



2003 ASSEMBLY BILL 391

June 5, 2003 - Introduced by Representatives BLACK, BERCEAU, POCAN, MILLER, HEBL and PLOUFF, cosponsored by Senators CARPENTER, RISSER and CHVALA. Referred to Committee on Ways and Means.

1 **AN ACT** *to renumber and amend* 71.26 (2) (a); and *to create* 71.01 (5p), 71.01
2 (9b), 71.05 (6) (a) 21., 71.22 (3m), 71.22 (9b), 71.34 (1) (j), 71.26 (2) (a) 6., 71.42
3 (1p), 71.42 (4m) and 71.45 (2) (a) 16. of the statutes; **relating to:** adding
4 payments to related entities to federal taxable income for state income tax and
5 franchise tax purposes.

Analysis by the Legislative Reference Bureau

For purposes of calculating a taxpayer's state income tax or franchise tax liability, this bill requires a taxpayer to add the following amounts to the taxpayer's federal taxable income: any amount that the taxpayer deducted or excluded under the Internal Revenue Code for management and service fees, interest expenses and costs, intangible expenses and costs, and any other expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related entities.

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:

6 **SECTION 1.** 71.01 (5p) of the statutes is created to read:

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1 71.01 **(5p)** “Intangible expenses and costs” includes expenses, losses, and costs
2 for, related to, or directly or indirectly in connection with the direct or indirect
3 acquisition of, use of, maintenance or management of, ownership of, sale of, exchange
4 of, or any other direct or indirect disposition of intangible property to the extent that
5 such expenses, losses, and costs are allowed as deductions or costs to determine
6 federal taxable income under the Internal Revenue Code. For purposes of this
7 subsection, “expenses, losses, and costs” include losses related to or incurred directly
8 or indirectly in connection with discounting transactions; royalty, patent, technical,
9 and copyright fees; licensing fees; and other similar expenses and costs.

10 **SECTION 2.** 71.01 (9b) of the statutes is created to read:

11 71.01 **(9b)** “Related entity” means any person related to a taxpayer as provided
12 under section 267, 318, or 1563 (a) (3) of the Internal Revenue Code during all or a
13 portion of the taxpayer’s taxable year.

14 **SECTION 3.** 71.05 (6) (a) 21. of the statutes is created to read:

15 71.05 **(6)** (a) 21. Any amount deducted or excluded under the Internal Revenue
16 Code for management and service fees, interest expenses and costs, intangible
17 expenses and costs, and any other expenses and costs directly or indirectly paid,
18 accrued, or incurred to, or in connection directly or indirectly with one or more direct
19 or indirect transactions with, one or more related entities.

20 **SECTION 4.** 71.22 (3m) of the statutes is created to read:

21 71.22 **(3m)** “Intangible expenses and costs” includes expenses, losses, and costs
22 for, related to, or directly or indirectly in connection with the direct or indirect
23 acquisition of, use of, maintenance or management of, ownership of, sale of, exchange
24 of, or any other direct or indirect disposition of intangible property to the extent that
25 such expenses, losses, and costs are allowed as deductions or costs to determine

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1 federal taxable income under the Internal Revenue Code. For purposes of this
2 subsection, “expenses, losses, and costs” include losses related to or incurred directly
3 or indirectly in connection with discounting transactions; royalty, patent, technical,
4 and copyright fees; licensing fees; and other similar expenses and costs.

5 **SECTION 5.** 71.22 (9b) of the statutes is created to read:

6 71.22 (9b) “Related entity” means any person related to a taxpayer as provided
7 under section 267, 318, or 1563 (a) (3) of the Internal Revenue Code during all or a
8 portion of the taxpayer’s taxable year.

9 **SECTION 6.** 71.34 (1) (j) of the statutes is created to read:

10 71.34 (1) (j) An addition shall be made for any amount deducted or excluded
11 under the Internal Revenue Code for management and service fees, interest
12 expenses and costs, intangible expenses and costs, and any other expenses and costs
13 directly or indirectly paid, accrued, or incurred to, or in connection directly or
14 indirectly with one or more direct or indirect transactions with, one or more related
15 entities.

