2011 DRAFTING REQUEST

Bill

Received: **02/10/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Administration-Budget 6-1923**

By/Representing: **Quinn**

May Contact:

Drafter: **mshovers**

Subject: **Tax, Individual - dedct/sbtrct**
Econ. Development - bus. dev.

Addl. Drafters: **csundber**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:......Quinn, BB0348 -

Topic:

Capital gains deferral for investments in qualified Wisconsin businesses

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Instructions:

See attached, and see s. 71.05 (24)

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers 02/10/2011 csundber 02/15/2011	kfollett 02/15/2011		_______ _______ _______ _______			State Tax
/P1			mduchek 02/15/2011	_______ _______	sbasford 02/15/2011		State Tax
/P2	mshovers 02/18/2011	kfollett 02/18/2011	rschluet 02/18/2011	_______ _______	mbarman 02/18/2011		

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required

FE Sent For:

<END>

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See attached, and see s. 71.05 (24)

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/?	mshovers 02/10/2011 csundber 02/15/2011	kfollett 02/15/2011 /P2 kf 2/18					State Tax
/P1			mduchek 02/15/2011		sbasford 02/15/2011		

/P2 MES 2/18/11

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Instructions:

See attached, and see s. 71.05 (24)

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers	/P1 jf 2/15	M 2/15				

FE Sent For:

<END>

2009 BILL

AN ACT ***to repeal*** 560.2085; ***to amend*** 71.05 (24) (a) 4. and 71.05 (24) (b) 2.; and ***to create*** 71.05 (24) (a) 5. of the statutes; **relating to:** modifying the income tax deferral for certain long-term capital gains to those that are reinvested in a Wisconsin business.

Analysis by the Legislative Reference Bureau

Under current law, as created in the state budget, 2009 Wisconsin Act 28, for taxable years beginning after December 31, 2010, 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 up to $10,000,000 of the gain realized from the sale of any capital asset held more than one year (original asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements.

Current law requires that the claimant must place the gain from the original asset in a segregated account in a financial institution, must invest all of the proceeds in a qualified new business venture (QNBV) as certified by the Department of Commerce (Commerce), within 180 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 claimant must send the form to DOR with the claimant's income tax return for the year to which the claim relates. The amount of the investment must be equal to or greater than the gain generated by the sale of the original asset.

Under current law, a business may be certified as a QNBV by Commerce if the business is engaged in developing a new product or business process, manufacturing, agriculture, or processing or assembling products and conducting research and development, except that Commerce may not certify a business engaged in certain activities, including real estate development, insurance, banking, lobbying, wholesale or retail sales, leisure, hospitality, transportation, or construction.

This bill repeals the provisions relating to certification of the business by Commerce and the requirement that the claimant must invest all of the proceeds in a QNBV. Under the bill, all of the other provisions of current law still apply. In addition, the bill requires that the business in which the claimant invests must be a Wisconsin business. The bill defines Wisconsin business as a business that meets at least one of three specified conditions. The conditions are that more than 50 percent of the business' property, payroll, or sales must be located in this state.

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 (24) (a) 4. of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

71.05 **(24)** (a) 4. "Qualified ~~new~~ business venture" means a <u>Wisconsin</u> business ~~certified by the department of commerce under s. 560.208~~.

SECTION 2. 71.05 (24) (a) 5. of the statutes is created to read:

71.05 **(24)** (a) 5. "Wisconsin business" means a business to which at least one of the following applies:

a. The business' property factor, as that term is used in s. 71.25 (7) (a), is greater than 50 percent.

b. The business' payroll factor, as that term is used in s. 71.25 (8) (a) is greater than 50 percent.

c. The business' sales factor, as that term is used in s. 71.25 (9) (a) is greater than 50 percent.

SECTION 3. 71.05 (24) (b) 2. of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

71.05 **(24)** (b) 2. Within 180 days after the sale of the asset that generated the gain, invests all of the proceeds in the account described under subd. 1. in a qualified ~~new~~ business venture.

SECTION 4. 560.2085 of the statutes, as created by 2009 Wisconsin Act 28, section 3073, is repealed.

