



2007 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB40)

Received: **06/20/2007**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Shanovich (RR)**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Business - crp inc, fran**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

LFB:.....Shanovich (RR) -

Topic:

Combined tax reporting

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 06/20/2007	wjackson 06/20/2007		_____			
/1	jkreye 06/22/2007	wjackson 06/22/2007	jfrantze 06/21/2007	_____	lparisi 06/21/2007		
/2	jkreye 06/25/2007	wjackson 06/25/2007	natzke 06/22/2007	_____	cduerst 06/22/2007		
/3	jkreye	wjackson	rschluet	_____	sbasford		

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	06/25/2007	06/25/2007	06/25/2007 _____		06/25/2007		
/4			sherritz _____		lparisi _____		
			06/25/2007 _____		06/25/2007		

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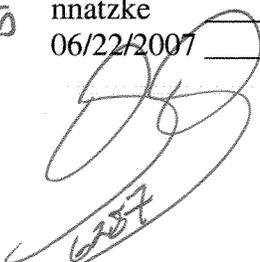
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2003 BILL

LPS: Please
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1 AN ACT *to repeal* 71.46 (3); *to amend* 71.25 (9) (a), 71.26 (3) (x), 71.26 (4), 71.29
2 (2), 71.44 (1) (a), 71.48 and 71.84 (2) (a); and *to create* 71.255 and 71.44 (1) (e)
3 of the statutes; **relating to:** combined tax reporting for income and franchise
4 tax purposes and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, each separate corporation doing business in this state must file a tax return with the Department of Revenue (DOR) reporting its net income. A corporation's net income includes interest, dividends and the sale of intangible assets received by the corporation from another corporation if the corporations are a unitary business. A unitary business is, generally, an affiliated group of corporations that operate as a unit and is characterized by centralized management and decision making. Under current law, separate corporations that are part of a unitary business are not required to file a combined tax return. Instead, a corporation doing business in this state that is part of a unitary business files a separate return.

This bill requires that an affiliated group of corporations that is part of a unitary business file a combined tax return with DOR. The bill creates a presumption that all corporations that are part of an affiliated group are unitary and must file a combined return.

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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:

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SECTION 1. 2018d

1 SECTION 1. 71.25 (9) (a) of the statutes is amended to read:

2 71.25 (9) (a) The sales factor is a fraction, the numerator of which is the total
3 sales of the taxpayer in this state during the tax period, and the denominator of
4 which is the total sales of the taxpayer everywhere during the tax period. For sales
5 of tangible personal property, the numerator of the sales factor is the sales of the
6 taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the
7 taxpayer during the tax period under pars. (b) 2m. and 3. and (c). For purposes of
8 determining the numerator of the sales factor for a member of a combined reporting
9 group under s. 71.255 (7), "taxpayer" means the member of a combined reporting
10 group, as defined in s. 71.255 (1) (c), that transferred title to tangible personal
11 property or, for sales other than sales of tangible personal property, that made the
12 sale.

SECTION 2. 2018g

13 SECTION 2. 71.255 of the statutes is created to read:

14 **71.255 Combined reporting. (1) DEFINITIONS.** In this section:

15 (a) "Brother-sister parent corporation" means a parent corporation that is a
16 member of a commonly controlled group, if any members of the commonly controlled
17 group are not connected to the parent corporation by stock ownership or interest
18 ownership as described in par. (d).

19 (b) "Combined report" means a form prescribed by the department that
20 specifies the income of each taxpayer member of a commonly controlled group
21 operating as a unitary business.

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1 (c) "Combined reporting group" means the members of a commonly controlled
2 group that are included in a combined report under sub. (2).

3 (d) "Commonly controlled group" means any of the following, but does not
4 include an insurer that is exempt from taxation under s. 71.45 (1):

5 1. A parent corporation and any corporation or chain of corporations that are
6 connected to the parent corporation by direct or indirect ownership by the parent
7 corporation if the parent corporation owns stock representing more than 50% of the
8 voting power of at least one of the connected corporations or if the parent corporation
9 or any of the connected corporations owns stock that cumulatively represents more
10 than 50% of the voting power of each of the connected corporations.

11 2. Any 2 or more corporations if a common owner directly or indirectly owns
12 stock representing more than 50% of the voting power of the corporations or the
13 connected corporations.

14 3. A partnership or limited liability company if a parent corporation or any
15 corporation connected to the parent corporation by common ownership directly or
16 indirectly owns more than a 50% interest in the capital and profits of the partnership
17 or limited liability company.

18 4. Any 2 or more corporations if stock representing more than 50% of the voting
19 power in each corporation are interests that cannot be separately transferred.

20 5. Any 2 or more corporations if stock representing more than 50% of the voting
21 power in each corporation is directly owned by, or for the benefit of, family members.
22 In this subdivision, "family members" means an individual related by blood,
23 marriage, or adoption within the 2nd degree of kinship as computed under s. 852.03
24 (2), 1995 stats., or the spouse of such an individual.



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SECTION 2

1 6. A corporation, partnership, or limited liability company if a parent
2 corporation or any corporation connected to the parent corporation by common
3 ownership does not hold more than a 50%^{percent} ownership interest in the corporation,
4 partnership, or limited liability company but effectively controls the corporation,
5 partnership, or limited liability company.

6 (e) "Corporation" has the meaning given in s. 71.22 (1)^k or 71.42 (1).[✓]

7 (f) "Department" means the department of revenue.

8 (g) "Designated agent" means the taxpayer member of a commonly controlled
9 group ^{that} who files a group return on behalf of the taxpayer members of a combined
10 reporting group.

11 (h) "Group return" means a tax return filed on behalf of the taxpayer members
12 of a combined reporting group.

13 (i) "Intercompany transaction" means a transaction between corporations,
14 partnerships, or limited liability companies that become members of the same
15 combined reporting group immediately after the transaction.

16 (im) "Partnership" means any entity considered a partnership under section
17 7701 of the Internal Revenue Code.

18 (j) "Separate return" means a return filed by a corporation, regardless of
19 whether the corporation is a member of a combined reporting group or is required
20 to file a tax return under s. 71.24 or 71.44.

21 (k) "Taxpayer member" means a corporation that is subject to tax under s. 71.23
22 (1) or (2) or 71.43, that is a member of a combined reporting group, and that files a
23 combined report under this section.

24 (L) "Top tier corporation" means a member of a commonly controlled group that
25 is not connected with a parent corporation by stock ownership or interest ownership



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1 as described in par. (d), is a parent corporation, or is a brother-sister parent
2 corporation, regardless of whether it is doing business in this state or deriving
3 income from sources in this state, and regardless of whether its income and
4 apportionment factors are excluded from a combined report filed under this section.

5 (m) "Unitary business" includes the business activities or operations of an
6 entity that are of mutual benefit to, integrated with, or dependent upon or that
7 contribute to activities of at least one other entity, including transactions that serve
8 an operational function, as determined by the department. Two or more businesses
9 are presumed to be a unitary business if the businesses have unity of ownership,
10 operation, and use as indicated by centralized management or a centralized
11 executive force; centralized purchasing, advertising, or accounting; intercorporate
12 sales or leases; intercorporate services; intercorporate debts; intercorporate use of
13 proprietary materials; interlocking directorates; or interlocking corporate officers.

14 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) Except as provided
15 in par. (b), and subject to sub. (6), a corporation that is subject to the tax imposed
16 under s. 71.23 (1) or (2) or 71.43, that is a member of a commonly controlled group,
17 and that is engaged, in whole or in part, in a unitary business with one or more
18 members of the commonly controlled group shall compute the corporation's income
19 attributable to this state by using the income computation under s. 71.26 or 71.45,
20 the apportionment formula under s. 71.25 (6) or 71.45, and the tax credits under s.
21 71.28 or 71.47 of all of the following that are members of the commonly controlled
22 group:

23 1. Any corporation organized or incorporated under the laws of the United
24 States, any state of the United States, the District of Columbia, the Commonwealth
25 of Puerto Rico, any possession of the United States, or any political subdivision of the



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1 United States, including corporations under sections 931 to 936 of the Internal
2 Revenue Code.

