

**2019 DRAFTING REQUEST**

**Bill**

For: **Administration-Budget 6-1923** Drafter: **mshovers**  
 By: **Quinn** Secondary Drafters:  
 Date: **1/2/2019** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email:  
 Carbon copy (CC) to: **doasbostatlanguage@wisconsin.gov**  
**Erika.Lunder@legis.wisconsin.gov**

**Pre Topic:**

DOA:.....Quinn, BB0162 -

**Topic:**

Individual income tax capital gains exclusion limitation

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 1/4/2019				
/P1	jkreye 2/19/2019	kfollett 2/19/2019	lparisi 1/8/2019		State S&L Tax Exempt
/P2			lparisi 2/19/2019		State S&L Tax Exempt

FE Sent For: **<END>**

**Shovers, Marc**

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**From:** Kreye, Joseph  
**Sent:** Monday, December 31, 2018 6:43 PM  
**To:** Shovers, Marc  
**Cc:** Lunder, Erika  
**Subject:** FW: Statutory Language Drafting Request - 2019-21

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From: Cathlene Hanaman [cathleneh@gmail.com]  
Sent: Saturday, December 29, 2018 4:12 PM  
To: Lunder, Erika; Kreye, Joseph  
Subject: Fwd: Statutory Language Drafting Request - 2019-21

Sent from my iPhone

Begin forwarded message:

From: "brian.quinn@wisconsin.gov<mailto:brian.quinn@wisconsin.gov>"  
<brian.quinn@wisconsin.gov<mailto:brian.quinn@wisconsin.gov>>  
Date: December 28, 2018 at 3:50:43 PM MST  
To: <Cathlene.Hanaman@legis.wisconsin.gov<mailto:Cathlene.Hanaman@legis.wisconsin.gov>>  
Cc: <Paul2.Ziegler@wisconsin.gov<mailto:Paul2.Ziegler@wisconsin.gov>>, <Brian.Quinn@wisconsin.gov<mailto:Brian.Quinn@wisconsin.gov>>  
Subject: Statutory Language Drafting Request - 2019-21  
Reply-To: <brian.quinn@wisconsin.gov<mailto:brian.quinn@wisconsin.gov>>

Biennial Budget: 2019-21

Topic: Capital Gains Exclusion Limitation

Tracking Code: BB0162

*-1121*

SBO Team: TLGED

SBO Analyst: Quinn, Brian D - DOA  
Phone: (608) 266-1923  
E-mail: brian.quinn@wisconsin.gov<mailto:brian.quinn@wisconsin.gov>

Agency Acronym: 566

Agency Number: 566

Priority: Low

Intent:

For the 30 percent capital gains exclusion for non-farm assets under s. 71.05(6)(b)9, disallow the exclusion for single or head of household filers with federal adjusted gross incomes in excess of \$100,000, married-joint filers with federal adjusted gross incomes in excess of \$150,000, and married-separate filers with federal adjusted gross incomes in excess of \$75,000. As an exception to this limitation, if a filer has noncapital gains adjusted gross income below those thresholds that filer may claim an amount of capital gains that, when combined with noncapital gains income, would equal the threshold.

*should it be net?*

Example for clarification: if a married-joint filer had \$130,000 in noncapital gains federal AGI and \$40,000 in capital gains federal AGI, they could claim \$20,000 for the purposes of the 30% exclusion because that \$20,000 and their \$130,000 of noncapital gains income would together be within the \$150,000 limit.

Apply these changes beginning with tax year 2019.

Attachments: False

Please send completed drafts to  
SBOSatlanguage@spmail.enterprise.wistate.us<mailto:SBOSatlanguage@spmail.enterprise.wistate.us>

*(noncapital gains adjusted fagi)  
or  
federal adj. gross income exclusive of  
capital gains and losses*



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-1191/P1

MES: 

DOA:.....Quinn, BB0162 - Individual income tax capital gains exclusion limitation

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION**

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

X Under current law, there is an income tax exclusion for individuals, fiduciaries, members of limited liability companies and partnerships, and shareholders of tax-option corporations for 30 percent of the net long-term capital gains realized from the sale of assets held more than one year and the sale of all assets acquired from a decedent, and an exclusion for 60 percent of such gains realized from the sale of farm assets held more than one year and the sale of all farm assets acquired from a decedent.

