

No. 464, S.]

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CHAPTER 600.

AN ACT to create 71.03 (4) and 71.035 of the statutes, relating to the inclusion under the income tax law of certain corporate liquidations.

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

SECTION 1. 71.03 (4) of the statutes is created to read:

71.03 (4) ELECTION AS TO RECOGNITION OF GAIN IN CERTAIN CORPORATE LIQUIDATIONS.

(a) If property is distributed in complete liquidation of a corporation and if (a) the liquidation is made in pursuance of a plan of liquidation adopted after December 31, 1950 whether the taxable year of the corporation began on, before, or after January 1, 1950; and (b) the distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within some one calendar month in 1951; then in the case of each qualified electing shareholder as defined in paragraph (c) gain upon the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in the paragraph (d).

(b) The term "excluded corporation" as used in this section means a corporation which at any time between August 15, 1950, and the date of the adoption of the plan of liquidation, both dates inclusive, was the owner of stock possessing 50 per cent or more of the total combined voting power of all classes of stock entitled to vote on the adoption of such plan.

(c) The term "qualified electing shareholder" as used in this section means a shareholder, other than an excluded corporation, of any class of stock whether or not entitled to vote on the adoption of the plan of liquidation who is a shareholder at the time of the adoption of such plan, and whose written election to have the benefits of this section is filed with the assessing authority not later than March 15, 1952, but (a) in the case of a shareholder other than a corporation, only if evidence is submitted to the department of taxation which is satisfactory to it that written elections have been filed as provided by section 112 (b) (7) of the United States Internal Revenue Code by shareholders other than corporations who at the time of the adoption of the plan of liquidation are owners of stock possessing at least 80 per cent of the total combined voting power exclusive of voting power possessed by stock owned by corporations of all classes of stock entitled to vote on the adoption of such plan of liquidation; or (b) in the case of a shareholder which is a corporation, only if evidence is submitted to the department of taxation which is satisfactory to it that written elections have been filed as provided by section 112 (b) (7) of the United States Internal Revenue Code by corporate shareholders, other than an excluded corporation, which at the time of the adoption of such plan of liquidation are owners of stock possessing at least 80 per cent of the total combined voting power exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not corporations of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(d) The gain of a corporate or noncorporate qualified electing shareholder upon the shares of the liquidating corporation owned by him at the time of adoption of the plan of liquidation shall be recognized and taxed as a profit on disposition of such shares, but

only to the extent of the greater of the following: (a) the portion of the assets received by him which consists of money, or of stock or securities acquired by the liquidating corporation after August 15, 1950, or (b) his ratable share of the earnings and profits of the liquidating corporation accumulated after January 1, 1911, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred, but without diminution by reason of distributions made during such month, but including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and provided that no part of the gain herein recognized shall be considered a dividend under this chapter.

(e) The income tax basis to any qualified electing shareholder of the property received in liquidation of the shares upon which gain was recognized as provided in paragraph (d) shall be the same as the basis of such shares, decreased in the amount of any money received in liquidation and increased in the amount taxed as profit on the disposition of such shares.

SECTION 2. 71.035 of the statutes is created to read:

71.035 EXCHANGES AND DISTRIBUTIONS IN OBEDIENCE TO ORDERS OF SECURITIES AND EXCHANGE COMMISSION. (1) NONRECOGNITION OF GAIN OR LOSS. In the case of any exchange or distribution described in paragraphs (a) to (e) herein, no gain or loss shall be recognized to the extent specified in such paragraph with respect to such exchange or distribution.

(a) *Exchanges of stock or securities only.* No gain or loss shall be recognized to the transferor if stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary company are transferred to such corporation or to an associate company thereof which is a registered holding company or a majority-owned subsidiary company solely in exchange for stock or securities (other than stock or securities which are nonexempt property), and the exchange is made by the transferee corporation in obedience to an order of the securities and exchange commission.

(b) *Exchanges and sales of property by corporations.* No gain shall be recognized to a transferor corporation which is a registered holding company or an associate company of a registered holding company, if such corporation, in obedience to an order of the securities and exchange commission, transfers property in exchange for property, and such order recites that such exchange by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member. If any such property so received is nonexempt property gain shall be recognized unless such nonexempt property or an amount equal to the fair market value of such property at the time of the transfer is, within 24 months of the transfer, under rules prescribed by the department of taxation, and in accordance with an order of the securities and exchange commission, expended for property other than nonexempt property or is invested as a contribution to the capital, or as paid-in surplus, of another corporation, and such order recites that such expenditure or investment by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member. If the fair market value of such nonexempt property at the time of the transfer exceeds the amount expended and the amount invested, as required in the second sentence of this paragraph, the gain, if any, to the extent of such excess, shall be recognized. Any gain, to the extent that it cannot be applied in reduction of basis under section 71.035 (2) shall be recognized. For the purposes of this subsection, a distribution in cancellation or redemption (except a distribution having the effect of a dividend) of the whole or a part of the transferor's own stock (not acquired on the transfer) and a payment in complete or partial retirement or cancellation of securities representing indebtedness of the transferor or a complete or partial retirement or cancellation of such securities which is a part of the consideration for the transfer, shall be considered an expenditure for property other than nonexempt property, and if, on the transfer, a liability of the transferor is assumed, or property of the transferor is transferred subject to a liability, the amount of such liability shall be considered to be an expenditure by the transferor for property other than nonexempt property. This subsection shall not apply unless the transferor corporation consents, at such time and in such manner as the department of taxation may by rules prescribe, to the rules prescribed under section 71.035 (2) in effect at the time of filing its return for the taxable year in which the transfer occurs.

