

**1999 DRAFTING REQUEST**

**Bill**

Received: **12/29/1999**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

**For: Revenue 6-6466**

By/Representing: **Tom Ourada**

This file may be shown to any legislator: NO

Drafter: **j kreye**

May Contact:

Alt. Drafters:

Subject: **Tax - corp. inc. and fran.**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Single sales factor apportionment of corporate income and franchise taxes

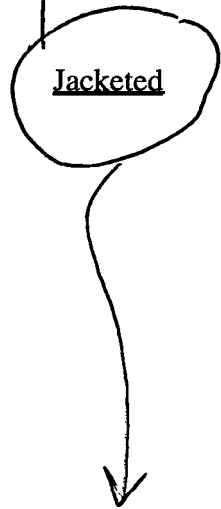
**Instructions:**

See Attached

*Sent To  
M. Lehman's  
Office  
per JK*

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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			02/03/2000 _____		02/03/2000	02/03/2000	

FE Sent For:

G → 02-10-00

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			<i>Kjg 2/3</i>	<i>Kjg/km 2/3</i>			

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May Contact:

Alt. Drafters:

Subject: **Tax - corp. inc. and fran.**

Extra Copies:

*Bill Ford  
Leg. Council*

**Pre Topic:**

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**Topic:**

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**Instructions:**

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1999 DRAFTING REQUEST

Bill

Received: 1212911999

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: Revenue 6-6466

By/Representing: Tom Ourada

This file may be shown to any legislator: NO

Drafter: jkreye

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Subject: Tax - corp. inc. and fran.

Extra Copies:

Pre Topic:

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Topic:

Single sales factor apportionment of corporate income and franchise taxes

Instructions:

See Attached

JEND TO M. LEHMAN  
- Sent TO Lehman  
1/19/2000

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Per instructions

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12-1-18-2000 kmj  
kmj  
JH  
kmj  
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Wanted: Soon

Identical to LRB:

For: Revenue 6-6466

By/Representing: Tom Ourada

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Drafter: j kreye

May Contact:

Alt. Drafters:

Subject: Tax - corp. inc. and fran.

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1?	jkreye	1-12-29-99 kmg	10/13	10/mc 1/1			

FE Sent For:

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## Single Sales Factor Apportionment

### I. Implementation of Single Sales Factor Apportionment for Corporations That Currently Use the Standard S-Factor Apportionment Formula and Financial Organizations

#### A. Phased-in Implementation

- ✓ 1. Amend sec. 71.04(4) as provided in LRB 0095/1, section 1675, page 826, lines 8 through 11 only.
- ✓ 2. Create sec. 71.04(4)(a) as provided in LRB 1309/1, page 240, lines 13 through 17.
- ✓ 3. Create sec. 71.04(4)(<sup>h</sup>am) as provided in LRB 1309/1, section 1675bb.
- ✓ 4. Create sec. 71.04(4)(<sup>c</sup>b) as provided in LRB 0095/1, section 1675c.
- ✓ 5. Create sec. 71.04(4)(<sup>d</sup>c) as provided in LRB 0095/1, section 1675d.
- ✓ 6. Create sec. 71.04(4)(<sup>e</sup>d) as follows:

71.04(4)(<sup>e</sup>d) For taxable years beginning after December 31, 2000, and before January 1, 2003, the apportionment fractions for financial organizations shall be determined pursuant to emergency rules of the department. For taxable years beginning after December 31, 2002, for financial organizations, an apportionment fraction composed of the receipts factor as determined pursuant to rules of the department.
- ✓ 7. Amend sec. 71.04(5)(intro.) as provided in LRB 0095/11, section 1676.
- ✓ 8. Amend sec. 71.04(6)(intro.) as provided in LRB 0095/1, section 1677.
- ✓ 9. Amend sec. 71.04(7)(d) to refer to sub. (6), 1997 stats.
- ✓ 10. Amend sec. 71.04(10) as provided in LRB 0095/1, section 1682r.
- ✓ 11. Amend sec. 71.25(6) as provided in LRB 0095/1, section 1729, page 874, lines 15 through 18 only.
- ✓ 12. Create sec. 71.25(6)(a) as provided in LRB 1309/11, page 253, lines 1 through 5.
- ✓ 13. Create sec. 71.25(6)(am) as provided in LRB 1309/1, section 1729bb.

also ✓  
create on  
71.05(6)(<sup>e</sup>)  
?

1. 1. 1.

2. 2. 2.

3. 3. 3.

4. 4. 4.

5. 5. 5.

6.

- ✓ 14. Create sec. 71.25(6)(b) as provided in LRB 0095/1, section 1729c.
- ✓ 15. Create sec. 71.25(6)(c) as provided in LRB 0095/1, section 1729d.
- ✓ 16. Amend sec. 71.25(7)(intro.) as provided in LRB 0095/1, section 1730.
- ✓ 17. Amend sec. 71.25(8)(intro.) as provided in LRB 0095/1, section 1731.
- ✓ 18. Amend sec. 71.25(9)(d) to refer to sub. (8), 1997 Stats.
- ✓ 19. Amend sec. 71.25(11) as provided in LRB 0095/1, section 1738r.

Note: Under current law, certain multistate corporations and noncorporate entities (such as partnerships and LLCs) use a 3-factor formula to attribute a portion of their income to Wisconsin. The factors used are a property factor, payroll factor, and double-weighted sales factor. Under these amendments, the sales factor would become the only factor used. These changes would NOT affect insurance companies, public utilities, airlines, motor carriers, railroads, or pipeline companies. For taxable year beginning after Dec. 31, 2000, the sales factor would be 63% and payroll and property would each be 18.5%. For taxable year beginning after Dec. 31, 2001, the sales factor would be 85% and the payroll and property factors would each be 7.5%. For taxable years beginning after Dec. 31, 2002, the apportionment fraction would be based on 100% sales. For financial organizations which currently use two factors, the department would phase-in single factor over the same timeframe by administrative rule. For taxable years beginning after Dec. 31, 2002, financial organizations would have a single receipts factor.

II. Implementation of Single Sales Factor Apportionment for Insurance Companies

A. Phased-In Implementation

- ✓ 1. Amend sec. 71.45(3)(intro.) as provided in LRB 0095/1, section 1750.
- ✓ 2. Amend sec. 71.45(3)(a) as provided in LRB 0095/1, section 1751, but change "by" to "with" on line 25.
- ✓ 3. Renumber and amend sec. 71.45(3)(b)1 as provided in LRB 0095/1 section 1752, page 940, lines 3 through 6.
- ✓ 4. Renumber and amend sec. 71.45(3)(b)2 as follows:

2. Compensation is paid ~~outside~~ in this state if the individual's service is performed entirely ~~outside~~ in this state; or the individual's service is performed both within and without this state, but the service performed

~~within~~ without is incidental to the individual's service ~~without~~ within this state; or some service is performed ~~without~~ within this state and the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is ~~without~~ in this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is ~~outside~~ in this state.

✓ 5. Create sec. 71.45(3)(c) as follows:

**71.45(3)(c)1.** For taxable years beginning after December 31, 2000, and before January 1, 2002, a domestic insurer that is subject to apportionment under this subsection shall multiply the net income figure derived by application of sub. (2) by an apportionment fraction composed of the percentage under par. (a) representing 63% of the fraction and the percentage under par. (b) representing 37% of the fraction.

2. For taxable years beginning after December 31, 2001, and before January 1, 2003, a domestic insurer that is subject to apportionment under this subsection shall multiply the net income figure derived by application of sub. (2) by an apportionment fraction composed of the percentage under par. (a) representing 85% of the fraction and the percentage under par. (b) representing 15% of the fraction.

3. For taxable years beginning after December 31, 2002, a domestic insurer that is subject to apportionment under this subsection shall multiply the net income figure derived by application of sub. (2) by the percentage under par. (a).

6. Amend sec. 71.45(3m) as follows:

71.45(3m) ARITHMETIC AVERAGE. ~~The~~ Except as provided in sub. (3)(c), the arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the net income figure arrived at by the successive application of sub. (2)(a) and (b) with respect to Wisconsin insurers to which sub. (2)(a) and (b) applies and which have ~~collected~~ received premiums, other than life insurance premiums, written ~~upon~~ for insurance, other than life insurance, where the subject of such insurance was on property or risks resident, located or to be performed outside this state, to arrive at Wisconsin income constituting the measure of the franchise tax.

Note: Under current law, multistate health, accident, property, and casualty insurance companies that are organized under Wisconsin law use a 2-factor formula to attribute a portion of their income to Wisconsin. The factors used are a payroll factor and a premiums factor. Under these amendments, the premiums factor would become the only factor used. In addition, the premiums factor would be expanded to include assumed premiums written for reinsurance as well as direct premiums written.

III. Implementation of Single Sales Factor Apportionment for Public Utilities

B. Phased-In Implementation <sup>(DM)</sup>

1. Create sec. 71.04(7)(dv) as follows:

71.04(7)(dv) For a pipeline company operating within and without this state, the numerator of the sales factor shall include the number of traffic units in this state during the taxable period. The denominator of the sales factor shall include the number of traffic units everywhere during the taxable period. "Traffic unit" means the transportation for a distance of one mile of one barrel of oil, one gallon of gasoline or one thousand cubic feet of natural or casinghead gas, or other appropriate measure of product.

2 ~~Renumber~~ and amend sec. 71.04(8)(b) as follows:

(b)L. "Public utility", as used in this section, means any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications or the production, transmission, sale, delivery, or furnishing of gas, electricity, water or steam, the rates of charges for goods or services of which have been established or approved by a federal, state or local government or governmental agency. This subdivision does not apply to taxable years beginning after December 31, 2000.

2. "Public utility" also means any business entity providing service to the public and engaged in the transportation of goods and persons for hire, as defined in s. 194.01(4), regardless of whether or not the entity's rates or charges for services have been established or approved by a federal, state or local government or governmental agency.

3. Create sec. 71.25(9)(~~dv~~) as follows:

71.25(9)(~~dv~~) For a pipeline company operating within and without ~~this~~ state, the numerator of the sales factor shall include the number of traffic units in this state during the taxable period. The denominator of the sales factor shall include the number of traffic units everywhere during the taxable period. "Traffic unit" means the transportation for a distance of one mile of one barrel of oil, one gallon of gasoline or one thousand cubic feet of natural or casinghead gas, or other appropriate measure of product.

4 4. Renumber and amend sec. 71.25(10)(b) as follows:

(b)1. In this section, "public utility" means any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications or the production, transmission, sale, delivery, or furnishing of gas, electricity, water or steam, the rates of charges for goods or services of which have been established or approved by a federal, state or local government or governmental agency. This paragraph does not apply to taxable years beginning after December 31, 2000.

2. "Public utility" also means any business entity providing service to the public and engaged in the transportation of goods and persons for hire, as defined in s. 194.01(4), regardless of whether or not the entity's rates or charges for services have been established or approved by a federal, state or local government or governmental agency.

→ 5. In addition, make the changes under I.B. ?

Note: Under current administrative rules, multistate public utilities use the 3-factor apportionment formula with single-weighted sales. Under these amendments, public utilities would use just a receipts factor to attribute a portion of their income to Wisconsin.





JK: King  
RMR

in 12-29-99

SOON

WPO:  
Fix request sheet.

1 **AN ACT** ..., *gen.* relating to: single sales factor apportionment of income for corporate  
2 income tax and franchise tax purposes.

*and granting rule-making authority!*

**Analysis by the Legislative Reference Bureau**

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a 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. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

7 Under this bill, beginning on January 1, 2002, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. The property and payroll factors will be decreased, and eventually phased out, over the next three years as the sales factor is increased and becomes the only factor. Beginning on January 1, 2002, the premium factor will be the only factor used to attribute a portion of an insurance company's income to this state. The payroll factor will be decreased, and eventually phased out, over the next three years.

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

3  
**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

3 **SECTION 1.** 71.01 (12m) of the statutes is created to read:

*as the premium factor is increased and becomes the only factor*

the allocation, one, of

1 71.01 (12m) "Traffic unit" means transporting for 1 mile a barrel of oil, a gallon  
2 of gasoline or 1,000 cubic feet of natural or casinghead gas.

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

5 71.04 (4) (intro.) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA.

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

23 SECTION 3. 71.04 (4) (a) of the statutes is created to read:

24 71.04 (4) (a) For taxable years beginning before January 1, 2001, an  
25 apportionment fraction composed of a sales factor under sub. (7) representing 50%

1 of the fraction, a property factor under sub. (5) representing 25% of the fraction and  
2 a payroll factor under sub. (6) representing 25% of the fraction.

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

4 71.04 (4) (b) For taxable years beginning after December 31, 2000, and before  
5 January 1, 2002, an apportionment fraction composed of a sales factor under sub. (7)  
6 representing 63% of the fraction, a property factor under sub. (5) representing 18.5%  
7 of the fraction and a payroll factor under sub. (6) representing 18.5% of the fraction.

8 **SECTION 5.** 71.04 (4) (c) of the statutes is created to read:

9 71.04 (4) (c) For taxable years beginning after December 31, 2001, and before  
10 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (7)  
11 representing 85% of the fraction, a property factor under sub. (5) representing 7.5%  
12 of the fraction and a payroll factor under sub. (6) representing 7.5% of the fraction.

13 **SECTION 6.** 71.04 (4) (d) of the statutes is created to read:

14 71.04 (4) (d) For taxable years beginning after December 31, 2002, an  
15 apportionment fraction composed of the sales factor under sub. (7).

16 **SECTION 7.** 71.04 (4) (e) of the statutes is created to read:

17 71.04 (4) (e) For taxable years beginning after December 31, 2000, and before  
18 January 1, 2003, the apportionment fraction for the remaining net income of a  
19 financial institution shall be determined by emergency rule by the department under  
20 s. 227.24 (1). For taxable years beginning after December 31, 2002, the  
21 apportionment fraction for the remaining net income of a financial institution shall  
22 be a receipts factor as determined by rule by the department.

23 **SECTION 8.** 71.04 (5) (intro.) of the statutes is amended to read:

24 71.04 (5) **PROPERTY FACTOR.** (intro.) For purposes of sub. (4) and for taxable  
25 years beginning before January 1, 2000:

1           **SECTION 9.** 71.04 (6) (intro.) of the statutes is amended to read:

2           71.04 (6) **PAYROLL FACTOR.** (intro.) For purposes of sub. (4) and for taxable years  
3 beginning before January 1, 2003:

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

5           71.04 (7) (d) Sales, other than sales of tangible personal property, are in this  
6 state if the income-producing activity is performed in this state. If the  
7 income-producing activity is performed both in and outside this state the sales shall  
8 be divided between those states having jurisdiction to tax such business in  
9 proportion to the direct costs of performance incurred in each such state in rendering  
10 this service. Services performed in states which do not have jurisdiction to tax the  
11 business shall be deemed to have been performed in the state to which compensation  
12 is allocated by ~~& (6), 1997 stats.~~ 5. 71.04

13           **SECTION 11.** 71.04 (7) (dm) of the statutes is created to read:

14           71.04 (7) (dm) For a pipeline company operating in and outside this state, the  
15 numerator of the sales factor shall include the number of **traffic** units in this state  
16 during the taxable year and the denominator of the sales factor shall include the total  
17 number of traffic units <sup>everywhere</sup> during the taxable year.

18           **SECTION 12.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and  
19 amended to read:

20           71.04 (8) (b) 1. "Public utility", as used in this section, means any business  
21 entity which owns or operates any plant, equipment, property, franchise, or license  
22 for the transmission of communications or the production, transmission, sale,  
23 delivery, or furnishing of electricity, water or steam, the rates of charges for goods or  
24 services of which have been established or approved by a federal, state or local

1 government or governmental agency.) This subdivision does not apply to taxable  
2 years beginning after December 31, 2000.

3 2. "Public utility" <sup>In this section, *public*</sup> also means any business entity providing service to the public  
4 and engaged in the transportation of goods and persons for hire, as defined in s.  
5 194.01 (4), regardless of whether or not the entity's rates or charges for services have  
6 been established or approved by a federal, state or local government or governmental  
7 agency.

