



## 2007 ASSEMBLY BILL 328

May 15, 2007 - Introduced by Representatives BLACK, JORGENSEN, SOLETSKI, HRAYCHUCK, SHERIDAN, SHILLING, MOLEPSKE, A. WILLIAMS, BERCEAU, HILGENBERG, TURNER, POCAN, BENEDICT, KREUSER, BOYLE, PARISI, SINICKI, CULLEN, SMITH, TRAVIS, POPE-ROBERTS and GARTHWAITE, cosponsored by Senators HANSEN, RISSER, CARPENTER, LEHMAN, KREITLOW, WIRCH and MILLER. 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), 71.26 (2) (a) 7., 71.34 (1) (j), 71.42  
3           (1p), 71.42 (4m), 71.45 (2) (a) 16., 71.738 (3m) and 71.80 (23) of the statutes;  
4           **relating to:** adding payments to related entities to federal taxable income for  
5           state income tax and franchise tax purposes.

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### ***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.

This bill also authorizes the Department of Revenue (DOR) to allow the tax consequences of a transaction, as asserted by a taxpayer, even if DOR initially disallows the consequences by asserting the sham transaction doctrine or a related doctrine, if a taxpayer meets certain conditions. The conditions include the taxpayer's ability to demonstrate that the transaction had a valid, good faith business purpose other than tax avoidance, that the business purpose is commensurate with the transaction's tax benefit, and that the transaction had economic substance apart from the taxpayer's asserted tax benefit.

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Also under the bill a taxpayer is not required to add to the taxpayer's federal taxable income certain expenses or costs as specified in the bill if a number of conditions apply. The conditions include the following:

1. Tax avoidance was not the principal purpose of the transaction to which the expenses and costs apply.

2. The related entity, to whom the taxpayer paid the expenses or costs, paid, accrued, or incurred such amounts to a person who is not a related entity.

3. The related entity was subject to tax on its net income, and a measure of the tax included the expenses or costs received from the taxpayer.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

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

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1           71.01 **(9b)** “Related entity” means any person related to a taxpayer as provided  
2           under section 267, 318, or 1563 of the Internal Revenue Code during all or a portion  
3           of the taxpayer’s taxable year.

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

5           71.05 **(6)** (a) 21. Any amount deducted or excluded under the Internal Revenue  
6           Code for management and service fees, interest expenses and costs, intangible  
7           expenses and costs, and any other expenses and costs directly or indirectly paid,  
8           accrued, or incurred to, or in connection directly or indirectly with one or more direct  
9           or indirect transactions with, one or more related entities.

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

11          71.22 **(3m)** “Intangible expenses and costs” includes expenses, losses, and costs  
12          for, related to, or directly or indirectly in connection with the direct or indirect  
13          acquisition of, use of, maintenance or management of, ownership of, sale of, exchange  
14          of, or any other direct or indirect disposition of intangible property to the extent that  
15          such expenses, losses, and costs are allowed as deductions or costs to determine  
16          federal taxable income under the Internal Revenue Code. For purposes of this  
17          subsection, “expenses, losses, and costs” includes losses related to or incurred  
18          directly or indirectly in connection with factoring transactions and discounting  
19          transactions; royalty, patent, technical, and copyright fees; licensing fees; and other  
20          similar expenses and costs.

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

22          71.22 **(9b)** “Related entity” means any person related to a taxpayer as provided  
23          under section 267, 318, or 1563 of the Internal Revenue Code during all or a portion  
24          of the taxpayer’s taxable year.

**ASSEMBLY BILL 328****SECTION 6**

1           **SECTION 6.** 71.26 (2) (a) of the statutes is renumbered 71.26 (2) (a) (intro.) and  
2 amended to read:

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

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

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

8           3. Minus, as provided under s. 71.28 (3) (c) 7., the amount of the credit under  
9 s. 71.28 (3) that the taxpayer added to income under this paragraph at the time that  
10 the taxpayer first claimed the credit ~~plus.~~

11           4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di),  
12 (1dj), (1dL), (1dm), (1ds), (1dx), (3g), (3n), (3t), (3w), (5b), (5e), (5f), (5g), and (5h) and  
13 not passed through by a partnership, limited liability company, or tax-option  
14 corporation that has added that amount to the partnership’s, limited liability  
15 company’s, or tax-option corporation’s income under s. 71.21 (4) or 71.34 (1) (g) ~~plus.~~

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

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

24           **SECTION 7.** 71.26 (2) (a) 7. of the statutes is created to read:

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1           71.26 (2) (a) 7. Plus any amount deducted or excluded under the Internal  
2 Revenue Code for management and service fees, interest expenses and costs,  
3 intangible expenses and costs, and any other expenses and costs directly or indirectly  
4 paid, accrued, or incurred to, or in connection directly or indirectly with one or more  
5 direct or indirect transactions with, one or more related entities.

