Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate - 2005 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number **05-3618/1**	Introduction Number **SB-376**

Description
Imposing an excess profits tax on integrated oil companies, creating an individual income tax credit for home heating costs, requiring the combined reporting of corporate income and franchise taxes, granting rule-making authority, and making an appropriation.

Fiscal Effect

State:
☐ No State Fiscal Effect
☒ Indeterminate
- ☐ Increase Existing Appropriations
- ☐ Decrease Existing Appropriations
- ☐ Create New Appropriations
- ☐ Increase Existing Revenues
- ☐ Decrease Existing Revenues
- ☒ Increase Costs - May be possible to absorb within agency's budget ☐ Yes ☒ No
- ☐ Decrease Costs

Local:
☐ No Local Government Costs
☐ Indeterminate
1. ☐ Increase Costs
   ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
   ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenue
   ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenue
   ☐ Permissive ☐ Mandatory
5. Types of Local Government Units Affected
   ☐ Towns ☐ Village ☐ Cities
   ☐ Counties ☐ Others
   ☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEGS

Affected Ch. 20 Appropriations

Agency/Prepared By	Authorized Signature	Date
DOR/ Rebecca Boldt (608) 266-6785	Rebecca Boldt (608) 266-6785	5/1/2006

Fiscal Estimate Narratives

DOR 5/1/2006

LRB Number **05-3618/1**	Introduction Number **SB-376**	Estimate Type **Original**
Description Imposing an excess profits tax on integrated oil companies, creating an individual income tax credit for home heating costs, requiring the combined reporting of corporate income and franchise taxes, granting rule-making authority, and making an appropriation.		

Assumptions Used in Arriving at Fiscal Estimate

Under current law, every corporation organized under Wisconsin law, licensed to do business in Wisconsin or engaged in business in Wisconsin is required to file a separate Wisconsin franchise or income tax return and pay tax on or measured by its net income. Wisconsin law does not require or permit either combined or consolidated reporting. Instead, each separately incorporated business is a discrete taxable entity. Any transfers of products, services, or information that occur between related corporations must be accounted for and allocated independently to each corporation.

Under current law, corporations are subject to an income or franchise tax equal to 7.9% of taxable income.

Combined Reporting

This bill would require an affiliated group of business entities that are part of a unitary business to file a combined tax return. Under combined reporting, all the separate business units of a commonly controlled group operating as a unitary business–divisions, subsidiaries, and affiliates–are treated as a single entity for tax purposes. A commonly controlled group does not include exempt insurers.

A unitary business is an affiliated group of corporations that operate as a unit. Businesses are presumed to be unitary if they have unity of ownership, operation and use that is characterized by:
• centralized management, executive force, purchasing, advertising, or accounting,
• intercorporate sales, leases, services, debts or use of proprietary materials, and
• interlocking directorates or corporate officers.

The bill generally provides for water's edge combination. Members of a commonly controlled group operating as a unitary business that are required to use combined reporting include:
• corporations organized in the United States, the Commonwealth of Puerto Rico and any possession or political subdivision of the United States.
• domestic international sales corporations, foreign sales corporations, and export trade corporations.
• corporations with at least 20% of the average of their property and payroll apportionment factors within the United States during any part of the taxable year.
• other corporations to the extent of their income within the United States and the corporations' property and payroll apportionment factors assignable to a location in the United States.

However, certain corporations may elect to compute income using a worldwide combination that includes all members of the unitary group regardless of the country in which the member is incorporated or conducts business. The election would generally remain in effect for at least seven taxable years, and if terminated, could not be made again for another seven years.

The accounting period of the common parent or the member with the most significant operations, if no common parent exists, is used to determine income, apportionment factors, and tax credits of all members of a combined group.

Income is computed by eliminating intercompany transactions, including:

• income or gain from sales, exchanges, contributions or other transfers of tangible and intangible property
• annual rents, license fees or royalties
• loans, advances,
• receivables, and similar items, including related interest income and interest expense
• stock or other equity
• dividends paid out of earnings or profits, except as provided by rule

• management or service fees
• income or expenses.

Net business losses incurred after combined reporting would take effect could be offset against the net income of the combined group in that taxable year. Unused losses may be carried forward to subsequent taxable years and offset against either the net income of the corporation that incurred the loss or the net income of the combined group, as prescribed by rule.

Generally, net business losses incurred prior to combined reporting and carried forward may offset the net income of the corporation that incurred the loss. If a corporation joins in filing a group return and its losses exceed its net income for the first year, the corporation is subject to group filing. It may annually offset up to 20% of the remaining net loss against the combined group return. Prior losses from corporations that were not subject to tax in the state when the losses were incurred may not be carried forward and used to offset combined income.

Excess Oil Profits Tax

The bill would create an excess oil profits tax on integrated oil companies that produce at least 150,000 barrels of crude petroleum per day. The tax would be in addition to the current income and franchise tax on corporations. The excess oil profits tax would have two components:

A tax on "normal taxable income" is equal to 7.9% of income computed by combining the petroleum-related income of the company and its subsidiaries times a percentage that is based on the company's 2001 in-state sales and income.

A tax on "excess taxable income" is equal to 50% of the company's total taxable income minus its normal taxable income. The Department could authorize other computations.

The bill creates a nonrefundable credit against the excess oil profits tax for a corporation equal to an amount determined by multiplying the current franchise tax by the percentage that petroleum-related taxable income is of total taxable income under the current franchise tax.

An integrated oil company is a corporation that, with activities of subsidiaries, engages in extracting, producing, and refining crude petroleum and transporting distributing, and marketing crude petroleum, gasoline, distillate fuels, aviation fuels, kerosene, diesel motor fuel, residual oil, propane, benzol, butane, or other similar petroleum products.

Excess Profits Home Heating Credit

The bill would create an individual income tax credit for the cost of fuel and electricity used to heat a claimant's principal dwelling. Only one member of a household could claim the credit. Unused credit amounts would be carried forward for 15 years for use in offsetting tax liability in those years. The credit amount would be determined annually by rule so that the maximum amount of all claims would not exceed the revenues generated by the excess oil profits tax. Because taxpayers would claim the credit before the state knows how much excess oil profits tax would be collected, the Department would be required to estimate the collections for purposes of the credit.

Fiscal Estimate

Combined Reporting. Information is not available to estimate combined reporting at this time. A prior estimate of combined reporting, based on a 2001 sample compiled by the Department of Revenue, estimated that the bill would increase revenues by $52 million in the first five years and $75 million per year thereafter. The lower collections in the first five years reflect a prorating of prior net business loss offsets. Recent tax law changes and more recent tax returns could increase or decrease this estimate.

Excess Oil Profits Tax. Information is not available to estimate the excess oil profits tax. The estimate requires the same oil companies to have been included in two samples. The samples are selected randomly according to specified parameters and the same oil companies are not included in two samples. Because of mergers and reorganizations in the industry, the two returns for some companies may not exist. In addition, even if the companies had been included in the two samples, the returns would still not provide sufficient information to determine profits from oil, compared to other sources of income.

Excess Profits Home Heating Credit. The home heating credit is intended to equal the amount of excess oil profits tax. Since that amount cannot be determined, the credit cannot be estimated.

Administrative Costs. The Department estimates that it would take two years to establish a combined reporting system and promulgate rules. The Department anticipates increased costs for computer programming, form development, processing of returns and auditor training. Estimated ongoing increased costs are estimated at $343,800 annually. The bill does not provide funding for these costs.

Long-Range Fiscal Implications