8 SECTION 13. 71.04 (10) of the statutes is amended to read:

9 71.04 (10) DEPARTMENT MAY ~~WAIVE~~FACTOR. Where, <sup>in</sup> in the case of any nonresident  
10 individual or nonresident estate or trust engaged in business <sup>outside</sup> within and without the  
11 state <sup>this</sup> of Wisconsin and required to apportion its income as provided in this section,  
12 it shall be shown to the satisfaction of the department of revenue that the use of any  
13 one of the 3 factors provided under sub. (4) gives an unreasonable or inequitable final  
14 average ratio because of the fact that such nonresident individual or nonresident  
15 estate or trust does not employ, to any appreciable extent in its trade or business in  
16 producing the income taxed, the factors made use of in obtaining such ratio, this  
17 factor may, with the approval of the department of revenue, be omitted in obtaining  
18 the final average ratio which is to be applied to the remaining net income. This  
19 subsection does not apply to taxable years beginning after December 31, 2002.

20 → SEC. #. CR; 71.22 (10m)  
71.22 (10m) "Traffic unit" means <sup>the</sup> transportation <sup>of</sup> for <sup>one</sup> mile a barrel of oil, <sup>one</sup> gallon  
21 of gasoline or 1,000 cubic feet of natural or casinghead gas.

22 SECTION 14. 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and  
23 amended to read:

24 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA .

25 (intro.) Corporations engaged in business within and without the state shall be taxed

1 only on such income as is derived from business transacted and property located  
 2 within the state. The amount of such income attributable to Wisconsin may be  
 3 determined by an allocation and separate accounting thereof, when the business of  
 4 such corporation within the state is not an integral part of a unitary business, but  
 5 the department of revenue may permit an allocation and separate accounting in any  
 6 case in which it is satisfied that the use of such method will properly reflect the  
 7 income taxable by this state. In all cases in which allocation and separate accounting  
 8 is not permissible, the determination shall be made in the following manner: for all  
 9 businesses except financial organizations, public utilities, railroads, sleeping car  
 10 companies, car line companies and corporations or associations that are subject to  
 11 a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted  
 12 from the total net income of the taxpayer the part thereof (less related expenses, if  
 13 any) that follows the situs of the property or the residence of the recipient. The  
 14 remaining net income shall be apportioned to TAT; this state by use of ~~an~~  
 15 ~~apportionment fraction composed of a sales factor under sub. (9) representing 50%~~  
 16 ~~of the fraction, a property factor under sub. (7) representing 25% of the fraction and~~  
 17 ~~a payroll factor under sub. (8) representing 25% of the fraction.~~ the following:

18 **SECTION 15.** 71.25 (6) (a) of the statutes is created to read:

19 71.25 (6) (a) For taxable years beginning before January 1, 2001, an  
 20 appportionment fraction composed of a sales factor under sub. (9) representing 50%  
 21 of the fraction, a property factor under sub. (7) representing 25% of the fraction and  
 22 a payroll factor under sub. (8) representing 25% of the fraction.

23 **SECTION 16.** 71.25 (6) (b) of the statutes is created to read:

24 71.25 (6) (b) For taxable years beginning after December 31, 2000, and before  
 25 January 1, 2002, an appportionment fraction composed of a sales factor under sub. (9)

1 representing 63% of the fraction, a property factor under sub. (8) representing 18.5%  
 2 of the fraction and a payroll factor under sub. (6) representing 18.5% of the fraction.

3 SECTION 17. 71.25 (6) (c) of the statutes is created to read:

4 71.25 (6) (c) For taxable years beginning after December 31, 2001, and before  
 5 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (1) 9  
 6 representing 85% of the fraction, a property factor under sub. (5) 7 representing 7.5%  
 7 of the fraction and a payroll factor under sub. (6) 8 representing 7.5% of the fraction.

8 SECTION 18. 71.25 (6) (d) of the statutes is created to read:

9 71.25 (6) (d) For taxable years beginning after December 31, 2002, an  
 10 apportionment fraction composed of the sales factor under sub. (1) 9

11 SECTION 19. 71.25 (6) (e) of the statutes is created to read:

12 71.25 (6) (e) For taxable years beginning after December 31, 2000, and before  
 13 January 1, 2003, the apportionment fraction for the remaining net income of a  
 14 financial institution shall be determined by emergency rule by the department under  
 15 s. 227.24 (1). For taxable years beginning after December 31, 2002, the  
 16 apportionment fraction for the remaining net income of a financial institution shall  
 17 be a receipts factor as determined by rule by the department.

18 SECTION 20. 71.25 (7) (intro.) of the statutes is amended to read:

19 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (5) and for taxable  
 20 years beginning before January 1, 2003:

21 SECTION 21. 71.25 (8) (intro.) of the statutes is amended to read:

22 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. (5) and for taxable years  
 23 beginning before January 1, 2003:

24 SECTION 22. 71.25 (9) (d) of the statutes is amended to read:

1 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this  
 2 state if the income-producing activity is performed in this state. If the  
 3 income-producing activity is performed both in and outside this state the sales shall  
 4 be divided between those states having jurisdiction to tax such business in  
 5 proportion to the direct costs of performance incurred in each such state in rendering  
 6 this service. Services performed in states which do not have jurisdiction to tax the  
 7 business shall be deemed to have been performed in the state to which compensation  
 8 is allocated by ~~sub. (8), 1997 stats.~~ s. 71.25

9 SECTION 23. 71.25 (9) (dm) of the statutes is created to read:

10 71.25 (9) (dm) For a pipeline company operating in and outside this state, the  
 11 numerator of the sales factor shall include the number of traffic units in this state  
 12 during the taxable year and the denominator of the sales factor shall include the total  
 13 number of traffic units <sup>everywhere</sup> during the taxable year.

14 SECTION 24. 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and  
 15 amended to read:

16 71.25 (10) (b) 1. In this section, "public utility" means any business entity  
 17 which owns or operates any plant, equipment, property, franchise, or license for the  
 18 transmission of communications or the production, transmission, sale, delivery, or  
 19 furnishing of electricity, water or steam the rates of charges for goods or services of  
 20 which have been established or approved by a federal, state or local government or  
 21 governmental agency. This subdivision does not annly to taxable years beginning  
 22 after December 31, 2000. In this section, "public

23 2. "Public utility" also means any business entity providing service to the public  
 -24 and engaged in the transportation of goods and persons for hire, as defined in s.  
 25 194.01 (4), regardless of whether or not the entity's rates or charges for services have



1 been established or approved by a federal, state or local government or governmental  
2 agency.

3 **SECTION 25.** 71.25 (11) of the statutes is amended to read:

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

14 **SECTION 26.** 71.28 (4) (a) of the statutes is amended to read:

15 71.28 (4) (a) Credit. Any corporation may credit against taxes otherwise due  
16 under this chapter an amount equal to 5% of the amount obtained by subtracting  
17 from the corporation's qualified research expenses, as defined in section 41 of the  
18 ~~internal revenue code~~ Internal Revenue Code, except that "qualified research  
19 expenses" includes only expenses incurred by the claimant, incurred for research  
20 conducted in this state for the taxable year, except that a taxpayer may elect the  
21 alternative computation under section 41 (c) (4) of the Internal Revenue Code and  
22 that election applies until the department permits its revocation and except that  
23 "qualified research expenses" does not include compensation used in computing the  
24 credit under subs. (ldj) and (ldx), the corporation's base amount, as defined in  
25 section 41 (c) of the ~~internal revenue code~~ Internal Revenue Code, except that gross

1 receipts used in calculating the base amount means gross receipts from sales  
2 attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and, (d) Section~~ i o n  
3 41 (h) of the ~~internal revenue code~~ Internal Revenue Code does not apply to the credit  
4 under this paragraph.

5 SECTION 27. 71.45 (3) (intro.) of the statutes is amended to read:

6 71.45 (3) APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in par. (c)  
7 to determine Wisconsin income for purposes of the franchise tax, domestic insurers  
8 ~~not engaged in the sale of life insurance but which that~~, in the taxable year, have  
9 collected received premiums, other than life insurance premiums, written on  
10 ~~subjects of~~ for insurance on property or risks resident, located or to be performed  
11 outside this state & here shall ~~be subtracted from~~ multiply the net income figure  
12 derived by application of sub. (2) (a) ~~to arrive at Wisconsin income constituting the~~

*sub. (3d)*

13  
14 \_\_\_\_\_ by the arithmetic average of the following percentages: ,

15 SECTION 1751. 71.45 (3) (a) of the statutes is amended to read:

16 71.45 (3) (a) ~~The Subject to par. (c)~~ The percentage determined by dividing the  
17 sum of total ~~direct~~ of ~~premiums written on all property and risks for insurance other~~  
18 than life insurance, on subjects of insurance resident, located or to be performed in  
19 this state. and assumed premiums written for reinsurance. other than life insurance,  
20 with respect to all property and risks resident, located or to be performed in this  
21 state, by the sum of direct premiums written for insurance on all property and risks,  
22 other than life insurance, wherever located during the taxable year, as reflects, and  
23 assumed premiums written on insurance for reinsurance on all property and risks,  
24 other than life insurance, where the subject of insurance was resident, located or to  
25 be performed outside this state wherever located. In this paragraph, "direct

*plan*

*sub. (3d)*

1 premiums” means direct premiums as reported for the taxable year on an annual  
2 statement that is filed by the insurer with the commissioner of insurance. In this  
3 paragraph, “assumed premiums” means assumed reinsurance premiums from  
4 domestic insurance companies as reported for the taxable year on an annual  
5 statement that is filed with the commissioner of insurance.

6 SECTION 28. 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and  
7 amended to read:

8 71.45 (3) (b) 1. ~~The Subject to~~ <sup>xy</sup> the percentage of determined by dividing  
9 the payroll, exclusive of life insurance payroll, paid in this state in the taxable year  
10 by total payroll, exclusive of life insurance payroll, paid everywhere in the taxable  
11 year as reflects such compensation paid outside this state.

12 2. Compensation <sup>Under subd. 1, compensation</sup> is paid outside in this state if the individual's service is  
13 performed entirely outside in this state; or the individual's service is performed both  
14 within and without in and outside this state, but the service performed within  
15 outside this state is incidental to the individual's service without in this state; or  
16 some service is performed without in this state and the base of operations, or if there  
17 is no base of operations, the place from which the service is directed or controlled is  
18 without in this state, or the base of operations or the place from which the service is  
19 directed or controlled is not in any state in which some part of the service is  
20 performed, but the individual's residence is outside in this state.

21 SECTION 29. 71.45 (3) <sup>d</sup> ~~of~~ of the statutes is created to read:

22 71.45 (3) <sup>d</sup> ~~(a)~~ <sup>(a)</sup> For taxable years beginning after December 31, 2000, and before  
23 January 1, 2002, a domestic insurer <sup>(c)</sup> that is subject to apportionment under this  
24 sub&ion shall multiply the net income figure derived by the application of sub. (2)  
25 by an apportionment fraction composed of the percentage under <sup>(a)</sup> representing

sub. (3) and  
x  
sub. (3)

1 63% of the ~~average of the~~ fraction and the percentage under ~~part~~ (b) 1 representing  
2 37% of the fraction. sub. (3)

3 ~~By~~ (b) For taxable years beginning after December 31, 2001, and before January  
4 1, 2003, a domestic insurer that is subject to apportionment under ~~this subsection~~ sub. (3) and  
5 shall multiply the net income figure derived by the application of sub. (2) by an  
6 apportionment fraction composed of the percentage under ~~part~~ (a) sub. (3) representing 85%

7 of the ~~average of the~~ fraction and the percentage under ~~part~~ (b) 1 representing 15%  
8 of the fraction. sub. (3) 1.

9 ~~By~~ (c) For taxable years beginning after December 31, 2002, a domestic insurer  
10 that is subject to apportionment under ~~this subsection~~ sub. (3) and shall multiply the net income  
11 figure derived by ~~the~~ application of sub. (2) by the percentage under ~~part~~ (a). sub. (3)

12 SECTION 30. 71.45 (3m) of the statutes is amended to read:

13 71.45 (3m) ARITHMETIC AVERAGE. The Except as provided in sub. (3) ~~of~~, the  
14 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the  
15 net income figure arrived at by the successive application of sub. (2) (a) and (b) with  
16 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have  
17 collected received premiums, other than life insurance premiums. written upon for  
18 insurance, other than life insurance, where the subject of such insurance was on  
19 property or risks resident, located or to be performed outside this state, to arrive at  
20 Wisconsin income constituting the measure of the franchise tax.

21 SECTION 31. 71.47 (4) (a) of the statutes is amended to read:

22 71.47 (4) (a) Credit. Any corporation may credit against taxes otherwise due  
23 under this chapter an amount equal to 5% of the amount obtained by subtracting  
24 from the corporation's qualified research expenses, as defined in section 41 of the  
25 ~~internal revenue code~~ Internal Revenue Code, except that "qualified research

1 expenses” includes only expenses incurred by the claimant, incurred for research  
 2 conducted in this state for the taxable year, except that a taxpayer may elect the  
 3 alternative computation under section 41 (c) (4) of the Internal Revenue Code and  
 4 that election applies until the department permits its revocation and except that  
 5 “qualified research expenses” does not include compensation used in computing the  
 6 credit under subs. (ldj) and (1dx), the corporation’s base amount, as defined in  
 7 section 41 (c) of the ~~internal revenue code~~ Internal Revenue Code, except that gross  
 8 receipts used in calculating the base amount means gross receipts from sales  
 9 attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and~~, (d) ~~and~~ (dm). Section  
 10 41 (h) of the ~~internal revenue code~~ Internal Revenue Code does not apply to the credit  
 11 under this paragraph.

12 **SECTION 32. Nonstatutory provisions.**

13 (1) INCOME APPORTIONMENT FOR FINANCIAL ~~ORGANIZATIONS~~ <sup>plan</sup> ~~INSTITUTIONS~~ RULES.

14 (a) The department of revenue shall submit in proposed form rules related to  
 15 the apportionment of the income of financial-s <sup>organizations</sup> under sections 71.04 (4) ~~and~~ (e)  
 16 and 71.25 (6) (e) of the statutes, as <sup>created</sup> ~~affected~~ by this act, to the legislative council staff  
 17 under section 227.15 (1) of the statutes no later than the first day of the 4th month  
 18 beginning after the effective date of this paragraph.

19 (b) Using the procedure under section 227.24 of the statutes, the department  
 20 of revenue may promulgate rules related to the apportionment of the income of  
 21 financial ~~institutions~~ <sup>organizations</sup> under sections 71.04 (4) ~~and~~ (e)  
 22 ~~affected~~ <sup>created</sup> by this act, for the period before the effective date of the rules submitted  
 23 under paragraph (a), but not to exceed the period authorized under section 227.24  
 24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3)  
 25 of the statutes, the department is not required to provide evidence that promulgating

1 a rule under this paragraph as an emergency rule is necessary for the preservation  
2 of the public peace, health, safety or welfare and is not required to provide a finding  
3 of emergency for a rule promulgated under this paragraph.

4 **SECTION 33. Initial applicability.**

5 (1) APPORTIONMENT FACTORS. This act first applies to taxable years beginning  
6 after December 31, 1999.

7 (END)

Joe - Please redraft LRB 4123/1  
for Rep M. Lehman with the highlighted  
changes made on the pages marked with  
a paperclip, plus add Section  
17 and 40 from LRB 4091/3.

Thanks.

Bill Ford  
266-0680

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**1999 BILL**

Gov/Rev

1 **AN ACT** to renumber and amend 71.04 (4), 71.04 (8) (b), 71.25 (6), 71.25 (10) (b)  
2 and 71.45 (3) (b); **to amend** 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04 (7) (d),  
3 71.04 (lo), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d), 71.25 (ll), 71.28 (4)  
4 \ (a), 71.45 (3) (intro.), 71.45 (3) (a), 71.45 (3m) and 71.47 (4) (a); and to **create**  
5 71.01 (12m), 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4) (e),  
6 71.04 (7) (dm), 71.22 (10m), 71.25 (6) (a), 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d),  
7 71.25 (6) (e), 71.25 (9) (dm) and 71.45 (3d) of the statutes; **relating to:** single  
8 sales factor apportionment of income for corporate income tax and franchise tax  
9 purposes and granting rule-making authority.

