2009 DRAFTING REQUEST

Bill

Received: **12/19/2008**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-7597**

By/Representing: **Lillethun**

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

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Tax, Individual - income**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:......Lillethun, BB0281 -

Topic:

Reduce the 60% exclusion for long-term capital gains

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers 12/22/2008	bkraft 12/23/2008		_______ _______			State Tax
/1			rschluet 12/23/2008	_______ _______	cduerst 12/23/2008		State Tax
/2	mshovers 01/21/2009	bkraft 01/21/2009	mduchek 01/21/2009	_______ _______	lparisi 01/21/2009		State Tax
/3	mshovers	bkraft	mduchek	_______	sbasford		State

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	01/23/2009	01/23/2009	01/23/2009	_______	01/23/2009		Tax
/4	mshovers 02/02/2009	csicilia 02/03/2009	phenry 02/03/2009	_______ _______	mbarman 02/03/2009		

FE Sent For:

<END>

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Pre Topic:

DOA:......Lillethun, BB0281 -

Topic:

Eliminate the 60% exclusion for long-term capital gains; eliminate the $500 limit to conform to federal treatment

---

Instructions:

See attached

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers 12/22/2008	bkraft 12/23/2008					State Tax
/1			rschluet 12/23/2008		cduerst 12/23/2008		State Tax
/2	mshovers 01/21/2009	bkraft 01/21/2009	mduchek 01/21/2009	2/13 ph	lparisi 01/21/2009		State Tax

2/3 ph

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/3	mshovers 01/23/2009	bkraft 01/23/2009	mduchek 01/23/2009	_______ _______	sbasford 01/23/2009		

/4 MES 2/2/09

FE Sent For:

<END>

/4 cjs 2/3/09

2009 DRAFTING REQUEST

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Eliminate the 60% exclusion for long-term capital gains; eliminate the $500 limit to conform to federal treatment

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/2	mshovers 01/21/2009	bkraft 01/21/2009	mduchek 01/21/2009	_______ _______	lparisi 01/21/2009		

/3 MES 1/23/09 /3 bjk 1/23 MD MD PH 1/23

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

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For: **Administration-Budget 6-7597** | By/Representing: **Lillethun**

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Subject: **Tax, Individual - income** | Extra Copies:

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Eliminate the 60% exclusion for long-term capital gains; eliminate the $500 limit to conform to federal treatment

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/?	mshovers 12/22/2008	bkraft 12/23/2008		_______ _______			State Tax
/1			rschluet 12/23/2008	_______ _______	cduerst 12/23/2008		

/2 MES 1/21/09

/2 bjk 1/21

MD

MDRS

FE Sent For:

<END>

1/21

2009 DRAFTING REQUEST

Bill

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Identical to LRB:

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By/Representing: **Lillethun**

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Eliminate the 60% exclusion for long-term capital gains; eliminate the $500 limit to conform to federal treatment

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See attached

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers						
/1	MES 12/22/08		12/22 38				

FE Sent For:

/1 bjk 12/23

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Federalize Capital Gain Treatment
- Tracking Code: BB0281
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
  - Phone: 266-7597
  - Email: Chad.Lillethun@wisconsing.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Low

Intent:

Eliminate the 60% exclusion for long-term capital gains and eliminate the $500 limit on capital losses to conform to federal tax treatment, effective for tax year 2010.

Legislative Proposal Summary
Wisconsin Department of Revenue
Research and Policy Division

Date: November 24, 2008

TITLE: Federalize Capital Gain Treatment

DESCRIPTION OF CURRENT LAW AND PROBLEM

Relative to other states, Wisconsin is unusual in its treatment of capital gains. While most states conform to federal treatment of capital gains and losses, Wisconsin provides a 60% deduction for long term capital gains while, at the same time, has a more stringent limitation for capital losses than federal law. Under federal law, capital losses up to $3,000 may be included in income, whereas Wisconsin only allows $500 in losses to be deducted from income. These two provisions create complexity in Wisconsin tax filing and primarily benefit very high income taxpayers.

The total tax benefit of Wisconsin's capital gain treatment relative to federal treatment is approximately $302 million (for tax year 2008). Taxpayers in the top 1% of income receive $172 million, or 57%, of the tax benefit of the current capital gain benefit. Taxpayers in the top 5% of income receive $236 million, or 78% of the tax benefit.

