

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/11/99**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Holden**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Alt. Drafters:

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

Extra Copies:

**Topic:**

DOA:.....Holden - Combined reporting for corporations

**Instructions:**

See Attached

**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>
/?	jkreye 01/13/99	ygeller 01/13/99		_____			State
/1	jkreye 01/31/99	ygeller 01/31/99	ismith 01/14/99	_____	lrb_docadmin 01/14/99		State
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/?	jkreye 01/13/99	ygeller 01/13/99		_____			State
/1		<i>1/2 1/31 jlg</i>	ismith 01/14/99	_____	lrb_docadmin 01/14/99		
			<i>1/31</i>	<i>1/31</i>			

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/?	jkreye	1 1/3 jlg	IS 1/4/99	ES/LP 1/4/99			

FE Sent For:

<END>



STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON  
GOVERNOR  
MARK D. BUGHER  
SECRETARY

Mailing Address:  
Post Office Box 7864  
Madison, WI 53707-7864



**Date:** January 8, 1999

**To:** Stephen Miller  
Chief, Legislative Reference Bureau

**From:** Kerry Holden (266-8593) KH  
Policy and Budget Analyst

**Subject:** Combined reporting for corporations

Please draft statutory language that would implement the use of combined reporting of income under the corporate franchise and income tax. Attached is additional information regarding the proposed draft. Please let me know if you have any questions. Thanks.

Wisconsin Department of Revenue  
IS&E Division  
September 6, 1994

**TITLE: COMBINED REPORTING FOR CORPORATIONS**

**DESCRIPTION OF CURRENT LAW AND PROBLEM:**

Wisconsin franchise or income tax applies to each separate corporation that is doing business in the state. Each separately incorporated entity must file a tax return reporting its own net income. Known as "separate entity reporting," this method of computing a corporation's income derived in a particular state is required by 6 other states besides Wisconsin.

Taxing corporations on a separate entity basis allows them to structure their business activities in such a way as to reduce, or in some cases totally eliminate, their Wisconsin tax liability. Corporations, including banks, that have a large portfolio of intangible investments have been forming wholly owned investment subsidiaries which are usually operated outside Wisconsin. Since the subsidiaries are not doing business in the state, Wisconsin is unable to tax the net income of the investment subsidiaries.

For Wisconsin tax purposes, a corporation may deduct from its income common stock dividends received if it owns at least 70 percent of the combined voting stock of the payor corporation for the entire year. Therefore, not only does the investment subsidiary's income escape taxation by Wisconsin, but also the parent corporation avoids tax on the dividends received from the investment subsidiary.

Since March of 1988, at least 223 Wisconsin banks have received approval from the Office of the Commissioner of Banking to establish investment subsidiaries in out-of-state locations. If the state adopted combined reporting it is estimated that the revenue increase from taxing these 223 subsidiaries would be \$19 million.

Another way that a corporation may avoid Wisconsin tax liability is by establishing an investment subsidiary that is incorporated in a state other than Wisconsin and qualifies as a personal holding company. Even if the subsidiary is operated in Wisconsin by employees of the parent corporation, Wisconsin cannot impose its tax on the subsidiary's intangible investment income, which generally is its entire income. Section 71.25(5)(b)2, Stats., provides that the income, gain, or loss from intangible property which is earned by a personal holding company is allocated to its state of incorporation.

**RECOMMENDATION:**

Require affiliated corporations that are related through a more than 50 percent stock ownership and are part of a unitary business to compute their Wisconsin net income under the combined reporting method rather than under the separate entity method. Currently, 30 of the 47 states that impose a corporate income or franchise tax either permit or require combined reporting.

DFUNIT1326

It is recommended that the department adopt combined reporting using the water's edge basis. Under the water's edge method, combination is generally limited to U.S. corporations and foreign affiliates having more than 20 percent of its property and payroll assigned to the United States. (NOTE: The average of the property and payroll factors must equal or exceed 20%. Each factor alone does not have to meet this standard.)

Create a presumption that all corporations which have more than a 50 percent ownership are unitary and are subject to combined reporting. A unitary business is one which operates as a unit and is characterized by centralized management, functional integration (such as product flow, central decision-making, centralized advertising, accounting, training of personnel, financing, purchasing, manufacturing, or warehousing), and economies of scale (such as discounts on bulk purchases) between more than one corporation.

Repeal sec. 71.25(5)(b)2, Stats., so that intangible income cannot escape taxation because a corporation is incorporated under the laws of a state that does not impose a corporate income or franchise tax.

See Attachment I for an example which illustrates the difference between combined reporting and separate entity reporting.

#### FISCAL/ADMINISTRATIVE IMPACT:

This proposal would prevent the erosion of Wisconsin's tax base. For any particular taxpayer, the use of combined reporting may cause an increase or decrease in tax liability, depending on the circumstances for a particular taxable year.

The adoption of combined reporting would necessitate revisions to the corporation tax forms, data processing programs and procedures, and audit manuals and procedures.

#### DRAFTING INSTRUCTIONS:

See the Recommendation.

#### EFFECTIVE DATE:

Taxable years beginning on January 1, 1996.

#### PERSON TO CONTACT:

Dan Davis, telephone 266-3612.

Prepared by: Carol Held  
July 20, 1992

Revised by: Jim Dix  
September, 1994

DFUNIT1326

## ATTACHMENT I

**EXAMPLE: Wisconsin Bank and Wholly Owned Investment Subsidiary**

The Wisconsin bank is organized under Wisconsin law and conducts 100 percent of its business activity in Wisconsin. The bank organizes an investment subsidiary which is incorporated under Nevada law and operates entirely in Nevada. The subsidiary periodically makes dividend distributions to the bank, which are 100 percent deductible in computing the bank's Wisconsin net income.

Exhibit A illustrates combined reporting for the Wisconsin bank and its wholly owned Nevada investment subsidiary. Although the investment subsidiary does not have nexus with Wisconsin and is not required to file a Wisconsin franchise or income tax return, its income and apportionment factors are included in the combined report because it is part of the unitary business.

The unitary income apportioned to Wisconsin is attributed to the bank and its subsidiary in the ratio that the Wisconsin factors of each bear to the aggregated group factors. Since the group's Wisconsin factors are attributable to the Wisconsin bank, the bank must file a Wisconsin return, reporting the group's Wisconsin net income.

The Wisconsin tax liability under current Wisconsin law (separate entity reporting) is \$79,000 versus \$217,250 under combined reporting, as explained below. If the Wisconsin bank had not organized the investment subsidiary, the bank's Wisconsin net income would be \$3,000,000 and its Wisconsin net tax would be \$237,000.

	<u>Current Law</u>	<u>Combined Report</u>
Wisconsin Bank		
Wis. Net Income	\$1,000,000	\$2,750,100
Wis. Net Tax	79,000	217,250
Nevada Subsidiary		
Wis. Net Income	\$ -0-	\$ -0-
Wis. Net Tax	-0-	-0-



**EXHIBIT A - COMBINED REPORTING - BANK**

	<u>A</u> <u>Wisconsin Bank</u>	<u>B</u> <u>Nevada Subsidiary</u>	<u>C</u> <u>Combined</u>
Taxable Income	\$1,000,000	\$2,000,000	\$3,000,000
Gross Receipts			
Wisconsin	\$5,000,000	\$ -0-	\$5,000,000
Total	5,000,000	-0-	5,000,000
Percentage	100%	0%	100%
Payroll			
Wisconsin	\$ 500,000	\$ -0-	\$ 500,000
Total	500,000	100,000	600,000
Percentage	100%	0%	83.33%
Total %	200%	0%	183.33%
% to Wis. (Total ÷ 2)	100%	0%	91.67%
Taxable Income	\$1,000,000	\$2,000,000	\$3,000,000
% to Wis.	x 100%	x 0%	x 91.67%
Wis. Net Income	<u>\$1,000,000</u>	<u>\$ -0-</u>	<u>\$2,750,100</u>
Wis. % of Gross Receipts			100.00%
Wis. % of Payroll			83.33%
Total Factors			183.33%
Average Factors (Total ÷ 2)			91.67%
Combined Net Income			\$2,750,000
Tax Rate			x 7.9%
Tax			<u>\$ 217,250</u>

**Explanation of Exhibit A:**

1. The combined amounts (column C) of taxable income, Wisconsin gross receipts, total gross receipts, Wisconsin payroll, and total payroll are the sums of the amounts in columns A and B.
2. The gross receipts and payroll factors are computed by dividing the Wisconsin amounts by the total amounts in each column.
3. The Wisconsin percentages of gross receipts and payroll for the bank and subsidiary are computed by dividing that entity's numerator for each factor by the combined group's denominator for that same factor.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1689

JK:.....

JK  
jlg

SOON

DOA:.....Holden - Combined reporting for corporations.

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

1

AN ACT ...; relating to: the budget

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, each separate corporation doing business in this state must file a tax return with the department of revenue (DOR) reporting its net income. A corporation's net income includes interest, dividends and the sale of intangible assets received by the corporation from another corporation if the corporations are a unitary operation. A unitary operation is, generally, an affiliated group of corporations that operate as a unit and is characterized by centralized management and decision making. Under current law, separate corporations that are part of a unitary operation are not required to file a consolidated tax return. Instead, a corporation doing business in this state that is part of a unitary operation files a separate return.

This bill requires that an affiliated group of corporations that is part of a unitary operation file a consolidated tax return with DOR. This bill creates a presumption that all operations that have a 50% voting stock ownership in common are unitary.

and must  
file a consolidated  
return

at least

The

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. 71.25 (5) (a) 9.<sup>X</sup> of the statutes is amended to read:  
 2 71.25 (5) (a) 9. Interest and dividends if the operations of the payer are unitary  
 3 with those of the payee, or if those operations are not unitary but the investment  
 4 activity from which that income is derived is an integral part of a unitary business  
 5 and the payer and payee are neither affiliates nor related as parent company and  
 6 subsidiary. All <sup>corporations</sup> ~~operations~~ that have at least a 50% voting stock ownership in  
 7 common are presumed unitary. In this subdivision, "investment activity" includes  
 8 decision making relating to the purchase and sale of stocks and other securities,  
 9 investing surplus funds and the management and record keeping associated with  
 10 corporate investments, not including activities of a broker or other agent in  
 11 maintaining an investment portfolio.

12 SECTION 2. 71.25 (5) (a) 10.<sup>X</sup> of the statutes is amended to read:  
 13 71.25 (5) (a) 10. Sale of intangible assets if the operations of the company in  
 14 which the investment was made were unitary with those of the investing company,  
 15 or if those operations were not unitary but the investment activity from which that  
 16 gain or loss was derived is an integral part of a unitary business and the companies  
 17 were neither affiliates nor related as parent company and subsidiary. All <sup>corporations</sup> ~~operations~~  
 18 that have at least a 50% voting stock ownership in common are presumed unitary.  
 19 In this subdivision, "investment activity" has the meaning given under subd. 9.

20 SECTION 3. 71.25 (5) (b) 2.<sup>X</sup> of the statutes is repealed.

21 SECTION 4. 71.26 (3) (x)<sup>X</sup> of the statutes is amended to read:

←  
 SEC.# RV ; 71.25(5)(b)1.;  
 (15) 71.25(5)(b).





DOR 1-29-99

combining 50% and over  
income to extent <sup>permitted</sup> ~~permitted~~ by VS court

elect <sup>1</sup> water's edge or <sup>2</sup> worldwide } allow elections  
for court.

patterned after Cal. with additions from other states } considerations

\* not adopting any of fed consolidated rules

\* department authority to promulgate rules/  
adopt rules to implement this  
~~subchapter~~  
section

bus. combine when  
non-life, in state

\* taxable year beginning January 1, 2000

partnerships as pt of group

probably need to  
do when  
merge drafts.

Rules

throughout rules - rules factor - under combined  
- look at corp or separate entity

| A - through to WI - no  
nexus or separate entity for through purposes

**Illinois Department of Revenue  
Regulations**

**Title 86 Part 100 Section 100.A Example of Unitary Business Apportionment**

**TITLE 86: REVENUE**

**PART 100  
INCOME TAX**

**Section 100.TABLE A Example of Unitary Business Apportionment**

Example: Corporations A, B and C are engaged in the conduct of a unitary business. All three corporations are doing business both within and without Illinois. For purposes of this example, it will be assumed that all of the income of the corporations is business income, that there are no applicable addition or subtraction modifications (see IITA Section 203(b)(2)), and, that none of the corporations derives income from a partnership. It is further assumed that none of the three corporations is a financial organization, transportation company or insurance company. In addition, it is assumed that there were no intercompany transactions. Based on A's, B's and C's records, the computation of each company's share of the unitary business income to be apportioned to Illinois would be as follows:

	Corporation A	Corporation B	Corporation C	Combined
Business Income	\$ 20,000	\$ 30,000	\$ 40,000	\$ 90,000
Illinois Property	50,000	25,000	25,000	
Total Property	75,000	50,000	75,000	200,000
Property Factor (1)	.25	.125	.125	
Illinois Payroll	10,000	20,000	30,000	
Total Payroll	20,000	30,000	50,000	100,000
Payroll Factor (2)	.1	.2	.3	
Illinois Sales	50,000	75,000	80,000	
Total Sales	150,000	100,000	250,000	500,000
Sales Factor (3)	.1	.15	.16	
Average Business Income Apportioned to Illinois (4)	.15	.158333	.195	<i>X combined</i>
	\$ 13,500	\$ 14,250	\$ 17,550	

Note (1) This decimal is derived by dividing each member's Illinois property by the combined total property; i.e., for A, this is \$50,000 divided by \$200,000.

