Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
1	Written Comments from Taxpayers	2.61(6)(a)3.	**Asset Basis.** Section 71.265, Stats., provides that when previously exempt corporations become taxable in Wisconsin, they must use their federal basis of assets for Wisconsin purposes. Section Tax 2.61(6)(a)3. applies this statute to combined group members that file Wisconsin returns for the first time because of combined reporting. Commenters have pointed out that s. Tax 2.61(6)(a)3. will cause some companies to permanently lose the tax benefit of some of their depreciation because the assets will have a deflated federal basis due to bonus depreciation. Additionally, commenters state that the statute interpreted in this manner may violate the Commerce Clause. This is not a combined reporting issue *per se*, but the issue is more prevalent because combined reporting will cause a sizable number of non-Wisconsin corporations to become Wisconsin taxpayers for the first time. Commenters are bringing up the Commerce Clause concern because under combined reporting, substantially all companies affected by s. 71.265 will be non-Wisconsin taxpayers. Commenters recommended allowing a basis adjustment or similar relief. They noted that Massachusetts allows a basis adjustment in its combined reporting regulations.	• Under s. Tax 2.30(3), an individual, estate, or trust computes asset basis under the "Internal Revenue Code" <u>as defined for Wisconsin purposes</u>, regardless of whether the property was acquired before the taxpayer became taxable in this state. This rule interprets s. 71.05(12), Stats., which is the individual income tax equivalent to s. 71.265, Stats. Thus, the same treatment should be granted to corporations. • **Amended 2.61(6)(a)3. to clarify that the federal basis computed under s. 71.265, Stats., must be determined using the "Internal Revenue Code" <u>as defined for Wisconsin purposes</u>. In effect, this allows the basis adjustment sought by the commenters.**
2	Written Comments from Taxpayers	None	**Recycling Surcharge.** Commenter notes that the recycling surcharge should be addressed in the rules. The rules don't address whether corporations that would have no nexus with Wisconsin on a separate entity basis (but have nexus because they are part of a combined group) have nexus for purposes of the recycling surcharge.	• Yes, these companies do have nexus for purposes of the recycling surcharge. • This topic is addressed in the emergency rule order for amendments to s. Tax 2.82, *Nexus*. The emergency rule order is expected to be published December 31, 2009.

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
3a	Written Comments from Taxpayers	2.61(9)(h)	**Net Business Losses.** Section Tax 2.61(9)(h) provides that a combined group member may elect not to use or not to share all or a portion of its net business loss. Commenters requested that more specific language be put into the rules to clarify the following: • A combined group member that elects to share (or not to share) any or a part of its net business loss is not bound by that election for any subsequent taxable year • How to make the election	• **Added sentence to 2.61(9)(h)2. to clarify that the election is not binding on subsequent years.** • There is no separate application for making the election. Details of how to make the election will be covered in publication and form instructions.
3b	Written Comments from Taxpayers	2.61(9) & (10)	**Net Business Losses and Research Credits.** Subsections Tax 2.61(9) and (10) each deal with the ordering of net losses and credits, separately. Commenter notes that these sections do not address priority of use if a member has both net business losses and research credits available. Commenter recommends clarifying language to say that the net losses should be considered used first, then the research credits.	• Even before combined reporting, our published position has been that a taxpayer may choose not to use its research credits so it can use net business losses first. • Published Tax Releases in *Wisconsin Tax Bulletin* 138-24 and 139-21.
4a	Written Comments from Taxpayers	2.61(10)(d)	**Research Credits.** Commenter requested an example be inserted following s. Tax 2.61(10)(d) to show that when Corporations A and B are in the same combined group, and Corporation B performs otherwise qualified research for Corporation A which is funded by Corporation A, the following are true for purposes of computing the research credit: • Corporation B may claim that research as qualified research • The research is includable in the credit at 100%, not at the 65% contract research rate • Corporation A may not include the research in its research credit	• **Added example following 2.61(10)(d).** • **Example also clarifies that the amount Corporation B includes in the credit does not include its markup on the sale of the service.**

