

Senate File 411 - Introduced

SENATE FILE _____
BY McKINLEY

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing a new economy employment initiative by
2 providing for a partial deduction under the individual income
3 tax for the capital gain from the sale or exchange of capital
4 stock of a corporation which was acquired by an individual on
5 account of employment with the corporation, and including an
6 effective and retroactive applicability date provision.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
8 TLSB 2264XS 83
9 tw/mg:sc/5

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1 1 Section 1. Section 422.7, Code 2009, is amended by adding
2 the following new subsection:
1 3 NEW SUBSECTION. 54. a. For purposes of this subsection:
1 4 (1) "Capital stock" means voting and nonvoting common and
1 5 preferred stock and stock options issued pursuant to an
1 6 incentive stock option plan. "Capital stock" does not include
1 7 stock rights, stock warrants, or debt securities, and does not
1 8 include stock or stock options issued by a corporation which
1 9 does not offer incentive stock options to all full-time
1 10 employees. A corporation does not offer incentive stock
1 11 options to all full-time employees unless each of those
1 12 employees is issued at least a number of incentive stock
1 13 options equal to twenty percent of all issued outstanding
1 14 incentive stock options divided by the number of full-time
1 15 employees.
1 16 (2) "Corporation" means any of the following:
1 17 (a) A corporation which at the time of the first sale or
1 18 exchange for which an election is made under paragraph "c" has
1 19 been in existence and actively doing business for at least
1 20 three years and is not a personal holding company as defined
1 21 in section 542(a) of the Internal Revenue Code.
1 22 (b) A corporation which is a member of an affiliated
1 23 group, as defined in section 1504(a) of the Internal Revenue
1 24 Code, which group includes a corporation described in
1 25 subparagraph division (a) and which group has been in
1 26 existence and actively doing business for at least three
1 27 years.
1 28 (c) A predecessor or successor corporation of a
1 29 corporation described in subparagraph division (a). A
1 30 corporation is a predecessor or successor corporation if the
1 31 corporation was a party to a reorganization that was entirely
1 32 or substantially income tax free and that occurred during or
1 33 after the employment of the taxpayer making an election under
1 34 paragraph "c".
1 35 (3) "Incentive stock option" means the same as defined in
2 1 section 422(b) of the Internal Revenue Code.
2 2 b. (1) For purposes of this subsection, the corporation
2 3 issuing capital stock for which an election under paragraph
2 4 "c" is made must, at the time of the first sale or exchange
2 5 for which the election is made, have at least five
2 6 shareholders and at least two shareholders or groups of
2 7 shareholders who are not related to each other and each of
2 8 which owns at least five percent of the capital stock.
2 9 (2) For purposes of this paragraph "b", two persons shall
2 10 be considered to be related when, under section 318 of the
2 11 Internal Revenue Code, one is a person who owns, directly or
2 12 indirectly, capital stock that if directly owned would be
2 13 attributed to the other person or is the spouse, child,
2 14 parent, grandparent, brother, sister, aunt, uncle, cousin,

2 15 niece, or nephew of the other person who owns capital stock
2 16 either directly or indirectly.
2 17 c. (1) In the manner provided in paragraph "d", an
2 18 individual may elect to subtract one-half of the capital gain
2 19 from the sale or exchange of capital stock of a corporation
2 20 acquired by the individual on account of employment with that
2 21 corporation. However, for tax years beginning in the 2009
2 22 calendar year, the amount that may be subtracted is one-fourth
2 23 of such capital gain.

2 24 (2) (a) Each individual shall be entitled to two
2 25 elections under subparagraph (1) during the individual's
2 26 lifetime for the capital stock of two different corporations.

2 27 (b) The election applies only to the tax year for which
2 28 the election was made and applies to all sales and exchanges
2 29 in the tax year for which the election was made of capital
2 30 stock in the same corporation which was acquired as provided
2 31 in subparagraph (1).

2 32 (c) After the individual makes an election for the tax
2 33 year, the election shall also apply to the sale or exchange in
2 34 that tax year of capital stock of the corporation which had
2 35 been transferred by inter vivos gift from the individual to
3 1 the individual's spouse if the capital stock was acquired as
3 2 provided in subparagraph (1). This provision applies in the
3 3 case of the spouse only if the spouse was married to such
3 4 individual on the date of sale or exchange or the date of
3 5 death of the individual and if the spouse and individual file
3 6 a joint Iowa income tax return on which the election is made.
3 7 If the individual dies without making an election, the
3 8 surviving spouse may make the election for capital stock that
3 9 would have qualified under this subparagraph division.
3 10 However, if there is no surviving spouse, the oldest surviving
3 11 issue who owns capital stock that would have qualified under
3 12 this subparagraph division may make the election.

3 13 d. An election under paragraph "c" shall be made by
3 14 including a written statement with the taxpayer's Iowa income
3 15 tax return for the tax year for which the election is made.
3 16 The written statement shall identify the corporation that
3 17 issued the capital stock, the grounds for the election under
3 18 this subsection, and that the taxpayer elects to have this
3 19 subsection apply to sales and exchanges in that tax year.

3 20 e. The deduction under this subsection is in lieu of any
3 21 deduction allowable under section 1202 of the Internal Revenue
3 22 Code for the capital gain from the sale or exchange of the
3 23 same capital stock.

3 24 Sec. 2. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.
3 25 This Act, being deemed of immediate importance, takes effect
3 26 upon enactment and applies retroactively to January 1, 2009,
3 27 for tax years beginning on or after that date.

3 28 EXPLANATION

3 29 This bill provides for a partial deduction from the
3 30 computation of the individual income tax for capital gains
3 31 from the sale or exchange of capital stock of a corporation
3 32 where the capital stock was acquired by an individual through
3 33 employment with the corporation. In general, capital stock
3 34 means voting and nonvoting common and preferred stock and
3 35 stock options issued pursuant to an incentive stock option
4 1 plan.

4 2 The bill allows an individual to elect to subtract one-half
4 3 of the capital gain from the sale or exchange of such capital
4 4 stock. However, for tax years beginning in the 2009 calendar
4 5 year, the amount that may be subtracted is limited to
4 6 one-fourth of the amount of the capital gain.

4 7 The bill provides that an individual is allowed to make
4 8 such an election two times during that individual's lifetime
4 9 for the sale of capital stock of two different corporations.
4 10 Such an election must be made by including a written statement
4 11 with the taxpayer's Iowa income tax return for the tax year
4 12 for which the election is made. The written statement must
4 13 identify the corporation that issued the capital stock, the
4 14 grounds for the election, and an indication that the taxpayer
4 15 elects to take the deduction in that tax year.

4 16 The bill provides that a deduction for the sale of capital
4 17 stock is in lieu of any similar deduction allowable under
4 18 section 1202 of the Internal Revenue Code.

4 19 The bill takes effect upon enactment and applies
4 20 retroactively to January 1, 2009, for tax years beginning on
4 21 or after that date.