

2001 DRAFTING REQUEST

Bill

Received: 02/22/2001

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Joseph Leibham (608) 266-0656

By/Representing: dan

This file may be shown to any legislator: NO

Drafter: shoveme

May Contact:

Addl. Drafters:

Subject: Tax - individual income

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Capital loss limit

Instructions:

See Attached

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>
/1	shoveme 03/13/2001	jdyer 03/14/2001	martykr 03/14/2001	_____	lrb_docadmin 03/14/2001	lrb_docadminState 03/26/2001	Tax

FE Sent For:

<END>

→ At
Intro.

2001 DRAFTING REQUEST

Bill

Received: 02/22/2001

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Joseph Leibham (608) 266-0656

By/Representing: dan

This file may be shown to any legislator: NO

Drafter: shoveme

May Contact:

Addl. Drafters:

Subject: Tax - individual income

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Capital loss limit

Instructions:

See Attached

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>
/1	shoveme 03/13/2001	jdye 03/14/2001	martykr 03/14/2001	_____	lrb_docadmin 03/14/2001		State Tax

FE Sent For:

<END>

2001 DRAFTING REQUEST

Bill

Received: 02/22/2001

Received By: jkreya

Wanted: As time permits

Identical to LRB:

For: Joseph Leibham (608) 266-0656

By/Representing: dan

This file may be shown to any legislator: NO

Drafter: shoveme

May Contact:

Alt. Drafters:

Subject: Tax - individual income

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Capital loss limit

Instructions:

See Attached

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>
1?	shoveme	1 3/4 jld	1 3/4 sm	1 3/4 kb	1 3/4 sm		
11 MES 3/12/01							

FE Sent For:

<END>



Daniel K. Lindstedt, LA
Office of State Representative Joseph K. Leibham

Memorandum

DATE: 22 February 2001

TO: Joe Kreye

FM: Dan Lindstedt

RE: Drafting of federalizing Wisconsin Capital Loss Limits

Enclosed is a summary of what Representative Leibham would like drafted. We have been working with Tom Ourada of DOR. The Summary of Recommendation is on behalf of Rep. Leibham.

If you could get things started with this draft and ask Mark Shovers to contact me when he is in receipt of this information at 266-0656.

Thank you in advance for you assistance.

####

June 8, 2000

TITLE: Individual Income Tax - Federalize the Capital Loss Limit

SUMMARY OF RECOMMENDATION:

Beginning in TY 2002, repeal the current \$500 limit on capital losses. In its place, the \$3,000 federal limit would apply. Also, include a transitional provision that would allow taxpayers with existing federal/state differences in capital loss carryovers attributable to the \$500 state limit to amortize the difference in equal installments over a 5-year period. Provide that if the amount to be amortized is equal to or less than \$500, it can be claimed in one year. Fiscal effect would be a loss of \$9.1 million GPR-revenue FY03 to 07 and a loss of \$7.7 million each fiscal year thereafter.

DESCRIPTION OF CURRENT LAW AND PROBLEM

Under current law, the amount of capital losses that can be used to offset ordinary income in determining taxable income is limited to \$500. Disallowed amounts can be carried forward and used to offset income in subsequent years. Under present federal law, capital losses are deductible up to a maximum of \$3,000 (\$1,500 for a married taxpayer filing separately). Net losses in excess of the \$3,000 limit are carried over to following tax years. Taxpayers with capital losses in excess of \$500 currently must make an adjustment for the additional amount deducted for federal tax purposes on their Wisconsin returns.

For persons with large capital losses, the \$500 deduction limit makes it very difficult to recover net capital losses for state tax purposes. In addition, the state income tax calculation is complicated and more prone to error because taxpayers have to make adjustments to their federal adjusted gross income to determine their Wisconsin adjusted gross income for the duration of the longer state loss carryover period. In addition to increasing the chance for error on returns, these adjustments increase the time spent on audits of returns with capital losses.

RECOMMENDATION FOR ACTION

Repeal the \$500 capital loss limit so that the federal \$3,000 limit would apply.

