23 subsection (h), or under any authority referred to in sub-
24 section (i), from a third-party payer or from any other

1 payer shall be deposited in the Treasury as a miscellane-
2 ous offsetting receipt.

3 “(9) For purposes of this section:

4 “(A) The term ‘covered beneficiary’ means a
5 member or employee (or family member of such a
6 member of employee) described in subsection (a)
7 who is enrolled under a covered health benefits plan.

8 “(B)(i) Subject to clause (ii), the term ‘covered
9 health benefits plan’ means a health benefits plan
10 offered under the Federal Employees Health Bene-
11 fits Program under chapter 89 of title 5, United
12 States Code.

13 “(ii) Such term does not include such a health
14 benefits plan (such as a plan of a staff-model health
15 maintenance organization) as the Secretary deter-
16 mines pursuant to regulations to be structured in a
17 manner that impedes the application of this sub-
18 section to individuals enrolled under the plan. To the
19 extent practicable, the Secretary shall seek to dis-
20 seminate to members of the Service and designated
21 employees described in subsection (a) who are eligi-
22 ble to receive health care under this section the
23 names of plans excluded under this clause.

24 “(C) The term ‘reasonable charge amount’
25 means, with respect to health care provided under

1 this section, the amount for such care specified in
2 the schedule established under paragraph (6).

3 “(D) The term ‘third-party payer’ means an en-
4 tity that offers a covered health benefits plan.

5 “(h)(1) In the case of an individual who—

6 “(A) receives health care pursuant to this sec-
7 tion; and

8 “(B)(i) is not a covered beneficiary (including
9 by virtue of enrollment only in a health benefits plan
10 excluded under subsection (g)(9)(B)(ii)), or

11 “(ii) is such a covered beneficiary and has made
12 an election described in subsection (g)(7) with re-
13 spect to such care,

14 the Secretary is authorized to collect from the individual
15 the full reasonable charge amount for such care.

16 “(2) The United States shall have the same rights
17 against such individuals with respect to collection of such
18 amounts as the United States has with respect to collec-
19 tion of amounts against a third-party payer under sub-
20 section (g), except that the rights under this subsection
21 shall be exercised without regard to any rules for
22 deductibles, coinsurance, or other cost-sharing.

23 “(i) Subsections (g) and (h) shall apply to reimburse-
24 ment for the cost of hospitalization and related outpatient
25 expenses paid for under subsection (d) only to the extent

1 provided in regulations. Nothing in this subsection, or sub-
2 sections (g) and (h), shall be construed as limiting any
3 authority the Secretary otherwise has with respect to ob-
4 taining reimbursement for the payments made under sub-
5 section (d).”.

6 (b) EFFECTIVE DATE.—(1) The amendments made
7 by subsection (a) shall apply to items and services pro-
8 vided on and after January 1, 1998.

9 (2) In order to carry out such amendments in a time-
10 ly manner, the Secretary of State is authorized to issue
11 interim, final regulations that take effect pending notice
12 and opportunity for public comment.

13 (c) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the Secretary of State
15 \$2,000,000 to offset the costs of carrying out the amend-
16 ments made by this section. Amounts appropriated under
17 this subsection shall remain available until expended.

Passed the House of Representatives November 8,
1997.

Attest:

ROBIN H. CARLE,
Clerk.

By RAY STRONG,
Assistant to the Clerk.