(END)

Shovers, Marc

From: Kreye, Joseph
Sent: Thursday, February 10, 2011 1:27 PM
To: Shovers, Marc
Cc: Hanaman, Cathlene
Subject: FW: Statutory Language Drafting Request
Attachments: Cap Gain Front End WI Business.doc

From: Scott.Thornton@Wisconsin.gov [mailto:Scott.Thornton@Wisconsin.gov]
Sent: Thursday, February 10, 2011 12:57 PM
To: Hanaman, Cathlene
Cc: Hetzel, Shayna - DOA; Thornton, Scott - DOA; Grinde, Kirsten - DOA; Quinn, Brian D - DOA
Subject: Statutory Language Drafting Request

Topic: Capital Gains Deferral

Tracking Code: BB0348

SBO Team: TTO

SBO Analyst: Quinn, Brian D - DOA
Phone: (608) 266-1923
E-mail: brian.quinn@wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: High

Intent:
See memo

Attachments: True

71.05(XX)INCOME TAX DEFERRAL; LONG–TERM CAPITAL ASSETS.

(a) In this subsection:
1. "Claimant" means an individual, including an individual who is a partner in a partnership, member of a limited liability company, or shareholder of a tax–option corporation.
2. "Financial institution" has the meaning given in s. 69.30 (1) (b).
3. "Long–term capital gain" means the gain realized from the sale of any capital asset held more than one year that is treated as a long–term gain under the Internal Revenue Code.
4. "Qualified Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s.283.??
(b) For taxable years beginning after December 31, 2010, a claimant may subtract from federal adjusted gross income any amount of a long–term capital gain if the claimant does all of the following:
1. Deposits the gain into a segregated account in a financial institution.
2. Within 180 days after the sale of the asset that generated the gain, invests all of the proceeds in the account described under subd. 1. in a qualified Wisconsin business.
3. After making the investment as described under subd. 2., notifies the department, on a form prepared by the department, that the claimant will not declare on the claimant's income tax return the gain described under subd. 1. because the claimant has reinvested the capital gain as described under subd. 2. The form shall be sent to the department along with the claimant's income tax return for the year to which the claim relates.
(c) The basis of the investment described in par. (b) 2. shall be calculated by subtracting the gain described in par. (b) 1. from the amount of the investment described in par. (b) 2.
(d) If a claimant defers the payment of income taxes on a capital gain under this subsection, the claimant may not use the gain described under par. (b)1. to net capital gains and losses, as described under sub. (10) (c).
(e)If a claimant defers the payment of income taxes on a capital gain under this subsection, the claimant may not use the same gain described in par. (b)1. to take a subtraction modification under s.71.05(24) or (25) (if proposed (25) is passed).

283.?? Qualified Wisconsin businesses. (1) The corporation shall implement a program to certify qualified Wisconsin businesses for purposes of s. 71.05 (XX). A business desiring certification shall submit an application to the corporation in each calendar year for which the business desires certification. Subject to sub. (2), a business may be certified under this subsection.

(2) The corporation may certify a business under sub. (1) if in the preceding taxable year of the business, the payroll factor of the business is at least 50 percent and the property factor of the business is at least 50 percent.
(a) For purposes of this subsection, payroll factor means the fraction, the numerator of which is the total amount paid in this state during the preceding taxable year by the business for compensation, as provided in s. 71.04(6), and the denominator of which is the total compensation paid everywhere during the preceding taxable year.
(b) For purposes of this subsection, property factor means the fraction, the numerator of which is the average value of the business' real and tangible personal property owned or rented and used in this state during the preceding taxable year and the denominator of which is the average value of all the business' real and tangible personal property owned or rented and used during the preceding taxable year.
1. Cash on hand or in the bank, shares of stock, notes, bonds, accounts receivable, or other evidence of indebtedness, special privileges, franchises, goodwill, or property the income of

which is not taxable or is separately allocated, shall not be considered tangible property nor included in the factor.
2. Property used in the production of nonapportionable income or losses shall be excluded from the numerator and denominator of the property factor. Property used in the production of both apportionable and nonapportionable income or losses shall be partially excluded from the numerator and denominator of the property factor so as to exclude, as near as possible, the portion of such property producing the nonapportionable income or loss.
3. Property owned by the business is valued at its original cost. Property rented by the business is valued at 8 times the net annual rental. Net annual rental is the annual rental paid by the business less any annual rental received by the business from sub-rentals.
4. The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year.

(3) (a) The corporation shall maintain a list of businesses certified under sub. (1) and shall permit public access to the lists through the department's Internet Web site.
(b) The corporation shall notify the department of revenue of every certification issued under sub. (1) and the date on which a certification under sub. (1) is revoked or expires.