To completely federalize the state treatment of capital losses, it is also necessary to allow taxpayers to "catch up" on prior years federal/state differences in capital loss. Some transition rules allowing amortization of these differences in capital loss carryovers for as short a period as possible (say 5 years) will be needed. The amortization should be allowed in the form of a separate subtraction modification for the federal/state differences in capital loss carryover. Some *de minimus* rule should be provided, so that if the total amount to be amortized was less than \$500, the entire amount would be allowed in one year.

ADMINISTRATIVE IMPACT

Making the limits the same as the federal amounts would reduce taxpayer errors and reduce the number of audit adjustments.

FISCAL IMPACT

Based on the 1997 Tax Model, it is estimated that increasing the capital loss limit from \$500 to \$3,000 would decrease state tax revenues by \$7.7 million annually.

In the transition period, the amortization over 5 years of capital loss carryovers that result from the different loss limits will cost an additional \$1.4 million a year for 5 years.

Thus, the combined fiscal effect will be \$9.1 million per year for the first 5 years, and \$7.7 million per year after that.

DRAFTING INSTRUCTIONS

1. Repeal s. 71.05(10)(c) to eliminate the \$500 state limit on the net capital loss deduction.
2. Create a paragraph under s. 71.05 for transitional language that would allow taxpayers with existing federal/state differences in capital loss carryovers attributable to the \$500 state limit to amortize the difference in equal installments over a 5-year period. Provide for a *de minimus* amount of \$500; if the amount to be amortized is equal to or less than this amount, it will be allowed to be claimed in one year.

EFFECTIVE DATE OR INITIAL APPLICABILITY

The repeal of the \$500 state capital loss limit should be effective for tax years beginning after December 31, 2001. Amortization should apply to tax years 2001 through 2005 for federal/state differences resulting from the difference between state and federal loss limits in prior years.

PERSON TO CONTACT: Pam Walgren, 266-7817

PW:skr
t:\bud\pw\federalize.bud.doc



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2623/1

MES.....
JL

2001 BILL

gen

1 AN ACT ...; relating to: federalizing the individual income tax capital loss limit.

Analysis by the Legislative Reference Bureau

Under current law, the amount of capital losses that can be used to offset ordinary income in determining taxable income is \$500^v each year. Disallowed amounts may be carried forward and used to offset income in subsequent years. Under current federal law, capital losses are deductible up to a limit of \$3,000 each year. Net losses in excess of the \$3,000^v limit may be carried over to following tax years.

This bill federalizes the treatment of individual income tax capital losses that can be used to offset ordinary income by increasing the current \$500 limit to \$3,000^v. In addition, the bill authorizes taxpayers who would have carried forward to subsequent years losses in excess of \$500 may, notwithstanding the \$3,000 annual limit, amortize the total amount of their losses over a period of ~~3~~^{five} years. If the loss carried forward is \$500 or less, however, the entire amount of the loss may be subtracted from federal adjusted gross income in one year.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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

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

BILL

1 SECTION 1. 71.05 (10) (c) of the statutes is amended to read:

2 71.05 (10) (c) The amount required so that the net capital loss, after netting
3 capital gains and capital losses to arrive at total capital gain or loss, is offset against
4 ordinary income only to the extent of \$500. Losses in excess of \$500 shall be carried
5 forward to the next taxable year and offset against ordinary income up to the limit
6 under this paragraph. Losses shall be used in the order in which they accrue. No
7 subtraction may be made under this paragraph for taxable years that begin after
8 December 31, 2001.

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.

9 SECTION 2. 71.05 (10) (ce) of the statutes is created to read:

10 71.05 (10) (ce) Subject to par. (cg), for taxable years beginning after December
11 31, 2001, the amount required so that the net capital loss, after netting capital gains
12 and capital losses to arrive at total capital gain or loss, is offset against ordinary
13 income only to the extent of \$3,000. Losses in excess of \$3,000 shall be carried
14 forward to the next taxable year and offset against ordinary income up to the limit
15 under this paragraph. Losses shall be used in the order in which they accrue.

