

**2005 DRAFTING REQUEST**

**Bill**

Received: **11/19/2004**

Received By: **mshovers**

Wanted: **12/01/2004**

Identical to LRB:

For: **Steve Wieckert (608) 266-3070**

By/Representing: **Scott**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Tax, Individual - dedct/sbtrct**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Wieckert@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Deferral of recognition of gains from sale of certain capital assets

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**Instructions:**

Redraft 2003 AB 776, LRB -2572

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 11/19/2004	jdyer 11/20/2004		_____			State Tax
/1			jfrantze 11/22/2004	_____	sbasford 11/22/2004	mbarman 12/05/2005	

FE Sent For: **11/22/2004.**

↳ ("1") per Scott

<END>

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FE Sent For:

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11-22-2004  
("11")

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/?	mshovers	11/20 jld					
11 MES	11/19/04		11/22	11/22			

FE Sent For:

<END>

## MEMORANDUM

February 10, 2004

**TO:** Marc Shovers  
Legislative Reference Bureau

**FROM:** Dennis Collier  
Department of Revenue

**SUBJECT:** Technical Memorandum on AB 776: Deferral of Recognition of Gains from Sale of Certain Capital Assets

There does not appear to be any limitation on the type of asset that can be purchased with the proceeds of the sale of the original asset. For example, if a person sells a stock and reinvests the gain by purchasing a new car for personal use, it appears that he or she would qualify for the deferral.

It appears the deferral of gain applies to capital assets as well as business assets, which will add a great deal of complexity and record keeping for the taxpayer. Under federal law, the gain on the sale of an asset used in a trade or business may be treated as ordinary income, capital gain income, or it may offset losses on other assets used in a trade or business. If the gain is deferred due to the purchase of another depreciable asset used in a trade or business, the taxpayer will have a different basis and therefore separate depreciation schedules for federal and Wisconsin tax purposes. When this asset is sold in the future, the taxpayer will have to determine the portion of the gain that was previously treated as ordinary income or used to offset losses as this portion would not qualify for the 60% capital gain exclusion.

Modifications would be needed in sec. 71.05 to adjust for the difference in depreciation and taxable gain due to the federal and Wisconsin difference in basis of assets.

In order to ease the administration of the bill, a definite time should be specified in proposed sec. 71.05 (24)(b)1 and 3 instead of "immediately".

If you have any questions regarding this technical memorandum, please contact Karyn Kriz at 261-8984.

- 0933/1

JLD  
AMNA

2005

**2003 ASSEMBLY BILL 776**

WANTED  
12/1

D-NOTA

January 29, 2004 - Introduced by Representatives WIECKERT, NISCHKE, OWENS, PETTIS, KRAWCZYK, NASS, GRONEMUS, GARD, STONE, LOEFFELHOLZ, HINES, MUSSER, OTT, KREIBICH, LADWIG, BIES and FREESE, cosponsored by Senators KANAVAS, WELCH, REYNOLDS and A. LASEE. Referred to Committee on Ways and Means.

raym ✓

- 1 AN ACT to create 71.05 (24) of the statutes; relating to: creating a procedure for
- 2 certain taxpayers to defer taxation on certain reinvested capital gains. ✓

***Analysis by the Legislative Reference Bureau***

Under current law, there is an income tax exclusion for individuals for 60 percent of the net capital gains realized from the sale of assets held for at least one year. ✓

Under this bill, 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 elect to defer the payment of income taxes on the gain realized from the sale of any asset held more than one year (original asset), other than gain realized from the sale of an asset that was obtained in a tax-free exchange of capital assets or the sale of property purchased as the result of an involuntary conversion, if the claimant completes a number of requirements.

Under the bill, the claimant must place the gain from the original asset in a segregated account in a financial institution, must purchase another capital asset (replacement asset) within 90 days after the sale of the original asset that generated the gain, and must notify the Department of Revenue (DOR) on a form prepared by DOR that the claimant is deferring the payment of income tax on the gain from the original asset because the proceeds have been reinvested. The cost of the replacement asset must be equal to or greater than the gain generated by the sale of the original asset.

The bill also specifies that the basis of the replacement asset shall be its cost minus the gain generated by the sale of the original asset. If a claimant defers the

**ASSEMBLY BILL 776**

payment of income taxes on the gain generated by the sale of the original asset, the claimant may not use that gain to net the claimant's gains and losses as the claimant could do if the claimant did not elect to defer the payment of taxes on the gain.

