State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -

PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Added To File: 01/15/2004 (Per: MES)

☞ The 2003 drafting file for LRB 03-2572/2

has been copied/added to the 2003 drafting file for

LRB 03-4048

☞ The attached 2003 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

LRB-2572

2003 DRAFTING REQUEST

Bill

Received: **04/07/2003**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Steve Wieckert (608) 266-3070**

By/Representing: **Rep. Wieckert**

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

Drafter: **mshovers**

May Contact: **Bill Ford**

Addl. Drafters:

Subject: **Tax (indiv) - misc.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Wieckert@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Deferal of recognition of gains from sale of certain capital assets

Instructions:

See Attached.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers 07/03/2003	wjackson 07/24/2003		_______ _______			State Tax
/1			pgreensl 07/25/2003	_______ _______	amentkow 07/25/2003		State Tax
/2	mshovers	wjackson	rschluet	_______	lemery	lnorthro	

LRB-2572

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	12/02/2003	12/02/2003	12/02/2003	_______	12/02/2003	01/14/2004	

FE Sent For: **10/31/2003.**

<END>

LRB-2572

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---

Instructions:

See Attached.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers 07/03/2003	wjackson 07/24/2003		_______ _______		req by Angela in Wieckert's office	State Tax
/1			pgreensl 07/25/2003	_______ _______	amentkow 07/25/2003		State Tax
/2	mshovers	wjackson	rschluet	_______	lemery		

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
	12/02/2003	12/02/2003	12/02/2003	_______	12/02/2003		

FE Sent For: **10/31/2003.**

<END>

LRB-2572

07/25/2003 02:15:44 PM
Page 1

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/?	mshovers 07/03/2003	wjackson 07/24/2003		_______ _______			State Tax
/1		/2 wlj 12/2	pgreensl 07/25/2003	12/3	amentkow 07/25/2003		

/2 MES 12/2/03

LRB-2572

FE Sent For:

10/31/2003
("/1")

Requested By Scott

<END>

LRB-2572

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Bill

Received: **04/07/2003**

Wanted: **As time permits**

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

May Contact: **Bill Ford**

Subject: **Tax (indiv) - misc.**

Received By: **mshovers**

Identical to LRB:

By/Representing: **Rep. Wieckert**

Drafter: **mshovers**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Wieckert@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Deferal of recognition of gains from sale of certain capital assets

Instructions:

See Attached.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mshovers	/1 wlj 7/24	7/25	7/25			
/1 MES 7/3/03							

FE Sent For:

P8

<END>

WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE STEVE WIECKERT

FROM: William Ford, Senior Staff Attorney WF

RE: Deferral of Income Tax on Gain From the Sale of a Capital Asset

DATE: March 7, 2003

This memorandum provides a preliminary description of your proposal ("the proposal") to allow persons who sell a capital asset to defer the gain on the sale for state income tax purposes if the person purchases another capital asset of equal or greater value within 90 days of the sale. The description of your proposal in this memorandum is preliminary because many of the details have not yet been considered by you and, therefore, need your review and approval.

The remainder of this memorandum first briefly describes the federal income tax treatment of capital gains and then describes the current state income tax treatment of capital gains. (Both federal law and state law give preferential income tax treatment to income from the sale of a capital asset, but these treatments differ in many respects.) The memorandum then describes your proposal.

FEDERAL INCOME TAX TREATMENT OF CAPITAL GAINS

Under federal (and Wisconsin) law, income from the sale of a "capital asset" is taxed differently than income from other sources. The term "capital asset" means property, including stocks, bonds, and real estate but excluding: property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business; inventoriable assets; notes or accounts receivable acquired in the ordinary course of trade or business for services rendered or from the sale of stock in trade or property held for sale in the ordinary course of business; depreciable business property; real property used in the taxpayer's trade or business; copyrights, literary musical or artistic compositions or similar property held by the taxpayer who created it; and certain other types of property. [Section 1221, U.S. IRC.] (This definition also applies for Wisconsin income tax purposes under s. 71.02, Stats.)

