AN ACT to amend 71.01 (13) and 71.01 (14); and to create 71.05 (24) of the statutes; relating to: creating a procedure for certain taxpayers to defer 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.
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:

Section 1. 71.01 (13) of the statutes is amended to read:
71.01 (13) “Wisconsin adjusted gross income” means federal adjusted gross
income, with the modifications prescribed in s. 71.05 (6) to (12), (19) and (20), and
(24).

Section 2. 71.01 (14) of the statutes is amended to read:
71.01 (14) “Wisconsin net operating loss” of persons other than corporations
means “federal net operating loss” adjusted as prescribed in s. 71.05 (6) (a) and (b),
(7) to (12) and (19) to (21), and (24), except s. 71.05 (6) (b) 9., except that no
deductions allowable on schedule A for federal income tax purposes are allowable.

Section 3. 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 who claims a subtraction from federal
adjusted gross income under this subsection.
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.

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

(b) Subject to par. (e), 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 a primary residence in this state of equal or greater value using all of the proceeds in the account described under subd. 1.

3. After purchasing a primary residence 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 primary residence described in par. (b) 2. shall be calculated by subtracting the gain described in par. (b) 1. from the cost of the purchased primary residence 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).
(e) 1. For taxable years beginning after December 31, 2007, and before January 1, 2009, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 4 percent.

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

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

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

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

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

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

8. For taxable years beginning after December 31, 2014, and before January 1, 2016, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 32 percent.
9. For taxable years beginning after December 31, 2015, and before January 1, 2017, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 36 percent.

10. For taxable years beginning after December 31, 2016, the amount calculated under par. (b) that may be subtracted from federal adjusted gross income shall be multiplied by 40 percent.