

No. 492, S.]

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CHAPTER 571

AN ACT to repeal 71.03 (1) (e) and (f), (2) (d) and (e) and (3); to amend 71.04 (4); to repeal and recreate 71.03 (1) (d); and to create 71.301 to 71.373 of the statutes, relating to income taxation of corporate distributions and adjustments.

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

SECTION 1. 71.03 (1) (d) of the statutes is repealed and recreated to read:

71.03 (1) (d) All dividends.

SECTION 2. 71.03 (1) (e) and (f), (2) (d) and (e) and (3) of the statutes are repealed.

SECTION 3. 71.04 (4) of the statutes is amended to read:

71.04 (4) Dividends, except * * * *stock dividends not taxable pursuant to s. 71.305*, received from any corporation conforming to all of the requirements of this subsection. Such corporation must have filed income tax returns as required by law and the income of such corporation must be subject to the income tax law of this state. The principal business of the corporation must be attributable to Wisconsin and for the purpose of this subsection any corporation shall be considered as having its principal business attributable to Wisconsin if 50 per cent or more of the entire net income or loss of such corporation after adjustment for tax purposes (for the year preceding the payment of such dividends) was used in computing the taxable income provided by ch. 71. If the net incomes of several affiliated corporations have been combined for the purpose of determining the amount of income subject to taxation under the statute, the location of the principal business of such group shall determine the taxable status of dividends paid, but intercompany dividends passing between affiliated corporations whose incomes are included in the taxable income of the group, shall not be assessed as group income.

SECTION 4. 71.301 to 71.373 of the statutes are created to read:

71.301 DISTRIBUTIONS OF PROPERTY. (1) IN GENERAL. Except as otherwise provided in this chapter, a distribution of property (as defined in s. 71.317 (1)) made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in sub. (3).

(2) **AMOUNT DISTRIBUTED.** (a) *General rule.* For purposes of this section, the amount of any distribution shall be:

1. *Noncorporate distributees.* If the shareholder is not a corporation, the amount of money received, plus the fair market value of the other property received.

2. *Corporate distributees.* If the shareholder is a corporation, the amount of money received, plus whichever of the following is the lesser: a. the fair market value of the other property received; or b. the basis (in the hands of the distributing corporation immediately before the distribution) of the other property received, increased in the amount of gain to the distributing corporation which is recognized under s. 71.311 (2) or (3).

(b) *Reduction for liabilities.* The amount of any distribution determined under par. (a) shall be reduced (but not below zero) by:

1. The amount of any liability of the corporation assumed by the shareholder in connection with the distribution, and

2. The amount of any liability to which the property received by the shareholder is subject immediately before, and immediately after, the distribution.

(c) *Determination of fair market value.* For purposes of this section, fair market value shall be determined as of the date of the distribution.

(3) **AMOUNT TAXABLE.** In the case of a distribution to which sub. (1) applies:

(a) *Amount constituting dividend.* That portion of the distribution which is a dividend (as defined in s. 71.316) shall be included in gross income.

(b) *Amount applied against basis.* That portion of the distribution which is not a dividend shall be applied against and reduce the basis of the stock.

(c) *Amount in excess of basis.* 1. In general. Except as provided in subd. 2, that portion of the distribution which is not a dividend, to the extent that it exceeds the basis of the stock, shall be treated as gain from the sale or exchange of property.

2. Distributions out of increase in value accrued before January 1, 1911. That portion of the distribution which is not a dividend, to the extent that it exceeds the basis of the stock and to the extent that it is out of increase in value accrued before January 1, 1911 shall be exempt from tax.

(4) **BASIS.** The basis of property received in a distribution to which sub. (1) applies shall be:

(a) *Noncorporate distributees.* If the shareholder is not a corporation, the fair market value of such property.

(b) *Corporate distributees.* If the shareholder is a corporation, whichever of the following is the lesser:

1. The fair market value of such property; or

2. The basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain to the distributing corporation which is recognized under s. 71.311 (2).

71.302 DISTRIBUTIONS IN REDEMPTION OF STOCK. (1) GENERAL RULE. If a corporation redeems its stock (within the meaning of s.

71.317 (2)), and if such redemption is not essentially equivalent to a dividend, it shall be treated as a distribution in part or full payment in exchange for the stock. A redemption is not essentially equivalent to a dividend if the distribution is substantially disproportionate with respect to the shareholder.

(2) **REDEMPTIONS TREATED AS DISTRIBUTIONS OF PROPERTY.** Except as otherwise provided in ch. 71, if a corporation redeems its stock (within the meaning of s. 71.317 (2)), and if sub. (1) does not apply, such redemption shall be treated as a distribution of property to which s. 71.301 applies.

71.303 DISTRIBUTIONS IN REDEMPTION OF STOCK TO PAY DEATH TAXES. A distribution of property to a shareholder by a corporation in redemption of part or all of the stock of such corporation which is included in the inventory of a decedent's estate shall be treated as a distribution in full payment in exchange for the stock so redeemed, provided such distribution shall be made prior to the time that taxes payable under ch. 72 by reason of the death of such decedent have become finally and conclusively fixed and determined, to the extent that the amount of such distribution does not exceed the sum of:

(1) The estate, inheritance, legacy and succession taxes (including any interest collected as a part of such taxes) imposed because of such decedent's death, and

(2) The amount of funeral and administration expenses allowable by the probate court having jurisdiction of the decedent's estate.