Note (2) This decimal is derived by dividing each member's Illinois payroll by the combined total payroll, i.e., for A, this is \$10,000 divided by \$100,000.

Note (3) This decimal is derived by dividing each member's Illinois sales by the combined total sales; i.e., for A, this is \$50,000 divided by \$500,000.

Note (4) This amount is determined by multiplying the combined business income (\$90,000) by the average of the three factors for each member. For A, this is .15 times \$90,000.00. Note that the provisions of P.L. 86-272 remain

applicable. In instances where one member of the group may come within the protection of P.L. 86-272, i.e., where the activities of the corporation with regard to sales of tangible personal property do not give rise to sufficient tax nexus, those sales will not be included in the numerator of the sales factor for that member. Nonetheless, those sales, to the extent arising out of the group's unitary business activity will be shown in the denominator and will be part of the combined apportionment formula. In utilizing the combined method of apportionment, members of a unitary group filing Illinois income tax returns will be required to disclose, in columnar form, all items of income, credit, deduction or exclusion which would enter into the computation of base income under the Illinois Income Tax Act as if each member of the group were required to file an Illinois income tax return. In some instances, it will also be necessary to disclose the computation of federal taxable income even where a particular member may not be required to file a federal income tax return. Appropriate schedules for this purpose will be provided. Essentially, the schedules will require, for each member of the group:

- (A) the construction of federal taxable income or its equivalent;
- (B) the computation of Illinois base income or its equivalent;
- (C) disclosure and explanation of intercompany eliminations;
- (D) classification of income as business or nonbusiness income;
- (E) the appropriate apportionment factors;
- (F) and, for those members required to file an Illinois income tax return the computation of Illinois base income which will include the member's apportioned share of unitary business income as well as any other income allocable or apportionable to Illinois.





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1689/1

JK:jlj:ijs

MONDAY

DOA:.....Holden - Combined reporting for corporations.

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

D-N

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

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Under current law, each separate corporation doing business in this state must file a tax return with the department of revenue (DOR) reporting its net income. A corporation's net income includes interest, dividends and the sale of intangible assets received by the corporation from another corporation if the corporations are a unitary operation. A unitary operation is, generally, an affiliated group of corporations that operate as a unit and is characterized by centralized management and decision making. Under current law, separate corporations that are part of a unitary operation are not required to file a consolidated tax return. Instead, a corporation doing business in this state that is part of a unitary operation files a separate return.

This bill requires that an affiliated group of corporations that is part of a unitary operation file a ~~consolidated~~ tax return with DOR. The bill creates a presumption that all operations that ~~have at least a 50% voting stock ownership in~~ ~~common~~ are unitary and must file a ~~consolidated~~ return.

combined combined  
are part of an affiliated

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:*

✓  
Insert 2-1  
↓

SECTION 1. 71.25 (5) (a) 9. of the statutes is amended to read:

71.25 (5) (a) 9. Interest and dividends if the operations of the payer are unitary with those of the payee, or if those operations are not unitary but the investment activity from which that income is derived is an integral part of a unitary business and the payer and payee are neither affiliates nor related as parent company and subsidiary. ~~All corporations that have at least 50% voting stock ownership in common are presumed unitary.~~ In this subdivision, "investment activity" includes decision making relating to the purchase and sale of stocks and other securities, investing surplus funds and the management and record keeping associated with corporate investments, not including activities of a broker or other agent in maintaining an investment portfolio.

SECTION 2. 71.25 (5) (a) 10. of the statutes is amended to read:

71.25 (5) (a) 10. Sale of intangible assets if the operations of the company in which the investment was made were unitary with those of the investing company, or if those operations were not unitary but the investment activity from which that gain or loss was derived is an integral part of a unitary business and the companies were neither affiliates nor related as parent company and subsidiary. ~~All corporations that have at least a 50% voting stock ownership in common are presumed unitary.~~ In this subdivision, "investment activity" has the meaning given under subd. 9.  $\frac{\downarrow}{\wedge}$

SECTION 3. 71.25 (5) (b) 1. of the statutes is renumbered 71.25 (5) (b).

Insert 3-2 ✓

1 SECTION 4. 71.25 (5) (b) 2. of the statutes is repealed.

2 SECTION 5. 71.26 (3) (x) of the statutes is amended to read:

3 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 1504 (relating  
4 to consolidated returns) are ~~excluded~~ modified so that an affiliated group of  
5 corporations shall file a consolidated return if the common parent corporation doing  
6 business in this state owns at least 50% of the voting stock of an includible  
7 corporation, the affiliated group of corporations are part of a unitary operation, and  
8 the average of the affiliated group's property and payroll factors within the United  
9 States is at least 20%. All corporations that have at least a 50% voting stock  
10 ownership in common are presumed unitary and shall file a consolidated return.

11 SECTION 6. 71.26 (3) (xm) of the statutes is created to read:

12 71.26 (3) (xm) Sections 1502, 1503, 1551, 1552, 1563 and 1564 (relating to  
13 consolidated returns) are excluded.

14 SECTION 7. 71.26 (4) of the statutes is amended to read:

15 71.26 (4) NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option  
16 corporation or an insurer to which s. 71.45 (4) applies, may offset against its  
17 Wisconsin net business income any Wisconsin net business loss sustained in any of  
18 the next 15 preceding taxable years, if the corporation was subject to taxation under  
19 this chapter in the taxable year in which the loss was sustained, to the extent not  
20 offset by other items of Wisconsin income in the loss year and by Wisconsin net  
21 business income of any year between the loss year and the taxable year for which an  
22 offset is claimed. For purposes of this subsection Wisconsin net business income or  
23 loss shall consist of all the income attributable to the operation of a trade or business  
24 in this state, less the business expenses allowed as deductions in computing net  
25 income. The Wisconsin net business income or loss of corporations engaged in

1 business within and without the state shall be determined under s. 71.25 (6) and (10)  
 2 to (12). ~~Nonapportionable losses having a Wisconsin situs under s. 71.25 (5) (b) shall~~  
 3 ~~be included in Wisconsin net business loss, and nonapportionable income having a~~  
 4 ~~Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be included~~  
 5 ~~in other items of Wisconsin income and Wisconsin net business income for purposes~~  
 6 ~~of this subsection.~~

7 **SECTION 9343. Initial applicability; revenue.**

8 (1) CONSOLIDATED RETURNS. The treatment of sections 71.25 (5) (a) 9. and 10.  
 9 and (b) 2, ~~and 71.25 (5) (b) and (c) and (d)~~ of the statutes first applies to taxable  
 10 years beginning on January 1 of the year in which this subsection takes effect, except  
 11 that if this subsection takes effect after July 31 the treatment of sections 71.25 (5)  
 12 (a) 9. and 10. and (b) 2, ~~and 71.25 (5) (b) and (c) and (d)~~ of the statutes first applies  
 13 to taxable years beginning on January 1 of the year following the year in which this  
 14 subsection takes effect.

15 (END)

71.255, 71.26(3)(L) and 71.44(1)(e) ✓

71.255, ✓ 71.26(3)(L) ✓ and 71.44(1)(e) ✓

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1689/lms  
JK:jlgr:ijs

Insert 2 - 1

1 SECTION 1. 71.25 (5) (a) (intro.)<sup>X</sup> of the statutes is amended to read:

2 71.25 (5) (a) *Apportionable income.* (intro.) Except as provided in sub. (6),  
3 corporations engaged in business both within and without this state are subject to  
4 apportionment. Income, gain or loss from the sources listed in this<sup>✓</sup> paragraph is  
5 presumed apportionable. Apportionable income includes all income or loss of  
6 corporations, other than nonapportionable income as specified in par. (b), including,  
7 but not limited to, income, gain or loss from the following sources:

Insert 3 - 2

8 SECTION 2. 71.255<sup>X</sup> of the statutes is created to read:

9 **71.255 Combined reporting.** (1)<sup>ⓑ</sup> DEFINITIONS. In this section:<sup>✓</sup>

10 (a) "Affiliated group" means any of the following:

11 1. A parent corporation and any corporation or chain of corporations that are  
12 connected to the parent corporation by direct or indirect ownership by the parent  
13 corporation if the parent corporation owns stock representing 50% or more of the  
14 voting stock of <sup>at</sup> least one of the connected corporations or if the parent corporation  
15 or any of the connected corporations owns stock that cumulatively represents 50%  
16 or more of the voting stock of each of the connected corporations.

17 2. Any 2 or more corporations if a common corporate or common<sup>✓</sup> noncorporate  
18 owner owns directly or indirectly stock representing 50% or more of the voting stock  
19 of the corporations.

20 3. A partnership, limited liability company or tax-option corporation if a  
21 parent corporation or any corporation connected to the parent corporation by

1 common ownership directly or indirectly owns shares representing 50% of the shares  
2 of the partnership, limited liability company or tax-option corporation.

3 4. Any 2 or more corporations if stock representing 50% or more of the voting  
4 stock in each corporation are interests that cannot be separately transferred.

5 5. Any 2 or more corporations if stock representing 50% or more of the voting  
6 stock is directly owned by, or for the benefit of, family members. In this <sup>subdivision</sup> ~~subd.~~, "family  
7 members" means an individual or a spouse related by blood, marriage or adoption  
8 within the 2nd degree of kinship as computed under s. 852.03 (2), 1995 <sup>✓</sup> stats.

9 (b) "Combined report" means a form prescribed by the department that shows  
10 the calculations under this section to divide the income of an affiliated group  
11 conducting a unitary business among the jurisdictions where the affiliated group  
12 conducts its trade or business.

13 (c) "Corporation" has the meaning given in s. 71.22 (1) <sup>✓</sup> or ~~in~~ 71.42 (1). <sup>✓</sup>

14 (d) "Department" means the department of revenue.

15 (e) "Intercompany transaction" means a transaction between corporations,  
16 partnerships, limited liability companies or tax-option corporations that become  
17 members of the same affiliated group that is engaged in a unitary business  
18 immediately after the transaction.

19 (f) "Partnership" means any entity considered a partnership under section  
20 7701 of the Internal Revenue Code. <sup>✓</sup>

21 (g) "Unitary business" means trade or business conducted by persons that have  
22 common ownership and the trade or business of one person is integrated with,  
23 dependent upon, or contributes to the trade or business of another person. Trade or  
24 business is presumed to be unitary if the trade or business has centralized  
25 management or a centralized executive force; centralized purchasing, advertising or

1 accounting; intercorporate sales or leases; intercorporate services; intercorporate  
2 debts; intercorporate use of proprietary materials; interlocking directorates or  
3 interlocking corporate officers; or if a trade or business conducted in this state is  
4 owned by a person that conducts a trade or business entirely outside of this state that  
5 is different from the trade or business conducted in this state.

6 (h) "Water's edge method" does not include the income and apportionment  
7 factors of a tax-option corporation unless the department determines that the  
8 water's edge method is necessary to accurately report the income of the tax option  
9 corporation apportioned to this state. "Water's edge method" means the income and  
10 apportionment factors of the following unitary businesses:

11 1. Any corporation organized or incorporated under the laws of the United  
12 States, any state, the District of Columbia, the Commonwealth of Puerto Rico, any  
13 possession of the United States, or any subdivision of the United States, including  
14 corporations under sections 931 to 936 of the Internal Revenue Code.

15 2. Any domestic international sales corporation under sections 991 to 994 of the  
16 Internal Revenue Code.

17 3. Any foreign sales corporation under sections 921 to 927 of the Internal  
18 Revenue Code.

19 4. Any export trade corporation under sections 970 and 971 of the Internal  
20 Revenue Code.

21 5. Any corporation regardless of its place of incorporation if the average of its  
22 property and payroll factors within the United States, and computed on an annual  
23 basis, is at least 20%. ✓

1           6. Any corporation not described in subds. 1. to 5. ✓ to the extent of the  
2 corporation's income within the United States and the corporation's property and  
3 payroll factors assignable to a location within the United States.

4           (i) "Worldwide method" means the income and apportionment factors of a  
5 unitary business regardless of the country where any member of the unitary  
6 business is organized or incorporated or conducts business. The worldwide method  
7 does not include the income and apportionment factors of tax-option corporations  
8 unless the department determines that the worldwide method is necessary to  
9 accurately report the income of the tax option corporation apportioned to this state.

10           ② (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. A corporation that is  
11 subject to tax under s. 71.23 (1) or (2) ✓ or 71.43 ✓, that is a member of an affiliated group  
12 and is engaged in a unitary business with one or more members of the affiliated  
13 group, shall elect to compute the corporation's income using the ✓ water's edge method  
14 of combined reporting or the worldwide ✓ method of combined reporting. A corporation  
15 electing to file a tax return using the worldwide method may not thereafter elect to  
16 file a tax return using the water's edge method without the department's consent.  
17 A corporation that has previously filed a return using the worldwide method may file  
18 with the department a request to file a return using the water's edge method before  
19 the end of the taxable year that the water's edge method is to apply. The department  
20 shall promulgate rules to implement this section.

