



2003 ASSEMBLY BILL 6

January 28, 2003 - Introduced by Representative ZIEGELBAUER. Referred to Committee on Economic Development.

1 **AN ACT** *to renumber and amend* 71.04 (4) and 71.25 (6); *to amend* 71.04 (5)
2 (intro.), 71.04 (6) (intro.), 71.04 (7) (d), 71.04 (10), 71.25 (7) (intro.), 71.25 (8)
3 (intro.), 71.25 (9) (d) and 71.25 (11); and *to create* 71.04 (4) (a), 71.04 (4) (b),
4 71.25 (6) (a) and 71.25 (6) (b) of the statutes; **relating to:** single factor
5 apportionment of income for corporate income tax and franchise tax purposes.

Analysis by the Legislative Reference Bureau

Under current law, when computing the income tax or franchise tax liability of a corporation that does business inside and outside of this state, a formula is used to attribute a portion of the corporation's income to this state. The formula has three factors: a sales factor, a property factor and a payroll factor. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula.

Under this bill, beginning on January 1, 2003, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state.

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:

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1 **SECTION 1.** 71.04 (4) of the statutes is renumbered 71.04 (4) (intro.) and
2 amended to read:

3 **71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA.** (intro.)
4 Nonresident individuals and nonresident estates and trusts engaged in business
5 within and without the state shall be taxed only on such income as is derived from
6 business transacted and property located within the state. The amount of such
7 income attributable to Wisconsin may be determined by an allocation and separate
8 accounting thereof, when the business of such nonresident individual or nonresident
9 estate or trust within the state is not an integral part of a unitary business, but the
10 department of revenue may permit an allocation and separate accounting in any case
11 in which it is satisfied that the use of such method will properly reflect the income
12 taxable by this state. In all cases in which allocation and separate accounting is not
13 permissible, the determination shall be made in the following manner: for all
14 businesses except financial organizations, public utilities, railroads, sleeping car
15 companies and car line companies there shall first be deducted from the total net
16 income of the taxpayer the part thereof (less related expenses, if any) that follows the
17 situs of the property or the residence of the recipient. The remaining net income shall
18 be apportioned to Wisconsin this state by use of an apportionment fraction composed
19 of a sales factor representing 50% of the fraction, a property factor representing 25%
20 of the fraction and a payroll factor representing 25% of the fraction. the following:

21 **SECTION 2.** 71.04 (4) (a) of the statutes is created to read:

22 **71.04 (4) (a)** For taxable years beginning before January 1, 2003, an
23 apportionment fraction composed of a sales factor under sub. (7) representing 50%
24 of the fraction, a property factor under sub. (5) representing 25% of the fraction, and
25 a payroll factor under sub. (6) representing 25% of the fraction.

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1 **SECTION 3.** 71.04 (4) (b) of the statutes is created to read:

2 71.04 (4) (b) For taxable years beginning after December 31, 2002, an
3 apportionment fraction composed of the sales factor under sub. (7).

4 **SECTION 4.** 71.04 (5) (intro.) of the statutes is amended to read:

5 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
6 years beginning before January 1, 2003:

7 **SECTION 5.** 71.04 (6) (intro.) of the statutes is amended to read:

8 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years
9 beginning before January 1, 2003:

10 **SECTION 6.** 71.04 (7) (d) of the statutes is amended to read:

11 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
12 state if the income-producing activity is performed in this state. If the
13 income-producing activity is performed both in and outside this state the sales shall
14 be divided between those states having jurisdiction to tax such business in
15 proportion to the direct costs of performance incurred in each such state in rendering
16 this service. Services performed in states which do not have jurisdiction to tax the
17 business shall be deemed to have been performed in the state to which compensation
18 is would be allocated by sub. s. 71.04 (6), 2001 stats.