RECOMMENDATION FOR ACTION

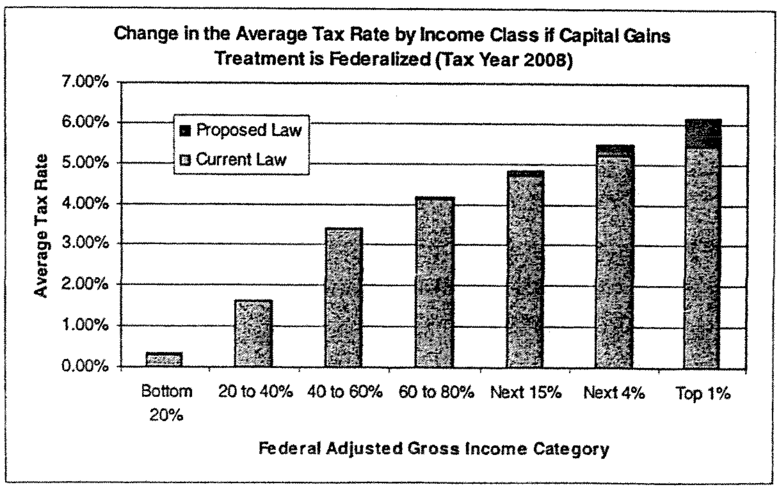
Effective for tax year 2010, conform to federal treatment of capital gains. In particular, eliminate the 60% exclusion for long-term capital gains and eliminate the $500 limit on capital losses. Wisconsin would conform to the federal loss limit of $3,000.

ADMINISTRATIVE IMPACT

Conforming to federal treatment would simplify tax instructions and computations.

FAIRNESS/TAX EQUITY

To the extent that the current capital gain treatment benefits very high income taxpayers, the proposal will enhance the progressivity of the individual income tax. The graph below compares the average effective tax rates by income categories under current law and under the proposed change. Under the proposal, the average effective tax rate of the top 1% is increased by 0.68%, and the rate for the next 4% of taxpayers is increased 0.29%; the effective rates for the remaining 95% of taxpayers are left largely unchanged.



FISCAL EFFECT

Federalizing capital gain treatment would result in an estimated $300 million GPR revenue increase for tax year 2010. This would result in an estimated $165 million GPR revenue increase in FY10 and a $300 million increase in FY11.

Note: if the proposal takes effect in tax year 2009, the 2009 tax year effect is estimated to be $200 million, with an estimated $110 million GPR revenue increase in FY09 and $255 million increase in FY10 and $300 million in FY11.

While the state revenue increase is estimated to be $300 million annually, the cost to taxpayers will be smaller for individuals who deduct their state income taxes on their federal returns. The federal offset is estimated to reduce the tax effect by $31.4 million for filers who itemize on their federal returns.

DRAFTING INSTRUCTIONS

Repeal s. 71.05(6)(b)9 and (10)(c).

Amend s.71.05(8)(b) to read as follows:

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. (6) (b) 9. 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.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

First effective tax year 2010.

INTERESTED/AFFECTED PARTIES

Taxpayers with large capital gains and large capital losses will be affected.

DOR CONTACT PERSON

Rebecca Boldt
Rebecca.boldt@dor.state.wi.us

PREPARED BY

Brad Caruth and Rebecca Boldt

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1240/1
MES:.....
Lbjk
RMR

DOA:......Lillethun, BB0281 - Eliminate the 60% exclusion for long-term capital gains; eliminate the $500 limit to conform to federal treatment

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA ✓
x-ref ✓

do not gen

AN ACT ...; **relating to:** federalizing the treatment of capital gains.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, there is an income tax exclusion for individuals and shareholders of tax-option corporations for 60 percent of the net long-term capital gains realized from the sale of assets held for at least one year. Also under current law, the maximum amount of a capital loss that may be deducted from income each year is $500; the federal limit is $3,000.

For taxable years beginning on January 1, 2010, this bill federalizes the treatment of capital gains and losses by eliminating the 60 percent exclusion and the $500 annual limit on capital loss deductions.

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:

X

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, 60% 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. <u>This subdivision does not apply to any taxable year that begins after December 31, 2009.</u>

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226.

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. (6) (b) 9. is not allowed for any taxable year that begins after December 31, 2009, 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.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226.