Gain or loss from the sale of a capital asset is generally determined by subtracting from the amount realized on the sale the amount of the taxpayer's basis in the capital asset. Generally, the basis of a capital asset is its cost to the taxpayer.

Under federal law, gain from the sale of capital assets is subject to a maximum long-term capital gains tax rate of 20% (10% for individuals in the 10% or 15% tax bracket). A lower tax rate of 8% for individuals in the 10% or 15% tax bracket may apply if the asset was held for more than five years. These capital gains tax rates apply to gains received by individuals, estates, and trusts.

The preferential income tax rates for capital gains applies only to "long-term" capital gains. To be classified as a long-term gain, the capital asset must be held more than 12 months. If the taxpayer has received long-term and short-term capital gains during the year, each type is totaled separately. The net long-term capital gain or loss for the year is then offset against the net short-term capital gain or loss for the year to arrive at an overall net capital gain or loss. When capital gains exceed capital losses, the overall gain is generally subject to a maximum tax rate of 20%. If capital losses exceed capital gains, the amount of the capital loss that may be deducted against ordinary income is limited to $3,000 per year. However, unused capital loss deductions may be carried forward for an unlimited time until the capital loss is completely used.

STATE INCOME TAX TREATMENT OF CAPITAL GAINS

The Wisconsin income tax treatment of long-term capital gains is based upon the federal income tax treatment of capital gains that existed prior to 1987. Under Wisconsin law, income from the sale of a capital asset held more than one year is taxed at the otherwise applicable state income tax rates, but 60% of the net long-term capital gains is deducted and only 40% of the gain is included in income.

Another significant difference between the Wisconsin treatment of capital gains and the current federal treatment is that, under federal law, capital losses are allowed in full against capital gains and up to $3,000 of any excess loss is allowed as a deduction against other income. Under Wisconsin law, capital losses are allowed in full against capital gains, and if the losses are more than the gains, up to $500 of the excess loss is allowed as a deduction against other income. As under federal law, unused capital losses may be carried over and used in later years.

In addition, because of various differences between Wisconsin and federal law, the Wisconsin basis of a capital asset may not always be the same as the federal basis of that asset. This is true of certain property acquired by inheritance, business property that has been depreciated at different rates for Wisconsin and federal income tax purposes, differences in when a gain or loss is reported for Wisconsin purposes and federal purposes, and in a number of other different circumstances.

PRELIMINARY DESCRIPTION OF THE PROPOSAL

Under the proposal, the 60% deduction for income from the sale of a long-term capital asset would continue to exist. In addition, persons would be allowed to offset long-term gains against long-term losses and net long-term gains against short-term losses. Also, persons would be allowed to offset the net capital losses against ordinary income, up to $500 per year and to carry the excess over to future years. For most persons, using capital losses to offset capital gains and using any net capital loss to reduce ordinary income would be more financially advantageous than deferring gain under the proposal.

If, within 90 days of the sale of a long-term capital asset, a taxpayer purchases another capital asset of equal or greater value, the taxpayer could elect to defer tax on the gain from the sale of the original capital asset. This deferral would be accomplished by reducing the amount of the deferred gain from the taxpayer's basis in the replacement capital asset. Recognition of the gain would continue to be deferred until such time as the taxpayer transfers the replacement capital asset and does not purchase another capital asset within the 90-day period.

The following is an example of how the proposal would work:

> On April 30, 2003, the taxpayer sells shares of stock for $200,000 and realizes a long-term capital gain of $160,000. On July 1, 2002 the taxpayer purchases $230,000 of stock. The capital gains that can be deferred is $160,000 and the taxpayer's basis in the new stock is $70,000 ($230,000-$160,000). Two years later, the taxpayer sells the replacement stock for $280,000 and reports a long-term capital gain for Wisconsin income tax purposes of $210,000 ($280,000 minus the $70 basis). After applying the 60% deduction for long-term capital gains, the taxpayer would include in his or her income for Wisconsin income tax purposes $84,000.

