WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 910	Assembly Substitute Amendment 1
***Memo published*: February 9, 2006**	***Contact*: William Ford, Senior Staff Attorney (266-0680)**

Current Law

Under current state law, 60% of the gain from the sale of a capital asset that was held for more than one year is excluded from income and is not subject to the state income tax. Wisconsin's top marginal income tax rate is 6.75%. Therefore, with the 60% exclusion, long-term capital gains are generally taxed at a maximum rate of 2.7%.

A "capital asset" is defined in Section 1221 of the U.S. Internal Revenue Code as "property," except the following property:

1. An inventoriable asset.

2. Property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

3. Depreciable business property.

4. Real property used in the taxpayer's trade or business.

5. A note or accounts receivable acquired in the ordinary course of trade or business for services rendered or from the sale of stock in trade or property held for sale in the ordinary course of business.

6. Certain other miscellaneous types of property.

"Capital asset" includes an individual's household furnishings, personal residence, automobiles, boats, and other vehicles.

Assembly Substitute Amendment 1

Assembly Substitute Amendment 1 (the "Substitute Amendment") would allow a person to defer state income taxation of long-term capital gains if:

1. The person immediately deposits the amount of the capital gain into a segregated account in a financial institution.

2. Within 90 days after the sale of the asset that generated the gain, the person purchases another capital asset of equal or greater value using all of the proceeds in the segregated account.

3. The person immediately notifies the Department of Revenue that he or she is not reporting the gain for state income tax purposes because the gain has been reinvested and the gain is being deferred.

The Substitute Amendment would not apply to gain realized from the sale of an asset that was obtained in a tax-free exchange of capital assets or gain realized from the sale of property purchased as a result of an involuntary conversion. The amount of gain deferred would be subtracted from the taxpayer's basis in the new capital asset. The effect of this is that the amount of deferred capital gain would be subject to state income taxation if the replacement asset is later sold and a gain is recognized.

The deferral of gain under the Substitute Amendment is phased in over a 10-year period beginning in taxable year 2008. In taxable year 2008, 4% of long-term capital gains could be deferred. This would increase by another 4% each year until it reaches 40% in taxable year 2017.

Legislative History

The Substitute Amendment was offered by Rep. Wieckert. On February 8, 2006, the Assembly Committee on Ways and Means adopted the Substitute Amendment and recommend the bill, as amended, for passage by a vote of Ayes, 8; Noes, 2.

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