

notes, etc. Accordingly, the term securities does not include commodity futures.

The amendments described above are to apply to straddles written after January 25, 1965, in taxable years ending after such date.

This bill is substantially identical to H.R. 11765, which was approved unanimously by the Committee on Ways and Means of the House of Representatives.

*12. Tax treatment of per-unit retain allocations (sec. 212 of the bill and secs. 1382, 1383, 1385, 1388, and 6044 of the code)*

Although the practices of cooperatives are not uniform in this regard, generally a per-unit retain certificate is issued by a cooperative to a patron to reflect the retention by the cooperative of a portion of the proceeds from the marketing of products for the patron. These amounts are retained pursuant to an authorization (usually in the bylaws of the cooperative) and are computed on the basis of units of products marketed.

Prior to the amendment in 1962, the Internal Revenue Code permitted cooperatives to deduct amounts paid to patrons as patronage dividends. Patronage dividends are limited by definition to amounts which are "determined with reference to the net earnings" of the cooperative. The treatment of per-unit retains, however, was not specifically dealt with in the code. The Revenue Act of 1962 substantially revised the income tax treatment of cooperatives and their patrons but the new provisions by their terms were applicable only to "patronage dividends." Because per-unit retain allocations are determined on the basis of units of products marketed for the patrons rather than with reference to net earnings, the new provisions are generally considered as not being applicable to them. By regulations issued on October 14, 1965, the Treasury Department provided for the income tax treatment of per-unit retain certificates in a manner that is substantially parallel to the treatment prescribed in the Revenue Act of 1962 with respect to patronage dividends.

The per-unit retains may be considered as contributions to capital by patrons. For this to be true they first must have been considered as paid out by the cooperative. However, because the per-unit retain certificates issued by cooperatives may have a fair market value considerably less than their face amount, and in some cases have only a negligible fair market value, some have raised questions as to whether they may be considered as paid out by the cooperatives and whether the patrons can be required to include them in their gross income. This situation bears certain similarities to the situation that caused the enactment of the provisions of the Revenue Act of 1962 dealing with patronage dividends, in that some believe that a tax may not necessarily be imposed at either level.

The patronage dividend provisions of the Revenue Act of 1962 were designed to assure that the amounts received by cooperatives in the course of their business activities with their patrons are included in computing the income tax of either the cooperative or the patron, thus subjecting these amounts to a single current tax. To accomplish this, the 1962 act provided detailed rules which specified the treatment which patronage dividends are to receive from the standpoint of both cooperatives and their patrons. It was hoped that these provisions would bring to an end the uncertainty that existed in the area