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
4b	Written Comments from Taxpayers	2.61(10)(c)	**Research Credits.** Commenters requested that the rules clarify the following: • A combined group member with research credits but no tax liability can share its unused credit with the rest of the combined group even though the corporation with the research credits has no tax liability of its own (one commenter recommended providing an example of this) • A combined group member that elects to share (or not to share) any or a part of its research credit with the rest of the combined group is not bound by that election for any subsequent taxable year • How to elect to share research credits	• **Inserted "if any" in 2.61(10)(c)1. to address the first bullet point.** • **Added sentence to 2.61(9)(h)2. to clarify that the election is not binding on subsequent years. Section 2.61(10)(c)5. incorporates (9)(h)2. by reference.** • There is no separate application for making the election. Details of how to make the election will be covered in publication and form instructions.
4c	Written Comments from Taxpayers	2.61(10)(c)2.	**Research Credits.** Section Tax 2.61(10)(c)2. provides that the amount of available research credit for the current taxable year is to be used before any research credit carryforward. Commenter indicates that there is nothing in the statutes mandating that current credits be used prior to carryforwards.	• The rule was actually inconsistent with our position published in *Wisconsin Tax Bulletin* 138-24. • **Deleted the text in 2.61(10)(c)2. that was inconsistent with WTB 138-24 and added sentence to end of section 10(c)1.**

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
5a, 5b	Written Comments from Taxpayers	2.63(4)	**Controlled Group Election.** Commenters stated that s. Tax 2.63(4) creates too much uncertainty. This provision allows the Department to disregard or revoke the controlled group election in cases where the facts demonstrate that the election has the primary effect of tax avoidance rather than of simplification. Commenters expressed concerns that if they choose the controlled group election, the Department could pick and choose who should be in the combined group based solely on what produces the highest tax result. Commenters offered three recommendations to ease the uncertainty: 1. Revise sub. (4)(b) to provide that if the Department is going to make an adjustment to pull a company out of the controlled group election, it must revoke the election for the entire group. 2. As an add-on to recommendation 1., revise sub. (4)(b) so that the Department can *partially* revoke the election only if there is an agreement between the Department and taxpayer to do so. 3. Add language to sub. (4)(a) or (b) stating that the Department cannot exclude a corporation from a combined group that has made the controlled group election if that corporation is otherwise part of the unitary business.	• **Amended 2.63(4)(b) to provide that if the Department is going to make an adjustment under the anti-abuse provision, it must revoke the election for the entire group (Commenter Recommendation 1.)**

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
5c	Written Comments from Taxpayers	2.61(7)(c)	**Controlled Group Election.** When a combined group makes the controlled group election, all members of the commonly controlled group become combined group members and thus have nexus in Wisconsin under s. 71.255(5)(a), Stats. Accordingly, when a combined group member computes throwback sales, it is not required to throw back sales destined for a state where any member of the combined group has nexus. Commenter requested that the rules contain more specific language clarifying that this rule applies equally to combined group members that are unitary and those that are included in the combined group solely because of the controlled group election.	• **Amended 2.61(4)(h)2. to 4. to more clearly state that if the controlled group election applies, nexus is automatic for all members of the commonly controlled group.** • **Amended 2.61(7)(c) to more clearly state that if the controlled group election applies, a member should not throw back sales destined for a state where any member of the group has nexus, even if that member is not in the unitary business.**
5d	Written Comments from Taxpayers	2.63(3)(a)	**Controlled Group Election.** Commenter noted that while section Tax 2.63(3)(a) provides that the controlled group election "...is also binding on any corporations that join the commonly controlled group during the period the election is in effect," it does not address the situation where a combined group that <u>has not</u> made a controlled group election purchases the parent company of a group that <u>has</u> made the election. Commenter suggests the following language be added to s. Tax 2.63(3)(a): "When a merger or acquisition occurs between two combined groups of corporations, and the book value of total assets or fair market value of the acquiring group is greater than that of a target controlled group on the date of the transaction, the controlled group election of the target group terminates."	• **Renumbered 2.63(3) to 2.63(3)(a) and added par. (b) to explain how reorganizations affect the controlled group election.** • **Also addressed what happens when a commonly controlled group divests a subgroup of companies.**