16 **SECTION 7.** 71.26 (2) (a) of the statutes is renumbered 71.26 (2) (a) (intro.) and
17 amended to read:

18 71.26 (2) (a) *Corporations in general.* (intro.) The “net income” of a corporation
19 means the gross income as computed under the Internal Revenue Code as modified
20 under sub. (3) ~~minus and modified as follows:~~

21 1. Minus the amount of recapture under s. 71.28 (1di) ~~plus.~~

22 2. Plus the amount of credit computed under s. 71.28 (1), (3), (4), and (5) ~~plus.~~

23 3. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di),
24 (1dj), (1dL), (1dm), (1ds), (1dx), and (3g) and not passed through by a partnership,
25 limited liability company, or tax-option corporation that has added that amount to

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1 the partnership's, limited liability company's, or tax-option corporation's income
2 under s. 71.21 (4) or 71.34 (1) (g) ~~plus~~.

3 4. Plus the amount of losses from the sale or other disposition of assets the gain
4 from which would be wholly exempt income, as defined in sub. (3) (L), if the assets
5 were sold or otherwise disposed of at a gain and minus deductions, as computed
6 under the Internal Revenue Code as modified under sub. (3), ~~plus~~.

7 5. Plus or minus, as appropriate, an amount equal to the difference between
8 the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or
9 otherwise disposed of in a taxable transaction during the taxable year, except as
10 provided in par. (b) and s. 71.45 (2) and (5).

11 **SECTION 8.** 71.26 (2) (a) 6. of the statutes is created to read:

12 71.26 (2) (a) 6. Plus any amount deducted or excluded under the Internal
13 Revenue Code for management and service fees, interest expenses and costs,
14 intangible expenses and costs, and any other expenses and costs directly or indirectly
15 paid, accrued, or incurred to, or in connection directly or indirectly with one or more
16 direct or indirect transactions with, one or more related entities.

17 **SECTION 9.** 71.42 (1p) of the statutes is created to read:

18 71.42 (1p) "Intangible expenses and costs" includes expenses, losses, and costs
19 for, related to, or directly or indirectly in connection with the direct or indirect
20 acquisition of, use of, maintenance or management of, ownership of, sale of, exchange
21 of, or any other direct or indirect disposition of intangible property to the extent that
22 such expenses, losses, and costs are allowed as deductions or costs to determine
23 federal taxable income under the Internal Revenue Code. For purposes of this
24 subsection, "expenses, losses, and costs" include losses related to or incurred directly

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1 or indirectly in connection with discounting transactions; royalty, patent, technical,
2 and copyright fees; licensing fees; and other similar expenses and costs.

3 **SECTION 10.** 71.42 (4m) of the statutes is created to read:

4 71.42 (4m) "Related entity" means any person related to a taxpayer as provided
5 under section 267, 318, or 1563 (a) (3) of the Internal Revenue Code during all or a
6 portion of the taxpayer's taxable year.

7 **SECTION 11.** 71.45 (2) (a) 16. of the statutes is created to read:

8 71.45 (2) (a) 16. By adding to federal taxable income any amount deducted or
9 excluded under the Internal Revenue Code for management and service fees,
10 interest expenses and costs, intangible expenses and costs, and any other expenses
11 and costs directly or indirectly paid, accrued, or incurred to, or in connection directly
12 or indirectly with one or more direct or indirect transactions with, one or more
13 related entities.

14 **SECTION 12. Initial applicability.**

15 (1) This act first applies to taxable years beginning on January 1 of the year
16 in which this subsection takes effect, except that if this subsection takes effect after
17 July 31 this act first applies to taxable years beginning on January 1 of the year
18 following the year in which this subsection takes effect.

19

(END)