SECTION 3. 71.05 (10) (c) of the statutes is amended to read:

71.05 **(10)** (c) The amount required so that the net capital loss, after netting capital gains and capital losses to arrive at total capital gain or loss, is offset against ordinary income only to the extent of $500. Losses in excess of $500 shall be carried forward to the next taxable year and offset against ordinary income up to the limit under this paragraph. Losses shall be used in the order in which they accrue. This paragraph does not apply to any taxable year that begins after December 31, 2009.

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226.

(END)

2009-11 LRB Draft Review

Date: January 16, 2009

LRB Number: 1240/1

Reviewed by: Rebecca Boldt and Marcella Stock

Brief Description of LRB Draft:

The bill provides the same treatment of capital gains as for federal tax purposes.

Comments on Draft:

The bill language is fine. However, we recommend that the first sentence in the analysis of the bill be changed to clarify who is affected by the bill. As drafted, it implies only individuals and shareholders of tax-option corporations are affected; however, members of partnerships and limited liability companies could also be affected. In addition it does not mention fiduciaries.

Changes Needed & Why:

Change the first sentence of the analysis to read as follows:

Under current law, there is an income tax exclusion for individuals and fiduciaries ~~shareholders of tax-option corporations~~ for 60 percent of the net long-term capital gains realized from the sale of assets held for at least one year.

Shovers, Marc

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Tuesday, January 20, 2009 2:36 PM
To: Shovers, Marc
Subject: FW: LRB 1240-1 Cap Gains - DOR Comments

Marc,

See the DOR response below, but I'd say let's go with your suggestion sinceI think it's more clear to the "average joe" your way.

From: Boldt, Rebecca A - DOR
Sent: Tuesday, January 20, 2009 2:32 PM
To: Lillethun, Chad W - DOA; Gates-Hendrix, Sherrie L - DOR; Raes, Julie M - DOR; Stock, Marcella L - DOR
Subject: RE: LRB 1240-1 Cap Gains - DOR Comments

I don't think this is a big deal, but as it is was drafted, the language suggests only members of s-corps would be affected. Our fix reads as follows:

Under current law, there is an income tax exclusion for individuals and fiduciaries ~~shareholders of tax-option corporations~~ for 60 percent of the net long-term capital gains realized from the sale of assets held for at least one year.

We thought that the reference to "individuals" would be sufficient to cover shareholders of tax-option corps, members of LLCs and partnerships. Alternatively we could have referenced each of them as Marc notes, but we didn't think it important to do so. Fidcuaries were added for clarity (not related to the shareholder/member/partner issue). Again, not a big deal - so Marc can change it per our suggestion or per his own thinking or not at all.

Hope this helps. Marcy, please correct me if you disagree.

Rebecca

From: Lillethun, Chad W - DOA
Sent: Tuesday, January 20, 2009 1:19 PM
To: Gates-Hendrix, Sherrie L - DOR; Raes, Julie M - DOR; Boldt, Rebecca A - DOR; Stock, Marcella L - DOR
Subject: FW: LRB 1240-1 Cap Gains - DOR Comments

Please see Marc's concern / suggestion below and clarify the change DOR would like to see on this one.

-Chad

From: Shovers, Marc [mailto:Marc.Shovers@legis.wisconsin.gov]
Sent: Friday, January 16, 2009 4:34 PM
To: Lillethun, Chad W - DOA
Subject: FW: LRB 1240-1 Cap Gains - DOR Comments

Hi Chad:

I'm confused about DOR's memo and what you'd like done. DOR says the analysis makes it seem as if only individuals and shareholders of subch. S corps are affected, and doesn't mention members of partnerships and LLCs, and fiduciaries, but their proposed fix takes out shareholders, adds fiduciaries, but doesn't add members of partnerships and LLCs. What would you like done? Are you just letting me know of DOR's concern? Do you want any changes made? If you'd like changes, I'd propose adding every entity to the analysis.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608) 266-0129
Fax: (608) 264-6948
e-mail: marc.shovers@legis.wisconsin.gov

From: Kreye, Joseph
Sent: Friday, January 16, 2009 2:42 PM
To: Shovers, Marc
Subject: FW: LRB 1240-1 Cap Gains - DOR Comments

for you

From: Lillethun, Chad W - DOA [mailto:Chad.Lillethun@wisconsin.gov]
Sent: Friday, January 16, 2009 2:26 PM
To: Kreye, Joseph
Subject: FW: LRB 1240-1 Cap Gains - DOR Comments