X Under this bill, for individuals, the exclusion of 30 percent of such net long-term capital gains, and all assets acquired from a decedent, does not apply to taxable years beginning after December 31, 2018, if the taxpayer's federal adjusted gross income exceeds specified threshold amounts. These amounts are \$100,000 for a single individual or head of household filer; \$150,000 for a married couple who files jointly; and \$75,000 for a married individual who files separately. The bill also provides that for a taxpayer whose FAGI, before adjustment for net capital gains, is below the specified threshold amounts, such a taxpayer may claim the current law capital gains exclusion for non-farm assets to the extent that the sum of the

taxpayer's noncapital gains adjusted FAGI and the taxpayer's net federal capital gains does not exceed the threshold amount. The bill does not affect the exclusion of the gains realized from the sale of farm assets held more than one year and the sale of farm assets acquired from a decedent.

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 and local* 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:***

*renumbered 71.05 (6) (b) 9. (intro.) and*

1  
2  
3

**SECTION 1.** 71.05 (6) (b) 9. of the statutes is amended to read:

71.05 (6) (b) 9. *(intro.)* On assets held more than one year and on all assets acquired from a decedent, 30 percent of the capital gain as computed under the internal revenue code Internal Revenue Code, not including capital gains for which the federal tax treatment is determined under section 406 of P.L. 99-514; not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason; and not including amounts treated as capital gain for federal income tax purposes from the sale or exchange of a lottery prize. For purposes of this subdivision, the capital gains and capital losses for all assets shall be netted before application of the percentage. For taxable years beginning after December 31, 2018, this subdivision does not apply to any of the following individuals whose federal adjusted gross income in the year to which the subtraction relates exceeds the following threshold amounts, except that for a taxpayer whose noncapital gains adjusted federal adjusted gross income is below the specified threshold amount, the taxpayer may claim the subtraction under this subdivision in an amount such that the sum of the taxpayer's entire noncapital gains

1 adjusted federal adjusted gross income and the taxpayer's net federal capital gains  
2 does not exceed the threshold amount:

**History:** 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10, 32, 212, 232, 237; 2011 a. 260 ss. 80, 81; 2013 a. 19, 20, 128, 145; 2013 a. 166 s. 76; 2013 a. 173, 227; 2015 a. 55, 60, 84, 195; 2015 a. 197 s. 51; 2015 a. 216, 312; 2017 a. 17, 58, 59, 197, 231, 368.

3 **SECTION 2.** 71.05 (6) (b) 9. a. of the statutes is created to read:

4 71.05 (6) (b) 9. a. For a single individual or an individual who files as a head  
5 of household, \$100,000.

6 **SECTION 3.** 71.05 (6) (b) 9. b. of the statutes is created to read:

7 71.05 (6) (b) 9. b. For a married couple who files a joint return, \$150,000.

8 **SECTION 4.** 71.05 (6) (b) 9. c. of the statutes is created to read:

9 71.05 (6) (b) 9. c. For a married individual who files a separate return, \$75,000.

10 (END)



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-1191/P1  
MES:kjf

DOA:.....Quinn, BB0162 - Individual income tax capital gains exclusion limitation

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION**

*ml-ml 1. Capital gains exclusion limitation*

1 **AN ACT ...; relating to:** the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

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Under this bill, for individuals, the exclusion of 30 percent of such net long-term capital gains, and all assets acquired from a decedent, does not apply to taxable years beginning after December 31, 2018, if the taxpayer's federal adjusted gross income exceeds specified threshold amounts. These amounts are \$100,000 for a single individual or head of household filer; \$150,000 for a married couple who files jointly; and \$75,000 for a married individual who files separately. The bill also provides that for a taxpayer whose FAGI, before adjustment for net capital gains, is below the specified threshold amounts, such a taxpayer may claim the current law capital gains exclusion for nonfarm assets to the extent that the sum of the taxpayer's

noncapital gains adjusted FAGI and the taxpayer's net federal capital gains does not exceed the threshold amount. The bill does not affect the exclusion of the gains realized from the sale of farm assets held more than one year and the sale of farm assets acquired from a decedent.

