
DEFERRAL AND EXCLUSION OF LONG-TERM CAPITAL GAINS FOR INVESTMENTS IN WISCONSIN BUSINESSES

Fact Sheet

DEFERRAL OF GAIN

Effective for taxable years beginning on or after January 1, 2011, there are two provisions in Wisconsin law that allow individuals to defer tax on the long-term capital gain realized from the sale of assets. The provisions are:

1. Section 71.05(24), Wis. Stats., which requires reinvestment of the gain in a "qualified new business venture."
2. Section 71.05(26), Wis. Stats., which requires reinvestment of the gain in a "qualified Wisconsin business."

The two provisions are similar, but there are several significant differences that are discussed below.

Individuals, including individual partners or members of a partnership, limited liability company, or limited liability partnership, and individual shareholders of a tax-option corporation, may defer tax on the long-term gain realized from the sale of any capital asset held more than one year. The gain must be treated as a long-term gain under the Internal Revenue Code. The amount of gain that may be deferred is limited to \$10,000,000 if the reinvestment is in a "qualified new business venture." The limitation does not apply if the reinvestment is in a "qualified Wisconsin business."

Certain conditions must be met in order to qualify for the deferral of gain.

- The long-term gain must be deposited in a segregated account in a financial institution. "Financial institution" means any bank, savings bank, savings and loan association, or credit union that is authorized to do business under state or federal laws relating to financial institutions.
- Within 180 days after the sale of the asset that generated the gain, all of the proceeds in the account must be invested in a "qualified new business venture" or a "qualified Wisconsin business." Both the "qualified new business

venture" and the "qualified Wisconsin business" must have been certified by the Wisconsin Economic Development Corporation (WEDC) for the year to which the deferral relates. (The "qualified new business venture" may have been certified by the Department of Commerce after January 1, 2011, and before July 1, 2011.)

- After making the investment, the individual must notify the Department of Revenue, on a form provided by the department, that he/she will not declare the gain on the Wisconsin income tax return because the gain has been reinvested. The form must be attached to the individual's income tax return for the year of the claim. Wisconsin Schedule CG is used to notify the department.

The basis of the investment must be reduced by the amount of deferred gain. Thus, the deferred gain will be taxable for Wisconsin when the investment is later sold.

"QUALIFIED NEW BUSINESS VENTURE" AND "QUALIFIED WISCONSIN BUSINESS"

A "qualified new business venture" is a business certified by the Department of Commerce or WEDC. A business may be certified, and maintain such certification, only if the business is engaged in one of the following:

- Developing a new product or business process.
- Manufacturing, agriculture, or processing or assembling products and conducting research and development.

The business must submit an application to WEDC in each calendar year for which it desires certification.

A "qualified Wisconsin business" is a business certified by WEDC. The business must submit an application to WEDC in each calendar year for which it desires certification. A business may be certified if:

- The amount of payroll compensation paid by the business in Wisconsin is equal to at least 50 percent of the amount of all payroll paid by the business, and
- The value of real and tangible personal property owned or rented and used by the business in Wisconsin 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.

EXCLUSION OF LONG-TERM CAPITAL GAIN

Wisconsin law (sec. 71.05(25), Wis. Stats.) provides for a capital gain exclusion when an investment is held for at least five years in a "qualified Wisconsin business." The exclusion does not apply for investments in a "qualified new business venture."

The following requirements must be met to qualify for the exclusion:

- The investment must be purchased after December 31, 2010, and held for at least five uninterrupted years.
- The gain is treated as a long-term capital gain under the Internal Revenue Code.
- The Wisconsin business must have been certified by the WEDC for the year purchased and for at least two of the subsequent four years.

The amount of gain that may be excluded is the lesser of:

- The amount of the individual's net capital gain as reported on federal Schedule D, or
- The amount of gain from the sale of the investment less any gain that was deferred for Wisconsin.

ADDITIONAL INFORMATION

For further information on certified businesses, contact:

Wisconsin Economic Development Corporation
PO Box 1687
Madison, WI 53703

Chris Schiffner
(608)267-2425
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or

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For further information on the Wisconsin treatment of the long-term capital gain deferral and exclusion, contact any [Department of Revenue office](#) or our Customer Service Bureau at (608)266-2772. You may e-mail your questions to income@revenue.wi.gov.

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