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February 1, 2022

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 327/Senate Bill 339: Increase Net Capital Loss Limitation

Assembly Bill 327 (AB 327) was introduced on May 13, 2021, and referred to the Assembly Committee on Ways and Means. On November 9, 2021, that Committee adopted Assembly Amendment 1 (AA 1) by a vote of 13-0, then recommended passage of the bill as amended by AA 1 on a vote of 12-1.

A companion bill, Senate Bill 339 (SB 339), was introduced on May 14, 2021, and referred to the Senate Committee on Financial Institutions and Revenue. On October 20, 2021, that Committee adopted Senate Amendment 1 (SA 1) to SB 339 on a vote of 4-1, and recommended passage of the bill as amended on a vote of 4-1.

BACKGROUND

Under Wisconsin law, a capital gains exclusion under the individual income tax is provided for 60% of the net capital gain from the sale of farm assets and 30% of the net capital gain from the sale of other assets, provided those assets are held more than one year (long-term capital gains) or are acquired from a decedent. Gains from assets held one year or less are fully taxed.

A net capital loss is the amount of capital losses that remain after subtracting all capital gains realized during the tax year. Any amount of applicable capital losses can be used to offset capital gains, but the amount of net capital losses that may be used to offset ordinary income is limited to $500 annually under current law, with the remainder carried over to future tax years. Pursuant to 2021 Act 2, beginning in tax year 2020, the same capital gains tax treatment as that described above applies to partnerships and tax-option (S) corporations that elect to be taxed at the entity-level.

For comparison, under federal law, long-term capital gains generally are fully taxable for federal purposes, and, if capital losses exceed gains, up to $3,000 of those losses are allowed as a deduction against ordinary income, with the excess loss carried forward to be used in a later tax year.

However, long-term capital gains are taxed at lower rates than ordinary income under federal law.

SUMMARY OF BILL, AS AMENDED

The bills, as amended by SA 1 to SB 339 and AA 1 to AB 327, would increase the amount of net capital loss that may be used to offset ordinary income in any taxable year from $500 to $3,000 ($1,500 for married taxpayers filing separate returns), beginning in tax year 2023. The bills would provide that the net capital loss limitation is also increased from $500 to $3,000 for partnerships and S corporations that elect to be taxed at the entity level for state tax purposes, beginning in tax year 2023.

FISCAL EFFECT

Based on a simulation performed by the Department of Revenue (DOR), the bills as amended would reduce income and franchise tax revenues relative to current law by an estimated $4.3 million in 2022-23 and $17.2 million in 2023-24 and annually thereafter.

In its fiscal note, DOR states that the bill would require additional one-time funding of $11,130 to implement the provisions of the bill. However, no such funding is provided in AB 327 or SB 339.

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