16 SECTION 3. 71.05 (10) (cg) of the statutes is created to read:

17 71.05 (10) (cg) Notwithstanding the limit under par. (ce), for taxable years
18 beginning after December 31, 2001, if a taxpayer has a loss that would have carried
19 forward under par. (c), the amount required so that the net capital loss, after netting
20 capital gains and capital losses to arrive at total capital gain or loss, is offset against
21 ordinary income, in each year for the next succeeding ⁵ ~~five~~ fiscal years, only to the
22 extent of one-fifth of the total loss that would have carried forward, except that if the

BILL

1 loss that would have carried forward under par. (c) is \$500 or less, the entire loss may
2 be subtracted in the next succeeding fiscal year.

3 (END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

March 14, 2001

MEMORANDUM

To: Representative Leibham

From: Marc E. Shovers, Senior Legislative Attorney

Re: LRB-2623 Capital loss limit

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0129 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-8522

REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

May 24, 2001

MEMORANDUM

To: Representative Leibham

From: Marc E. Shovers, Sr. Legislative Attorney, (608) 266-0129

Subject: Technical Memorandum to **2001 AB 381** (LRB 2623/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. The department raises a number of points on which I would like to comment. Two of DOR's five comments are well-taken, but I'm not sure I agree with DOR's other points.

The first point claims that "s. 71.05 (10) (c) should refer to an addition as well as a subtraction from federal adjusted gross income (FAGI) . . ." I believe that DOR is basically correct, except that the amended language should refer to "No calculation" instead of "No subtraction" as s. 71.05 (10) (intro.) already refers to an addition or subtraction from FAGI.

The second point claims that s. 71.05 (10) (ce) should make a provision for married separate filers. I'm not sure if this is correct. Created s. 71.05 (10) (ce) is based on the current law provision, s. 71.05 (10) (c), which does *not* make any provision for married separate filers.

The third point states that s. 71.05 (10) (c) and (ce) should be clarified to provide an offset against gains from the sales or exchanges of capital assets first, and then against ordinary income. Again, created s. 71.05 (10) (ce) is based on the current law provision, s. 71.05 (10) (c), which does *not* make any provision for an offset against gains from the sales or exchanges of capital assets. The current law provision has been in existence for years and DOR has never raised this point before. I'm not sure how DOR currently addresses this problem, but the change the department suggests could certainly be incorporated into the bill if it has caused DOR a problem in the past or is currently a problem.

The fourth point deals with the use of the term "fiscal years." The department is correct; these references should be changed to "taxable years."

The fifth point deals with funding costs. This is purely a policy decision for you to decide, but I've never seen a bill contain the funding changes requested by DOR.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

May 24, 2001

TO: Marc Shovers
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on AB 381 - Federalizing the Individual Income Tax Capital Loss Limit

The Department wishes to make several comments regarding AB 381:

1. The language in sec. 71.05 (10)(c) should refer to an addition to as well as a subtraction from federal adjusted gross income (FAGI) since the language currently results in either an addition or a subtraction. For example, in the case of a \$1,000 capital loss for federal tax purposes, the taxpayer must make an addition to FAGI of \$500 to arrive at Wisconsin income.
2. Section 71.05 (10)(ce) allows filers to use up to \$3,000 in capital losses to offset ordinary income each year and to carryover losses in excess of \$3,000. To accurately federalize the treatment of capital losses, the language should include provisions for married separate filers, who may use losses of up to \$1,500 and carryover losses in excess of this amount at the federal level.
3. Federal treatment provides that carryover losses are first offset against gains from the sales or exchanges of capital assets and then against ordinary income. Thus, sections 71.05 (10)(c) and 71.05 (10)(ce) should be clarified to provide the offset against gains from the sales or exchanges of capital assets first.
4. References in sec. 71.05 (10)(cg) referring to fiscal years should be changed to refer to taxable years.
5. The proposed legislation makes no provision for the funding of the costs involved in administering the activities required. If the author wishes to provide funding, appropriation language could be developed and costs allocated in the following manner:

	<u>Chapter 20</u>	<u>Amount</u>	<u>FTE</u>
annual	s. 20.566 (1) (a)	\$ 10,000	

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

DC:MK