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
5e	Review Comments from Legislative Council	2.63 & 2.64	**Controlled Group Election and Specialized Apportionment Formulas.** Legislative Council inquires whether the provisions relating to the controlled group election (s. Tax 2.63) and specialized apportionment formulas (s. Tax 2.64) should address what happens if the business terminates before the end of the election period.	• Whether the election or method continues to apply after termination of the business makes no difference since the business cannot be subject to tax if it no longer exists.
6	Written Comments from Taxpayers	2.61(6)(h)	**Allocation of Expenses and Deductions.** Section Tax 2.61(6)(h) provides that if an expense or amount otherwise deductible is indirectly related to both combined unitary income and to income not subject to combination, a reasonable allocation should be made. Commenter requests further detail and examples of how these allocations are to be made.	• **Renumbered section 2.61(6)(h) to (6)(h)1. and added subds. 2. and 3. to specify that Wisconsin would follow the same requirements and methods specified in the Internal Revenue Code and its regulations.** • The federal regulations in this area are quite detailed and contain numerous examples.
7a	Written Comments from Taxpayers	2.61(8) & (9)	**100% Wisconsin Groups.** Commenter requests that examples be added to clarify that when a combined group consists only of 100% Wisconsin corporations (and therefore does not use apportionment), a member with current year income can offset that income with the current year loss of another member or members.	• **Amended 2.61(8)(intro.) to explicitly state that the group's tax liability is based on the aggregate total net business income or loss of the unitary business.** • This computation becomes apparent from looking at how the combined return comes together (i.e. the amounts on each member's Form 4M must add up to the combined group's total on Form 4).

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
7b	Written Comments from Taxpayers	2.61(8)	**100% Wisconsin Groups.** Commenter wants to confirm that within a group of 100% Wisconsin companies (where there is no apportionment), there is no requirement or mechanism to allocate any portion of a member's Wisconsin net income to other members.	• Commenter is correct. • If there were a requirement to allocate a member's net income to other members, the requirement would be just as likely to increase a taxpayer's tax liability as it would decrease a taxpayer's tax liability. • Such a requirement or mechanism does not appear to be authorized by statute.
8a	Written Comments from Taxpayers	2.61(2)(c)	**Nonincludable Corporations.** Commenter requests that the rules more clearly state the answers to the questions below regarding real estate investment trusts (REITs), regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), and financial asset securitization investment trusts (FASITs). The questions arise from s. Tax 2.61(2)(c), which provides that these corporations are treated as pass-through entities for purposes of determining whether combined reporting applies. • Does a shareholder in one of these corporations include income from the corporation in the year it is actually distributed or when it is earned by the corporation? • How is tax basis of the ownership interest of these corporations determined? • Do such corporations have earnings and profits for Wisconsin purposes? • Are such corporations required to file a separate Wisconsin tax return if they have nexus?	• All of these questions have the same answers as before combined reporting. • **Added sentence to end of 2.61(2)(c) simply stating that the tax status of these entities was not affected by combined reporting.**

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
8b	Written Comments from Taxpayers	2.60(2)(l)	**Nonincludable Corporations.** Commenter wants to confirm that: • A "nonincludable corporation" as defined in s. Tax 2.60(2)(l) is different than a corporation that is excluded from a combined group because it does not meet the three-part test in s. Tax 2.61(2)(a) • A "nonincludable corporation" would only include two types of entities (a) pass-through entities as defined in s. 71.255(1)(m), Stats., and (b) tax exempt organizations	• Commenter is probably correct, although there is always a chance that new forms of organization will emerge as business laws are modernized.
9a	Written Comments from Taxpayers	2.61(4)(h)	**Water's Edge.** Commenter notes that clarification is needed in Example 1 following s. Tax 2.61(4)(h). The example describes a foreign 80/20 company that is not a combined group member, but it happens to have nexus in Wisconsin because of the activities of agents acting on its behalf in Wisconsin. Commenter points out that IRC §864(c)(5)(A) states that, with some exceptions, "in determining whether a nonresident alien individual or corporation has an office or other fixed place of business, an office or fixed place of business of an agent shall be disregarded." Commenter recommends inserting language in the example to clarify that the agency relationship that creates nexus does not run afoul of IRC §864 or P.L. 86-272.	• IRC §864(c)(5)(A) relates to foreign source income that is "effectively connected." In the example, the income at issue is true U.S. source income, not foreign source income that is "effectively connected." • **Added language to 2.61(c)2. to clarify that "effectively connected" has no effect on the "active foreign business income" test – this may be why the commenter erroneously referenced IRC §864(c)(5)(A).** • **Added language to example stating that the agent's activities exceeded the protection of P.L. 86-272.**