(c) *Distribution of stock or securities only.* If there is distributed, in obedience to an order of the securities and exchange commission, to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company, stock or securities (other than stock or securities which are nonexempt property), without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of the stock or securities so distributed shall be recognized.

(d) *Transfers within system group.* 1. No gain or loss shall be recognized to a corporation which is a member of a system group (A) if such corporation transfers property to another corporation which is a member of the same system group in exchange for other property, and the exchange by each corporation is made in obedience to an order of the securities and exchange commission, or (B) if there is distributed to such corporation as a shareholder in a corporation which is a member of the same system group, property, without the surrender by such shareholder of stock or securities in the corporation making the distribution, and the distribution is made and received in obedience to an order of the securities and exchange commission. If an exchange by or a distribution to a corporation with respect to which no gain or loss is recognized under any of the provisions of this paragraph may also be considered to be within the provisions of subsection (a), (b), or (c), then the provisions of this paragraph only shall apply.

2. If the property received upon an exchange which is within any of the provisions of subdivision 1 of this paragraph consists in whole or in part of stock or securities issued by the corporation from which such property was received, and if in obedience to an order of the securities and exchange commission such stock or securities (other than stock which is not preferred as to both dividends and assets) are sold and the proceeds derived therefrom are applied in whole or in part in the retirement or cancellation of stock or of securities of the recipient corporation outstanding at the time of such exchange, no gain or loss shall be recognized to the recipient corporation upon the sale of the stock or securities with respect to which such order was made; except that if any part of the proceeds derived from the sale of such stock or securities is not so applied, or if the amount of such proceeds is in excess of the fair market value of such stock or securities at the time of such exchange, the gain, if any, shall be recognized, but in an amount not in excess of the proceeds which are not so applied, or in an amount not more than the amount by which the proceeds derived from such sale exceed such fair market value, whichever is the greater.

(e) *Exchanges not solely in kind.* 1. If an exchange (not within any of the provisions of section 71.035 (1) (d)), would be within the provisions of section 71.035 (1) (a) if it were not for the fact that property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property, and the loss, if any, to the recipient shall not be recognized.

2. If an exchange is within the provisions of section 71.035 (1) (e) 1. of this subsection and if it includes a distribution which has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under such subdivision 1. as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after January 1, 1911. The remainder, if any, of the gain recognized under such subdivision 1. shall be taxed as a gain from the exchange of property.

(f) *Application section.* The provisions of this section shall not apply to an exchange, expenditure, investment, distribution, or sale unless (1) the order of the securities and exchange commission in obedience to which such exchange, expenditures, investment, distribution, or sale was made recites that such exchange, expenditure, investment, distribution, or sale is necessary or appropriate to effectuate the provisions of section 11 (b) of the public utility holding company act of 1935, 49 Stat. 820 (U. S. C., title 15, Sec. 79k (b)), (2) such order specifies and itemizes the stock and securities and other property which are ordered to be acquired, transferred, received, or sold upon such exchange, acquisition, expenditure, distribution, or sale, and, in the case of an investment, the investment to be made, and (3) such exchange, acquisition, expenditure, investment, distribution or sale was made in obedience to such order, and was completed within the time prescribed therefor.

(g) *Nonapplication of other provisions.* If an exchange or distribution made in obedience to an order of the securities and exchange commission is within any of the provisions of this section and may also be considered to be within any of the provisions of section 71.03 (3), then the provisions of this section only shall apply.

