

House File 2311 - Introduced

HOUSE FILE 2311

BY BRANDENBURG

A BILL FOR

1 An Act providing an exemption from the computation of the state
2 individual income tax of certain dividends and net capital
3 gain from the sale or exchange of qualified capital stock
4 and including effective date and retroactive applicability
5 provisions.

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

1 Section 1. Section 422.7, Code Supplement 2011, is amended
2 by adding the following new subsection:

3 NEW SUBSECTION. 57. *a.* Subtract, to the extent included,
4 the extraordinary dividends from, and net capital gain from
5 the sale or exchange of, the capital stock of the qualified
6 corporation for which an election is made pursuant to paragraph
7 "b".

8 *b.* (1) A resident individual is entitled to make one
9 irrevocable lifetime election to exclude the extraordinary
10 dividends from, and net capital gain from the sale or exchange
11 of, the capital stock of one qualified corporation which
12 capital stock was acquired by the resident individual on
13 account of employment by such qualified corporation or while
14 employed by such qualified corporation.

15 (2) The election shall apply to all subsequent
16 extraordinary dividends and sales or exchanges of the elected
17 capital stock, provided it is capital stock in the same
18 qualified corporation and was acquired on account of employment
19 by such qualified corporation or while employed by such
20 qualified corporation.

21 (3) The election shall apply to transfers of the capital
22 stock by inter vivos gift from the electing individual to the
23 electing individual's spouse or lineal descendants, or to a
24 trust for the benefit of the individual's spouse or lineal
25 descendants. This subparagraph shall apply to a spouse only if
26 the spouse was married to the electing individual on the date
27 of the extraordinary dividend or sale or exchange or the date
28 of death of the electing individual.

29 (4) If a resident individual dies without making an
30 election, the surviving spouse or, if there is no surviving
31 spouse, the oldest surviving lineal descendant may make the
32 election that would have qualified under subparagraph (3).

33 (5) The election shall be made by including a written
34 statement with the taxpayer's state income tax return for
35 the taxable year in which the election is made. The written

1 statement shall identify the qualified corporation that issued
2 the capital stock, the grounds for the election under this
3 paragraph, a statement that the taxpayer elects to have this
4 paragraph apply, and any other information required by the
5 department. The department shall provide appropriate forms
6 for making elections and reporting exclusions pursuant to this
7 subsection.

8 c. For purposes of this subsection:

9 (1) "*Capital stock*" means common or preferred stock, either
10 voting or nonvoting. "*Capital stock*" does not include stock
11 rights, stock warrants, stock options, or debt securities.

12 (2) "*Electing individual*" means a resident individual who
13 makes an election under paragraph "b", subparagraph (1).

14 (3) "*Extraordinary dividend*" means any dividend paid on
15 capital stock exceeding twenty percent of the fair market value
16 of the capital stock as of the date the dividend is declared.

17 (4) "*Lineal descendant*" means children of the electing
18 individual, including legally adopted children and biological
19 children, stepchildren, grandchildren, great-grandchildren, and
20 any other lineal descendants of the electing individual.

21 (5) (a) "*Qualified corporation*" means a corporation which,
22 at the time an election is made under paragraph "b", meets the
23 following conditions:

24 (i) The corporation has been in existence and actively doing
25 business in this state for at least three years.

26 (ii) The corporation has at least five shareholders.

27 (iii) The corporation has at least two shareholders or
28 groups of shareholders who are not related and who each
29 own at least ten percent of the capital stock. Two persons
30 are considered to be related when, under section 318 of the
31 Internal Revenue Code, one is a person who owns, directly or
32 indirectly, capital stock that if directly owned would be
33 attributed to the other person, or is the brother, sister,
34 aunt, uncle, cousin, niece, or nephew of the other person who
35 owns capital stock either directly or indirectly.

1 (b) A qualified corporation shall include any member of
2 an affiliated group, as defined in section 422.32, if the
3 affiliated group includes a member that has been in existence
4 and actively doing business in this state for at least three
5 years.

6 (c) A qualified corporation shall include any corporation
7 that was a party to a reorganization that was entirely or
8 substantially tax free if such reorganization occurred during
9 or after the employment of the electing individual.

10 Sec. 2. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
11 immediate importance, takes effect upon enactment.

12 Sec. 3. RETROACTIVE APPLICABILITY. This Act applies
13 retroactively to January 1, 2012, for tax years beginning on
14 or after that date.

15 EXPLANATION

16 This bill grants an Iowa resident one irrevocable
17 lifetime election to exclude from state income taxation the
18 extraordinary dividends and net capital gain from the sale or
19 exchange of the capital stock of one qualified corporation.

20 Several requirements must be met for stock to qualify as
21 capital stock of a qualified corporation. First, the stock
22 must be either voting or nonvoting, common or preferred
23 stock. Stock rights, stock warrants, stock options, and debt
24 securities do not qualify. Second, the corporation that issued
25 the stock must be in existence and actively doing business in
26 Iowa for at least three years. A corporation that is part of an
27 affiliated group will qualify if the affiliated group includes
28 a member that has been in existence and actively doing business
29 in Iowa for at least three years. Third, the corporation that
30 issued the stock must have at least five shareholders, and two
31 of the shareholders must not be related and must each own at
32 least 10 percent of the stock. Fourth, the stock must have
33 been acquired by the Iowa resident on account of employment
34 with the corporation or while employed by the corporation. A
35 corporation will qualify if it is a party to a reorganization

1 that was entirely or substantially tax free as long as the
2 reorganization occurred during or after the Iowa resident's
3 employment.

4 The election shall apply to all subsequent extraordinary
5 dividends and sales of the elected capital stock, provided
6 it is capital stock in the same qualified corporation and
7 was acquired on account of employment by the corporation or
8 while employed by the corporation. "Extraordinary dividends"
9 are defined as any dividend which exceeds 20 percent of the
10 fair market value of the stock as of the date the dividend is
11 declared.

12 The bill provides that the election applies to transfers
13 of the capital stock by inter vivos gift from the electing
14 individual to a spouse or lineal descendant, or to a trust for
15 the benefit of the taxpayer's spouse or lineal descendant. The
16 election will apply to a spouse only if the spouse was married
17 to the electing individual on the date of the extraordinary
18 dividend or sale or exchange or the date of the individual's
19 death.

20 If, after making a valid inter vivos transfer of stock that
21 meets all the requirements for an election, an Iowa resident
22 dies without making an election, the surviving spouse, or if
23 there is no surviving spouse, the oldest surviving lineal
24 descendant may make the election.

25 An election is made by including a written statement with the
26 taxpayer's Iowa income tax return for the taxable year in which
27 the election is made. The written statement shall identify
28 the qualified corporation that issued the capital stock, the
29 grounds for the election, a statement that the taxpayer elects
30 to have the exclusion apply, and any other information required
31 by the department of revenue. The department of revenue is
32 required to provide appropriate forms for making elections and
33 reporting exclusions.

34 The bill takes effect upon enactment and applies
35 retroactively to January 1, 2012, for tax years beginning on

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1 or after that date.