71.305 DISTRIBUTIONS OF STOCK AND STOCK RIGHTS. (1) GENERAL RULE. Except as provided in sub. (2), gross income does not include the amount of any distribution made by a corporation to its shareholders, with respect to the stock of such corporation, in its stock or in rights to acquire its stock.

(2) **DISTRIBUTIONS IN LIEU OF MONEY.** Subsection (1) shall not apply to a distribution by a corporation of its stock (or rights to acquire its stock), and the distribution shall be treated as a distribution of property to which s. 71.301 applies:

(a) To the extent that the distribution is made in discharge of preference dividends for the taxable year of the corporation in which the distribution is made or for the preceding taxable year; or

(b) If the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either 1. in its stock (or in rights to acquire its stock), or 2. in property.

71.307 BASIS OF STOCK AND STOCK RIGHTS ACQUIRED IN DISTRIBUTIONS. (1) GENERAL RULE. If a shareholder in a corporation receives its stock or rights to acquire its stock (referred to in this subsection as "new stock") in a distribution to which s. 71.305 (1) applies, then the basis of such new stock and of the stock with respect to which it is distributed (referred to in this section as "old stock"), respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the basis of the old stock. Such allocation shall be made under rules prescribed by the department of taxation.

(2) **EXCEPTIONS FOR CERTAIN STOCK RIGHTS. (a) In general.** If a corporation distributes rights to acquire its stock to a shareholder in a distribution to which s. 71.305 (1) applies, and the fair market value of such rights at the time of the distribution is less than 15 per cent of the fair market value of the old stock at such time, then sub. (1) shall not apply and the basis of such rights shall be zero, unless the taxpayer elects under this subsection to determine the basis of the old stock and of the stock rights under the method of allocation provided in sub. (1).

(b) *Election.* The election referred to in par. (a) shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such rights were received. Such election shall be made in such manner as the department of taxation may by rule prescribe, and shall be irrevocable when made.

71.311 TAXABILITY OF CORPORATION ON DISTRIBUTION.

(1) **GENERAL RULE.** Except as provided in subs. (2) and (3), no gain or loss shall be recognized to a corporation on the distribution, with respect to its stock of:

- (a) Its stock (or rights to acquire its stock), or
- (b) Property.

(2) **LIFO INVENTORY.** (a) *Recognition of gain.* If a corporation inventorying goods under the last-in, first-out (LIFO) inventory method distributes inventory assets (as defined in par. (b) 1) then the amount (if any) by which the inventory amount (as defined in par. (b) 2) of such assets under the first-in, first-out (FIFO) inventory method, exceeds the inventory amount of such assets under the LIFO method, shall be treated as gain to the corporation recognized from the sale of such inventory assets.

(b) *Definitions.* For purposes of par. (a) :

1. **Inventory assets.** The term "inventory assets" means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

2. **Inventory amount.** The term "inventory amount" means, in the case of inventory assets distributed during a taxable year, the amount of such inventory assets determined as if the taxable year closed at the time of such distribution.

(c) *Method of determining inventory amount.* For purposes of this subsection, the inventory amount of assets under the FIFO method shall be determined:

- 1. If the corporation uses the retail method of valuing LIFO inventories, by using such method, or
- 2. If subd. 1 does not apply, by using cost or market, whichever is lower.

(3) **LIABILITY IN EXCESS OF BASIS.** If a corporation distributes property to a shareholder with respect to its stock, such property is subject to a liability, or the shareholder assumes a liability of the corporation in connection with the distribution, and the amount of such liability exceeds the basis (in the hands of the distributing corporation) of such property, then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. In the case of a distribution of property subject to a liability which is not assumed by the shareholder, the amount of gain to be recognized under the preceding sentence shall not exceed the excess, if any, of the fair market value of such property over its basis.

71.312 EFFECT ON EARNINGS AND PROFITS. (1) **GENERAL RULE.** Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of the amount of money, the principal amount of the obligations of such corporation and the basis of the other property, so distributed.

(2) **CERTAIN INVENTORY ASSETS.** (a) *In general.* On the distribution by a corporation, with respect to its stock, of inventory assets (as defined

in par. (b) 1) the fair market value of which exceeds the basis thereof, the earnings and profits of the corporation:

1. Shall be increased by the amount of such excess; and

2. Shall be decreased by whichever of the following is the lesser: a. the fair market value of the inventory assets distributed, or b. the earnings and profits (as increased under subd. 1).

(b) *Definitions.* 1. Inventory assets. For the purposes of par. (a), the term "inventory assets" means: stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year; property held by the corporation primarily for sale to customers in the ordinary course of its trade or business; and unrealized receivables or fees, except receivables from sales or exchanges of assets other than assets described in this subdivision.

2. UNREALIZED RECEIVABLES OR FEES. For purposes of subd. 1, the term "unrealized receivables or fees" means, to the extent not previously includible in income under the method of accounting used by the corporation, any rights (contractual or otherwise) to payment for goods delivered, or to be delivered, to the extent that the proceeds therefrom would be treated as amounts received from the sale or exchange of property, or services rendered or to be rendered.

(3) ADJUSTMENTS FOR LIABILITIES, ETC. In making the adjustments to the earnings and profits of a corporation under sub. (1) or (2), proper adjustment shall be made for:

(a) The amount of any liability to which the property distributed is subject,

(b) The amount of any liability of the corporation assumed by a shareholder in connection with the distribution, and

(c) Any gain to the corporation recognized under s. 71.311 (2).

