State of Wisconsin
2005 - 2006 LEGISLATURE

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ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2005 ASSEMBLY BILL 910

February 7, 2006 – Offered by Representative WIECKERT.

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

Analysis by the Legislative Reference Bureau

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

Under this substitute amendment, 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 a percentage of the gain realized from the sale of any asset held more than one year (original asset), other than gain realized from the sale of an asset that was obtained in a tax–free exchange of capital assets or the sale of property purchased as the result of an involuntary conversion, if the claimant completes a number of requirements. The allowable percentage of gain that may be deferred under the substitute amendment starts at 4 percent in taxable year 2008, and increases by another 4 percent each year until it reaches 40 percent in taxable year 2017.

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

The substitute amendment also specifies that the basis of the replacement asset shall be its cost minus the gain generated by the sale of the original asset. If a claimant defers the payment of income taxes on the gain generated by the sale of the original asset, the claimant may not use that gain to net the claimant's gains and losses as the claimant could do if the claimant did not elect to defer the payment of taxes on the gain.

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

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

71.05 **(24)** INCOME TAX DEFERRAL; LONG–TERM 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 asset held more than one year, other than gain realized from any of the following:

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

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

(b) Subject to par. (e), 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. Immediately deposits the gain into a segregated account in a financial institution.

2. Within 90 days after the sale of the asset that generated the gain, purchases another capital asset of equal or greater value using all of the proceeds in the account described under subd. 1.

3. After purchasing a capital asset as described under subd. 2., immediately 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.

(c) The basis of the purchased capital asset described in par. (b) 2. shall be calculated by subtracting the gain described in par. (b) 1. from the cost of the purchased asset 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) 1. For taxable years beginning after December 31, 2007, and before January 1, 2009, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 4 percent.

2. For taxable years beginning after December 31, 2008, and before January 1, 2010, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 8 percent.

3. For taxable years beginning after December 31, 2009, and before January 1, 2011, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 12 percent.

4. For taxable years beginning after December 31, 2010, and before January 1, 2012, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 16 percent.

5. For taxable years beginning after December 31, 2011, and before January 1, 2013, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 20 percent.

6. For taxable years beginning after December 31, 2012, and before January 1, 2014, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 24 percent.

7. For taxable years beginning after December 31, 2013, and before January 1, 2015, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 28 percent.

8. For taxable years beginning after December 31, 2014, and before January 1, 2016, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 32 percent.

9. For taxable years beginning after December 31, 2015, and before January 1, 2017, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 36 percent.

10. For taxable years beginning after December 31, 2016, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 40 percent.

(END)