

## 2013 DRAFTING REQUEST

### Bill

Received: 12/11/2012 Received By: mshovers  
Wanted: As time permits Same as LRB:  
For: Administration-Budget 6-7597 By/Representing: Ley  
May Contact: Drafter: mshovers  
Subject: Econ. Development - bus. dev. Addl. Drafters: fknepp  
Tax, Individual - dedct/sbtret  
Extra Copies: MPG

Submit via email: YES  
Requester's email:  
Carbon copy (CC) to:

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#### Pre Topic:

DOA:.....Ley, BB0294 -

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#### Topic:

Transfer certification of business for capital gain deferral and exclusion from WEDC to DOR;  
consolidate the subtractions

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#### Instructions:

See attached. Transfer administration of the certification process from WEDC to DOR and make it on  
-line self registration. Consolidate the subtract modifications in s. 71.05 (6) (b) 24. and 26. into one  
subtraction

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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 12/19/2012			_____			
/P1	mshovers 1/23/2013	scalvin 12/27/2012	rschluet 1/2/2013	_____	srose 1/2/2013		State Tax

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	fknepp 2/14/2013	scalvin 1/24/2013	rschluet 1/24/2013	_____	mbarman 1/24/2013		State Tax
/2		kfollett 2/14/2013	rschluet 2/14/2013	_____	srose 2/14/2013		State Tax

FE Sent For:

<END>

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May Contact:	Drafter: <b>mshovers</b>
Subject: <b>Econ. Development - bus. dev. Tax, Individual - dedct/sbtret</b>	Addl. Drafters: <b>fknepp</b>
	Extra Copies: <b>MPG</b>

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/?	mshovers 12/19/2012			_____			
/P1	mshovers 1/23/2013	scalvin 12/27/2012	rschluet 1/2/2013	_____	srose 1/2/2013		State Tax

12/27/12  
2/1/13

2/1/13

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	fknepp 1/23/2013	scalvin 1/24/2013	rschluet 1/24/2013	_____	mbarman 1/24/2013		State Tax

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<END>

**2013 DRAFTING REQUEST**

**Bill**

Received: 12/11/2012 Received By: mshovers  
Wanted: As time permits Companion to LRB:  
For: Administration-Budget 6-7597 By/Representing: Ley  
May Contact: Drafter: mshovers  
Subject: Econ. Development - bus. dev. Addl. Drafters: fknepp  
Tax, Individual - dedct/sbtrct  
Extra Copies: MPG

Submit via email: YES  
Requester's email:  
Carbon copy (CC) to:

**Pre Topic:**

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**Instructions:**

See attached. Transfer administration of the certification process from WEDC to DOR and make it on  
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subtraction

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<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 12/19/2012						
/P1	fknepp 12/21/2012	scalvin 12/27/2012	1/2/2013		rosse 1/2/2013		State Tax

1/1 MES 1/23/13 1 sac 01/24/2013 12/4/13 JF

FE Sent For:

<END>

**2013 DRAFTING REQUEST**

**Bill**

Received: 12/11/2012 Received By: mshovers  
Wanted: As time permits Same as LRB:  
For: Administration-Budget 6-7597 By/Representing: Ley  
May Contact: Drafter: mshovers  
Subject: Econ. Development - bus. dev. Addl. Drafters: fknepp  
Tax, Individual - dedct/sbtret  
Extra Copies: MPG

Submit via email: YES  
Requester's email:  
Carbon copy (CC) to:

---

**Pre Topic:**

DOA:.....Ley, BB0294 -

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**Topic:**

Transfer certification of business for capital gain deferral and exclusion from WEDC to DOR;  
consolidate the subtractions

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**Instructions:**

See attached. Transfer administration of the certification process from WEDC to DOR and make it on  
-line self registration. Consolidate the subtract modifications in s. 71.05 (6) (b) 24. and 26. into one  
subtraction

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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	/PI SAC 12/27/12	/PI SAC 12/27/12				

FE Sent For:

<END>

## Shovers, Marc

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**From:** Kreye, Joseph  
**Sent:** Friday, December 07, 2012 9:07 AM  
**To:** Shovers, Marc  
**Cc:** Gallagher, Michael; Knepp, Fern  
**Subject:** FW: [Possible SPAM] Statutory Language Drafting Request - BB0294  
**Attachments:** WEDC Transfer to DOR of Capital Gain DeferralExemption Program.docx

**Importance:** Low

Mr. Shovers,

I believe that this will involve you and not me.