(4) CERTAIN DISTRIBUTIONS OF STOCK AND SECURITIES. (a) *In general.* The distribution to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property, in a distribution to which ch. 71 applies, shall not be considered a distribution of the earnings and profits of any corporation.

1. If no gain to such distributee from the receipt of such stock or securities, or property, was recognized under ch. 71, or

2. If the distribution was not subject to tax in the hands of such distributee by reason of s. 71.305 (1).

(b) *Prior distributions.* In the case of a distribution of stock or securities, or property, before January 1, 1955, the effect on earnings and profits of such distribution shall be determined under the corresponding provisions of prior law.

(c) *Stock or securities.* For purposes of this subsection, the term "stock or securities" includes rights to acquire stock or securities.

(5) SPECIAL RULE FOR PARTIAL LIQUIDATIONS AND CERTAIN REDEMPTIONS. In the case of amounts distributed in partial liquidation or in a redemption to which s. 71.302 (1) or 71.303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits.

(6) EFFECT ON EARNINGS AND PROFITS OF GAIN OR LOSS AND OF RECEIPT OF TAX-FREE DISTRIBUTIONS. (a) *Effect on earnings and profits of gain or loss.* The gain or loss realized from the sale or other disposition (after January 1, 1911) of property by a corporation for the purpose of the computation of the earnings and profits of the corporation, shall (except as herein provided) be determined by using as the basis the basis (under the law applicable to the year in which the sale or other disposition

was made) for determining gain, except that no regard shall be had to the value of the property as of January 1, 1911; but for purposes of the computation of the earnings and profits of the corporation for any period beginning after January 1, 1911, shall be determined by using as the basis the basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain. Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made. Where, in determining the basis used in computing such realized gain or loss, the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings and profits, then the latter adjustment shall be used in determining the increase or decrease above provided.

(b) *Effect on earnings and profits of receipt of tax-free distributions.*

Where a corporation receives (after January 1, 1911) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

1. No such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made; and

2. No such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received (or such basis would, but for s. 71.307 (1), be so allocated).

(7) EARNINGS AND PROFITS—INCREASE IN VALUE ACCRUED BEFORE JANUARY 1, 1911. (a) If any increase or decrease in the earnings and profits for any period beginning after January 1, 1911, with respect to any matter would be different had the basis of the property involved been determined without regard to its January 1, 1911, value, then, except as provided in par. (b), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before January 1, 1911.

(b) If the application of sub. (6) to a sale or other disposition after January 1, 1911, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after January 1, 1911, then, notwithstanding sub. (6) and in lieu of the rule provided in par. (a), the amount of such loss so to be applied shall be reduced by the amount, if any, by which the basis of the property used in determining the loss exceeds the basis computed without regard to the value of the property on January 1, 1911, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before January 1, 1911.

(8) ALLOCATION IN CERTAIN CORPORATE SEPARATIONS. In the case of a distribution or exchange to which s. 71.355 (or so much of s. 71.356 as relates to s. 71.355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under rules prescribed by the department of taxation.

(9) DISTRIBUTION OF PROCEEDS OF LOAN INSURED BY THE UNITED STATES. If a corporation distributes property with respect to its stock, and if, at the time of the distribution there is outstanding a loan to such corporation which was made, guaranteed or insured by the United States (or

by any agency or instrumentality thereof), and the amount of such loan so outstanding exceeds the adjusted basis of the property constituting security for such loan, then the earnings and profits of the corporation shall be increased by the amount of such excess, and (immediately after the distribution) shall be decreased by the amount of such excess. For purposes of this subsection, the basis of the property at the time of distribution shall be determined without regard to any adjustment for depreciation and depletion. For purposes of this subsection, a commitment to make, guarantee or insure a loan shall be treated as the making, guaranteeing or insuring of a loan.

71.316 DIVIDEND DEFINED. (1) **GENERAL RULE.** For purposes of this chapter, the term "dividend" means any distribution of property made by a corporation to its shareholders out of its earnings and profits accumulated after January 1, 1911, or out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made. Except as otherwise provided in this chapter, every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits. To the extent that any distribution is, under any provision of this chapter, treated as a distribution of property to which s. 71.301 applies, such distribution shall be treated as a distribution of property for purposes of this subsection.

71.317 OTHER DEFINITIONS. (1) **PROPERTY.** For purposes of ss. 71.301 to 71.317, the term "property" means money, securities, and any other property; except that such term does not include stock in the corporation making the distribution (or rights to acquire such stock).

(2) **REDEMPTION OF STOCK.** For purposes of ss. 71.301 to 71.317, stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is canceled, retired or held as treasury stock.

71.331 GAIN OR LOSS TO SHAREHOLDERS IN CORPORATE LIQUIDATIONS. (1) **GENERAL RULE.** (a) *Complete liquidations.* Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock.

(b) *Partial liquidations.* Amounts distributed in partial liquidation of a corporation (as defined in s. 71.346) shall be treated as in part or full payment in exchange for the stock.

(2) **NONAPPLICATION OF SECTION 71.301.** Section 71.301 shall not apply to any distribution of property in partial or complete liquidation.

71.332 COMPLETE LIQUIDATIONS OF SUBSIDIARIES. (1) **GENERAL RULE.** No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation.