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For further information see the *state and local* 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 (6) (b) 9. of the statutes is renumbered 71.05 (6) (b) 9. (intro.)  
2           and amended to read:  
3           71.05 (6) (b) 9. (intro.) On assets held more than one year and on all assets  
4           acquired from a decedent, 30 percent of the capital gain as computed under the  
5           internal revenue code Internal Revenue Code, not including capital gains for which  
6           the federal tax treatment is determined under section 406 of P.L. 99-514; not  
7           including amounts treated as ordinary income for federal income tax purposes  
8           because of the recapture of depreciation or any other reason; and not including  
9           amounts treated as capital gain for federal income tax purposes from the sale or  
10          exchange of a lottery prize. For purposes of this subdivision, the capital gains and  
11          capital losses for all assets shall be netted before application of the percentage. For  
12          taxable years beginning after December 31, 2018, this subdivision does not apply to  
13          any of the following individuals whose federal adjusted gross income in the year to  
14          which the subtraction relates exceeds the following threshold amounts, except that  
15          for a taxpayer whose <sup>9</sup>noncapital gains adjusted federal adjusted gross income is  
16          below the specified threshold amount, the taxpayer may claim the subtraction under  
17          this subdivision in an amount such that the sum of the taxpayer's <sup>6</sup>entire noncapital

reduced by  
the amount

, less 30 percent of eligible long-term capital  
gains from non-farm assets,



1 ~~gains adjusted~~ federal adjusted gross income <sup>g</sup> ~~and the taxpayer's net federal capital~~

2 ~~gains does not exceed~~ the threshold amount: *that exceeds*

3 SECTION 2. 71.05 (6) (b) 9. a. of the statutes is created to read:

4 71.05 (6) (b) 9. a. For a single individual, or an individual who files as a head  
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10 (END)



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-1191/P2  
MES:kjf

DOA:.....Quinn, BB0162 - Individual income tax capital gains exclusion limitation

**FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION**

1 **AN ACT ...; relating to:** the budget.

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**TAXATION**

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**1. Capital gains exclusion limitation**

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capital gains exclusion for nonfarm assets to the extent that the sum of the taxpayer's noncapital gains adjusted FAGI and the taxpayer's net federal capital gains does not exceed the threshold amount. The bill does not affect the exclusion of the gains realized from the sale of farm assets held more than one year and the sale of farm assets acquired from a decedent.

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7 including amounts treated as ordinary income for federal income tax purposes  
8 because of the recapture of depreciation or any other reason; and not including  
9 amounts treated as capital gain for federal income tax purposes from the sale or  
10 exchange of a lottery prize. For purposes of this subdivision, the capital gains and  
11 capital losses for all assets shall be netted before application of the percentage. For  
12 taxable years beginning after December 31, 2018, this subdivision does not apply to  
13 any of the following individuals whose federal adjusted gross income in the year to  
14 which the subtraction relates exceeds the following threshold amounts, except that  
15 for a taxpayer whose federal adjusted gross income, less 30 percent of eligible  
16 long-term capital gains from nonfarm assets, is below the specified threshold  
17 amount, the taxpayer may claim the subtraction under this subdivision reduced by

1 the amount of the taxpayer's federal adjusted gross income that exceeds the  
2 threshold amount:

3 **SECTION 2.** 71.05 (6) (b) 9. a. of the statutes is created to read:

4 71.05 (6) (b) 9. a. For an estate, a trust, a single individual, or an individual who  
5 files as a head of household, \$100,000.

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7 71.05 (6) (b) 9. b. For a married couple who files a joint return, \$150,000.

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10

(END)