3 2. Any domestic international sales corporation under sections 991 to 994 of the
4 Internal Revenue Code.

5 3. Any foreign sales corporation under sections 921 to 927 of the Internal
6 Revenue Code.

7 4. Any export trade corporation under sections 970 and 971 of the Internal
8 Revenue Code.

9 5. Any corporation regardless of its place of incorporation if the average of its
10 property factor under s. 71.25 (7) and its payroll factor under s. 71.25 (8), for property
11 and payroll within the United States and computed on an annual basis, is at least
12 20% *percent* during any part of the taxable year that a corporation is a member of the
13 commonly controlled group.

14 6. Any corporation not described in subds. 1. to 5. to the extent of the
15 corporation's income within the United States and the corporation's property factor
16 under s. 71.25 (7) and payroll factor under s. 71.25 (8) assignable to a location within
17 the United States.

18 (b) A corporation that is subject to the tax imposed under s. 71.23 (1) or (2) or
19 71.43, that is a member of a commonly controlled group, and that is engaged, in whole
20 or in part, in a unitary business with one or more members of the commonly
21 controlled group may, subject to sub. (6), compute the corporation's income
22 attributable to this state by using the income computation under s. 71.26 or 71.45,
23 the apportionment formula under s. 71.25 (6) or 71.45, and the tax credits under s.
24 71.28 or 71.47 of all the members of the commonly controlled group, regardless of the
25 country in which any member of the commonly controlled group is organized or



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1 incorporated or conducts business, if all top tier corporations that are members of the
2 commonly controlled group elect under sub. (3) to compute the corporation's income
3 as provided under this paragraph.

4 (3) COMPUTATION ELECTION. (a) A top tier corporation that is a member of a
5 commonly controlled group may elect on the commonly controlled group's behalf, and
6 in the manner prescribed by the department, to compute the income of each
7 corporation that is a member of the commonly controlled group under sub. (2) (b).

8 If more than one member of the commonly controlled group is a top tier corporation,
9 an election under this subsection is not effective unless all top tier corporations elect
10 on the commonly controlled group's behalf, and in the manner prescribed by the
11 department, to compute income under sub. (2) (b).

12 (b) A top tier corporation shall file an election made under par. (a) with the
13 department before the last day of the taxable year. The top tier corporation shall
14 designate a taxable year that corresponds with the taxable year of any taxpayer
15 member that is subject to the tax imposed under s. 71.23 (1) or (2) or 71.43. If the
16 top tier corporation fails to file the election before the last day of the taxable year
17 designated under this paragraph, all members of the commonly controlled group to
18 which the top tier corporation belongs, including the top tier corporation, shall
19 compute income under sub. (2) (a).

20 (c) Except as provided under par. (d), the members of the commonly controlled
21 group subject to an election under this subsection shall compute their income under
22 sub. (2) (b) for 7 taxable years, beginning with the taxable year designated under par.
23 (b). Thereafter, the members of the commonly controlled group shall compute their
24 income under sub. (2) (b) for periods of 7 taxable years and until any top tier
25 corporation that is a member of the commonly controlled group notifies the



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1 department, in a manner prescribed by the department, before the last day of the last
 2 taxable year in any period of 7 taxable years that the top tier corporation is
 3 terminating the election under ~~this subsection~~ ^{PAR. (a)} ^{STET}. A termination under this paragraph
 4 takes effect on the first day of the first taxable year beginning after the top tier
 5 corporation notifies the department under this paragraph.

6 (d) The department may grant a request by a top tier corporation to terminate
 7 an election under ~~this subsection~~ ^{PAR. (a)} ^{STET} before the first period of 7 taxable years under par.

8 (c) expires, if the top tier corporation shows good cause for granting the request, as
 9 determined by the department and consistent with section 1502 of the Internal
 10 Revenue Code.

11 (e) Except as provided in par. (f), if an election by a top tier corporation on behalf
 12 of the members of a commonly controlled group under ~~this subsection~~ ^{PAR. (a)} ^{STET} is terminated
 13 no top tier corporation may make an election on behalf of the members of the same
 14 commonly controlled group until 7 taxable years have elapsed from the day that the
 15 termination of the original election took effect.

16 (f) The department may grant a request by a top tier corporation to make an
 17 election under this subsection before the period of 7 taxable years under par. (e) have
 18 elapsed, if the top tier corporation shows good cause for granting the request, as
 19 determined by the department and consistent with section 1502 of the Internal
 20 Revenue Code.

21 (4) ACCOUNTING PERIOD. For purposes of this section, the income under ss. 71.26
 22 and 71.45, the apportionment factors under ss. 71.25 and 71.45 and the tax credits
 23 under ss. 71.28 and 71.47 of all corporations that are members of a combined
 24 reporting group shall be determined by using the same accounting period. If the
 25 combined reporting group has a common parent corporation, the accounting period

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1 of the common parent corporation shall be used to determine the income, the
2 apportionment factors, and the tax credits of all the corporations that are members
3 of the combined reporting group. If the combined reporting group has no common
4 parent corporation, the income, the apportionment factors, and the tax credits of the
5 combined reporting group shall be determined using the accounting period of the
6 member of the combined reporting group that has the most significant operations on
7 a recurring basis in this state, as determined by the department.

8 (5) FILING RETURNS. (a) *Corporations with the same accounting period.*
9 Corporations that must file a combined report under this section and that have the
10 same accounting period may file a group return, as prescribed by the department,
11 that reports the aggregate state franchise or state income tax liability of all of the
12 members of the combined reporting group. Corporations that are required to file a
13 combined report under this section may file separate returns reporting the
14 respective apportionment of the corporation's state franchise or state income tax
15 liability as determined under sub. (2), if each corporation filing a separate return
16 pays its own apportionment of its state franchise or state income tax liability.

17 (b) *Corporations with different accounting periods.* Corporations that are
18 required to file a combined report and that have different accounting periods shall
19 file separate returns and shall use the actual figures from the corporations' financial
20 records to determine the proper income and income-related computations to convert
21 to a common accounting period. Corporations that are required to file a combined
22 report may use a proportional method to convert income to a common accounting
23 period if the results of the proportional method do not materially misrepresent the
24 income apportioned to this state. The apportionment factors under ss. 71.25 and
25 71.45 and the tax credits under ss. 71.28 and 71.47 shall be computed according to



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1 the same method used to determine the income under ss. 71.26 and 71.45 for the
2 common accounting period. If a corporation performs an interim closing of its
3 financial records to determine the income attributable to the common accounting
4 period, the actual figures from the interim closing shall be used to convert the
5 apportionment factors and tax credits to the common accounting period.

6 (c) *Designated agent.* 1. For corporations that are subject to this section and
7 that file a group return under par. (a), the parent corporation of the combined
8 reporting group is the sole designated agent for each member of the combined
9 reporting group including the parent corporation, if the parent corporation is a
10 taxpayer member of the combined reporting group and income of the parent
11 corporation is included on the group return. If the parent corporation is not a
12 taxpayer member or if the parent corporation's income is not included on the group
13 return, the taxpayer members may appoint a taxpayer member to be the designated
14 agent. If the parent corporation of the combined reporting group is not eligible to be
15 the designated agent and no taxpayer member is appointed to be the designated
16 agent, the designated agent is the taxpayer member that has the most significant
17 operations in this state on a recurring basis, as determined by the department. The
18 designated agent, as determined under this subdivision, remains the designated
19 agent until the designated agent is no longer a taxpayer member or until the
20 taxpayer members appoint a different designated agent. If the designated agent
21 changes, the combined reporting group shall notify the department of such a change,
22 in a manner prescribed by the department.