(2) **LIQUIDATIONS TO WHICH SECTION APPLIES.** For purposes of sub. (1), a distribution shall be considered to be in complete liquidation only if:

(a) The corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possession at least 80 per cent of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 per cent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends); and either

(b) The distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(c) Such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within 3 years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under par. (a) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

A distribution otherwise constituting a distribution in complete liquidation within the meaning of this subsection shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for purposes of this subsection a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (a) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, on an exchange described in s. 71.361, and (b) the complete cancellation or redemption under the plan, as a result of exchanges described in s. 71.354, of the shares not owned by the taxpayer.

(3) SPECIAL RULE FOR INDEBTEDNESS OF SUBSIDIARY TO PARENT. If a corporation is liquidated and sub. (1) applies to such liquidation, and on the date of the adoption of the plan of liquidation, such corporation was indebted to the corporation which meets the 80 per cent stock ownership requirements specified in sub. (2), then no gain or loss shall be recognized to the corporation so indebted because of the transfer of property in satisfaction of such indebtedness.

71.333 ELECTION AS TO RECOGNITION OF GAIN IN CERTAIN CORPORATE LIQUIDATIONS. (1) 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, 1954, 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; then in the case of each qualified electing shareholder as defined in sub. (3) 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 sub. (4).

(2) The term "excluded corporation" as used in this section means a corporation which at any time between January 1, 1955, 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.

(3) 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 within 30 days after the adoption of the plan of liquidation, 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 333 of the U.S. internal revenue code of 1954 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 333 of the U.S. internal revenue code of 1954 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.

(4) 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 January 1, 1955, 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.

71.334 BASIS OF PROPERTY RECEIVED IN LIQUIDATIONS.

(1) **GENERAL RULE.** If property is received in a distribution in partial or complete liquidation (other than a distribution to which s. 71.333 applies), and if gain or loss is recognized on receipt of such property, then the basis of the property in the hands of the distributee shall be the fair market value of such property at the time of the distribution.

(2) **LIQUIDATION OF SUBSIDIARY.** (a) *In general.* If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of s. 71.332 (2)), then, except as provided in par. (b), the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor. If property is received by a corporation in a transfer to which s. 71.332 (3) applies, and if par. (b) does not apply, then the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

(b) *Exception.* If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of s. 71.332 (2)), and if the distribution is pursuant to a plan of liquidation adopted not more than 2 years after the date of the transaction described in this sentence (or, in the case of a series of transactions, the date of the last such transaction); and stock of the distributing corporation possessing at least 80 per cent of the total combined voting power of all classes of stock entitled to vote, and at least 80 per cent of the total num-

ber of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in par. (c)) during a period of not more than 12 months, then the basis of the property in the hands of the distributee shall be the basis of the stock with respect to which the distribution was made. For purposes of the preceding sentence, under rules prescribed by the department of taxation, proper adjustment in the basis of any stock shall be made for any distribution made to the distributee with respect to such stock before the adoption of the plan of liquidation, for any money received, for any liabilities assumed or subject to which the property was received, and for other items.

(c) *Purchase defined.* For purposes of par. (b), the term "purchase" means any acquisition of stock, but only if the basis of the stock in the hands of the distributee is not determined in whole or in part by reference to the basis of such stock in the hands of the person from whom acquired, or under such provisions of s. 71.03 (1) (g) as relate to the basis of property acquired by descent, devise, will or inheritance, and the stock is not acquired in an exchange to which s. 71.351 applies.

(a) *Distributee defined.* For purposes of this subsection, the term "distributee" means only the corporation which meets the 80 per cent stock ownership requirements specified in s. 71.332 (2).

(3) **PROPERTY RECEIVED IN LIQUIDATION UNDER SECTION 71.333.** If property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock, and with respect to such acquisition gain was realized, but as a result of an election made by the shareholder under s. 71.333, the extent to which gain was recognized was determined under s. 71.333, then the basis shall be the same as the basis of such stock canceled or redeemed in the liquidation, decreased in the amount of any money received by the shareholder, and increased in the amount of gain recognized to him.

71.336 GAIN OR LOSS TO CORPORATION ON LIQUIDATION; GENERAL RULE. No gain or loss shall be recognized to a corporation on the distribution of property in partial or complete liquidation.

71.337 GAIN OR LOSS ON SALES OR EXCHANGES IN CONNECTION WITH CERTAIN LIQUIDATIONS. (1) GENERAL RULE. If a corporation adopts a plan of complete liquidation, and within the 12-month period beginning on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims, then no gain or loss shall be recognized to such corporation from the sale or exchange by it of property within such 12-month period.

(2) **PROPERTY DEFINED. (a) In general.** For purposes of sub. (1), the term "property" does not include:

1. Stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sale to customers in the ordinary course of its trade or business,

2. Instalment obligations acquired in respect of the sale or exchange (without regard to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in sub. (1) of stock in trade or other property described in subd. 1, and

3. Instalment obligations acquired in respect of property (other than property described in subd. 1) sold or exchanged before the date of the adoption of such plan of liquidation.

(b) *Nonrecognition with respect to inventory in certain cases.* Notwithstanding par. (a), if substantially all of the property described in par.

(a) 1 which is attributable to a trade or business of the corporation is, in accordance with this section, sold or exchanged to one person in one transaction, then for purposes of sub. (1) the term "property" includes such property so sold or exchanged, and instalment obligations acquired in respect of such sale or exchange.

(3) LIMITATIONS. (a) *Liquidations to which section 71.333 applies.* This section shall not apply to any sale or exchange following the adoption of a plan of complete liquidation, if s. 71.333 applies with respect to such liquidation.