19 **SECTION 7.** 71.04 (10) of the statutes is amended to read:

20 71.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident
21 individual or nonresident estate or trust engaged in business within and without the
22 this state of ~~Wisconsin~~ and required to apportion its income as provided in this
23 section, it shall be shown to the satisfaction of the department of revenue that the
24 use of any one of the 3 factors provided under sub. (4) gives an unreasonable or
25 inequitable final average ratio because of the fact that such nonresident individual

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1 or nonresident estate or trust does not employ, to any appreciable extent in its trade
2 or business in producing the income taxed, the factors made use of in obtaining such
3 ratio, this factor may, with the approval of the department of revenue, be omitted in
4 obtaining the final average ratio which is to be applied to the remaining net income.
5 This subsection does not apply to taxable years beginning after December 31, 2002.

6 **SECTION 8.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and
7 amended to read:

8 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.
9 (intro.) Corporations engaged in business within and without the state shall be taxed
10 only on such income as is derived from business transacted and property located
11 within the state. The amount of such income attributable to Wisconsin may be
12 determined by an allocation and separate accounting thereof, when the business of
13 such corporation within the state is not an integral part of a unitary business, but
14 the department of revenue may permit an allocation and separate accounting in any
15 case in which it is satisfied that the use of such method will properly reflect the
16 income taxable by this state. In all cases in which allocation and separate accounting
17 is not permissible, the determination shall be made in the following manner: for all
18 businesses except financial organizations, public utilities, railroads, sleeping car
19 companies, car line companies and corporations or associations that are subject to
20 a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted
21 from the total net income of the taxpayer the part thereof (less related expenses, if
22 any) that follows the situs of the property or the residence of the recipient. The
23 remaining net income shall be apportioned to ~~Wisconsin~~ this state by use of an
24 ~~apportionment fraction composed of a sales factor under sub. (9) representing 50%~~

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1 of the fraction, a property factor under sub. (7) representing 25% of the fraction and
2 a payroll factor under sub. (8) representing 25% of the fraction. the following:

3 **SECTION 9.** 71.25 (6) (a) of the statutes is created to read:

4 71.25 (6) (a) For taxable years beginning before January 1, 2003, an
5 apportionment fraction composed of a sales factor under sub. (9) representing 50%
6 of the fraction, a property factor under sub. (7) representing 25% of the fraction, and
7 a payroll factor under sub. (8) representing 25% of the fraction.

8 **SECTION 10.** 71.25 (6) (b) of the statutes is created to read:

9 71.25 (6) (b) For taxable years beginning after December 31, 2002, an
10 apportionment fraction composed of the sales factor under sub. (9).

11 **SECTION 11.** 71.25 (7) (intro.) of the statutes is amended to read:

12 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (5) (6) and for taxable
13 years beginning before January 1, 2003:

14 **SECTION 12.** 71.25 (8) (intro.) of the statutes is amended to read:

15 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. (5) (6) and for taxable
16 years beginning before January 1, 2003:

17 **SECTION 13.** 71.25 (9) (d) of the statutes is amended to read:

18 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
19 state if the income-producing activity is performed in this state. If the
20 income-producing activity is performed both in and outside this state the sales shall
21 be divided between those states having jurisdiction to tax such business in
22 proportion to the direct costs of performance incurred in each such state in rendering
23 this service. Services performed in states which do not have jurisdiction to tax the
24 business shall be deemed to have been performed in the state to which compensation
25 is would be allocated by sub. s. 71.25 (8), 2001 stats.

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1 **SECTION 14.** 71.25 (11) of the statutes is amended to read:

2 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
3 engaged in business within and without ~~the~~ this state of Wisconsin and required to
4 apportion its income as provided in sub. (6), it shall be shown to the satisfaction of
5 the department of revenue that the use of any one of the 3 factors provided in sub.
6 (6) gives an unreasonable or inequitable final average ratio because of the fact that
7 such corporation does not employ, to any appreciable extent in its trade or business
8 in producing the income taxed, the factors made use of in obtaining such ratio, this
9 factor may, with the approval of the department of revenue, be omitted in obtaining
10 the final average ratio which is to be applied to the remaining net income. This
11 subsection does not apply to taxable years beginning after December 31, 2002.

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(END)