



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

April 10, 2013

MEMORANDUM

To: Senator Kedzie

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

Subject: Technical Memorandum to **2013 SB 122** (LRB-1176/1) 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

April 9, 2013

TO: Marc Shovers
Legislative Reference Bureau

FROM: John Koskinen
Brad Caruth
Department of Revenue

SUBJECT: Technical Memorandum on Senate Bill 122: Federalizing the Treatment of Capital Losses

The Department has the following concerns related to the bill:

For taxable years beginning in 2014, this bill eliminates the language limiting the net capital loss deduction to ordinary income. In prior years, the capital loss deduction was limited to the lesser of \$500, the amount of the loss, or ordinary income. Thus if a taxpayer's ordinary income was \$200 and the capital loss was \$500 or more, the individual could only claim a \$200 capital loss deduction. The excess over the \$200 would be carried over to the next year. While this bill adopts the provisions of sec. 1211(b) which provide the limitations on capital losses, it does not otherwise limit the amount that may be claimed each year.

For federal purposes, assuming the capital loss was \$3,000 or more, \$3,000 would be entered on the federal Schedule D. The loss is limited by sec. 1212(b), but only the carry over is adjusted, not the amount on the Schedule D. Section 1212(b) limits the loss to federal taxable income plus the federal exemption amount plus the \$3,000. Because this section refers to amounts on the federal return, if Wisconsin wanted to follow this procedure a similar provision would be needed in Wisconsin law.

If the intent is to continue to limit a capital loss to ordinary income (Wisconsin income without considering any capital loss), the following language is suggested:

Create sec. 71.05(10)(c)3 to read:

For taxable years that begin after December 31, 2013, net capital loss, after netting capital gains and capital losses to arrive at total capital gain or loss, is offset against ordinary income only to the extent of the amount provided under section 1211(b) of the

Internal Revenue Code. Losses in excess of the amount provided under section 1211(b) of the Internal Revenue Code shall be carried forward to the next taxable year and offset against ordinary income up to the limit under section 1211(b) of the Internal Revenue Code.

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 Kedzie