

**2009 DRAFTING REQUEST**

**Bill**

Received: **02/11/2009**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

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

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Business - credits**

Extra Copies:

Submit via email: **NO**

**Pre Topic:**

DOA:.....Lillethun, BB -

**Topic:**

Throwback sales

**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 02/11/2009	kfollett 02/11/2009		_____			State
/P1			rschluet 02/11/2009	_____	mbarman 02/11/2009		State
/P2	jkreye 02/13/2009 jkreye 02/13/2009	kfollett 02/13/2009 jdye 02/13/2009	phenry 02/13/2009	_____	cduerst 02/13/2009		State
/P3			jfrantze 02/13/2009	_____	sbasford 02/13/2009		

FE Sent For:

**<END>**

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*of Self*  
*2/13*  
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2/11/09  
1/13 ph/RO  
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Throwback sales

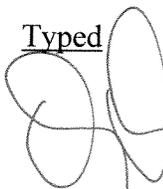
---

### Instructions:

See attached

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/?	jkreye	1/11/09 2/11/09					State

FE Sent For:

<END>

5/19

**Kreye, Joseph**


---

**From:** Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]  
**Sent:** Tuesday, February 10, 2009 5:06 PM  
**To:** Kreye, Joseph  
**Cc:** Hanaman, Cathlene; Kraus, Jennifer - DOA  
**Subject:** FW: Intro of NEW DRAFT\_ Increasing Throwbacks to 100%  
**Attachments:** Increase Throwbacks to 100%.doc

Joe - As discussed, we're requesting the creation of a new draft for introduction as part of the budget adjustment bill tomorrow. The intent is to repeal current corporate income tax treatment of throwback sales from the current 50% weight and change to provide throwback sales a full 100% weight, equal to in-state sales for the purpose corporate tax purposes.

Attached below are the instructions.

-Chad

---

**From:** Boldt, Rebecca A - DOR  
**Sent:** Tuesday, February 10, 2009 5:00 PM  
**To:** Lillethun, Chad W - DOA  
**Cc:** Miller, Wendy J - DOR; Oakleaf, Michael P - DOR  
**Subject:** FW: Increasing Throwbacks to 100%

Thanks Wendy!!

---

**From:** Miller, Wendy J - DOR  
**Sent:** Tuesday, February 10, 2009 4:57 PM  
**To:** Boldt, Rebecca A - DOR  
**Cc:** Hardt, Diane L - DOR; Crane, Lili B - DOR; Candelaria, Axel F - DOR  
**Subject:** RE: Increasing Throwbacks to 100%

Rebecca, here are the drafting instructions, including what would have to change in the combined reporting bill. Let me know if I can be of further help.

**CONFIDENTIALITY NOTICE:** This electronic mail transmission and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is only for the use of the individual or entity to whom this electronic mail transmission was intended. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this transmission is strictly prohibited. **If you have received this transmission in error, please immediately contact the sender and delete the message.** Thank you.

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**From:** Boldt, Rebecca A - DOR  
**Sent:** Tuesday, February 10, 2009 4:02 PM  
**To:** Miller, Wendy J - DOR  
**Cc:** Wink, Wendy L - DOR  
**Subject:** FW: VERY HIGH PRIORITY

Sorry - I meant Ms. Miller, not Ms. Wink!

---

**From:** Boldt, Rebecca A - DOR  
**Sent:** Tuesday, February 10, 2009 4:01 PM  
**To:** Wink, Wendy L - DOR; Cianciara, Jacek J - DOR  
**Cc:** Oakleaf, Michael P - DOR  
**Subject:** VERY HIGH PRIORITY

02/10/2009

I just got a call from Chad at DOA. They need drafting instructions to introduce tomorrow - yes tomorrow to change the throwback provision from the 50% to 100%. I'm just looking at the law now, but would appreciate any help you can provide.

## Drafting Instructions: Increasing Throwback Sales from 50% to 100%

### I. Change "50%" to "100%" in the following statutory sections:

- 71.04(7)(a)
- 71.04(7)(df)3.
- 71.04(7)(dh)4.
- 71.25(9)(a)
- 71.25(9)(df)3.
- 71.25(9)(dh)4.

