

2009 ASSEMBLY BILL 38

February 12, 2009 – Introduced by Representatives STRACHOTA, SPANBAUER, RIPP, ZIPPERER, KNODL, BROOKS, RHOADES, SUDER, PETERSEN, DAVIS, ROTH, TAUCHEN, KERKMAN, VAN ROY, NYGREN, A. OTT, VUKMIR, KRAMER, KAUFERT, MURTHA, LOTHIAN, LEMAHIEU, STONE, MURSAU, GUNDERSON, HUEBSCH, HONADEL, M. WILLIAMS, KLEEFISCH, BIES and BALLWEG, cosponsored by Senators HOPPER, KANAVAS, TAYLOR, S. FITZGERALD, DARLING, LEIBHAM, SCHULTZ, HARS DORF, OLSEN and KEDZIE. Referred to Committee on Jobs, the Economy and Small Business.

1 **AN ACT** *to create* 71.05 (24) of the statutes; **relating to:** excluding from taxable
2 income gains from a Wisconsin business.

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 the 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 subtract from federal adjusted gross income the amount of capital gain, not to exceed \$10,000,000 in a taxable year, realized from the sale of any asset held more than one year (original asset), to the extent that the gain is not already excluded from taxation.

Under the bill, the claimant must place the gain from the original asset in a segregated account in a financial institution, must invest all of the proceeds in the account in a Wisconsin business within 180 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 will not declare the gain from the original asset because the proceeds have been reinvested in a Wisconsin business.

A “Wisconsin business” is defined as a business that is headquartered in Wisconsin; that employs at least 51 percent of its employees in this state; that is engaged in, or is committed to engage, in businesses such as manufacturing, agriculture, silviculture, conducting research, or developing new products or business processes; that is not engaged in businesses such as real estate

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development, insurance, banking, lobbying, political consulting, professional services, retail, leisure, hospitality, transportation, or construction; that has fewer than 500 employees; that has been in operation in this state for not more than seven consecutive years; and that is not a publicly traded entity.

The bill also specifies that the basis of the investment shall be its cost minus the gain generated by the sale of the original asset. If a claimant claims the subtraction allowed under the bill, 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 claim the subtraction.

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 EXCLUSION; LONG-TERM CAPITAL GAINS; WISCONSIN
3 BUSINESSSES. (a) In this 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.

10 4. "Wisconsin business" means a business to which all of the following apply:

11 a. Its headquarters is in this state.

12 b. At least 51 percent of the employees employed by the business are employed
13 in this state.

14 c. It is engaged in, or has committed to engage in, manufacturing, agriculture,
15 silviculture, processing or assembling products, conducting research and
16 development, or developing a new product or business process.

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1 d. It is not engaged in real estate development; insurance; banking; lending;
2 lobbying; political consulting; professional services provided by attorneys,
3 accountants, business consultants, physicians, or health care consultants; wholesale
4 or retail trade; leisure; hospitality; transportation; or construction.

5 e. It has fewer than 500 employees.

6 f. It has been in operation in this state for not more than 7 consecutive years.

7 g. It is not a publicly traded entity.

8 (b) To the extent that the gain is not excluded from taxation under sub. (6) (b)
9 9., a claimant may subtract from federal adjusted gross income the amount of a
10 long-term capital gain, not to exceed \$10,000,000 in a taxable year, if the claimant
11 does all of the following:

12 1. Immediately deposits the gain into a segregated account in a financial
13 institution.

14 2. Within 180 days after the sale of the asset that generated the gain, invests
15 in a Wisconsin business using all of the proceeds in the account described under subd.
16 1.

17 3. After investing in a Wisconsin business as described under subd. 2.,
18 immediately notifies the department, on a form prepared by the department, that the
19 claimant will not declare on the claimant's income tax return the gain described
20 under subd. 1. because the claimant has reinvested the capital gain as described
21 under subd. 2.

22 (c) The basis of the investment described in par. (b) 2. shall be calculated by
23 subtracting the gain described in par. (b) 1. from the cost of the investment described
24 in par. (b) 2.