23 2. The designated agent shall file the group return under par. (a), shall file for
24 any extensions under s. 71.24 (7) or 71.44 (3), shall file amended reports and claims
25 for refund or credit, and shall send and receive all correspondence with the

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1 department regarding a group return. Any notice the department sends to the
2 designated agent is considered a notice sent to all members of the combined reporting
3 group. Any refund with respect to a group return shall be paid to and in the name
4 of the designated agent and shall discharge any liability of the state to any member
5 of a combined reporting group regarding the refund. The combined reporting group
6 filing a group return under par. (a) shall pay all taxes, including estimated taxes, in
7 the designated agent's name. The designated agent shall participate on behalf of the
8 members of the combined reporting group in any investigation or hearing requested
9 by the department regarding a group return and shall produce all information
10 requested by the department regarding a group return. The designated agent may
11 execute a power of attorney on behalf of the members of the combined reporting
12 group. The designated agent shall execute waivers, closing agreements, and other
13 documents regarding a group return filed under par. (a) and any waiver, agreement,
14 or document executed by the designated agent shall be considered as executed by all
15 members of the combined reporting group. If the department acts in good faith with
16 a combined reporting group member that represents itself as the designated agent
17 for the combined reporting group but that combined reporting group member is not
18 the designated agent, any action taken by the department with that combined
19 reporting group member has the same effect as if that combined reporting group
20 member were the actual designated agent for the combined reporting group.

21 (d) *Part-year members.* If a corporation becomes a member of a combined
22 reporting group or ceases to be a member of a combined reporting group after the
23 beginning of a common accounting period, the corporation's income shall be
24 apportioned to this state as follows:



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1 1. If the corporation is required to file 2 or more short[✓] period federal returns
2 for the common accounting period, the income for the short period that the
3 corporation was a member of a combined reporting group shall be determined as
4 provided under sub. (2), the corporation shall join in filing a combined report for that
5 short period, and the corporation may join in filing a group return for that short
6 period. The income for the remaining short period shall be reported on a separate
7 return under s. 71.26 or 71.45. If the corporation becomes a member of another
8 combined reporting group in the remaining short period, the corporation's income
9 shall be determined for the remaining short period as provided under sub. (2).

10 2. If the corporation is not required to file federal short period returns, the
11 corporation shall file a separate return. Income shall be determined as follows:

12 a. As provided under sub. (2) for any period that the corporation was a member
13 of a combined reporting group.

14 b. As a separate entity under s. 71.26 or 71.45 for any period that the
15 corporation was not a member of a combined reporting group.

16 (e) *Amended group return.* The election to file a group return under this section
17 applies to an amended group return that includes the same corporations that joined
18 in the filing of the original group return. Under this section, an amended group
19 return shall be filed as follows:

20 1. If an election to file a group return that is in effect for a taxable year is
21 revoked for the taxable year because the combined reporting group that filed the
22 group return is not subject to sub. (2), as determined by the department, the
23 designated agent for the combined reporting group may not file an amended group
24 return. The designated agent and each corporation that joined in filing the group
25 return shall file a separate amended return. To compute the tax due on a separate



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1 amended return, a corporation that files a separate amended return shall consider
2 all of the payments, credits, or other amounts, including refunds, that the designated
3 agent allocated to the corporation.

4 2. If a change in tax liability under this section is the result of the removal of
5 a corporation from a combined reporting group because the corporation was not
6 eligible to be a member of the combined reporting group for the taxable year, as
7 determined by the department, the designated agent shall file an amended group
8 return and the ineligible corporation shall file a separate amended return.

9 3. If a corporation erroneously fails to join in the filing of a group return, the
10 designated agent shall file an amended group return that includes the corporation.
11 If a corporation that erroneously fails to join in the filing of a group return has filed
12 a separate return, the corporation shall file an amended separate return that shows
13 no net income, overpayment, or underpayment, and shows that the corporation has
14 joined in the filing of a group return.

15 **(6) INCOME COMPUTATION UNDER COMBINED REPORTING.** For the purposes of sub.
16 (2), income attributable to this state shall be determined as follows:

17 (a) Determine the net income of each member of a combined reporting group
18 under s. 71.26 or 71.45, as appropriate, before deducting net business losses. A
19 member of a combined reporting group may determine its net loss or net income
20 under a method of accounting or an election authorized under s. 71.26 (3) (y), 71.30
21 (1), 71.45 (2) (a) 13., or 71.49 (2), as appropriate, regardless of the accounting method
22 used to determine the net loss or net income of other members of the combined
23 reporting group. After a member establishes an accounting method, or makes any
24 election under this section, the member's net loss or net income shall be consistently
25 determined in the combined report of all members of the combined reporting group



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SECTION 2

1 and in the group return filed by the taxpayer members or in the separate return filed
2 by the members. If a corporation is engaged in 2 or more trades or businesses that
3 are required to use different apportionment formulas under s. 71.25 or 71.45, the net
4 income for each trade or business shall be computed separately. A unitary business
5 with operations in a foreign country shall compute its net loss or net income as
6 provided by rule by the department.

7 (b) Adjust each member's income, as determined under par. (a), as provided
8 under s. 71.30.

9 (c) From the amount determined under par. (b), subtract intercompany
10 transactions, as provided by rule by the department, such that intercompany
11 accounts of assets, liabilities, equities, income, costs, or expenses are excluded from
12 the income determination to accurately reflect the income, the apportionment
13 factors, and the tax credits in a combined report that is filed under this section. An
14 intercompany transaction includes the following:

15 1. Income or gain from sales, exchanges, contributions, or other transfers of
16 tangible or intangible property from a member of the combined reporting group to
17 another member of the combined reporting group.

18 2. Annual rent paid by a member of the combined reporting group to another
19 member of the combined reporting group.

20 3. Annual license fees or royalties paid by a member of the combined reporting
21 group to another member of the combined reporting group.

22 4. Loans, advances, receivables, and similar items that one member of the
23 combined reporting group owes to another member of the combined reporting group,
24 including interest income and interest expense related to these items.

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1 5. Stock or other equity of a member of the combined reporting group that is
2 owned or controlled by another member of the combined reporting group.

3 6. Except as provided by rule by the department, dividends paid out of earnings
4 or profits and paid by a member of the combined reporting group to another member
5 of the combined reporting group.

6 7. Management or service fees paid by a member of the combined reporting
7 group to another member of the combined reporting group.

8 8. Income or expenses allocated or charged by a member of the combined
9 reporting group to another member of the combined reporting group.

10 (d) From the amount determined under par. (c) for each member of a combined
11 reporting group, subtract nonapportionable income, net of related expenses, and add
12 nonapportionable losses, net of related expenses, to determine each member's
13 apportionable net income or apportionable net loss.

14 (e) Calculate the apportionment factors under sub. (7) and multiply each
15 member's apportionable net income or apportionable net loss, as determined under
16 par. (d), by the member's apportionment factor as determined under sub. (7).

17 (f) For each corporation, combine the amounts determined under par. (e) for
18 each trade or business.

19 (g) To the amounts determined under par. (f), add each member's
20 nonapportionable income attributable to this state and subtract each member's
21 nonapportionable losses attributable to this state.

22 (h) If the combined reporting group is not filing a group return, combine the
23 amounts determined under par. (g) for all members of the combined reporting group.



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SECTION 2

1 (i) If the combined reporting group is filing a group return, combine the
2 amounts determined under par. (g) for all members of the combined reporting group
3 that join in filing the group return.

4 (j) From the amount determined under par. (h) or (i), as appropriate, subtract
5 the combined reporting group's net operating loss as determined under sub. (8).

6 **(7) APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING.** For the
7 purposes of sub. (2), this state's apportionment factors are determined as follows:

8 (a) 1. Determine the numerator and the denominator of the apportionment
9 factors as determined under s. 71.25 or 71.45, as appropriate, for each member of the
10 combined reporting group, except as provided in subd. 2.

