



State of Wisconsin

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STEPHEN R. MILLER
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November 5, 2007

MEMORANDUM

To: Representative Wieckert

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

Subject: Technical Memorandum to **2007 un-introduced** (LRB-3297/1) by **DOR**

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.

MEMORANDUM

October 30, 2007

TO: Marc Shovers
Legislative Reference Bureau

FROM: Rebecca Boldt
Department of Revenue

SUBJECT: Technical Memorandum on LRB 3297/01: Deferral of Taxation on Certain Capital Gains That Are Used to Purchase a Primary Residence

The Department has the following concerns related to the bill:

The bill defines long-term capital gain as "the gain realized from the sale of any asset held more than one year..." When business assets are sold, for federal tax purposes (and Wisconsin) a portion of any gain due to depreciation is treated as ordinary income and does not get capital gain treatment. It is not clear whether the intent is that the portion of gain treated as ordinary income is subject to this provision. Sec. 71.05(6)(b)9 describes capital gains subject to the current 60% exclusion.

Paragraph (b) provides a subtraction from federal adjusted gross income for any amount of long-term capital gain subject to certain conditions. Paragraph (e)1 limits the subtraction to 4% of the long-term capital gain for 2008. It is not clear what happens to the other 96% of the capital gain. If it is still included in Wisconsin income and subject to the 60% capital gain exclusion then it is unclear how it is affected by par. (d), which provides that the claimant may not use the gain described under par. (b)1. to net capital gains and losses.

Paragraph (b)1 provides that the taxpayer must deposit the gain into a segregated account in a financial institution. Paragraph (c) provides that the basis of the purchased primary residence is reduced by subtracting the gain described in par. (b)1 from the cost of the purchased primary residence. It is not clear if it is the intent that the entire gain is required to be deposited, but only 4% is allowed to be subtracted. It is also unclear if the intent is that the basis is reduced by the entire gain.

The bill requires the gain to be "immediately deposited" into a segregated account in a financial institution, but no definition clarifies the time frame.

Under par. (b)1., the taxpayer must immediately notify 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 in a principal

residence. This appears to conflict with the limitation in par.(e). There is only a subtraction for 4% of the gain for 2008. There is no subtraction for the entire gain. It is also unclear what is meant by "immediately." It would be better to have the taxpayer submit a form with the tax return when filed.

If you have any questions regarding this technical memorandum, please contact Brad Caruth at (608) 261-8984 or bradley.caruth@revenue.wi.gov.

Barman, Mike

From: Barman, Mike
Sent: Thursday, November 08, 2007 3:07 PM
To: Rep.Wieckert
Subject: LRB 07-3297/1 (un-introduced) (Tech. Memo by DOR - attached - for your review)

Attachments: Tech_Memo_Wieckert.PDF



Tech_Memo_Wieckert.PDF (133 KB...

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