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
9b	Written Comments from Taxpayers	2.61(4)(h)	**Water's Edge.** Commenter requested clarification of how items that are excluded from combination under the water's edge rules are to be reported for Wisconsin purposes in the following scenarios: • Foreign corporation that isn't an 80/20 (therefore is included in combination to extent of U.S. source income) but has foreign source income excluded from combination • Foreign corporation that is an 80/20 (therefore is entirely excluded from combination) but also has nexus in Wisconsin • Domestic corporation that is an 80/20 and has foreign or certain U.S. source income excluded from combination	• The rules address this reasonably well, although the pieces of the answers to these questions are in several different places (e.g. ss. 2.61(4)(h), (5)(b), 2.65(3)(c) and (f), 2.67(2)(d)). • The instructions for Form 4N, *Nonapportionable and Separately Apportioned Income*, will put the pieces together. • **Amended section 2.67(2)(d) to further clarify that a nonmember's Form 4N may be filed along with the combined return.**

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
9c	Oral Comments by Taxpayers, Discussion with Massachusetts DOR	2.61(4)(g)	**Water's Edge.** Section Tax 2.61(4)(g) provides that if a corporation's income is not taxable for federal purposes under the provisions of a federal treaty, the income is not taxable for Wisconsin purposes and is not required to be included in combined unitary income. In informal discussions, taxpayers have inquired how this paragraph would apply to a tax treaty that provides for a reduced federal tax rate rather than an exclusion from federal taxable income.	• Confirmed position that any income that is exempt from taxation for federal purposes under a federal treaty is also exempt from taxation for Wisconsin purposes because Treas. Reg. §1.894-1(a) excludes income that is exempt by treaty from "gross income." • Confirmed position that if a treaty provides for the reduction in the federal tax rate or federal withholding rate, that treaty would have no impact on Wisconsin taxation. • **Amended 2.61(4)(g) to say "included in gross income" instead of "taxable" to be more precise.**
9d	Oral Comments by Taxpayers	2.61(4)(c)	**Water's Edge.** Section Tax 2.61(4)(c) draws a distinction between U.S. source and foreign source income, and paragraphs (d) and (e) then specify that apportionment factors relating to foreign source income must be excluded. At training presentations, audience members have asked how to apply paragraphs (d) and (e) to apportionment factors that relate to income that is dual-sourced (both U.S. source and foreign source) under specific provisions of sections 861 through 865 of the Internal Revenue Code.	• **Added 2.61(7)(i) (after renumbering prior (7)(i) to (7)(h)2.) to specify how a taxpayer must adjust apportionment factors to account for dual-sourced income.**

