State of Wisconsin
2013 - 2014 LEGISLATURE

LRB–0790/2
MES&FFK:sac:rs

DOA:......Ley, BB0294 – Transfer certification of business for capital gain deferral and exclusion from WEDC to DOR; consolidate the subtractions

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, capital gains on certain Wisconsin–sourced capital assets are exempted from taxation. For taxable years beginning after December 31, 2015, 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 subtract from federal adjusted gross income the lesser of the claimant's federal net capital gain as reported on the claimant's federal tax return if, in that year, the claimant had a qualifying gain, or the claimant's qualifying gain.

The capital gains exemption defines "qualifying gain" as the gain realized by the sale of any asset that is purchased after December 31, 2010, held for at least five consecutive years, is a Wisconsin capital asset at the time of purchase and for at least two of the next four years, and treated as a long–term gain under federal law. A "Wisconsin capital asset" is real or tangible personal property that is located in this state and used in a Wisconsin business, or stock or other ownership interest in a Wisconsin business. Currently, a business may apply to WEDC for annual certification. WEDC 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.

This bill transfers the responsibility for registering a business from WEDC to DOR, subject to the business meeting the same conditions related to payroll and the value of the business's real and tangible personal property as is the case under current law. Also under the bill, excluded gain is not limited to net capital gain, and the bill clarifies that the exclusion is for gain on investments in a business and not for individual assets of the business.

Also under current law, there are two income tax deferrals for capital gains that are reinvested in qualified Wisconsin businesses.

Under one of the deferrals (long–term deferral), a 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. The requirements include: placing the gain from the original asset in a segregated account in a financial institution; investing all of the proceeds in a qualified new business venture (QNBV), as certified by WEDC, within 180 days after the sale of the original asset that generated the gain; and notifying 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. Under the bill, the long–term deferral may no longer be claimed for taxable years beginning after December 31, 2013.

Under the other deferral (Wisconsin assets deferral), 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. The current requirements for the Wisconsin assets deferral are nearly the same as the requirements for the long–term deferral, although the proceeds must be invested in a "qualified Wisconsin business," as certified by WEDC, instead of a QNBV.

Under this bill, for taxable years beginning after December 31, 2013, the current requirement that the gain realized from the sale of the applicable long–term asset must be deposited into a segregated account in a financial institution does not apply. This bill transfers the responsibility for registering a business under the Wisconsin assets deferral from WEDC to DOR.

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 (24) (a) 4. of the statutes is amended to read:

71.05 **(24)** (a) 4. "Qualified new business venture" means a business certified under s. 238.20, 2011 stats., or s. 560.2085, 2009 stats.

SECTION 2. 71.05 (24) (b) (intro.) of the statutes is amended to read:

71.05 **(24)** (b) (intro.) For taxable years beginning after December 31, 2010, and before January 1, 2014, a claimant may subtract from federal adjusted gross income any amount, up to $10,000,000, of a long–term capital gain if the claimant does all of the following:

SECTION 3. 71.05 (25) (title) of the statutes is amended to read:

71.05 **(25)** (title) CAPITAL GAINS EXCLUSION; ~~WISCONSIN–SOURCE ASSETS~~ QUALIFIED WISCONSIN BUSINESS.

SECTION 4. 71.05 (25) (a) 2. of the statutes is amended to read:

71.05 **(25)** (a) 2. "Qualifying gain" means ~~the~~ a long–term capital gain under the Internal Revenue Code realized from the sale of ~~any asset which is a Wisconsin capital asset in the year it is purchased by the claimant and for at least 2 of the subsequent 4 years; that is purchased~~ an investment made after December 31, 2010~~;~~ ~~that is,~~ and held for at least 5 uninterrupted years~~; and that is treated as a long–term gain under the Internal Revenue Code~~ in a business that for the year of investment and at least 2 of the 4 subsequent years was a qualified Wisconsin business; except that a qualifying gain may not include any amount for which the claimant claimed a subtraction under sub. (24) (b) or any gain described under sub. (26) (b) ~~1~~.

SECTION 5. 71.05 (25) (a) 3. of the statutes is renumbered 71.05 (25) (a) 1s. and amended to read:

71.05 **(25)** (a) 1s. "Qualified Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.145, 2011 stats., or registered with the department under s. 73.03 (69).

SECTION 6. 71.05 (25) (a) 4. of the statutes is repealed.