---

***Analysis by the Legislative Reference Bureau***

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a 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. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

**BILL**

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. The property and payroll factors will be decreased, and eventually phased out, over the next three years as the sales factor is increased and becomes the only factor. Beginning on January 1, 2003, the premium factor will be the only factor used to attribute a portion of an insurance company's income to this state. The payroll factor will be decreased, and eventually phased out, over the next three years as the premium factor is increased and becomes the only factor.

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.** 7 1 .01 (12m) of the statutes is created to read:

2           71.01 (12m) "Traffic unit" means the transportation, for one mile, of a barrel  
3 of oil, a gallon of gasoline or 1,000 cubic feet of natural or casinghead gas.

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

6           71.04 (4) ~~NONRESIDENT ALLOCATION AND APPOINTMENT FORMULA.~~ (intro.)  
7 ~~Nonresident individuals and nonresident estates and trusts~~ engaged in business  
8 within and without the state shall be taxed only on such income as is derived from  
9 business transacted and property located within the state. The amount of such  
10 income attributable to Wisconsin may be determined by an allocation and separate  
11 accounting thereof, when the business of such nonresident individual or nonresident  
12 estate or trust within the state is not an integral part of a unitary business, but the  
13 department of revenue may permit an allocation and separate accounting in any case  
14 in which it is satisfied that the use of such method will properly reflect the income  
15 taxable by this state. In all cases in which allocation and separate accounting is not  
16 permissible, the determination shall be made in the following manner: for all  
17 businesses except financial organizations, public utilities, railroads, sleeping car

**BILL**

1 companies and car line companies there shall first be deducted from the total net  
 2 income of the taxpayer the part thereof (less related expenses, if any) that follows the  
 3 situs of the property or the residence of the recipient. The remaining net income shall  
 4 be apportioned to ~~Wisconsin~~ this state by use of ~~an apportionment fraction composed~~  
 5 ~~of a sales factor representing 50% of the fraction, a property factor representing 25%~~  
 6 ~~of the fraction and a payroll factor representing 25% of the fraction.~~ the following:

7 SECTION 3. 7 1.04 (4) (a) of the statutes is created to read:

8 ~~71.04 (4) (a) For taxable years beginning before January 1, 2001,~~ <sup>2002</sup> an  
 9 apportionment fraction composed of a sales factor under sub. (7) representing ~~50%~~  
 10 of the fraction, a property factor under sub. (5) representing ~~25%~~ 25% of the fraction and  
 11 a payroll factor under sub. (6) representing ~~25%~~ 25% of the fraction.

12 SECTION 4. 7 1.04 (4) (b) of the statutes is created to read:

13 ~~71.04 (4) (b) For taxable years beginning after December 31, 2000, and before~~  
 14 ~~January 1, 2002,~~ <sup>2001</sup> an apportionment fraction composed of a sales factor under sub. (7)  
 15 representing ~~63%~~ 63% of the fraction, a property factor under sub. (5) representing ~~18.5%~~  
 16 of the fraction and a payroll factor under sub. (6) representing ~~18.5%~~ 18.5% of the fraction.

17 SECTION 5. 7 1.04 (4) (c) of the statutes is created to read:

18 ~~71.04 (4) (c) For taxable years beginning after December 31, 2001, and before~~ <sup>2002</sup>  
 19 ~~January 1, 2003,~~ <sup>Dec 31</sup> an apportionment fraction composed of a sales factor under sub. (7)  
 20 representing ~~85%~~ 85% of the fraction, a property factor under sub. (5) representing ~~+~~ %  
 21 of the fraction and a payroll factor under sub. (6) representing ~~7.5%~~ 7.5% of the fraction.

22 SECTION 6. 7 1.04 (4) (d) of the statutes is created to read:

23 ~~71.04 (4) (d) For taxable years beginning after December 31, 2002,~~ <sup>2003</sup> an  
 24 apportionment fraction composed of the ~~sales factor~~ sales factor under sub. (7).

25 SECTION 7. 7 1.04 (4) (e) of the statutes is created to read:

*[Handwritten scribbles and a large vertical line on the left margin]*

**BILL**

1           7 1.04 (4) (e) For taxable years beginning after December 31, 2000, and before  
 2 January 1, 2003, the apportionment fraction for the remaining net income of a  
 3 financial institution shall be determined by ~~the department~~ <sup>receipts reported by</sup> the department ~~under~~  
 4 ~~s. 71.04 (4) (e)~~. For taxable years beginning after December 31, 2002, the  
 5 apportionment fraction for the remaining net income of a financial institution shall  
 6 be a receipts factor as determined by rule by the department. *Organization*

7           **SECTION 8.** 7 1.04 (5) (intro.) of the statutes is amended to read:

8           71.04 (5) **PROPERTY FACTOR.** (intro.) For purposes of sub. (4) and for taxable  
 9 years beginning before January 1, 2003:

10          **SECTION 9.** 7 1.04 (6) (intro.) of the statutes is amended to read:

11          71.04 (6) **PAYROLL FACTOR.** (intro.) For purposes of sub. (4) and for taxable years  
 12 beginning before January 1, 2003:

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

14          71.04 (7) (d) Sales, other than sales of tangible personal property, are in this  
 15 state if the income-producing activity is performed in this state. If the  
 16 income-producing activity is performed both in and outside this state the sales shall  
 17 be divided between those states having jurisdiction to tax such business in  
 18 proportion to the direct costs of performance incurred in each such state in rendering  
 19 this service. Services performed in states which do not have jurisdiction to tax the  
 20 business shall be deemed to have been performed in the state to which compensation  
 21 is allocated by ~~sub. s. 71.04 (6), 1997 stats.~~

22          **SECTION 11.** 71.04 (7) (dm) of the statutes is created to read:

23          7 1.04 (7) (dm) For a pipeline company operating in and outside this state, the  
 24 numerator of the sales factor shall include the number of traffic units in this state

*Pipeline Co*

**BILL**

1 during the taxable year and the denominator of the sales factor shall include the total  
2 number of traffic units everywhere during the taxable year.

3 **SECTION 12.** ~~71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1.~~ and  
4 amended to read: *For taxable years prior to January 1, 2001,*

5 71.04 (8) (b) ~~1.~~ "Public utility", as used in this section, means any business  
6 entity which owns or operates any plant, equipment, property, franchise, or license  
7 for the transmission of communications or the production, transmission, sale,  
8 delivery, or furnishing of electricity, water or steam, the rates of charges for goods or  
9 services of which have been established or approved by a federal, state or local  
10 government or governmental agency. ~~"Public utility" does not apply to~~  
11 ~~taxable years beginning after December 31, 2000.~~

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12 2. In this section. "public utility" also means any business entity providing  
13 service to the public and engaged in the transportation of goods and persons for hire,  
14 as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges  
15 for services have been established or approved by a federal, state or local government  
16 or governmental agency.

17 **SECTION 13.** 7 1.04 (10) of the statutes is amended to read:

18 7 1.04 (10) **DEPARTMENT MAY WAIVE FACTOR.** Where, in the case of any nonresident  
19 individual or nonresident estate or trust engaged in business ~~within in~~ and ~~without~~  
20 ~~the outside this~~ state of Wisconsin and required to apportion its income as provided  
21 in this section, it shall be shown to the satisfaction of the department of revenue that  
22 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or  
23 inequitable final average ratio because of the fact that such nonresident individual  
24 or nonresident estate or trust does not employ, to any appreciable extent in its trade  
25 or business in producing the income taxed, the factors made use of in obtaining such

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**BILL****SECTION 13**

1 ratio, this factor may, with the approval of the department of revenue, be omitted in  
 2 obtaining the final average ratio which is to be applied to the remaining net income.

3 This subsection does not apply to taxable years beginning after December 31, 2002.

4 **SECTION 14. 71.22 (10m)** of the statutes is created to read:  
 5

6 **7 1.22 (10m)** "Traffic unit" means the transportation, for one mile, of a barrel  
 7 of oil, one gallon of gasoline or 1,000 cubic feet of natural or casinghead gas.

8 **SECTION 15. 71.25 (6)** of the statutes is renumbered 71.25 (6) (intro.) and  
 9 amended to read:

10 **7 1.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.**  
 11 (intro.) Corporations engaged in business within and without the state shall be taxed  
 12 only on such income as is derived from business transacted and property located  
 13 within the state. The amount of such income attributable to Wisconsin may be  
 14 determined by an allocation and separate accounting thereof, when the business of  
 15 such corporation within the state is not an integral part of a unitary business, but  
 16 the department of revenue may permit an allocation and separate accounting in any  
 17 case in which it is satisfied that the use of such method will properly reflect the  
 18 income taxable by this state. In all cases in which allocation and separate accounting  
 19 is not permissible, the determination shall be made in the following manner: for all  
 20 businesses except financial organizations, public utilities, railroads, sleeping car  
 21 companies, car line companies and corporations or associations that are subject to  
 22 a tax on unrelated business income under s. 7 1.26 (1) (a) there shall first be deducted  
 23 from the total net income of the taxpayer the part thereof (less related expenses, if  
 24 any) that follows the situs of the property or the residence of the recipient. The  
 25 remaining net income shall be apportioned to ~~Wisconsin~~ this state by use of an  
~~apportionment fraction composed of a sales factor under sub. (9) representing 50%~~

## BILL

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 16. 71.25 (6) (a) of the statutes is created to read: ~~25%~~

4 7 1.25 (6) (a) For taxable years beginning before January 1, ~~2001~~, 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 17. 71.25 (6) (b) of the statutes is created to read:

9 71.25 (6) (b) For taxable years beginning after December 31, ~~2000~~, and before  
10 January 1, ~~2002~~, an apportionment fraction composed of a sales factor under sub. (9)  
11 representing 63% of the fraction, a property factor under sub. (7) representing 18.5%  
12 of the fraction and a payroll factor under sub. (8) representing 18.5% of the fraction.

13 SECTION 18. 71.25 (6) (c) of the statutes is created to read:

14 7 1.25 (6) (c) For taxable years beginning after December 31, ~~2001~~, and before  
15 January 1, ~~2003~~, an apportionment fraction composed of a sales factor under sub. (9)  
16 representing 85% of the fraction, a property factor under sub. (7) representing 7.5%  
17 of the fraction and a payroll factor under sub. (8) representing 7.5% of the fraction.

18 SECTION 19. 71.25 (6) (d) of the statutes is created to read:

19 71.25 (6) (d) For taxable years beginning after December 31, ~~2002~~, an  
20 apportionment fraction composed of the sales factor under sub. (9).

21 SECTION 20. 71.25 (6) (e) of the statutes is created to read:

22 7 1.25 (6) (e) For taxable years beginning after December 31, ~~2002~~, and before  
23 January 1, 2003, the apportionment fraction for the remaining net income of a  
24 financial institution shall be determined by emergency rule by the department under  
25 s. ~~227.24~~ (1). For taxable years beginning after December 31, 2002, the

**BILL**

1 apportionment fraction for the remaining net income of a financial institution shall  
2 be a receipts factor as determined by rule by the department.

3 **SECTION 21.** 71.25 (7) (intro.) of the statutes is amended to read:

4 71.25 (7) **PROPERTY FACTOR.** (intro.) For purposes of sub. (5) and for taxable  
5 years beginning before January 1, ~~2008~~<sup>2004</sup>.

6 **SECTION 22.** 71.25 (8) (intro.) of the statutes is amended to read:

7 71.25 (8) **PAYROLL FACTOR.** (intro.) For purposes of sub. (5) and for taxable years  
8 beginning before January 1, ~~2008~~.

9 **SECTION 23.** 71.25 (9) (d) of the statutes is amended to read:

10 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this  
11 state if the income-producing activity is performed in this state. If the  
12 income-producing activity is performed both in and outside this state the sales shall  
13 be divided between those states having jurisdiction to tax such business in  
14 proportion to the direct costs of performance incurred in each such state in rendering  
15 this service. Services performed in states which do not have jurisdiction to tax the  
16 business shall be deemed to have been performed in the state to which compensation  
17 is allocated by ~~sub. s. 71.25 (8), 1997 stats.~~

18 **SECTION 24.** 71.25 (9) (dm) of the statutes is created to read:

19 7 1.25 (9) (dm) For a pipeline company operating in and outside this state, the  
20 numerator of the sales factor shall include the number of traffic units in this state  
21 during the taxable year and the denominator of the sales factor shall include the total  
22 number of traffic units everywhere during the taxable year.

23 **SECTION 25.** 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and  
24 amended to read:



**BILL**

*Amended by statute prior to January 1, 2001*

1           71.25 (10) (b) 1. In this section, "public utility" means any business entity  
2 which owns or operates any plant, equipment, property, franchise, or license for the  
3 transmission of communications or the production, transmission, sale, delivery, or  
4 furnishing of electricity, water or steam the rates of charges for goods or services of  
5 which have been established or approved by a federal, state or local government or  
6 governmental agency. Public This subdivision does not apply to taxable years  
7 beginning after December 31, 2000.

8           2. In this section, "public utility" also means any business entity providing  
9 service to the public and engaged in the transportation of goods and persons for hire,  
10 as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges  
11 for services have been established or approved by a federal, state or local government  
12 or governmental agency.

13           **SECTION 26.** 71.25 (11) of the statutes is amended to read:

14           7 1.25 **(11)** DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation  
15 engaged in business ~~within in and without the~~ outside this state of Wisconsin and  
16 required to apportion its income as provided in sub. (6), it shall be shown to the  
17 satisfaction of the department of revenue that the use of any one of the 3 factors  
18 provided in sub. (6) gives an unreasonable or inequitable final average ratio because  
19 of the fact that such corporation does not employ, to any appreciable extent in its  
20 trade or business in producing the income taxed, the factors made use of in obtaining  
21 such ratio, this factor may, with the approval of the department of revenue, be  
22 omitted in obtaining the final average ratio which is to be applied to the remaining  
23 net income. This subsection does not apply to taxable years beginning: after  
December 31, 2002.

*Corpsent 24*

25           **SECTION 27.** 71.28 (4) (a) of the statutes is amended to read:

## BILL

1           7 1.28 (4) (a) **Credit.** Any corporation may credit against taxes otherwise due  
 2 under this chapter an amount equal to 5% of the amount obtained by subtracting  
 3 from the corporation's qualified research expenses, as defined in section 41 of the  
 4 ~~internal revenue code~~ Internal Revenue Code, except that "qualified research  
 5 expenses" includes only expenses incurred by the claimant, incurred for research  
 6 conducted in this state for the taxable year, except that a taxpayer may elect the  
 7 alternative computation under section 41 (c) (4) of the Internal Revenue Code and  
 8 that election applies until the department permits its revocation and except that  
 9 "qualified research expenses" does not include compensation used in computing the  
 10 credit under subs. (ldj) and (ldx), the corporation's base amount, as defined in  
 11 section 41 (c) of the ~~internal revenue code~~ Internal Revenue Code, except that gross  
 12 receipts used in calculating the base amount means gross receipts from sales  
 13 attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and~~, (d) ~~and~~ (dm). Section  
 14 41 (h) of the ~~internal revenue code~~ Internal Revenue Code does not apply to the credit  
 15 under this paragraph.