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1409/? P1
MES&CTS...:cjs

DOA:......Quinn, BB0348 – Capital gains deferral for investments in qualified Wisconsin businesses

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

AN ACT ...; **relating to:** creating an individual income tax deferral for certain long-term capital gains that are reinvested in a qualified Wisconsin business.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

bill

Under current law, as created in the 2009-2010 biennial state budget, for taxable years beginning after December 31, 2010, 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 up to $10,000,000 of the gain realized from the sale of any capital asset held more than one year (original asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements.

This bill creates another income tax deferral under which a claimant may elect to defer the payment of income taxes on any amount of the gain realized from the sale of any capital asset held more than one year (original new asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements.

Current law requires that the claimant must place the gain from the original asset in a segregated account in a financial institution, must invest all of the proceeds

in a qualified new business venture, (QNBV) as certified by the Department of Commerce (Commerce), within 180 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 claimant must send the form to DOR with the claimant's income tax return for the year to which the claim relates. The amount of the investment must be equal to or greater than the gain generated by the sale of the original asset.

The requirements under the bill are the same as current law with regard to placing the original new asset in a segregated account in a financial institution and notifying DOR, but under the bill a claimant must invest all of the proceeds in a qualified Wisconsin business (QWB) as certified by the Wisconsin Economic Development Corporation (WEDC), within 180 days after the sale of the original new asset that generated the gain, instead of in a QNBV.

corporation

Under current law, a business may be certified as a QNBV by Commerce if the business is engaged in developing a new product or business process, manufacturing, agriculture, or processing or assembling products and conducting research and development, except that Commerce may not certify a business engaged in certain activities, including real estate development, insurance, banking, lobbying, wholesale or retail sales, leisure, hospitality, transportation, or construction. ~~Under the bill, to be certified by WEDC,~~ INSERT A

Under the bill, a claimant may not claim the deferral under this bill if the claimant also claims the current law deferral or the capital gains exclusion for Wisconsin-sourced assets, as created in this bill.

****NOTE: If LRB -1283 is not included in the compile for the Governor's budget, the analysis and numbering in this bill must be changed.

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:

INS 2-1 change component

SECTION 1. 71.05 ~~(24)~~ (26) of the statutes is ~~amended~~ created to read:

71.05 ~~(24)~~ (26) INCOME TAX DEFERRAL; LONG-TERM WISCONSIN CAPITAL 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. "Financial institution" has the meaning given in s. 69.30 (1) (b).

3. "Long-term capital gain" means the gain realized from the sale of any capital asset held more than one year that is treated as a long-term gain under the Internal Revenue Code.

4. "Qualified ~~new~~ Wisconsin business ~~venture~~" means a business certified by the ~~department of commerce under s. 560.2085~~ Wisconsin Economic Development Corporation under s. 238.146.

(b) For taxable years beginning after December 31, 2010, a claimant may subtract from federal adjusted gross income any amount, up to $10,000,000, of a long-term capital gain if the claimant does all of the following:

1. Deposits the gain into a segregated account in a financial institution.

2. Within 180 days after the sale of the asset that generated the gain, invests all of the proceeds in the account described under subd. 1. in a qualified ~~new~~ Wisconsin business venture.

3. After making the investment as described under subd. 2., notifies the department, on a form prepared by the department, that the claimant will not declare on the claimant's income tax return the gain described under subd. 1. because the claimant has reinvested the capital gain as described under subd. 2. The form shall be sent to the department along with the claimant's income tax return for the year to which the claim relates.

(c) The basis of the investment described in par. (b) 2. shall be calculated by subtracting the gain described in par. (b) 1. from the amount of the investment described in par. (b) 2.

(d) If a claimant defers the payment of income taxes on a capital gain under this subsection, the claimant may not use the gain described under par. (b) 1. to net capital gains and losses, as described under sub. (10) (c).

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; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; s. 13.92 (1) (bm) 2., (2) (i).

~~(END)~~

(e) If a claimant claims the subtraction under this subsection, the claimant may not use the gain described under par. (b) 1. to claim a subtraction under sub. (24) or (25).

****NOTE: see the NOTE in the analysis.

INS CTS

INSERT 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), and (25).

SECTION 2. 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 Wisconsin capital asset that is purchased after December 31, 2010, held for at least 5 uninterrupted years, and 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).

INS 2-1

Section #. 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), and (26).

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2003 a. 33; 2005 a. 25, 49, 362; 2007 a. 20, 226; 2009 a. 2, 28, 161, 183; s. 13.92 (2) (i).

★★★★ NOTE. If LRB-1283 is not included in the compile for the Governor's budget, the numbering in this subsection should be changed.

