

Revenue Information Bulletin No. 16-039¹
November 15, 2017
Individual Income Tax

Calculation and Substantiation Requirements for the Deduction for Net Capital Gains

Act 11 of the 2016 Second Extraordinary Session of the Louisiana Legislature limits the individual income tax deduction provided by La. R.S. 47:293(9)(a)(xvii) for certain net capital gains. The deduction is for net capital gains resulting from the sale or exchange of an equity interest in or substantially all of the assets of a nonpublicly traded corporation, partnership, limited liability company, or other business organization commercially domiciled in Louisiana.

Act 11 limits the deduction to net capital gains resulting from the sale or exchange of an equity interest or assets held by the taxpayer for a minimum of five years immediately prior to the sale or exchange.

Two Part Test to Calculate Deduction

Part 1: Minimum Holding Period for Taxpayer

The taxpayer must have owned, by purchase, donation, exchange, or otherwise, the equity interest in or the assets of a nonpublicly traded business for five years immediately prior to the sale or exchange. The taxpayer's holding period starts on the day the taxpayer acquires an equity interest in or assets of a nonpublicly traded business.

For purposes of Part 1, a taxpayer's holding period does not include the holding period of the predecessor owner regardless of the mode of transfer (e.g. donation *inter vivos* or *mortis causa*, sale, exchange, *dation en paiement*) between the predecessor owner and the taxpayer.

Part 2: Minimum Length of Louisiana Commercial Domicile

The nonpublicly traded business must have been commercially domiciled in Louisiana for at least five years prior to the sale or exchange to qualify for the lowest tier of the deduction. The deduction increases based on the appropriate tier for length of commercial domicile as follows:

¹ Revenue Information Bulletin updated on November 15, 2017 to include the calculation and substantiation requirements for the deduction for net capital gains.

Length of Commercial Domicile	Deduction Amount
At least 5 years but less than 10 years	50%
At least 10 years but less than 15 years	60%
At least 15 years but less than 20 years	70%
At least 20 years but less than 25 years	80%
At least 25 years but less than 30 years	90%
30 or more years	100%

No deduction is allowed if the nonpublicly traded business has been domiciled in Louisiana for less than 5 years.

Substantiation Requirements

Taxpayers claiming the deduction shall submit a completed Form R-6180 including all supporting documentation as listed in the form.

A taxpayer must substantiate the deduction by providing documentation establishing the date the taxpayer created by organization or incorporation a nonpublicly traded business entity or acquired an equity interest in or assets of a nonpublicly traded business. Documentation may include articles of incorporation or organization, act of sale, and donative instruments.

Revenue Information Bulletin 10-017 provides, in part, that 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”.

A taxpayer must substantiate a deduction attributable to the sale or exchange of substantially all of the assets by providing documentation establishing the fair market value of gross and net assets that the nonpublicly traded business held immediately before the transfer. For deductions relating to the sale or exchange of substantially all of the assets, documentation must include an appraisal issued by a qualified appraiser as defined by Internal Revenue Code Section 170(f)(11)(E)(ii).

Example 1

Taxpayer, an individual, purchases Partnership from Seller on July 1, 2016. Seller organized Partnership by filing Articles of Organization with the Louisiana Secretary of State on January 1, 1980. Seller’s holding period does not transfer to Taxpayer. If Taxpayer sells Partnership on August 1, 2016, Taxpayer does not qualify for the deduction because Taxpayer does not meet the minimum holding period of Part 1 of the test.

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 2

Taxpayer, an individual, inherited Limited Liability Company from her parent on December 31, 2005. Limited Liability Company was organized and domiciled in Louisiana since December 31, 2000. Taxpayer sells Limited Liability Company for \$100,000 to Buyer on December 31, 2016. Taxpayer is entitled to a deduction for the income from net capital gains in the amount of \$70,000, or 70% of the total sale price because Taxpayer meets Part 1 and 2 of the test. Part 1 is satisfied because Taxpayer has held an equity interest in Limited Liability Company for 11 years. Part 2 is satisfied because Limited Liability Company was domiciled in Louisiana for 16 years which qualifies the deduction amount at 70%.

Example 3

Taxpayer, an individual, owns Company A, a nonpublicly traded corporation and parent company to Company B, a nonpublicly traded corporation. Company A was incorporated on January 1, 2000. Company B was incorporated on August 1, 2016, for various business and family succession planning reasons. When Company B was created, assets were contributed from Company A in exchange for a controlling interest in stock of Company B. Taxpayer sells both Company A and Company B on December 31, 2016. Taxpayer is entitled to a deduction for the income from net capital gains from the sale of Company A only. Taxpayer does not qualify for a deduction from the income from net capital gains from the sale of Company B because Taxpayer has not held an equity interest or the assets of Company B for at least 5 years and Company B has not been domiciled in Louisiana for at least 5 years. The fact that Company A and Company B have substantially similar ownership and are related in a parent/subsidiary organizational setting has no effect on the deductibility of the net capital gains.

Application

Act 11 applies to the sales or exchanges of an equity interest in or substantially all of the assets of a nonpublicly traded business organization occurring on or after June 28, 2016.

For additional information regarding this deduction, please refer to Revenue Information Bulletin No. 10-017.

For questions concerning this matter, please contact the Policy Services Division at (225) 219-2780.

Kimberly Lewis Robinson
Secretary

<p>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.</p>
