

Sukup, Ch.  
Larson  
Shoultz

HSB 244  
WAYS AND MEANS

Succeeded

\$ 0710

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
WAYS AND MEANS BILL BY  
CHAIRPERSON VAN FOSSEN)

Passed House, Date \_\_\_\_\_ Passed Senate, 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, limiting the  
6 fiscal impact of the partial deductions, and including an  
7 effective and retroactive applicability date provision.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 . Section 1. Section 422.7, Code 2001, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 36. a. For purposes of this subsection:

4 (1) "Capital stock" means voting and nonvoting common and  
5 preferred stock and stock options issued pursuant to an  
6 incentive stock option plan. "Capital stock" does not include  
7 stock rights, stock warrants, or debt securities, and does not  
8 include stock or stock options issued by a corporation which  
9 does not offer incentive stock options to all full-time  
10 employees. A corporation does not offer incentive stock  
11 options to all full-time employees unless each of those  
12 employees is issued at least a number of incentive stock  
13 options equal to twenty percent of all issued outstanding  
14 incentive stock options divided by the number of full-time  
15 employees.

16 (2) "Corporation" means any of the following:

17 (a) A corporation which at the time of the first sale or  
18 exchange for which an election is made under paragraph "c" has  
19 been in existence and actively doing business for at least  
20 three years and is not a personal holding company as defined  
21 in section 542(a) of the Internal Revenue Code.

22 (b) A corporation which is a member of an affiliated  
23 group, as defined in section 1504(a) of the Internal Revenue  
24 Code, which group includes a corporation described in  
25 subparagraph subdivision (a) and which group has been in  
26 existence and actively doing business for at least three  
27 years.

28 (c) A predecessor or successor corporation of a  
29 corporation described in subparagraph subdivision (a). A  
30 corporation is a predecessor or successor corporation if the  
31 corporation was a party to a reorganization that was entirely  
32 or substantially income tax free and that occurred during or  
33 after the employment of the taxpayer making an election under  
34 paragraph "c".

35 (3) "Incentive stock option" means the same as defined in

1 section 422(b) of the Internal Revenue Code.

2 b. For purposes of this subsection, the corporation  
3 issuing capital stock for which an election under paragraph  
4 "c" is made must, at the time of the first sale or exchange  
5 for which the election is made, have at least five  
6 shareholders and at least two shareholders or groups of  
7 shareholders who are not related to each other and each of  
8 which owns at least five percent of the capital stock.

9 For purposes of this paragraph "b", two persons shall be  
10 considered to be related when, under section 318 of the  
11 Internal Revenue Code, one is a person who owns, directly or  
12 indirectly, capital stock that if directly owned would be  
13 attributed to the other person or is the spouse, child,  
14 parent, grandparent, brother, sister, aunt, uncle, cousin,  
15 niece, or nephew of the other person who owns capital stock  
16 either directly or indirectly.

17 c. (1) In the manner provided in paragraph "d", an  
18 individual may elect to subtract one-half of the capital gain  
19 from the sale or exchange of capital stock of a corporation  
20 acquired by the individual on account of employment with that  
21 corporation. However, for tax years beginning in the 2001  
22 calendar year, the amount that may be subtracted is one-fourth  
23 of such capital gain.

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

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

32 (c) After the individual makes an election for the tax  
33 year, the election shall also apply to the sale or exchange in  
34 that tax year of capital stock of the corporation which had  
35 been transferred by inter vivos gift from the individual to

1 the individual's spouse if the capital stock was acquired as  
2 provided in subparagraph (1). This provision applies in the  
3 case of the spouse, only if the spouse was married to such  
4 individual on the date of sale or exchange or the date of  
5 death of the individual and if the spouse and individual file  
6 a joint Iowa income tax return on which the election is made.  
7 If the individual dies without making an election, the  
8 surviving spouse may make the election for capital stock that  
9 would have qualified under this subparagraph subdivision.

10 However, if there is no surviving spouse, the oldest surviving  
11 issue who owns capital stock that would have qualified under  
12 this subparagraph subdivision may make the election.

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

20 (1) In order for the taxpayer to claim the benefits of the  
21 partial deduction of the capital gain under this subsection,  
22 the taxpayer must completely fill out the tax return,  
23 determine the taxpayer's income tax liability without the  
24 benefit of this subsection, and pay the amount of tax owed.  
25 The taxpayer shall recompute the taxpayer's income tax  
26 liability, by applying the provisions of this subsection on a  
27 special return. This special return shall be filed under  
28 rules of the director and constitutes a claim for refund of  
29 the difference between the amount of tax the taxpayer paid as  
30 determined without the application of the provisions of this  
31 subsection and the amount of tax determined with the  
32 application of the provisions of this subsection.

33 (2) This subsection shall not affect the amount of the  
34 taxpayer's checkoff to the Iowa election campaign fund under  
35 section 56.18, the checkoff for the state fish and game

1 protection fund in section 456A.16, the credits from tax  
2 provided in sections 422.10, 422.11A, and 422.12 and the  
3 allocation of these credits between spouses if the taxpayers  
4 filed separate returns or separately on combined returns.