16           **SECTION 28.** 71.45 (3) (intro.) of the statutes is amended to read:

17           7 1.45 (3) **APPORTIONMENT.** (intro.) ~~With respect~~ Except as provided in sub. (3d),  
 18 to determine Wisconsin income for purposes of the franchise tax, domestic insurers  
 19 ~~not engaged in the sale of life insurance but which that,~~ in the taxable year, have  
 20 ~~collected~~ received premiums, other than life insurance premiums, written ~~on~~  
 21 ~~subjects of~~ for insurance on property or risks resident, located or to be performed  
 22 outside this state & here shall be ~~subtracted from~~ multiply the net income figure  
 23 derived by application of sub. (2) (a) ~~to arrive at~~ ~~Wisconsin income constituting the~~  
 24 ~~measure of the franchise tax~~ an amount calculated by multiplying such adjusted  
 25 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:

**BILL**

*Premium  
insured  
to  
compensation  
payroll  
cost*

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SECTION 1751. 71.45 (3) (a) of the statutes is amended to read:

71.45 (3) (a) The Subject to sub. (3d), the percentage of total determined by dividing the sum of direct premiums written on all property and risks for insurance other than life insurance, on subjects of insurance resident, located or to be performed in this state, and assumed premiums written for reinsurance, other than life insurance, with respect to all property and risks resident, located or to be performed in this state, by the sum of direct premiums written for insurance on all property and risks, other than life insurance, wherever located during the taxable year, as reflects, and assumed premiums written on insurance for reinsurance on all property and risks, other than life insurance, where the subject of insurance was resident, located or to be performed outside this state wherever located. In this paragraph, "direct premiums" means direct premiums as reported for the taxable year on an annual statement that is filed by the insurer with the commissioner of insurance. In this paragraph, "assumed premiums" means assumed reinsurance premiums from domestic insurance companies as reported for the taxable year on an annual statement that is filed with the commissioner of insurance.

SECTION 29. 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and amended to read:

71.45 (3) (b) 1. The Subject to sub. (3d), the percentage of determined by dividing the payroll, exclusive of life insurance payroll, paid in this state in the taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in the taxable year as reflects such compensation paid outside this state. Compensation.

2. Under subd. 1., compensation is paid outside in this state if the individual's service is performed entirely outside in this state; or the individual's service is

## BILL

## SECTION 29

1 performed both ~~within and without~~ in and outside this state, but the service  
2 performed ~~within~~ outside this state is incidental to the individual's service ~~without~~  
3 in this state; or some service is performed ~~without~~ in this state and the base of  
4 operations, or if there is no base of operations, the place from which the service is  
5 \*directed or controlled is ~~without~~ in this state, or the base of operations or the place  
6 from which the service is directed or controlled is not in any state in which some part  
7 of the service is performed, but the individual's residence is ~~outside~~ in this state.

8 SECTION 30. 7 1.45 (3d) of the statutes is created to read:

9 71.45 (3d) **PHASE IN; DOMESTIC INSURERS.** (a) For taxable years beginning after  
10 December 31, ~~2000~~, and before January 1, ~~2002~~, a domestic insurer that is subject  
11 to apportionment under sub. (3) and this subsection shall multiply the net income  
12 figure derived by the application of sub. (2) by an apportionment fraction composed  
13 of the percentage under sub. (3) (a) representing 63% of the fraction and the  
14 percentage under sub. (3) (b) 1. representing 37% of the fraction.

15 (b) For taxable years beginning after December 31, ~~2001~~, and before January  
16 1, ~~2003~~, a domestic insurer that is subject to apportionment under sub. (3) and this  
17 subsection shall multiply the net income figure derived by the application of sub. (2)  
18 by an apportionment fraction composed of the percentage under sub. (3) (a)  
19 representing 85% of the fraction and the percentage under sub. (3) (b) 1. representing  
20 15% of the fraction.

21 (c) For taxable years beginning after December 31, ~~2002~~, a domestic insurer  
22 that is subject to apportionment under sub. (3) and this subsection shall multiply the  
23 net income figure derived by the application of sub. (2) by the percentage under sub.  
24 (3) (a).

25 SECTION 31. 71.45 (3m) of the statutes is amended to read:

**BILL**

1           71.45 **(3m) ARITHMETIC AVERAGE.** ~~The~~ Except as provided in sub. (3d), the  
2 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the  
3 net income figure arrived at by the successive application of sub. (2) (a) and (b) with  
4 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have  
5 ~~collected~~ received premiums, ~~other than life insurance premiums,~~ written ~~upon~~ for  
6 insurance, ~~other than life insurance, where the subject of such insurance was~~ on  
7 property or risks resident, located or to be performed outside this state, to arrive at  
8 Wisconsin income constituting the measure of the franchise tax.

9           **SECTION 32.7 1.47 (4) (a)** of the statutes is amended to read:

10           71.47 **(4) (a) Credit.** Any corporation may credit against taxes otherwise due  
11 under this chapter an amount equal to 5% of the amount obtained by subtracting  
12 from the corporation's qualified research expenses, as defined in section 41 of the  
13 ~~internal revenue code~~ Internal Revenue Code, except that "qualified research  
14 expenses" includes only expenses incurred by the claimant, incurred for research  
15 conducted in this state for the taxable year, except that a taxpayer may elect the  
16 alternative computation under section 41 (c) (4) of the Internal Revenue Code and  
17 that election applies until the department permits its revocation and except that  
18 "qualified research expenses" does not include compensation used in computing the  
19 credit under subs. (ldj) and (ldx), the corporation's base amount, as defined in  
20 section 4 1 (c) of the ~~internal revenue code~~ Internal Revenue Code, except that gross  
21 receipts used in calculating the base amount means gross receipts from sales  
22 attributable to Wisconsin under s. 7 1.25 (9) (b) 1. and 2. ~~and~~, (d) ~~and~~ (dm). Section  
23 4 1 (h) of the ~~internal revenue code~~ Internal Revenue Code does not apply to the credit  
24 under this paragraph.

25           **SECTION 33. Nonstatutory provisions.**

**BILL**

1 (1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES.

2 (a) The department of revenue shall submit in proposed form rules related to  
3 the apportionment of the income of financial organizations under sections 7 1.04 (4)  
4 (e) and 7 1.25 (6) (e) of the statutes, as created by this act, to the legislative council  
5 staff under section 227.15 (1) of the statutes no later than the first day of the 4th  
6 month beginning after the effective date of this paragraph.

7 (b) Using the procedure under section 227.24 of the statutes, the department  
8 of revenue may promulgate rules related to the apportionment of the income of  
9 financial organizations under sections 7 1.04 (4) (e) and 7 1.25 (6) (e) of the statutes,  
10 as created by this act, for the period before the effective date of the rules submitted  
11 under paragraph (a), but not to exceed the period authorized under section 227.24  
12 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3)  
13 of the statutes, the department is not required to provide evidence that promulgating  
14 a rule under this paragraph as an emergency rule is necessary for the preservation  
15 of the public peace, health, safety or welfare and is not required to provide a finding  
16 of emergency for a rule promulgated under this paragraph.

17 **SECTION 34. Initial applicability.**

18 (1) APPORTIONMENT FACTORS. This act first applies to taxable years beginning  
19 after December 31, 1999.

20 (END)

*[Handwritten signature]*

1999



**1999 BILL**

*in 1-18-2000*

*SOON*

*re gen*

1 **AN ACT to renumber and amend** 71.04 (4), 71.04 (8) (b), 71.25 (6), 71.25 (10) (b)  
2 and 71.45 (3) (b); **to amend** 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04 (7) (d),  
3 71.04 (10), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d), 71.25 (ll), 71.28 (4)  
4 (a), 71.45 (3) (intro.), 71.45 (3) (a), 71.45 (3m) and 71.47 (4) (a); and **to create**  
5 71.01 (12m), 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4) (e),  
6 71.04 (7) (dm), 71.22 (10m), 71.25 (6) (a), 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d),  
7 71.25 (6) (e), 71.25 (9) (dm) and 71.45 (3d) of the statutes; **relating to:** single  
8 sales factor apportionment of income for corporate income tax and franchise tax  
9 purposes and granting rule-making authority.

**Analysis by the Legislative Reference Bureau**

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a 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. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

**BILL**

→ Under this bill, beginning on January 1, ~~2003~~<sup>2004</sup>, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. The property and payroll factors will be decreased, and eventually phased out, over the next ~~three~~<sup>four</sup> years as the sales factor is increased and becomes the only factor. Beginning on January 1, ~~2003~~<sup>2004</sup>, the premium factor will be the only factor used to attribute a portion of an insurance company's income to this state. The payroll factor will be decreased, and eventually phased out, over the next ~~three~~<sup>four</sup> years as the premium factor is increased and becomes the only factor.

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.** 71.01 (12m) of the statutes is created to read:

2           71.01 (12m) "Traffic unit" means the transportation, for one mile, of a barrel  
3 of oil, a gallon of gasoline or 1,000 cubic feet of natural or casinghead gas.

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

6           71.04 (4) **NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA.** (intro.)

7 Nonresident individuals and nonresident estates and trusts engaged in business  
8 within and without the state shall be taxed only on such income as is derived from  
9 business transacted and property located within the state. The amount of such  
10 income attributable to Wisconsin may be determined by an allocation and separate  
11 accounting thereof, when the business of such nonresident individual or nonresident  
12 estate or trust within the state is not an integral part of a unitary business, but the  
13 department of revenue may permit an allocation and separate accounting in any case  
14 in which it is satisfied that the use of such method will properly reflect the income  
15 taxable by this state. In all cases in which allocation and separate accounting is not  
16 permissible, the determination shall be made in the following manner: for all  
17 businesses except financial organizations, public utilities, railroads, sleeping car



## BILL

1 companies and car line companies there shall first be deducted from the total net  
2 income of the taxpayer the part thereof (less related expenses, if any) that follows the  
3 situs of the property or the residence of the recipient. The remaining net income shall  
4 be apportioned ~~to Wisconsin~~ this state by use of &  
5 of a sales factor representing 50% of the fraction, a property factor representing 25%  
6 of the fraction and a payroll factor representing 25% of the fraction. the following:

7 SECTION 3. 71.04 (4) (a) of the statutes is created to read: 2002

8 71.04 (4) (a) For taxable years beginning before January 1, ~~2001~~, an  
9 apportionment fraction composed of a sales factor under sub. (7) representing 50%  
10 of the fraction, a property factor under sub. (5) representing 25% of the fraction and  
11 a payroll factor under sub. (6) representing 25% of the fraction.

12 SECTION 4. 71.04 (4) (b) of the statutes is created to read: 2001

13 71.04 (4) (b) For taxable years beginning after December 31, ~~2000~~, and before  
14 January 1, ~~2002~~/<sup>2003</sup>, an apportionment fraction composed of a sales factor under sub. (7)  
15 representing 63% of the fraction, a property factor under sub. (5) representing 18.5%  
16 of the fraction and a payroll factor under sub. (6) representing 18.5% of the fraction.

17 SECTION 5. 71.04 (4) (c) of the statutes is created to read: 2002

18 71.04 (4) (c) For taxable years beginning after December 31, ~~2001~~/<sup>2004</sup>, and before  
19 January 1, ~~2003~~, an apportionment fraction composed of a sales factor under sub. (7)  
20 representing 85% of the fraction, a property factor under sub. (5) representing 7.5%  
21 of the fraction and a payroll factor under sub. (6) representing 7.5% of the fraction.

22 SECTION 6. 71.04 (4) (d) of the statutes is created to read: 2003

23 71.04 (4) (d) For taxable years beginning after December 31, ~~2002~~, an  
24 apportionment fraction composed of the sales factor under sub. (7).

25 SECTION 7. 71.04 (4) (e) of the statutes is created to read:

**BILL**

1 71.04 (4) (e) For taxable years beginning after December 31, ~~2000~~, and before  
 2 January 1, 2003, the apportionment fraction for the remaining net income of a  
 3 financial institution shall be determined by emergency rule by the department under  
 4 s. ~~227.24~~ (1). For taxable years beginning after December 31, ~~2002~~, the  
 5 apportionment fraction for the remaining net income of a financial institution shall  
 6 be ~~a receipts factor as~~ determined by rule by the department. *organization*

SECTION 8. 71.04 (5) (intro.) of the statutes is amended to read:

7 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable  
 8 years beginning before January 1, ~~2003~~: 2004

SECTION 9. 71.04 (6) (intro.) of the statutes is amended to read:

9 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years  
 10 beginning before January 1, ~~2003~~: 2004

SECTION 10. 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 allocated by ~~sub. s. 71.04 (6), 1997 stats.~~

SECTION 11. 71.04 (7) (dm) of the statutes is created to read:

19 71.04 (7) (dm) For a pipeline company operating in and outside this state, the  
 20 numerator of the sales factor shall include the number of traffic units in this state  
 21

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5-2

**BILL**

1 during the taxable year and the denominator of the sales factor shall include the total  
2 number of traffic units everywhere during the taxable year.

3 **SECTION 12.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and  
4 amended to read:

*For taxable years beginning before  
January 1, 2001, "public"*

5 71.04 (8) (b) 1. "Public utility", as used in this section, means any business  
6 entity which owns or operates any plant, equipment, property, franchise, or license  
7 for the transmission of communications or the production, transmission, sale,  
8 delivery, or furnishing of electricity, water or steam, the rates of charges for goods or  
9 services of which have been established or approved by a federal, state or local  
10 government or governmental agency. ~~"Public This subdivision does not apply to  
11 taxable years beginning after December 31, 2000."~~

12 2. In this section. "public utility" also means any business entity providing  
13 service to the public and engaged in the transportation of goods and persons for hire,  
14 as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges  
15 for services have been established or approved by a federal, state or local government  
16 or governmental agency.

17 **SECTION 13.** 71.04 (10) of the statutes is amended to read:

18 7 1.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident  
19 individual or nonresident estate or trust engaged in business ~~within in~~ and ~~without~~  
20 ~~the outside this~~ state of Wisconsin and required to apportion its income as provided  
21 in this section, it shall be shown to the satisfaction of the department of revenue that  
22 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or  
23 inequitable final average ratio because of the fact that such nonresident individual  
24 or nonresident estate or trust does not employ, to any appreciable extent in its trade  
25 or business in producing the income taxed, the factors made use of in obtaining such

**BILL**

1 ratio, this factor may, with the approval of the department of revenue, be omitted in  
2 obtaining the final average ratio which is to be applied to the remaining net income. <sup>2007</sup>

3 This subsection does not apply to [REDACTED] ing after December 31, 2002.

4 SECTION 14. 71.22 (10m) of the statutes is created to read:

5 71.22 (10m) "Traffic unit" means the transportation, for one mile, of a barrel  
6 of oil, one gallon of gasoline or 1,000 cubic feet of natural or casinghead gas.

7 SECTION 15. 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and  
8 amended to read:

9 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA .

10 (intro.) Corporations engaged in business within and without the state shall be taxed  
11 only on such income as is derived from business transacted and property located  
12 within the state. The amount of such income attributable to Wisconsin may be  
13 determined by an allocation and separate accounting thereof, when the business of  
14 such corporation within the state is not an integral part of a unitary business, but  
15 the department of revenue may permit an allocation and separate accounting in any  
16 case in which it is satisfied that the use of such method will properly reflect the  
17 income taxable by this state. In all cases in which allocation and separate accounting  
18 is not permissible, the determination shall be made in the following manner: for all  
19 businesses except financial organizations, public utilities, railroads, sleeping car  
20 companies, car line companies and corporations or associations that are subject to  
21 a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted  
22 from the total net income of the taxpayer the part thereof (less related expenses, if  
23 any) that follows the situs of the property or the residence of the recipient. The  
24 remaining net income shall be apportioned to ~~Wisconsin~~ this state by use of an  
25 ~~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 16.** 71.25 (6) (a) of the statutes is created to read:

4 71.25 (6) (a) For taxable years beginning before January 1, ~~2001~~<sup>2002</sup>, 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 17.** 71.25 (6) (b) of the statutes is created to read:

9 71.25 (6) (b) For taxable years beginning after December 31, ~~2000~~<sup>2001</sup>, and before  
10 January 1, ~~2002~~<sup>2003</sup>, an apportionment fraction composed of a sales factor under sub. (9)  
11 representing 63% of the fraction, a property factor under sub. (7) representing 18.5%  
12 of the fraction and a payroll factor under sub. (8) representing 18.5% of the fraction.

