

CHAPTER 471

AN ACT to amend 71.03 (1) (g); and to create 71.03 (5) of the statutes, relating to non-recognition of capital gains for income tax purposes on sales of residences and exchanges of productive property.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 71.03 (1) (g) of the statutes is amended to read:

71.03 (1) (g) All profits derived from the transaction of business or from the sale or other disposition of real estate or other capital assets; provided, that for the purpose of ascertaining the gain or loss resulting from the sale or other disposition of property, real or personal, acquired prior to January 1, 1911, the fair market value of such property as of January 1, 1911, shall be the basis for determining the amount of such gain or loss; and, provided, further, that the basis for computing the profit or loss on the sale of property acquired by gift after 1922 but prior to July 31, 1943, shall be the same as it would have been had the sale been made by the last preceding owner who did not acquire it by gift; and in case the taxing officers are unable to ascertain the cost of the property to such prior owner, if acquired after January 1, 1911, then the basis shall be the value thereof at or about the time it was acquired by him, and such value shall be determined from the best information obtainable. However, with respect to all gifts made after July 31, 1943, the basis for computing gain or loss resulting from the sale or other disposition of said property acquired by gift shall be the fair market value of said property at the time of the said gift or the valuation on which a gift tax has been paid or is payable. In computing profit or loss on the sale of property acquired by descent, devise, will or inheritance, or on the sale of property in a decedent's estate, since January 1, 1911, the appraised value of such property in the administration of the estate of the deceased owner as of the date of his death shall be the basis for determining the amount of such profit or loss. The cost, or other basis mentioned above, shall be diminished by the amount of the deduction for exhaustion, wear and tear and depletion which have, since the acquisition of the property, been allowed as deductions under all Wisconsin income tax laws; and such basis shall also be diminished by the amounts of all income deferred by the taxpayer and used to reduce property, and all anticipated losses on such property which have been deducted from taxable income. If property, exclusive of inventories (as raw materials, goods in process and finished goods), as a result of its destruction in whole or in part by fire or other casualty, theft or seizure, or an exercise of power of requisition or condemnation or the threat or imminence thereof, is involuntarily converted into money which is within one year in good faith, under regulations prescribed by the department of taxation, expended in the replacement of the property destroyed or in the acquisition of other property similar or related in service or use to the property so destroyed, or in the establishment of a replacement fund which, within 2 years from date of the fire or other casualty is actually expended to replace the property destroyed or in the acquisition of other property similar or related in service or use to the property destroyed, no gain shall be recognized, and in the case of gain the property so replaced or acquired, for purposes of depreciation and all other purposes of taxation, shall be deemed to take the place of the property so destroyed. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended. A replacement of property by an insurance company shall be deemed to be an expenditure by the taxpayer of insurance moneys received by him from the insurance company for the purposes of this subsection. *The provisions of this subsection relating to nonrecognition of gain on certain involuntary conversions shall be inapplicable when the property involuntarily converted was the taxpayer's residence and such involuntary conversion constituted a sale coming within the "nonrecognition" provisions of s. 71.03 (5).* If shares of stock in a corporation acquired subsequent to January 1, 1934, are sold from lots acquired at different dates or at different prices, the basis for determining gain or loss shall be that of the specific shares sold. If the identity of the lots cannot be determined, the stock sold shall be charged against the earliest acquisitions of such stock. The basis for determining gain or loss on sales of stock acquired prior to January 1, 1934, shall be the average cost of all such shares of the same stock, determined in accordance with the regulations of the department of taxation in effect on January 1, 1934.

SECTION 2. 71.03 (5) of the statutes is created to read:

71.03 (5) NONRECOGNITION OF GAIN FROM SALE OR EXCHANGE OF RESIDENCE. (a) If property in Wisconsin (hereinafter in this section called "old residence") used by the

taxpayer as his principal residence is sold by him and, within a period beginning one year prior to the date of such sale and ending one year after such date, property in Wisconsin (hereinafter in this section called "new residence") is purchased and used by the taxpayer as his principal residence, gain (if any) from such sale shall be recognized only to the extent that the taxpayer's selling price of the old residence exceeds the taxpayer's cost of purchasing the new residence.

(b) For the purposes of this section:

1. An exchange by the taxpayer of his residence for other property shall be considered as a sale of such residence, and the acquisition of a residence upon the exchange of property shall be considered as a purchase of such residence.

2. If the taxpayer's residence (as a result of its destruction in whole or in part, theft or seizure) is compulsorily or involuntarily converted into property or into money, such destruction, theft or seizure shall be considered as a sale of the residence; and if the residence is so converted into property which is used by the taxpayer as his residence, such conversion shall be considered as a purchase of such property by the taxpayer.