### II. In the combined reporting bill (LRB 1215/5), change "50%" to "100%" in the following proposed statutory sections:

- 71.04(7)(dj)2.
- 71.04(7)(dk)2.
- 71.25(9)(dj)2.
- 71.25(9)(dk)2.

*plus transition language*



Handwritten initials and marks

Handwritten "BB" and scribbles

DOA:.....Lillethun, BAB - Throwback sales

**FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION**

Handwritten "in" and "2-11-09"

Handwritten "Don't Gen" circled

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

Under current law, 50 percent of the sales of the following tangible personal property must be included in a taxpayer's sales factor for income and franchise tax purposes:

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2. Property that is shipped from storage in this state to a purchaser, other than the federal government, if the destination state does not have tax jurisdiction over the taxpayer.
3. Property sold by an office in this state, but not shipped from this state, if neither the state from which the property is shipped nor the destination state has tax jurisdiction over the taxpayer.

Under this bill, 100 percent of the sales of all such tangible personal property must be included in a taxpayer's sales factor.

Under current law, 50 percent of the following must be included in a taxpayer's sales factor for income and franchise tax purposes:

1. Gross receipts that are received in a state in which the taxpayer is not subject to an income tax, if the taxpayer's commercial domicile is in this state.

2. Gross receipts from services, if the benefit of service is received in a state in which the taxpayer is not subject to an income tax, but the taxpayer's employees or representative's performed services from a location in this state.

Under this bill, 100 percent of such gross receipts must be included in a taxpayer's sales factor.

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:***

1           **SECTION 1.** 71.04 (7) (a) of the statutes is amended to read:

2           71.04 (7) (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% 100 percent of the  
7 sales of the taxpayer during the tax period under pars. (b) 2m. and 3. and (c).

History: 1987 a. 312; 1987 a. 411 ss. 34 to 40, 61; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39, 189, 269; 1993 a. 112, 204, 491; 1995 a. 27; 1997 a. 27, 237; 1999 a. 9; 2003 a. 37; 2005 a. 25; 2007 a. 20.

8           **SECTION 2.** 71.04 (7) (df) 3. of the statutes is amended to read:

9           71.04 (7) (df) 3. If the taxpayer is not subject to income tax in the state in which  
10 the gross receipts are considered received under this paragraph, but the taxpayer's  
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13           **SECTION 3.** 71.04 (7) (dh) 4. of the statutes is amended to read:

14           71.04 (7) (dh) 4. If the taxpayer is not subject to income tax in the state in which  
15 the benefit of the service is received, the benefit of the service is received in this state  
16 to the extent that the taxpayer's employees or representatives performed services  
17 from a location in this state. ~~Fifty~~ One hundred percent of the taxpayer's receipts

1 that are considered received in this state under this paragraph shall be included in  
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7 of tangible personal property, the numerator of the sales factor is the sales of the  
8 taxpayer during the tax period under par. (b) 1. and 2. plus ~~50%~~ 100 percent of the  
9 sales of the taxpayer during the tax period under pars. (b) 2m. and 3. and (c).

**History:** 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9; 2001 a. 16; 2003 a. 37; 2005 a. 25.

10 **SECTION 5.** 71.25 (9) (df) 3. of the statutes is amended to read:

11 71.25 (9) (df) 3. If the taxpayer is not subject to income tax in the state in which  
12 the gross receipts are considered received under this paragraph, but the taxpayer's  
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14 included in the numerator of the sales factor.

