State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–1685/1
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2005 SENATE BILL 52

February 8, 2005 – Introduced by Senators KANAVAS, S. FITZGERALD, GROTHMAN, LEIBHAM and ROESSLER, cosponsored by Representatives NISCHKE, JENSEN, GARD, MCCORMICK, KREIBICH, F. LASEE, ALBERS, GUNDERSON, HINES, PETTIS and VRAKAS. Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

AN ACT ***to amend*** 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4) (e), 71.25 (6) (a), 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d), 71.25 (6) (e), 71.45 (3d) (a), 71.45 (3d) (b) and 71.45 (3d) (c); and ***to create*** 71.04 (4) (f), 71.25 (6) (f) and 71.45 (3d) (d) of the statutes; **relating to:** apportioning remaining net income by using a single sales factor based on creating and retaining new jobs.

Analysis by the Legislative Reference Bureau

Under current law, for purposes of computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a corporation's income to this state. The formula has three factors: a sales factor, a property factor, and a payroll factor. The sales factor represents 50 percent of the formula and the property and payroll factors each represent 25 percent of the formula. For purposes of computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

Under current law, beginning on January 1, 2008, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. The property and payroll factors will be decreased, and eventually phased out, over four years as the sales factor is increased and becomes the only factor. Beginning on January 1, 2008, the premium factor will be the only factor used to attribute a portion of an insurance company's income to this state. The payroll factor will be decreased, and eventually phased out, over four years as the premium factor is increased and becomes the only factor.

Under this bill, a corporation may use only the sales factor to attribute a portion of the corporation's income to this state before taxable years beginning on January 1, 2008, if the corporation has a net gain of 100 employees in the taxable year and retains the employees for three consecutive years.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 71.04 (4) (a) of the statutes is amended to read:

71.04 **(4)** (a) ~~For~~ Except as provided in par. (f), for taxable years beginning before January 1, 2006, an apportionment fraction composed of a sales factor under sub. (7) representing ~~50%~~ 50 percent of the fraction, a property factor under sub. (5) representing ~~25%~~ 25 percent of the fraction, and a payroll factor under sub. (6) representing ~~25%~~ 25 percent of the fraction.

SECTION 2. 71.04 (4) (b) of the statutes is amended to read:

71.04 **(4)** (b) ~~For~~ Except as provided in par. (f), for taxable years beginning after December 31, 2005, and before January 1, 2007, an apportionment fraction composed of a sales factor under sub. (7) representing ~~60%~~ 60 percent of the fraction, a property factor under sub. (5) representing ~~20%~~ 20 percent of the fraction, and a payroll factor under sub. (6) representing ~~20%~~ 20 percent of the fraction.

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

71.04 **(4)** (c) ~~For~~ Except as provided in par. (f), for taxable years beginning after December 31, 2006, and before January 1, 2008, an apportionment fraction composed of a sales factor under sub. (7) representing ~~80%~~ 80 percent of the fraction, a property factor under sub. (5) representing ~~10%~~ 10 percent of the fraction, and a payroll factor under sub. (6) representing ~~10%~~ 10 percent of the fraction.

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

71.04 **(4)** (d) ~~For~~ Except as provided in par. (f), for taxable years beginning after December 31, 2007, an apportionment fraction composed of the sales factor under sub. (7).

SECTION 5. 71.04 (4) (e) of the statutes is amended to read:

71.04 **(4)** (e) ~~For~~ Except as provided in par. (f), for taxable years beginning after December 31, 2005, and before January 1, 2008, the apportionment fraction for the remaining net income of a financial organization shall include a sales factor that represents more than ~~50%~~ 50 percent of the apportionment fraction, as determined by rule by the department. For taxable years beginning after December 31, 2007, the apportionment fraction for the remaining net income of a financial organization is composed of a sales factor, as determined by rule by the department.

SECTION 6. 71.04 (4) (f) of the statutes is created to read:

71.04 **(4)** (f) If a taxpayer who is subject to apportionment under this subsection has a net gain of 100 employees in this state in any taxable year beginning after the effective date of this paragraph .... [revisor inserts date], and before January 1, 2008, the taxpayer's remaining net income may, at the taxpayer's option, be apportioned to this state by an apportionment fraction composed of the sales factor under sub. (7) or, for a financial organization, under par. (e) beginning with the taxable year in which the employees are hired, except that, if the taxpayer does not retain the net gain of employees in this state for at least 3 consecutive taxable years, or until January 1, 2008, the taxpayer shall apportion the taxpayer's remaining net income as provided under pars. (a) to (e), as appropriate, and shall file amended returns to reflect the change of apportionment.

SECTION 7. 71.25 (6) (a) of the statutes is amended to read:

71.25 **(6)** (a) ~~For~~ Except as provided in par. (f), for taxable years beginning before January 1, 2006, an apportionment fraction composed of a sales factor under sub. (9) representing ~~50%~~ 50 percent of the fraction, a property factor under sub. (7) representing ~~25%~~ 25 percent of the fraction, and a payroll factor under sub. (8) representing ~~25%~~ 25 percent of the fraction.