11 2. If a member of a combined reporting group is not subject to the tax imposed
12 under s. 71.23 or 71.43 because it does not have sufficient connection to this state as
13 a separate entity for income or franchise tax purposes, as determined by the
14 department, the numerator of the member's sales factor under s. 71.25 (9) or
15 apportionment factor under s. 71.45 (3) is zero. If a member of a combined reporting
16 group is a corporation engaged in business wholly within this state, as provided
17 under s. 71.25 (4), the numerator and denominator of the member's apportionment
18 factors is the same. If a member of a combined reporting group is not subject to an
19 income or franchise tax as a separate entity in the state to which a sale is attributed,
20 the sale is attributed to this state.

21 (b) Subtract intercompany transactions under sub. (6) (c) from both the
22 numerators and the denominators as determined under par. (a).

23 (c) Add the denominators of the apportionment factors for each member of the
24 combined reporting group, as determined under par. (b), to arrive at the combined
25 denominator.



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1 (d) Compute each corporation's apportionment factors by dividing the
2 corporation's numerator as determined under par. (b) by the combined denominator
3 as determined under par. (c).

4 (8) NET BUSINESS LOSS CARRY-OVER. (a) For taxable years beginning after
5 December 31, ~~2003~~²⁰⁰⁷, any net business loss of a corporation that is a member of a
6 combined reporting group as determined under sub. (6) for the taxable year that is
7 not offset against the net income of the other members of the combined reporting
8 group in the same taxable year may be carried forward as provided under s. 71.26
9 (4), except that any net business loss carried forward to a subsequent taxable year
10 may be offset against either the net income of the corporation that incurred the net
11 business loss or the net income of the combined reporting group of which the
12 corporation is a member, in the manner prescribed by rule by the department.

13 (b) A corporation that is a member of a combined reporting group may not carry
14 forward a net business loss from a taxable year beginning before January 1, ~~2004~~²⁰⁰⁸,
15 if the corporation was not subject to the tax imposed under s. 71.23 or 71.43 for the
16 same taxable year.

17 ²⁰⁰⁸ (c) A corporation that is a member of a combined reporting group and that
18 incurred a Wisconsin net business loss in a taxable year beginning before January
19 1, ~~2004~~²⁰⁰⁸, that has not been offset against the corporation's net income in subsequent
20 taxable years, may offset the remaining net business loss against the corporation's
21 net income as determined under sub. (6). If the corporation joins in filing a group
22 return under sub. (5) and the corporation's remaining net business loss exceeds the
23 corporation's net income as determined under sub. (6) for the first taxable year
24 beginning after December 31, ~~2003~~^{2003 & 2007}, that the corporation is subject to this section, the
25 corporation may annually offset up to 20% of the remaining net business loss against

percent



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1 the net income of the other members of the combined reporting group that join in
2 filing a group return under sub. (5).

3 **(9) NET INCOME OR LOSS FOR CORPORATIONS WITH DIFFERENT ACCOUNTING PERIODS.**

4 If a taxpayer member has a different accounting period than the common accounting
5 period of the combined reporting group, the combined reporting group shall assign
6 the combined report income or loss for the combined reporting group, as determined
7 under sub. (6), proportionally to the number of months in the taxpayer member's
8 taxable year that are wholly or partly within the combined reporting group's common
9 accounting period. The total amount of income or loss assigned to a taxpayer member
10 under this subsection for the portions of the common accounting period that are
11 included in the taxpayer member's taxable period shall be aggregated or netted to
12 determine the taxpayer member's apportionable income.

13 **(10) NET TAX LIABILITY. (a) A corporation that files a separate return under this**

14 section shall determine its net tax liability as follows:

15 1. Multiply the amount determined under sub. (6) (i) for the corporation by the
16 tax rate under s. 71.27 or 71.46, as appropriate.

17 2. From the amount determined under subd. 1., subtract the corporation's tax
18 credits under s. 71.28 or 71.47 based on the corporation's expenses. The corporation
19 may not offset any of its tax credits, or tax credit carry forwards, against the tax
20 liability of any other member of the combined reporting group to which the
21 corporation belongs.

22 (b) A combined reporting group that files a group return under this section shall
23 determine its net tax liability as follows:

24 1. Multiply the amount determined under sub. (6) (i) for the combined reporting
25 group by the tax rate under s. 71.27 or 71.46, as appropriate.

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1 2. From the amount determined under subd. 1., subtract the tax credits under
2 ss. 71.28 and 71.47 for all taxpayer members of the combined reporting group.

3 **(11) ESTIMATED TAX PAYMENTS.** (a) For the first 2 taxable years that a group
4 return is filed under this section, estimated taxes under ss. 71.29 and 71.48 may be
5 paid on a group basis or on a separate basis. The amount of any separate estimated
6 taxes paid in the first 2 taxable years that a group return is filed shall be credited
7 against the group's tax liability. The designated agent shall notify the department
8 of any estimated taxes paid on a separate basis in the first 2 taxable years that a
9 group return is filed.

10 (b) If a group return is filed for 2 consecutive taxable years, estimated taxes
11 under ss. 71.29 and 71.48 shall be paid on a group basis for each subsequent taxable
12 year until such time as separate returns are filed by the corporations that were
13 members of a combined reporting group that filed group returns under this section.
14 For each taxable year in which combined estimated taxes are paid under this
15 subsection, the department shall consider the combined reporting group filing a
16 group return to be one taxpayer for purposes of computing interest on the
17 underpayment of estimated taxes. If a corporation subject to this section files a
18 separate return in a taxable year following a year in which the corporation joined in
19 filing a group return, the amount of any estimated tax payments made on a group
20 basis for the previous year shall be credited against the tax liability of the corporation
21 that files a separate return, as allocated by the designated agent with the
22 department's approval.

23 (c) If a combined reporting group pays estimated taxes on a group basis for a
24 taxable year or for any part of a taxable year, and the members of the combined
25 reporting group file separate returns for the taxable year, the designated agent, with



BILL

1 the department's approval, shall allocate the estimated tax payments among the
2 members of the combined reporting group.

3 (d) If estimated taxes are paid on a group basis for a taxable year but the group
4 does not file a group return for the taxable year and did not file a group return for
5 the previous taxable year, the estimated tax shall be credited to the member of the
6 combined reporting group that made the estimated tax payment on the group's
7 behalf.

8 (e) If a combined reporting group that will file a group return applies for a
9 refund of estimated taxes under s. 71.29 (3m), the department shall determine the
10 combined reporting group's eligibility for a refund on a group basis.

11 **(12) INTEREST FOR UNDERPAYMENT OF ESTIMATED TAX.** (a) *General.* The amount
12 of interest that is due for an underpayment of estimated taxes under sub. (11) shall
13 be computed as follows:

14 1. For the first year in which a combined reporting group files a group return,
15 the amount of interest that is due for an underpayment of estimated taxes shall be
16 determined by using the aggregate of the tax and income shown on the returns filled
17 by the members of the combined reporting group for the previous year.

18 2. For any year in which a combined reporting group files a group return, the
19 department shall determine if the combined reporting group qualifies for the
20 exception to interest under s. 71.29 (7) (b) by using the aggregate of the amount of
21 the tax liability and the amount of the net income of all members of the combined
22 reporting group.

23 3. For any year in which a combined reporting group files a group return, the
24 department shall determine if the installment provisions under s. 71.29 (9) or (10)
25 apply to the combined reporting group by using the aggregate of the amount of the

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1 tax liability and the amount of the net income of all members of the combined
2 reporting group.

3 4. For estimated taxes paid under sub. (11) (c), the amount of interest that is
4 due from a member of a combined reporting group for an underpayment of estimated
5 taxes paid by the member shall be determined by using the member's separate items
6 from the group return filed for the previous year and the member's allocated share
7 of the combined estimated tax payments for the current year. The designated agent
8 shall report the member's allocated share of the combined estimated tax payments
9 for the current year to the department, in the manner prescribed by the department.