FYI -

From: Gates-Hendrix, Sherrie L - DOR
Sent: Friday, January 16, 2009 2:12 PM
To: Lillethun, Chad W - DOA
Cc: Raes, Julie M - DOR
Subject: LRB 1240-1 Cap Gains - DOR Comments

Hi Chad -- one minor change to this one

thanks

SGH

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1240/2
MES:bjk:rs

stays

RMR

DOA:......Lillethun, BB0281 - Eliminate the 60% exclusion for long-term capital gains; eliminate the $500 limit to conform to federal treatment

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA

do not gen

AN ACT ...; **relating to:** federalizing the treatment of capital gains.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

fiduciaries, members of limited liability corporations and partnerships,

Under current law, there is an income tax exclusion for individuals and shareholders of tax-option corporations for 60 percent of the net long-term capital gains realized from the sale of assets held for at least one year. Also under current law, the maximum amount of a capital loss that may be deducted from income each year is $500; the federal limit is $3,000.

For taxable years beginning on January 1, 2010, this bill federalizes the treatment of capital gains and losses by eliminating the 60 percent exclusion and the $500 annual limit on capital loss deductions.

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, 60% 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. <u>This subdivision does not apply to any taxable year that begins after December 31, 2009.</u>

√

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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. (6) (b) 9. is not allowed for any taxable year that begins after December 31, 2009, 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 (10) (c) of the statutes is amended to read:

71.05 **(10)** (c) The amount required so that the net capital loss, after netting capital gains and capital losses to arrive at total capital gain or loss, is offset against ordinary income only to the extent of $500. Losses in excess of $500 shall be carried forward to the next taxable year and offset against ordinary income up to the limit under this paragraph. Losses shall be used in the order in which they accrue. This paragraph does not apply to any taxable year that begins after December 31, 2009.

(END)

2009-11 LRB Draft Review

Date: January 22, 2009

LRB Number: 1240/2

Reviewed by: Rebecca Boldt and Marcella Stock

Brief Description of LRB Draft:

The bill federalizes the tax treatment of capital gains for tax years after December 31, 2009. As such, the bill eliminates the 60% capital gain exclusion and increases the loss limit from $500 to $3,000.

Comments on Draft:
Indicate whether draft will accomplish intent, or if not, why not

The bill, as drafted, creates ambiguity with respect to the computation of "Wisconsin modified taxable income" for tax years prior to enactment.

The bill, as drafted, creates ambiguity with respect to the treatment of loss carryforwards for tax years after enactment.

Changes Needed & Why:
Include page and line references if appropriate. Example: page 2, line 4-5 – omit the phrase "with respect to a product under s.77.51 (3) (a)... " and replace with the phrase "all products used in a manner consistent with... "

Section 2: Strike the changes in Section 2. Current law allows a net operating loss to be carried forward to the extent the loss is not offset against "Wisconsin modified taxable income" and defines "Wisconsin modified taxable income" to mean Wisconsin taxable income with adjustments that disallow the 60% exclusion for long-term capital gains. As drafted, the bill disallows the 60% exclusion for long-term capital gain <u>only</u> for tax years that begin after December 31, 2009. Thus, the draft changes the treatment for tax years prior to December 31, 2009. The proposal does not intend to change any tax treatment prior to December 31, 2009.

This section is not required to the extent that s. 71.05(8)(b) references the 60% capital gain exclusion in s. 71.05(6)(b)9 and s. 71.05(6)(b)9. specifies that the exclusion no longer applies for tax years that begin after December 31, 2009. In other words, the reference to the exclusion in s. 71.05(6)(b)9. is harmless for tax years 2010 and thereafter because s. 71.05(6)(b)9. makes plain the exclusion no longer applies after 2009.

Section 3: The section amends s. 71.05(10)(c) to specify that the $500 Wisconsin loss limit no longer applies after December 31, 2009. Thus, for tax years 2010 and thereafter, the federal loss limit would apply. However, there is concern that federal language does not address the treatment of losses accumulated for Wisconsin tax purposes. In particular, because of the lower Wisconsin loss limit of $500 (compared to the federal limit of $3,000), many Wisconsin taxpayers have larger accumulated loss carry-forwards for Wisconsin tax purposes than for federal tax purposes. Reliance solely on federal treatment may imply that only federal accumulated losses may be carried forward. To make clear that the new $3,000 limit applies to Wisconsin accumulated losses, we suggest the following:

1. Renumber s. 71.05(10)(c) to s. 71.05(10)(c)1. Retain the amended language as drafted.
2. Create s. 71.05(10)(c)2. to read as follows:

s. 71.05(10)(c)2. Any Wisconsin loss carry-forwards as of December 31, 2009 shall be allowed as provided under sec. 1211(b) of the Internal Revenue Code.

