State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-0936/1
MES:jld:ph

2011 SENATE BILL 10

January 21, 2011 - Introduced by Senators HOPPER, DARLING, LEIBHAM, VUKMIR, GALLOWAY, ZIPPERER, WANGGAARD, KEDZIE, ELLIS, MOULTON, OLSEN, LAZICH and SCHULTZ, cosponsored by Representatives KUGLITSCH, THIESFELDT, ZIEGELBAUER, WILLIAMS, KAUFERT, MEYER, BIES, NYGREN, MURSAU, SPANBAUER, BROOKS, KNODL, RIPP, JACQUE, RIVARD, KAPENGA, FARROW and HONADEL. Referred to Committee on Public Health, Human Services, and Revenue.

AN ACT ***to repeal*** 71.05 (6) (b) 9m.; ***to amend*** 71.05 (6) (b) 9.; and ***to create*** 71.05 (6) (b) 9e. and 71.05 (6) (b) 9h. of the statutes; **relating to:** restoring the treatment of the exclusion of capital gains for individuals and certain other persons that existed before the enactment of 2009 Wisconsin Act 28, and phasing out the taxation of capital gains.

Analysis by the Legislative Reference Bureau

Under current law, as affected by the 2009-11 biennial budget bill, there is an income tax exclusion for individuals, fiduciaries, members of limited liability companies and partnerships, and shareholders of tax-option corporations for 30 percent of the net long-term capital gains realized from the sale of assets held more than one year and the sale of all assets acquired from a decedent, and an exclusion for 60 percent of such gains realized from the sale of farm assets held more than one year and the sale of all farm assets acquired from a decedent.

For taxable year 2012, this bill reverses the changes made to the taxation of capital gains in the 2009-11 biennial budget bill and restores the income tax exclusion for capital gains to 60 percent of the net long-term capital gains realized from the sale of assets held more than one year and the sale of all assets acquired from a decedent and repeals the separate 60 percent exclusion for farm assets.

For taxable year 2013, the bill increases this capital gains exclusion to 80 percent, and increases it to 100 percent for taxable year 2014 and beyond.

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. 71.05 (6) (b) 9. of the statutes is amended to read:

71.05 **(6)** (b) 9. On assets held more than one year and on all assets acquired from a decedent, ~~30~~ 60 percent of the capital gain as computed under the ~~internal revenue code~~ Internal Revenue Code, not including capital gains for which the federal tax treatment is determined under section 406 of P.L. 99–514; not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason; and not including amounts treated as capital gain for federal income tax purposes from the sale or exchange of a lottery prize. For purposes of this subdivision, the capital gains and capital losses for all assets shall be netted before application of the percentage. This subdivision applies to taxable years beginning after December 31, 2011, and before January 1, 2013.

SECTION 2. 71.05 (6) (b) 9e. of the statutes is created to read:

71.05 **(6)** (b) 9e. On assets held more than one year and on all assets acquired from a decedent, 80 percent of the capital gain as computed under the Internal Revenue Code, not including capital gains for which the federal tax treatment is determined under section 406 of P.L. 99–514; not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason; and not including amounts treated as capital gain for federal income tax purposes from the sale or exchange of a lottery prize. For purposes of this subdivision, the capital gains and capital losses for all assets shall be netted before application of the percentage. This subdivision applies to taxable years beginning after December 31, 2012, and before January 1, 2014.

SECTION 3. 71.05 (6) (b) 9h. of the statutes is created to read:

71.05 **(6)** (b) 9h. On assets held more than one year and on all assets acquired from a decedent, 100 percent of the capital gain as computed under the Internal Revenue Code, not including capital gains for which the federal tax treatment is determined under section 406 of P.L. 99–514; not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason; and not including amounts treated as capital gain for federal income tax purposes from the sale or exchange of a lottery prize. For purposes of this subdivision, the capital gains and capital losses for all assets shall be netted before application of the percentage. This subdivision applies to taxable years beginning after December 31, 2013.

SECTION 4. 71.05 (6) (b) 9m. of the statutes is repealed.

SECTION 5. Initial applicability.

(1) This act first applies to taxable years beginning on January 1, 2012.

(END)