Joe

**Joseph Kreye**  
**Senior Legislative Attorney**  
Legislative Reference Bureau  
608 266-2263

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**From:** Hanaman, Cathlene  
**Sent:** Friday, December 07, 2012 8:41 AM  
**To:** Gallagher, Michael; Knepp, Fern; Kreye, Joseph  
**Subject:** FW: [Possible SPAM] Statutory Language Drafting Request - BB0294  
**Importance:** Low

**From:** [Emily.Ley@wisconsin.gov](mailto:Emily.Ley@wisconsin.gov) [<mailto:Emily.Ley@wisconsin.gov>]  
**Sent:** Thursday, December 06, 2012 5:26 PM  
**To:** Hanaman, Cathlene  
**Cc:** Thornton, Scott - DOA; Frederick, Caitlin - DOA; Ley, Emily A - DOA  
**Subject:** [Possible SPAM] Statutory Language Drafting Request - BB0294  
**Importance:** Low

**Biennial Budget:** 2013-15

**Topic:** Transfer Capital Gain Deferrals and Exclusions certification from WEDC to DOR

**Tracking Code:** BB0294

**SBO Team:** TLGED

**SBO Analyst:** Ley, Emily - DOA  
**Phone:** 608-266-7597  
**E-mail:** [Emily.Ley@wisconsin.gov](mailto:Emily.Ley@wisconsin.gov)

**Agency Acronym:** WEDC

**Agency Number:** 192

**Priority:** Medium

**Intent:** Transfer administration of the certification process from WEDC to DOR.  
Modify the certification process from an application to an online, self-registration process.  
Consolidate ss. 71.05(24), Wis. Stats., Long-term capital assets income tax deferral, and 71.05(26),  
Long-term Wisconsin capital assets.  
Make other program modifications. See attached language.

**Attachments:** True

*Please send completed drafts to [statlanguage@wisapps.wi.gov](mailto:statlanguage@wisapps.wi.gov)*

## Wisconsin Economic Development Corporation

### 2013/15 Biennial Budget

#### Transfer Certification of Businesses for Capital Gain Deferral/Exclusion to DOR and other Modifications

The Wisconsin Economic Development Corporation (WEDC), with full support and drafting assistance from the Wisconsin Department of Revenue (DOR), proposes changing the WEDC certification of businesses for the Capital Gain Deferral and Exclusion to a DOR Registration Process.

##### Background

Currently WEDC is responsible under secs. 238.20, 238.145, and 238.146 for the certification of businesses for purposes of the capital gain deferral under sec. 71.05(24) and (26) and the capital gain exclusion under sec. 71.05(25). DOR is responsible for administering taxes, including the capital gain deferral and exclusion. The intent of the certifications is to promote and encourage investment in Wisconsin businesses.

A process to register new businesses seeking investment, rather than certifying these businesses, would streamline processes and encourage investments in Wisconsin businesses. DOR can efficiently register businesses seeking investments and then share the registration list with WEDC and the public. WEDC could also link to the DOR registration list and quickly promote Wisconsin businesses seeking investments.

The deferral in sec. 71.05(24) could promote investment in non-Wisconsin businesses and is confusing as it uses the same term, qualified new business venture, as used for the angel and early seed investment credits but with a different definition.

Sec. 71.05(25) provides for a capital gain exclusion when an investment is held for at least five years in a "qualified Wisconsin business." The investment must be purchased after December 31, 2010 and held for at least five uninterrupted years. Investors in a "qualified Wisconsin business" could be concerned that they may not be able to exclude the entire qualifying gain if they have capital losses in the year the investment is sold. It is also unclear as to whether the exclusion applies to the sale of individual assets of the business or to the investment itself.

The requirement to deposit the gain in a separate account in a financial institution places an added burden on investors.

