2003 SENATE BILL 422

February 3, 2004 − Introduced by Senators KANAVAS, WELCH, REYNOLDS, LEIBHAM and A. LASEE, cosponsored by Representatives WIECKERT, GARD, NISCHKE, STONE, OWENS, PETTIS, KRAWCZYK, NASS, GRONEMUS, LOEFFELHOLZ, HINES, MUSSER, OTT, KREIBICH, LADWIG, BIES, FREESE, SERATTI, GUNDERSON and VRAKAS. Referred to Joint Survey Committee on Tax Exemptions.

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 bill, 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 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.

Under the bill, 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 bill 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.

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:

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) 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).

SECTION 2. Initial applicability.

(1) This act first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31, this act first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

(END)