



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-16894

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

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

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AN ACT <sup>Don't
in Cal.</sup> 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 ~~group~~ are unitary and must file a combined return.

business

business

combined

business

business

corporations

group

business

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) (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. 9a.

plain period

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% ~~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 ~~more~~ of the voting stock of each of the connected corporations.

at least

at least

at least

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

at least

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

at least

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

at least

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~~ ^{2 or more businesses} that have
17 common ownership, ~~and the trade or business of one person is~~ ^{or are} integrated with
18 dependent upon ~~or contributes to the trade or business of another person.~~ ^{each other} ~~Trade or~~

^{Two or more businesses are}
19 ~~businesses~~ ^{a business} presumed to be unitary if the ~~trade or business~~ ^{businesses} centralized
20 management or a centralized executive force; centralized purchasing, ^{businesses have} 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~~ ^{business} conducted in this state is
24 owned by a person that conducts a ~~trade or business~~ ^{business} entirely outside of this state that
25 is different from the ~~trade or business~~ ^{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

5 ~~the~~ 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

W

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*under ss. 71.26,
71.34
and
71.45
tax
71.28
and
71.47*

under s. 71.25(8)

factor under s. 71.25(7) under s. 71.25(8)

derived from or attributable to sources

factor under s. 71.25(7)

under s. 71.26, 71.34 and 71.45,

*under s. 71.25 and 71.45 and the credits under s. 71.28 and 71.47
tax*

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 ^{that} is engaged in a unitary business with one or more members of the affiliated
6 group shall ~~compute~~ ^{be} compute the corporation's income using the ~~water's edge method~~
7 ~~combined reporting or the worldwide method or combined reporting.~~ ^{method under this section} A corporation
8 ~~choosing to file a tax return using the worldwide method may not thereafter~~
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 ^{to which} the water's edge method is to apply ~~the department~~
13 ~~may promulgate rules to implement this section.~~ ^{under ss. 71.26, 71.34 and 71.45,}

14 (3) ACCOUNTING PERIOD. For purposes of this section, the income ^{and the}
15 ^{under ss. 71.25 and 71.45 and the tax credits under ss. 71.28 and 71.47} 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 ^{the} ~~apportionment~~ ^{and the tax credits} factors of all
20 the corporations that are members of the affiliated group that ~~are~~ ^{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 ^{the} ~~apportionment~~ ^{and the tax credits} factors of all
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.

Insert 6-B ✓

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 ~~file a return~~ ^{combined report} under par. (c) that reports ~~this~~ ^{the}
 4 ~~state's~~ ^{state} aggregate franchise or ~~income tax~~ ^{state} liability of all members of the affiliated,
 5 group that are engaged in a unitary business. ~~Corporations that must file a return~~ ^{are required combined} report
 6 under this section may ~~file separate returns~~ ^{file separate returns} reporting the ~~separate~~
 7 respective apportionment of ~~this state's~~ ^{the corporation's state} franchise or income tax liability as
 8 determined under the ~~worldwide~~ ^{state} method, if each corporation filing
 9 a separate return pays its own apportionment of ~~this state's~~ ^{combined reporting its state} franchise or income tax
 10 liability. ^{state}

11 (b) *Corporations with different accounting periods.* Corporations that ~~must~~ ^{are required to} file
 12 a ~~return~~ ^{combined report} 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~~ ^{are required to} file a ~~return~~ ^{combined report} 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 ^{and}
 19 used to determine the income ^{under ss. 71.25 and 71.45 and the tax credits under ss. 71.28} for the common accounting period. If a corporation
 20 performs an interim closing of its financial records to determine the income ^{under ss. 71.26, 71.34 and 71.45}
 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 ~~must~~ ^{are required to} file
 25 a ~~return~~ ^{combined report} 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~~ ^{combined report} under par. (a),
 3 shall file for any extensions under s. 71.24 (7) or 71.44 (3), shall file amended ~~returns~~ ^{reports}
 4 and claims for refund or credit, and shall send and receive all correspondence with
 5 the department regarding a ~~return~~ ^{combined report} 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~~ ^{combined report} 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~~ ^{a combined report} filed under
 13 ~~this section~~ and shall produce all information requested by the department
 14 regarding a ~~return~~ ^{combined report} 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~~ ^{report} 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 ^{but that affiliated group member is not the designated agent} the affiliated group, any action taken by the department with ~~the~~ ^{that} affiliated group
 22 member has the same effect as if ^{that} ~~the~~ affiliated group member were the ^{actual} 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 and the corporation shall join in filing a combined report for that short
by using the ~~water's edge or worldwide method~~ ^{combined reporting method}. The income for the remaining short ^{period}
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 ^{that is} engaged in a unitary business in the
9 remaining short period, the corporation's income shall be determined for the
10 remaining short period ^{by} using the ~~water's edge or worldwide~~ ^{combined reporting} method.