##### Recommendations for Action

- Change the certification process to an on-line registration process
- Transfer the responsibility for registration of businesses for purposes of sec. 71.05(24), (25), and (26) to the DOR as of January 1, 2014
- Consolidate the two deferral provisions into one provision

- Provide that excluded gain is not limited to net capital gain. This will allow the entire qualifying gain to be excluded
- Clarify that the exclusion is for gain on investments in the business and not for individual assets of the business
- Eliminate the requirement to deposit gain in a financial institution

*DOR instructions  
shows in-text app of  
2011-2013*

Effective date and/or initial applicability

Amendment to section 71.05(24), effective for taxable years beginning or after January 1, 2014. Amendments to section 71.05(25), effective January 1, 2011. Amendments to section 71.05(26), effective for taxable years beginning on or after January 1, 2014. Creation of section 73.03(69), effective January 1, 2014. Amendments to sections 238.145, 238.146, and 238.20, effective for calendar years beginning after December 31, 2013.

*in-text*

*in-text*

The fiscal effect should be minimal. Please see Attachment A for drafting instructions provided by DOR.

Attachment A

**Elimination of "qualified new business venture" capital gain deferral provision**

*Amend 71.05 (24) (b) (intro.)*

(b) For taxable years beginning after December 31, 2010, and before January 1, 2014, 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:

*Amend 238.20 (1) (intro.)*

(1) The corporation shall implement a program to certify qualified new business ventures for purposes of s. 71.05 (24). A business desiring certification shall submit an application to the corporation in each taxable year for which the business desires certification; except no application may be submitted after December 31, 2013. Subject to sub. (2), a business may be certified under this subsection, and may maintain such certification, only if the business is engaged in one of the following:

**Revision of 71.05 (25) and (26) and related provisions**

*Amend 71.05 (25) (title)*

**(25) CAPITAL GAINS EXCLUSION; WISCONSIN-SOURCE ASSETS QUALIFIED WISCONSIN BUSINESS.**

*Repeal and recreate 71.05 (25) (a) 2.*

*I amended it*

2. "Qualifying gain" means a long-term capital gain under the Internal Revenue Code realized from the sale of an investment made after December 31, 2010, and held for at least 5 uninterrupted years in a business that for the year of investment and at least 2 of the 4 subsequent years was a qualified Wisconsin business; except that a qualifying gain may not include any amount for which the claimant claimed a subtraction under sub. (24) (b) or any gain described under sub. (26) (b).

*Renumber 71.05 (25) (a) 3. to 71.05 (25) (a) 1m. and amend as renumbered*

**1m. "Qualified Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.145 or registered with the department under s. 73.03 (69).**

*Repeal 71.05 (25) (a) 4.*

*Renumber 71.05 (25) (b) (intro.) to 71.05 (25) (b) and amend as renumbered*

(b) For taxable years beginning after December 31, 2015, for a ~~Wisconsin capital asset that is purchased~~ an investment in a qualified Wisconsin business made after December 31, 2010, and held for at least 5 uninterrupted years, a claimant may subtract from federal adjusted gross income the lesser of one of the following amounts amount of the claimant's qualifying gain in the year to which the claim relates, to the extent that it is not subtracted under sub. (6) (b) 9. or 9m.:

*Repeal 71.05 (25) (b) 1. and 2.*

*Amend 71.05 (26) (title), (a) 4., and (b) (intro.)*

**(26) INCOME TAX DEFERRAL; LONG-TERM WISCONSIN-CAPITAL ASSETS QUALIFIED WISCONSIN BUSINESS.**

4. "Qualified Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.146 or registered with the department under s. 73.03 (69).

*(intro.)*  
(b) For taxable years beginning after December 31, 2010, and before January 1, 2014, 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:

*Create 71.05 (26) (bm)*

(bm) For taxable years beginning after December 31, 2013, 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. Within 180 days after the sale of the asset that generated the gain, invests all of the gain in a qualified Wisconsin business.
2. After making the investment as described under subd. 1., notifies the department, on a form prepared by the department, that the claimant will not declare the gain on the claimant's income tax return because the claimant has reinvested the capital gain as described under subd. 1. The form shall be sent to the department along with the claimant's income tax return for the year to which the claim relates.

*Amend 71.05 (26) (c), (d), and (f)*

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

(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).

(f) If a claimant claims the a subtraction for a capital gain under this subsection par. (b) or (bm), the gain described under par. (b) 1. may not be used as a qualifying gain under sub. (25).