13 **SECTION 18.** 71.25 (6) (c) of the statutes is created to read:

14 71.25 (6) (c) For taxable years beginning after December 31, ~~2001~~<sup>2002</sup>, and before  
15 January 1, ~~2003~~<sup>2004</sup>, an apportionment fraction composed of a sales factor under sub. (9)  
16 representing 85% of the fraction, a property factor under sub. (7) representing 7.5%  
17 of the fraction and a payroll factor under sub. (8) representing 7.5% of the fraction.

18 **SECTION 19.** 71.25 (6) (d) of the statutes is created to read:

19 71.25 (6) (d) For taxable years beginning after December 31, ~~2002~~<sup>2003</sup>, an  
20 apportionment fraction composed of the sales factor under sub. (9).

21 **SECTION 20.** 71.25 (6) (e) of the statutes is created to read:

22 71.25 (6) (e) For taxable years beginning after December 31, ~~2000~~<sup>2001</sup>, and before  
23 January 1, 2003, the apportionment fraction for the remaining net income of a  
24 financial institution shall be determined by emergency rule by the department under  
25 s. 227.24 (1). For taxable years beginning after December 31, ~~2002~~<sup>2003</sup>, the

**BILL**

*organization*

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2

apportionment fraction for the remaining net income of a financial institution shall  
be ~~receipts factor~~ determined by rule by the department.

3 **SECTION 21.** 71.25 (7) (intro.) of the statutes is amended to read:

4 **71.25 (7) PROPERTY FACTOR.** (intro.) For purposes of sub. (5) and for taxable  
5 years beginning before January 1, 2003: 2004

6 **SECTION 22.** 71.25 (8) (intro.) of the statutes is amended to **read:**

7 **71.25 (8) PAYROLL FACTOR.** (intro.) For purposes of sub. (5) and for taxable years  
8 beginning before January 1, 2003: 2004

9 **SECTION 23.** 71.25 (9) (d) of the statutes is amended to read:

10 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this  
11 state if the income-producing activity is performed in this state. If the  
12 income-producing activity is performed both in and outside this state the sales shall  
13 be divided between those states having jurisdiction to tax such business in  
14 proportion to the direct costs of performance incurred in each such state in rendering  
15 this service. Services performed in states which do not have jurisdiction to tax the  
16 business shall be deemed to have been performed in the state to which compensation  
17 is allocated by ~~sub. s. 71.25 (8), 1997 stats.~~

18 **SECTION 24.** 71.25 (9) (dm) of the statutes is created to read:

19 71.25 (9) (dm) For a pipeline company operating in and outside this state, the  
20 numerator of the sales factor shall include the number of traffic units in this state  
21 during the taxable year and the denominator of the sales factor shall include the total  
22 number of traffic units everywhere during the taxable year.

22

23 **SECTION 25.** 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and  
24 amended to read:

*INSERT 8-22* ✓

**BILL**

*For taxable years beginning before January 1, 2001*

1

71.25 (10) (b) 1. In this section, "public utility" means any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications or the production, transmission, sale, delivery, or furnishing of electricity, water or steam the rates of charges for goods or services of which have been established or approved by a federal, state or local government or governmental agency. ~~"Public This subdivision does not apply to taxable years~~

6

7

~~beginning after December 31, 2000.~~

8

2. In this section. "public utility" also means any business entity providing service to the public and engaged in the transportation of goods and persons for hire, as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges for services have been established or approved by a federal, state or local government or governmental agency.

13

**SECTION 26.** 71.25 (11) of the statutes is amended to read:

14

71.25 (11) **DEPARTMENT MAY WAIVE FACTOR.** Where, in the case of any corporation engaged in business ~~within in~~ and ~~without the~~ outside this state of Wisconsin and required to apportion its income as provided in sub. (6), it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided in sub. (6) gives an unreasonable or inequitable final average ratio because of the fact that such corporation does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income. This subsection does not apply to taxable years beginning after December 31, 2002. 2003

25'

**SECTION 27.** 71.28 (4) (a) of the statutes is amended to read:

**BILL****SECTION 27**

1           **71.28 (4) (a) Credit.** Any corporation may credit against taxes otherwise due  
 2 under this chapter an amount equal to 5% of the amount obtained by subtracting  
 3 from the corporation's qualified research expenses, as defined in section 41 of the  
 4 ~~internal revenue code~~ Internal Revenue Code, except that "qualified research  
 5 expenses" includes only expenses incurred by the claimant, incurred for research  
 6 conducted in this state for the taxable year, except that a taxpayer may elect the  
 7 alternative computation under section 41 (c) (4) of the Internal Revenue Code and  
 8 that election applies until the department permits its revocation and except that  
 9 "qualified research expenses" does not include compensation used in computing the  
 10 credit under subs. (ldj) and (ldx), the corporation's base amount, as defined in  
 11 section 41 (c) of the ~~internal revenue code~~ Internal Revenue Code, except that gross  
 12 receipts used in calculating the base amount means gross receipts from sales  
 13 attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and, (d) Section~~ ~~intro.~~  
 14 41 (h) of the ~~internal revenue code~~ Internal Revenue Code does not apply to the credit  
 15 under this paragraph.

16           **SECTION 28.** 71.45 (3) (intro.) of the statutes is amended to read:

17           **71.45 (3) APPORTIONMENT.** (intro.) ~~With respect~~ ~~Except as provided in sub. (3d),~~  
 18 to determine Wisconsin income for purposes of the franchise tax, domestic insurers  
 19 ~~not engaged in the sale of life insurance but which~~ ~~that~~, in the taxable year, have  
 20 ~~collected~~ received premiums, other than life insurance premiums, written ~~on~~  
 21 ~~subjects of~~ for insurance on property or risks resident, located or to be performed  
 22 outside this state & here shall ~~be subtracted from~~ multiply the net income figure  
 23 ~~derived by application of sub. (2) / a \~~  
 24 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~  
 25 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:



**BILL**

1           **SECTION 1751. 71.45 (3)** (a) of the statutes is amended to read:

2           71.45 (3) (a) The Subject to sub. (3d), the percentage of total determined by  
3 dividing the sum of direct premiums written on all property and risks for insurance  
4 other than life insurance, on subjects of insurance resident, located or to be  
5 performed in this state, and assumed premiums written for reinsurance, other than  
6 life insurance, with respect to all property and risks resident, located or to be  
7 performed in this state, by the sum of direct premiums written for insurance on all  
8 property and risks, other than life insurance, wherever located during the taxable  
9 year, as reflects, and assumed premiums written on insurance for reinsurance on all  
10 property and risks, other than life insurance, where the subject of insurance was  
11 resident, located or to be performed outside this state wherever located. In this  
12 paragraph, "direct premiums" means direct premiums as reported for the taxable  
13 year on an annual statement that is filed by the insurer with the commissioner of  
14 insurance. In this paragraph, "assumed premiums" means assumed reinsurance  
15 premiums from domestic insurance companies as reported for the taxable year on an  
16 annual statement that is filed with the commissioner of insurance.

17           **SECTION 29. 71.45 (3) (b)** of the statutes is renumbered 71.45 (3) (b) 1. and  
18 amended to read:

19           71.45 (3) (b) 1. The Subject to sub. (3d), the percentage of determined by  
20 dividing the payroll, exclusive of life insurance payroll, paid in this state in the  
21 taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in  
22 the taxable year as reflects such compensation paid outside this state,  
23 Compensation,

24           2. Under subd. 1., compensation is paid outside in this state if the individual's  
25 service is performed entirely outside in this state; or the individual's service is

**BILL**

1 performed both ~~within and without~~ in and outside this state, but the service  
 2 performed ~~within~~ outside this state is incidental to the individual's service ~~without~~  
 3 in this state; or some service is performed ~~without~~ in this state and the base of  
 4 operations, or if there is no base of operations, the place from which the service is  
 5 directed or controlled is ~~without~~ in this state, or the base of operations or the place  
 6 from which the service is directed or controlled is not in any state in which some part  
 7 of the service is performed, but the individual's residence is ~~outside~~ in this state.

8 **SECTION 30.** 71.45 (3d) of the statutes is created to read:

9 71.45 **(3d) PHASE IN; DOMESTIC INSURERS.** (a) For taxable years beginning after  
 10 December 31, ~~2000~~<sup>2001</sup>, and before January 1, ~~2002~~<sup>2003</sup>, a domestic insurer that is subject  
 11 to apportionment under sub. (3) and this subsection shall multiply the net income  
 12 figure derived by the application of sub. (2) by an apportionment fraction composed  
 13 of the percentage under sub. (3) (a) representing 63% of the fraction and the  
 14 percentage under sub. (3) (b) 1. representing 37% of the fraction.

15 (b) For taxable years beginning after December 31, ~~2001~~<sup>2002</sup>, and before January  
 16 1, ~~2003~~<sup>2004</sup>, a domestic insurer that is subject to apportionment under sub. (3) and this  
 17 subsection shall multiply the net income figure derived by the application of sub. (2)  
 18 by an apportionment fraction composed of the percentage under sub. (3) (a)  
 19 representing 85% of the fraction and the percentage under sub. (3) (b) 1. representing  
 20 15% of the fraction.

21 (c) For taxable years beginning after December 31, ~~2002~~<sup>2003</sup>, a domestic insurer  
 22 that is subject to apportionment under sub. (3) and this subsection shall multiply the  
 23 net income figure derived by the application of sub. (2) by the percentage under sub.  
 24 (3) (a).

25 **SECTION 31.** 71.45 (3m) of the statutes is amended to read:

**BILL**

1           **71.45 (3m)** ARITHMETIC AVERAGE. The ~~Except as provided in sub. (3d), the~~  
2 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the  
3 net income figure arrived at by the successive application of sub. (2) (a) and (b) with  
4 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have  
5 ~~collected~~ received premiums, other than life insurance premiums, written ~~upon~~ for  
6 ~~insurance, other than life insurance, where the subject of such insurance was on~~  
7 ~~property or risks~~ resident, located or to be performed outside this state, to arrive at  
8 Wisconsin income constituting the measure of the franchise tax.

9           **SECTION 32.** 71.47 (4) (a) of the statutes is amended to read:

10           **71.47 (4)** (a) *Credit.* Any corporation may credit against taxes otherwise due  
11 under this chapter an amount equal to 5% of the amount obtained by subtracting  
12 from the corporation's qualified research expenses, as defined in section 41 of the  
13 ~~internal revenue code~~ Internal Revenue Code, except that "qualified research  
14 expenses" includes only expenses incurred by the claimant, incurred for research  
15 conducted in this state for the taxable year, except that a taxpayer may elect the  
16 alternative computation under section 41 (c) (4) of the Internal Revenue Code and  
17 that election applies until the department permits its revocation and except that  
18 "qualified research expenses" does not include compensation used in computing the  
19 credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in  
20 **section** 41 (c) of the ~~internal revenue code~~ Internal Revenue Code, except that gross  
21 receipts used in calculating the base amount means gross receipts from sales  
22 attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and, (d) and (dm).~~ Section  
23 41 (h) of the ~~internal revenue code~~ Internal Revenue Code does not apply to the credit  
24 under this paragraph.

25           **SECTION 33. Nonstatutory provisions.**

**BILL****(1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. 1)**

~~(a)~~ The department of revenue shall submit in proposed form rules related to the apportionment of the income of financial organizations under sections 71.04 (4) (e) and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 4th month beginning after the effective date of this ~~paragraph~~ <sup>subsection</sup>.

~~(b) Using the procedure under section 227.24 of the statutes, the department of revenue may promulgate rules related to the apportionment of the income of financial organizations under sections 71.04 (4) (e) and 71.25 (6) (e) of the statutes, as created by this act, for the period before the effective date of the rules submitted under paragraph (a), but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.~~

**SECTION 34. Initial applicability.**

**(1) APPORTIONMENT FACTORS.** This act first applies to taxable years beginning after December 31, 1999.

**(END)**

BILL

INSERT  
5-2

1           71.04 (7) (dt) 1. For taxable years beginning after June 30, 2000, the gross  
2 receipts from radio and television broadcasting, including advertising revenue, are  
3 attributed to this state in proportion to the audience in this state as compared to the  
4 total audience.

5           2. For taxable years beginning after June 30, 2000, the gross receipts from  
6 newspapers and magazines, including advertising revenue, are attributed to this  
7 state in proportion to the circulation in this state as compared to the total circulation.

8           **SECTION 17.** 71.04 (7) (dw) of the statutes is created to read:

9           71.04 (7) (dw) 1. Except as provided in subds. 2. and 3., if a person doing  
10 business in this state and outside this state owns a business that is subject to  
11 apportionment under sub. (4) or s. 71.25 (6) and a business that is subject to  
12 apportionment under sub. (8), the person shall apportion income as provided under  
13 sub. (4) or s. 71.25 (6).

14           2. A person who has filed a tax return and who has reported income on the  
15 return as apportioned under subd. 1. may request permission from the department  
16 to use an alternative apportionment method in the next taxable year, if the person  
17 receives at least 50% of the person's total gross receipts in a taxable year from a  
18 business described under sub. (8) (c). If the department grants permission to a  
19 person to use an alternative apportionment method under this subdivision, the  
20 person may not use the alternative method, and shall apportion income under subd.  
21 1., if the person receives less than 50% of the person's total gross receipts in a taxable  
22 year from a business described under sub. (8) (c).

23           3. The department may require that a person who is subject to apportionment  
24 under this section use an alternative apportionment method to accurately reflect  
25 income that is attributable to this state.

**BILL**

INSERT 8-22

1 communications network are attributed to this state in proportion to the number of  
2 events held in this state in which the taxpayer's team is a participant and that are  
3 related to the contract compared to the total number of events in which the  
4 taxpayer's team is a participant and that are related to the contract.

5 **SECTION 39.** 71.25 (9) (dt) of the statutes is created to read:

6 71.25 (9) (dt) 1. For taxable years beginning after June 30, 2000, the gross  
7 receipts from radio and television broadcasting, including advertising revenue, are  
8 attributed to this state in proportion to the audience in this state as compared to the  
9 total audience.

10 2. For taxable years beginning after June 30, 2000, the gross receipts from  
11 newspapers and magazines, including advertising revenue, are attributed to this  
12 state in proportion to the circulation in this state as compared to the total circulation.

13 **SECTION 40.** 71.25 (9) (dw) of the statutes is created to read:

14 71.25 (9) (dw) 1. Except as provided in subds. 2. and 3., if a person doing  
15 business in this state and outside this state 'owns a business that is subject to  
16 apportionment under sub. (6) or s. 71.04 (4) and a business that is subject to  
17 apportionment under sub. (10), the person shall apportion income as provided under  
18 sub. (6) or s. 71.04 (4).

19 2. A person who has filed a tax return and who has reported income on the  
20 return as apportioned under subd. 1. may request permission from the department  
21 to use an alternative apportionment method in the next taxable year, if the person  
22 receives at least 50% of the person's total gross receipts in a taxable year from a  
23 business described under sub. (10) (c). If the department grants permission to a  
24 person to use an alternative apportionment method under this subdivision, the  
25 person may not use the alternative method, and shall apportion income under subd.

INSERT  
8-22

7

**BILL**

1 l., if the person receives less than 50% of the person's total gross receipts in a taxable  
2 year from, a business described under sub. (IO) (c).

