

# State of Wisconsin



April 1998 Special Session  
Assembly Bill 5

Date of enactment: **June 16, 1998**  
Date of publication\*: **June 30, 1998**

## 1997 WISCONSIN ACT 299

AN ACT to amend 71.07 (3s) (c) 4., 71.22 (11), 71.28 (3) (c) 4. and 71.47 (3) (c) 4.; to create 71.25 (14) of the statutes; and to affect 1997 Wisconsin Act 27, section 9343 (9z); relating to: income tax and franchise tax credits for sales taxes paid on fuel and electricity used in manufacturing, the apportionment of income for the corporate income tax and franchise tax and requiring and permitting the promulgation of rules.

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

**SECTION 1.** 71.07 (3s) (c) 4. of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

71.07 (3s) (c) 4. If a tax-option corporation becomes liable for tax for a taxable year that begins on or after January 1, 1998, the corporation may offset the credit against the tax due, with any remaining credit computed for a taxable year that begins on or after January 1, 1998, passing through to the shareholders.

**SECTION 2g.** 71.22 (11) of the statutes is amended to read:

71.22 (11) Except as provided in s. 71.45 (2), "Wisconsin net income", for corporations engaged in business wholly within this state, means net income and, for corporations engaged in business both within and outside this state, means the amount assigned to this state under s. 71.25 (6), (10) (c) or (13) or by a separate accounting or allocation, if allowed under s. 71.25 (6), or by another method approved under s. 71.25 (11) or (12) or (14).

**SECTION 2r.** 71.25 (14) of the statutes is created to read:

71.25 (14) ALTERNATIVE ALLOCATION. (a) Upon request by a corporation on or before January 1, 2000, the department of revenue may authorize a corporation or a

subsidiary thereof to use or continue to use a different method of apportioning its income to this state for purposes of this subchapter, and may specify the method of apportionment that the corporation or subsidiary shall use. This paragraph is to be used exclusively in the event of a corporate restructuring that would result in an unfair representation of the degree of business activity in this state. In no instance may the alternative method proposed under the new corporate structure result in less franchise or income tax revenue to the state than the current corporate structure is liable for, given the same overall level of sales, payroll and property.

(b) Before the department of revenue grants permission to any corporation to use an alternative method of allocation under par. (a), the department of revenue shall promulgate rules that specify in more detail the circumstances in which that authority may be granted and the kinds of alternative methods that the department may authorize.

(c) At least 14 days before giving final approval to an alternative method of apportionment under par. (a), the department of revenue shall submit the proposed alternative method of apportionment to the cochairpersons of the joint committee for review of administrative rules, together with a description of the proposed alternative and the reasons for the proposed alternative. If, within 14

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

days after receipt of the proposed alternative method, the cochairpersons of the joint committee for review of administrative rules do not notify the department of revenue that the proposed alternative must be promulgated as an administrative rule in order to be used, the department of revenue may give final approval to the proposed method without promulgating an administrative rule. If the cochairpersons of the joint committee for review of administrative rules notify the department of revenue within 14 days after receipt of the proposed alternative that the proposed alternative must be promulgated as an administrative rule, the proposed alternative may not be used until it is promulgated as an administrative rule under ch. 227.

**SECTION 3.** 71.28 (3) (c) 4. of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

71.28 (3) (c) 4. If a tax-option corporation becomes liable for tax for a taxable year that begins on or after January 1, 1998, the corporation may offset the credit against the tax due, with any remaining credit computed for a taxable year that begins on or after January 1, 1998, passing through to the shareholders.

**SECTION 4.** 71.47 (3) (c) 4. of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

71.47 (3) (c) 4. If a tax-option corporation becomes liable for tax for a taxable year that begins on or after January 1, 1998, the corporation may offset the credit against the tax due, with any remaining credit computed

for a taxable year that begins on or after January 1, 1998, passing through to the shareholders.

**SECTION 5.** 1997 Wisconsin Act 27, section 9343 (9z) is amended to read:

[1997 Wisconsin Act 27] Section 9343 (9z) FUEL TAX CREDIT. The treatment of sections 71.05 (6) (a) 15. (as it relates to the credit for fuel), 71.07 (3s) and (10) (a) and (b), 71.10 (4) (de), 71.21 (4) (as it relates to the credit for fuel), 71.28 (3) (b), (c) 2. to 6. and (d), 71.34 (1) (g) (as it relates to the credit for fuel) and (j), 71.365 (3) (a) and (b) and 71.47 (3) (b), (c) 2. to 6. and (d) of the statutes and the renumbering of sections 71.28 (3) (c) and 71.47 (3) (c) of the statutes first apply to credits computed for taxable years beginning on January 1, 1998.

**SECTION 5q. Nonstatutory provisions; revenue.**

(1t) APPORTIONMENT OF INCOME. On June 30, the department of revenue shall prepare and present to the joint committee on finance a report that specifies, for the 12-month period ending on the previous December 31, the corporations for which adjustments were made under section 71.25 (12) of the statutes, as affected by this act, the type of adjustments that were made, the reasons for the adjustments and the difference in tax liabilities due to the adjustments.

**SECTION 6. Initial applicability.**

(1) APPORTIONMENT OF INCOME. The treatment of sections 71.22 (11) and 71.25 (14) of the statutes first applies to taxable years beginning on January 1, 1998.