*Create 73.03 (69)*

(69) (a) To, effective January 1, 2014, implement a program to register businesses for purposes of s. 71.05 (25) and (26). A business shall electronically register with the department in each calendar year for which the business desires registration.

(b) A business may register under this subsection if, in the business's taxable year ending immediately before the date of the business's registration, all of the following are true:

1. The amount of payroll compensation paid by the business in this state is equal to at least 50 percent of the amount of all payroll compensation paid by the business.
2. The value of real and tangible personal property owned or rented and used by the business in this state 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.

(c) The department may adopt rules for the administration of this subsection.

(d) For each calendar year beginning after December 31, 2013, the department shall compile a list of businesses registered under this subsection and shall make the list available to the public at the department's Internet website.

*Amend 238.145 (1) ✓*

**(1)** The corporation shall implement a program to certify businesses for purposes of s. 71.05 (25). A business shall submit an application to the corporation in each calendar year for which the business desires certification; except no application may be submitted in a calendar year beginning after December 31, 2013.

*Amend 238.146 (1)* ✓

**(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; except no application may be submitted in a calendar year beginning after December 31, 2013.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0790/P1  
MES&FFK.....):...

In 12-21-12

SAC

DOA:.....Ley, BB0294 - Transfer certification of business for capital gain deferral and exclusion from WEDC to DOR; consolidate the subtractions

**FOR 2013-2015 BUDGET - NOT READY FOR INTRODUCTION**

do not gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

Under current law, capital gains on certain Wisconsin-sourced capital assets are exempted from taxation. For taxable years beginning after December 31, 2015, an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation (claimant) may subtract from federal adjusted gross income the lesser of the claimant's federal net capital gain as reported on the claimant's federal tax return if, in that year, the claimant had a qualifying gain, or the claimant's qualifying gain.

The capital gains exemption defines "qualifying gain" as the gain realized by the sale of any asset that is purchased after December 31, 2010, held for at least five consecutive years, is a Wisconsin capital asset at the time of purchase and for at least two of the next four years, and treated as a long-term gain under federal law. A "Wisconsin capital asset" is real or tangible personal property that is located in this state and used in a Wisconsin business, or stock or other ownership interest in a Wisconsin business. Currently, a business may apply to the Wisconsin Economic

✓

\* ~~Development Corporation (WEDC)~~ for annual certification. ~~The WEDC~~ 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.

\* ~~This bill transfers the responsibility for registering a business from WEDC to the Department of Revenue (DOR),~~ subject to the business meeting the same conditions related to payroll and the value of the business's real and tangible personal property as is the case under current law. Also under the bill, excluded gain is not limited to net capital gain, and the bill clarifies that the exclusion is for gain on investments in a business and not for individual assets of the business.

\* Also under current law, there ~~is~~ are two income tax deferrals for capital gains that are reinvested in qualified Wisconsin businesses.

\* Under one of the deferrals (long-term deferral), a 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. The requirements include: placing the gain from the original asset in a segregated account in a financial institution; investing all of the proceeds in a qualified new business venture (QNBV) ~~as~~ certified by WEDC, within 180 days after the sale of the original asset that generated the gain; and notifying 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. Under the bill, the long-term deferral may no longer be claimed for taxable years beginning after December 31, 2013.

\* Under the other deferral (Wisconsin assets deferral), 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. The current requirements for the Wisconsin assets deferral are nearly the same as the requirements for the long-term deferral, although the proceeds must be invested in a "qualified Wisconsin business" ~~as~~ certified by WEDC, instead of a QNBV.

\* Under this bill, for taxable years beginning after December 31, 2013, the current requirement that the gain realized from the sale of the applicable long-term asset must be deposited into a segregated account in a financial institution does not apply. This bill transfers the responsibility for registering a business under the Wisconsin assets deferral from WEDC to ~~the Department of Revenue (DOR)~~.

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.

(tr)

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:*

1 SECTION 1. 71.05 (24) (b) (intro.) of the statutes is amended to read:

2 71.05 (24) (b) (intro.) For taxable years beginning after December 31, 2010, and  
3 before January 1, 2014, a claimant may subtract from federal adjusted gross income  
4 any amount, up to \$10,000,000, of a long-term capital gain if the claimant does all  
5 of the following:

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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

\*\*\*NOTE: The init. app/eff. date instructions from DOR say that the amendment of s. 71.05 (24) should be "effective for taxable years beginning on or after January 1, 2014", which is inconsistent with the drafting instructions for the text. I implemented the drafting instructions in the text, which in effect creates an in-text sunset provision, and did not treat s. 71.05 (24) in the initial applicability provision. Is this OK?