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
9e	Discussion with Massachusetts DOR	2.61(4)(c)3.	**Water's Edge.** Section Tax 2.61(4)(c)3. expands the scope of U.S. source income by providing that all income that is "effectively connected" with the conduct of a trade or business located in the U.S. (as determined under sections 861 through 865 of the Internal Revenue Code) is considered U.S. source even if otherwise derived from sources outside the U.S. Our counterparts in Massachusetts have asked if this means (or should mean) we use the expanded definition of U.S. source income for both foreign and domestic corporations.	• Under the Internal Revenue Code, the classification of income as "effectively connected" only applies to a foreign corporation. • **Amended 2.61(4)(c) to clarify that "effectively connected" income is only considered U.S. source income if the corporation is a foreign corporation.**
10a	Written Comments from Taxpayers	2.61(6)(c)6.	**Apportionment and Capital Losses.** In the example for s. Tax 2.61(6)(c)6., which demonstrates how to apply unused capital loss carryovers, commenter asks why Corporation Q's deduction is the post-apportioned amount of $250 instead of the pre-apportioned amount of $1000, since the net capital loss carryover was reduced by the pre-apportioned amount of $1000.	• The rule applies the capital loss limitation before apportionment, which is consistent with how capital loss limitations have been applied in prior years.
10b	Oral Comments by Taxpayers	2.61(6)(a) & (7)	**Apportionment and Bonus Depreciation.** Audience members at the Department's presentations have asked whether any relief could be given to taxpayers who had relatively high Wisconsin apportionment percentages in 2008 and added back bonus depreciation in 2008, but whose combined groups will have lower apportionment percentages in 2009 and subsequent years when the bonus depreciation is subtracted back out.	• If applied equally, this type of relief provision would be as just as likely to increase a taxpayer's tax liability as it would decrease a taxpayer's tax liability. • Such a provision does not appear to be authorized by statute.
11a	Written Comments from Taxpayers	2.61(3)(b) & (c)	**Commonly Controlled Group.** Commenter indicates that it would be helpful to see some examples of when the Department would assert s. Tax 2.61(3)(b) & (c), which provide that: • The common owner or owners of a commonly controlled group need not be combined group members • A commonly controlled group may be engaged in one or more unitary businesses	• To the extent resources permit, these types of examples will be provided in other published guidance.

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
11b	Written Comments from Taxpayers	2.61(3)(a)2.	**Commonly Controlled Group.** Commenter requests clarification on how the Department would apply the provision in s. Tax 2.61(3)(a)2. which provides that the Department may consider a person to own stock if the person has options to acquire stock. Commenter inquires whether it makes any difference if the options are "in the money."	• The general rule in 2.61(3)(a)2. is that stock options are disregarded in the attribution of ownership; the exception is if options are being used to avoid a corporation's inclusion in a combined group. • Determining whether the exception applies is very fact-specific and would be difficult to embody in a rule without risking abuse of the rule.
12	Written Comments from Taxpayers	2.67(2)(c)	**Electronic Filing.** Commenter indicates that specific guidance may be needed for how to file attachments (for example, the federal consolidated return) electronically.	• This guidance will be published in media other than the administrative rules, such as tax form instructions and the *Guide to Combined Reporting* publication.
13a	Written Comments from Taxpayers	2.61(6)(e)	**Dividends.** Commenter indicates that in s. Tax 2.61(6)(e), which provides that dividends paid between combined group members may be eliminated under certain conditions, the term "dividends" should be changed to "distributions" since a distribution with respect to stock may or may not be a "dividend" depending on whether it is treated as made from applicable earnings and profits.	• The subtraction adjustment in sub. (6)(e) applies only to amounts paid from certain earnings and profits, Since it always must come from *earnings and profits*, the term "dividend" is entirely appropriate. • Massachusetts also uses the term "dividend."

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
13b	Written Comments from Taxpayers	2.61(6)(e)	**Dividends.** Commenter states that for the regular dividends received deduction under s. 71.26(3)(j), Stats., the determination of at least 70% ownership and ownership during the entire tax year should be based on a combined group approach and addressed in the rules.	• The ability to exclude dividends from taxation has already been substantially expanded under combined reporting to account for the fact that the unitary business is being taxed as a whole. • The commenter's recommendation does not appear to be consistent with the federal rules for consolidated groups, and at any rate it is not authorized by statute.
14a	Written Comments from Taxpayers	2.62(3)(a)	**Unitary Business.** Commenter indicates that in s. Tax 2.62(3)(a), for the phrases "contribute in a nontrivial way," "nontrivial business objectives," and "some economies of scale or economies of scope" (emphases added), it would be helpful to have a definition of "nontrivial" with some additional explanation and examples.	• To the extent resources permit, further guidance will be provided in media other than administrative rules.
14b	Written Comments from Taxpayers	2.62(6)(a)	**Unitary Business.** For the presumption in s. Tax 2.62(6)(a), which states that commonly owned entities are presumed to be unitary if they are in the same general line of business, commenter requests that "same general line of business" be defined and examples provided. Commenter suggests using NAICS codes at some level.	• Determining whether a unitary business exists very fact-specific • Tying the definition of "unitary business" to NAICS codes may provide a more restrictive definition than the statutes allow. • To the extent resources permit, further guidance will be provided in media other than administrative rules.

