State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1283/4
MES&CTS:kjf:rs

DOA:......Quinn, BB0303 - Capital gains exclusion for Wisconsin-sourced investments

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** creating a procedure for certain taxpayers to exclude from income certain capital gains from the sale of Wisconsin-sourced assets.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, there is an income tax exclusion for individuals for 30 percent of the net capital gains realized from the sale of assets held for at least one year, except a farm asset is subject to an exclusion for 60 percent of such gains.

Under this bill, and subject to some exceptions, for taxable years beginning after December 31, 2015, an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation (claimant) may subtract from federal adjusted gross income the lesser of the claimant's federal net capital gain as reported on the claimant's federal tax return if, in that year, the claimant had a qualifying gain, or the claimant's qualifying gain.

The bill defines "qualifying gain" as the gain realized by the sale of any asset that is purchased after December 31, 2010, held for at least five consecutive years, is a Wisconsin capital asset at the time of purchase and for at least two of the next four years, and treated as a long-term gain under federal law. A "Wisconsin capital asset" is real or tangible personal property that is located in this state and used in a Wisconsin business, or stock or other ownership interest in a Wisconsin business. Under the bill, a business may apply to the Wisconsin Economic Development Corporation (corporation) for annual certification. The corporation may certify a business if it determines that, in the taxable year ending immediately before the date of the business's application, at least 50 percent of the business's payroll is paid in Wisconsin and at least 50 percent of the value of the business's real and tangible personal property is used by the business in this state. The bill permits the corporation to adopt rules in consultation with DOR, and it requires the corporation to make a list of certified businesses available at the corporation's Web site.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.01 (13) of the statutes is amended to read:

71.01 **(13)** "Wisconsin adjusted gross income" means federal adjusted gross income, with the modifications prescribed in s. 71.05 (6) to (12), (19), (20), ~~and~~ (24), (25), and (26).

****NOTE: This is reconciled s. 71.01 (13). This SECTION has been affected by drafts with the following LRB numbers: LRB–1283/3 and LRB–1409/P1.

SECTION 2. 71.05 (8) (b) of the statutes is amended to read:

71.05 **(8)** (b) A Wisconsin net operating loss may be carried forward against Wisconsin taxable incomes of the next 15 taxable years, if the taxpayer was subject to taxation under this chapter in the taxable year in which the loss was sustained, to the extent not offset against other income of the year of loss and to the extent not offset against Wisconsin modified taxable income of any year between the loss year and the taxable year for which the loss carry–forward is claimed. In this paragraph, "Wisconsin modified taxable income" means Wisconsin taxable income with the following exceptions: a net operating loss deduction or offset for the loss year or any taxable year thereafter is not allowed, the deduction for long–term capital gains under ~~sub.~~ subs. (6) (b) 9. and 9m. and (25) is not allowed, the amount deductible for losses from sales or exchanges of capital assets may not exceed the amount includable in income for gains from sales or exchanges of capital assets and "Wisconsin modified taxable income" may not be less than zero.

SECTION 3. 71.05 (25) of the statutes is created to read:

71.05 **(25)** CAPITAL GAINS EXCLUSION; WISCONSIN–SOURCE ASSETS. (a) In this subsection:

1. "Claimant" means an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax–option corporation.

2. "Qualifying gain" means the gain realized from the sale of any asset which is a Wisconsin capital asset in the year it is purchased by the claimant and for at least 2 of the subsequent 4 years; that is purchased after December 31, 2010; that is held for at least 5 uninterrupted years; and that is treated as a long–term gain under the Internal Revenue Code; except that a qualifying gain may not include any amount for which the claimant claimed a subtraction under sub. (24) (b).

3. "Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.145.

4. "Wisconsin capital asset" means any of the following:

a. Real or tangible personal property that is located in this state and used in a Wisconsin business.

b. Stock or other ownership interest in a Wisconsin business.

(b) For taxable years beginning after December 31, 2015, for a Wisconsin capital asset that is purchased after December 31, 2010, and held for at least 5 years, a claimant may subtract from federal adjusted gross income the lesser of one of the following amounts, to the extent that it is not subtracted under sub. (6) (b) 9. or 9m.:

1. The amount of the claimant's federal net capital gain as reported on Schedule D of the claimant's federal income tax return for the taxable year to which the claim relates, but this subdivision applies only if, in that taxable year, the claimant has a qualifying gain.

2. The amount of the claimant's qualifying gain in the year to which the claim relates.

SECTION 4. 238.145 of the statutes is created to read:

238.145 Wisconsin–source assets exclusion; business certification. (1) The corporation shall implement a program to certify businesses for purposes of s. 71.05 (25). A business shall submit an application to the corporation in each calendar year for which the business desires certification.

(2) The corporation may certify a business if, in the business's taxable year ending immediately before the date of the business's application, all of the following are true:

(a) The amount of payroll compensation paid by the business in this state, as determined by the corporation, is equal to at least 50 percent of the amount of all payroll compensation paid by the business, as determined by the corporation.

(b) The value of real and tangible personal property owned or rented and used by the business in this state, as determined by the corporation, is equal to at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business, as determined by the corporation.

(3) The corporation shall notify the department of revenue of every certification issued under this section and of the date on which a certification is revoked or expires.

(4) The corporation, in consultation with the department of revenue, may adopt rules for the administration of this section.

(5) The corporation shall compile a list of businesses certified under this section and the taxable years for which the businesses are certified and shall make the list available to the public at the corporation's Internet Web site.

(END)