



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-4005/1
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2019 SENATE BILL 440

September 23, 2019 - Introduced by Senators FEYEN, RINGHAND, BEWLEY, DARLING, HANSEN, MILLER, PETROWSKI, L. TAYLOR and TESTIN, cosponsored by Representatives VANDERMEER, BILLINGS, ALLEN, BOWEN, EDMING, FIELDS, KOLSTE, KRUG, KULP, MILROY, MURSAU, NOVAK, NYGREN, OLDENBURG, OHNSTAD, POPE, QUINN, ROHRKASTE, SKOWRONSKI, SPIROS, SPREITZER, SUBECK, SUMMERFIELD, TAUCHEN, C. TAYLOR, THIESFELDT, TRANEL, TUSLER, VINING, VRUWINK and NEYLON. Referred to Committee on Agriculture, Revenue and Financial Institutions.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to amend** 71.01 (13) and 71.05 (8) (b) 1.; and **to create** 71.05 (25m), 71.26
2 (3) (vm), 71.34 (1k) (p), 71.45 (2) (a) 21. and 71.83 (1) (e) of the statutes; **relating**
3 **to:** income and franchise tax benefit for investment in Wisconsin opportunity
4 zones and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill allows a taxpayer to decrease the amount of capital gains subject to income and franchise taxation by investing in a Wisconsin opportunity zone.

Currently, under the federal opportunity zone program created in 2017, a taxpayer may defer paying federal income tax on capital gains, and in some cases reduce the amount of tax owed, by investing the gains in an opportunity zone. An opportunity zone is a low-income population census tract designated by the U.S. Treasury secretary, with input from a state's governor. Wisconsin has 120 opportunity zones. A taxpayer invests in an opportunity zone by investing in a qualified fund, which must hold at least 90 percent of its assets in opportunity zone property. If the fund's opportunity zone assets fall below the 90 percent threshold, the fund is subject to a fine that is based on the shortfall for each month the threshold is not met. Under the federal program, the taxpayer defers paying tax on the capital gains until the earlier of the date on which the taxpayer sells the investment in the fund or December 31, 2026. At that time, the taxpayer may permanently exclude 10 percent of the deferred gains from income, and thus not pay tax on that amount, if the investment was held for at least five years. The exclusion increases to 15 percent of the gains if the investment was held for at least seven years. Additionally, if the

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taxpayer holds the investment for at least ten years, the investment's earnings are not taxed. Wisconsin has incorporated the federal provisions into state law and, therefore, the deferral and exclusion treatments apply when calculating state income and franchise taxes.

Under the bill, for income and franchise tax purposes, a taxpayer may exclude an additional 10 percent of the deferred gains if the taxpayer holds the investment in a Wisconsin qualified opportunity fund for at least five years or an additional 15 percent of the deferred gains if the taxpayer holds the investment for at least seven years. A Wisconsin qualified opportunity fund must hold at least 90 percent of its assets in property that qualifies under the federal program and is located in a Wisconsin opportunity zone. If the fund is liable for the federal penalty for failing to meet the 90 percent threshold for opportunity zone assets, the fund must also pay a state civil penalty that is equal to 33 percent of the federal penalty.

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:

1 **SECTION 1.** 71.01 (13) of the statutes is amended to read:

2 71.01 (13) "Wisconsin adjusted gross income" means federal adjusted gross
3 income, with the modifications prescribed in s. 71.05 (6) to (12), (19), (20), (24), (25),
4 (25m), and (26).

5 **SECTION 2.** 71.05 (8) (b) 1. of the statutes is amended to read:

6 71.05 (8) (b) 1. Except as provided in s. 71.80 (25), a Wisconsin net operating
7 loss may be carried back against Wisconsin taxable income of the previous 2 years
8 and then carried forward against Wisconsin taxable incomes of the next 20 taxable
9 years, if the taxpayer was subject to taxation under this chapter in the taxable year
10 in which the loss was incurred, to the extent not offset against other income of the
11 year of loss and to the extent not offset against Wisconsin modified taxable income
12 of the 2 years preceding the loss and of any year between the loss year and the taxable

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1 year for which the loss carry-forward is claimed. In this paragraph, “Wisconsin
2 modified taxable income” means Wisconsin taxable income with the following
3 exceptions: a net operating loss deduction or offset for the loss year or any taxable
4 year before or thereafter is not allowed, the deduction for long-term capital gains
5 under subs. (6) (b) 9. and 9m. ~~and, (25), and (25m)~~ is not allowed, the amount
6 deductible for losses from sales or exchanges of capital assets may not exceed the
7 amount includable in income for gains from sales or exchanges of capital assets and
8 “Wisconsin modified taxable income” may not be less than zero.

9 **SECTION 3.** 71.05 (25m) of the statutes is created to read:

10 71.05 **(25m)** CAPITAL GAINS EXCLUSION; OPPORTUNITY ZONES. (a) In this
11 subsection:

12 1. “Claimant” means an individual; an individual partner or member of a
13 partnership, limited liability company, or limited liability partnership; or an
14 individual shareholder of a tax-option corporation.

