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CHAPTER 242

AN ACT to create 71.032 of the statutes, to conform the tax treatment granted to restricted stock options under the laws of this state to the tax treatment granted to such options under federal law, except insofar as such federal law grants separate treatment to gains or losses upon the sale or exchange of a capital asset.

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

SECTION 1. 71.032 of the statutes is created to read:

71.032 TREATMENT OF RESTRICTED STOCK OPTIONS. (1)
TRANSFER OF STOCK. If a share of stock is transferred to an individual

pursuant to his exercise after 1962 of a restricted stock option, and no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him:

(a) No income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(b) No deduction under s. 71.04 (1) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which sub. (6) is applicable, with respect to the shares so transferred; and

(c) No amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

(d) This subsection shall not apply unless:

1. The individual, at the time he exercises the restricted stock option, is an employe of either the corporation granting such option, a parent or subsidiary of such corporation, or a corporation or a parent or subsidiary of such corporation issuing or assuming a stock option in a transaction to which sub. (6) is applicable, or

2. The option is exercised by him within 3 months after the date he ceases to be an employe of such corporation. In applying sub. (3) (b) and (c) for purposes of subd. 1, there shall be substituted for the term "employer corporation" wherever it appears in such paragraphs the term "grantor corporation" or "corporation issuing or assuming a stock option in a transaction to which sub. (6) is applicable," as the case may be.

(2) ACQUISITION OF NEW STOCK. If stock is received by an individual in a distribution to which s. 71.305, 71.354, 71.355 or 71.356 applies or in a distribution wherein common stock in a corporation is exchanged for common stock in the same corporation or preferred stock in a corporation is exchanged for preferred stock in the same corporation, and such distribution was made with respect to stock transferred to him upon his exercise of the option, such stock shall be considered as having been transferred to him on his exercise of such option. A similar rule shall be applied in the case of a series of such distributions.

(3) DEFINITIONS. For purposes of this section:

(a) *Restricted stock option.* The term "restricted stock option" means an option granted after February 26, 1945, to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if:

1. At the time such option is granted:

a. The option price is at least 85 per cent of the fair market value at such time of the stock subject to the option, or

b. In the case of a variable price option, the option price (computed as if the option had been exercised when granted) is at least 85 per cent of the fair market value of the stock at the time such option is granted; and

2. Such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

3. Such individual, at the time the option is granted, does not own stock possessing more than 10 per cent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation. This subdivision shall not apply if at the time such option is granted the option price is at least 110 per cent of the fair market value of the stock subject to the option and such option either by its terms is not exercisable after the expiration of 5 years from the date such option

is granted or is exercised within one year after the effective date of this section. For purposes of this subdivision:

a. Such individual shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors and lineal descendants; and

b. Stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust, shall be considered as being owned proportionately by or for its shareholders, partners or beneficiaries; and

4. Such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted, if such option has been granted on or after June 22, 1954.

(b) *Parent corporation.* The term "parent corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 per cent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(c) *Subsidiary corporation.* The term "subsidiary corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 per cent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(d) *Disposition.* 1. General rule. Except as provided in subd. 2, the term "disposition" includes a sale, exchange, gift or a transfer of legal title, but does not include:

a. A transfer from a decedent to an estate or a transfer by bequest or inheritance;

b. An exchange to which s. 71.354, 71.355 or 71.356 applies or an exchange of common stock in a corporation for common stock in the same corporation or preferred stock in a corporation for preferred stock in the same corporation, or

c. A mere pledge or hypothecation.

2. Joint tenancy. The acquisition of a share of stock in the name of the employe and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenancy (except to the extent such employe acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated.

(e) *Stockholder approval.* If the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval.

(f) *Exercise by estate.* 1. In general. If a restricted stock option is exercised subsequent to the death of the employe by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, this section shall apply to the same extent as if the option had been exercised by the decedent, except that:

a. The holding period and employment requirements of sub. (1) shall not apply.

2. Basis of shares acquired. In the case of a share of stock acquired by the exercise of an option to which subd. 1 applies:

a. The basis of such share shall include so much of the basis of the option as is attributable to such share.

(g) *Variable price option.* The term "variable price option" means an option under which the purchase price of the stock is fixed or de-

terminable under a formula in which the only variable is the fair market value of the stock at any time during a period of 6 months which includes the time the option is exercised; except that in the case of options granted after September 30, 1958, such term does not include any such option in which such formula provides for determining such price by reference to the fair market value of the stock at any time before the option is exercised if such value may be greater than the average fair market value of the stock during the calendar month in which the option is exercised.

(4) MODIFICATION, EXTENSION OR RENEWAL OF OPTION. (a) *Rules of application.* For purposes of sub. (3), if the terms of any option to purchase stock are modified, extended or renewed, the following rules shall be applied with respect to transfers of stock made on the exercise of the option after the making of such modification, extension or renewal:

1. Such modification, extension or renewal shall be considered as the granting of a new option.

2. The fair market value of such stock at the time of the granting of such option shall be considered as:

a. The fair market value of such stock on the date of the original granting of the option,

b. The fair market value of such stock on the date of the making of such modification, extension or renewal, or

c. The fair market value of such stock at the time of the making of any intervening modification, extension or renewal, whichever is the highest.

3. Subdivision 2 shall not apply if the aggregate of the monthly average fair market values of the stock subject to the option for the 12 consecutive calendar months before the date of the modification, extension or renewal, divided by 12, is an amount less than 80 per cent of the fair market value of such stock on the date of the original granting of the option or the date of the making of an intervening modification, extension or renewal, whichever is the highest.

(b) *Definition of modification.* The term "modification" means any change in the terms of the option which gives the employe additional benefits under the option, but such term shall not include a change in the terms of the option:

1. Attributable to the issuance or assumption of an option under sub. (6); or

2. To permit the option to qualify under sub. (3) (a) 2. If an option is exercisable after the expiration of 10 years from the date such option is granted, this subdivision shall not apply unless the terms of the option are also changed to make it not exercisable after the expiration of such period.

(5) EFFECT OF DISQUALIFYING DISPOSITION. If a share of stock, acquired by an individual pursuant to his exercise of a restricted stock option, is disposed of by him within 2 years from the date of the granting of the option or within 6 months after the transfer of such share to him, then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred.

(6) CORPORATE REORGANIZATIONS, LIQUIDATIONS, ETC. For purposes of this section, the term "issuing or assuming a stock option in a transaction to which subsection (6) is applicable" means a substitution of a new option for the old option, or an assumption of the old option, by an employer corporation, or a parent or subsidiary of such corporation, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization or liquidation, if:

(a) The excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or assumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares; and

(b) The new option or the assumption of the old option does not give the employe additional benefits which he did not have under the old option.

(7) For purposes of this section, the parent-subsiary relationship shall be determined at the time of any such transaction under this section.

SECTION 2. This bill is declared to be an emergency appropriation bill in accordance with section 16.47 (2) of the statutes.

Approved August 12, 1963.