3. In the case of an exchange or conversion described in subds. 1 and 2, in determining the extent to which the selling price of the old residence exceeds the taxpayer's cost of purchasing the new residence, the amount realized by the taxpayer upon such exchange or conversion shall be considered the selling price of the old residence.

4. A residence, any part of which was constructed or reconstructed by the taxpayer, shall be considered as purchased by the taxpayer. In determining the taxpayer's cost of purchasing a residence, there shall be included only so much of his cost as is attributable to the acquisition, construction, reconstruction, and improvements made which are properly chargeable to capital account, during the period specified in par. (a).

5. If a residence is purchased by the taxpayer prior to the date of his sale of the old residence, the purchased residence shall not be treated as his new residence if sold or otherwise disposed of by him prior to the date of the sale of the old residence.

6. If the taxpayer, during the period described in par. (a), purchases more than one residence which is used by him as his principal residence at some time within one year after the date of sale of the old residence, only the last of such residences used by him after the date of such sale shall constitute the new residence. If within the one year, referred to in the preceding sentence, property used by the taxpayer as his principal residence is destroyed, stolen, seized, requisitioned, or condemned, or is sold or exchanged under threat or imminence thereof, then for purposes of the preceding sentence such one year shall be considered as ending with the date of such destruction, theft, seizure, requisition, condemnation, sale, or exchange.

7. In the case of a new residence the construction of which was commenced by the taxpayer prior to the expiration of one year after the date of the sale of the old residence, the period specified in par. (a), and the one year referred to in subd. 6, shall be considered as including a period of 18 months beginning with the date of the sale of the old residence.

(c) The provisions of par. (a) shall not be applicable with respect to the sale of the taxpayer's residence if within one year prior to the date of such sale the taxpayer sold at a gain other property used by him as his principal residence and any part of such gain was not recognized by reason of the provisions of par. (a). For the purposes of this paragraph, the destruction, theft, seizure, requisition or condemnation of property or the sale or exchange of property under threat or imminence thereof, shall not be considered as a sale of such property.

(d) Where the purchase of a new residence results, under par. (a), in the nonrecognition of gain upon the sale of an old residence, in determining the income tax basis of the new residence, as of any time following the sale of the old residence, the adjustments to basis shall include a reduction by an amount equal to the amount of the gain not so recognized upon the sale of the old residence. For this purpose, the amount of the gain not so recognized upon the sale of the old residence includes only so much of such gain as is not recognized by reason of the cost, up to such time, of purchasing the new residence.

(e) For the purposes of this section, references to property used by the taxpayer as his principal residence, and references to the residence of a taxpayer, shall include stock held by a tenant-stockholder in a cooperative apartment if:

1. In the case of stock sold, the apartment which the taxpayer was entitled to occupy as such stockholder was used by him as his principal residence, and

2. In the case of stock purchased, the stockholder used as his principal residence the apartment which he was entitled to occupy as such stockholder.

(f) For purposes of par. (e), a "tenant-stockholder" means an individual who is a stockholder in a co-operative apartment corporation, and whose stock is fully paid up in an amount not less than the amount shown to the satisfaction of the assessor of in-

comes, as bearing a reasonable relationship to the portion of the value of the corporation's equity in the building and the land on which it is situated which is attributable to the apartment which such individual is entitled to occupy. For purposes of par. (e), a "co-operative apartment" means a corporation—

1. Having one and only one class of stock outstanding;

2. All the stockholders of which are entitled, solely by reason of their ownership of stock in the corporation, to occupy for dwelling purposes apartments in a building owned or leased by such corporation, and who are not entitled, either conditionally or unconditionally, except upon a liquidation of the corporation, to receive any distribution not out of earnings and profits of the corporation; and

3. Eighty per cent or more of the gross income of which for the taxable year is derived from tenant-stockholders.

(g) If the taxpayer during a taxable year sells at a gain property used by him as his principal residence, then the statutory period for the assessment of any deficiency attributable to any part of such gain shall not expire prior to the expiration of 3 years from the date the department of taxation is notified by the taxpayer in writing of: (1) the taxpayer's cost of purchasing the new residence which the taxpayer claims results in nonrecognition of any part of such gain; or (2) the taxpayer's intention not to purchase a new residence within the period specified in par. (a); or (3) a failure to make such purchase within such period. Such deficiency may be assessed prior to the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(h) This provision shall be applicable in the determination of taxable income in any case in which the income year in which the old residence is sold ends on or after July 31, 1953.

Approved July 7, 1953.

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