21           ② (3) ACCOUNTING PERIOD. For purposes of this section, the income and  
22 apportionment factors of all corporations that are members of an affiliated group and  
23 that are engaged in a unitary business ✓ shall be determined by using the same  
24 accounting period. If the ✓ affiliated group that is engaged in a unitary business has  
25 a common parent corporation, the accounting period of the common parent



1 corporation shall be used to determine the income and apportionment factors of all  
2 the corporations that are members of the affiliated group that are engaged in a  
3 unitary business. If the affiliated group that is engaged in a unitary business has  
4 ~~no~~ no common parent corporation, the income of the affiliated group that is engaged  
5 in a unitary business shall be determined using the accounting period of the member  
6 of the affiliated group that has the most significant operations on a recurring basis  
7 in this state.

8 <sup>(B)</sup>(4) FILING RETURNS. (a) *Corporations with the same accounting period.*  
9 Corporations that must file a return under this section and that have the same  
10 accounting period may elect to file a group return under par. (c) <sup>✓</sup> that reports this  
11 state's aggregate franchise or income tax liability of all members of the affiliated  
12 group that are engaged in a unitary business. Corporations that must file a return  
13 under this section may elect to file separate returns reporting the corporations'  
14 respective apportionment of this state's franchise or income tax liability as  
15 determined under the water's edge or worldwide method, if each corporation filing  
16 a separate return pays its own apportionment of this state's franchise or income tax  
17 liability.

18 (b) *Corporations with different accounting periods.* Corporations that must file  
19 a return under this section and that have different accounting periods shall use the  
20 actual figures from the corporations' financial records to determine the proper  
21 income and income <sup>λ</sup>related computations to convert to a common accounting period.  
22 Corporations that must file a return under this section may use a proportional  
23 method to convert income to a common accounting period if the results of the  
24 proportional method do not materially misrepresent the income apportioned to this  
25 state. The apportionment factors shall be computed according to the same method

1 used to determine the income for the common accounting period. If a corporation  
2 performs an interim closing of its financial records to determine the income  
3 attributable to the common accounting period, the actual figures from the interim  
4 closing shall be used to convert the apportionment factors to the common accounting  
5 period.

6 (c) *Designated agent.* If corporations that are subject to this section elect to file  
7 a group return under par. (a),<sup>✓</sup> the parent corporation of the affiliated group shall be  
8 the sole designated agent for each member of the affiliated group including the  
9 parent corporation . The designated agent shall file the group return under par. (a),  
10 shall file for any extensions under s. 71.24 (7) or 71.44 (3),<sup>✓</sup> shall file amended returns  
11 and claims for refund or credit, and shall send and receive all correspondence with  
12 the department regarding a return filed under this section. Any notice the  
13 department sends to the designated agent is considered a notice sent to all members  
14 of the affiliated group. Any refund shall be paid to and in the name of the designated  
15 agent and shall discharge any liability of the state to any member of an affiliated  
16 group regarding the refund. The affiliated group filing a group return under par. (a)  
17 shall pay all taxes, including estimated taxes, in the designated agent's name. The  
18 designated agent shall participate on behalf of the affiliated group in any  
19 investigation or hearing requested by the department regarding a return filed under  
20 this section and shall produce all information requested by the department  
21 regarding a return filed under this section. The designated agent may execute a  
22 power of attorney on the behalf of the designated agent and the members of the  
23 affiliated group. The designated agent shall execute waivers, closing agreements  
24 and other documents regarding a return filed under par. (a) and any waiver,  
25 agreement or document executed by the designated agent shall be considered as

1 executed by all members of the affiliated group. If the department acts in good faith  
2 with an affiliated group member that represents itself as the designated agent for  
3 the affiliated group, any action taken by the department with the affiliated group  
4 member has the same effect as if the affiliated group member were the designated  
5 agent for the affiliated group.

6 (d) <sup>✓</sup>*Part-year members.* If a corporation becomes a member of an affiliated  
7 group engaged in a unitary business or ceases to be a member of an affiliated group  
8 engaged in a unitary business after the beginning of a common accounting period,  
9 the corporation's income shall be apportioned to this state as follows:

10 1. If the corporation is required to file 2 short period federal returns for the  
11 common accounting period, the income for the short period that the corporation was  
12 a member of an affiliated group engaged in a unitary business shall be determined  
13 using the water's edge or worldwide method. The income for the remaining short  
14 period shall be by separate reporting under s. 71.25 or 71.45<sup>✓</sup>. If the corporation  
15 becomes a member of another affiliated group engaged in a unitary business in the  
16 remaining short period, the corporation's income shall be determined for the  
17 remaining short period using the water's edge or worldwide method.

18 2. If the corporation is not required to file federal short period returns, the  
19 corporation must file a separate return. Income shall be determined by ~~the~~ the  
20 following methods:

21 a. By the water's edge or worldwide method for any period that the corporation  
22 was a member of an affiliated group that was engaged in a unitary business.

23 b. By separate reporting under s. 71.25 or 71.45 for any period that the  
24 corporation was not a member of an affiliated group that was engaged in a unitary  
25 business.

1 <sup>(b)</sup> (5) INCOME COMPUTATION UNDER COMBINED REPORTING. Under the water's edge  
2 or worldwide method, income attributable to this state shall be determined as  
3 follows:

4 (a) The net income of each corporation as determined under s. 71.26, 71.34 (1) ✓  
5 or 71.45. ✓

6 (b) To the amount determined under par. (a), add a general or limited partner's  
7 share of income to the extent that the general or limited partner and the partnership  
8 in which the general or limited partner invests are engaged in a unitary business,  
9 regardless of the percentage of the general or limited partner's ownership in the  
10 partnership.

11 (c) Adjust each corporation's income, as determined under sub. (b), ✓ as provided  
12 under s. 71.30 ✓ or ~~71.49~~ 71.49. ✓

13 (d) From the amount determined under par. (c), subtract intercompany  
14 transactions, <sup>such</sup> so that intercompany accounts of assets, liabilities, equities, income,  
15 costs or expenses are excluded from the determination of income to accurately reflect  
16 the income and apportionment factors in a tax return that is filed under this section.  
17 To compute the apportionment factors, intercompany transactions are excluded from  
18 both the numerator and the denominator. Distributions of intercompany dividends  
19 that are paid from nonbusiness earnings or nonbusiness profits, or distributions of  
20 intercompany dividends that are paid from earnings or profits that are accumulated  
21 before the payer corporation becomes a member of an affiliated group engaged in a  
22 unitary business, are not excluded from the income of the recipient corporation. An  
23 intercompany distribution that exceeds the payer corporation's earnings or profits  
24 or stock basis shall not be considered income from an intercompany sale of an asset  
25 and shall not be excluded as income from an intercompany transaction.

1 Intercompany dividends that are paid from earnings or profits from a unitary  
2 business income shall be considered as paid first from current earnings or profits and  
3 then from accumulations from prior years in reverse order of accumulation. An  
4 intercompany transaction includes the following:

5 1. Income from sales of inventory from one member of an affiliated group to  
6 another member of an affiliated group.

7 2. Gain or loss from sales of intangible assets from one member of an affiliated  
8 group to another member of an affiliated group.

9 3. Gain or loss on sales of fixed assets or capitalized intercompany charges from  
10 one member of an affiliated group to another member of an affiliated group.

11 4. Loans, advances, receivables and similar items due <sup>✓</sup> one member of an  
12 affiliated group to another member of an affiliated group, including interest income  
13 and interest expense related to these items.

14 5. Stock or other equity of one member of an affiliated group that is owned or  
15 controlled by another member of an affiliated group.

16 6. Except as provided in par. (d) (intro), intercompany dividends paid out of  
17 earnings and profits from a unitary business income.

18 7. Annual rent paid by one member of an affiliated group to another member  
19 of an affiliated group.

20 8. Management or service fees paid by one member of an affiliated group to  
21 another member of an affiliated group.

22 9. Income or expenses allocated or charged by one member of an affiliated group  
23 to another member of an affiliated group.

1 (e) To the amount determined under par. (d), for each corporation, add  
2 nonbusiness income, net of related expenses, and subtract nonbusiness losses, net  
3 of related expenses, to determine each corporation's apportionable income or loss.

4 (f) Calculate the apportionment factors under sub. (6) and multiply each  
5 corporation's apportionable income or loss, as determined under par. ~~(e)~~ (e) by the  
6 corporation's apportionment percentage.

7 (g) Allocate the combined net income attributable to this state among the  
8 corporations subject to this state's income or franchise tax, according to the ratio of  
9 each corporation's income factors attributable to this state compared to the affiliated  
10 group's aggregated income factors attributable to this state.

11 (h) To the amount determined under par. (g), add each corporation's  
12 nonbusiness income attributable to this state and subtract each corporation's  
13 nonbusiness losses attributable to this state.

14 (i) To the amount determined under par. (h), subtract each corporation's net  
15 business loss carry-forward under s. 71.26 (4) or 71.45 (4). A corporation shall not  
16 apply s. 71.26 (4) or 71.45 (4) to the amount determined ~~under~~ par. (h) if the corporation did  
17 not file a tax return in this state for taxable years ending on or before December 31,  
18 1999.

19 (6) APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING. Under the  
20 water's edge or worldwide method, this state's apportionment factors are determined  
21 as follows:

22 (a) The apportionment factors of each corporation as determined under s. 71.25  
23 or 71.45.

24 (b) To the amount determined under par. (a), add a general or limited partner's  
25 share of the apportionment factors to the extent that the general or limited partner

1 and the partnership in which the general or limited partner invests are engaged in  
2 a unitary business, regardless of the percentage of the general or limited partner's  
3 ownership in the partnership.

4 (c) To the amount determined under par. (b),<sup>✓</sup> subtract intercompany  
5 transactions under sub. (5) (d).<sup>✓</sup>

6 <sup>⑤</sup>(7) PRESUMPTIONS AND BURDEN OF PROOF. An affiliated group under sub.<sup>✓</sup>(1) (a)  
7 shall be presumed to be engaged in a unitary business under sub. (1) <sup>g</sup>(~~g~~) and all the  
8 income of the unitary business shall be presumed to be apportionable business  
9 income under this section. A corporation, partnership, limited liability company or  
10 tax-option corporation shall have the burden of proving that it is not a member of  
11 an affiliated group subject to this section.

12 SECTION 3. 71.26 (3) (L)<sup>x</sup> of the statutes is amended to read:

13 71.26 (3) (L) Section 265 is excluded and replaced by the rule that any amount  
14 otherwise deductible under this chapter that is directly or indirectly related to  
15 income wholly exempt from taxes imposed by this chapter or to losses from the sale  
16 or other disposition of assets the gain from which would be exempt under this  
17 paragraph if the assets were sold or otherwise disposed of at a gain is not deductible.  
18 In this paragraph, "wholly exempt income", for corporations subject to franchise or  
19 income taxes, includes ~~amounts received from affiliated or subsidiary corporations~~  
20 ~~for interest, dividends or capital gains that, because of the degree of common~~  
21 ~~ownership, control or management between the payer and payee, are not subject to~~  
22 taxes under this chapter. In this paragraph, "wholly exempt income", for  
23 corporations subject to income taxation under this chapter, also includes interest on  
24 obligations of the United States. In this paragraph, "wholly exempt income" does not  
25 include income excludable, not recognized, exempt or deductible under specific

1 provisions of this chapter. If any expense or amount otherwise deductible is  
2 indirectly related both to wholly exempt income or loss and to other income or loss,  
3 a reasonable proportion of the expense or amount shall be allocated to each type of  
4 income or loss, in light of all the facts and circumstances.

5 **SECTION 4.** 71.46 (3)<sup>x</sup> of the statutes is repealed.

6 **SECTION 5.** 71.44 (1) (e)<sup>x</sup> of the statutes is created to read:

7 71.44 (1) (e) A corporation that is a member of an affiliated group, as defined  
8 in s. 71.255 (1) (a), and engaged in a unitary business, as defined in s. 71.255 (1) (g),  
9 shall file a tax return under s. 71.255.



1689/2 DN  
JK

D-N

Kerry Holden

¶ This is an extremely complicated draft, so I am not sure I have completely expressed the department of revenue's intent. Please review this draft very carefully. Specifically, please review <sup>the</sup> sections regarding income computation under combined reporting and apportionment factor computation under combined reporting. In addition, this bill uses <sup>s</sup> the existing provisions for estimated taxes under sections 71.29<sup>v</sup> and 71.49<sup>v</sup> of the statutes. Please contact me if this should be changed. If you have any questions, please do not hesitate to contact me.

JK

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1689/2dn  
JK;jlg:hmh

Sunday, January 31, 1999

Kerry Holden:

This is an extremely complicated draft, so I am not sure I have completely expressed the department of revenue's intent. Please review this draft very carefully. Specifically, please review the sections regarding income computation under combined reporting and apportionment factor computation under combined reporting. In addition, this bill uses the existing provisions for estimated taxes under sections 71.29 and 71.49 of the statutes. Please contact me if this should be changed. If you have any questions, please do not hesitate to contact me.

