

State of Wisconsin



2019 Assembly Bill 532

Date of enactment: **March 3, 2020**
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2019 WISCONSIN ACT 136

AN ACT *to amend* 71.01 (13) and 71.05 (8) (b) 1.; and *to create* 71.05 (25m), 71.26 (3) (vm), 71.34 (1k) (p), 71.45 (2) (a) 21. and 71.83 (1) (e) of the statutes; **relating to:** income and franchise tax benefit for investment in Wisconsin opportunity zones and providing a penalty.

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), (20), (24), (25), (25m), and (26).

SECTION 2. 71.05 (8) (b) 1. of the statutes is amended to read:

71.05 (8) (b) 1. Except as provided in s. 71.80 (25), a Wisconsin net operating loss may be carried back against Wisconsin taxable income of the previous 2 years and then carried forward against Wisconsin taxable incomes of the next 20 taxable years, if the taxpayer was subject to taxation under this chapter in the taxable year in which the loss was incurred, to the extent not offset against other income of the year of loss and to the extent not offset against Wisconsin modified taxable income of the 2 years preceding the loss and of any year between the loss year and the taxable year for which the loss carry-forward is claimed. In this paragraph, "Wisconsin modified taxable income" means Wisconsin taxable income with the following exceptions: a net operating loss deduction or offset for the loss year or any taxable year

before or thereafter is not allowed, the deduction for long-term capital gains under subs. (6) (b) 9. and 9m. ~~and (25), and (25m)~~ is not allowed, the amount deductible for losses from sales or exchanges of capital assets may not exceed the amount includable in income for gains from sales or exchanges of capital assets and "Wisconsin modified taxable income" may not be less than zero.

SECTION 3. 71.05 (25m) of the statutes is created to read:

71.05 (25m) CAPITAL GAINS EXCLUSION; OPPORTUNITY ZONES. (a) In this subsection:

1. "Claimant" means 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.

2. "Wisconsin qualified opportunity fund" means a qualified opportunity fund, as defined in 26 USC 1400Z-2 (d) (1), that holds at least 90 percent of its assets in Wisconsin qualified opportunity zone property, as measured on the last day of the first 6-month period of the fund's taxable year and the last day of the fund's taxable year.

3. "Wisconsin qualified opportunity zone" means a population census tract located in this state that is desig-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

nated as a qualified opportunity zone under 26 USC 1400Z-1.

4. “Wisconsin qualified opportunity zone property” means qualified opportunity zone property, as defined in 26 USC 1400Z-2 (d) (2), except that qualified opportunity zone business property, as defined in 26 USC 1400Z-2 (d) (2) (D) and (3) (A) (i), shall be located in a Wisconsin qualified opportunity zone.

(b) For taxable years beginning after December 31, 2019, a claimant may subtract from federal adjusted gross income the amount of gain excluded from federal gross income in the taxable year due to the application of 26 USC 1400Z-2 (b) (2) (B) (iii) for an investment held in a Wisconsin qualified opportunity fund for at least 5 years or due to the application of 26 USC 1400Z-2 (b) (2) (B) (iv) for an investment held in a Wisconsin qualified opportunity fund for at least 7 years; except that the gain may not include any amount for which the claimant claimed a subtraction under sub. (25) (b) or any gain described under sub. (26) (b).

(c) No later than January 31 of the year following the close of the fund’s taxable year, a fund shall annually certify to each investor and the department that it qualifies as a Wisconsin qualified opportunity fund for the fund’s taxable year.

(d) Nothing in this subsection affects, or requires an adjustment to, a subtraction by the claimant under sub. (6) (b) 9. for the same taxable year.

(e) An individual partner, member, or shareholder may not make a subtraction under par. (b) if the entity of which the individual is a partner, member, or shareholder makes a subtraction under par. (b) when computing net income under s. 71.21 (6) (d) 1. or makes a subtraction under s. 71.34 (1k) (p) when computing net income under s. 71.365 (4m) (d) 1.

SECTION 4. 71.26 (3) (vm) of the statutes is created to read:

71.26 (3) (vm) 1. For taxable years beginning after December 31, 2019, section 1400Z-2 (relating to capital gains invested in opportunity zones) is modified so that an increase in basis is twice the amount determined under section 1400Z-2 (b) (2) (B) (iii) for an investment held in a Wisconsin qualified opportunity fund for at least 5 years or under section 1400Z-2 (b) (2) (B) (iv) for an investment held in a Wisconsin qualified opportunity fund for at least 7 years. In this subdivision, “Wisconsin qualified opportunity fund” has the meaning given in s. 71.05 (25m) (a) 2.

2. No later than January 31 of the year following the close of the fund’s taxable year, a fund shall annually certify to each investor and the department that it qualifies

as a Wisconsin qualified opportunity fund for the fund’s taxable year.

SECTION 5. 71.34 (1k) (p) of the statutes is created to read:

71.34 (1k) (p) 1. For taxable years beginning after December 31, 2019, a subtraction may be made of the amount of gain excluded from federal gross income in the taxable year due to the application of 26 USC 1400Z-2 (b) (2) (B) (iii) for an investment held in a Wisconsin qualified opportunity fund for at least 5 years or due to the application of 26 USC 1400Z-2 (b) (2) (B) (iv) for an investment held in a Wisconsin qualified opportunity fund for at least 7 years. In this subdivision, “Wisconsin qualified opportunity fund” has the meaning given in s. 71.05 (25m) (a) 2.

2. No later than January 31 of the year following the close of the fund’s taxable year, a fund shall annually certify to each investor and the department of revenue that it qualifies as a Wisconsin qualified opportunity fund for the fund’s taxable year.

SECTION 6. 71.45 (2) (a) 21. of the statutes is created to read:

71.45 (2) (a) 21. a. For taxable years beginning after December 31, 2019, by subtracting from federal taxable income an amount equal to the gain excluded from federal gross income in the taxable year due to the application of 26 USC 1400Z-2 (b) (2) (B) (iii) for an investment held in a Wisconsin qualified opportunity fund for at least 5 years or 26 USC 1400Z-2 (b) (2) (B) (iv) for an investment held in a Wisconsin qualified opportunity fund for at least 7 years. In this subdivision, “Wisconsin qualified opportunity fund” has the meaning given in s. 71.05 (25m) (a) 2.

b. No later than January 31 of the year following the close of the fund’s taxable year, a fund shall annually certify to each investor and the department that it qualifies as a Wisconsin qualified opportunity fund for the fund’s taxable year.

SECTION 7. 71.83 (1) (e) of the statutes is created to read:

71.83 (1) (e) *Wisconsin qualified opportunity funds.* A Wisconsin qualified opportunity fund, as defined in s. 71.05 (25m) (a) 2., that is liable for a penalty under section 1400Z-2 (f) of the Internal Revenue Code is liable for a penalty equal to 33 percent of the federal penalty. The department shall assess, levy, and collect the penalty under this paragraph in the same manner as it assesses, levies, and collects taxes under this chapter.

SECTION 8. Initial applicability.

(1) This act first applies to taxable years beginning after December 31, 2019.