INS CTS

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, 2010, 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 3. 238.14~~5~~ 6 of the statutes is created to read:

238.14~~5~~ 6 ~~Wisconsin-source assets exclusion;~~ Long-term Wisconsin capital assets deferral; business certification. (1) The corporation shall implement a program to certify businesses for purposes of s. 71.05 (~~25~~ 26). 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:

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.

~~(END)~~

B

(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.

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1409/P1 2
MES&CTS:kjf:md
RMR

DOA:......Quinn, BB0348 – Capital gains deferral for investments in qualified Wisconsin businesses

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

D-NOTE

Don't Gen

AN ACT ...; **relating to:** creating an individual income tax deferral for certain long-term capital gains that are reinvested in a qualified Wisconsin business.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, as created in the 2009-10 biennial budget bill, for taxable years beginning after December 31, 2010, 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 up to $10,000,000 of the gain realized from the sale of any capital asset held more than one year (original asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements.

This bill creates another income tax deferral under which a claimant may elect to defer the payment of income taxes on any amount of the gain realized from the sale of any capital asset held more than one year (original new asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements.

Current law requires that the claimant must place the gain from the original asset in a segregated account in a financial institution, must invest all of the proceeds

in a qualified new business venture (QNBV) as certified by the Department of Commerce (Commerce), within 180 days after the sale of the original asset that generated the gain, and must notify 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 claimant must send the form to DOR with the claimant's income tax return for the year to which the claim relates. The amount of the investment must be equal to or greater than the gain generated by the sale of the original asset.

The requirements under the bill are the same as current law with regard to placing the original new asset in a segregated account in a financial institution and notifying DOR, but under the bill a claimant must invest all of the proceeds in a qualified Wisconsin business (QWB) as certified by the Wisconsin Economic Development Corporation (corporation), within 180 days after the sale of the original new asset that generated the gain, instead of in a QNBV.

Under current law, a business may be certified as a QNBV by Commerce if the business is engaged in developing a new product or business process, manufacturing, agriculture, or processing or assembling products and conducting research and development, except that Commerce may not certify a business engaged in certain activities, including real estate development, insurance, banking, lobbying, wholesale or retail sales, leisure, hospitality, transportation, or construction.

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.

Under the bill, a claimant may not claim the deferral under this bill if the claimant also claims the current law deferral or the capital gains exclusion for Wisconsin–sourced assets, as created in this bill.

~~****NOTE: If LRB –1283 is not included in the compile for the Governor's budget, the analysis and numbering in this bill must be changed.~~

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), and (26).

****NOTE: If LRB-1283 is not included in the compile for the Governor's budget, the numbering in this subsection should be changed.

SECTION 2. 71.05 (26) of the statutes is created to read:

71.05 **(26)** INCOME TAX DEFERRAL; LONG-TERM WISCONSIN CAPITAL 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. "Financial institution" has the meaning given in s. 69.30 (1) (b).

3. "Long-term capital gain" means the gain realized from the sale of any capital asset held more than one year that is treated as a long-term gain under the Internal Revenue Code.

4. "Qualified Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.146.

(b) For taxable years beginning after December 31, 2010, a claimant may subtract from federal adjusted gross income any amount of a long-term capital gain if the claimant does all of the following:

1. Deposits the gain into a segregated account in a financial institution.

2. Within 180 days after the sale of the asset that generated the gain, invests all of the proceeds in the account described under subd. 1. in a qualified Wisconsin business.

3. After making the investment as described under subd. 2., notifies the department, on a form prepared by the department, that the claimant will not declare on the claimant's income tax return the gain described under subd. 1. because the claimant has reinvested the capital gain as described under subd. 2. The form shall be sent to the department along with the claimant's income tax return for the year to which the claim relates.

(c) The basis of the investment described in par. (b) 2. shall be calculated by subtracting the gain described in par. (b) 1. from the amount of the investment described in par. (b) 2.

(d) If a claimant defers the payment of income taxes on a capital gain under this subsection, the claimant may not use the gain described under par. (b) 1. to net capital gains and losses, as described under sub. (10) (c).

(e) If a claimant claims the subtraction under this subsection, the claimant may not use the gain described under par. (b) 1. to claim a subtraction under sub. (24) or (25).