6 SECTION 2. 71.05 (25) (title) of the statutes is amended to read:

7 71.05 (25) (title) CAPITAL GAINS EXCLUSION; WISCONSIN SOURCE ASSETS QUALIFIED  
8 WISCONSIN BUSINESS.

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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

9 SECTION 3. 71.05 (25) (a) 2. of the statutes is amended to read:

10 71.05 (25) (a) 2. "Qualifying gain" means the a long-term capital gain under  
11 the Internal Revenue Code realized from the sale of any asset which is a Wisconsin  
12 capital asset in the year it is purchased by the claimant and for at least 2 of the  
13 subsequent 4 years; that is purchased an investment made after December 31, 2010;  
14 that is, and held for at least 5 uninterrupted years; and that is treated as a long-term  
15 gain under the Internal Revenue Code in a business that for the year of investment  
16 and at least 2 of the 4 subsequent years was a qualified Wisconsin business; except

1 that a qualifying gain may not include any amount for which the claimant claimed  
2 a subtraction under sub. (24) (b) or any gain described under sub. (26) (b) 1.

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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

3 **SECTION 4.** 71.05 (25) (a) 3. of the statutes is renumbered 71.05 (25) (a) 1s. and  
4 amended to read:

5 71.05 (25) (a) 1s. "Qualified Wisconsin business" means a business certified by  
6 the Wisconsin Economic Development Corporation under s. 238.145 or registered  
7 with the department under s. 73.03 (69).

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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

8 **SECTION 5.** 71.05 (25) (a) 4. of the statutes is repealed.

9 **SECTION 6.** 71.05 (25) (b) (intro.) of the statutes is renumbered 71.05 (25) (b)  
10 and amended to read:

11 71.05 (25) (b) (intro.) For taxable years beginning after December 31, 2015, for  
12 a Wisconsin capital asset that is purchased an investment in a qualified Wisconsin  
13 business made after December 31, 2010, and held for at least 5 uninterrupted years,  
14 a claimant may subtract from federal adjusted gross income the lesser of one of the  
15 following amounts amount of the claimant's qualifying gain in the year to which the  
16 claim relates, to the extent that it is not subtracted under sub. (6) (b) 9. or 9m.:

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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

17 **SECTION 7.** 71.05 (25) (b) 1. of the statutes is repealed.

18 **SECTION 8.** 71.05 (25) (b) 2. of the statutes is repealed.

19 **SECTION 9.** 71.05 (26) (title) of the statutes is amended to read:

20 71.05 (26) (title) INCOME TAX DEFERRAL; LONG-TERM WISCONSIN CAPITAL ASSETS  
21 QUALIFIED WISCONSIN BUSINESS.

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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

1                    <sup>X</sup>  
**SECTION 10.** 71.05 (26) (a) 4. of the statutes is amended to read:

2                    71.05 (26) (a) 4. “Qualified Wisconsin business” means a business certified by  
3                    the Wisconsin Economic Development Corporation under s. 238.146 or registered  
4                    with the department under s. 73.03 (69).

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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

5                    **SECTION 11.** 71.05 (26) (b) (intro.) of the statutes is amended to read:

6                    71.05 (26) (b) (intro.) For taxable years beginning after December 31, 2010, and  
7                    before January 1, 2014, a claimant may subtract from federal adjusted gross income  
8                    any amount of a long-term capital gain if the claimant does all of the following:

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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

9                    **SECTION 12.** 71.05 (26) (bm) of the statutes is created to read:

10                   71.05 (26) (bm) For taxable years beginning after December 31, 2013, a  
11                   claimant may subtract from federal adjusted gross income any amount of a  
12                   long-term capital gain if the claimant does all of the following:

13                   1. Within 180 days after the sale of the asset that generated the gain, invests  
14                   all of the gain in a qualified Wisconsin business.