(b) *Liquidations to which section 71.332 applies.* In the case of a sale or exchange following the adoption of a plan of complete liquidation, if s. 71.332 applies with respect to such liquidation, then:

1. If the basis of the property of the liquidating corporation in the hands of the distributee is determined under s. 71.334 (2) (a), this section shall not apply; or

2. If the basis of the property of the liquidating corporation in the hands of the distributee is determined under s. 71.334 (2) (b), this section shall apply only to that portion (if any) of the gain which is not greater than the excess of a. that portion of the basis (adjusted for any adjustment required under the second sentence of s. 71.334 (2) (b)) of the stock of the liquidating corporation which is allocable, under rules prescribed by the department of taxation to the property sold or exchanged, over b. the basis, in the hands of the liquidating corporation, of the property sold or exchanged.

71.346 PARTIAL LIQUIDATION DEFINED. (1) IN GENERAL. For purposes of ch. 71, a distribution shall be treated as in partial liquidation of a corporation if:

(a) The distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan; or

(b) The distribution is not essentially equivalent to a dividend, is in redemption of a part of the stock of the corporation pursuant to a plan, and occurs within the taxable year in which the plan is adopted or within the succeeding taxable year, including (but not limited to) a distribution which meets the requirements of sub. (2).

(2) TERMINATION OF A BUSINESS. A distribution shall be treated as a distribution described in sub. (1) (b) if the requirements of this subsection are met.

(a) The distribution is attributable to the corporation's ceasing to conduct, or consists of the assets of, a trade or business which has been actively conducted throughout the 5-year period immediately before the distribution, which trade or business was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(b) Immediately after the distribution the liquidating corporation is actively engaged in the conduct of a trade or business, which trade or business was actively conducted throughout the 5-year period ending on the date of the distribution and was not acquired by the corporation within such period in a transaction in which gain or loss was recognized in whole or in part.

(2a) Whether or not a distribution meets the requirements of sub. (2) shall be determined without regard to whether or not the distribution is pro rata with respect to all of the shareholders of the corporation.

(3) TREATMENT OF CERTAIN REDEMPTIONS. The fact that, with respect to a shareholder, a distribution qualifies under s. 71.302 (1) (relating to redemptions treated as distributions in part or full payment in exchange for stock) by reason of such distribution being substantially dispropor-

tionate shall not be taken into account in determining whether the distribution, with respect to such shareholder, is also a distribution in partial liquidation of the corporation.

71.351 TRANSFER TO CORPORATION CONTROLLED BY TRANSFEROR. (1) **GENERAL RULE.** No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation and immediately after the exchange such person or persons are in control (as defined in s. 71.368 (3)) of the corporation. For purposes of this section, stock or securities issued for services shall not be considered as issued in return for property.

(2) **RECEIPT OF PROPERTY.** If sub. (1) would apply to an exchange but for the fact that there is received, in addition to the stock or securities permitted to be received under sub. (1), other property or money, then gain (if any) to such recipient shall be recognized, but not in excess of the amount of money received, plus the fair market value of such other property received; and no loss to such recipient shall be recognized.

(3) **SPECIAL RULE.** In determining control, for purposes of this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.

71.354 EXCHANGES OF STOCK AND SECURITIES IN CERTAIN REORGANIZATIONS. (1) **GENERAL RULE.** (a) *In general.* No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(b) *Limitation.* Paragraph (a) shall not apply if the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or any such securities are received and no such securities are surrendered.

(2) **EXCEPTION.** (a) *In general.* Subsection (1) shall not apply to an exchange in pursuance of a plan of reorganization within the meaning of s. 71.368 (1) (a) 4, unless: the corporation to which the assets are transferred acquired substantially all of the assets of the transferor of such assets; and the stock, securities and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

(3) **CERTAIN RAILROAD REORGANIZATIONS.** Notwithstanding any other provision of ch. 71, sub. (1) (a) and s. 71.356 shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of s. 71.368 (1)) for a railroad approved by the interstate commerce commission under section 77 of the bankruptcy act, or under section 20b of the interstate commerce act, as being in the public interest.

71.355 DISTRIBUTION OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION. (1) **EFFECT ON DISTRIBUTEES.** (a) *General rule.* If:

1. A corporation (referred to in this section as the "distributing corporation") distributes to a shareholder, with respect to its stock, or distributes to a security holder, in exchange for its securities, solely stock or securities of a corporation (referred to in this section as "controlled corporation") which it controls immediately before the distribution,

2. The transaction was not used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (but the mere fact that subsequent to the distribution stock or securities in one or more of such corporations

are sold or exchanged by all or some of the distributees (other than pursuant to an arrangement negotiated or agreed upon prior to such distribution) shall not be construed to mean that the transaction was used principally as such a device),

3. The requirements of sub. (2) (relating to active businesses) are satisfied, and

4. As part of the distribution, the distributing corporation distributes all of the stock and securities in the controlled corporation held by it immediately before the distribution, or an amount of stock in the controlled corporation constituting control within the meaning of s. 71.368 (3), and it is established to the satisfaction of the department of taxation that the retention by the distributing corporation of stock (or stock and securities) in the controlled corporation was not in pursuance of a plan having as one of its principal purposes the avoidance of income tax, then no gain or loss shall be recognized to (and no amount shall be includible in the income of) such shareholder or security holder on the receipt of such stock or securities.