10 (b) *Entering a group.* If a corporation becomes a member of a combined
11 reporting group during a common accounting period under sub. (4), the combined
12 reporting group shall make the following adjustments to determine the amount of
13 interest that is due for an underpayment of estimated taxes:

14 1. If a corporation becomes a member of a combined reporting group at the
15 beginning of a common accounting period, the combined reporting group shall
16 include with the corresponding items on the group return for the previous common
17 accounting period the separate items shown on the corporation's return for the
18 previous taxable year.

19 2. If a corporation is not a member of a combined reporting group for an entire
20 common accounting period, the combined reporting group shall include with the
21 corresponding items on the group return for the current taxable year the
22 corporation's separate items for that portion of the common accounting period that
23 the corporation was not a member of the combined reporting group.

24 3. To determine the separate items under subs. 1. and 2., if a corporation is
25 a member of a combined reporting group during a portion of a common accounting



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SECTION 2

1 period in which the corporation becomes a member of another combined reporting
2 group, the corporation's separate items shall include the separate items that are
3 attributed to the corporation by the designated agent of the first combined reporting
4 group.

5 (c) *Leaving a group.* If a corporation leaves a combined reporting group during
6 a common accounting period under sub. (4), the combined reporting group shall make
7 the following adjustments to determine the amount of interest that is due for an
8 underpayment of estimated taxes:

9 1. If a corporation leaves a combined reporting group before the first day of a
10 common accounting period, the combined reporting group shall exclude the separate
11 items that the designated agent of the combined reporting group attributed to the
12 corporation for the preceding common accounting period from the corresponding
13 items of the combined reporting group for the preceding common accounting period.

14 2. If a corporation leaves a combined reporting group after the first day of a
15 common accounting period, the combined reporting group shall exclude the separate
16 items that the designated agent of the combined reporting group attributed to the
17 corporation for the common accounting period from the corresponding items of the
18 combined reporting group for the current common accounting period.

19 3. A corporation that leaves a combined reporting group shall use the separate
20 items that the designated agent of the combined reporting group attributed to the
21 corporation to determine the amount of interest that is owed for any underpayment
22 of estimated taxes under sub. (11) for the first taxable year beginning after the day
23 that the corporation leaves the combined reporting group or, for a corporation that
24 has a different accounting period than the combined reporting group, for the portion



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1 of the corporation's separate taxable year that remains after the day that the
2 corporation leaves the combined reporting group.

3 (13) ASSESSMENT NOTICE. If the department sends a notice of taxes that are
4 owed by a combined reporting group to the designated agent of a combined reporting
5 group, the notice shall name each corporation that joined in filing the group return
6 related to the notice during any part of the period covered by the notice. The
7 department's failure to name a corporation on a notice under this subsection shall
8 not invalidate the notice as to the unnamed corporation. Any levy, lien, or other
9 proceeding to collect the amount of a tax assessment under this section shall name
10 the corporation from which the department shall collect the assessment. If a
11 corporation that joined in the filing of a group return leaves the combined reporting
12 group, the department shall send the corporation a copy of any notice sent to the
13 combined reporting group under this subsection if the corporation notifies the
14 department that the corporation is no longer a member of the combined reporting
15 group and if the corporation requests in writing that the department send notices
16 under this subsection to the corporation. The department's failure to comply with
17 a corporation's request to receive a notice does not affect the tax liability of the
18 corporation.

19 (14) LIABILITY FOR TAX, INTEREST, AND PENALTY. If members of a combined
20 reporting group file a group return, the members of the combined reporting group
21 shall be jointly and severally liable for any combined tax, interest, or penalty. The
22 liability of a member of a combined reporting group for any combined tax, interest,
23 or penalty shall not be reduced by an agreement with another member of the
24 combined reporting group or by an agreement with another person.



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SECTION 2

1 **(15) PRESUMPTIONS AND BURDEN OF PROOF.** A commonly controlled group shall
2 be presumed to be engaged in a unitary business and all of the income of the unitary
3 business shall be presumed to be apportionable business income under this section.
4 A corporation, partnership, or limited liability company has the burden of proving
5 that it is not a member of a commonly controlled group that is subject to this section.
6 The department shall promulgate rules to implement this subsection.

7 **(16) INFORMATION.** (a) A member of a commonly controlled group shall retain
8 any information, and provide such information to the department at the
9 department's request, that the department considers necessary to administer this
10 section, including all documents submitted to or obtained from the Internal Revenue
11 Service or other states regarding income and taxing jurisdiction.

12 (b) A member of a commonly controlled group shall identify, at the department's
13 request, the name, job title, and address of the member's principal officers or
14 employees who have substantial knowledge of, and access to, documents that specify
15 the pricing policies, profit centers, cost centers, and methods of allocating income and
16 expenses among cost centers related to the operations of the member.

17 (c) A member of a commonly controlled group shall retain all information
18 provided under par. (a) during any period for which the member's tax liability to this
19 state is subject to adjustment, including any period in which the state may assess
20 additional income or franchise taxes, an appeal of the member's tax assessment is
21 pending, or a suit related to the member's tax liability is pending.

22 **(17) CORPORATIONS NOT FILING.** If a corporation that is required to report under
23 this section directly or indirectly owns or controls any other corporation, or is directly
24 or indirectly owned or controlled by another corporation, the department may



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(A)

1 require that such other corporations join in filing a combined report under this
2 section. ^{1/10} (end of insert A)

(3)

~~SECTION 3.~~ ^{2032 d} 71.26 (3) (x) of the statutes is amended to read:

(INSERT B)

4 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
5 consolidated returns) are excluded, except to the extent that they pertain to
6 intercompany transactions and the carry forward of net business loss under s. 71.255
7 and except that they are modified so that more than 50% ^{percent} ownership is substituted
8 for at least 80% ^{percent} ownership. ^{2032 g}

(9)

~~SECTION 4.~~ ^{2032 g} 71.26 (4) of the statutes is amended to read:

10 71.26 (4) NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option
11 corporation or an insurer to which s. 71.45 (4) applies, may offset against its
12 Wisconsin net business income any Wisconsin net business loss sustained in any of
13 the next 15 preceding taxable years, if the corporation was subject to taxation under
14 this chapter in the taxable year in which the loss was sustained, to the extent not
15 offset by other items of Wisconsin income in the loss year and by Wisconsin net
16 business income of any year between the loss year and the taxable year for which an
17 offset is claimed. For purposes of this subsection Wisconsin net business income or
18 loss shall consist of all the income attributable to the operation of a trade or business
19 in this state, less the business expenses allowed as deductions in computing net
20 income. The Wisconsin net business income or loss of corporations engaged in
21 business within and without the state shall be determined under s. 71.255 or 71.25
22 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25
23 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income
24 having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be

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(B)

1 included in other items of Wisconsin income and Wisconsin net business income for
2 purposes of this subsection. ✓ end of insert B

(INSERT C)

3 ~~SECTION 5.~~ SECTION 5. 71.29 (2) of the statutes is amended to read:

4 71.29 (2) WHO SHALL PAY. ^{2060md} Every Except as provided in s. 71.255 (11), every
5 corporation subject to tax under s. 71.23 (1) or (2) and every virtually exempt entity
6 subject to tax under s. 71.125 or 71.23 (1) or (2) shall pay an estimated tax. ✓

(INSERT D)

7 ~~SECTION 6.~~ SECTION 6. 71.44 (1) (a) of the statutes is amended to read:

8 71.44 (1) (a) ^{2086d} Every Except as provided in par. (e), every corporation, except
9 corporations all of whose income is exempt from taxation and except as provided in
10 sub. (1m), shall furnish to the department a true and accurate statement, on or before
11 March 15 of each year, except that returns for fiscal years ending on some other date
12 than December 31 shall be furnished on or before the 15th day of the 3rd month
13 following the close of such fiscal year and except that returns for less than a full
14 taxable year shall be furnished on or before the date applicable for federal income
15 taxes under the internal revenue code, in such manner and form and setting forth
16 such facts as the department deems necessary to enforce this chapter. Every
17 corporation that is required to furnish a statement under this paragraph and that
18 has income that is not taxable under this subchapter shall include with its statement
19 a report that identifies each item of its nontaxable income. The statement shall be
20 subscribed by the president, vice president, treasurer, assistant treasurer, chief
21 accounting officer or any other officer duly authorized so to act. In the case of a return
22 made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The
23 fact that an individual's name is subscribed on the return shall be prima facie
24 evidence that the individual is authorized to subscribe the return on behalf of the
25 corporation.