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15 **SECTION 6.** 71.25 (9) (dh) 4. of the statutes is amended to read:

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22 **SECTION 7.** 71.80 (24) of the statutes is created to read:

1           71.80 (24) THROWBACK TRANSITION. For persons subject to tax under this  
2 chapter whose sales factor includes sales under ss. 71.04 (7) (a), (df) 3., and (dh) 4.  
3 and 71.25 (9) (a), (df) 3., and (dh) 4., the department shall deem timely paid the  
4 estimated tax payments attributable to the difference between the person's tax  
5 liability for the taxable year and the person's tax liability for the taxable year  
6 computed under this chapter, 2007 stats., for installments that become due during  
7 the period beginning on January 1, 2009, and ending on the effective date of this  
8 subsection, provided that such estimated tax payments are paid by the next  
9 installment due date that follows in sequence following the effective date of this  
10 subsection .... [LRB inserts date]. However, if the next installment due date that  
11 follows in sequence following the effective date of this subsection .... [LRB inserts  
12 date], is less than 45 days after the effective date of this subsection .... [LRB inserts  
13 date], such estimated tax payments, in addition to the payment due less than 45 days  
14 after the effective date of this subsection .... [LRB inserts date], shall be deemed  
15 timely paid if paid by the next subsequent installment due date.

**SECTION 9343. Initial applicability; Revenue.**

17           (1) THROWBACK. The treatment of sections 71.04 (7) (a), (df) 3., and (dh) 4., 71.25  
18 (9) (a), (df) 3., and (dh) 4., and 71.80 (24) of the statutes first applies to taxable years  
19 beginning on January 1, 2009.

(END)

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## 2009-11 LRB Draft Review

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**Date:** February 12, 2009

**LRB Number:** 2075/1 (Increase Throwback Percentage)

**Reviewed by:** Wendy Miller

### **Brief Description of LRB Draft:**

When multistate taxpayers compute their Wisconsin income, they must use an apportionment percentage which consists of a sales factor. Under current law, the numerator of the sales factor includes 50% of gross receipts from sales that are destined for, or received in, a state which does not have jurisdiction to impose an income or franchise tax on the taxpayer. These sales are called "throwback" sales. Throwback sales apply to the following types of transactions:

- Sales of tangible personal property
- Sales of the use of computer software
- Sales of services

This bill increases the percentage of throwback sales included in the numerator from 50% to 100%. Since the bill would be effective for taxable years beginning on or after January 1, 2009, it also contains transitional provisions which allow a grace period for taxpayers to catch up on their estimated payments.

### **Comments on Draft:**

Minor changes are needed to the transitional provisions. The bill summary on the draft also contains an error.

### **Changes Needed & Why:**

#### *Transitional Provisions*

- On page 3, line 25, the bill states that the transitional provisions apply to persons "whose sales factor includes sales under ss. 71.04(7)(a), (df)3., **and (dh)4. and 71.25(9)(a), (df)3., and (dh)4....**" [emphasis added]. Would this language mean that the taxpayer must have all of those types of

throwback sales in order to be eligible for the transitional provisions? The intent may be better conveyed if the word “or” was used instead of “and.”

- On page 4, line 5, the language refers to the “effective date of this subsection” but does not have the note “[...LRB inserts date]” as it does on lines 7, 8, 9 and 11. LRB should insert the date on line 5 as well.

### *Bill Summary*

About halfway through the summary where it indicates that “Under current law, 50 percent of the following must be included in a taxpayer’s sales factor...”, point 1. doesn’t specify that that provision relates to the use of computer software. The following change would more accurately describe current law:

“1. Gross receipts from the use of computer software that are received in a state in which the taxpayer is not subject...”



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-2075/P1  
JK:kjf:rs

RMK

DOA:.....Lillethun, BB - Throwback sales

**FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION**

in 2-13-09

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[LRB inserts date]

1 estimated tax payments attributable to the difference between the person's tax  
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17 (END)



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-2075/P2

JK:kjf:ph

RM and R

DOA:.....Lillethun, BB - Throwback sales

**FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION**

in 2-13-09

don't gen

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✓

2. Gross receipts from services, if the benefit of service is received in a state in which the taxpayer is not subject to an income tax, but the taxpayer's employees or representative's performed services from a location in this state.

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2 the numerator of the sales factor.