✓ This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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

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

1 SECTION 1. 71.05 (24) ✓ of the statutes is created to read:

2 71.05 (24) ✓ INCOME TAX DEFERRAL; LONG-TERM ✓ CAPITAL ASSETS. (a) In this  
3 subsection: ✓

4 1. "Claimant" means an individual; an individual partner or member of a  
5 partnership, limited liability company, or limited liability partnership; or an  
6 individual shareholder of a tax-option corporation. ✓

7 2. "Financial institution" has the meaning given in s. 69.30 (1) (b). ✓

8 3. "Long-term capital gain" means the gain realized from the sale of any asset  
9 held more than one year, other than gain realized from any of the following:

10 a. The sale of an asset that was obtained in a tax-free exchange of capital  
11 assets.

12 b. The sale of property purchased as the result of an involuntary conversion.

13 (b) A claimant may subtract from federal adjusted gross income ✓ any amount  
14 of a long-term capital gain ✓ if the claimant does all of the following:

15 1. Immediately deposits the gain into a segregated account in a financial  
16 institution.



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0933/1dn

MES:.....

Jld

Representative Wieckert:

(DOR)

Because the procedure for deferring gains that the bill creates may be difficult for the Department of Revenue to administer, you may wish to have DOR review the bill. In addition, a DOR technical memo raised a number of issues regarding 2003 AB-776, the bill on which this bill is based. For example, the bill does not contain any limitation on the type of asset that may be purchased with the proceeds of the sale of the original asset. Presumably, under the bill, an individual could sell a stock and reinvest the gain by purchasing a new car for personal use and be eligible for the deferral.

\*  
\*

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0933/1dn  
MES:jld:jf

November 22, 2004

Representative Wieckert:

Because the procedure for deferring gains that the bill creates may be difficult for the Department of Revenue (DOR) to administer, you may wish to have DOR review the bill. In addition, a DOR technical memo raised a number of issues regarding 2003 AB-776, the bill on which this bill is based. For example, the bill does not contain any limitation on the type of asset that may be purchased with the proceeds of the sale of the original asset. Presumably, under the bill, an individual could sell a stock and reinvest the gain by purchasing a new car for personal use and be eligible for the deferral.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us

**Emery, Lynn**

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**From:** Emery, Lynn  
**Sent:** Thursday, November 17, 2005 1:10 PM  
**To:** Becher, Scott  
**Subject:** LRB 05-0933/1 & 1dn (attached as requested)

**Attachments:** 05-0933/1; 05-0933/1dn



05-09331.pdf (17  
KB)



05-09331dn.pdf  
(10 KB)

Lynn Emery  
Program Assistant  
Legislative Reference Bureau  
(608) 266-3561

**Basford, Sarah**

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**From:** Field, Adam  
**Sent:** Friday, December 02, 2005 1:51 PM  
**To:** LRB.Legal  
**Subject:** LRB 0933

**Attachments:** 05-09331.pdf

Please jacket LRB 0933 for introduction. Thanks.



05-09331.pdf (17  
KB)

***Adam Field***

Rep. Steve Wieckert Office  
Wisconsin State Assembly  
(608) 266-3070

cccccccccccccccccccc

Mike -

Adam Field <sup>(Wiedert's office)</sup>

requested a PDF of the fiscal note for LRB

0933 ... Not

sure where to find that? Or do you just scan it + e-mail it? He said it could wait til

Thurs. A.M. -

FE by  
DOR  
resent  
12-08-05  
9MB

# Memo

To: Senator

Representative

**Wieckert**

(The Draft's Requester)

Per your request: ... the attached fiscal estimate was prepared for your unIntroduced 2005 draft.

LRB Number: LRB **-0933**

Version: **"/ 1 "**

Fiscal Estimate Prepared By: (agency abbr.) **DoR**

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: **12 / 09 / 2004**

\* \* \* \* \*

To: LRB - Legal Section PA's

Subject: *Fiscal Estimate Received For An Unintroduced Draft*

- > **If redrafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version.
- > **If introduced** ... and the version of the attached fiscal estimate is for a **previous version** ... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.
- > **If introduced** ... and the version of the attached fiscal estimate is for the **current version** ... please write the draft's introduction number below and give to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2005 **AB 910**

## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Thursday, December 09, 2004 9:42 AM  
**To:** Rep.Wieckert; Becher, Scott  
**Subject:** LRB 05-0933/1 (FE by DOR - attached - for your review)



FE\_Wieckert.PDF

## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Thursday, December 08, 2005 8:47 AM  
**To:** Rep.Wieckert  
**Cc:** Field, Adam  
**Subject:** LRB 05-0933/1 (un-introduced) (FE by DOR - attached) (resent - by requested by Adam)

**Attachments:** FE\_Wieckert.PDF



FE\_Wieckert.PDF  
(688 KB)