



2007 ASSEMBLY BILL 808

February 15, 2008 – Introduced by Representatives WIECKERT, KERKMAN, MUSSER, TOWNSEND, A. OTT and GUNDERSON, cosponsored by Senator DARLING. Referred to Committee on Housing.

1 **AN ACT to amend** 71.01 (13) and 71.01 (14); and **to create** 71.05 (24) of the
2 statutes; **relating to:** creating a procedure for certain taxpayers to defer
3 taxation on certain capital gains that are used to purchase a primary residence.

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 (claimant) may elect to defer the payment of income taxes on a percentage of 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. The allowable percentage of gain that may be deferred under the bill starts at 4 percent in taxable year 2008, and increases by another 4 percent each year until it reaches 40 percent in taxable year 2017.

Under the bill, the claimant must place the gain from the original asset in a segregated account in a financial institution, must purchase a primary residential dwelling 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 dwelling must be equal to or greater than the gain generated by the sale of the original asset.

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The bill also specifies that the basis of the dwelling 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.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the 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.** 71.01 (13) of the statutes is amended to read:

2 71.01 (13) "Wisconsin adjusted gross income" means federal adjusted gross
3 income, with the modifications prescribed in s. 71.05 (6) to (12), (19) ~~and~~, (20), and
4 (24).

5 **SECTION 2.** 71.01 (14) of the statutes is amended to read:

6 71.01 (14) "Wisconsin net operating loss" of persons other than corporations
7 means "federal net operating loss" adjusted as prescribed in s. 71.05 (6) (a) and (b),
8 (7) to (12) ~~and~~, (19) ~~to~~, (21), and (24), except s. 71.05 (6) (b) 9., except that no
9 deductions allowable on schedule A for federal income tax purposes are allowable.

10 **SECTION 3.** 71.05 (24) of the statutes is created to read:

11 71.05 (24) INCOME TAX DEFERRAL; LONG-TERM CAPITAL ASSETS. (a) In this
12 subsection:

13 1. "Claimant" means an individual who claims a subtraction from federal
14 adjusted gross income under this subsection.

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

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

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

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

4 4. "Primary residence" means the principal residential dwelling that is owned
5 and occupied by a claimant.

6 (b) Subject to par. (e), a claimant may subtract from federal adjusted gross
7 income any amount of a long-term capital gain if the claimant does all of the
8 following:

9 1. Immediately deposits the gain into a segregated account in a financial
10 institution.

11 2. Within 90 days after the sale of the asset that generated the gain, purchases
12 a primary residence in this state of equal or greater value using all of the proceeds
13 in the account described under subd. 1.

14 3. After purchasing a primary residence as described under subd. 2.,
15 immediately notifies the department, on a form prepared by the department, that the
16 claimant will not declare on the claimant's income tax return the gain described
17 under subd. 1. because the claimant has reinvested the capital gain as described
18 under subd. 2.

19 (c) The basis of the purchased primary residence described in par. (b) 2. shall
20 be calculated by subtracting the gain described in par. (b) 1. from the cost of the
21 purchased primary residence described in par. (b) 2.

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

ASSEMBLY BILL 808**SECTION 3**

1 (e) 1. For taxable years beginning after December 31, 2007, and before January
2 1, 2009, the amount calculated under par. (b) that may be subtracted from federal
3 adjusted gross income shall be multiplied by 4 percent.

4 2. For taxable years beginning after December 31, 2008, and before January
5 1, 2010, the amount calculated under par. (b) that may be subtracted from federal
6 adjusted gross income shall be multiplied by 8 percent.

7 3. For taxable years beginning after December 31, 2009, and before January
8 1, 2011, the amount calculated under par. (b) that may be subtracted from federal
9 adjusted gross income shall be multiplied by 12 percent.

10 4. For taxable years beginning after December 31, 2010, and before January
11 1, 2012, the amount calculated under par. (b) that may be subtracted from federal
12 adjusted gross income shall be multiplied by 16 percent.

13 5. For taxable years beginning after December 31, 2011, and before January
14 1, 2013, the amount calculated under par. (b) that may be subtracted from federal
15 adjusted gross income shall be multiplied by 20 percent.

16 6. For taxable years beginning after December 31, 2012, and before January
17 1, 2014, the amount calculated under par. (b) that may be subtracted from federal
18 adjusted gross income shall be multiplied by 24 percent.

19 7. For taxable years beginning after December 31, 2013, and before January
20 1, 2015, the amount calculated under par. (b) that may be subtracted from federal
21 adjusted gross income shall be multiplied by 28 percent.

22 8. For taxable years beginning after December 31, 2014, and before January
23 1, 2016, the amount calculated under par. (b) that may be subtracted from federal
24 adjusted gross income shall be multiplied by 32 percent.