15 2. “Wisconsin qualified opportunity fund” means a qualified opportunity fund,
16 as defined in 26 USC 1400Z-2 (d) (1), that holds at least 90 percent of its assets in
17 Wisconsin qualified opportunity zone property, as measured on the last day of the
18 first 6-month period of the fund’s taxable year and the last day of the fund’s taxable
19 year.

20 3. “Wisconsin qualified opportunity zone” means a population census tract
21 located in this state that is designated as a qualified opportunity zone under 26 USC
22 1400Z-1.

23 4. “Wisconsin qualified opportunity zone property” means qualified
24 opportunity zone property, as defined in 26 USC 1400Z-2 (d) (2), except that qualified

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1 opportunity zone business property, as defined in 26 USC 1400Z-2 (d) (2) (D) and (3)
2 (A) (i), shall be located in a Wisconsin qualified opportunity zone.

3 (b) For taxable years beginning after December 31, 2018, a claimant may
4 subtract from federal adjusted gross income the amount of gain excluded from
5 federal gross income in the taxable year due to the application of 26 USC 1400Z-2
6 (b) (2) (B) (iii) for an investment held in a Wisconsin qualified opportunity fund for
7 at least 5 years or due to the application of 26 USC 1400Z-2 (b) (2) (B) (iv) for an
8 investment held in a Wisconsin qualified opportunity fund for at least 7 years; except
9 that the gain may not include any amount for which the claimant claimed a
10 subtraction under sub. (25) (b) or any gain described under sub. (26) (b).

11 (c) A fund shall annually certify to each investor and the department that it
12 qualifies as a Wisconsin qualified opportunity fund for the fund's taxable year.

13 (d) Nothing in this subsection affects, or requires an adjustment to, a
14 subtraction by the claimant under sub. (6) (b) 9. for the same taxable year.

15 **SECTION 4.** 71.26 (3) (vm) of the statutes is created to read:

16 71.26 (3) (vm) 1. For taxable years beginning after December 31, 2018, section
17 1400Z-2 (relating to capital gains invested in opportunity zones) is modified so that
18 an increase in basis is twice the amount determined under section 1400Z-2 (b) (2)
19 (B) (iii) for an investment held in a Wisconsin qualified opportunity fund for at least
20 5 years or under section 1400Z-2 (b) (2) (B) (iv) for an investment held in a Wisconsin
21 qualified opportunity fund for at least 7 years. In this subdivision, "Wisconsin
22 qualified opportunity fund" has the meaning given in s. 71.05 (25m) (a) 2.

23 2. A fund shall annually certify to each investor and the department that it
24 qualifies as a Wisconsin qualified opportunity fund for the fund's taxable year.

25 **SECTION 5.** 71.34 (1k) (p) of the statutes is created to read:

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1 71.34 (1k) (p) 1. For taxable years beginning after December 31, 2018, a
2 subtraction may be made of the amount of gain excluded from federal gross income
3 in the taxable year due to the application of 26 USC 1400Z-2 (b) (2) (B) (iii) for an
4 investment held in a Wisconsin qualified opportunity fund for at least 5 years or due
5 to the application of 26 USC 1400Z-2 (b) (2) (B) (iv) for an investment held in a
6 Wisconsin qualified opportunity fund for at least 7 years. In this subdivision,
7 “Wisconsin qualified opportunity fund” has the meaning given in s. 71.05 (25m) (a)
8 2.

9 2. A fund shall annually certify to each investor and the department of revenue
10 that it qualifies as a Wisconsin qualified opportunity fund for the fund’s taxable year.

11 **SECTION 6.** 71.45 (2) (a) 21. of the statutes is created to read:

12 71.45 (2) (a) 21. a. For taxable years beginning after December 31, 2018, by
13 subtracting from federal taxable income an amount equal to the gain excluded from
14 federal gross income in the taxable year due to the application of 26 USC 1400Z-2
15 (b) (2) (B) (iii) for an investment held in a Wisconsin qualified opportunity fund for
16 at least 5 years or 26 USC 1400Z-2 (b) (2) (B) (iv) for an investment held in a
17 Wisconsin qualified opportunity fund for at least 7 years. In this subdivision,
18 “Wisconsin qualified opportunity fund” has the meaning given in s. 71.05 (25m) (a)
19 2.

20 b. A fund shall annually certify to each investor and the department that it
21 qualifies as a Wisconsin qualified opportunity fund for the fund’s taxable year.

22 **SECTION 7.** 71.83 (1) (e) of the statutes is created to read:

23 71.83 (1) (e) *Wisconsin qualified opportunity funds.* A Wisconsin qualified
24 opportunity fund, as defined in s. 71.05 (25m) (a) 2., that is liable for a penalty under
25 section 1400Z-2 (f) of the Internal Revenue Code is liable for a penalty equal to 33

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1 percent of the federal penalty. The department shall assess, levy, and collect the
2 penalty under this paragraph in the same manner as it assesses, levies, and collects
3 taxes under this chapter.

4 **SECTION 8. Initial applicability.**

5 (1) This act first applies to taxable years beginning after December 31, 2018.

6 (END)