(b) *Non pro rata distributions, etc.* Paragraph (a) shall be applied without regard to the following:

1. Whether or not the distribution is pro rata with respect to all of the shareholders of the distributing corporation,

2. Whether or not the shareholder surrenders stock in the distributing corporation, and

3. Whether or not the distribution is in pursuance of a plan of reorganization (within the meaning of s. 71.368 (1) (a) 4.).

(c) *Limitation.* Paragraph (a) shall not apply if the principal amount of the securities in the controlled corporation which are received exceeds the principal amount of the securities which are surrendered in connection with such distribution, or securities in the controlled corporation are received and no securities are surrendered in connection with such distribution. For purposes of this section (other than par. (a) 4) and so much of s. 71.356 as relates to this section, stock of a controlled corporation acquired by the distributing corporation by reason of any transaction which occurs within 5 years of the distribution of such stock and in which gain or loss was recognized in whole or in part, shall not be treated as stock of such controlled corporation, but as other property.

(2) REQUIREMENTS AS TO ACTIVE BUSINESS. (a) *In general.* Subsection (1) shall apply if either:

1. The distributing corporation, and the controlled corporation (or, if stock of more than one controlled corporation is distributed, each of such corporations), is engaged immediately after the distribution in the active conduct of a trade or business, or

2. Immediately before the distribution, the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged immediately after the distribution in the active conduct of a trade or business.

(b) *Definition.* For the purposes of par. (a), a corporation shall be treated as engaged in the active conduct of a trade or business if and only if:

1. It is engaged in the active conduct of a trade or business, or substantially all of its assets consist of stock and securities of a corporation controlled by it (immediately after the distribution) which is so engaged,

2. Such trade or business has been actively conducted throughout the 5-year period ending on the date of the distribution,

3. Such trade or business was not acquired within the period described in subd. 2 in a transaction in which gain or loss was recognized in whole or in part, and

4. Control of a corporation which (at the time of acquisition of control) was conducting such trade or business was not acquired directly (or through one or more corporations) by another corporation within the period described in subd. 2, or was so acquired by another corporation within such period, but such control was so acquired only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.

71.356 RECEIPT OF ADDITIONAL CONSIDERATION. (1) **GAIN ON EXCHANGES.** (a) *Recognition of gain.* If s. 71.354 or 71.355 would apply to an exchange but for the fact that the property received in the exchange consists not only of property permitted by s. 71.354 or 71.355 to be received without the recognition of gain 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.

(b) *Treatment as dividend.* If an exchange is described in par. (a) but has the effect of the distribution of a dividend, then there shall be treated as a dividend to each distributee such an amount of the gain recognized under par. (a) 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 par. (a) shall be treated as gain from the exchange of property.

(2) **ADDITIONAL CONSIDERATION RECEIVED IN CERTAIN DISTRIBUTIONS.** If s. 71.355 would apply to a distribution but for the fact that the property received in the distribution consists not only of property permitted by s. 71.355 to be received without the recognition of gain, but also of other property or money, then an amount equal to the sum of such money and the fair market value of such other property shall be treated as a distribution of property to which s. 71.301 applies.

(3) **Loss.** If s. 71.354 would apply to an exchange, or s. 71.355 would apply to an exchange or distribution, but for the fact that the property received in the exchange or distribution consists not only of property permitted by s. 71.354 or 71.355 to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange or distribution shall be recognized.

(4) **SECURITIES AS OTHER PROPERTY.** For purposes of this section:

(a) *In general.* Except as provided in par. (b), the term "other property" includes securities.

(b) *Exceptions.*

1. Securities with respect to which nonrecognition of gain would be permitted. The term "other property" does not include securities to the extent that, under s. 71.354 or 71.355, such securities would be permitted to be received without the recognition of gain.

2. Greater principal amount in s. 71.354 exchange. If in an exchange described in s. 71.354 (other than sub. (3) thereof), securities of a corporation a party to the reorganization are surrendered and securities of any corporation a party to the reorganization are received, and the principal amount of such securities received, exceeds the principal amount of such securities surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess. For purposes of this subdivision and subd. 3., if no securities are surrendered, the excess shall be the entire principal amount of the securities received.

3. Greater principal amount in s. 71.355 transaction. If, in an exchange or distribution described in s. 71.355, the principal amount of

the securities in the controlled corporation which are received exceeds the principal amount of the securities in the distributing corporation which are surrendered, then, with respect to such securities received, the term "other property" means only the fair market value of such excess.

71.357 ASSUMPTION OF LIABILITY. (1) **GENERAL RULE.** Except as provided in subs. (2) and (3), if the taxpayer receives property which would be permitted to be received under s. 71.351, 71.361 or 71.371, without recognition of gain if it were the sole consideration, and as part of the consideration, another party to the exchange assumes a liability of the taxpayer, or acquires from the taxpayer property subject to a liability, then such assumption or acquisition shall not be treated as money or other property, and shall not prevent the exchange from being within the provisions of s. 71.351, 71.361 or 71.371, as the case may be.

(2) **TAX AVOIDANCE PURPOSE.** (a) *In general.* If, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition described in sub. (1) was a purpose to avoid income tax on the exchange, or if not such purpose, was not a bona fide business purpose, then such assumption or acquisition (in the total amount of the liability assumed or acquired pursuant to such exchange) shall, for purposes of s. 71.351, 71.361 or 71.371 (as the case may be) be considered as money received by the taxpayer on the exchange.

(b) *Burden of proof.* In any suit or proceeding where the burden is on the taxpayer to prove such assumption or acquisition is not to be treated as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence.