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1 SECTION 7^{2086e} 71.44 (1) (e) of the statutes is created to read:

2 71.44 (1) (e) A corporation that is a member of a commonly controlled group,
3 as defined in s. 71.255 (1) (d), and engaged in a unitary business, as defined in s.
4 71.255 (1) (m), shall file a tax return under s. 71.255. ✓

end of
insert D

5 ~~SECTION 8.~~ 71.46 (3) of the statutes is repealed. ✓

6 ~~SECTION 9.~~ 71.48 of the statutes is amended to read:

7 ^{2116md} **71.48 Payments of estimated taxes.** Sections Except as provided in s.
8 71.255 (11), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under
9 this chapter. ✓

10 ~~SECTION 10.~~ ^{2139g} 71.84 (2) (a) of the statutes is amended to read:

11 71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment
12 of estimated tax under s. 71.255, 71.29 or 71.48 there shall be added to the aggregate
13 tax for the taxable year interest at the rate of 12% per year on the amount of the
14 underpayment for the period of the underpayment. For corporations, except as
15 provided in par. (b), "period of the underpayment" means the time period from the
16 due date of the installment until either the 15th day of the 3rd month beginning after
17 the end of the taxable year or the date of payment, whichever is earlier. If 90% of the
18 tax shown on the return is not paid by the 15th day of the 3rd month following the
19 close of the taxable year, the difference between that amount and the estimated taxes
20 paid, along with any interest due, shall accrue delinquent interest under s. 71.91 (1)

21 (a). ✓

22 **SECTION 11. Initial applicability.**

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SECTION 11

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APP

(1) COMBINED REPORTING. The treatment of sections 71.25 (9) (a), 71.255, 71.26
(3) (x) and (4), 71.29 (2), 71.44 (1) (e), 71.46 (3), 71.48, and 71.84 (2) (a) of the statutes
first applies to taxable years beginning on January 1, 2005.

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(END)

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State of Wisconsin
2007 - 2008 LEGISLATURE

LRBb0510/?
JK:.....

Wlj *Rm* *mtR*

LFB:.....Shanovich (RR) - Combined tax reporting

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 40**

in *6-20-07*

1 At the locations indicated, amend the substitute amendment as follows:

- 2 ↓ 1. Page 922, line 19: after that line insert: **Insert A**
- 3 ↓ 2. Page 962, line 18: after that line insert: **Insert B**
- 4 ↓ 3. Page 974, line 8: after that line insert: **Insert C**
- 5 ↓ 4. Page 1008, line 17: after that line insert: **Insert D**
- 6 ↓ 5. Page 1009, line 16: after that line insert: **Insert E**
- 7 ↓ 6. Page 1021, line 5: after that line insert: **Insert F**
- 8 ↓ 7. Page 1038, line 16: after that line insert: **Insert G**

(A)
(B)
(C)
(D)
(E)
(F)
(G)

1

√ 8. Page 1661, line 23: after that line insert: **Insert H**

④
K

2

(END)

Kreye, Joseph

From: Shanovich, Ron
Sent: Thursday, June 21, 2007 11:49 AM
To: Kreye, Joseph
Subject: FW: Combined reporting drafting instructions

Attachments: 6-2007 Drafting Instr comb reptg.doc

From: Worcester, Barbara
Sent: Friday, June 15, 2007 4:35 PM
To: Shanovich, Ron
Subject: FW: Combined reporting drafting instructions

Joe here's the draft on combined reporting Ron

From: Gates-Hendrix, Sherrie L - DOR
Sent: Friday, June 15, 2007 11:47 AM
To: Worcester, Barbara
Cc: Templeton, Carrie E
Subject: Combined reporting and LLC issue

Hi Barb --

Attached are the drafting instructions for combined reporting



6-2007 Drafting
Instr comb rep...

DRAFTING INSTRUCTIONS FOR COMBINED REPORTING

I. Amend definition in sec. 71.22, Wis. Stats., as follows:

71.22 (9) "Person" includes corporations, unless the context requires otherwise. "Person" may also include any individual, partnership, general partner of a partnership, limited liability company, registered limited liability partnership, foreign limited liability partnership, syndicate, estate, trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee or organization of any kind.

II. Create sec. 71.255, Wis. Stats., as follows:

71.255 Combined Reporting. (1) DEFINITIONS. In this section:

(a) "Combined group" means the group of all persons whose income and apportionment factors are required to be taken into account pursuant to sub. (2) in determining the taxpayer's share of the net business income or loss apportionable to this state.

(b) "Combined report" means a tax return pursuant to s. 71.24 on a form prescribed by the department that specifies the income, credits and tax of each taxpayer member of a commonly controlled group operating as a unitary business.

(c) "Commonly controlled group" means any of the following:

1. A parent corporation and any one or more corporations or chains of corporations that are connected to the parent corporation by direct or indirect ownership by the parent corporation if the parent corporation owns stock representing more than 50% of the voting power of at least one of the connected corporations or if the parent corporation or any of the connected corporations owns stock that cumulatively represents more than 50% of the voting power of each of the connected corporations.

2. Any 2 or more corporations if a common owner, corporate or noncorporate, directly or indirectly owns stock representing more than 50% of the voting power of the corporations or connected corporations.

3. Any 2 or more corporations if stock representing more than 50% of the voting power in each corporation are interests that cannot be separately transferred.

4. Any 2 or more corporations if stock representing more than 50% of the voting power in each corporation is directly owned by, or for the benefit of, family members. In this subdivision, "family members" means an individual related by blood, marriage or adoption within the 2nd degree of kinship as computed under s. 852.03(2), 1995 stats., or the spouse of such individual.

(d) "Corporation" means any corporation as defined in s. 71.22(1k), wherever located, which if it were doing business in this state would be subject to this chapter. The business conducted by a pass-through entity which is directly or indirectly held by a corporation shall be considered the business of the corporation to the extent of the corporation's

did not include - seems to be defining the obvious?

distributive share of the income of the pass-through entity. "Corporation" does not include a tax-option corporation.

f (e) "Internal Revenue Code" means Internal Revenue Code as defined in s. 71.22(4) and (4)(m) without regard to application of federal treaties unless expressly made applicable to states of the United States.

g f (f) "Pass-through entity" means a general or limited partnership, organization of any kind treated as a partnership for tax purposes under the laws of this state, a real estate investment trust, regulated investment company, real estate mortgage investment conduit, financial asset securitization investment trust, trust, or estate.

h g (g) "Tax haven" means a jurisdiction that, during the tax year in question, is identified by the Organization for Economic Co-operation and Development (OECD) as a tax haven or as having a harmful preferential tax regime; or has no or nominal effective tax on the relevant income and exhibits the following characteristics established by the OECD as indicative of a tax haven or as a jurisdiction having a harmful preferential tax regime:

1. Has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime;
2. Has a tax regime which lacks transparency. A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation, is not adequately available;
3. Facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;
4. Explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or
5. Has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy.