(2) BASIS FOR DETERMINING GAIN OR LOSS. (a) *Exchanges generally.* If the property was acquired upon an exchange subject to the provisions of section 71.035 (1) (a) or (e) the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 71.035 (1) (a) to be received without the recognition of gain or loss, and in part of nonexempt property, the basis provided in this subsection shall be allocated between the properties (other than

money) received, and for the purpose of the allocation there shall be assigned to such non-exempt property (other than money) an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it. The gain not recognized upon a transfer by reason of section 71.035 (1) (b) shall be applied to reduce the basis for determining gain or loss on sale or exchange of the following categories of property in the hands of the transferor immediately after the transfer, and property acquired within 24 months after such transfer by an expenditure or investment to which section 71.035 (1) (b) relates on account of the acquisition of which gain is not recognized under such subsection, in the following order:

1. Property of a character subject to the allowance for depreciation under section 71.04 (2);
2. Stock and securities of corporations not members of the system group of which the transferor is a member (other than stock or securities of a corporation of which the transferor is a subsidiary);
3. Securities (other than stock) of corporations which are members of the system group of which the transferor is a member (other than securities of the transferor or of a corporation of which the transferor is a subsidiary);
4. Stock of corporations which are members of the system group of which the transferor is a member (other than stock of the transferor or of a corporation of which the transferor is a subsidiary);
5. All other remaining property of the transferor (other than stock or securities of the transferor or of a corporation of which the transferor is a subsidiary).
6. The manner and amount of the reduction to be applied to particular property within any of the categories described in subdivisions 1. to 5., herein, shall be determined under rules prescribed by the department of taxation.

(b) *Transfer to corporations.* If, in connection with a transfer subject to the provisions of section 71.035 (1) (a), (b) or (c), the property was acquired by a corporation, either as paid-in surplus or as a contribution to capital, or in consideration for stock or securities issued by the corporation receiving the property (including cases where part of the consideration for the transfer of such property to the corporation consisted of property or money in addition to such stock or securities), then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

(c) *Distributions of stock or securities.* If the stock or securities were received in a distribution subject to the provisions of section 71.035 (1) (c), then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules prescribed by the department of taxation, between such stock and the stock or securities distributed.

(d) *Transfers within system group.* If the property was acquired by a corporation which is a member of a system group upon a transfer or distribution described in section 71.035 (1) (d) 1., then the basis shall be the same as it would be in the hands of the transferor; except that if such property is stock or securities issued by the corporation from which such stock or securities were received and they were issued (1) as the sole consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (a) the same as in the case of the property transferred therefor, or (b) the fair market value of such stock or securities at the time of their receipt, whichever is the lower; or (2) as part consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (a) an amount which bears the same ratio to the basis of the property transferred as the fair market value of such stock or securities at the time of their receipt bears to the total fair market value of the entire consideration received, or (b) the fair market value of such stock or securities at the time of their receipt, whichever is the lower.

(3) **DEFINITIONS.** (a) The term "order of the securities and exchange commission" means an order issued after May 28, 1938, by the securities and exchange commission which requires, authorizes, permits, or approves transactions described in such order to effectuate the provisions of section 11 (b) of the public utility holding company act of 1935, 49 Stat. 820 (U. S. C., title 15, Sec. 79k (b)), which has become or becomes final in accordance with law.

(b) The terms "registered holding company", "holding-company system", and "associate company" shall have the meanings assigned to them by section 2 of the public utility holding company act of 1935, 49 Stat. 804 (U.S.C., Supp. III, Title 15, Sec. 79 (b) (c)).

(c) The term "majority-owned subsidiary company" of a registered holding company means a corporation, stock of which, representing in the aggregate more than 50 per cent of the total combined voting power of all classes of stock of such corporation entitled to vote (not including stock which is entitled to vote only upon default or nonpayment of dividends or other special circumstances) is owned wholly by such registered holding company, or partly by such registered holding company and partly by one or more majority-owned subsidiary companies thereof, or by one or more majority-owned subsidiary companies of such registered holding company.

(d) The term "system group" means one or more chains of corporations connected through stock ownership with a common parent corporation if:

1. At least 90 per cent of each class of the stock (other than stock which is preferred as to both dividends and assets) of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

2. The common parent corporation owns directly at least 90 per cent of each class of the stock (other than stock which is preferred as to both dividends and assets) of at least one of the other corporations; and

3. Each of the corporations is either a registered holding company or a majority-owned subsidiary company.

(e) The term "nonexempt property" means:

1. Any consideration in the form of evidences of indebtedness owned by the transferor or a cancellation or assumption of debts or other liabilities of the transferor (including a continuance of incumbrances subject to which the property was transferred);

2. Short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace;

3. Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof);

4. Stock or securities which were acquired from a registered holding company or an associate company of a registered holding company which acquired such stock or securities after February 28, 1938, unless such stock or securities (other than obligations described as nonexempt property in section 71.035 (3) (e) 1, 2 or 3) were acquired in obedience to an order of the securities and exchange commission or were acquired with the authorization or approval of the securities and exchange commission under any section of the public utility holding company act of 1935, 49 Stat. (820 U. S. C., title 15, Sec. 79k (b));

5. Money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in section 71.035 (3) (e) 2. or 3.

(f) The term "stock or securities" means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures, and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing).

Approved July 12, 1951.
