

Senate File 2043 - Introduced

SENATE FILE 2043

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A BILL FOR

1 An Act providing an exemption from the computation of net
2 income for the individual income tax of net capital gain
3 from the sale or exchange of qualified capital stock and
4 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, subsection 21, paragraph a,
2 subparagraph (2), Code 2014, is amended to read as follows:

3 (2) For purposes of this ~~paragraph~~ subsection, "*lineal*
4 *descendant*" means children of the taxpayer, including legally
5 adopted children and biological children, stepchildren,
6 grandchildren, great-grandchildren, and any other lineal
7 descendants of the taxpayer.

8 Sec. 2. Section 422.7, subsection 21, Code 2014, is amended
9 by adding the following new paragraph:

10 NEW PARAGRAPH. *f.* (1) Net capital gain from the sale or
11 exchange of capital stock of a qualified corporation for which
12 an election is made by an employee-owner.

13 (2) (a) An employee-owner is entitled to make one
14 irrevocable lifetime election to exclude the net capital
15 gain from the sale or exchange of capital stock of one
16 qualified corporation which capital stock was acquired by the
17 employee-owner on account of employment by such qualified
18 corporation and while employed by such qualified corporation.

19 (b) The election shall also apply to all subsequent sales or
20 exchanges of the elected capital stock, provided it is capital
21 stock in the same qualified corporation and was acquired by
22 the employee-owner on account of employment by such qualified
23 corporation and while employed by such qualified corporation.

24 (c) (i) The election shall apply to transfers of the
25 capital stock by inter vivos gift from the employee-owner to
26 the employee-owner's spouse or lineal descendants, or to a
27 trust for the benefit of the employee-owner's spouse or lineal
28 descendants. This subparagraph subdivision (i) shall apply to
29 a spouse only if the spouse was married to the employee-owner
30 on the date of the sale or exchange of the capital stock or the
31 date of death of the employee-owner.

32 (ii) If after transferring the capital stock by inter
33 vivos gift as provided in subparagraph subdivision (i),
34 the employee-owner dies without making an election, the
35 surviving spouse or, if there is no surviving spouse, the

1 personal representative of the employee-owner's estate may
2 make the election that would have qualified under subparagraph
3 subdivision (i).

4 (d) The election shall be made by including a written
5 statement with the taxpayer's state income tax return for
6 the taxable year in which the election is made. The written
7 statement shall identify the qualified corporation that issued
8 the capital stock, the grounds for the election under this
9 paragraph "f", a statement that the taxpayer elects to have this
10 paragraph "f" apply, and any other information required by the
11 department. The department shall provide appropriate forms
12 for making elections and reporting exclusions pursuant to this
13 paragraph "f".

14 (3) For purposes of this paragraph:

15 (a) "*Capital stock*" means common or preferred stock, either
16 voting or nonvoting. "*Capital stock*" does not include stock
17 rights, stock warrants, stock options, or debt securities.

18 (b) "*Employee-owner*" means an individual who owns capital
19 stock in a qualified corporation, which capital stock was
20 acquired by the individual on account of employment by such
21 qualified corporation and while employed by such corporation.

22 (c) "*Personal representative*" means the same as defined in
23 section 633.3, or if there is no such personal representative
24 appointed, then the person legally authorized to perform
25 substantially the same functions.

26 (d) (i) "*Qualified corporation*" means a corporation
27 which, at the time of the first sale or exchange for which an
28 election is made under this paragraph "f", meets the following
29 conditions:

30 (A) The corporation has been in existence and actively doing
31 business in this state for at least ten years.

32 (B) The corporation has at least five shareholders.

33 (C) The corporation has at least two shareholders or
34 groups of shareholders who are not related. Two persons are
35 considered related when, under section 318 of the Internal

1 Revenue Code, one is a person who owns, directly or indirectly,
2 capital stock that if directly owned would be attributed to the
3 other person, or is the brother, sister, aunt, uncle, cousin,
4 niece, or nephew of the other person who owns capital stock
5 either directly or indirectly.

6 (ii) A qualified corporation shall include any member
7 of an affiliated group, as defined in section 422.32, if the
8 affiliated group includes a member that has been in existence
9 and actively doing business in this state for at least ten
10 years.

11 (iii) A qualified corporation shall include any corporation
12 that was a party to a reorganization that was entirely or
13 substantially tax free if such reorganization occurred during
14 or after the employment of the employee-owner.

15 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
16 immediate importance, takes effect upon enactment.

17 Sec. 4. RETROACTIVE APPLICABILITY. This Act applies
18 retroactively to January 1, 2014, for tax years beginning on
19 or after that date.

20 EXPLANATION

21 The inclusion of this explanation does not constitute agreement with
22 the explanation's substance by the members of the general assembly.

23 This bill grants an employee-owner, as defined in the
24 bill, one irrevocable lifetime election to exclude from state
25 individual income tax the net capital gain from the sale or
26 exchange of the capital stock of one qualified corporation.
27 Several requirements must be met for capital stock to qualify
28 as capital stock of a qualified corporation. First, the
29 stock must be either voting or nonvoting, common or preferred
30 stock. Stock rights, stock warrants, stock options, and debt
31 securities do not qualify. Second, the corporation that issued
32 the stock must be in existence and actively doing business
33 in Iowa for at least 10 years. A corporation that is part
34 of an affiliated group will qualify if the affiliated group
35 includes a member that has been in existence and actively doing

1 business in Iowa for at least 10 years. Third, the corporation
2 that issued the stock must have at least five shareholders,
3 two of whom must not be related. Fourth, the stock must have
4 been acquired by the employee-owner on account of employment
5 with the corporation and while employed by the corporation. A
6 corporation will qualify if it is a party to a reorganization
7 that was entirely or substantially tax free as long as the
8 reorganization occurred during or after the employee-owner's
9 employment.

10 The election shall also apply to all subsequent sales of the
11 elected capital stock, provided it is capital stock in the same
12 qualified corporation and was acquired by the employee-owner
13 on account of employment by the corporation and while employed
14 by the corporation.

15 The bill provides that the election applies to transfers of
16 the capital stock by inter vivos gift from the employee-owner
17 to a spouse or lineal descendant, or to a trust for the benefit
18 of the employee-owner's spouse or lineal descendant. The
19 election will apply to a spouse only if the spouse was married
20 to the employee-owner on the date of the sale or the date of the
21 employee-owner's death.

22 If, after making a valid inter vivos transfer of stock that
23 meets all the requirements for an election, an employee-owner
24 dies without making an election, the surviving spouse, or if
25 there is no surviving spouse, the personal representative of
26 the employee-owner's estate may make the election.

27 An election is made by including a written statement
28 containing certain required information, as specified in the
29 bill, with the taxpayer's Iowa income tax return for the
30 taxable year in which the election is made. The department of
31 revenue is required to provide appropriate forms for making
32 elections and reporting exclusions.

33 The bill takes effect upon enactment and applies
34 retroactively to January 1, 2014, for tax years beginning on
35 or after that date.