Joseph T. Kreye  
Legislative Attorney  
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LRB Draft 1689/1 — Combined Reporting

1. Amend the statutes to provide that all interest and dividend income is included in apportionable income unless barred by the U.S. Constitution. This same test applies to all other items included in the list of apportionable income. The changes needed include the following:

- a. Bill section 1. Amend sec. 71.25(5)(a)9 by deleting all the language after the word “dividends” in the first line. Therefore, it would read as follows:

71.25(5)(a)9. Interest and dividends.

- b. Bill section 2. Amend sec. 71.25(5)(a)10 by deleting all the language after the word “assets” in the first line. Therefore, it would read as follows:

71.25(5)(a)10. Sale of intangible assets.

- c. Amend the second sentence of sec. 71.25(5)(a)(intro.) to clarify that the items listed are presumed to be apportionable income unless such treatment would be unconstitutional.

- d. Amend sec. 71.26(3)(L) to read as follows:

(L) Section 265 is excluded and replaced by the rule that any amount otherwise deductible under this chapter that is directly or indirectly related to income wholly exempt from taxes imposed by this chapter or to losses from the sale or other disposition of asset the gain from which would be exempt under this paragraph if the assets were sold or otherwise disposed of at a gain is not deductible. In this paragraph, “wholly exempt income”, for corporations subject to franchise or income taxes, includes amounts received from affiliated or subsidiary corporations for interest, dividends or capital gains that, because of the degree of common ownership, control or management between the payor and payee, are not subject to taxes under this chapter. ...

- e. Make similar changes to the appropriate parts of sec. 71.04, Stats.

- ~~2. Eliminate bill sections 5 and 6. We do not want to adopt federal consolidated reporting. Instead, we want to adopt the combined method of accounting for unitary businesses. We propose creating a new section in subchapter IV of chapter 71, that would include the following provisions.~~

71.255 **Combined reporting.** (a) DEFINITIONS. In this section:

- a. (1) “Affiliated group” <sup>means</sup> includes any of the following:

a. A parent corporation and any one or more corporations or chains of corporations, connected through direct or indirect ownership with the parent if the parent owns stock possessing 50% or more of the voting power of at least one corporation and, if applicable, stock cumulatively representing 50% or more of the voting power of each of the corporations, except the parent, is owned by the parent or one or more of the other corporations.

b. Any 2 or more corporations if stock representing 50% or more of the voting power of the corporations is directly or indirectly owned by a common owner or owners, either corporate or noncorporate. *2 or more entities owned by any corp or group*

*need  
will  
were  
never*

c. Any 2 or more corporations that constitute stapled entities. "Stapled entities" means any group of 2 or more corporations if 50% or more of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests. Two or more interests are stapled interests if, by reason of form of ownership restrictions on transfer, or other terms of conditions, in connection with the transfer of one of the interests the other interest or interests are also transferred or required to be transferred.

*in this item  
need  
clearer*

d. Any 2 or more corporations, all of whose stock representing 50% or more of the voting power of the corporations is directly owned by or for the benefit of, members of the same family. Members of the same family are limited to an individual, the individual's spouse, parents, brothers or sisters, grandparents, children and grandchildren, and their respective spouses.

(2) "Combined report" means a form showing the calculations to divide the income of a multi-entity unitary business among the taxing jurisdictions in which the trade or business is conducted.

(3) "Unitary business" includes a trade or business carried on by more than one person when the persons are related through common ownership and when the trade or business activities of the persons are of mutual benefit, integrated with, dependent upon, or contribute to the activities of one or more of the other persons, individually or as a group. Unity is presumed whenever there is unity of ownership, operation, and use, evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction, but the absence of these centralized activities will not necessarily evidence a nonunitary business. Other factors that may indicate the existence of a unitary business include intercorporate sales or leases, intercorporate services, intercorporate debts, intercorporate use of proprietary materials, interlocking directorates, and interlocking corporate officers. Where a business operation conducted within this state is owned by a business entity that carries on business activity outside the state different in kind from that conducted within this state, and the other business is conducted entirely outside the state, it is presumed that the two business operations are unitary in nature, interrelated, connected, and interdependent unless it can be shown to the contrary.

*need  
better  
definition*

*substitute  
"and" for "a"  
not inclusive*

*any need to  
use "made a business" ?  
me Jan 70, 71, 77*

*under s. 71.25(6)? (+ int. subd. 2)  
(or at of subd here?)*

*Q (4)* The "water's edge method of combined reporting" includes the income and apportionment factors of the following unitary entities:

- a. Any corporation organized or incorporated under the laws of the United States or any state, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, or any political subdivision thereof, including corporations described in ss. 931 through 936 of the Internal Revenue Code.
- b. Any domestic international sales corporation under ss. 991 through 994 of the Internal Revenue Code.
- c. Any foreign sales corporation under ss. 921 through 927 of the Internal Revenue Code.
- d. Any export trade corporation under ss. 970 and 971 of the Internal Revenue Code.
- e. Any corporation regardless of its place of incorporation if the average of its property and payroll factors, computed on an annual basis, within the United States is at least 20%.
- f. Any corporation not otherwise described in subds. a through e to the extent of its income within the United States and its factors assignable to a location within the United States.

The water's edge method of combined reporting does not include the income and apportionment factors of tax-option corporations, unless the department determines that it is necessary to clearly reflect income.

*Q (5)* The "worldwide method of combined reporting" includes the income and apportionment factors of unitary entities irrespective of the country or countries in which any member of the group is organized or incorporated or conducts business. The worldwide method of combined reporting does not include the income and apportionment factors of tax-option corporations, unless the department determines that it is necessary to clearly reflect income.

*under s. 71.25(6)  
(+ int. subd. 2)  
(or int. subd. here?)*

*Q* **(b) CORPORATIONS REQUIRED TO USE COMBINED REPORTING.** A corporation subject to tax under s. 71.23(1) or (2) or 71.43 that is a member of an affiliated group and is engaged in a unitary business with one or more members of that affiliated group shall compute its income and apportionment factors using the water's edge method of combined reporting, unless the group elects to use the worldwide method of combined reporting under s. 71.255(4).

*Q* Corporations electing to file under the worldwide method of combined reporting may not thereafter elect to compute their income and apportionment factors under the water's edge method without the consent of the department. A request to file under the water's edge method shall be filed with the department before the end of the taxable year for which the use

of the water's edge method of combined reporting is to apply.

3 (c) ACCOUNTING PERIOD. For purposes of the combined report, the income and apportionment factors of all corporations shall be determined on the basis of the same accounting period. If the group has a common parent corporation, the accounting period of the common parent corporation shall be used. If the group has no common parent, the income of the group's members shall be determined on the basis of the accounting period of the member that is expected to have, on a recurring basis, the most significant Wisconsin operations.

4 (d) FILING RETURNS. (1) Corporations with the same accounting period. Corporations subject to this section that have the same accounting period may elect to file a group return on which the aggregate Wisconsin franchise or income tax liability of all members of the affiliated group is reported. Alternatively, the corporations may elect to file separate returns reporting their respective shares of the Wisconsin franchise or income tax liability as determined under the combined reporting method.

①

Designated Agent  
A. If the election to file a group return is made, the group shall designate the parent corporation or the entity with the most significant Wisconsin operations to be the designated agent. The designated agent shall be the sole agent for each member of the affiliated group, duly authorized to act in its own name in all matters relating to the tax liability for the year for which a group return is filed. The designated agent is responsible for filing the group return. All correspondence between the department and the affiliated group shall be carried on directly with the designated agent. The designated agent shall file for all extensions of time. Notices of deficiencies shall be mailed only to the designated agent, and the mailing to the designated agent shall be considered as a mailing to each member of the group. Notice and demand for payment of taxes shall be given only to the designated agent and such notice and demand shall be considered as a notice and demand to each member. All taxes, including estimated taxes, shall be paid in the name of the designated agent. The designated agent shall participate in investigations and hearings on behalf of each member; it shall make available to information necessary to conduct those proceedings; and it may execute a power of attorney on behalf of itself and the other members of the affiliated group. The designated agent shall file amended returns and claims for refund or credit, and any refund shall be made directly to and in the name of the designated agent and shall discharge any liability of the state in respect thereof to any member of the affiliated group. The designated agent in its name shall give waivers and execute closing agreements and all other documents, and any waiver so given, or agreement or other document so executed, shall be considered as having also been given or executed by each member of the affiliated group. If the department in good faith with a member representing itself to be designated agent for an affiliated group, any action of such member of the department in the course of such dealing shall have the same effect as if such member were the designated agent.

refer to "the designated agent"

\*

all

nonresident  
corporation

(2) If the corporations elect to file their own Wisconsin returns, each member shall be

of an  
affiliated  
group

responsible for payment of its share of the taxes.

*books?*  
*sub-title*  
*use English*  
*(in/under)*  
2) Corporations with different accounting periods. Except as provided below, corporations subject to this section that have different accounting periods shall use the actual figures from their books and records to determine the proper income and related computations for the common accounting period. A corporation may use a pro rata method of converting income to the common accounting period provided the results do not produce a material misstatement of income apportioned to the state. The apportionment factors shall be computed on the basis of the same common accounting period used to determine the income for the common accounting period. If an interim closing of the books is done to determine the income attributable to the common accounting period, then the actual figures from the interim closing shall be used to convert the apportionment factors to the common accounting period. If the pro rata method is used to convert income, then a pro rata method shall also be used to convert the apportionment factors.

*07*  
d (3) Part-year members. If a corporation either becomes a member or ceases to be a member of a unitary group after the beginning of the common accounting period, the following treatment applies:

1 a. If the part-year member is required to file 2 short period federal returns for the common accounting period, the income for the period in which the member was unitary with the group shall be determined on a combined basis. The income for the remaining short period is determined on a separate basis or on a combined basis with a different group if the taxpayer had a unitary relationship with one or more corporations in that short period.

2 b. If the part-year member is not required to file federal short period returns, it must file a separate return for its entire taxable year. The income reported on that return is determined using combined reporting for any period in which the part-year member was part of a unitary group, and by separate reporting for any period it was not part of a unitary group.

\*\* Need provisions on estimated tax and amended returns.

*faxing over Friday afternoon*

*5*  
e) INCOME COMPUTATION UNDER COMBINED REPORTING. Under the water's edge or worldwide method of combined reporting, Wisconsin income is determined as follows:

(1) Begin with the net income of each corporation as determined under s. 71.26, s. 71.34(1), or s. 71.45, as appropriate.

(2) To the extent that a general or limited partner and the partnership in which it invests are engaged in any unitary business operation, irrespective of the percentage of ownership, include the partner's share of the income. "Partnership" includes any entity that is treated as a partnership under s. 7701 of the Internal Revenue Code.

*see 71.29*  
*71.48*

(3) Adjust each corporation's income as provided under s. 71.30, if applicable.

*add to  
definition*

(4) Eliminate intercompany transactions. An intercompany transaction is a transaction between corporations or other entities that are part of the same unitary group immediately after the transaction. Intercompany accounts of assets, liabilities, equities, income, costs, and expenses shall be eliminated in whole or in part to properly reflect income and apportionment factors in a combined report. When computing the apportionment factors, intercompany transactions are eliminated from both the numerator and the denominator. ~~The purpose of eliminating intercompany transactions is to avoid taking into account an item more than once in a combined report.~~ Intercompany transactions include, but are not limited to, the following:

- a. Income from sales of inventory from one member of the group to another member.
- b. Gain or loss from sales of intangible assets from one member of the group to another member.
- c. Gain or loss on sales of business fixed assets or capitalized intercompany charges from one member of the group to another.
- d. Loans, advances, receivables, and similar items due to one member from another member, including interest income and interest expense related to these items.
- e. Stock or other equity of one member which is owned or controlled by another member.
- f. Intercompany dividends paid out of earnings and profits derived from unitary business income. Distributions are deemed paid first out of current earnings and profits and then out of prior years' accumulations in reverse order of accumulation. Distributions paid out of nonbusiness earnings and profits or distributions from earnings and profits accumulated prior to the time the payer corporation became a member of the combined group are not eliminated from the income of the recipient corporation. An intercompany distribution which exceeds the payer's earnings and profits and stock basis is not treated as income from an intercompany sale of an asset. Such a distribution may not be eliminated as income from an intercompany transaction.
- g. Annual rent paid by one member to another member.
- h. Management or service fees paid by one member to another member.
- i. Income or expenses allocated or charged by one member to another member.

(5) Add or subtract nonbusiness income and nonbusiness losses, net of related expenses, for each corporation to determine each corporation's apportionable income or loss.



(6) Calculate the apportionment factors under sub. (f), and multiply each corporation's apportionable income or loss by its Wisconsin apportionment percentage.

(7) Allocate the combined Wisconsin net income among the corporations subject to Wisconsin franchise or income taxation, based on the ratio that the Wisconsin factors of each of these corporations bears to the aggregated group factors.

(8) Add or subtract, as appropriate, each corporation's Wisconsin nonbusiness income or nonbusiness losses.

(9) Subtract each corporation's Wisconsin net business loss carryforward as determined under s. 71.26(4).

