



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

February 8, 2011

MEMORANDUM

To: Senator Hooper

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

Subject: Technical Memorandum to **2011 SB 10** (LRB-0936/1) **by DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you choose to amend ss.71.01 (14) and 71.05 (8)(b) as suggested by DOR, you will maintain the current law treatment of capital gains. If you do not address DOR's policy concern, the bill will create a new "double benefit" as DOR explains in their memo.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

January 24, 2011

TO: Marc Shovers
Legislative Reference Bureau

FROM: Rebecca Boldt
Department of Revenue

SUBJECT: Technical Memorandum on Senate Bill 10: Restoring the Treatment of the Exclusion of Capital Gains for Individuals and Certain Other Persons that Existed Before the Enactment of 2009 Wisconsin Act 28, and Phasing out the Taxation of Capital Gains

The Department has the following concerns related to the bill:

Under current law, sec. 71.02(14) defines "Wisconsin net operating loss" to provide that the federal net operating loss is not adjusted by the amount allowed under sec. 71.05(6)(b)9, and sec. 71.05(8)(b) provides that the capital gain exclusion under sub. ((6)(b)9 is not used in determining the amount of net operating loss used during the year. These provisions prevent a double benefit by not increasing a net operating loss by amounts that have been excluded from income.

Sections 71.02(14) and 71.05(8)(b) should both be amended to include a reference to sec. 71.05(6)(b)9e and 9h in addition to the reference to 71.05(6)(b)9.

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

cc: Senator Hopper