SECTION 7. 71.05 (25) (b) (intro.) of the statutes is renumbered 71.05 (25) (b) and amended to read:

71.05 **(25)** (b) For taxable years beginning after December 31, 2015, for ~~a Wisconsin capital asset that is purchased~~ an investment in a qualified Wisconsin business made after December 31, 2010, and held for at least 5 uninterrupted years, a claimant may subtract from federal adjusted gross income the ~~lesser of one of the following amounts~~ amount of the claimant's qualifying gain in the year to which the claim relates, to the extent that it is not subtracted under sub. (6) (b) 9. or 9m.~~:~~

SECTION 8. 71.05 (25) (b) 1. of the statutes is repealed.

SECTION 9. 71.05 (25) (b) 2. of the statutes is repealed.

SECTION 10. 71.05 (26) (title) of the statutes is amended to read:

71.05 **(26)** (title) INCOME TAX DEFERRAL; ~~LONG–TERM WISCONSIN CAPITAL ASSETS~~ QUALIFIED WISCONSIN BUSINESS.

SECTION 11. 71.05 (26) (a) 4. of the statutes is amended to read:

71.05 **(26)** (a) 4. "Qualified Wisconsin business" means a business certified by the Wisconsin Economic Development Corporation under s. 238.146, 2011 stats., or registered with the department under s. 73.03 (69).

SECTION 12. 71.05 (26) (b) (intro.) of the statutes is amended to read:

71.05 **(26)** (b) (intro.) For taxable years beginning after December 31, 2010, <u>and before January 1, 2014,</u> 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:

SECTION 13. 71.05 (26) (bm) of the statutes is created to read:

71.05 **(26)** (bm) For taxable years beginning after December 31, 2013, 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. Within 180 days after the sale of the asset that generated the gain, invests all of the gain in a qualified Wisconsin business.

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

SECTION 14. 71.05 (26) (c) of the statutes is amended to read:

71.05 **(26)** (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. <u>The basis of the investment described in par. (bm) 1. shall be calculated by subtracting the gain described in par. (bm) 1. from the amount of the investment described in par. (bm) 1.</u>

SECTION 15. 71.05 (26) (d) of the statutes is amended to read:

71.05 **(26)** (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).

SECTION 16. 71.05 (26) (f) of the statutes is amended to read:

71.05 **(26)** (f) If a claimant claims ~~the~~ a subtraction for a capital gain under ~~this subsection~~ par. (b) or (bm), the gain ~~described under par. (b) 1.~~ may not be used as a qualifying gain under sub. (25).

SECTION 17. 73.03 (69) of the statutes is created to read:

73.03 **(69)** (a) To, effective on January 1, 2014, implement a program to register businesses for purposes of s. 71.05 (25) and (26). A business shall register electronically with the department each year for which the business desires registration.

(b) A business may register under this subsection if, in the business's taxable year ending immediately before the date of the businesses registration, all of the following apply:

1. The business has at least 2 full–time employees and the amount of payroll compensation paid by the business in this state is equal to at least 50 percent of the amount of all payroll compensation paid by the business.

2. The value of real and tangible personal property owned or rented and used by the business in this state 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.

(c) The department may adopt rules for the administration of this subsection.

(d) For each year beginning after December 31, 2013, the department shall compile a list of businesses registered under this subsection and shall make the list available to the public at the department's Internet site.

SECTION 18. 238.145 of the statutes is repealed.

SECTION 19. 238.146 of the statutes is repealed.

SECTION 20. 238.20 of the statutes is repealed.

SECTION 9337. Initial applicability; Revenue.

(1) CAPITAL GAINS DEFERRALS, EXCLUSIONS.

(a) The treatment of section 71.05 (25) (title), (a) 2., 3., and 4., and (b) (intro.), 1., and 2. of the statutes first applies, retroactively, to taxable years beginning after December 31, 2010.

(b) The treatment of section 71.05 (26) (title), (a) 4., (b) (intro.), (bm), (c), (d), and (f) of the statutes first applies to taxable years beginning after December 31, 2013.

SECTION 9450. Effective dates; Wisconsin Economic Development Corporation.

(1) CAPITAL GAINS DEFERRAL, EXCLUSIONS; CERTIFICATION. The treatment of sections 238.145, 238.146, and 238.20 of the statutes takes effect on January 1, 2014.

(END)