(3) **LIABILITIES IN EXCESS OF BASIS.** (a) In the case of an exchange to which s. 71.351 applies, or to which s. 71.361 applies by reason of a plan of reorganization within the meaning of s. 71.368 (1) (a) 4, if the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds the total of the basis of the property transferred pursuant to such exchange, then such excess shall be considered as a gain from the sale or exchange of property.

(b) *Exception.* Paragraph (a) shall not apply to any exchange to which s. 71.357 (2) (a) applies or to which s. 71.371 applies.

71.358 BASIS TO DISTRIBUTEES. (1) **GENERAL RULE.** In the case of an exchange to which s. 71.351, 71.354, 71.355, 71.356, 71.361 or 71.371 (2) applies:

(a) *Nonrecognition property.* The basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged decreased by the fair market value of any other property (except money) received by the taxpayer, and the amount of any money received by the taxpayer, and increased by the amount which was treated as a dividend, and the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(b) *Other property.* The basis of any property (except money) received by the taxpayer shall be its fair market value.

(2) **ALLOCATION OF BASIS.** (a) *In general.* Under rules prescribed by the department of taxation, the basis determined under sub. (1) (a) shall be allocated among the properties permitted to be received without the recognition of gain or loss.

(b) *Special rule for section 71.355.* In the case of an exchange to which s. 71.355 (or so much of s. 71.356 as relates to s. 71.355) applies,

then in making the allocation under par. (a), there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing corporation which are retained, and the allocation of basis shall be made among all such properties.

(3) **TRANSACTIONS WHICH ARE NOT EXCHANGES.** For purposes of this section, a distribution to which s. 71.355 (or so much of s. 71.356 as relates to s. 71.355) applies shall be treated as an exchange, and for such purposes the stock and securities of the distributing corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(4) **ASSUMPTION OF LIABILITY.** Where, as part of the consideration to the taxpayer, another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability), shall, for purposes of this section, be treated as money received by the taxpayer on the exchange.

(5) **EXCEPTION.** This section shall not apply to property acquired by a corporation by the issuance of its stock or securities as consideration in whole or in part for the transfer of the property to it.

71.361 NONRECOGNITION OF GAIN OR LOSS TO CORPORATIONS. (1) **GENERAL RULE.** No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(2) **EXCHANGES NOT SOLELY IN KIND.** (a) *Gain.* If sub. (1) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by sub. (1) to be received without the recognition of gain, but also of other property or money, then:

1. If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

2. If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation 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 so received, which is not so distributed.

(b) *Loss.* If sub. (1) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by sub. (1) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

71.362 BASIS TO CORPORATIONS. (1) **PROPERTY ACQUIRED BY ISSUANCE OF STOCK OR AS PAID-IN SURPLUS.** If property was acquired on or after January 1, 1955, by a corporation in connection with a transaction to which s. 71.351 (relating to transfer of property to corporation controlled by transferor) applies, or as paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer.

(2) **TRANSFERS TO CORPORATIONS.** If property was acquired by a corporation in connection with a reorganization to which ss. 71.351 to 71.368 apply, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to

the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

(3) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS TO CAPITAL. (a) *Property other than money.* Notwithstanding sub. (1), if property other than money is acquired by a corporation, on or after January 1, 1955, as a contribution to capital, and is not contributed by a shareholder as such, then the basis of such property shall be zero.

(b) *Money.* Notwithstanding sub. (1), if money is received by a corporation, on or after January 1, 1955, as a contribution to capital, and is not contributed by a shareholder as such, then the basis of any property acquired with such money during the 12-month period beginning on the day the contribution is received shall be reduced by the amount of such contribution. The excess (if any) of the amount of such contribution over the amount of the reduction under the preceding sentence shall be applied to the reduction (as of the last day of the period specified in the preceding sentence) of the basis of any other property held by the taxpayer. The particular properties to which the reductions required by this paragraph shall be allocated shall be determined under rules prescribed by the department of taxation.

71.368 DEFINITIONS RELATING TO CORPORATE REORGANIZATIONS. (1) REORGANIZATION. (a) *In general.* For purposes of ss. 71.301 to 71.368, the term "reorganization" means:

1. A statutory merger or consolidation;
2. The acquisition by one corporation, in exchange solely for all or a part of its voting stock, of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);
3. The acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;
4. A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under s. 71.354, 71.355, or 71.356;
5. A recapitalization; or
6. A mere change in identity, form, or place of organization, however effected.

(b) *Special rules.* 1. Reorganizations described in par. (a) 3 and 4. If a transaction is described in par. (a) 3 and 4, then, for purposes of ch. 71, such transaction shall be treated as described only in par. (a) 4.

2. Additional consideration in certain cases. If one corporation acquires substantially all of the properties of another corporation, the acquisition would qualify under par. (a) 3 but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock, and the acquiring corporation acquires, solely for voting stock described in par. (a) 3, property of the other corporation having a fair market value which is at least 80 per cent of the fair market value of all

of the property of the other corporation, then such acquisition shall (subject to subd. 1) be treated as qualifying under par. (a) 3. Solely for the purpose of determining whether clause (a) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

3. Transfers of assets to subsidiaries in certain cases. A transaction otherwise qualifying under par. (a) 1 or 3 shall not be disqualified by reason of the fact that part or all of the assets which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring such assets.