15                   2. After making the investment as described under subd. 1., <sup>✓</sup> notifies the  
16                   department, on a form prepared by the department, that the claimant will not  
17                   declare the gain on the claimant’s income tax return because the claimant has  
18                   reinvested the capital gain as described under subd. 1. <sup>✓</sup> The form shall be sent to the  
19                   department along with the claimant’s income tax return for the year to which the  
20                   claim relates.

21                   <sup>X</sup>  
**SECTION 13.** 71.05 (26) (c) of the statutes is amended to read:

22                   71.05 (26) (c) The basis of the investment described in par. (b) 2. shall be  
23                   calculated by subtracting the gain described in par. (b) 1. from the amount of the

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

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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

4 **SECTION 14. 71.05 (26) (d) of the statutes is amended to read:**

5 71.05 (26) (d) If a claimant defers the payment of income taxes on a capital gain  
6 under this subsection, the claimant may not use the gain described under ~~par. (b) 1.~~  
7 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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

8 **SECTION 15. 71.05 (26) (f) of the statutes is amended to read:**

9 71.05 (26) (f) If a claimant claims ~~the a subtraction for a capital gain under this~~  
10 ~~subsection par. (b) or (bm),~~ the gain described under ~~par. (b) 1.~~ may not be used as  
11 a qualifying gain under sub. (25).

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; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; s. 13.92 (1) (bm) 2., (2) (i).

12 **SECTION 16. 73.03 (69) of the statutes is created to read:**

13 73.03 (69) (a) To, effective on January 1, 2014, implement a program to register  
14 businesses for purposes of s. 71.05 (25) and (26). A business shall register  
15 electronically with the department each year for which the business desires  
16 registration.

17 (b) A business may register under this subsection if, in the business's taxable  
18 year ending immediately before the date of the businesses registration, all of the  
19 following apply:

20 1. The amount of payroll compensation aid by the business in this state is equal  
21 to at least 50 percent of the amount of all payroll compensation paid by the business.

1           2. The value of real and tangible personal property owned or rented and used  
2 by the business in this state is equal to at least 50 percent of the value of all real and  
3 tangible personal property owned or rented and used by the business.

4           (c) The department may adopt rules for the administration of this subsection.

5           (d) For each year beginning after December 31, 2013, the department shall  
6 compile a list of businesses registered under this subsection and shall make the list  
available to the public at the department's Internet website.

Ins 7-7 → 7

8           **SECTION 9337. Initial applicability; Revenue.**

9           (1) CAPITAL GAINS DEFERRALS, EXCLUSIONS. (a) The treatment of section 71.05  
10 (25) (title), (a) ~~1, 2, 3, and 4~~ 2., 3., and 4., and (b) (intro.), 1., and 2. of the statutes first applies,  
11 retroactively, to taxable years beginning after December 31, 2010.

\*\*\*\*NOTE: The instructions from DOR state that the treatment of s. 71.05 (25) should "take effect" on January 1, 2011; do you really want a retroactive initial applicability for this provision? How would it affect people who have claimed the deferral for a "Wisconsin capital asset", as defined in par. (a) 4., which is repealed? Would they have to amend their returns based on the new definition of "qualified Wisconsin business asset" and "qualified gain"?

12           (b) The treatment of section 71.05 (26) (title), (a) 4., (b) (intro.), (bm), (c), (d),  
13 and (f) of the statutes first applies to taxable years beginning after December 31,  
14 2013.

15           (END)

I don't see a (25)(a) Im. treated in the draft. Change the int. app or create the unit?  
↓

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0790/P1ins  
FFK:.....

INS. 7-7

1                    <sup>x</sup>  
SECTION 1. 238.145 (1) of the statutes is amended to read:

2                    238.145 (1) The corporation shall implement a program to certify businesses  
3 for purposes of s. 71.05 (25). A business shall submit an application to the  
4 corporation in each calendar year for which the business desires certification; except  
5 that a business may not submit an application after December 31, 2013.

\*\*\*\*NOTE: This prohibits the submission of an application to WEDC after December 31, 2013 but continues to require WEDC to implement a program to certify businesses for purposes of s. 71.05 (25). Is this consistent with your intent? If this is a permanent change, you may want to consider repealing s. 238.145 as of a specific delayed effective date. This note also applies to ss. 238.146 (1) and 238.20 (1) (intro.).