6 ~~(f)~~ APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING. Under the water's edge or worldwide method of combined reporting, the Wisconsin apportionment factors are determined as follows:

(1) Begin with the apportionment factors of each corporation as determined under s. 71.25 or s. 71.45, as appropriate.

(2) To the extent that a general or limited partner and the partnership in which it invests are engaged in any unitary business operation, irrespective of the percentage of ownership, include the partner's share of the apportionment factors. "Partnership" includes any entity that is treated as a partnership under s. 7701 of the Internal Revenue Code.

(3) Eliminate intercompany transactions as described in sub. (e)(4).

7 ~~(g)~~ PRESUMPTIONS AND BURDEN OF PROOF. A qualified taxpayer and its affiliates shall be presumed to be a part of a unitary business and all income of that business shall be presumed to be apportionable business income. A taxpayer shall have the burden of proof regarding the issue of whether or not a corporation is a member of an affiliated group subject to this section.

3. Bill section 7. This change should not be made.

4. It is the intent that domestic insurance companies which are subject to Wisconsin franchise taxation be required to use the combined reporting method of accounting. Therefore, the following changes should be made:

a. The insurance company subchapter should be amended to include a reference to the combined reporting provisions that will be included in subchapter IV.

b. Section 71.46(3) should be repealed.

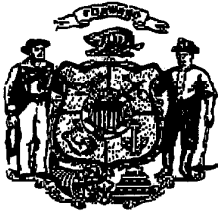
*1  
not possible  
X ref to  
ins or corp.  
subd.*

5. A nonstatutory transitional rule should be added. This provision should state that if a corporation that is included in a Wisconsin combined report for the taxable year beginning in 2000 previously filed Wisconsin franchise or income tax returns, the carryforwards of net operating losses, capital losses, and credits for this corporation may be claimed on the combined report, subject to the statute of limitations relating to each carryforward. If a corporation that is included in a Wisconsin combined report for the taxable year beginning in 2000 did not have nexus with Wisconsin for prior years, no carryforwards may be claimed on the combined report.

ie, did not  
file a WI  
return in  
prior years

- not wanting  
to cover losses  
from the past

because now a person can  
claim had nexus in the past  
(because of change in law)



# Facsimile Cover Sheet

**Wisconsin Department of Revenue**  
**Income, Sales & Excise Tax Division**  
**Administration**  
125 South Webster St.  
P.O. Box 8933  
Madison, WI 53708-8933  
(608)266-1911

**Fax Number: (608) 261-6240**

Number of pages attached, including this cover sheet: 8

If all pages are not received or are illegible, please call:

Deliver to: Joe Kreye 6-2263  
Addressee Addressee's Phone Number

From: Carol Held 6-5464  
Sender Sender's Phone Number  
(836-9646) home

Please reply when received:  Yes  No

**Additional Information:**

Here is additional information for the draft  
we discussed this afternoon.

**\*\*\*Important Confidentiality Notice\*\*\***

This facsimile transmission from the Wisconsin Department of Revenue contains information which may be confidential or legally privileged. These documents are intended only for the use of the individual or entity named on this transmission cover sheet. If you or your firm are not the intended recipient and have received this information in error, you are notified that reading, copying, disclosing, or distributing these documents, or taking any action based on the information contained in them is strictly prohibited. The documents should be returned to this office. Please notify us as soon as possible at the telephone number above so that we can arrange to retrieve the transmitted documents at no cost to you.

**Group amended returns.**

The election to file a group return applies to any amended return which includes the same corporations which joined in the filing of the original return.

If an election to file a group return is in effect for a taxable year and it is subsequently revoked for that year because the group is not a unitary business, the designated agent may not file a group amended return. The designated agent and each corporation which joined in filing the group return shall file a separate amended return. In computing the tax due on any such amended return, the filer shall take into account all payments, credits and other amounts, including refunds, allocated to it by the designated agent.

*consider  
how?  
add to  
something?*

If a change in liability relates to the removal of a member that was not eligible to be a part of the group, the designated agent shall file a group amended return and the ineligible taxpayer shall file a separate amended return.

If a corporation erroneously fails to join in the filing of a group return, the designated agent shall file an amended group return adding such corporation and, if a separate return was filed by such corporation, such corporation shall file an amended separate return showing no net income, overpayment or underpayment, and stating that such corporation has joined in the filing of a group return.

**Estimated tax payments.** *insert 12-23*

If a group return is filed for 2 consecutive taxable years, payments of estimated tax shall be made on a group basis for each subsequent taxable year, until such time as separate returns are filed. For the taxable years in which combined estimated payments are required, the combined group shall be treated as one taxpayer. If separate returns are filed in a year after a group return year, the amount of any estimated tax payments made on a group basis for such year shall be credited against the separate tax liabilities of the former filers of a group return in the manner allocated by the designated agent which is satisfactory to the department. The manner of allocation will be satisfactory to the department if it does not jeopardize the collection of any liability.

For the first 2 years for which a group return is filed, payments of estimated tax may be made on either a group or separate basis. The amount of any separate estimated tax payments made for such year shall be credited against the group tax liability. The designated agent shall give notice to the department of any estimated payments made on a separate basis for any such year.

**Interest for underpayment of estimated tax.**

*(8)* If a group return is filed, the amount of any interest for underpayment of estimated tax

shall be computed as if the group were one taxpayer.

*Es* *in* *amount*  
In the first year for which a group return is filed, the determination of any interest due shall be made using the aggregate of the tax and income shown on the returns filed by the members of the group for the previous year.

*(7/07)*  
If a group makes estimated tax payments on a group basis for all or any part of a taxable year, and its members file separate returns for the taxable year, the payments made shall be allocated in the manner prescribed by the designated agent which is satisfactory to the department. The manner of allocation will be satisfactory if it does not jeopardize the collection of any liability. The determination of any interest due from any of the members of the group making the estimated payments shall be made using each former member's separate company items from the combined report filed for the previous year and such member's allocated share of the combined estimated payments for the current year. The allocated shares shall be reported to the department by the designated agent in the manner prescribed by the department.

If group estimated tax payments are made for a taxable year but no group return was filed for that year and no group return was filed for the previous year, the estimated tax shall be a credit only for the corporation that made the payment.

Underpayment interest when change in group membership:

Entering a group:

*(b)(1)(A)*  
a. If a corporation becomes a member of a new or existing combined group during the common accounting period (the entry year), the corporation's separate company items shown on its return for its taxable year preceding the entry year shall be included with the corresponding items of the members of the group for the common accounting period preceding the entry year.

*under* *in the first year that a corp files a return under this section*  
b. If such corporation is not a member of the combined group for the entire entry year, for purposes of determining underpayment interest to the common accounting period immediately following the entry year, such corporation's separate company items for that portion of the entry year prior to the date of entry shall be included with the corresponding items of the combined group for that taxable year.

*2*  
c. If a corporation was a member of another combined group during any portion of the entry year in which it becomes a member of a second combined group or during any portion of the preceding taxable year, for purposes of applying a. and b., such corporation's separate company items shall include the items attributed to such corporation by the designated agent of the first combined group.

*what does this have to do with interest or est taxes?*

(C) Leaving a group:

*mean end?* *the same thing!?*

*there seems conflicting?*

*combine?*

a. If a corporation leaves a combined group during a common accounting period (the departure year), for purposes of determining underpayment interest to the combined group for the departure year, the separate company items attributed to such corporation by the designated agent for the common accounting period preceding the departure year shall be excluded from the corresponding items of the combined group as if such corporation had not been a member of the combined group during the common accounting period preceding the departure year.

b. In the case of a corporation departing a combined group after the beginning of the departure year, for purposes of determining underpayment interest for the combined group in the common accounting period beginning after the departure year, separate company items attributed to such corporation by the designated agent for the portion of the departure year prior to its departure shall be excluded from the corresponding items of the combined group as if such corporation had not been a member of the group during that portion of the departure year.

c. For purposes of determining underpayment interest to such corporation, for the first taxable year of the corporation beginning after the date of departure, and, in the case of a corporation that leaves a group prior to the end of such corporation's taxable year, for the portion of its separate taxable year remaining after the date of departure, such corporation shall take into account the separate company items attributed to it by the designated agent.

(See Illinois estimated tax examples.)

**Assessment notices.**

Any notice of amount due in respect to the tax for a group return year will identify each corporation which was a member of the group during any part of the period covered by the notice. A failure to properly list all members of the combined group will not affect the validity of the notice as to any member. Any levy, any notice of a lien, or any other proceeding to collect the amount of any assessment, after the assessment has been made, will name the corporation from which such collection is to be made.

If a corporation that joined in the filing of a group return has ceased to be a member of the combined group, such corporation files written notice of such cessation with the department, the department upon request will furnish the corporation with a copy of any notice of amount due. A failure of the department to comply with such request shall not have the effect of limiting the liability of such corporation.

**Liability for tax, penalty, and interest.**

If members of a combined group file a group return, they shall be jointly and severally liable for the combined tax, interest, and penalties computed. No agreement entered into by one or more members of the combined group with any other member of such group or with any other person shall in any case have the effect of reducing the liability prescribed.

**Application of net operating losses in a combined report.**

The net operating loss for each taxpayer in the combined report is determined by adjusting each taxpayer's share of the business income or loss by any nonbusiness income or loss. In a subsequent year when a member of the group has positive net income, only the amount of net operating loss carryforward attributable to that particular taxpayer may be deducted. (See California example.)

*parties into as draft*

*[Handwritten bracket on the left side of the paragraph]*

*do the 1st year / 2d year restriction of Cal. law apply?*

for purposes of applying IITA Section 804 to the combined group for the departure year, the separate company items attributed to such corporation by the designated agent for the common taxable year preceding the departure year shall be excluded from the corresponding items of the combined group as if such corporation had not been a member of the combined group during the common taxable year preceding the departure year;

ii) in the case of a corporation departing a combined group after the beginning of the departure year, for purposes of applying IITA Section 804 to the combined group in the common taxable year beginning after the departure year, separate company items attributed to such corporation by the designated agent for the portion of the departure year prior to its departure shall be excluded from the corresponding items of the combined group as if such corporation had not been a member of the group during that portion of the departure year; and

iii) for purposes of applying IITA Section 804 to such corporation, for the first taxable year of the corporation beginning after the date of departure, and, in the case of a corporation that leaves a group prior to the end of such corporation's taxable year, for the portion of its separate taxable year remaining after the date of departure, such corporation shall take into account the separate company items attributed to it by the designated agent under subsections (d)(2)(A)(i) and (ii) of this Section.

B) If the designated agent fails to make reasonable attributions of separate company items, as described in subsections (d)(2)(A)(i) and (ii) of this Section, prior to the date on which the first Illinois Income Tax return for the departure year is filed by either the combined group or such corporation, no items shall be attributed to such corporation for purposes of applying Section 804 to the combined group or to such corporation.

ILLINOIS

e) Examples. The provisions of this Section may be illustrated by the following examples:

- 1) Example 1. Corporations P and S-1 file a combined return for the first time for calendar year 1985. P and S-1 also file combined returns for 1986 and 1987. For 1985 and 1986, P and S-1 may make payments of estimated tax on either a separate or combined basis. For 1987, however, the group must pay its estimated tax on a combined basis. In determining whether P and S-1 come within the exception provided in IITA Section 804(d)(1) (as in effect for 1985), the "tax shown on the return" is the aggregate amount of tax shown on the separate returns of each member for 1984.
- 2) Example 2. Corporations X and Y filed combined returns for the calendar years 1985 and 1986 and separate returns for 1987. In



determining whether X or Y comes within the exception provided in IITA Section 804(d)(2) (as in effect for 1987), the "facts shown on the return" are the facts shown on the combined return for 1986 attributable to X and to Y by the designated agent.

- 3) Example 3. Assume the same facts as in Example 1. Assume further that corporation S-2 becomes a member of the group on July 1, 1987, and joins in the filing of the combined return for 1987. In determining whether the group (which now includes S-2) comes within the exception provided in IITA Section 804(d)(1) (as in effect for 1987), the "tax shown on the return" is the tax shown on the combined return for 1986 plus any tax of S-2 on its separate return for 1986. In addition, for purposes of applying IITA Section 804(d)(2) (as in effect for 1987), the "facts shown on the return" for 1986 shall include the facts shown on the combined return plus the separate company items of S-2 for 1986.

In applying IITA Section 804(d) for 1988, the "tax shown on the return" and the "facts shown on the return" for 1987 shall include the separate company items of S-2 for the period prior to the July 1, 1987 date of its entry into the combined group.

- 4) Example 4. Assume the same facts as in Example 1. Assume further that corporation S-2 is a member of the group during 1986, and joins in the filing of the combined return for such year, but ceases to be a member of the group on September 15, 1987. In determining whether the group (which no longer includes S-2) comes within the exception provided in IITA Section 804(d)(1) (as in effect for 1987), the "tax shown on the return" is the tax shown on the combined return for 1986 less the amount attributed to S-2 by the designated agent. In applying IITA Section 804(d)(2), the "facts shown on the return" for 1986 will exclude the separate company items attributed to S-2 by the designated agent. Likewise, with regard to S-2's return, the "tax shown on the return" and the "facts shown on the return" for 1986 shall be the amounts attributed to S-2 by the designated agent.