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
14c	Review Comments from Legislative Council	2.62(6)(g)	**Unitary Business.** Section Tax 2.62(6)(g) provides a presumption that the Department's determination of a whether an entity is engaged in a unitary business is presumed correct if the taxpayer unreasonably refuses to provide pertinent information. The Legislative Council inquires whether the Department has the statutory authority to create this presumption.	• The Department has specific authority in s. 71.80(9m), Stats., to disallow deductions, credits, exemptions, or include income related to records that the taxpayer fails to provide (this particular provision is effective July 1, 2009). • The Department also has general authority in ss. 73.03(1) and 71.74(2)(b), Stats. to obtain whatever records are necessary to determine the proper amount of tax owed.
14d	Review Comments from Legislative Council	2.62(6)(c)	**Unitary Business.** Section Tax 2.62(6)(c) generally provides that an enterprise is presumed to be a unitary business if there is centralized management. Legislative Council inquires whether the provisions in sub. (4)(b) and (c) may be confused by the presumption that the business is unitary if there is centralized management alone. Subsection (4)(b) and (c) list factors that evidence unity of operation of use, both of which must exist in order for the business to be considered unitary.	• The presumption in 2.62(6)(c) is phrased more broadly than subs. (4)(b) and (c), so it is not automatic that if you met (6)(c), you also meet (4)(b) or (4)(c). • If the presumption in sub. (6)(c) is met, the taxpayer could rebut that presumption if it could show that neither sub. (3) or sub. (4)(a) & (b) apply.

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
15a	Written Comments from Taxpayers	2.64(2)(b)	**Alternative Apportionment Method.** Section Tax 2.64(2)(b) states that a taxpayer eligible and electing to petition for an alternative method of apportionment must file an application at least 60 days before the return is due. Commenter asks the following questions: • What happens if the taxpayer files the petition in time, but the Department does not get the approval certificate back to the taxpayer in time to file the return? • Are there any parallel time limits as to when the Department can raise or require an alternative method? • Does the fact that the taxpayer did not apply for alternative apportionment preclude the Department from allowing alternative apportionment in settlement of an audit?	• **Amended 2.64(d) to specify that the Department generally has 45 days to respond to the petition, but if there is a delay, the alternative method can't be used until approved. When approved, the taxpayer may amend the return.** • Under s. Tax 2.45, the Department may require alternative apportionment in special cases, under the normal statute of limitations rather than a 60-day period. • The administrative rules cannot address what may or may not be allowed in audit settlements.

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
15b	Written Comments from Taxpayers	2.64(3)(b)	**Alternative Apportionment Method.** Section Tax 2.64(3)(b) provides that the alternative method, if approved, must be used by the combined group for a 7-year period, unless it becomes an ineligible group during that period (a combined group is ineligible if less than 30% of its total business income is otherwise required to be apportioned using a multiple-factor formula). Commenter requests that this rule be revised to allow a taxpayer to petition for a change any time it can demonstrate that there has been a significant operational change.	• As long as the combined group is still a qualifying combined group, the Department and taxpayer are both "locked in" to the alternative method for a 7-year period, so the tax effect could go either way. • If the taxpayer's operational change is significant enough so that 70% or more of the group's income is required to be apportioned using a single factor method, the alternative apportionment method does not apply anyway.
15c	Written Comments from Taxpayers	2.64(3)(b)	**Alternative Apportionment Method.** Section Tax 2.64(3)(b) provides that the alternative apportionment method cannot result in a lower tax liability than the corporations in the combined group would have had if each of their tax liabilities were computed without applying the combined reporting provisions. Commenter requests eliminating this limitation.	• This limitation is consistent with the limitation in s. Tax 2.395(6)(b), which provides for alternative apportionment methods for certain companies that had corporate restructuring. • The limitation in s. Tax 2.395(6)(b) has existed since 1999.
16	Written Comments from Taxpayers	2.61(2)(f)	**Department's General Authority.** Commenter requests specifics or examples as to when the Department would apply s. Tax 2.61(2)(f), which restates the provisions of s. 71.255(2)(f), Stats. This statute gives the Department authority to include corporations in a combined group that are not otherwise includable, or exclude corporations that would otherwise be included, in order to reflect proper apportionment of income or to prevent avoidance or evasion of tax.	• Determining whether these exceptions apply is very fact-specific and would be difficult to embody in a rule without risking abuse of the rule.