5 (3) For any tax year, the aggregate amount of refund  
6 claims that shall be paid pursuant to this subsection shall  
7 not exceed three million dollars. If, for a tax year, the  
8 aggregate amount of refund claims filed pursuant to this  
9 subsection exceeds three million dollars, each claim for  
10 refund shall be paid on a pro rata basis so that the aggregate  
11 amount of refund claims paid does not exceed three million  
12 dollars. In the case where refund claims are not paid in  
13 full, the amount of the refund to which the taxpayer is  
14 entitled under this subsection is the pro rata amount that was  
15 paid and the taxpayer is not entitled to a refund of the  
16 unpaid portion and is not entitled to carry that amount  
17 forward or backward to another tax year. Taxpayers shall not  
18 use refunds as estimated payments for the succeeding tax year.  
19 Taxpayers whose tax years begin on January 1 must file their  
20 refund claims by October 31 of the calendar year following the  
21 end of their tax years to be eligible for refunds. Taxpayers  
22 whose tax years begin on a date other than January 1 must file  
23 their refund claims by the end of the tenth month following  
24 the end of their tax years to be eligible. The department  
25 shall determine on February 1 of the second succeeding  
26 calendar year if the total amount of claims for refund exceeds  
27 three million dollars for the tax year. Notwithstanding any  
28 other provision, interest shall not be due on any refund  
29 claims that are paid by the last day of February of the second  
30 succeeding calendar year. If the claim is not payable on  
31 February 1 of the second succeeding calendar year, because the  
32 taxpayer is a fiscal year filer, then the amount of the claim  
33 allowed shall be in the same ratio as the refund claims  
34 available on February 1 of the second succeeding calendar  
35 year. These claims shall be funded by moneys appropriated for

1 payment of individual income tax refunds.

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

6 Sec. 2. EFFECTIVE AND RETROACTIVE APPLICABILITY DATE.

7 This Act, being deemed of immediate importance, takes effect  
8 upon enactment and applies retroactively to January 1, 2001,  
9 for tax years beginning on or after that date.

10

EXPLANATION

11 This bill provides a deduction under the individual income  
12 tax of 50 percent (25 percent for the 2001 tax year) of the  
13 capital gain from the sale or exchange of capital stock of a  
14 corporation acquired by the taxpayer on account of employment  
15 with the corporation. The taxpayer must make an election to  
16 take the deduction and the election only applies for that tax  
17 year. The election is made by a written statement filed with  
18 the department. In addition, the benefits of the deduction  
19 are realized by means of a refund claim. This involves the  
20 taxpayer filing a return with tax liability determined without  
21 deduction for the capital gain and a special return with tax  
22 liability determined with the deduction for the capital gain.  
23 The reduction in tax liability will be treated as a claim for  
24 refund of the amount of the reduction. However, not more than  
25 \$3 million in tax refunds may be allowed for any tax year. If  
26 more refunds are claimed, then each refund claim is payable at  
27 a pro rata amount, which is the final amount of the taxpayer's  
28 actual refund. A taxpayer may make two elections for two  
29 different corporations during the taxpayer's lifetime. The  
30 election would also apply to stock sold during that tax year  
31 which was previously granted to a spouse of the taxpayer but  
32 only if they file a joint Iowa income tax return. The  
33 election would not apply to capital gains from stock or stock  
34 options unless the corporation issuing the options offered  
35 them to all full-time employees.

1 The deduction is in lieu of the deduction that may be  
2 allowable under the Internal Revenue Code for sale or exchange  
3 of stock in a small business held for five years.

4 The bill takes effect upon enactment and applies  
5 retroactively to January 1, 2001, for tax years beginning on  
6 or after that date.

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*Substituted for By SF 521*

*5/2/01 (P.1731)*

APR 11 2001

WAYS & MEANS CALENDAR

HOUSE FILE 710

BY COMMITTEE ON WAYS AND MEANS

**WITHDRAWN**  
*5-2-01*

(SUCCESSOR TO HSB 244)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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2 providing for a partial deduction under the individual income  
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HF 710



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20 three years and is not a personal holding company as defined  
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24 Code, which group includes a corporation described in  
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32 or substantially income tax free and that occurred during or  
33 after the employment of the taxpayer making an election under  
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29 the difference between the amount of tax the taxpayer paid as  
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35 section 56.18, the checkoff for the state fish and game

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12 tax of 50 percent (25 percent for the 2001 tax year) of the  
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2 allowable under the Internal Revenue Code for sale or exchange  
3 of stock in a small business held for five years.

4 The bill takes effect upon enactment and applies  
5 retroactively to January 1, 2001, for tax years beginning on  
6 or after that date.

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HOUSE FILE 710

H-1769

1 Amend House File 710 as follows:

2 1. By striking page 4, line 32 through page 5,  
3 line 1, and inserting the following: "taxpayer is a  
4 fiscal year filer, the claim shall be considered as a  
5 claim for the following tax year."

By SUKUP of Franklin

H-1769 FILED APRIL 30, 2001

*adapted 5/2/01 (p. 1728)*