LRB-1240/~~2~~ 3
MES:bjk:md

stays PMR

DOA:......Lillethun, BB0281 - Eliminate the 60% exclusion for long-term capital gains; eliminate the $500 limit to conform to federal treatment

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA ✓
x-ref ✓

do not gen.

AN ACT ...; **relating to:** federalizing the treatment of capital gains.

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TAXATION

INCOME TAXATION

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For taxable years beginning on January 1, 2010, this bill federalizes the treatment of capital gains and losses by eliminating the 60 percent exclusion and the $500 annual limit on capital loss deductions.

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.

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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, 60% 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 does not apply to any taxable year that begins after December 31, 2009.

~~**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. (6) (b) 9. is not allowed for any taxable year that begins after December 31, 2009, 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.~~

LPS – Please change component

SECTION 3. 71.05 (10) (c) ~~of the statutes is amended to read:~~

RA; L; 71.05 (10) (c) 1.

71.05 **(10)** (c) L1. The amount required so that the net capital loss, after netting capital gains and capital losses to arrive at total capital gain or loss, is offset against ordinary income only to the extent of $500. Losses in excess of $500 shall be carried forward to the next taxable year and offset against ordinary income up to the limit under this ~~paragraph~~ subdivision. Losses shall be used in the order in which they accrue. This ~~paragraph~~ subdivision does not apply to any taxable year that begins after December 31, 2009.

(END)

Sec#; CR; 71.05 (10) (c) 2.

71.05 (10) (c) 2. Any Wisconsin loss carry-forwards that exist as of December 31, 2009, shall be allowed as provided under section 1211 (b) of the Internal Revenue Code.

Shovers, Marc

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Monday, February 02, 2009 5:58 PM
To: Shovers, Marc
Cc: Grinde, Kirsten - DOA; Kraus, Jennifer - DOA; Hanaman, Cathlene
Subject: RE: Capital Gains Draft Back IN - 09-1240/3

Marc - I believe that is correct. The other sections do not appear to relate to the exclusion amount specifically, which is really the only thing we're amending here.

Thanks.

From: Shovers, Marc [mailto:Marc.Shovers@legis.wisconsin.gov]
Sent: Monday, February 02, 2009 5:41 PM
To: Lillethun, Chad W - DOA
Cc: Grinde, Kirsten - DOA; Kraus, Jennifer - DOA; Hanaman, Cathlene - LEGIS
Subject: RE: Capital Gains Draft Back IN - 09-1240/3

Hi Chad:

Do you mean that you only want to affect s. 71.05 (6) (b) 9. and that you no longer want bill sections 2 and 3 to be part of -1240? Thanks.

Marc

From: Lillethun, Chad W - DOA [mailto:Chad.Lillethun@wisconsin.gov]
Sent: Monday, February 02, 2009 5:03 PM
To: Shovers, Marc
Cc: Grinde, Kirsten - DOA; Kraus, Jennifer - DOA; Hanaman, Cathlene
Subject: Capital Gains Draft Back IN - 09-1240/3

Marc - Here's a recap of one of the tax items we discussed over the phone. A previous draft related to capital gains was "out" but we're bringing it back with modifications. The previous version federalized capital gains by 1) eliminating the 60% exclusion for capital gains, 2) increased the state's recognition of losses up to $3,000 dollars, and 3) generally exchanged the state's capital gains exemptions for the exemptions recognized by the federal government.

Our requested re-draft simply is to take current state law, which provides for a 60% exclusion, and reduce it to a 40% exclusion.

Please call if you have questions. Thanks.

-Chad

Shovers, Marc

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Monday, February 02, 2009 6:00 PM
To: Shovers, Marc
Subject: RE: Capital Gains Draft Back IN - 09-1240/3

Marc - Also, to clarify the effective date. This would be made effective for tax year 2009. Thanks.