- 5) Example 5. Assume that, on July 1, 1996, S-3 becomes a member of a combined group. Both S-3 and the combined group use a calendar taxable year. For purposes of applying IITA Section 804(c)(1)(B)(ii) for 1996, the "tax shown on the return of the taxpayer for the preceding taxable year" shall include the tax shown on the combined return for 1995 plus the tax shown on S-2's separate return for 1995. If S-3 was a member of another combined group during 1995, the tax attributed to it for 1995 by the designated agent of its former combined group shall be added to the tax shown on the combined return of its new group for 1995. For purposes of applying IITA Section 804(c)(1)(B)(ii) for 1997, the "tax shown on the return of the taxpayer for the preceding taxable year" shall include the tax reported by S-3 on its separate company return for the period ending prior to its July 1, 1996 entry into the group or any tax liability of its former combined group for 1996 attributed to it by the designated agent of the former combined group.

## Net Operating Losses (NOLs)

California incorporates, with specific modifications, the provisions of IRC Section 172, concerning carryovers of NOLs incurred in the conduct of a trade or business. In general, California law allows 50% of the NOLs incurred in income years beginning on or after January 1, 1987, to be carried forward for up to 5 years. For any NOL carryover for which a deduction was not allowed in 1991 or 1992 due to the R&TC Section 24416.3 suspension of NOL carryovers, the carryover period shall be extended as follows:

1. By two years, for losses sustained in income years beginning prior to January 1, 1991.
2. By one year, for losses sustained in income years beginning in 1991.

For income years beginning on or after January 1, 1994, new businesses may carry over 100% of the NOL incurred during the first 3 years of operation. The carryover period is 8 years for losses incurred in the first income year of business, 7 years for losses incurred in the second year of business, and 6 years for losses incurred in the third year.

In addition, small businesses may carry over 100% of a NOL incurred in income years

beginning on or after January 1, 1994. The carryover period is 5 years. A small business is a business with total receipts of less than \$1 million during the income year.

For more information regarding "eligible small business" and "new business" NOLs, get FTB Legal Ruling 96-5.

California does not have a provision that allows NOL carrybacks.

For income years where the taxpayer has a water's-edge election in effect, the deduction of an NOL carryover is not allowed to the extent that such NOL was determined by taking into account the income and factors of a bank or corporation that would not have been included in the combined report if a water's-edge election had been in effect in the year in which the loss was incurred.

Further information regarding the general NOL carryover can be found in form FTB 3805Q, Net Operating Loss (NOL) Computation and NOL and Disaster Loss Limitations — Corporations. California also has special NOL provisions for losses incurred in enterprise zones, the Los Angeles Revitalization Zone, Targeted Tax Areas and Local Agency Military Base Recovery Areas. For further information regarding these NOLs, see R&TC Sections 24416 through 24416.6, and

form FTB 3805Z, Enterprise Zone Business Booklet, form FTB 3806, Los Angeles Revitalization Zone Business Booklet, form FTB 3807, Local Agency Military Base Recovery Area Business Booklet and form FTB 3809, Targeted Tax Area Business Booklet.

### Application of NOL Carryovers in a Combined Report

The NOL for each taxpayer in the combined group is determined by adjusting each taxpayer's share of the unitary business income or loss by any nonbusiness income or loss. In a subsequent year when a member of the group has positive net income, only the amount of NOL attributable to that particular taxpayer may be deducted. The example below shows the computations involved in determining and applying an NOL in a combined report.

Another example of an NOL is shown in Schedule 4-E in the comprehensive example on page 18 of this booklet. Although unitary business income apportioned to each taxpayer in that example was positive, a nonbusiness loss caused Corporation C to have a net loss for California. Fifty percent of that loss will be available to be carried forward to subsequent years, although a deduction will be allowed only from California net income apportioned or allocated to Corporation C.

YEAR 1:	Corp. X	Corp. Y	Corp. Z	Combined
Unitary business income (loss) subject to apportionment	(400,000)	(10,000)	60,000	(350,000)
Apportionment percentages	5%	1%	3%	9%
Loss apportioned to California (Combined loss x %)	(17,500)	(3,500)	(10,500)	(31,500)
Nonbusiness items wholly attributable to California	50,000	(2,500)	0	
California net income (loss)	32,500	(6,000)	(10,500)	
NOL available to be carried forward (50% of loss)	0	(3,000)	(5,250)	

YEAR 2:	Corp. X	Corp. Y	Corp. Z	Combined
Unitary business income (loss) subject to apportionment	50,000	80,000	(5,000)	125,000
Apportionment percentages	6%	4%	4%	14%
Income apportioned to California (Combined income x %)	7,500	5,000	5,000	17,500
Nonbusiness items wholly attributable to California	2,500	(10,000)	0	
California net income (loss) before carryover	10,000	(5,000)	5,000	
Application of NOL carryover from Year 1	0	0	(5,000)	
California net income (loss)	10,000	(5,000)	0	

	Corp. X	Corp. Y	Corp. Z
Remaining NOL from Year 1		(3,000)	(250)
50% of loss in Year 2		(2,500)	
NOL available to be carried forward	0	(5,500)	(250)



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • FAX (608) 261-6240

Date: February 1, 1999
To: Joseph Kreye
From: Carol Held
Subject: LRB 1689/2 — Combined Reporting

Here are our comments.

- 1. Any references to a "consolidated return" should be changed to a "combined return" to avoid confusion with the federal consolidated return rules.
2. In the analysis, the word "group" should be added after "affiliated" in the second sentence of the second paragraph.
3. Create a definition of "doing business in this state" in sec. 71.22 as follows:

"Doing business in this state" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. A corporation that directly or indirectly owns a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership, or that directly or indirectly owns an interest in a limited liability company that does business in this state, regardless of the percentage of ownership, is presumed to be doing business in this state.

actually may be unintentionally limit the scope

does this part belong in this definition?

- 4. Amend sec. 71.23(1) to provide that the income tax also applies to a corporation that derives income from sources within the state or from activities carried on in the state.

how does this help

15

Revise the definition of "affiliated group" in bill section 6, by adding the words "or connected corporations" on page 3, line 17, after "corporations".

5.71.255?

- 6. Revise the definition of "affiliated group" in bill section 6, by adding the words "or more" on page 3, line 20, after "50%".

- 7. Revise the definition of "unitary business" on page 4 as follows:

"Unitary business" includes, but is not limited to, business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group; transactions that serve an operational

→

? not defined

too vague to enforce

function; or other activities that justify the apportionment of a multistate entity's income. Unity is presumed whenever there is unity of ownership, operation, or use, evidenced by one or more of the following: centralized management or executive force; centralized purchasing, advertising or accounting; intercorporate sales or leases; intercorporate services; intercorporate debts; intercorporate use of proprietary materials; or interlocking directorates or interlocking corporate officers, but the absence of these centralized activities will not necessarily evidence a nonunitary business. If a business operation conducted in this state is owned by a person that conducts business activity entirely outside of this state that is different from the business conducted in this state, it is presumed that the 2 business operations are unitary in nature, interrelated, connected and interdependent unless it can be shown to the contrary.

may not need heritage

} if unitary  
only mention  
interrelated,  
connected,  
etc.

- 8. ✓ Revise the definition of "water's edge method" on page 5, line 20, by adding after the word "income" the words "derived from or attributable to sources".
- ? 9. Revise both the definitions of "water's edge method" and "worldwide method" to include references to tax credits.
- ✓ 10. On page 5, lines 17 and 21, after the word "factors" include a reference to s. 71.25(7) and (8), 1997 stats.
- ? 11. On page 6, in sub. (3) and on page 7, in sub. (4)(b), add references to tax credits along with the references to "income and apportionment factors".
- ✓ 12. On page 9, on lines 7, 12, and 16, change references to "separate reporting" or "separate return" to "on a separate entity return".
- \* 13. Revise the income computation under combined reporting in sub. (5) as follows:
  - ✓ a. On page 10, line 5, eliminate the words "or 71.49".
  - ? b. On page 10, line 9, refer to the income, apportionment factors and tax credits. 71.28 or 71.47 how
  - ✓ c. On page 11, lines 18 through 20, paragraph (e) should provide for subtracting nonbusiness income, net of related expenses, and adding nonbusiness losses, net of related expenses.
  - ✓ d. On page 11, a new paragraph (f) should be added as follows:

and tax credits?

(f) Combine the net income or loss of each corporation, as determined under par. (e), to arrive at the combined net income or loss.

e. On page 11, paragraph (f) should be renumbered paragraph (g), and revised as follows:

(g) Calculate the apportionment factors under sub. (6) and multiply the combined net income or loss, as determined under par. (f), by each corporation's apportionment percentage.

u. On page 11, eliminate paragraph (g).

*is (h) added not business inc? net nonbusiness? loss?*

g. On page 12, revise par. (i) by deleting the words "did not file a tax return" and inserting "was not subject to Wisconsin income or franchise tax" on line 9.

★ 14. Revise the apportionment factor computation under combined reporting in sub. (6) as follows:

va. On page 12, line 14, revise par. (a) as follows:

(a) The numerator and denominator of each corporation's apportionment factors as determined under s. 71.25 or 71.45.

b. On page 12, revise par. (b) by changing "amount" to "amounts" on line 16 and by referring to the partner's share of the numerator and denominator of the apportionment factors on line 17.

c. On page 12, after line 22, insert paragraphs (d) and (e) as follows:

*How do we get denominator under par. (c) →*

(d) Add the denominators of the factors for each corporation, as determined under par. (c), to arrive at the combined denominators.

(f) Compute each corporation's apportionment factors by dividing the corporation's numerator as determined under par (c) by the combined denominator as determined under par. (d).

15. On page 14, revise the initial applicability language to refer to combined returns and to provide that the treatment first applies to taxable years beginning on January 1, 2000.

16. Will there be transitional language for the loss carryforwards?

*(see (5)(i) may need to amend*

*A corporation shall not carry forward a business loss from taxable years ending before 12-31-1979 if it corp... etc.*



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1689/2

JK:hmh

3  
jlg & kmg

DOA:.....Holden - Combined reporting for corporations

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

do not generate

Edited  
1/3 rough copy

1 AN ACT...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

Under current law, each separate corporation doing business in this state must file a tax return with the department of revenue (DOR) reporting its net income. A corporation's net income includes interest, dividends and the sale of intangible assets received by the corporation from another corporation if the corporations are a unitary operation. A unitary operation is, generally, an affiliated group of corporations that operate as a unit and is characterized by centralized management and decision making. Under current law, separate corporations that are part of a unitary operation are not required to file a consolidated tax return. Instead, a corporation doing business in this state that is part of a unitary operation files a separate return.

This bill requires that an affiliated group of corporations that is part of a unitary operation file a combined tax return with DOR. The bill creates a presumption that all operations that are part of an affiliated are unitary and must file a combined return.

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.** 71.25 (5) (a) (intro.) of the statutes is amended to read:

2           71.25 (5) (a) *Apportionable income.* (intro.) Except as provided in sub. (6),  
3 corporations engaged in business both within and without this state are subject to  
4 apportionment. Income, gain or loss from the sources listed in this paragraph is  
5 presumed apportionable. Apportionable income includes all income or loss of  
6 corporations, other than nonapportionable income as specified in par. (b), including,  
7 but not limited to, income, gain or loss from the following sources:

8           **SECTION 2.** 71.25 (5) (a) 9. of the statutes is amended to read:

9           71.25 (5) (a) 9. Interest and dividends ~~if the operations of the payer are unitary~~  
10 ~~with those of the payee, or if those operations are not unitary but the investment~~  
11 ~~activity from which that income is derived is an integral part of a unitary business~~  
12 ~~and the payer and payee are neither affiliates nor related as parent company and~~  
13 ~~subsidiary. In this subdivision, "investment activity" includes decision making~~  
14 ~~relating to the purchase and sale of stocks and other securities, investing surplus~~  
15 ~~funds and the management and record keeping associated with corporate~~  
16 ~~investments, not including activities of a broker or other agent in maintaining an~~  
17 ~~investment portfolio.~~

18           **SECTION 3.** 71.25 (5) (a) 10. of the statutes is amended to read:

19           71.25 (5) (a) 10. Sale of intangible assets ~~if the operations of the company in~~  
20 ~~which the investment was made were unitary with those of the investing company,~~  
21 ~~or if those operations were not unitary but the investment activity from which that~~

1 ~~gain or loss was derived is an integral part of a unitary business and the companies~~  
2 ~~were neither affiliates nor related as parent company and subsidiary. In this~~  
3 ~~subdivision, "investment activity" has the meaning given under subd. 9~~

*Stacy [Signature]*  
*no change here*

4 SECTION 4. 71.25 (5) (b) 1. of the statutes is renumbered 71.25 (5) (b).

5 SECTION 5. 71.25 (5) (b) 2. of the statutes is repealed.

6 SECTION 6. 71.255 of the statutes is created to read:

7 **71.255 Combined reporting. (1) DEFINITIONS.** In this section:

8 (a) "Affiliated group" means any of the following:

9 1. A parent corporation and any corporation or chain of corporations that are  
10 connected to the parent corporation by direct or indirect ownership by the parent  
11 corporation if the parent corporation owns stock representing 50% or more of the  
12 voting stock of at least one of the connected corporations or if the parent corporation  
13 or any of the connected corporations owns stock that cumulatively represents 50%  
14 or more of the voting stock of each of the connected corporations.