6           **SECTION 8.** 71.34 (1) (j) of the statutes is created to read:

7           71.34 (1) (j) An addition shall be made for any amount deducted or excluded  
8 under the Internal Revenue Code for management and service fees, interest  
9 expenses and costs, intangible expenses and costs, and any other expenses and costs  
10 directly or indirectly paid, accrued, or incurred to, or in connection directly or  
11 indirectly with one or more direct or indirect transactions with, one or more related  
12 entities.

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

14           71.42 (1p) “Intangible expenses and costs” includes expenses, losses, and costs  
15 for, related to, or directly or indirectly in connection with the direct or indirect  
16 acquisition of, use of, maintenance or management of, ownership of, sale of, exchange  
17 of, or any other direct or indirect disposition of intangible property to the extent that  
18 such expenses, losses, and costs are allowed as deductions or costs to determine  
19 federal taxable income under the Internal Revenue Code. For purposes of this  
20 subsection, “expenses, losses, and costs” includes losses related to or incurred  
21 directly or indirectly in connection with factoring transactions and discounting  
22 transactions; royalty, patent, technical, and copyright fees; licensing fees; and other  
23 similar expenses and costs.

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

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1           71.42 **(4m)** “Related entity” means any person related to a taxpayer as provided  
2 under section 267, 318, or 1563 of the Internal Revenue Code during all or a portion  
3 of the taxpayer’s taxable year.

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

5           71.45 **(2)** (a) 16. By adding to federal taxable income any amount deducted or  
6 excluded under the Internal Revenue Code for management and service fees,  
7 interest expenses and costs, intangible expenses and costs, and any other expenses  
8 and costs directly or indirectly paid, accrued, or incurred to, or in connection directly  
9 or indirectly with one or more direct or indirect transactions with, one or more  
10 related entities.

11           **SECTION 12.** 71.738 (3m) of the statutes is created to read:

12           71.738 **(3m)** “Related entity” means any person related to a taxpayer as  
13 provided under section 267, 318, or 1563 of the Internal Revenue Code during all or  
14 a portion of the taxpayer’s taxable year.

15           **SECTION 13.** 71.80 (23) of the statutes is created to read:

16           71.80 **(23)** TRANSACTIONS. (a) Subject to par. (b), if the department asserts the  
17 sham transaction doctrine, or any other related tax doctrine, to disallow the tax  
18 consequences, as asserted by the taxpayer, of a transaction, the department may  
19 allow the tax consequences, as asserted by the taxpayer, of the transaction, if the  
20 taxpayer demonstrates by clear and convincing evidence that the transaction had a  
21 valid, good faith, business purpose other than tax avoidance and had economic  
22 substance apart from any tax benefit asserted by the taxpayer.

23           (b) For all instances in which the department disallows the tax consequences,  
24 as asserted by the taxpayer, of a transaction, the department may allow the tax  
25 consequences, as asserted by the taxpayer, of the transaction, if the taxpayer

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1 demonstrates by clear and convincing evidence that the transaction's nontaxable  
2 business purpose, as asserted by the taxpayer, is commensurate with the  
3 transaction's tax benefit, as asserted by the taxpayer.

4 (c) The adjustments under ss. 71.05 (6) (a) 21., 71.26 (2) (a) 7., 71.34 (1) (j), and  
5 71.45 (2) (a) 16. shall not apply to any expenses or costs if all of the following apply  
6 to the expenses or costs:

7 1. The transaction to which the expenses or costs are related did not have tax  
8 avoidance as its principal purpose.

9 2. The related entity to whom the taxpayer paid interest expenses or costs,  
10 intangible expenses, or management or service fees during the taxable year directly  
11 or indirectly paid, accrued, or incurred such amounts to a person who is not a related  
12 entity. For purposes of this subdivision, "interest" means interest on a debt for which  
13 the taxpayer is the guarantor, if the interest rate is the market rate in effect at the  
14 time of the debt's origination, but excludes interest that is paid in connection with  
15 any debt that is incurred to acquire the taxpayer's assets or stock under section 368  
16 of the Internal Revenue Code.

17 3. The related entity was subject to tax on its net income in this state, or any  
18 state, U.S. possession, or foreign country; a measure of the tax paid included the  
19 interest income, intangible income, or management or service fees received from the  
20 taxpayer; and the tax rate applied to the interest income, intangible income, or  
21 management or service fees was not less than 3 percentage points below the tax rate  
22 that would have applied under s. 71.27. For purposes of this subdivision, "any state,  
23 U.S. possession, or foreign country" does not include any state, U.S. possession, or  
24 foreign country under the laws of which the taxpayer files or could have elected to  
25 file with the related entity, or the related entity files or could have elected to file with

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1 another entity, a combined income tax report or return, a consolidated income tax  
2 report or return, or any other report or return that is due because of the imposition  
3 of a tax that is measured on or by income, if the report of return results in eliminating  
4 the tax effects of transactions directly or indirectly between either the taxpayer and  
5 the related entity or between the related entity and another entity.

6 **SECTION 14. Initial applicability.**

7 (1) This act first applies to taxable years beginning on January 1, 2008.

8 (END)