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
17	Written Comments from Taxpayers	2.65(2)(c)	**Designated Agent.** Commenter noted that s. Tax 2.65(2)(c) does not address who the designated agent should be in cases where a combined group is acquired by another combined group (thus creating a new combined group). Commenter recommends the rules provide that in this situation, whichever corporation files the first combined return after the acquisition date is appointed as the new designated agent.	• **Renumbered 2.65(c)2. to 3. and added subd. 2. to state that if two combined groups merge together, the designated agent is the corporation that files the first combined return for the new group.**
18a	Written Comments from Taxpayers	2.61(6)(f)3.	**Miscellaneous Correction.** Commenter points out that in s. Tax 2.61(6)(f)3., regarding the stock basis adjustment for dividends, the reference to the elimination of dividends should be to pars. (e)(intro.) and (e)3., not just (e)3.	• **Made correction so the reference is more precise.**
18b	Written Comments from Taxpayers	2.61(9)(a)2.	**Miscellaneous Correction.** Commenter points out that in s. Tax 2.61(9)(a)2., where sharable loss carryforwards are described, in the phrase "…regardless of whether new corporations have joined or left the combined group in the intervening years," the word "new" may cause confusion and should be stricken.	• **Correction made as noted.**
19a	Review Comments from Legislative Council	Throughout	**Form and Style.** Legislative Council advises that throughout the rule, subsection titles should be written in solid capital letters as specified in s. 1.05(2)(c) of the *Administrative Rules Procedures Manual.*	• No style changes needed.
19b	Review Comments from Legislative Council	Throughout	**Form and Style.** Legislative Council advises that use of terms like "such" and "thereof" should be avoided. For example, in the first sentence of s. Tax 2.61(3)(d)3., "the" should replace "such" in two places.	• **Style changes made throughout.**
19c	Review Comments from Legislative Council	2.61(2)(f) (intro.)	**Form and Style.** Legislative Council advises that in s. Tax 2.61(2)(f)(intro.) the word ", inclusive" should be removed from the first sentence.	• **Style change made as noted.**

Summary of Comments on Emergency Rules for Combined Reporting (Sections Tax 2.60-2.67)

Comment No.	Source	Rule Section	Description of Comment	Resolution
19d	Review Comments from Legislative Council	Throughout	**Form and Style.** Legislative Council advises that definitions that apply to specific portions of the rule should be placed more prominently at the beginning of the subunit to which the definition applies. Sections Tax 2.61(4)(c)1. and (f)1. and 2. are cited as examples.	• Verified that all definitions are in the most logical place for easiest readability.
19e	Review Comments from Legislative Council	Throughout	**Form and Style.** Legislative Council advises that references to the U.S. Treasury Regulations should be consistent throughout as specified in s. 1.07(3)(b) of the *Administrative Rules Procedures Manual.*	• **Style changes made throughout.**
19f	Review Comments from Legislative Council	2.62(3)(a)4.	**Form and Style.** Legislative Council inquires whether the case citation in s. Tax 2.62(3)(a)4. should be placed in notes rather than in the text of the rule itself.	• Followed the format of s. Tax 2.82(a), where the case citation followed, in parentheses, the specific paragraph to which it applies.
19g	Review Comments from Legislative Council	2.62(3)(b) (intro.)	**Form and Style.** Legislative Council inquires whether s. Tax 2.62(3)(b)(intro.) would be better stated as "Activities between participants that constitute a flow of value between them include all of the following:"	• **Style change made as noted.**
19h	Review Comments from Legislative Council	2.61(7)(b)2.	**Form and Style.** Legislative Council advises that in s. Tax 2.61(7)(b)2., "ch. 71," should be inserted before "subchapter."	• **Style change made as noted.**