(h) "Taxpayer member" means a corporation that is subject to tax under s. 71.23(1) or (2), that is a member of a combined group.

(i) "Unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. Two or more business entities are presumed to be a unitary business if the businesses have unity of ownership, operation and use as indicated by a centralized management or a centralized executive force; centralized purchasing, advertising, or accounting; intercorporate sales or leases; intercorporate services; intercorporate debts; intercorporate

use of proprietary materials; interlocking directorates; or interlocking corporate officers. Any business conducted by a pass-through entity that is owned directly or indirectly by a corporation shall be treated as conducted by the corporation, to the extent of the corporation's distributive share of the pass-through entity's income, regardless of the percentage of the corporation's ownership interest. A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a pass-through entity if the conditions of the first sentence of this subsection are satisfied, to wit: there is a synergy, and exchange and flow of value between the two parts of the business and the two corporations are members of the same commonly controlled group.

(j) "United States" means the 50 states of the United States, the District of Columbia, and United States territories and possessions.

(2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING.

(a) A corporation engaged in a unitary business with one or more other corporations shall file a combined report which includes the income, determined under sub. (3), and apportionment factor, determined under s. 71.25 and sub. (5), of the following members of the unitary business:

1. Any member incorporated in the United States or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States.

2. Any member, regardless of the place incorporated or formed, if the average of the following ratios is 20 percent or more:

a. Average real and tangible personal property located in the United States divided by average real and tangible personal property worldwide. For purposes of this paragraph, "property" includes a value of 8 times the net annual rental of property rented by the member but does not include property used to produce nonapportionable income.

b. Payroll paid in the United States divided by payroll worldwide. For purposes of this paragraph, "payroll" includes compensation paid to employees but does not include payroll used to produce nonapportionable income. The payroll paid in the United States shall be determined in the same manner as determined for payroll paid in Wisconsin in s. 71.25(8)(b)1. through s. 71.25(8)(b)5.

c. Sales in the United States divided by sales worldwide. For purposes of this paragraph, sales include items identified in s. 71.25(9)(e), sales exclude items identified in s. 71.25(9)(f), and the situs of a sale shall be determined in the same manner as for Wisconsin sales in ss. 71.25(9)(b), (d), (df) and (dh), except that (b)2m., (b)3., (c), (df)3. and (dh)4. shall not apply.

3. Any member which is a domestic international sales corporation as described in Internal Revenue Code Sections 991 to 994, inclusive; a foreign sales corporation as described in Internal Revenue Code Sections 921 to 927, inclusive; or any member which is an export trade corporation, as described in Internal Revenue Code Sections 970 to 971, inclusive.

4. Any member that is a "controlled foreign corporation," as defined in Internal Revenue Code Section 957, to the extent of the income of that member that is defined in

Section 952 of Subpart F of the Internal Revenue Code not excluding lower-tier subsidiaries' distributions of such income which were previously taxed, determined without regard to federal treaties, and the apportionment factors related to that income; any item of income received by a controlled foreign corporation shall be excluded if such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in Internal Revenue Code Section 11.

5. Any member that earns more than 20 percent of its income, directly or indirectly, from intangible property or service related activities that are deductible against the business income of other members of the combined group, to the extent of that income and the apportionment factors related thereto.

6. Any member that is doing business in a tax haven, where "doing business in a tax haven" is defined as being engaged in activity sufficient for that tax haven jurisdiction to impose a tax under United States constitutional standards. If the member's business activity within a tax haven is entirely outside the scope of the laws, provisions and practices that cause the jurisdiction to meet the criteria established in sub. (1)(g), the activity of the member shall be treated as not having been conducted in a tax haven.

7. Any member not described in 1. through 6., inclusive, to the extent its income is derived from or attributable to sources within the United States, as determined under the Internal Revenue Code, without regard to federal treaties, and its apportionment factors related thereto.

(b) The department may require the combined report include the income and associated apportionment factor of any persons that are not included pursuant to par. (a), but that are members of a unitary business, in order to reflect proper apportionment of income of the entire unitary business. Authority to require combination under this paragraph includes authority to require combination of persons that are not, or would not be if doing business in this state, subject to this chapter.

(3) COMPONENTS OF INCOME SUBJECT TO TAX. Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state, which shall include:

(a) Its share of any business income apportionable to this state of each of the combined groups of which it is a member, determined under subs. (4) and (5).

(b) Its share of any business income apportionable to this state of a distinct business activity conducted within and without the state wholly by the taxpayer member, determined under s. 71.25.

(c) Its income from a business conducted wholly by the taxpayer member entirely within the state.

(d) Its income sourced to this state from the sale or exchange of capital or assets, and from involuntary conversions, as determined under sub. (4)(b)8.

- (e) Its nonbusiness income or loss allocable to this state.
- (f) Its income or loss allocated or apportioned in an earlier year, required to be taken into account as state source income during the income year, other than a net business loss carryforward.
- (g) Its net business loss carryforward. If the taxable income computed pursuant to subs. (3), (4), and (5) results in a loss for a taxpayer member of the combined group, that taxpayer member has a net business loss, subject to the net business loss limitations and carryforward provisions in s. 71.26(4). Such business loss is applied as a deduction in a subsequent year only if that taxpayer member has net income sourced to this state, whether or not the taxpayer is a member of a combined group in the subsequent year.

(4) BUSINESS INCOME OF THE COMBINED GROUP. The business income of a combined group is determined as follows:

(a) From the total income of the combined group, determined under par. (b), subtract any income, and add any expense or loss, other than the business income, expense or loss of the combined group.

(b) Except as otherwise provided, the total income of the combined group is the sum of the income of each member of the combined group determined under federal income tax laws as if the member were not consolidated for federal purposes, and modified for state purposes per s. 71.26. The income of each member of the combined group shall be determined as follows:

1. For any member incorporated in the United States, or included in a consolidated federal corporate income tax return, the income to be included in the total income of the combined group shall be the taxable income for the corporation as determined by s. 71.26.

2. For any member not included in subd. 1., the income to be included in the total income of the combined group shall be determined as follows:

a. A profit and loss statement shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained.

b. Adjustments shall be made to the profit and loss statement to conform it to the accounting principles generally accepted in the United States for the preparation of such statements.

c. Adjustments shall be made to the profit and loss statement to conform it to the tax accounting standards required by this chapter.

d. The profit and loss statement of each member of the combined group, and the apportionment factors related thereto, whether United States or foreign, shall be translated into the currency in which the parent company maintains its books and records.

e. Income apportioned to this state shall be expressed in United States dollars.

3. In lieu of the procedures set forth in par. (b)2, and subject to the determination of

the department that it reasonably approximates income as determined under s. 71.26, any member not included in par. (a) may determine its income on the basis of the consolidated profit and loss statement which includes the member and which is prepared for filing with the Securities and Exchange Commission by related corporations. If the member is not required to file with the Securities and Exchange Commission, the department may allow the use of the consolidated profit and loss statement prepared for reporting to shareholders and subject to review by an independent auditor. If above statements do not reasonably approximate income as determined under s. 71.26, the department may accept those statements with appropriate adjustments to approximate that income.

4. If a unitary business includes income from a pass-through entity, the income to be included in the total income of the combined group shall include the member of the combined group's direct and indirect distributive share of the pass-through entity's unitary business income.

5. All dividends paid by one to another of the members of the combined group shall, to the extent those dividends are paid out of the earnings and profits of the unitary business included in the combined report, in the current or an earlier year, be eliminated from the income of the recipient. This provision shall not apply to dividends received from members of the unitary business which are not a part of the combined group.