History: 2011 a. 32.

6  
7                    <sup>x</sup>  
SECTION 2. 238.146 (1) of the statutes is amended to read:

8                    238.146 (1) The corporation shall implement a program to certify businesses  
9 for purposes of s. 71.05 (26). A business shall submit an application to the  
10 corporation in each calendar year for which the business desires certification; except  
11 that a business may not submit an application after December 31, 2013.

History: 2011 a. 32.

12                    <sup>x</sup>  
SECTION 3. 238.20 (1) (intro.) of the statutes is amended to read:

13                    238.20 (1) (intro.) The corporation shall implement a program to certify  
14 qualified new business ventures for purposes of s. 71.05 (24). A business desiring  
15 certification shall submit an application to the corporation in each taxable year for  
16 which the business desires certification; except that a business may not submit an  
17 application after December 31, 2013. Subject to sub. (2), a business may be certified  
18 under this subsection, and may maintain such certification, only if the business is  
19 engaged in one of the following:

History: 2009 a. 28 s. 3073; 2009 a. 276 s. 83; 2011 a. 32 s. 3371; Stats. 2011 s. 238.20.

End Ins 7-7

## Knepp, Fern

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**From:** Ley, Emily A - DOA <Emily.Ley@wisconsin.gov>  
**Sent:** Wednesday, January 23, 2013 1:10 PM  
**To:** Shovers, Marc; Knepp, Fern  
**Subject:** DOR feedback on 0790/P1 Transfer certification of capital gain deferral and exclusion to DOR

Marc and Fern,

I asked DOR to provide feedback on the draft of 0790/P1, Transfer certification of business for capital gain deferral and exclusion from WEDC to DOR; consolidate the subtractions. Please see their responses below. Let me know if you have questions or if a conference call with DOR would be helpful. Thank you,

Emily

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**From:** Wagner, Michael W - DOR  
**Sent:** Wednesday, January 23, 2013 12:06 PM  
**To:** Ley, Emily A - DOA  
**Subject:** RE: A final stat lang draft for your review

Emily,

Responses to the notes are as follows. We also have a couple of other items that I have included at the end.

\*\*\*\*NOTE: The init. app/eff. date instructions from DOR say that the amendment of s. 71.05 (24) should be "effective for taxable years beginning on or after January 1, 2014", which is inconsistent with the drafting instructions for the text. I implemented the drafting instructions in the text, which in effect creates an in-text sunset provision, and did not treat s. 71.05 (24) in the initial applicability provision. Is this OK?

Yes, the drafter understood our intention correctly.

\*\*\*\*NOTE: This prohibits the submission of an application to WEDC after December 31, 2013 but continues to require WEDC to implement a program to certify businesses for purposes of s. 71.05 (25). Is this consistent with your intent? If this is a permanent change, you may want to consider repealing s. 238.145 as of a specific delayed effective date. This note also applies to ss. 238.146 (1) and 238.20 (1) (intro.).

It's a permanent change. We agree that 235.145, 238.146, and 238.20 can be repealed with an effective date of 1/1/14.

\*\*\*\*NOTE: The instructions from DOR state that the treatment of s. 71.05 (25) should "take effect" on January 1, 2011; do you really want a retroactive initial applicability for this provision? How would it affect people who have claimed the deferral for a "Wisconsin capital asset", as defined in par. (a) 4., which is repealed? Would they have to amend their returns based on the new definition of "qualified Wisconsin business asset" and "qualified gain"?

We want retroactive initial applicability. This wouldn't involve amending returns since any qualifying gain would first be computed in tax year 2016. This provision is intended to clarify that the exclusion is for gain on investments in the business and not for individual assets of the business.

Other suggestions:

Page 6, line 8, insert "calendar" before year. (These are calendar-year investors and this is consistent with the program's current operation).

Not needed  
see 0990.01 (49)

Page 6, line 13, insert after 1. "The business has at least 2 full-time employees." (DOR has recently received questions concerning the payroll requirement. This change provides clarification and is consistent with WEDC's current standards.)

Page 6, line 19, insert "calendar" before year. *Not needed*

Page 6, line 13, replace the word "aid" with "paid"

Please let me know if you need anything else.

-Mike

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