3 **SECTION 4.** 71.25 (9) (a) of the statutes is amended to read:

4 71.25 (9) (a) The sales factor is a fraction, the numerator of which is the total  
5 sales of the taxpayer in this state during the tax period, and the denominator of  
6 which is the total sales of the taxpayer everywhere during the tax period. For sales  
7 of tangible personal property, the numerator of the sales factor is the sales of the  
8 taxpayer during the tax period under par. (b) 1. and 2. plus ~~50%~~ 100 percent of the  
9 sales of the taxpayer during the tax period under pars. (b) 2m. and 3. and (c).

10 **SECTION 5.** 71.25 (9) (df) 3. of the statutes is amended to read:

11 71.25 (9) (df) 3. If the taxpayer is not subject to income tax in the state in which  
12 the gross receipts are considered received under this paragraph, but the taxpayer's  
13 commercial domicile is in this state, ~~50~~ 100 percent of those gross receipts shall be  
14 included in the numerator of the sales factor.

15 **SECTION 6.** 71.25 (9) (dh) 4. of the statutes is amended to read:

16 71.25 (9) (dh) 4. If the taxpayer is not subject to income tax in the state in which  
17 the benefit of the service is received, the benefit of the service is received in this state  
18 to the extent that the taxpayer's employees or representatives performed services  
19 from a location in this state. ~~Fifty~~ One hundred percent of the taxpayer's receipts  
20 that are considered received in this state under this paragraph shall be included in  
21 the numerator of the sales factor.

22 **SECTION 7.** 71.80 (24) of the statutes is created to read:

23 71.80 (24) **THROWBACK TRANSITION.** For persons subject to tax under this  
24 chapter whose sales factor includes sales under s. 71.04 (7) (a), (df) 3., or (dh) 4. or  
25 71.25 (9) (a), (df) 3., or (dh) 4., the department shall deem timely paid the estimated

1 tax payments attributable to the difference between the person's tax liability for the  
2 taxable year and the person's tax liability for the taxable year computed under ch.  
3 71, 2007 stats., for installments that become due during the period beginning on  
4 January 1, 2009, and ending on the effective date of this subsection [LRB inserts  
5 date], provided that such estimated tax payments are paid by the next installment  
6 due date that follows in sequence following the effective date of this subsection ....  
7 [LRB inserts date]. However, if the next installment due date that follows in  
8 sequence following the effective date of this subsection .... [LRB inserts date], is less  
9 than 45 days after the effective date of this subsection .... [LRB inserts date], such  
10 estimated tax payments, in addition to the payment due less than 45 days after the  
11 effective date of this subsection .... [LRB inserts date], shall be deemed timely paid  
12 if paid by the next subsequent installment due date.

13 **SECTION 9343. Initial applicability; Revenue.**

14 (1) THROWBACK. The treatment of sections 71.04 (7) (a), (df) 3., and (dh) 4., 71.25  
15 (9) (a), (df) 3., and (dh) 4., and 71.80 (24) of the statutes first applies to taxable years  
16 beginning on January 1, 2009.

17 (END)



DOA:.....Lillethun, BB - Throwback sales

**FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION**

1 **AN ACT ...; relating to:** the budget.

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

Under current law, 50 percent of the sales of the following tangible personal property must be included in a taxpayer's sales factor for income and franchise tax purposes:

1. Property that is shipped from storage in this state to the federal government outside this state, if the destination state does not have tax jurisdiction over the taxpayer.

2. Property that is shipped from storage in this state to a purchaser, other than the federal government, if the destination state does not have tax jurisdiction over the taxpayer.

3. Property sold by an office in this state, but not shipped from this state, if neither the state from which the property is shipped nor the destination state has tax jurisdiction over the taxpayer.

Under this bill, 100 percent of the sales of all such tangible personal property must be included in a taxpayer's sales factor.

Under current law, 50 percent of the following must be included in a taxpayer's sales factor for income and franchise tax purposes:

1. Gross receipts from the use of computer software that are received in a state in which the taxpayer is not subject to an income tax, if the taxpayer's commercial domicile is in this state.

2. Gross receipts from services, if the benefit of service is received in a state in which the taxpayer is not subject to an income tax, but the taxpayer's employees or representative's performed services from a location in this state.