SECTION 8. 71.25 (6) (b) of the statutes is amended to read:

71.25 **(6)** (b) ~~For~~ Except as provided in par. (f), for taxable years beginning after December 31, 2005, and before January 1, 2007, an apportionment fraction composed of a sales factor under sub. (9) representing ~~60%~~ 60 percent of the fraction, a property factor under sub. (7) representing ~~20%~~ 20 percent of the fraction, and a payroll factor under sub. (8) representing ~~20%~~ 20 percent of the fraction.

SECTION 9. 71.25 (6) (c) of the statutes is amended to read:

71.25 **(6)** (c) ~~For~~ Except as provided in par. (f), for taxable years beginning after December 31, 2006, and before January 1, 2008, an apportionment fraction composed of a sales factor under sub. (9) representing ~~80%~~ 80 percent of the fraction, a property factor under sub. (7) representing ~~10%~~ 10 percent of the fraction, and a payroll factor under sub. (8) representing ~~10%~~ 10 percent of the fraction.

SECTION 10. 71.25 (6) (d) of the statutes is amended to read:

71.25 **(6)** (d) ~~For~~ Except as provided in par. (f), for taxable years beginning after December 31, 2007, an apportionment fraction composed of the sales factor under sub. (9).

SECTION 11. 71.25 (6) (e) of the statutes is amended to read:

71.25 **(6)** (e) ~~For~~ Except as provided in par. (f), for taxable years beginning after December 31, 2005, and before January 1, 2008, the apportionment fraction for the remaining net income of a financial organization shall include a sales factor that represents more than ~~50%~~ <u>50 percent</u> of the apportionment fraction, as determined by rule by the department. For taxable years beginning after December 31, 2007, the apportionment fraction for the remaining net income of a financial organization is composed of a sales factor, as determined by rule by the department.

SECTION 12. 71.25 (6) (f) of the statutes is created to read:

71.25 **(6)** (f) If a taxpayer who is subject to apportionment under this subsection has a net gain of 100 employees in this state in any taxable year beginning after the effective date of this paragraph .... [revisor inserts date], and before January 1, 2008, the taxpayer's remaining net income may, at the taxpayer's option, be apportioned to this state by an apportionment fraction composed of the sales factor under sub. (9) or, for a financial organization, under par. (e) beginning with the taxable year in which the employees are hired, except that, if the taxpayer does not retain the net gain of employees in this state for at least 3 consecutive taxable years, or until January 1, 2008, the taxpayer shall apportion the taxpayer's remaining net income as provided under pars. (a) to (e), as appropriate, and shall file amended returns to reflect the change of apportionment.

SECTION 13. 71.45 (3d) (a) of the statutes is amended to read:

71.45 **(3d)** (a) ~~For~~ <u>Except as provided in par. (d), for</u> taxable years beginning after December 31, 2005, and before January 1, 2007, a domestic insurer that is subject to apportionment under sub. (3) and this subsection shall multiply the net income figure derived by the application of sub. (2) by an apportionment fraction composed of the percentage under sub. (3) (a) representing ~~60%~~ <u>60 percent</u> of the fraction and the percentage under sub. (3) (b) 1. representing ~~40%~~ <u>40 percent</u> of the fraction.

SECTION 14. 71.45 (3d) (b) of the statutes is amended to read:

71.45 **(3d)** (b) ~~For~~ Except as provided in par. (d), for taxable years beginning after December 31, 2006, and before January 1, 2008, a domestic insurer that is subject to apportionment under sub. (3) and this subsection shall multiply the net income figure derived by the application of sub. (2) by an apportionment fraction composed of the percentage under sub. (3) (a) representing ~~80%~~ 80 percent of the fraction and the percentage under sub. (3) (b) 1. representing ~~20%~~ 20 percent of the fraction.

SECTION 15. 71.45 (3d) (c) of the statutes is amended to read:

71.45 **(3d)** (c) ~~For~~ Except as provided in par. (d), for taxable years beginning after December 31, 2007, a domestic insurer that is subject to apportionment under sub. (3) and this subsection shall multiply the net income figure derived by the application of sub. (2) by the percentage under sub. (3) (a).

SECTION 16. 71.45 (3d) (d) of the statutes is created to read:

71.45 **(3d)** (d) If a taxpayer who is subject to apportionment under sub. (3) has a net gain of 100 employees in this state in any taxable year beginning after the effective date of this paragraph .... [revisor inserts date], and before January 1, 2008, the taxpayer's remaining net income may, at the taxpayer's option, be apportioned to this state by an apportionment fraction composed of the percentage under sub. (3) (a) beginning with the taxable year in which the employees are hired, except that, if the taxpayer does not retain the net gain of employees in this state for at least 3 consecutive taxable years, or until January 1, 2008, the taxpayer shall apportion the taxpayer's remaining net income as provided under pars. (a) to (c), as appropriate, and shall file amended returns to reflect the change of apportionment.

(END)