(2) PARTY TO A REORGANIZATION. For purposes of ss. 71.351 to 71.368, the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under sub. (1) (a) 3, if the stock exchanged for the properties is stock of a corporation which is in control of the acquiring corporation, the term "a party to a reorganization" includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under sub. (1) (a) 1 or 3 by reason of sub. (1) (b) 3, the term "a party to a reorganization" includes the corporation controlling the corporation to which the acquired assets are transferred.

(3) CONTROL. For purposes of ss. 71.301 to 71.368, the term "control" means the ownership of stock possessing at least 80 per cent of the total combined voting power of all classes of stock entitled to vote and at least 80 per cent of the total number of shares of all other classes of stock of the corporation.

71.371 REORGANIZATION IN CERTAIN RECEIVERSHIP AND BANKRUPTCY PROCEEDINGS. (1) EXCHANGES BY CORPORATIONS. (a) *In general.* No gain or loss shall be recognized if property of a corporation (other than a railroad corporation, as defined in section 77 (m) of the bankruptcy act (49 Stat. 922; 11 USC 205)) is transferred in pursuance of an order of the court having jurisdiction of such corporation in a receivership, foreclosure, or similar proceeding, or, in a proceeding under chapter X of the bankruptcy act (52 Stat. 883-905; 11 USC, ch. 10) or the corresponding provisions of prior law, to another corporation organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other corporation.

(b) *Gain from exchanges not solely in kind.* If an exchange would be within the provisions of par. (a) if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by par. (a) to be received without the recognition of gain, but also of other property or money, then if the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but if the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation 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 so received, which is not so distributed.

(2) EXCHANGES BY SECURITY HOLDERS. (a) *In general.* No gain or loss shall be recognized on an exchange consisting of the relinquishment or extinguishment of stock or securities in a corporation the plan of reorganization of which is approved by the court in a proceeding described

in sub. (1), in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate such plan or reorganization.

(b) *Gain from exchanges not solely in kind.* If an exchange would be within the provisions of par. (a) if it were not for the fact that the property received in exchange consists not only of property permitted by par. (a) to be received without the recognition of gain, 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.

(3) **LOSS FROM EXCHANGES NOT SOLELY IN KIND.** If an exchange would be within the provisions of sub. (1) (a) or (2) (a) if it were not for the fact that the property received in exchange consists not only of property permitted by sub. (1) (a) or (2) (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(4) **ASSUMPTION OF LIABILITIES.** In the case of a transaction involving an assumption of a liability or the acquisition of property subject to a liability, the rules provided in s. 71.357 shall apply.

71.372 BASIS IN CONNECTION WITH CERTAIN RECEIVERSHIP AND BANKRUPTCY PROCEEDINGS. If property was acquired by a corporation in a transfer to which s. 71.371 (1) applies, so much of s. 71.371 (3) as relates to s. 71.371 (1) (a) applies or the corresponding provisions of prior law apply, then notwithstanding the provisions of section 270 of the bankruptcy act (54 Stat. 709; 11 USC 670), the basis in the hands of the acquiring corporation shall be the same as it would be in the hands of the corporation whose property was so acquired, increased in the amount of gain recognized to the corporation whose property was so acquired under the law applicable to the year in which the acquisition occurred, and such basis shall not be adjusted by reason of a discharge of indebtedness in pursuance of the plan of reorganization under which such transfer was made.

71.373 LOSS NOT RECOGNIZED IN CERTAIN RAILROAD REORGANIZATIONS. (1) **NONRECOGNITION OF LOSS.** No loss shall be recognized if property of a railroad corporation, as defined in section 77 (m) of the bankruptcy act (49 Stat. 922; 11 USC 205), is transferred in pursuance of an order of the court having jurisdiction of such corporation in a receivership proceeding, or in a proceeding under section 77 of the bankruptcy act, to a railroad corporation (as defined in section 77 (m) of the bankruptcy act) organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding.

(2) **BASIS.** (a) *Railroad corporations.* If the property of a railroad corporation (as defined in section 77 (m) of the bankruptcy act) was acquired after December 31, 1938, in pursuance of an order of the court having jurisdiction of such corporation in a receivership proceeding, or in a proceeding under section 77 of the bankruptcy act, and the acquiring corporation is a railroad corporation (as defined in section 77 (m) of the bankruptcy act) organized or made use of to effectuate a plan of reorganization approved by the courts in such proceeding, the basis shall be the same as it would be in the hands of the railroad corporation whose property was so acquired.

(b) *Property acquired by street, suburban, or interurban electric railway corporation.* If the property of any street, suburban, or interurban electric railway corporation engaged as a common carrier in the transportation of persons or property in interstate commerce was acquired after December 31, 1934, in pursuance of an order of the court having jurisdiction of such corporation in a proceeding under section 77B of the bank-

ruptcy act (48 Stat. 912), and the acquiring corporation is a street, suburban, or interurban electric railway engaged as a common carrier in the transportation of persons or property in interstate commerce, organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, then, notwithstanding the provisions of section 270 of the bankruptcy act (52 Stat. 904; 11 USC 670), the basis shall be the same as it would be in the hands of the corporation whose property was so acquired.

SECTION 5. This act shall be effective as to all transactions occurring on or after January 1, 1955. With respect to ss. 71.331 to 71.346 relating to corporate liquidations, this act shall apply to distributions in liquidation and to sales or exchanges in connection with liquidations whether or not the plan of liquidation pursuant to which such distribution, sale, or exchange is made occurs prior to January 1, 1955, provided that the first distribution in pursuance of such plan of liquidation occurs on or after January 1, 1955.

Approved August 4, 1955.