15 2. Any 2 or more corporations if a common corporate or common noncorporate  
16 owner owns directly or indirectly stock representing 50% or more of the voting stock  
17 of the corporations.

18 3. A partnership, limited liability company or tax-option corporation if a  
19 parent corporation or any corporation connected to the parent corporation by  
20 common ownership directly or indirectly owns shares representing 50% of the shares  
21 of the partnership, limited liability company or tax-option corporation.

22 4. Any 2 or more corporations if stock representing 50% or more of the voting  
23 stock in each corporation are interests that cannot be separately transferred.

24 5. Any 2 or more corporations if stock representing 50% or more of the voting  
25 stock is directly owned by, or for the benefit of, family members. In this subdivision,



1 "family members" means an individual or a spouse related by blood, marriage or  
2 adoption within the 2nd degree of kinship as computed under s. 852.03 (2), 1995  
3 stats.

4 (b) "Combined report" means a form prescribed by the department that shows  
5 the calculations under this section to divide the income of an affiliated group  
6 conducting a unitary business among the jurisdictions where the affiliated group  
7 conducts its trade or business.

8 (c) "Corporation" has the meaning given in s. 71.22 (1) or 71.42 (1).

9 (d) "Department" means the department of revenue.

10 (e) "Intercompany transaction" means a transaction between corporations,  
11 partnerships, limited liability companies or tax-option corporations that become  
12 members of the same affiliated group that is engaged in a unitary business  
13 immediately after the transaction.

14 (f) "Partnership" means any entity considered a partnership under section  
15 7701 of the Internal Revenue Code.

16 (g) "Unitary business" means trade or business conducted by persons that have  
17 common ownership and the trade or business of one person is integrated with,  
18 dependent upon, or contributes to the trade or business of another person. Trade or  
19 business is presumed to be unitary if the trade or business has centralized  
20 management or a centralized executive force; centralized purchasing, advertising or  
21 accounting; intercorporate sales or leases; intercorporate services; intercorporate  
22 debts; intercorporate use of proprietary materials; interlocking directorates or  
23 interlocking corporate officers; or if a trade or business conducted in this state is  
24 owned by a person that conducts a trade or business entirely outside of this state that  
25 is different from the trade or business conducted in this state.

1 (h) “Water’s edge method” does not include the income and apportionment  
2 factors of a tax-option corporation unless the department determines that the  
3 water’s edge method is necessary to accurately report the income of the tax option  
4 corporation apportioned to this state. “Water’s edge method” means the income and  
5 apportionment factors of the following unitary businesses:

6 1. Any corporation organized or incorporated under the laws of the United  
7 States, any state, the District of Columbia, the Commonwealth of Puerto Rico, any  
8 possession of the United States, or any subdivision of the United States, including  
9 corporations under sections 931 to 936 of the Internal Revenue Code.

10 2. Any domestic international sales corporation under sections 991 to 994 of the  
11 Internal Revenue Code.

12 3. Any foreign sales corporation under sections 921 to 927 of the Internal  
13 Revenue Code.

14 4. Any export trade corporation under sections 970 and 971 of the Internal  
15 Revenue Code.

16 5. Any corporation regardless of its place of incorporation if the average of its  
17 property and payroll factors within the United States, and computed on an annual  
18 basis, is at least 20%.

19 6. Any corporation not described in subds. 1. to 5. to the extent of the  
20 corporation’s income within the United States and the corporation’s property and  
21 payroll factors assignable to a location within the United States.

22 (i) “Worldwide method” means the income and apportionment factors of a  
23 unitary business regardless of the country where any member of the unitary  
24 business is organized or incorporated or conducts business. The worldwide method  
25 does not include the income and apportionment factors of tax-option corporations

1 unless the department determines that the worldwide method is necessary to  
2 accurately report the income of the tax option corporation apportioned to this state.

3 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. A corporation that is  
4 subject to tax under s. 71.23 (1) or (2) or 71.43, that is a member of an affiliated group  
5 and is engaged in a unitary business with one or more members of the affiliated  
6 group shall elect to compute the corporation's income using the water's edge method  
7 of combined reporting or the worldwide method of combined reporting. A corporation  
8 electing to file a tax return using the worldwide method may not thereafter elect to  
9 file a tax return using the water's edge method without the department's consent.  
10 A corporation that has previously filed a return using the worldwide method may file  
11 with the department a request to file a return using the water's edge method before  
12 the end of the taxable year that the water's edge method is to apply. The department  
13 shall promulgate rules to implement this section.

14 (3) ACCOUNTING PERIOD. For purposes of this section, the income and  
15 apportionment factors of all corporations that are members of an affiliated group and  
16 that are engaged in a unitary business shall be determined by using the same  
17 accounting period. If the affiliated group that is engaged in a unitary business has  
18 a common parent corporation, the accounting period of the common parent  
19 corporation shall be used to determine the income and apportionment factors of all  
20 <sup>of</sup> the corporations that are members of the affiliated group that are engaged in a ✓  
21 unitary business. If the affiliated group that is engaged in a unitary business has  
22 no common parent corporation, the income of the affiliated group that is engaged in  
23 a unitary business shall be determined using the accounting period of the member  
24 of the affiliated group that has the most significant operations on a recurring basis  
25 in this state.

1           (4) FILING RETURNS. (a) *Corporations with the same accounting period.*  
2           Corporations that must file a return under this section and that have the same  
3           accounting period may elect to file a group return under par. (c) that reports this  
4           state's aggregate franchise or income tax liability of all members of the affiliated  
5           group that are engaged in a unitary business. Corporations that must file a return  
6           under this section may elect to file separate returns reporting the corporations'  
7           respective apportionment of this state's franchise or income tax liability as  
8           determined under the water's edge or worldwide method, if each corporation filing  
9           a separate return pays its own apportionment of this state's franchise or income tax  
10          liability.

11          (b) *Corporations with different accounting periods.* Corporations that must file  
12          a return under this section and that have different accounting periods shall use the  
13          actual figures from the corporations' financial records to determine the proper  
14          income and income-related computations to convert to a common accounting period.  
15          Corporations that must file a return under this section may use a proportional  
16          method to convert income to a common accounting period if the results of the  
17          proportional method do not materially misrepresent the income apportioned to this  
18          state. The apportionment factors shall be computed according to the same method  
19          used to determine the income for the common accounting period. If a corporation  
20          performs an interim closing of its financial records to determine the income  
21          attributable to the common accounting period, the actual figures from the interim  
22          closing shall be used to convert the apportionment factors to the common accounting  
23          period.

24          (c) *Designated agent.* If corporations that are subject to this section elect to file  
25          a group return under par. (a), the parent corporation of the affiliated group shall be

1 the sole designated agent for each member of the affiliated group including the  
2 parent corporation . The designated agent shall file the group return under par. (a),  
3 shall file for any extensions under s. 71.24 (7) or 71.44 (3), shall file amended returns  
4 and claims for refund or credit, and shall send and receive all correspondence with  
5 the department regarding a return filed under this section. Any notice the  
6 department sends to the designated agent is considered a notice sent to all members  
7 of the affiliated group. Any refund shall be paid to and in the name of the designated  
8 agent and shall discharge any liability of the state to any member of an affiliated  
9 group regarding the refund. The affiliated group filing a group return under par. (a)  
10 shall pay all taxes, including estimated taxes, in the designated agent's name. The  
11 designated agent shall participate on behalf of the affiliated group in any  
12 investigation or hearing requested by the department regarding a return filed under  
13 this section and shall produce all information requested by the department  
14 regarding a return filed under this section. The designated agent may execute a  
15 power of attorney on the behalf of the designated agent and the members of the  
16 affiliated group. The designated agent shall execute waivers, closing agreements  
17 and other documents regarding a return filed under par. (a) and any waiver,  
18 agreement or document executed by the designated agent shall be considered as  
19 executed by all members of the affiliated group. If the department acts in good faith  
20 with an affiliated group member that represents itself as the designated agent for  
21 the affiliated group, any action taken by the department with the affiliated group  
22 member has the same effect as if the affiliated group member were the designated  
23 agent for the affiliated group.

24 (d) *Part-year members.* If a corporation becomes a member of an affiliated  
25 group engaged in a unitary business or ceases to be a member of an affiliated group

1 engaged in a unitary business after the beginning of a common accounting period,  
2 the corporation's income shall be apportioned to this state as follows:

3 1. If the corporation is required to file 2 short period federal returns for the  
4 common accounting period, the income for the short period that the corporation was  
5 a member of an affiliated group engaged in a unitary business shall be determined  
6 using the water's edge or worldwide method. The income for the remaining short  
7 period shall be by separate reporting under s. 71.25 or 71.45. If the corporation  
8 becomes a member of another affiliated group engaged in a unitary business in the  
9 remaining short period, the corporation's income shall be determined for the  
10 remaining short period using the water's edge or worldwide method.

11 2. If the corporation is not required to file federal short period returns, the  
12 corporation must file a separate return. Income shall be determined by the following  
13 methods:

14 a. By the water's edge or worldwide method for any period that the corporation  
15 was a member of an affiliated group that was engaged in a unitary business.

16 b. By separate reporting under s. 71.25 or 71.45 for any period that the  
17 corporation was not a member of an affiliated group that was engaged in a unitary  
18 business.

19 **(5) INCOME COMPUTATION UNDER COMBINED REPORTING.** Under the water's edge  
20 or worldwide method, income attributable to this state shall be determined as  
21 follows:

22 (a) The net income of each corporation as determined under s. 71.26, 71.34 (1)  
23 or 71.45.

24 (b) To the amount determined under par. (a) add a general or limited partner's  
25 share of income to the extent that the general or limited partner and the partnership

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1 in which the general or limited partner invests are engaged in a unitary business,  
2 regardless of the percentage of the general or limited partner's ownership in the  
3 partnership.

4 (c) Adjust each corporation's income, as determined under sub. (b), as provided  
5 under s. 71.30 or 71.49.

6 (d) From the amount determined under par. (c), subtract intercompany  
7 transactions, such that intercompany accounts of assets, liabilities, equities, income,  
8 costs or expenses are excluded from the determination of income to accurately reflect  
9 the income and apportionment factors in a tax return that is filed under this section.  
10 To compute the apportionment factors, intercompany transactions are excluded from  
11 both the numerator and the denominator. Distributions of intercompany dividends  
12 that are paid from nonbusiness earnings or nonbusiness profits, or distributions of  
13 intercompany dividends that are paid from earnings or profits that are accumulated  
14 before the payer corporation becomes a member of an affiliated group engaged in a  
15 unitary business, are not excluded from the income of the recipient corporation. An  
16 intercompany distribution that exceeds the payer corporation's earnings or profits  
17 or stock basis shall not be considered income from an intercompany sale of an asset  
18 and shall not be excluded as income from an intercompany transaction.  
19 Intercompany dividends that are paid from earnings or profits from a unitary  
20 business income shall be considered as paid first from current earnings or profits and  
21 then from accumulations from prior years in reverse order of accumulation. An  
22 intercompany transaction includes the following:

23 1. Income from sales of inventory from one member of an affiliated group to  
24 another member of an affiliated group.

1           2. Gain or loss from sales of intangible assets from one member of an affiliated  
2 group to another member of an affiliated group.

3           3. Gain or loss on sales of fixed assets or capitalized intercompany charges from  
4 one member of an affiliated group to another member of an affiliated group.

5           4. Loans, advances, receivables and similar items due one member of an  
6 affiliated group to another member of an affiliated group, including interest income  
7 and interest expense related to these items.

8           5. Stock or other equity of one member of an affiliated group that is owned or  
9 controlled by another member of an affiliated group.

10          6. Except as provided in par. (d) (intro.), intercompany dividends paid out of  
11 earnings and profits from a unitary business income.

12          7. Annual rent paid by one member of an affiliated group to another member  
13 of an affiliated group.

14          8. Management or service fees paid by one member of an affiliated group to  
15 another member of an affiliated group.

16          9. Income or expenses allocated or charged by one member of an affiliated group  
17 to another member of an affiliated group.

18          (e) To the amount determined under par. (d) for each corporation, add  
19 nonbusiness income, net of related expenses, and subtract nonbusiness losses, net  
20 of related expenses, to determine each corporation's apportionable income or loss.

21          (f) Calculate the apportionment factors under sub. (6) and multiply each  
22 corporation's apportionable income or loss, as determined under par. (e), by the  
23 corporation's apportionment percentage.

24          (g) Allocate the combined net income attributable to this state among the  
25 corporations subject to this state's income or franchise tax, according to the ratio of



1 each corporation's income factors attributable to this state compared to the affiliated  
2 group's aggregated income factors attributable to this state.

3 (h) To the amount determined under par. (g), add each corporation's  
4 nonbusiness income attributable to this state and subtract each corporation's  
5 nonbusiness losses attributable to this state.

6 (i) To the amount determined under par. (h), subtract each corporation's net  
7 business loss carry-forward under s. 71.26 (4) or 71.45 (4). A corporation shall not  
8 apply s. 71.26 (4) or 71.45 (4) to the amount determined under par. (h) if the  
9 corporation did not file a tax return in this state for taxable years ending on or before  
10 December 31, 1999.