Under this bill, 100 percent of such gross receipts must be included in a taxpayer's sales factor.

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

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

1           **SECTION 1.** 71.04 (7) (a) of the statutes is amended to read:

2           71.04 (7) (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%~~ 100 percent of the  
7 sales of the taxpayer during the tax period under pars. (b) 2m. and 3. and (c).

8           **SECTION 2.** 71.04 (7) (df) 3. of the statutes is amended to read:

9           71.04 (7) (df) 3. If the taxpayer is not subject to income tax in the state in which  
10 the gross receipts are considered received under this paragraph, but the taxpayer's  
11 commercial domicile is in this state, ~~50~~ 100 percent of those gross receipts shall be  
12 included in the numerator of the sales factor.

13           **SECTION 3.** 71.04 (7) (dh) 4. of the statutes is amended to read:

14           71.04 (7) (dh) 4. If the taxpayer is not subject to income tax in the state in which  
15 the benefit of the service is received, the benefit of the service is received in this state  
16 to the extent that the taxpayer's employees or representatives performed services  
17 from a location in this state. ~~Fifty~~ One hundred percent of the taxpayer's receipts

1 that are considered received in this state under this paragraph shall be included in  
2 the numerator of the sales factor.

3 **SECTION 4.** 71.25 (9) (a) of the statutes is amended to read:

4 71.25 (9) (a) The sales factor is a fraction, the numerator of which is the total  
5 sales of the taxpayer in this state during the tax period, and the denominator of  
6 which is the total sales of the taxpayer everywhere during the tax period. For sales  
7 of tangible personal property, the numerator of the sales factor is the sales of the  
8 taxpayer during the tax period under par. (b) 1. and 2. plus ~~50%~~ 100 percent of the  
9 sales of the taxpayer during the tax period under pars. (b) 2m. and 3. and (c).

10 **SECTION 5.** 71.25 (9) (df) 3. of the statutes is amended to read:

11 71.25 (9) (df) 3. If the taxpayer is not subject to income tax in the state in which  
12 the gross receipts are considered received under this paragraph, but the taxpayer's  
13 commercial domicile is in this state, ~~50~~ 100 percent of those gross receipts shall be  
14 included in the numerator of the sales factor.

15 **SECTION 6.** 71.25 (9) (dh) 4. of the statutes is amended to read:

16 71.25 (9) (dh) 4. If the taxpayer is not subject to income tax in the state in which  
17 the benefit of the service is received, the benefit of the service is received in this state  
18 to the extent that the taxpayer's employees or representatives performed services  
19 from a location in this state. ~~Fifty~~ One hundred percent of the taxpayer's receipts  
20 that are considered received in this state under this paragraph shall be included in  
21 the numerator of the sales factor.

22 **SECTION 7.** 71.80 (24) of the statutes is created to read:

23 71.80 (24) **THROWBACK TRANSITION.** For persons subject to tax under this  
24 chapter whose sales factor includes sales under s. 71.04 (7) (a), (df) 3., or (dh) 4. or  
25 71.25 (9) (a), (df) 3., or (dh) 4., the department shall deem timely paid the estimated

1 tax payments attributable to the difference between the person's tax liability for the  
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3 71, 2007 stats., for installments that become due during the period beginning on  
4 January 1, 2009, and ending on the effective date of this subsection .... [LRB inserts  
5 date], provided that such estimated tax payments are paid by the next installment  
6 due date that follows in sequence following the effective date of this subsection ....  
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9 than 45 days after the effective date of this subsection .... [LRB inserts date], such  
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11 effective date of this subsection .... [LRB inserts date], shall be deemed timely paid  
12 if paid by the next subsequent installment due date.

13 **SECTION 9343. Initial applicability; Revenue.**

14 (1) THROWBACK. The treatment of sections 71.04 (7) (a), (df) 3., and (dh) 4., 71.25  
15 (9) (a), (df) 3., and (dh) 4., and 71.80 (24) of the statutes first applies to taxable years  
16 beginning on January 1, 2009.

17 (END)