

108TH CONGRESS  
1ST SESSION

# H. R. 457

To amend the Internal Revenue Code of 1986 to exclude from gross income gain on the sale of a family farming business to a family member.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2003

Mr. GREEN of Wisconsin (for himself, Mr. KENNEDY of Minnesota, Mr. NETHERCUTT, Mr. BAKER, Mr. MCHUGH, and Mr. POMEROY) introduced the following bill; which was referred to the Committee on Ways and Means

---

## A BILL

To amend the Internal Revenue Code of 1986 to exclude from gross income gain on the sale of a family farming business to a family member.

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. SHORT TITLE.**

4       This Act may be cited as the “Family Farm Protec-  
5       tion Act”.

6       **SEC. 2. EXCLUSION OF GAIN ON SALE OF FAMILY FARMING**  
7       **BUSINESS TO FAMILY MEMBER.**

8       (a) IN GENERAL.—Part I of subchapter P of chapter  
9       1 of the Internal Revenue Code of 1986 (relating to treat-

1 ment of capital gains) is amended by adding at the end  
 2 the following new section:

3 **“SEC. 1203. EXCLUSION OF GAIN ON SALE OF FAMILY FARM**  
 4 **TO FAMILY MEMBER.**

5 “(a) IN GENERAL.—At the election of the taxpayer,  
 6 gross income shall not include any gain from the sale of  
 7 a qualified family farm interest to a member of the tax-  
 8 payer’s family if—

9 “(1) at all times during the 5-year period end-  
 10 ing on the date of such sale, there was material par-  
 11 ticipation by the taxpayer or a member of the tax-  
 12 payer’s family in the operation of the farming busi-  
 13 ness to which such interest relates, and

14 “(2)(A) such interest is being acquired by a  
 15 member of the taxpayer’s family, and

16 “(B) such member agrees—

17 “(i) for the 5-year period beginning on the  
 18 day after the date of such sale, to materially  
 19 participate in the operation of the farming busi-  
 20 ness to which such interest relates, and

21 “(ii) to the provisions of subsection (b).

22 “(b) RECAPTURE OF TAX IF INTEREST CEASES TO  
 23 BE USED IN A FARMING BUSINESS.—

1           “(1) IN GENERAL.—If, during any year within  
2           the 5-year period beginning on the date of such  
3           sale—

4                   “(A) a qualified family farm interest with  
5                   respect to which an election is made under sub-  
6                   section (a) is disposed of, or otherwise ceases to  
7                   be a qualified family farm interest of the mem-  
8                   ber of the family who acquired such interest,  
9                   other than through the bankruptcy or insol-  
10                  vency of such member of the family, or

11                   “(B) the member of the family who ac-  
12                   quired such interest fails to materially partici-  
13                   pate (directly or through a family member of  
14                   such member) in the operation of the farming  
15                   business to which such interest relates,

16           then the tax imposed on such member of the family  
17           under this subtitle for the year shall be increased by  
18           an amount equal to the recapture percentage of the  
19           excluded tax amount, plus interest on the amount of  
20           such increase at the underpayment rate established  
21           under section 6621 for the period beginning on the  
22           date the return of tax for the year of such sale was  
23           due under this chapter (without regard to extensions  
24           thereof) and ending on the date the increase in tax

1 under this subsection is due (without regard to ex-  
2 tensions thereof).

3 “(2) RECAPTURE PERCENTAGE.—For purposes  
4 of paragraph (1), the recapture percentage shall be  
5 determined under the following table:

<b>“If the event described in paragraph (1) occurs in the following years after such sale:</b>	<b>The recapture percentage is:</b>
1 .....	100
2 .....	80
3 .....	60
4 .....	40
5 .....	20.

6 “(3) EXCLUDED TAX AMOUNT.—For purposes  
7 of paragraph (1), the term ‘excluded tax amount’  
8 means the excess of—

9 “(A) the amount of tax that would have  
10 been imposed on the taxpayer under this sub-  
11 title for the taxable year ending with or within  
12 which the sale for which an election was made  
13 under subsection (a), over

14 “(B) the amount of tax imposed on the  
15 taxpayer under this subtitle for such taxable  
16 year.

17 This paragraph shall be applied without regard to  
18 the installment method of accounting or averaging of  
19 farm income under section 1301.

20 “(c) DEFINITIONS.—For purposes of this section—

1 “(1) QUALIFIED FAMILY FARM INTEREST.—

2 The term ‘qualified family farm interest’ means an  
3 interest which is a qualified family-owned business  
4 interest in a farming business.

5 “(2) QUALIFIED FAMILY-OWNED BUSINESS IN-

6 TEREST.—The term ‘qualified family-owned business  
7 interest’ has the meaning given such term by section  
8 2057(e), determined by substituting ‘taxpayer’ for  
9 ‘decedent’ each place it appears.

10 “(3) FARMING BUSINESS.—The term ‘farming

11 business’ has the meaning given such term by sec-  
12 tion 263A(e)(4).

13 “(4) MEMBER OF THE FAMILY.—The term

14 ‘member of the family’ has the meaning given such  
15 term by section 2032A(e).

16 “(5) MATERIAL PARTICIPATION.—The term

17 ‘material participation’ has the meaning given such  
18 term by section 2032A(e)(6).”.

19 (b) CLERICAL AMENDMENT.—The table of sections

20 for part I of subchapter P of chapter 1 of the Internal

21 Revenue Code of 1986 is amended by adding at the end

22 the following new item:

“Sec. 1203. Exclusion of gain on sale of family farm to family member.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to sales occurring on or after the  
3 date of enactment of this Act.

○