11 (6) APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING. Under the  
12 water's edge or worldwide method, this state's apportionment factors are determined  
13 as follows:

14 (a) The apportionment factors of each corporation as determined under s. 71.25  
15 or 71.45.

16 (b) To the amount determined under par. (a), add a general or limited partner's  
17 share of the apportionment factors to the extent that the general or limited partner  
18 and the partnership in which the general or limited partner invests are engaged in  
19 a unitary business, regardless of the percentage of the general or limited partner's  
20 ownership in the partnership.

21 (c) To the amount determined under par. (b), subtract intercompany  
22 transactions under sub. (5) (d).

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12 (bold)

(f) PRESUMPTIONS AND BURDEN OF PROOF. An affiliated group under sub. (1) (a)  
shall be presumed to be engaged in a unitary business under sub. (1) (g) and all the  
income of the unitary business shall be presumed to be apportionable business

of

1 income under this section. A corporation, partnership, limited liability company or  
2 tax-option corporation shall have the burden of proving that it is not a member of  
3 an affiliated group subject to this section.

4 **SECTION 7.** 71.26 (3) (L) of the statutes is amended to read:

5 71.26 (3) (L) Section 265 is excluded and replaced by the rule that any amount  
6 otherwise deductible under this chapter that is directly or indirectly related to  
7 income wholly exempt from taxes imposed by this chapter or to losses from the sale  
8 or other disposition of assets the gain from which would be exempt under this  
9 paragraph if the assets were sold or otherwise disposed of at a gain is not deductible.  
10 In this paragraph, “wholly exempt income”, for corporations subject to franchise or  
11 income taxes, includes ~~amounts received from affiliated or subsidiary corporations~~  
12 ~~for interest, dividends or capital gains that, because of the degree of common~~  
13 ~~ownership, control or management between the payor and payee, are not subject to~~  
14 taxes under this chapter. In this paragraph, “wholly exempt income”, for  
15 corporations subject to income taxation under this chapter, also includes interest on  
16 obligations of the United States. In this paragraph, “wholly exempt income” does not  
17 include income excludable, not recognized, exempt or deductible under specific  
18 provisions of this chapter. If any expense or amount otherwise deductible is  
19 indirectly related both to wholly exempt income or loss and to other income or loss,  
20 a reasonable proportion of the expense or amount shall be allocated to each type of ✓  
21 income or loss, in light of all the facts and circumstances. ←

22 **SECTION 8.** 71.44 (1) (c) of the statutes is created to read:

23 71.44 (1) (e) A corporation that is a member of an affiliated group, as defined  
24 in s. 71.255 (1) (a), and engaged in a unitary business, as defined in s. 71.255 (1) (g),  
25 shall file a tax return under s. 71.255.

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14-2

1 SECTION 9. 71.46 (3) of the statutes is repealed.

2 SECTION 9343. Initial applicability; revenue.

3 (1) CONSOLIDATED RETURNS. The treatment of sections 71.25 (5) (a) 9. and 10.  
4 and (b) 2., 71.255, 71.26 (3) (L) ~~and~~ 71.44 (1) (e) of the statutes first applies to taxable  
5 years beginning on January 1 of the year in which this subsection takes effect, except  
6 that if this subsection takes effect after July 31 the treatment of sections 71.25 (5)  
7 (a) 9. and 10. and (b) 2., 71.255, 71.26 (3) (L) ~~and~~ 71.44 (1) (e) of the statutes first  
8 applies to taxable years beginning on January 1 of the year following the year in  
9 which this subsection takes effect.

(END)

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, 71.29(2),

✓  
, 71.48 and 71.84(2)(a) ✓

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LEGISLATIVE REFERENCE BUREAU

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1 (e) *Group amended returns.* The election to file a group return under this  
2 section applies to any amended group return that includes the same corporations  
3 that joined in the filing of the original group return. Under this section, an amended  
4 return shall be filed as follows:

5 1. If an election to file a group return that is in effect for a taxable year is  
6 revoked for the taxable year because the affiliated group that filed the group return  
7 is not a unitary business ~~under section 1361~~, the designated agent for the affiliated  
8 group shall not file <sup>an</sup> group amended return. The designated agent and each  
9 corporation that joined in filing the group return shall file a separate amended  
10 return. To compute the tax due on a separate amended return, a corporation that  
11 files a separate amended return shall consider all <sup>of</sup> the payments, credits or other  
12 amounts, including refunds, that the designated agent allocated to the corporation.

13 2. If a change in tax liability under this section is due to the removal of a  
14 corporation from an affiliated group because the corporation was not eligible to be  
15 <sup>a</sup> member of the affiliated group for the taxable year, the designated agent shall file  
16 an amended group return and the ineligible corporation shall file a separate  
17 amended return.

18 3. If a corporation erroneously fails to join in the filing of a group return, the  
19 designated agent shall file an amended group return that includes the corporation.  
20 If a corporation that erroneously fails to join in the filing of a group return has filed  
21 a separate return, the corporation shall file an amended separate return that shows

1 no net income, overpayment or underpayment, and shows that the corporation has  
2 joined in the filing of a group return under this section.

**Insert 12 - 22**

3 (7) NET OPERATING LOSSES. For the first 2 taxable years that a group return is  
 4 filed under this section, the net operating loss for each member of an affiliated group  
 5 that files a group return is determined by ~~adjusting~~ <sup>to</sup> each member's share of business  
 6 income or business loss ~~by~~ adding each member's share of nonbusiness income and  
 7 subtracting each member's share of nonbusiness loss. Beginning with the 3rd  
 8 taxable year that a group return is filed under this section, if a member of an  
 9 affiliated group that files a group return has a positive net income as determined  
 10 under sub. (5), the affiliated group shall only deduct the amount of the net operating  
 11 loss carry-forward attributable to the member.

12 (8) ESTIMATED TAX PAYMENTS. (a) For the first 2 taxable years that a group  
 13 return is filed under this section, estimated taxes may be paid on a group or on a  
 14 separate basis. The amount of any separate estimated taxes paid in the first 2  
 15 taxable years that a group return is filed shall be credited against the group's tax  
 16 liability. The designated agent shall notify the department of any estimated taxes  
 17 paid on a separate basis in the first 2 taxable years that a group return is filed.

18 (b) If a group return under this section is filed for 2 consecutive taxable years,  
 19 estimated taxes shall be paid on a group basis for each subsequent taxable year and  
 20 until such time as separate returns are filed by the corporations that ~~are~~ <sup>are</sup> members  
 21 of an affiliated group that filed group returns under this section. For the taxable  
 22 years in which combined estimated payments are required under this subsection, the  
 23 department shall consider the affiliated group filing a group return ~~as~~ <sup>to be</sup> one taxpayer.

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1 If a corporation subject to this section files a separate return in a taxable year  
2 following a year in which the corporation joined in filing a group return, the amount  
3 of any estimated tax payments made on a group basis for the previous year shall be  
4 credited against the tax liability of the corporation that files a separate return, as  
5 allocated by the designated agent with the department's approval.

6 (c) If an affiliated group pays estimated taxes on a group basis for a taxable year  
7 or for any part of a taxable year, and the members of the affiliated group file separate  
8 returns for the taxable year, the designated agent, with the department's approval,  
9 shall allocate the estimated tax payments among the members of the affiliated  
10 group.

11 (9) INTEREST FOR UNDERPAYMENT OF ESTIMATED TAX. (a) *General.* Under this  
12 subsection, the amount of interest that is due for an underpayment of estimated  
13 taxes shall be computed as follows:

14 1. For the first year in which a group return is filed, the amount of interest that  
15 is due for an underpayment of estimated taxes shall be determined by using the  
16 aggregate of the tax and income shown on the returns filed by the members of the  
17 group for the previous year.

18 2. For estimated taxes paid under sub. (1)<sup>8</sup>(c), the amount of interest that is due  
19 from a group member for an underpayment of estimated taxes paid by the group  
20 member shall be determined by using the group member's separate company items  
21 from the combined report filed for the previous year and the group member's  
22 allocated share of the combined estimated payments for the current year. The  
23 designated agent shall report the group member's allocated share of the combined  
24 estimated payments for the current year to department, in the manner prescribed  
25 by the department.

1           3. If estimated taxes are paid on a group basis for a taxable year but the group  
2 does not file a group return for the current taxable year and did not file a group return  
3 for the previous taxable year, the estimated tax shall be credited to the corporation  
4 that made the estimated tax payment on the group's behalf.

5           (b) *Entering a group.* For a corporation that becomes a member of an affiliated  
6 group during a common accounting period under sub. (3), the amount of interest that  
7 is due for an underpayment of estimated taxes shall be allocated to the corporation  
8 as follows:

9           1. If a corporation becomes a member of an affiliated group at the beginning  
10 of a common accounting period, the corporation shall include with the corresponding  
11 items on the group return for the previous common accounting period the separate  
12 company items shown on the corporation's return for the previous taxable year.

13           2. If a corporation ~~is~~ <sup>becomes</sup> a member of an affiliated group ~~for the~~ <sup>during a</sup> common  
14 accounting period, the corporation shall include with the corresponding items on the  
15 group return for the current taxable year the corporation's separate company items  
16 for that portion of the common accounting period that the corporation ~~was~~ <sup>is</sup> a member  
17 of the affiliated group.

18           3. To determine the separate company items under subd. 1. and 2., if a  
19 corporation is a member of an affiliated group during a portion of a common  
20 accounting period in which the corporation becomes a member of another affiliated  
21 group, the corporation's separate company items shall include the separate company  
22 items that are attributed to the corporation by the designated agent of the first  
23 affiliated group.

(S)

1 (c) *Leaving a group.* For a corporation that leaves an affiliated group during  
2 a common accounting period under sub. (3), the amount of interest that is due for an  
3 underpayment of estimated taxes shall be allocated as follows:

4 1. The separate company items attributed by the designated agent to the <sup>of</sup>  
5 corporation for the common accounting period during which the corporation leaves  
6 the affiliated group shall be excluded from the corresponding items of the affiliated  
7 group for the current common accounting period and all the common accounting  
8 periods following the corporation's departure from the affiliated group.

9 2. A corporation that leaves an affiliated group shall consider the separate  
10 company items attributed to the corporation by the designated agent of the affiliated  
11 group to determine the ~~the~~ amount of interest that is due from the corporation for  
12 an underpayment of estimated taxes under sub. (1). <sup>8</sup>

13 (10) ASSESSMENT NOTICE. A notice of taxes that are owed by an affiliated group  
14 that files a return under this section shall name each corporation that is a member  
15 of the affiliated group during any part of the period covered by the notice. The  
16 department's failure to name a member of an affiliated group on a notice under this  
17 subsection shall not invalidate the notice as to an unnamed member of the affiliated  
18 group. Any levy, lien or other proceeding to collect the amount of a tax assessment  
19 under this section shall name the corporation that the department shall collect the  
20 assessment from. If a corporation that joined in the filing of a group return under  
21 this section leaves the affiliated group, the department shall send the corporation a  
22 copy of any notice sent to the affiliated group under this subsection if the corporation  
23 notifies the department that the corporation is no longer a member of the affiliated  
24 group and if the corporation requests in writing that the department send notices  
25 under this subsection to the corporation. The department's failure to comply with



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a corporation's request to receive a notice under this subsection does not affect the tax liability of the corporation.

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**(11) LIABILITY FOR TAX, INTEREST AND PENALTY.** If members of an affiliated group file a group return under this section, the members of the affiliated group shall be jointly and severally liable for any combined tax, interest or penalty. The liability of a member of an affiliated group for any combined tax, interest or penalty shall not be reduced by an agreement with another member of the affiliated group or by an agreement with another person.

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**Insert 13 - 22**

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**SECTION 1.** 71.29 (2) of the statutes is amended to read:

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**71.29 (2) WHO SHALL PAY.** ~~Every~~ Except as provided in s. 71.255 (8), a corporation subject to tax under s. 71.23 (1) or (2) and every virtually exempt entity subject to tax under s. 71.125 or 71.23 (1) or (2) shall pay an estimated tax.

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**Insert 14 - 2**

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**SECTION 2.** 71.48 of the statutes is amended to read:

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**71.48 Payments of estimated taxes.** ~~Sections~~ Except as provided in s. 71.255 (8), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under this chapter.

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**SECTION 3.** 71.84 (2) (a) of the statutes is amended to read:

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**71.84 (2) (a)** Except as provided in s. 71.29 (7), in the case of any underpayment of estimated tax under s. ~~71.29~~ <sup>71.255,</sup> ~~71.254~~ or 71.48 there shall be added to the aggregate tax for the taxable year interest at the rate of 12% per year on the amount of the underpayment for the period of the underpayment. For corporations, except as provided in par. (b), "period of the underpayment" means the time period from the

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1 due date of the instalment until either the 15th day of the 3rd month beginning after  
2 the end of the taxable year or the date of payment, whichever is earlier. If 90% of the  
3 tax shown on the return is not paid by the 15th day of the 3rd month following the  
4 close of the taxable year, the difference between that amount and the estimated taxes  
5 paid, along with any interest due, shall accrue delinquent interest under s. 71.91 (1)  
6 (a).