State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1409/P2
MES&CTS:kjf:rs

DOA:......Quinn, BB0348 – Capital gains deferral for investments in qualified Wisconsin businesses

FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** creating an individual income tax deferral for certain long–term capital gains that are reinvested in a qualified Wisconsin business.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, as created in the 2009–10 biennial budget bill, for taxable years beginning after December 31, 2010, 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 elect to defer the payment of income taxes on up to $10,000,000 of the gain realized from the sale of any capital asset held more than one year (original asset) that is treated as a long–term gain under the Internal Revenue Code, if the claimant completes a number of requirements.

This bill creates another income tax deferral under which a claimant may elect to defer the payment of income taxes on any amount of the gain realized from the sale of any capital asset held more than one year (original new asset) that is treated as a long–term gain under the Internal Revenue Code, if the claimant completes a number of requirements.

Current law requires that 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 a qualified new business venture (QNBV) as certified by the Department of Commerce (Commerce), within 180 days after the sale of the original asset that generated the gain, and must notify DOR on a form prepared by DOR that the claimant is deferring the payment of income tax on the gain from the original asset because the proceeds have been reinvested. The claimant must send the form to DOR with the claimant's income tax return for the year to which the claim relates. The amount of the investment must be equal to or greater than the gain generated by the sale of the original asset.

The requirements under the bill are the same as current law with regard to placing the original new asset in a segregated account in a financial institution and notifying DOR, but under the bill a claimant must invest all of the proceeds in a qualified Wisconsin business (QWB) as certified by the Wisconsin Economic Development Corporation (corporation), within 180 days after the sale of the original new asset that generated the gain, instead of in a QNBV.

Under current law, a business may be certified as a QNBV by Commerce if the business is engaged in developing a new product or business process, manufacturing, agriculture, or processing or assembling products and conducting research and development, except that Commerce may not certify a business engaged in certain activities, including real estate development, insurance, banking, lobbying, wholesale or retail sales, leisure, hospitality, transportation, or construction.

The corporation may certify a business if it determines that, in the taxable year ending immediately before the date of the business's application, at least 50 percent of the business's payroll is paid in Wisconsin and at least 50 percent of the value of the business's real and tangible personal property is used by the business in this state. The bill permits the corporation to adopt rules in consultation with DOR, and it requires the corporation to make a list of certified businesses available at the corporation's Web site.

Under the bill, a claimant may not claim the deferral under this bill if the claimant also claims the current law deferral or the capital gains exclusion for Wisconsin–sourced assets, as created in this bill.

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*** 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:

SECTION 1. 71.05 (26) of the statutes is created to read:

71.05 **(26)** INCOME TAX DEFERRAL; LONG–TERM WISCONSIN CAPITAL ASSETS. (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. "Financial institution" has the meaning given in s. 69.30 (1) (b).

3. "Long–term capital gain" means the gain realized from the sale of any capital asset held more than one year that is treated as a long–term gain under the Internal Revenue Code.

4. "Qualified Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.146.

(b) For taxable years beginning after December 31, 2010, a claimant may subtract from federal adjusted gross income any amount of a long–term capital gain if the claimant does all of the following:

1. Deposits the gain into a segregated account in a financial institution.

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

3. After making the investment as described under subd. 2., notifies the department, on a form prepared by the department, that the claimant will not declare on the claimant's income tax return the gain described under subd. 1. because the claimant has reinvested the capital gain as described under subd. 2. The form shall be sent to the department along with the claimant's income tax return for the year to which the claim relates.

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

(d) If a claimant defers the payment of income taxes on a capital gain under this subsection, the claimant may not use the gain described under par. (b) 1. to net capital gains and losses, as described under sub. (10) (c).

(e) If a claimant claims the subtraction under this subsection, the claimant may not use the gain described under par. (b) 1. to claim a subtraction under sub. (24) or (25).

****NOTE: See the NOTE in the analysis.

SECTION 2. 238.146 of the statutes is created to read:

238.146 Long-term Wisconsin capital assets deferral; business certification. (1) The corporation shall implement a program to certify businesses for purposes of s. 71.05 (26). A business shall submit an application to the corporation in each calendar year for which the business desires certification.

(2) The corporation may certify a business if, in the business's taxable year ending immediately before the date of the business's application, all of the following are true:

(a) The amount of payroll compensation paid by the business in this state, as determined by the corporation, is equal to at least 50 percent of the amount of all payroll compensation paid by the business, as determined by the corporation.

(b) The value of real and tangible personal property owned or rented and used by the business in this state, as determined by the corporation, is equal to at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business, as determined by the corporation.

(3) The corporation shall notify the department of revenue of every certification issued under this section and of the date on which a certification is revoked or expires.

(4) The corporation, in consultation with the department of revenue, may adopt rules for the administration of this section.

(5) The corporation shall compile a list of businesses certified under this section and the taxable years for which the businesses are certified and shall make the list available to the public at the corporation's Internet Web site.

(END)