



State of Wisconsin
1997 - 1998 LEGISLATURE
April 1998 Special Session

LRB-5244/1
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ASSEMBLY BILL 5

May 12, 1998 - Introduced by COMMITTEE ON ASSEMBLY ORGANIZATION, by request of Governor Tommy G. Thompson. Referred to Joint survey committee on Tax Exemptions.

1 **AN ACT to amend** 71.07 (3s) (c) 4., 71.28 (3) (c) 4. and 71.47 (3) (c) 4.; **to repeal**
2 **and recreate** 71.25 (12) of the statutes; and **to affect** 1997 Wisconsin Act 27,
3 section 9343 (9z); **relating to:** income tax and franchise tax credits for sales
4 taxes paid on fuel and electricity used in manufacturing, the apportionment of
5 income for the corporate income tax and franchise tax and requiring and
6 permitting the promulgation of rules.

Analysis by the Legislative Reference Bureau

Under current law, in computing the income tax or franchise tax liability of corporations that operate in this state and in other states, some income is allocated to a state and the remainder of the income is apportioned among those states. To apportion income this state uses a formula that has property, payroll and sales factors. The department of revenue (DOR) is also allowed to promulgate rules to apportion income if that cannot be done with reasonable certainty by using the generally applicable formula. This bill discontinues that authority to promulgate rules. In its place it allows corporations to petition for, and DOR to require, if to do so is reasonable and the generally applicable formula does not result in a fair representation of the corporation's business activity in this state, excluding one or more of the apportionment factors, including one or more additional factors and using any other method of apportionment. The bill requires DOR to promulgate permanent rules, and allows DOR to promulgate emergency rules, on the procedure

for applying for a change in the apportionment method. The bill is silent on the authority to promulgate rules on alternative apportionment methods.

This bill also limits the pass-through of the income tax credit and franchise tax credit for sales taxes paid on fuel and electricity used in manufacturing by a tax-option corporation to its shareholders to credits computed for taxable years that begin on January 1, 1998, or later.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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.** 71.07 (3s) (c) 4. of the statutes, as created by 1997 Wisconsin Act
2 27, is amended to read:

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

7 **SECTION 2.** 71.25 (12) of the statutes is repealed and recreated to read:

8 71.25 **(12)** ALTERNATIVE ALLOCATION. (a) If the allocation and apportionment
9 provisions under this section do not result in a fair representation of the extent of a
10 corporation's business activity in this state; the corporation may petition for, or the
11 department of revenue may require, if to do so is reasonable, in respect to all or part
12 of the corporation's business activity, any of the following:

- 13 1. Excluding one or more of the apportionment factors.
- 14 2. Including one or more additional apportionment factors that will result in
15 a fair representation of the corporation's business activity in this state.
- 16 3. Using any other method to effect an equitable allocation and apportionment
17 of the corporation's income.

1 (b) The department of revenue shall promulgate permanent rules that specify
2 the procedure for applying for a change in the apportionment method. The
3 department may also promulgate emergency rules on that subject.

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

6 71.28 (3) (c) 4. If a tax-option corporation becomes liable for tax for a taxable
7 year that begins on or after January 1, 1998, the corporation may offset the credit
8 against the tax due, with any remaining credit computed for a taxable year that
9 begins on or after January 1, 1998, passing through to the shareholders.

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

12 71.47 (3) (c) 4. If a tax-option corporation becomes liable for tax for a taxable
13 year that begins on or after January 1, 1998, the corporation may offset the credit
14 against the tax due, with any remaining credit computed for a taxable year that
15 begins on or after January 1, 1998, passing through to the shareholders.

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

17 [1997 Wisconsin Act 27] Section 9343 (9z) FUEL TAX CREDIT. The treatment of
18 sections 71.05 (6) (a) 15. (as it relates to the credit for fuel), 71.07 (3s) and (10) (a) and
19 (b), 71.10 (4) (de), 71.21 (4) (as it relates to the credit for fuel), 71.28 (3) (b), (c) 2. to
20 6. and (d), 71.34 (1) (g) (as it relates to the credit for fuel) and (j), 71.365 (3) (a) and
21 (b) and 71.47 (3) (b), (c) 2. to 6. and (d) of the statutes and the renumbering of sections
22 71.28 (3) (c) and 71.47 (3) (c) of the statutes first apply to credits computed for taxable
23 years beginning on January 1, 1998.

24 **SECTION 6. Initial applicability.**