-Chad

From: Shovers, Marc [mailto:Marc.Shovers@legis.wisconsin.gov]
Sent: Monday, February 02, 2009 5:41 PM
To: Lillethun, Chad W - DOA
Cc: Grinde, Kirsten - DOA; Kraus, Jennifer - DOA; Hanaman, Cathlene - LEGIS
Subject: RE: Capital Gains Draft Back IN - 09-1240/3

Hi Chad:

Do you mean that you only want to affect s. 71.05 (6) (b) 9. and that you no longer want bill sections 2 and 3 to be part of -1240? Thanks.

Marc

From: Lillethun, Chad W - DOA [mailto:Chad.Lillethun@wisconsin.gov]
Sent: Monday, February 02, 2009 5:03 PM
To: Shovers, Marc
Cc: Grinde, Kirsten - DOA; Kraus, Jennifer - DOA; Hanaman, Cathlene
Subject: Capital Gains Draft Back IN - 09-1240/3

Marc - Here's a recap of one of the tax items we discussed over the phone. A previous draft related to capital gains was "out" but we're bringing it back with modifications. The previous version federalized capital gains by 1) eliminating the 60% exclusion for capital gains, 2) increased the state's recognition of losses up to $3,000 dollars, and 3) generally exchanged the state's capital gains exemptions for the exemptions recognized by the federal government.

Our requested re-draft simply is to take current state law, which provides for a 60% exclusion, and reduce it to a 40% exclusion.

Please call if you have questions. Thanks.

-Chad

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1240/3 4
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&cjs

RMR

Reduce

DOA:......Lillethun, BB0281 - ~~Eliminate~~ the 60% exclusion for long-term capital gains~~; eliminate the $500 limit to conform to federal treatment~~

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

LPS: Please make these changes on request sheet if the drafter has not done so already

NOT do not gen

reducing the exclusion amount for

AN ACT ...; **relating to:** ~~federalizing the treatment of~~ capital gains.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

This bill reduces the exclusion to 40 percent.

Under current law, there is an income tax exclusion for individuals, fiduciaries, members of limited liability corporations and partnerships, and shareholders of tax-option corporations for 60 percent of the net long-term capital gains realized from the sale of assets held for at least one year. ~~Also under current law, the maximum amount of a capital loss that may be deducted from income each year is $500; the federal limit is $3,000.~~

~~For taxable years beginning on January 1, 2010, this bill federalizes the treatment of capital gains and losses by eliminating the 60 percent exclusion and the $500 annual limit on capital loss deductions.~~

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, ~~60%~~ 40 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 does not apply to any taxable year that begins after December 31, 2009.

Section 2. 71.05 (10) (c) of the statutes is renumbered 71.05 (10) (c) 1. and amended to read:

71.05 **(10)** (c) 1. The amount required so that the net capital loss, after netting capital gains and capital losses to arrive at total capital gain or loss, is offset against ordinary income only to the extent of $500. Losses in excess of $500 shall be carried forward to the next taxable year and offset against ordinary income up to the limit under this ~~paragraph~~ subdivision. Losses shall be used in the order in which they accrue. This subdivision does not apply to any taxable year that begins after December 31, 2009.

Section 3. 71.05 (10) (c) 2. of the statutes is created to read:

~~71.05 **(10)** (c) 2. Any Wisconsin loss carry-forwards that exist as of December 31, 2009, shall be allowed as provided under section 1211 (b) of the Internal Revenue Code.~~

INS 3-3

(END)

2009–2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1240/4ins
MES:bjk:md

INS 3–3

SECTION 9343. Initial applicability; Revenue.

(1) TAXATION OF CAPITAL GAINS. The treatment of section~~s~~ 71.05 (6) (b) 9. of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after ~~July~~ August 31 the treatment of section~~s~~ 71.05 (6) (b) 9. of the statutes first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1240/4
MES:bjk&cjs:ph

DOA:......Lillethun, BB0281 - Reduce the 60% exclusion for long-term capital gains

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** reducing the exclusion amount for capital gains.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, there is an income tax exclusion for individuals, fiduciaries, members of limited liability corporations and partnerships, and shareholders of tax-option corporations for 60 percent of the net long-term capital gains realized from the sale of assets held for at least one year. This bill reduces the exclusion to 40 percent.

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.

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SECTION 9343. Initial applicability; Revenue.

(1) TAXATION OF CAPITAL GAINS. The treatment of section 71.05 (6) (b) 9. of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after August 31 the treatment of section 71.05 (6) (b) 9. of the statutes first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

(END)