

Revenue Information Bulletin No. 10-017
December 6, 2010
Individual Income Tax

Capital Gains Deduction

Louisiana Revised Statutes 47:293(9)(a)(xvii) and 47:293(10) provides an individual income tax deduction for net capital gains, limited to gains recognized and treated for federal purposes as arising from the sale or exchange of equity interests in, or substantially all of the assets of, a non-publicly traded business commercially domiciled in Louisiana.

For purposes of computing this deduction, the following terms are defined and explained:

Net Capital Gains - the amount reported as capital gains on the Federal Form 1040.

Equity Interest - an ownership interest in a business entity that is not publicly traded, such as stock in a corporation, a partnership interest in a partnership, or a membership interest in a limited liability company (LLC).

Sale or Exchange of an Equity Interest - a sale or exchange of an equity interest that is required to be reported on Schedule D of Federal Form 1040 – Capital Gains and Losses.

Sale or Exchange of Substantially all of the Assets of a Business - a sale or exchange of assets that would allow the buyer of the assets to continue the business. A sale or exchange of assets is presumed to be a sale or exchange of substantially all of the assets of the business if the selling business transfers at least 90% of the fair market value of the net assets and at least 70% of the fair market value of the gross assets that it held immediately before the transfer.

Example: Company A has gross assets of \$1,000,000 and liabilities of \$500,000, i.e. net assets of \$500,000. Company A must sell or exchange at least \$450,000 of net assets (90% of \$500,000) and \$700,000 of gross assets (70% of \$1,000,000) for the sale or exchange to be presumed to be a sale or exchange of substantially all of Company A's assets.

Capital Gains from the Sale or Exchange of the Assets of a Business - capital gains from sales and exchanges that are reported on Federal Form 4797 – Sales of Business Property, the gains from which are reported on Schedule D of Federal Form 1040.

Commercial Domicile - the principle place from which the trade or business is directed or managed.

Calculating the deduction:

Because of the netting of gains with losses on the federal Schedule D, the following calculations and limitations are necessary to determine the amount of the qualifying gains that are included in federal adjusted gross income, and therefore exempted from Louisiana tax table income.

The deduction is the smaller amount of Net Capital Gains reported on Federal Form 1040 line 13, or the following sum:

Smaller amount of total qualifying short-term gains or net short-term gains from line 7 of Schedule D of Federal Form 1040, plus the smaller amount of total qualifying long-term gains or net long-term gains from line 15 of Schedule D of Federal Form 1040.

A Revenue Information Bulletin (RIB) is issued under the authority of LAC 61:III.101.D. A RIB is an informal statement of information issued for the public and employees that is general in nature. A RIB does not have the force and effect of law and is not binding on the public or the Department.

Example:

Taxpayer reported the following items on the Schedule D of federal form 1040:

Part I Short-Term Capital Gains and Losses	Amount
Short-term capital gain on sale of equity interest in a Louisiana commercially domiciled non-publicly traded company.	100
Short-term capital gain on sale of equity interest in a publicly traded company.	25
Short-term capital loss.	(25)
Net Short-Term Capital Gains (Schedule D line 7)	100
Part II Long-Term Capital Gains and Losses	
Long-term capital gain from federal form 4797 passed through from an LLC that is taxed as a partnership. The LLC is a Louisiana commercially domiciled non-publicly traded company. Taxpayer owns 30% of the LLC. The gain is the result the LLC's sale of more than 90% of the fair market value of the net assets and more than 70% of the fair market value of the gross assets that it held immediately before the transfer.	300
Long-term capital gain on sale of equity interest in a Louisiana commercially domiciled non-publicly traded company.	200
Long-term capital gain on sale of equity interest in a Louisiana commercially domiciled publicly traded company.	100
Long-term capital loss.	(250)
Long-term capital loss carryover.	(75)
Net Long-Term Capital Gains (Schedule D line 15)	275
Capital gains reported on line 13 of the federal form 1040 (Net Short-Term Capital Gains of 100 + Net Long-Term Capital gains of 275)	375

The taxpayer's capital gains deduction is determined as follows:

Step 1. Determine the total of qualifying short-term capital gains:	
Short-term capital gain on sale of equity interest in a Louisiana commercially domiciled non-publicly traded company.	100
Total of qualifying short-term capital gains	100
Step 2. Enter the amount of net short-term capital gains or losses. (Schedule D line 7)	100
Step 3. If the amount entered in Step 2 is zero or a loss enter zero, if not enter the smaller of the amount from Steps 1 and 2.	100
Step 4. Determine the total of qualifying long-term capital gains:	
Long-term capital gain from federal form 4797 passed through from an LLC that is taxed as a partnership. The LLC is a Louisiana commercially domiciled non-publicly traded company. Taxpayer owns 30% of the LLC. The gain is the result the LLC's sale of more than 90% of the fair market value of the net assets and more than 70% of the fair market value of the gross assets that it held immediately before the transfer.	300
Long-term capital gain on sale of equity interest in a Louisiana commercially domiciled non-publicly traded company.	200
Total of qualified long-term capital gains:	500
Step 5. Enter the amount of net long-term capital gains or losses. (Schedule D line 15)	275
Step 6. If the amount entered in Step 5 is zero or a loss enter zero, if not enter the smaller of	275

the amount from Steps 4 and 5.	
Step 7. Enter the sum of the amounts from Steps 3 and 6.	375
Step 8. Enter the amount of capital gain or loss reported on line 13 of the federal form 1040	375
Step 9. If the amount from step 8 is less than or equal to the amount from step 7 enter the amount from Step 8 here. If not enter the amount from Step 7. This is the taxpayer's capital gains deduction.	375

Questions should be addressed to the Special Programs Division of the Louisiana Department of Revenue at website.technicalquestions@la.gov.

Cynthia Bridges
Secretary