6. Except as otherwise provided by rule, business income or loss from an intercompany transaction between members of the same combined group shall be deferred in a manner similar to 26 CFR 1.1502-13. Upon the occurrence of any of the following events, deferred business income or loss resulting from an intercompany transaction between members of a combined group shall be included in the income of the seller, and shall be apportioned as business income earned immediately before the event:

a. The object of the deferred intercompany transaction is re-sold by the buyer to an entity that is not a member of the combined group.

b. The object of the deferred intercompany transaction is re-sold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged.

c. The object of the deferred intercompany transaction is converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged.

d. The buyer and seller are no longer members of the same combined group, regardless of whether the members remain unitary.

7. A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to Internal Revenue Code Section 170, be subtracted first from the business income of the combined group, subject to the income limitations of that section applied to the entire business income of the group, and any remaining amount shall then be treated as a nonbusiness expense allocable to the member that incurred the expense, subject to the income limitations of that section applied to the nonbusiness income of that specific member. Any charitable deduction disallowed under the foregoing rule, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member, and the rules of this section shall apply in the subsequent year in determining the allowable deduction in that year.

8. Gain or loss from the sale or exchange of capital assets, property described by

Internal Revenue Code Section 1231(a)(3), and property subject to an involuntary conversion, shall be removed from the total separate net income of each member of a combined group and shall be apportioned and allocated as follows.

a. For short term capital gains or losses, long term capital gains or losses, Internal Revenue Code Section 1231 gains or losses, and involuntary conversions, all members' business gain and loss shall be combined within each class, and each class of net business gain or loss separately apportioned to each member using the member's apportionment percentage determined under sub. (5).

b. Each taxpayer member shall then net its apportioned business gain or loss for all classes, including any such apportioned business gain and loss from other combined groups, against the taxpayer member's nonbusiness gain and loss for all classes allocated to this state, using the rules of Internal Revenue Code Sections 1231 and 1222, without regard to any of the taxpayer member's gains or losses from the sale or exchange of capital assets, Section 1231 property, and involuntary conversions which are nonbusiness items allocated to another state.

c. Any resulting state source income (or loss, if the loss is not subject to the limitations of Internal Revenue Code Section 1211) of a taxpayer member produced by the application of the preceding subsections shall then be applied to all other state source income or loss of that member.

d. Any resulting state source loss of a member that is subject to the limitations of Section 1211 shall be carried forward or carried back by that member, and shall be treated as state source short-term capital loss incurred by that member for the year for which the carryforward or carryback applies.

9. Any expense of one member of the unitary group which is directly or indirectly attributable to the nonbusiness or exempt income of another member of the unitary group shall be allocated to that other member as corresponding nonbusiness or exempt expense, as appropriate.

(5) TAXPAYER'S SHARE OF BUSINESS INCOME OF COMBINED GROUP. The taxpayer's share of the business income apportionable to this state of each combined group of which it is a member shall be the product of the business income of the combined group as determined under sub. (4) and the taxpayer member's sales factor percentage, determined under s. 71.25, modified in the following ways:

(a) Including in the numerator the taxpayer member's sales associated with the combined group's unitary business in this state.

(b) Including in the numerator the taxpayer member's sales associated with the combined group's unitary business to another state in which the taxpayer member is not engaged in business, as required by s. 71.25(9), notwithstanding that another member of the combined group is engaged in business in the other state.

(c) Including in the denominator the sales of all members of the combined group, including the taxpayer, which sales are associated with the combined group's unitary business wherever located.

(d) Including sales of a pass-through entity owned directly or indirectly by a corporation in proportion to a ratio the numerator of which is the amount of the corporation's distributive share of the pass-through entity's unitary income included in the income of the combined group in accordance with sub. (4) and the denominator of which is the amount of the pass-through entity's total unitary income.

(e) Excluding sales between members of the combined group.

(f) If a member of a combined group is not subject to the taxes imposed by s. 71.23 because it is not engaged in business in Wisconsin, the numerator of that member's sales factor is zero.

(6) CREDITS AND POST-APPORTIONMENT DEDUCTIONS. Except where otherwise provided, no tax credit or post-apportionment deduction earned by one member of the combined group, but not fully used by or allowed to that member, may be used in whole or in part by another member of the combined group or applied in whole or in part against the total income of the combined group.

(7) DESIGNATED AGENT.

(a) Each combined group shall have a sole designated agent. For purposes of this subsection, "designated agent" means a corporation in a combined group that is the parent corporation of the combined group, if such parent corporation is a taxpayer member of the combined group and the income of the parent corporation is included in the combined report. If there is no such parent, the designated agent may be appointed by the taxpayer members. If there is no such parent and no taxpayer member is appointed, the designated agent is the taxpayer member that has the most significant operations in this state on a recurring basis, as determined by the department. The designated agent shall change only when the designated agent is no longer subject to tax under s. 71.23(1) or (2), in which case the combined group shall notify the department of such a change in a manner prescribed by the department.

(b) The designated agent is responsible for acting on behalf of the taxpayer members of the combined group. These responsibilities include:

1. File with the department a combined report under sub. (1)(b).
2. File any extensions under s. 71.24.
3. File any amended combined reports and claims for refund or credit.
4. Send and receive all correspondence with the department regarding the combined report.
5. Remit all taxes, including estimated taxes, to the department. For purposes of computing interest on late payments, all payments remitted are deemed to be made on a pro rata basis by all taxpayer members of the combined group, unless otherwise specified by the designated agent.

6. Participate on behalf of the combined group members in any investigation or hearing requested by the department regarding a combined report, produce all information requested by the department regarding the combined report, and file any appeal related thereto. Any appeal filed by the designated agent shall be considered as filed by all members of the combined group.

7. Execute waivers, closing agreements, power of attorney, and other documents regarding the combined report filed under sub. (1)(b). Any waiver, agreement, or document executed by the designated agent shall be considered as executed by all members of the combined group.

8. Receive notices regarding the combined report. Any such notice the department sends to the designated agent is considered sent to all taxpayer members of the combined group.

9. Receive refunds regarding the combined report. Any such refund shall be paid to and in the name of the designated agent and shall discharge any liability of the state to any member of the combined group regarding the refund.

(c) The department may relieve the designated agent from any of the duties described in par. (b) to the extent such duties relate to income, expense, or loss that is not includable in the business income of the combined group pursuant to sub. (4). Unless the department provides for such relief by rule, a designated agent must obtain written approval from the department to be relieved of any such duties.

(8) TAXABLE YEAR OF COMBINED GROUP. The combined group's taxable year is determined as follows:

(a) If two or more members of a combined group file a federal consolidated return, the combined group's taxable year is the taxable year of the federal consolidated group. In all other cases, the taxable year is the taxable year of the designated agent as defined in sub. (7).

(b) If a taxable year of a member of a combined group differs from the taxable year of the combined group, the designated agent may elect to determine the portion of that member's income to be included in one of the following ways:

1. A separate income statement prepared from the books and records for the months included in the combined group's taxable year.

2. Including all of the income for the year that ends during the combined group's taxable year.

(c) For corporations that make an election under par. (b), the same election must be made for each member of the combined group making such election, the same election must be made in each succeeding year, and this election is irrevocable except upon written approval by the department.

(9) PART-YEAR MEMBERS OF COMBINED GROUP. If a corporation becomes a

member of a combined group or ceases to be a member of a combined group after the beginning of the taxable year of the combined group, the corporation's income shall be determined as provided under subs. (3), (4), and (5), for the portion of the year in which the corporation was a member of the combined group, and such income shall be included in the combined report. The income for the remaining short period shall be reported on a separate return or separate combined report.

(10) PRESUMPTIONS AND BURDEN OF PROOF. A commonly controlled group shall be presumed to be engaged in a unitary business and all of the income of the unitary business shall be presumed to be apportionable business income under this section. A corporation has the burden of proving that it is not a member of a combined group that is subject to this section.

III. Amend sec. 71.26(3)(x) as follows:

71.26(3)(x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to consolidated returns) are excluded, except the U.S. Treasury regulations under Section 1502, relating to deferred gain or loss from an intercompany transaction under s. 71.255(4)(b)6.