

2003 DRAFTING REQUEST

Bill

Received: **01/15/2004**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **Jeremey**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Tax (indiv) - deduct/subtract**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Deferral of recognition of gains from the sale of certain capital assets

Instructions:

Companion to -2572/2

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 01/15/2004	jdyer 01/16/2004		_____			State Tax
/1			jfrantze 01/16/2004	_____	lemery 01/16/2004	mbarman 01/20/2004	

FE Sent For:

<END>

↳ At
Intro.

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1? mshovers

1/16 jld 2/1/16

Self
1/16

11 MES 1/15/04

FE Sent For:

<END>

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman (or Lynn E. in his absence)

(Request Made By: MES) (Date: 1/15/04)



Please transfer the drafting file for

2001 LRB _____ to the drafting file

for 2003 LRB _____

The final version of the 2001 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2001 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2001 draft was incorporated into a 2003 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the 2003 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

— OR —

Please copy the drafting file for

2003 LRB - 2572 / 2 (include the version) and place it in the

drafting file for 2003 LRB - 4048

For research purposes, because the original 2003 draft was incorporated into another 2003 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2003 drafting file. This request form will be inserted into the "guts" of the new 2003 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

stays
RM MR

2003 BILL

WANTED
Fri 1/16

D-NOTE

gen

1 AN ACT to create 71.05 (24) of the statutes; relating to: creating a procedure for
2 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

BILL

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:

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

2 71.05 (24) INCOME TAX DEFERRAL; LONG-TERM CAPITAL ASSETS. (a) In this
3 subsection:

4 1. "Claimant" means an individual; an individual partner or member of a
5 partnership, limited liability company, or limited liability partnership; or an
6 individual shareholder of a tax-option corporation.

7 2. "Financial institution" has the meaning given in s. 69.30 (1) (b).

8 3. "Long-term capital gain" means the gain realized from the sale of any asset
9 held more than one year, other than gain realized from any of the following:

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

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

13 (b) A claimant may subtract from federal adjusted gross income any amount
14 of a long-term capital gain if the claimant does all of the following:

15 1. Immediately deposits the gain into a segregated account in a financial
16 institution.

BILL

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

4 3. After purchasing a capital asset as described under subd. 2., immediately
5 notifies the department, on a form prepared by the department, that the claimant
6 will not declare on the claimant's income tax return the gain described under subd.
7 1. because the claimant has reinvested the capital gain as described under subd. 2.

8 (c) The basis of the purchased capital asset described in par. (b) 2. shall be
9 calculated by subtracting the gain described in par. (b) 1. from the cost of the
10 purchased asset described in par. (b) 2.

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

SECTION 2. Initial applicability.

14 (1) This act first applies to taxable years beginning on January 1 of the year
15 in which this subsection takes effect, except that if this subsection takes effect after
16 July 31, this act first applies to taxable years beginning on January 1 of the year
17 following the year in which this subsection takes effect.
18

19 (END)

D-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

1
LRB-4048/7dn

MES^{sw}:.....
jld

Senator Kanavas:

As I discussed briefly with Jeremy of your staff, this bill is drafted rather broadly. Under the bill, for example, a taxpayer could sell a stock and reinvest the gain in a capital asset, such as an automobile for personal use, and claim the deferral. Also, if the bill becomes law, it may cause some complex record^o keeping requirements for taxpayers because the federal treatment and Wisconsin treatment of the basis of certain assets would be different, leading to the use of separate depreciation schedules for federal and Wisconsin tax purposes. You may wish to discuss this bill with the Department of Revenue. ✓ *

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4048/1dn
MES:jld:jf

January 16, 2004

Senator Kanavas:

As I discussed briefly with Jeremy of your staff, this bill is drafted rather broadly. Under the bill, for example, a taxpayer could sell a stock and reinvest the gain in a capital asset, such as an automobile for personal use, and claim the deferral. Also, if the bill becomes law, it may cause some complex record-keeping requirements for taxpayers because the federal treatment and Wisconsin treatment of the basis of certain assets would be different, leading to the use of separate depreciation schedules for federal and Wisconsin tax purposes. You may wish to discuss this bill with the Department of Revenue.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us

Barman, Mike

From: Shepherd, Jeremy
Sent: Friday, January 16, 2004 10:58 AM
To: LRB.Legal
Subject: Draft review: LRB 03-4048/1 Topic: Deferral of recognition of gains from the sale of certain capital assets

It has been requested by <Shepherd, Jeremy> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-4048/1 Topic: Deferral of recognition of gains from the sale of certain capital assets



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

1 EAST MAIN, SUITE 200
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 264-6948

STEPHEN R. MILLER
CHIEF

February 13, 2004

MEMORANDUM

To: Senator Kanavas

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

Subject: Technical Memorandum to **SB-422** (LRB 03-4048/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. I believe that the issues raised by the Department of Revenue are correct. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

February 11, 2004

TO: Marc Shovers
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on SB 422: Deferral of Recognition of Gains from Sale of Certain Capital Assets

There does not appear to be any limitation on the type of asset that can be purchased with the proceeds of the sale of the original asset. For example, if a person sells a stock and reinvests the gain by purchasing a new car for personal use, it appears that he or she would qualify for the deferral.

It appears the deferral of gain applies to capital assets as well as business assets, which will add a great deal of complexity and record keeping for the taxpayer. Under federal law, the gain on the sale of an asset used in a trade or business may be treated as ordinary income, capital gain income, or it may offset losses on other assets used in a trade or business. If the gain is deferred due to the purchase of another depreciable asset used in a trade or business, the taxpayer will have a different basis and therefore separate depreciation schedules for federal and Wisconsin tax purposes. When this asset is sold in the future, the taxpayer will have to determine the portion of the gain that was previously treated as ordinary income or used to offset losses as this portion would not qualify for the 60% capital gain exclusion.

Modifications would be needed in sec. 71.05 to adjust for the difference in depreciation and taxable gain due to the federal and Wisconsin difference in basis of assets.

In order to ease the administration of the bill, a definite time should be specified in proposed sec. 71.05 (24)(b)1 and 3 instead of "immediately".

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