3 3. The department may require that a person who is subject to apportionment  
4 under this section use an alternative apportionment method to accurately reflect  
5 income that is attributable to this state. *END OF INSERT 8-22*

~~6 **SECTION 41.** 71.25 (9) (e) (title) of the statutes is repealed.~~

~~7 **SECTION 42.** 71.25 (9) (f) (title) of the statutes is repealed.~~

~~8 **SECTION 43.** 71.25 (9d) of the statutes is created to read:~~

~~9 **71.25 (9d) FINANCIAL ORGANIZATIONS.** (a) *Definitions.* In this subsection:~~

~~10 1. "Billing address" means the address to which a taxpayer under this  
11 subsection sends a notice, statement or bill to the taxpayer's customer.~~

~~12 2. "Credit card" includes a debit card and a travel and entertainment card.~~

~~13 3. "Credit card reimbursement fee" means the fee that a taxpayer receives from  
14 a merchant's bank because a person to whom the taxpayer has issued a credit card  
15 has paid for merchandise or services sold by the merchant with the credit card.~~

~~16 4. "Financial organization" means a bank; a savings bank; a bank holding  
17 company; a savings and loan association; a trust company; a credit union, except a  
18 credit union that is exempt from taxes under s. 71.26 (1) (a); a production credit  
19 association; or an agency or branch of a foreign depository; whether chartered under  
20 the laws of this state, another state or territory, the laws of the United States or the  
21 laws of a foreign country. "Financial organization" includes a corporation that  
22 derives at least 50% of its total gross income from finance leases, including direct  
23 finance leases and leverage leases as defined by rule, and a corporation that derives  
24 at least 50% of its total gross income from an activity that a financial organization  
25 performs, except that "financial organization" does not include an insurance~~

## Kreye, Joseph

---

**From:** Ourada, Thomas D  
**Sent:** Thursday, January 27, 2000 1:20 PM  
**To:** Nowlan, Andrew; Ford, William; Kreye, Joseph  
**Subject:** FW: LRB 412312 -- Single Sales Apportionment

**Importance:** High

Gentlemen attached are changes to the draft reflecting discussions with Carol Held. Thanks.

-----Original Message-----

**From:** Held, Carol L  
**Sent:** Thursday, January 27, 2000 12:41 PM  
**To:** Ourada, Thomas D  
**Subject:** LRB 4123/2 -- Single Sales Apportionment  
**Importance:** High

Here are the proposed changes.



LRB41232.doc





# State of Wisconsin • DEPARTMENT OF REVENUE

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PHONE (608) 266-5464 • FAX (608) 261-6240 • <http://www.dor.state.wi.us>

Date: January 27, 2000  
To: Tom Ourada  
From: Carol Held  
Subject: Changes to LRB 4123/2 -- Single Sales Factor

Based on our conversation, the following changes should be made to the draft:

1. Exclude interstate pipeline companies from the corporations that will be going to the single sales factor. They will continue to apportion their income as provided in sec. Tax 2.48. (It appears that pipeline companies were excluded from the definition of "public utility" in 1987 Act 27.)
  - ✓ a. Delete bill Section 1, which creates sec. 71.01(12m).
  - ✓ b. Delete bill Section 11, which creates sec. 71.04(7)(dm).
  - ✓ c. Delete bill Section 15, which creates sec. 71.22(10m).
  - ✓ d. Delete bill Section 25, which creates sec. 71.22(9)(dm).
  - ✓ e. Delete bill Section 29, which amends sec. 71.28(4)(a).
  - ✓ f. Delete bill section 34, which amends sec. 71.47(4)(a).
  - ✓ g. Amend secs. 71.04(4) and 71.25(6) to include a reference to interstate pipeline companies.
  - ✓ h. Amend secs. 71.04(8)(c) and 71.25(10)(c) to include a reference to interstate pipeline companies.
  - ✓ i. Check any other sections that refer to railroads to see if they should include a reference to interstate pipeline companies.
2. Exclude interstate air carriers from the corporations that will be going to the single sales factor. They will continue to apportion their income as provided in sec. Tax 2.46. (It appears that air carriers were excluded from the definition of "public utility" in 1987 Act 27.)
  - ✓ a. Amend secs. 71.04(4) and 71.25(6) to include a reference to interstate air carriers.
  - ✓ b. Amend secs. 71.04(8)(c) and 71.25(10)(c) to include a reference to interstate air carriers.
  - ✓ c. Check any other sections that refer to railroads to see if they should include a reference to interstate air carriers.
3. Exclude the provisions relating to the apportionment of income of diversified businesses.
  - ✓ a. Delete bill Section 12, which creates sec. 71.04(7)(dw).
  - ✓ b. Delete bill Section 26, which creates sec. 71.25(9)(dw).
4. Clarify the treatment of financial organizations.

- ✓ a. Revise bill Section 7, which creates sec. 71.04(4)(e), to read:

For taxable years beginning after December 31, 2001, and before January 1, 2004, the apportionment fraction for the remaining net income of a financial institution shall include a receipts factor that represents more than 50% of the fraction as determined by rule by the department. For taxable years beginning after December 31, 2003, the apportionment fraction for the remaining net income of a financial institution shall be a receipts factor as determined by rule by the department.

- i b. Make a similar change to bill Section 21, which creates sec. 71.25(6)(e).

5. Change the effective dates.

- ✓ a. Change the date in bill Section 13, which amends sec. 71.04(8)(b)1., from January 1, 2001, to January 1, 2002.
- ✓ b. Change the date in bill Section 27, which amends sec. 71.25(10)(b)1., from January 1, 2001, to January 1, 2002.
- ✓ c. Change the date in bill Section 36, initial applicability, from December 31, 1999, to December 31, 2001.

6. Clarify the treatment of public utilities.

- ✓ a. In bill Sections 13 and 27, would it be possible to repeat the language from subd. 2. in subd. 1. and then add at the beginning of subd. 2. the words "For taxable years beginning on or after January 1, 2002, "public utility" ~~also~~ means . . .



## 1999 BILL

ms 1-27-2000

SOON

re gen

1 **AN ACT to renumber and amend** 71.04 (4), 71.04 (8) (b), 71.25 (6), 71.25 (10) (b)  
2 and 71.45 (3) (b); **to amend** 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04 (7) (d),  
3 71.04 (lo), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d), 71.25 (ll), 71.28 (4)  
4 (a), 71.45 (3) (intro.), 71.45 (3) (a), 71.45 (3m) and 71.47 (4) (a); and **to create**  
5 71.01 (12m), 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4) (e),  
6 71.04 (7) (dm), 71.04 (7) (dw), 71.22 (10m), 71.25 (6) (a), 71.25 (6) (b), 71.25 (6)  
7 (c), 71.25 (6) (d), 71.25 (6) (e), 71.25 (9) (dm), 71.25 (9) (dw) and 71.45 (3d) of the  
8 statutes; **relating to:** single sales factor apportionment of income for corporate  
9 income tax and franchise tax purposes and granting rule-making authority.

---

### ***Analysis by the Legislative Reference Bureau***

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a 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. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

**BILL**

Under this bill, beginning on January 1, 2004, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. The property and payroll factors will be decreased, and eventually phased out, over the next four years as the sales factor is increased and becomes the only factor. Beginning on January 1, 2004, the premium factor will be the only factor used to attribute a portion of an insurance company's income to this state. The payroll factor will be decreased, and eventually phased out, over the next four years as the premium factor is increased and becomes the only factor.

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:**

~~SECTION 1. 71.01 (12m) of the statutes is created to read:~~

~~71.01 (12m) "Traffic unit" means the transportation, for one mile, of a barrel of oil, a gallon of gasoline or 1,000 cubic feet of natural or casinghead gas.~~

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

71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)

Nonresident individuals and nonresident estates and trusts engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such nonresident individual or nonresident estate or trust within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all

businesses except financial organizations, public utilities, railroads, sleeping car

air carriers.

pipeline companies,

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## BILL

1 companies and car line companies there shall first be deducted from the total net  
2 income of the taxpayer the part thereof (less related expenses, if any) that follows the  
3 situs of the property or the residence of the recipient. The remaining net income shall  
4 be apportioned to ~~Wisconsin~~ this state by use of ~~an apportionment fraction composed~~  
5 ~~of a sales factor representing 50% of the fraction, a property factor representing 25%~~  
6 ~~of the fraction and a payroll factor representing 25% of the fraction.~~ the following:

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

8 71.04 (4) (a) For taxable years beginning before January 1, 2002, an  
9 apportionment fraction composed of a sales factor under sub. (7) representing 50%  
10 of the fraction, a property factor under sub. (5) representing 25% of the fraction and  
11 a payroll factor under sub. (6) representing 25% of the fraction.

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

13 71.04 (4) (b) For taxable years beginning after December 31, 2001, and before  
14 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (7)  
15 representing 63% of the fraction, a property factor under sub. (5) representing 18.5%  
16 of the fraction and a payroll factor under sub. (6) representing 18.5% of the fraction.

17 **SECTION 5.** 71.04 (4) (c) of the statutes is created to read:

18 71.04 (4) (c) For taxable years beginning after December 31, 2002, and before  
19 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (7)  
20 representing 85% of the fraction, a property factor under sub. (5) representing 7.5%  
21 of the fraction and a payroll factor under sub. (6) representing 7.5% of the fraction.

22 **SECTION 6.** 71.04 (4) (d) of the statutes is created to read:

23 71.04 (4) (d) For taxable years beginning after December 31, 2003, an  
24 apportionment fraction composed of the sales factor under sub. (7).

25 **SECTION 7.** 71.04 (4) (e) of the statutes is created to read:

**BILL**

INSERT 4-3

1 71.04 (4) (e) For taxable years beginning after December 31, 2001, the  
2 apportionment fraction for the remaining net income of a financial organization shall  
3 be determined by rule by the department.

4 **SECTION 8.** 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, 2004:

7 **SECTION 9.** 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, 2004:

10 **SECTION 10.** 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 allocated by ~~sub. s. 71.04 (6), 1997 stats.~~

19 ~~**SECTION 11.** 71.04 (7) (dm) of the statutes is created to read:~~

20 ~~71.04 (7) (dm) For a pipeline company operating in and outside this state, the~~  
21 ~~numerator of the sales factor shall include the number of traffic units in this state~~  
22 ~~during the taxable year and the denominator of the sales factor shall include the total~~  
23 ~~number of traffic units everywhere during the taxable year.~~

24 ~~**SECTION 12.** 71.04 (7) (dw) of the statutes is created to read:~~

BILL

1 ~~71.04 (7) (dw) 1. Except as provided in subds. 2 and 3., if a person doing~~  
 2 ~~business in this state and outside this state owns a business that is subject to~~  
 3 ~~apportionment under sub. (4) or s. 71.25 (6) and a business that is subject to~~  
 4 ~~apportionment under sub. (8), the person shall apportion income as provided under~~  
 5 ~~sub. (4) or s. 71.25 (6).~~

6 ~~2. A person who has filed a tax return and who has reported income on the~~  
 7 ~~return as apportioned under subd. 1. may request permission from the department~~  
 8 ~~to use an alternative apportionment method in the next taxable year, if the person~~  
 9 ~~receives at least 50% of the person's total gross receipts in a taxable year from a~~  
 10 ~~business described under sub. (8) (c). If the department grants permission to a~~  
 11 ~~person to use an alternative apportionment method under this subdivision, the~~  
 12 ~~person may not use the alternative method, and shall apportion income under subd.~~  
 13 ~~l., if the person receives less than 50% of the person's total gross receipts in a taxable~~  
 14 ~~year from a business described under sub. (8) (c).~~

15 ~~3. The department may require that a person who is subject to apportionment~~  
 16 ~~under this section use an alternative apportionment method to accurately reflect~~  
 17 ~~income that is attributable to this state.~~

18 SECTION 13. 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and  
 19 amended to read:

20 71.04 (8) (b) 1. ~~Public~~ For taxable years beginning before January 1, ~~2001~~  
 21 public utility, as used in this section, means any business entity o r  
 22 operates any plant, equipment, property, franchise, or license for the transmission  
 23 of communications or the production, transmission, sale, delivery, or furnishing of  
 24 electricity, water or steam, the rates of charges for goods or services of which have

2002

any business entity as described under subd. 2. and

**BILL**

**SECTION 13**

*for taxable years beginning after  
December 31, 2001;*

1 been established or approved by a federal, state or ~~local~~ government or governmental  
2 agency. "Public

3 2. In this section, "public utility" ~~also~~ means any business entity providing  
4 service to the public and engaged in the transportation of goods and persons for hire,  
5 as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges  
6 for services have been established or approved by a federal, state or local government  
7 or governmental agency.

**INSERT 6-7** ✓

8 **SECTION 14.** 71.04 (10) of the statutes ~~is~~ amended to read:

9 71.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident  
10 individual or nonresident estate or trust engaged in business ~~within in~~ and ~~without~~  
11 ~~the outside this~~ state of Wisconsin and required to apportion its income as provided  
12 in this section, it shall be shown to the satisfaction of the department of revenue that  
13 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or  
14 inequitable final average ratio because of the fact that such nonresident individual  
15 or nonresident estate or trust does not employ, to any appreciable extent in its trade  
16 or business in producing the income taxed, the factors made use of in obtaining such  
17 ratio, this factor may, with the approval of the department of revenue, be omitted in  
18 obtaining the final average ratio which is to be applied to the remaining net income.  
19 This subsection does not apply to taxable years beginning after December 31, 2003.

~~20 **SECTION 15.** 71.22 (10m) of the statutes is created to read:~~

~~21 71.22 (10m) "Traffic unit" means the transportation, for one mile, of a barrel  
22 of oil, one gallon of gasoline or 1,000 cubic feet of natural or casinghead gas.~~

23 **SECTION 16.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and  
24 amended to read:



**BILL****71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA .**

(intro.) Corporations engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such corporation within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all businesses except <sup>air carriers,</sup> financial organizations, <sup>pipeline companies,</sup> public utilities, railroads, sleeping car companies, car line companies and corporations or associations that are subject to a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted from the total net income of the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property or the residence of the recipient. The remaining net income shall be apportioned to ~~Wisconsin~~ this state by use of ~~an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.~~ the following:

**SECTION 17.** 71.25 (6) (a) of the statutes is created to read:

71.25 (6) (a) For taxable years beginning before January 1, 2002, an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.

**SECTION 18.** 71.25 (6) (b) of the statutes is created to read:

**BILL**

1           71.25 (6) (b) For taxable years beginning after December 31, 2001, and before  
2 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (9)  
3 representing 63% of the fraction, a property factor under sub. (7) representing 18.5%  
4 of the fraction and a payroll factor under sub. (8) representing 18.5% of the fraction.

5           **SECTION 19.** 71.25 (6) (c) of the statutes is created to read:

6           71.25 (6) (c) For taxable years beginning after December 31, 2002, and before  
7 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (9)  
8 representing 85% of the fraction, a property factor under sub. (7) representing 7.5%  
9 of the fraction and a payroll factor under sub. (8) representing 7.5% of the fraction.

10          **SECTION 20.** 71.25 (6) (d) of the statutes is created to read:

11          71.25 (6) (d) For taxable years beginning after December 31, 2003, an  
12 apportionment fraction composed of the sales factor under sub. (9).

13          **SECTION 21.** 71.25 (6) (e) of the statutes is created to read:

14          ~~71.25 (6) (e) For taxable years beginning after December 31, 2001, the~~  
15 ~~apportionment fraction for the remaining net income of a financial organization shall~~  
16 ~~be determined by rule by the department.~~

INSERT 8-16 ✓

17          **SECTION 22.** 71.25 (7) (intro.) of the statutes is amended to read:

18          71.25 (7) **PROPERTY FACTOR.** (intro.) For purposes of sub. (5) and for taxable  
19 years beginning before January 1, 2004:

20          **SECTION 23.** 71.25 (8) (intro.) of the statutes is amended to read:

21          71.25 (8) **PAYROLL FACTOR.** (intro.) For purposes of sub. (5) and for taxable years  
22 beginning before January 1, 2004:

23          **SECTION 24.** 71.25 (9) (d) of the statutes is amended to read:

24          **71.25 (9) (d)** Sales, other than sales of tangible personal property, are in this  
25 state if the income-producing activity is performed in this state. If the

**BILL**

1 income-producing activity is performed both in and outside this state the sales shall  
2 be divided between those states having jurisdiction to tax such business in  
3 proportion to the direct costs of performance incurred in each such state in rendering  
4 this service. Services performed in states which do not have jurisdiction to tax the  
5 business shall be deemed to have been performed in the state to which compensation  
6 is allocated by ~~sub. s. 71.25 (8), 1997 stats.~~

~~7 SECTION 25. 71.25 (9) (dm) of the statutes is created to read: --- - ---~~

~~8 71.25 (9) (dm) For a pipeline company operating in and outside this state, the  
9 numerator of the sales factor shall include the number of traffic units in this state  
10 during the taxable year and the denominator of the sales factor shall include the total  
11 number of traffic units everywhere during the t&k-year.~~

~~12 SECTION 26. 71.25 (9) (dw) of the statutes is created to read:~~

~~13 71.25 (9) (dw) 1. Except as provided in subds. 2. and 3., if a person doing  
14 business in this state and outside this state owns a business that is subject to  
15 apportionment under sub. (6) or s. 71.04 (4) and a business that is subject to  
16 apportionment under sub. (10), the person shall apportion income as provided under  
17 sub. (6) or s. 71.04 (4).~~

~~18 2. A person who has filed a tax return and who has reported income on the  
19 return as apportioned under subd. 1. may request permission from the department  
20 to use an alternative apportionment method in the next taxable year, if the person  
21 receives at least 50% of the person's total gross receipts in a taxable year from a  
22 business described under sub. (10) (c). If the department grants permission to a  
23 person to use an alternative apportionment method under this subdivision, the  
24 person may not use the alternative method, and shall apportion income under subd.~~

BILL

1 if the person receives less than 50% of the person's total gross receipts in a taxable  
2 year from a business described under sub. (10) (c).