Deferral of income under the proposal would be an election for individuals, partnerships, limited liability companies, limited liability partnerships, and S corporations. The taxpayer would be required to deposit, in a separate account at a savings institution, the proceeds from the sale of the original capital asset and withdraw the amount to purchase the replacement capital asset. The taxpayer would also be required to file a form electing deferral of reinvested capital gains with the Department of Revenue in the year that the original capital asset is sold.

The proposal would not apply to:

1. The gain from the sale of a taxpayer's principal residence.
2. Tax-free exchanges of capital assets. see sec. 643 (a) (3) of the IRC
3. Property purchased as the result of an involuntary conversion. see sec. 1033 (b) (2) of IRC

One perhaps unintended consequence of the proposal would be that persons who have deferred gain under the proposal and who establish a residence in a place other than Wisconsin would escape Wisconsin income taxation on the deferred gain. Generally, when an individual who is no longer a Wisconsin resident sells an asset, Wisconsin does not have legal authority to impose an income tax on the gain from the sale, including any deferred gain on the sale.

Please contact me at the Legislative Council staff offices if I can provide further information.

WF:jal:ksm;tlu

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–2572/1
MES...1...
WLJ
RMR

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

D-Note

gen

AN ACT ...; **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 and tax–option corporations for 60% 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 the taxpayer's principal residence and two other specified exceptions, 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 gains generated by the sale of the original asset~~.

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 individual's principal residence.

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

c. 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 ~~be~~ 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)

LRB–2572/?dn
MES...:...:....
WLj

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

Rep. Wieckert:

This draft is based on instructions contained in the memo prepared by Bill Ford. Please review the draft very carefully to ensure that it is consistent with your intent. Because the procedure for deferring gains that the bill creates may be difficult for the Department of Revenue to administer, you may wish to have DOR review the bill.

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–2572/1dn
MES:wlj:pg

July 25, 2003

Rep. Wieckert:

This draft is based on instructions contained in the memo prepared by Bill Ford. Please review the draft very carefully to ensure that it is consistent with your intent. Because the procedure for deferring gains that the bill creates may be difficult for the Department of Revenue to administer, you may wish to have DOR review the bill.

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

LRB

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

November 17, 2003

MEMORANDUM

To: Representative Wieckert

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

Subject: Technical Memorandum to **(un–introduced)** (LRB 03–2572/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

LRB

MEMORANDUM

November 4, 2003

TO: Marc Shovers
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on LRB 2572/1: 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".

The LRB analysis indicates that, under current Wisconsin law, a 60% capital gain exclusion is available to tax-option corporations. This is not the case.

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

Memo

To: Senator ☐ Representative ☑ Wieckert *(The Draft's Requester)*

Per your request: ... the attached fiscal estimate was prepared for your unintroduced 2003 draft.

LRB Number: LRB – 2572

Version: "/1"

Fiscal Estimate Prepared By: (agency abbr.) DOR

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E–Mail: 11 / 17 / 2003

* *

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Unintroduced Draft*

> ***If redrafted*** *... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version.*

> ***If introduced*** *... and the version of the attached fiscal estimate is for a* ***previous version*** *... please insert this cover sheet and attached early fiscal estimate into the drafting file ... after the draft's old version (the version that this fiscal estimate was based on), and before the markup of the draft on the updated version. Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.*

> ***If introduced*** *... and the version of the attached fiscal estimate is for the* ***current version*** *... please write the draft's introduction number below and give to Mike (or Lynn) to process.*

THIS DRAFT WAS INTRODUCED AS: 2003 ____________________

Barman, Mike

From: Barman, Mike
Sent: Monday, November 17, 2003 12:34 PM
To: Rep.Wieckert
Cc: Becher, Scott
Subject: LRB 03-2572/1 (FE by DOR - attached - for your review)

FE_Wieckert #1.pdf

Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate - 2003 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number 03-2572/1	Introduction Number

Subject

Deferal of recognition of gains from sale of certain capital assets

Fiscal Effect

State:

☐ No State Fiscal Effect
☐ Indeterminate
☐ Increase Existing Appropriations
☐ Decrease Existing Appropriations
☐ Create New Appropriations
☐ Increase Existing Revenues
☒ Decrease Existing Revenues
☒ Increase Costs - May be possible to absorb within agency's budget ☒ Yes ☐ No
☐ Decrease Costs

Local:

☐ No Local Government Costs
☐ Indeterminate
1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenue ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenue ☐ Permissive ☐ Mandatory
5. Types of Local Government Units Affected
☐ Towns ☐ Village ☐ Cities
☐ Counties ☐ Others
☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEGS

Affected Ch. 20 Appropriations

Agency/Prepared By	Authorized Signature	Date
DOR/ Karyn Kriz (608) 261-8984	Dennis Collier (608) 266-5773	11/17/2003

Fiscal Estimate Narratives

DOR 11/17/2003

LRB Number **03-2572/1**	Introduction Number	Estimate Type **Original**
Subject Deferal of recognition of gains from sale of certain capital assets		

Assumptions Used in Arriving at Fiscal Estimate

Under current Wisconsin law, individuals may exclude 60% of net long-term capital gains. 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 may elect to defer the payment of income taxes on the gain realized from the sale of any asset held more than one year, if the claimant completes a number of requirements. These requirements include: 1) Immediate deposit of the gain in a segregated account in a financial institution; 2) purchase of another capital asset of equal or greater value using all of the proceeds in the account within 90 days after the sale of the asset that generated the gain; 3) after purchase of the replacement asset, immediate notification to the Department of Revenue that the claimant will not declare the gain on the claimant's income tax return because the claimant has reinvested the capital gain.

Gains realized from the sale of the taxpayer's principal residence, sale of an asset that was obtained in a tax-free exchange of capital assets, and sale of property purchased as a result of an involuntary conversion do not qualify for the deferral under the bill.

The basis of the replacement asset would be calculated by subtracting the gain from the cost of the asset. If a claimant defers the payment of income taxes on a capital gain under this bill, the claimant may not use the gain to net capital gains and losses.

Data are not readily available on the number of tax filers that would take advantage of this deferral and therefore the fiscal effect of this bill is indeterminate. However, according to the 2001 Individual Income Tax Sample, about 62% of currently excluded capital gains is claimed by filers with income over $100,000 and taxes paid by these filers on capital gains total $63 million.

Since these high-income filers have large enough disposable income to reinvest their long-term capital gains in other capital assets, payment of all or a substantial portion of the $63 million they pay in tax on capital gains under current law could be deferred indefinitely.

Long-Range Fiscal Implications

Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate Worksheet - 2003 Session

Detailed Estimate of Annual Fiscal Effect

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number 03-2572/1	Introduction Number

Subject

Deferal of recognition of gains from sale of certain capital assets

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	**Annualized Fiscal Impact on funds from:**	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	$	
(FTE Position Changes)		
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	$	$
B. State Costs by Source of Funds		
GPR		
FED		
PRO/PRS		
SEG/SEG-S		

III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, ets.)

	Increased Rev	Decreased Rev
GPR Taxes	$	$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues	$	$

NET ANNUALIZED FISCAL IMPACT

	State	Local
NET CHANGE IN COSTS	$	$
NET CHANGE IN REVENUE	$SeeText	$

Agency/Prepared By	**Authorized Signature**	**Date**
DOR/ Karyn Kriz (608) 261-8984	Dennis Collier (608) 266-5773	11/17/2003

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–2572/~~1~~ 2
MES:wlj:~~pg~~

~~SOON~~ ~~LATER~~

2003 BILL

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

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~~ a percent income tax exclusion for individuals ~~and tax–option corporations~~ for 60~~%~~ 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 ~~the taxpayer's principal residence and two other specified exceptions~~, 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 individual's principal residence.~~

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

b. ~~c.~~ 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)

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–2572/2
MES:wlj:rs

2003 BILL

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)