****NOTE: See the NOTE in the analysis.

SECTION 3. 238.146 of the statutes is created to read:

238.146 Long-term Wisconsin capital assets deferral; business certification. (1) The corporation shall implement a program to certify businesses for purposes of s. 71.05 (26). 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)

LRB-1409/P2dn
MES:kjf

D-NOTE

This draft reconciles LRB-1283/3 and -1409/P1. Both drafts should continue to appear in the compiled bill. If LRB-1283/4 is yanked, s. 71.01 (13), as amended in LRB-1409/P1, must be added back to this bill.

MES

DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRB-1409/P2dn
MES:kjf:rs

February 18, 2011

This draft reconciles LRB-1283/3 and -1409/P1. Both drafts should continue to appear in the compiled bill. If LRB-1283/4 is yanked, s. 71.01 (13), as amended in LRB-1409/P1 must be added back to this bill.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1409/P2
MES&CTS:kjf:rs

DOA:......Quinn, BB0348 – Capital gains deferral for investments in qualified Wisconsin businesses

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** creating an individual income tax deferral for certain long-term capital gains that are reinvested in a qualified Wisconsin business.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, as created in the 2009-10 biennial budget bill, for taxable years beginning after December 31, 2010, 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 up to $10,000,000 of the gain realized from the sale of any capital asset held more than one year (original asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements.

This bill creates another income tax deferral under which a claimant may elect to defer the payment of income taxes on any amount of the gain realized from the sale of any capital asset held more than one year (original new asset) that is treated as a long-term gain under the Internal Revenue Code, if the claimant completes a number of requirements.

Current law requires that the claimant must place the gain from the original asset in a segregated account in a financial institution, must invest all of the proceeds

in a qualified new business venture (QNBV) as certified by the Department of Commerce (Commerce), within 180 days after the sale of the original asset that generated the gain, and must notify 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 claimant must send the form to DOR with the claimant's income tax return for the year to which the claim relates. The amount of the investment must be equal to or greater than the gain generated by the sale of the original asset.

The requirements under the bill are the same as current law with regard to placing the original new asset in a segregated account in a financial institution and notifying DOR, but under the bill a claimant must invest all of the proceeds in a qualified Wisconsin business (QWB) as certified by the Wisconsin Economic Development Corporation (corporation), within 180 days after the sale of the original new asset that generated the gain, instead of in a QNBV.

Under current law, a business may be certified as a QNBV by Commerce if the business is engaged in developing a new product or business process, manufacturing, agriculture, or processing or assembling products and conducting research and development, except that Commerce may not certify a business engaged in certain activities, including real estate development, insurance, banking, lobbying, wholesale or retail sales, leisure, hospitality, transportation, or construction.

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.

Under the bill, a claimant may not claim the deferral under this bill if the claimant also claims the current law deferral or the capital gains exclusion for Wisconsin-sourced assets, as created in this bill.

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 (26) of the statutes is created to read:

71.05 **(26)** INCOME TAX DEFERRAL; LONG-TERM WISCONSIN CAPITAL 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. "Financial institution" has the meaning given in s. 69.30 (1) (b).

3. "Long-term capital gain" means the gain realized from the sale of any capital asset held more than one year that is treated as a long-term gain under the Internal Revenue Code.

4. "Qualified Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.146.

(b) For taxable years beginning after December 31, 2010, a claimant may subtract from federal adjusted gross income any amount of a long-term capital gain if the claimant does all of the following:

1. Deposits the gain into a segregated account in a financial institution.

2. Within 180 days after the sale of the asset that generated the gain, invests all of the proceeds in the account described under subd. 1. in a qualified Wisconsin business.

3. After making the investment as described under subd. 2., notifies the department, on a form prepared by the department, that the claimant will not declare on the claimant's income tax return the gain described under subd. 1. because the claimant has reinvested the capital gain as described under subd. 2. The form shall be sent to the department along with the claimant's income tax return for the year to which the claim relates.

(c) The basis of the investment described in par. (b) 2. shall be calculated by subtracting the gain described in par. (b) 1. from the amount of the investment described in par. (b) 2.

(d) If a claimant defers the payment of income taxes on a capital gain under this subsection, the claimant may not use the gain described under par. (b) 1. to net capital gains and losses, as described under sub. (10) (c).

(e) If a claimant claims the subtraction under this subsection, the claimant may not use the gain described under par. (b) 1. to claim a subtraction under sub. (24) or (25).

****NOTE: See the NOTE in the analysis.

SECTION 2. 238.146 of the statutes is created to read:

238.146 Long-term Wisconsin capital assets deferral; business certification. (1) The corporation shall implement a program to certify businesses for purposes of s. 71.05 (26). 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)