3 3. The department may require that a person who is subject to apportionment  
4 under this section use an alternative apportionment method to accurately reflect  
5 income that is attributable to this state

6 SECTION 27. 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and  
7 amended to read: 2002 any business entity as described under  
subd. 2. and

8 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,

9 2001, "public utility" means any business entity which owns or operates any plant,  
10 equipment, property, franchise, or license for the transmission of communications or  
11 the production, transmission, sale, delivery, or furnishing of electricity, water or  
12 steam the rates of charges for goods or services of which have been established or  
13 approved by a federal, state or local government or governmental agency. "Public

14 2. In this section, "public utility" also means any business entity providing  
15 service to the public and engaged in the transportation of goods and persons for hire,  
16 as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges  
17 for services have been established or approved by a federal, state or local government  
18 or governmental agency. for taxable years beginning after  
December 31, 2001,

19 SECTION 28. 71.25 (11) of the statutes is amended to read:

20 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation  
21 engaged in business within in and without the outside this state of Wisconsin and  
22 required to apportion its income as provided in sub. (6), it shall be shown to the  
23 satisfaction of the department of revenue that the use of any one of the 3 factors  
24 provided in sub. (6) gives an unreasonable or inequitable final average ratio because  
25 of the fact that such corporation does not employ, to any appreciable extent in its

INSERT 10-18 ✓

## BILL

1 trade or business in producing the income taxed, the factors made use of in obtaining  
2 such ratio, this factor may, with the approval of the department of revenue, be  
3 omitted in obtaining the final average ratio which is to be applied to the remaining  
4 net income. This subsection does not apply to taxable years beginning after  
5 December 31, 2003.

6 **SECTION 29.** 71.28 (4) (a) of the statutes is amended to read:

7 71.28 (4) (a) *Credit.* Any corporation may credit against taxes otherwise due  
8 under this chapter an amount equal to 5% of the amount obtained by subtracting  
9 from the corporation's qualified research expenses, as defined in section 41 of the  
10 ~~internal revenue code~~ Internal Revenue Code, except that "qualified research  
11 expenses" includes only expenses incurred by the claimant, incurred for research  
12 conducted in this state for the taxable year, except that a taxpayer may elect the  
13 alternative computation under section 41 (c) (4) of the Internal Revenue Code and  
14 that election applies until the department permits its revocation and except that  
15 "qualified research expenses" does not include compensation used in computing the  
16 credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in  
17 section 41 (c) of the ~~internal revenue code~~ Internal Revenue Code, except that gross  
18 receipts used in calculating the base amount means gross receipts from sales  
19 attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. and, (d) and (dm). Section  
20 41 (h) of the ~~internal revenue code~~ Internal Revenue Code does not apply to the credit  
21 under this paragraph.

22 **SECTION 30.** 71.45 (3) (intro.) of the statutes is amended to read:

23 71.45 (3) **APPORTIONMENT.** (intro.) ~~With respect~~ Except as provided in sub. (3d),  
24 to determine Wisconsin income for purposes of the franchise tax, domestic insurers  
25 not engaged in the sale of life insurance but which that, in the taxable year, have

**BILL**

1 ~~collected~~ received premiums, other than life insurance premiums, written ~~on~~  
2 ~~subjects of~~ for insurance on property or risks resident, located or to be performed  
3 outside this state shall ~~be subtracted from~~ multiply the net income figure  
4 derived by application of sub. (2) ~~(a) to arrive at Wisconsin income~~ constituting the  
5 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~  
6 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:

7 **SECTION 1751.** 71.45 (3) (a) of the statutes is amended to read:

8 71.45 (3) (a) ~~The~~ Subject to sub. (3d), the percentage of total determined by  
9 dividing the sum of direct premiums written on all property and risks for insurance  
10 other than life insurance, on subjects of insurance resident, located or to be  
11 performed in this state, and assumed premiums written for reinsurance, other than  
12 life insurance, with respect to all property and risks resident, located or to be  
13 performed in this state, by the sum of direct premiums written for insurance on all  
14 property and risks, other than life insurance, wherever located during the taxable  
15 year, as reflects, and assumed premiums written on insurance for reinsurance on all  
16 property and risks, other than life insurance, where the subject of insurance was  
17 resident, located or to be performed outside this state wherever located. In this  
18 paragraph, "direct premiums" means direct premiums as reported for the taxable  
19 year on an annual statement that is filed by the insurer with the commissioner of  
20 insurance. In this paragraph, "assumed premiums" means assumed reinsurance  
21 premiums from domestic insurance companies as reported for the taxable year on an  
22 annual statement that is filed with the commissioner of insurance.

23 **SECTION 31.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and  
24 amended to read:

**BILL**

1           71.45 (3) (b) 1. The ~~Subject to sub. (3d), the percentage of determined by~~  
2           ~~dividing the payroll, exclusive of life insurance payroll, paid in this state in the~~  
3           ~~taxable year by~~ total payroll, exclusive of life insurance payroll, paid everywhere in  
4           the taxable year ~~as reflects such compensation paid outside this state.~~  
5           ~~Compensation.~~

6           2. ~~Under subd. 1., compensation is paid outside in~~ this state if the individual's  
7           service is performed entirely ~~outside in~~ this state; or the individual's service is  
8           performed both ~~within and without~~ in and outside this state, but the service  
9           performed ~~within~~ outside this state is incidental to the individual's service ~~without~~  
10          in this state; or some service is performed ~~without~~ in this state and the base of  
11          operations, or if there is no base of operations, the place from which the service is  
12          directed or controlled is ~~without~~ in this state, or the base of operations or the place  
13          from which the service is directed or controlled is not in any state in which some part  
14          of the service is performed, but the individual's residence is ~~outside in~~ this state.

15           **SECTION 32.** 71.45 (3d) of the statutes is created to read:

16           71.45 (3d) **PHASE IN; DOMESTIC INSURERS.** (a) For taxable years beginning after  
17          December 31, 2001, and before January 1, 2003, a domestic insurer that is subject  
18          to apportionment under sub. (3) and this subsection shall multiply the net income  
19          figure derived by the application of sub. (2) by an apportionment fraction composed  
20          of the percentage under sub. (3) (a) representing 63% of the fraction and the  
21          percentage under sub. (3) (b) 1. representing 37% of the fraction.

22           (b) For taxable years beginning after December 31, 2002, and before January  
23          1, 2004, a domestic insurer that is subject to apportionment under sub. (3) and this  
24          subsection shall multiply the net income figure derived by the application of sub. (2)  
25          by an apportionment fraction composed of the percentage under sub. (3) (a)

**BILL**

1 representing 85% of the fraction and the percentage under sub. (3) (b) 1. representing  
2 15% of the fraction.

3 (c) For taxable years beginning after December 31, 2003, a domestic insurer  
4 that is subject to apportionment under sub. (3) and this subsection shall multiply the  
5 net income figure derived by the application of sub. (2) by the percentage under sub.  
6 (3) (a).

7 **SECTION 33.** 71.45 (3m) of the statutes is amended to read:

8 71.45 (3m) **ARITHMETIC AVERAGE.** ~~The Except as provided in sub. (3d), the~~  
9 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the  
10 net income figure arrived at by the successive application of sub. (2) (a) and (b) with  
11 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have  
12 ~~collected~~ received premiums, other than life insurance premiums, written ~~upon~~ for  
13 ~~insurance, other than life insurance, where the subject of such insurance was on~~  
14 property or risks resident, located or to be performed outside this state, to arrive at  
15 Wisconsin income constituting the measure of the franchise tax.

16 **SECTION 34.** 71.47 (4) (a) of the statutes is amended to read:

17 ~~71.47 (4) (a) Credit. Any corporation may credit against taxes otherwise due~~  
18 ~~under this chapter an amount equal to 5% of the amount obtained by subtracting~~  
19 ~~from the corporation's qualified research expenses, as defined in section 41 of the~~  
20 ~~internal revenue code~~ Internal Revenue Code, except that "qualified research  
21 expenses" includes only expenses incurred by the claimant, incurred for research  
22 conducted in this state for the taxable year, except that a taxpayer may elect the  
23 alternative computation under section 41 (c) (4) of the Internal Revenue Code and  
24 that election applies until the department permits its revocation and except that  
25 "qualified research expenses" does not include compensation used in computing the



**BILL**

1 credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in  
 2 section 41 (c) of the internal revenue code Internal Revenue Code, except that gross  
 3 receipts used in calculating the base amount means gross receipts from sales  
 4 attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and, (d) and (dm)~~. Section  
 5 41 (h) of the internal revenue code Internal Revenue Code does not apply to the credit  
 6 under this paragraph.

**SECTION 35. Nonstatutory provisions.**

8 (1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. The  
 9 department of revenue shall submit in proposed form rules related to the  
 10 apportionment of the income of financial organizations under sections 71.04 (4) (e)  
 11 and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff  
 12 under section 227.15 (1) of the statutes no later than the first day of the 4th month  
 13 beginning after the effective date of this subsection.

**SECTION 36. Initial applicability.**

15 (1) APPORTIONMENT FACTORS. This act first applies to taxable years beginning  
 16 after December 31, ~~1999~~.

(END)

2001

16

17

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4123/zins  
JK:kmg:km

INSERT 2 - A ✓

Under current law, the income of a financial organization is apportioned, for corporate income tax and franchise tax purposes, by rules established by the department of revenue (DOR). Under the bill, for taxable years beginning after December 31, 2001, and before January 1, 2004, the income of a financial organization is apportioned by multiplying that income by a fraction that includes a sales factor representing more than 50% of the fraction, as determined by rule by DOR. For taxable years beginning after December 31, 2003, the income of a financial organization is apportioned by rules established by DOR.

Under current law and under the bill, the income of air carriers and pipeline companies is apportioned by rules established by DOR.

INSERT 4 - 3 ✓

1           71.04 (4) (e) For taxable years beginning after December 31, 2001, and before  
2           January '1, 2004, the apportionment fraction for the remaining net income of a  
3           financial organization shall include a sales factor that represents more than 50% of  
4           the apportionment fraction, as determined by rule by the department. For taxable  
5           years beginning after December 31, 2003, the apportionment fraction for the  
6           remaining net income of a financial organization shall be determined by rule by the  
7           department.

INSERT 6-7 ✓

8           **SECTION 1.** 71.04 (8) (c) of the statutes is amended to read:

9           71.04 (8) (c) The net business income of railroads, sleeping car companies, car  
10          line companies, pipeline companies, financial organizations, air carriers and public  
11          utilities requiring apportionment shall be apportioned pursuant to rules of the  
12          department of revenue, but the income taxed is limited to the income derived from  
13          business transacted and property located within the state.

INSERT 8 - 16 ✓

14          71.25 (6) (e) For taxable years beginning after December 31, 2001, and before  
15          January 1, 2004, the apportionment fraction for the remaining net income of a

1 financial organization shall include a sales factor that represents more than 50% of  
2 the apportionment fraction, as determined by rule by the department. For taxable  
3 years beginning after December 31, 2003, the apportionment fraction for the  
4 remaining net income of a financial organization shall be determined by rule by the  
5 department.

INSERT 10 - 18 ✓

6 **SECTION 2. 71.25 (10) (c)** of the statutes is amended to read:

7 1.25 (10) (c) The net business income of railroads, sleeping car companies, car  
8 line companies, pipeline companies, financial organizations, air carriers and public  
9 utilities requiring apportionment shall be apportioned pursuant to rules of the  
10 department of revenue, but the income taxed is limited to the income derived from  
11 business transacted and property located within the state.

4

## Kreye, Joseph

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**From:** Ourada, Thomas D  
**Sent:** Tuesday, February 01, 2000 1:04 PM  
**To:** Kreye, Joseph  
**Subject:** FW: 4123/3 - single factor

Hi Joe, per the voicemail I sent, attached is a note from Carol Held on the financial organization language. We had hoped to include language saying that the formula would be a receipts factor for tax year 2004 and beyond, so that the industry is assured that the rule will reflect this and not leave it so open-ended. Is it possible to put the language in? I will mention this to Andrew as well. Thanks.

-----Original Message-----

**From:** Held, Carol L  
**Sent:** Tuesday, February 01, 2000 11:50 AM  
**To:** Ourada, Thomas D; Walgren, Pamela J  
**cc:** Collier, Dennis J; Braun, Eng; Hardt, Diane L  
**Subject:** RE: 4123/3 - single factor

Tom, this draft takes care of everything we had discussed, with one exception. In the second sentence of the provisions relating to financial organizations (bill sections 6 [creating sec. 71.04(4)(e)] and 18 [creating sec. 71.25(6)(e)]) it does not specifically state that for taxable years beginning after December 31, 2003, the apportionment fraction shall consist solely of a receipts factor.

-----Original Message-----

**From:** Ourada, Thomas D  
**Sent:** Tuesday, February 01, 2000 11:01 AM  
**To:** Held, Carol L; Walgren, Pamela J  
**cc:** Collier, Dennis J; Braun, Eng; Hardt, Diane L  
**Subject:** FW: 4123/3 - single factor

This is the revised single factor draft. Carol, can you let me know if it reflects our earlier discussions. Pam this is just another heads-up on the draft that will soon be introduced. I believe it is the intent of Rep. Lehman to introduce this version - I will let you know if that is confirmed. They are shooting for a hearing in Ways & Means on Feb. 16th. Thanks.

-----Original Message-----

**From:** Gates-Hendrix, Sherrie  
**Sent:** Monday, January 31, 2000 3:57 PM  
**To:** Ourada, Thomas D  
**Subject:** FW: 4123/3 - single factor

Single factor draft from LRB; I have not distributed to anyone.

<< File: 99-4123/3 >>

**1999 BILL**

M 2-1-2000

500N

Gen. Cat.

1 **AN ACT to renumber and amend** 71.04 (4), 71.04 (8) (b), 71.25 (6), 71.25 (10) (b)  
2 and 71.45 (3) (b); **to amend** 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04 (7) (d),  
3 71.04 (8) (c), 71.04 (10), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d), 71.25  
4 (10) (c), 71.25 (11), 71.45 (3) (intro.), 71.45 (3) (a) and 71.45 (3m); and **to create**  
5 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4) (e), 71.25 (6) (a),  
6 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d), 71.25 (6) (e) and 71.45 (3d) of the statutes;  
7 **relating to:** single sales factor apportionment of income for corporate income  
8 tax and franchise tax purposes and granting rule-making authority.

**Analysis by the Legislative Reference Bureau**

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a 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. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

Under this bill, beginning on January 1, 2004, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. The property

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*using a sales factor, as determined*

and payroll factors will be decreased, and eventually phased out, over the next four years as the sales factor is increased and becomes the only factor. Beginning on January 1, 2004, the premium factor will be the only factor used to attribute a portion of an insurance company's income to this state. The payroll factor will be decreased, and eventually phased out, over the next four years as the premium factor is increased and becomes the only factor.

