

No. 451, S.]

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CHAPTER 484.

AN ACT to repeal 71.16 (3); to repeal and recreate 71.16 (2), (4) and (6); to amend 71.16 (5), (7) and (9); and to create 71.16 (10) of the statutes, relating to the privilege dividend tax.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.16 (2) is repealed and recreated to read:

71.16 (2) Every corporation required to deduct and withhold any tax under this section shall annually on or before the fifteenth day of the third month following the close of its fiscal year make return of its dividends paid during such fiscal year on the forms prescribed by the department of taxation and make remittance to the department of taxation of the privilege dividend taxes due thereon.

SECTION 2. 71.16 (3) of the statutes is repealed.

SECTION 3. 71.16 (4) of the statutes is repealed and recreated to read:

71.16 (4) (a) In the case of corporations doing business within and without the state of Wisconsin, such tax shall apply only to dividends paid out of income derived from business transacted and property located within the state of Wisconsin. Dividends shall be presumed to have been paid from the income of the fiscal year immediately preceding that in which they are paid. If the dividends paid exceed such prior year's income, the excess shall be presumed to have been paid from income of the most proximate prior fiscal year which has not been exhausted by subsequent dividends or losses. If the dividends paid exceed the aggregate of all prior years' incomes earned after January 1, 1911 and available for their payment, the excess shall be presumed to have been paid from the income of the year of payment. If the dividends paid exceed both the aggregate of prior years' incomes and the current year's income available for their payment, such excess shall be presumed to have been paid from income earned prior to January 1, 1911 or from capital and not subject to the tax herein imposed. The presumptions herein stated are to be deemed rebuttable only to such extent as is necessary to sustain the constitutionality of the tax. Should any corporation rebut the presump-

tion as to the source of a dividend by establishing that such dividend was paid from a source other than that presumed, the portion of such dividend paid out of income derived from business transacted and property located in Wisconsin shall be determined by applying to such dividend the ratio of corporate surplus earned in Wisconsin to the total earned surplus, or by such other computation as may be warranted so as to reach a reasonable result.

(b) For the purposes of this section the amount of the total annual net income available for the payment of dividends shall be computed in accordance with the provisions of chapter 71, except that the provisions of section 71.06 shall not apply, increased by any nontaxable income and deductible dividends received, and decreased by any non-deductible taxes, contributions and expenses paid.

(c) The taxable portion of dividends paid by a corporation doing business both within and without Wisconsin shall be based on the ratio of its Wisconsin income to its total income for the year or years which are presumed to be the source of the dividend payments. For the purposes of this computation both total income and Wisconsin income shall be computed in accordance with the provisions of chapter 71, except that the provisions of section 71.08 shall not apply and the total income shall be increased by any nontaxable income and deductible dividends received, and such items shall likewise be added to Wisconsin income when under section 71.07 (1) they have a situs in this state. When the determination of the portion of dividends subject to taxation by use of this formula produces an inequitable result because the effective federal income tax rate imposed on a corporation's income attributable to Wisconsin is substantially different from the effective federal income tax rate on its total income, the department of taxation may authorize or direct the modification of the ratio provided in this subsection by deduction from the numerator of the nondeductible federal income taxes paid that would have been deductible from Wisconsin income but for the limitation of section 71.04 (3a), and by deduction from the denominator of the federal income taxes paid which were excluded in the computation of total income in accordance with the provisions of chapter 71.

SECTION 4. 71.16 (5) of the statutes is amended to read:

71.16 (5) The provisions of this section shall not apply to dividends declared and paid by a corporation out of its income which it has reported for taxation under the provisions of chapter 71, to the extent that the business of such corporation consists in the * * * receipt of dividends * * * upon which a privilege dividend tax has been paid. Dividends paid by a subsidiary corporation to a parent corporation, both of which corporations are organized under the laws of Wisconsin, shall not be subject to the tax herein imposed, provided the subsidiary and its parent report their income for taxation under the provisions of chapter 71 * * *.

SECTION 5. 71.16 (6) of the statutes is repealed and recreated to read:

71.16 (6) The term "dividends" as used in this section shall include all dividends paid in cash or property. The tax herein imposed shall not apply to stock dividends, liquidating dividends, dividends paid from capital and dividends paid from earnings accumulated prior to January 1, 1911. Only when all sources of income have been exhausted as provided in paragraph (a) of subsection (4) may a dividend be exempt from the tax as having been paid from capital or as having been paid from income earned prior to January 1, 1911.

SECTION 6. 71.16 (7) and (9) of the statutes are amended to read:

71.16 (7) The tax hereby levied, if not paid within the time herein provided, shall become delinquent and when delinquent shall be subject to a penalty of 2 per cent on the amount of the tax and interest at the rate of one-half per cent per month until paid; provided that, except as they are inconsistent, the provisions of chapter 71, relating to the collection of taxes and the imposition of penalties and interest shall be applicable to the tax imposed by this section on dividends paid on or before July 1, 1949.

(9) Except as they are inconsistent with this section, the provisions of section 71.09 (5) (b), sections 71.10 through 71.13, sections 73.01 and 73.051 * * * shall apply to the tax imposed by this section, but the discount provisions of section 71.10 (9) (c) and the installment payment provisions of section 71.10 (9) (a) and (b) shall not apply.

SECTION 7. 71.16 (10) of the statutes is created to read:

71.16 (10) Any amount of additional taxable income determined pursuant to the provisions of section 71.11 (7) (a) shall constitute a dividend declared and received during the year within the meaning of subsection (1). A transfer of income between affiliated corporations without a formal dividend declaration, which transfer in effect is a distribu-

tion of profits, shall constitute a dividend declared and received during the year within the meaning of subsection (1).

Approved July 18, 1949.