Under current law, the income of a financial organization is apportioned, for corporate income tax and franchise tax purposes, by rules established by the department of revenue (DOR). Under the bill, for taxable years beginning after December 31, 2001, and before January 1, 2004, the income of a financial organization is apportioned by multiplying that income by a fraction that includes a sales factor representing more than 50% of the fraction, as determined by rule by DOR. For taxable years beginning after December 31, 2003, the income of a financial organization is apportioned by ~~rules established~~ by DOR.

Under current law and under the bill, the income of air carriers and pipeline companies is apportioned by rules established by DOR.

For further information see the state 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.** 71.04 (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

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1 permissible, the determination shall be made in the following manner: for all  
2 businesses except air carriers, financial organizations, pipeline companies, public  
3 utilities, railroads, sleeping car companies and car line companies there shall first  
4 be deducted from the total net income of the taxpayer the part thereof (less related  
5 expenses, if any) that follows the situs of the property or the residence of the  
6 recipient. The remaining net income shall be apportioned to Wisconsin this state by  
7 use of ~~an apportionment fraction composed of a sales factor representing 50% of the~~  
8 ~~fraction, a property factor representing 25% of the fraction and a payroll factor~~  
9 ~~representing 25% of the fraction.~~ the following:

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

11 71.04 (4) (a) For taxable years beginning before January 1, 2002, an  
12 apportionment fraction composed of a sales factor under sub. (7) representing 50%  
13 of the fraction, a property factor under sub. (5) representing 25% of the fraction and  
14 a payroll factor under sub. (6) representing 25% of the fraction.

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

16 71.04 (4) (b) For taxable years beginning after December 31, 2001, and before  
17 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (7)  
18 representing 63% of the fraction, a property factor under sub. (5) representing 18.5%  
19 of the fraction and a payroll factor under sub. (6) representing 18.5% of the fraction.

20 SECTION 4. 71.04 (4) (c) of the statutes is created to read:

21 71.04 (4) (c) For taxable years beginning after December 31, 2002, and before  
22 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (7)  
23 representing 85% of the fraction, a property factor under sub. (5) representing 7.5%  
24 of the fraction and a payroll factor under sub. (6) representing 7.5% of the fraction.

25 SECTION 5. 71.04 (4) (d) of the statutes is created to read:



1           71.04 (4) (d) For taxable years beginning after December 31, 2003, an  
2 appportionment fraction composed of the sales factor under sub. (7).

3           **SECTION 6.** 71.04 (4) (e) of the statutes is created to read:

4           71.04 (4) (e) For taxable years beginning after December 31, 2001, and before  
5 January 1, 2004, the appportionment fraction for the remaining net income of a  
6 financial organization shall include a sales factor that represents more than 50% of  
7 the appportionment fraction, as determined by rule by the department. For taxable  
8 years beginning after December 31, 2003, the appportionment fraction for the  
9 remaining net income of a financial organization shall be determined by rule by the  
10 department, *is composed of a sales factor, as*

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

12           71.04 (5) **PROPERTY FACTOR.** (intro.) For purposes of sub. (4) and for taxable  
13 years beginning before January 1, 2004:

14           **SECTION 8.** 71.04 (6) (intro.) of the statutes is amended to read:

15           71.04 (6) **PAYROLL FACTOR.** (intro.) For purposes of sub. (4) and for taxable years  
16 beginning before January 1, 2004:

17           **SECTION 9.** 71.04 (7) (d) of the statutes is amended to read:

18           71.04 (7) (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 allocated by ~~sub. s. 71.04 (6), 1997 stats.~~

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1           **SECTION 10.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and  
2 amended to read:

3           71.04 (8) (b) 1. ~~“Public~~ For taxable years beginning before January 1, 2002,  
4 “public utility”, as used in this section, means any business entity as described under  
5 subd. 2. and any business entity which owns or operates any plant, equipment,  
6 property, franchise, or license for the transmission of communications or the  
7 production, transmission, sale, delivery, or furnishing of electricity, water or steam,  
8 the rates of charges for goods or services of which have been established or approved  
9 by a federal, state or local government or governmental agency. ~~“Public~~

10           2. In this section, for taxable years beginning after December 31, 2001, “public  
11 utility” also means any business entity providing service to the public and engaged  
12 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),  
13 regardless of whether or not the entity’s rates or charges for services have been  
14 established or approved by a federal, state or local government or governmental  
15 agency.

16           **SECTION 11.** 71.04 (8) (c) of the statutes is amended to read:

17           71.04 (8) (c) The net business income of railroads, sleeping car companies, car  
1 8 line companies, pipeline companies, financial organizations, air carriers and public  
19 utilities requiring apportionment shall be apportioned pursuant to rules of the  
20 department of revenue, but the income taxed is limited to the income derived from  
21 business transacted and property located within the state.

22           **SECTION 12.** 71.04 (10) of the statutes is amended to read:

23           71.04 (10) **DEPARTMENT MAY WAIVE FACTOR.** Where, in the case of any nonresident  
24 individual or nonresident estate or trust engaged in business ~~within in~~ and without  
25 ~~the outside this~~ state ~~of Wisconsin~~ and required to apportion its income as provided

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1 in this section, it shall be shown to the satisfaction of the department of revenue that  
2 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or  
3 inequitable final average ratio because of the fact that such nonresident individual  
4 or nonresident estate or trust does not employ, to any appreciable extent in its trade  
5 or business in producing the income taxed, the factors made use of in obtaining such  
6 ratio, this factor may, with the approval of the department of revenue, be omitted in  
7 obtaining the final average ratio which is to be applied to the remaining net income.  
8 This subsection does not apply to taxable years beginning after December 31, 2003.

9 **SECTION 13.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and  
10 amended to read:

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

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1 residence of the recipient. The remaining net income shall be apportioned to  
2 ~~Wisconsin this state by use of an apportionment fraction composed of a sales factor~~  
3 ~~under sub. (9) representing 50% of the fraction, a property factor under sub. (7)~~  
4 ~~representing 25% of the fraction and a payroll factor under sub. (8) representing 25%~~  
5 ~~of the fraction. the following:~~

6 **SECTION 14.** 71.25 (6) (a) of the statutes is created to read:

7 71.25 (6) (a) For taxable years beginning before January 1, 2002, an  
8 apportionment fraction composed of a sales factor under sub. (9) representing 50%  
9 of the fraction, a property factor under sub. (7) representing 25% of the fraction and  
10 a payroll factor under sub. (8) representing 25% of the fraction.

11 **SECTION 15.** 71.25 (6) (b) of the statutes is created to read:

12 71.25 (6) (b) For taxable years beginning **after** December 31, 2001, and before  
13 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (9)  
14 representing 63% of the fraction, a property factor under sub. (7) representing 18.5%  
15 of the fraction and a payroll factor under sub. (8) representing 18.5% of the fraction.

16 **SECTION 16.** 71.25 (6) (c) of the statutes is created to read:

17 71.25 (6) (c) For taxable years beginning after December 31, 2002, and before  
18 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (9)  
19 representing 85% of the fraction, a property factor under sub. (7) representing 7.5%  
20 of the fraction and a payroll factor under sub. (8) representing 7.5% of the fraction.

21 **SECTION 17.** 71.25 (6) (d) of the statutes is created to read:

22 71.25 (6) (d) For taxable years beginning after December 31, 2003, an  
23 apportionment fraction composed of the sales factor under sub. (9).

24 **SECTION 18.** 71.25 (6) (e) of the statutes is created to read:

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1           71.25 (6) (e) For taxable years beginning after December 31, 2001, and before  
2           January 1, 2004, the apportionment fraction for the remaining net income of a  
3           financial organization shall include a sales factor that represents more than 50% of  
4           the apportionment fraction, as determined by rule by the department. For taxable  
5           years beginning after December 31, 2003, the apportionment fraction for the  
6           remaining net income of a financial organization ~~shall be~~ determined by rule by the  
7           department. *is composed of a sales factor, as*

8           SECTION 19. 71.25 (7) (intro.) of the statutes is amended to read:

9           71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (5) and for taxable  
10          years beginning before January 1, 2004:

11          SECTION 20. 71.25 (8) (intro.) of the statutes is amended to read:

12          71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. (5) and for taxable years  
13          beginning before January 1, 2004:

14          SECTION 21. 71.25 (9) (d) of the statutes is amended to read:

15          71.25 (9) (d) Sales, other than sales of tangible personal property, are in this  
16          state if the income-producing activity is performed in this state. If the  
17          income-producing activity is performed both in and outside this state the sales shall  
18          be divided between those states having jurisdiction to tax such business in  
19          proportion to the direct costs of performance incurred in each such state in rendering  
20          this service. Services performed in states which do not have jurisdiction to tax the  
21          business shall be deemed to have been performed in the state to which compensation  
22          is allocated by ~~sub. s. 71.25 (8), 1997 stats.~~

23          SECTION 22. 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and  
24          amended to read:

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1           71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,  
2 2002, “public utility” means any business entity as described under subd. 2. and any  
3 business entity which owns or operates any plant, equipment, property, franchise,  
4 or license for the transmission of communications or the production, transmission,  
5 sale, delivery, or furnishing of electricity, water or steam the rates of charges for  
6 goods or services of which have been established or approved by a federal, state or  
7 local government or governmental agency ~~“Public~~

8           2. In this section, for taxable years beginning after December 31, 2001, “public  
9 utility” also means any business entity providing service to the public and engaged  
10 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),  
11 regardless of whether or not the entity’s rates or charges for services have been  
12 established or approved by a federal, state or local government or governmental  
13 agency.

14           **SECTION 23.** 71.25 (10) (c) of the statutes is amended to read:

15           71.25 (10) (c) The net business income of railroads, sleeping car companies, car  
16 line companies, pipeline companies, financial organizations, air carriers and public  
17 utilities requiring apportionment shall be apportioned pursuant to rules of the  
18 department of revenue, but the income taxed is limited to the income derived from  
19 business transacted and property located within the state.

20           **SECTION 24.** 71.25 (11) of the statutes is amended to read:

21           71.25 (11) ~~DEPARTMENT MAY WAIVE FACTOR.~~ Where, in the case of any corporation  
22 engaged in business ~~within in~~ and ~~without the~~ outside this state of Wisconsin and  
23 required to apportion its income as provided in sub. (6), it shall be shown to the  
24 satisfaction of the department of revenue that the use of any one of the 3 factors  
25 provided in sub. (6) gives an unreasonable or inequitable final average ratio because

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1 of the fact that such corporation does not employ, to any appreciable extent in its  
 2 trade or business in producing the income taxed, the factors made use of in obtaining  
 3 such ratio, this factor may, with the approval of the department of revenue, be  
 4 omitted in obtaining the final average ratio which is to be applied to the remaining  
 5 net income. This subsection does not apply to taxable years beginning after  
 6 December 31, 2003.

7 **SECTION 25.** 71.45 (3) (intro.) of the statutes is amended to read:

8 **71.45 (3) APPORTIONMENT.** (intro.) ~~With respect~~ Except as provided in sub. (3d),  
 9 to determine Wisconsin income for purposes of the franchise tax, domestic insurers  
 10 ~~not engaged in the sale of life insurance but which~~ that, in the taxable year, have  
 11 ~~collected~~ received premiums, other than life insurance premiums, written on  
 12 ~~subjects of~~ for insurance on property or risks resident, located or to be performed  
 13 outside this state, ~~there shall be subtracted from~~ multiply the net income figure  
 14 derived by application of sub. (2) to  
 15 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~  
 16 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:

17 **SECTION 1751.** 71.45 (3) (a) of the statutes is amended to read:

18 71.45 (3) (a) ~~The~~ Subject to sub. (3d), the percentage of total determined by  
 19 dividing the sum of direct premiums written on all property and risks for insurance  
 20 other than life insurance, on subjects of insurance resident, located or to be  
 21 performed in this state, and assumed premiums written for reinsurance, other than  
 22 life insurance, with respect to all property and risks resident, located or to be  
 23 performed in this state, by the sum of direct premiums written for insurance on all  
 24 property and risks, other than life insurance, wherever located during the taxable  
 25 year, as reflects, and assumed premiums written on insurance for reinsurance on all

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1 pronerty and risks, other than life insurance, ~~where the subject of insurance was~~  
2 ~~resident, or to be performed outside~~ this state wherever located. In this  
3 paragraph, "direct premiums" means direct premiums as reported for the taxable  
4 year on an annual statement that is filed by the insurer with the commissioner of  
5 insurance. In this paragraph, "assumed premiums" means assumed reinsurance  
6 premiums from domestic insurance companies as reported for the taxable year on an  
7 annual statement that is filed with the commissioner of insurance.

8 **SECTION 26.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and  
9 amended to read:

10 71.45 (3) (b) 1. ~~The Subject to sub. (3d), the percentage of determined by~~  
11 dividing the payroll, exclusive of life insurance payroll, paid in this state in the  
12 taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in  
13 the taxable year as reflects such compensation paid outside this state.  
14 Compensation.

15 2. Under subd. 1., compensation is paid outside in this state if the individual's  
16 service is performed entirely outside in this state; or the individual's service is  
17 performed both ~~within and without~~ in and outside this state, but the service  
18 performed within outside this state is incidental to the individual's service ~~without~~  
19 in this state; or some service is performed ~~without~~ in this state and the base of  
20 operations, or if there is no base of operations, the place from which the service is  
21 directed or controlled is ~~without~~ in this state, or the base of operations or the place  
22 from which the service is directed or controlled is not in any state in which some part  
23 of the service is performed, but the individual's residence is ~~outside~~ in this state.

24 **SECTION 27.** 71.45 (3d) of the statutes is created to read:



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1           71.45 **(3d) PHASE IN, DOMESTIC INSURERS** (a) For taxable years beginning after  
2 December 31, 2001, and before January 1, 2003, a domestic insurer that is subject  
3 to apportionment under sub. (3) and this subsection shall multiply the net income  
4 figure derived by the application of sub. (2) by an apportionment fraction composed  
5 of the percentage under sub. (3) (a) representing 63% of the fraction and the  
6 percentage under sub. (3) (b) 1. representing 37% of the fraction.

7           (b) For taxable years beginning after December 31, 2002, and before January  
8 1, 2004, a domestic insurer that is subject to apportionment under sub. (3) and this  
9 subsection shall multiply the net income figure derived by the application of sub. (2)  
10 by an apportionment fraction composed of the percentage under sub. (3) (a)  
11 representing 85% of the fraction and the percentage under sub. (3) (b) 1. representing  
12 15% of the fraction.

13           (c) For taxable years beginning after December 31, 2003, a domestic insurer  
14 that is subject to apportionment under sub. (3) and this subsection shall multiply the  
15 net income figure derived by the application of sub. (2) by the percentage under sub.  
16 **(3) (a)**.

17           **SECTION 28.** 71.45 (3m) of the statutes is amended to read:

18           71.45 **(3m) ARITHMETIC AVERAGE.** The Except as provided in sub. (3d), the  
19 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the  
20 net income figure arrived at by the successive application of sub. (2) (a) and (b) with  
21 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have  
22 collected received premiums, other than life insurance premiums, written upon for  
23 insurance, other than life insurance, where the subject of such insurance was on  
24 property or risks resident, located or to be performed outside this state, to arrive at  
25 Wisconsin income constituting the measure of the franchise tax.

**BILL****1 SECTION 29. Nonstatutory provisions.**

**2 (1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES.** The  
**3** department of revenue shall submit in proposed form rules related to the  
**4** apportionment of the income of financial organizations under sections 71.04 (4) (e)  
**5** and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff  
**6** under section 227.15 (1) of the statutes no later than the first day of the 4th month  
**7** beginning after the effective date of this subsection.

**8 SECTION 30. Initial applicability.**

**9 (1) APPORTIONMENT FACTORS.** This act first applies to taxable years beginning  
**10** after December 31, 2001.

**11 (END)**