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

14 a. By the ~~water's edge or worldwide~~ ^{combined reporting} 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 (e) ~~group amended returns~~ ^{amended combined report} The election to file a ~~group return~~ ^{combined report} under this
20 section applies to an amended ~~group return~~ ^{combined report} that includes the same corporations that
21 joined in the filing of the original ~~group return~~ ^{combined report}. Under this section, an amended
22 ~~return~~ ^{combined report} shall be filed as follows:

23 1. If an election to file a ~~group return~~ ^{combined report} that is in effect for a taxable year is
24 revoked for the taxable year because the affiliated group that filed the ~~group return~~ ^{combined report}
25 is not a unitary business ~~under sub (1)~~, as determined by the department, the

SECTION 6

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designated agent for the affiliated group ~~shall~~ ^{may} not file an amended ~~group return~~ ^{combined report}. The

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designated agent and each corporation that joined in filing the ~~group return~~ ^{combined report} shall file

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a separate amended return. To compute the tax due on a separate amended return, of

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a corporation that files a separate amended return shall consider all the payments,

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credits or other amounts, including refunds, that the designated agent allocated to

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the corporation.

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2. If a change in tax liability under this section is ~~due to~~ ^{the result of} the removal of a

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corporation from an affiliated group because the corporation was not eligible to be

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^a member of the affiliated group for the taxable year, as determined by the

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department, the designated agent shall file an amended ~~group return~~ ^{combined report} and the

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ineligible corporation shall file a separate amended return.

12

3. If a corporation erroneously fails to join in the filing of a ~~group return~~ ^{combined report}, the

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designated agent shall file an amended ~~group return~~ ^{combined report} that includes the corporation.

14

If a corporation that erroneously fails to join in the filing of a ~~group return~~ ^{combined report} has filed

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a separate return, the corporation shall file an amended separate return that shows

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no net income, overpayment or underpayment, and shows that the corporation has

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joined in the filing of a ~~group return under this section~~ ^{combined report}.

18

(5) INCOME COMPUTATION UNDER COMBINED REPORTING. Under the ~~partner's edge~~ ^{combined reporting}

19

~~or worldwide~~ method, income attributable to this state shall be determined as

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follows:

21

(a) ^{Determine} The net income of each corporation as determined under s. 71.26, 71.34 (1)

22

or 71.45 ^{including}

23

~~to the amount determined under par. (a)~~ ^{including} a general or limited partner's

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share of income to the extent that the general or limited partner and the partnership

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in which the general or limited partner invests are engaged in a unitary business,

1 regardless of the percentage of the general or limited partner's ownership in the
2 partnership.

3 ^{b l} (c) Adjust each corporation's income, as determined under ^{par a} ~~any~~ (b), as provided
4 under s. 71.30 ~~and~~.

5 ^c (d) From the amount determined under par. (c), subtract intercompany
6 transactions such that intercompany accounts of assets, liabilities, equities, income,
7 costs or expenses are excluded from the determination of income to accurately reflect
8 ^{the} the income ^{and tax credit} apportionment factors ^{combined report} in a ~~return~~ that is filed under this section.

9 ~~To compute the apportionment factors, intercompany transactions are excluded from~~
10 ~~both the numerator and the denominator.~~ Distributions of intercompany dividends

11 that are paid from nonbusiness earnings or nonbusiness profits, or distributions of
12 intercompany dividends that are paid from earnings or profits that are accumulated

13 before the payer corporation becomes a member of an affiliated group ^{that is} engaged in a
14 unitary business, ^{may be} ~~not~~ excluded from the income of the recipient corporation. An

15 intercompany distribution that exceeds the payer corporation's earnings or profits
16 or stock basis shall not be considered income from an intercompany sale of an asset

17 and shall not be excluded as income from an intercompany transaction.
18 Intercompany dividends that are paid from earnings or profits from a unitary

19 business income shall be considered as paid first from current earnings or profits and
20 then from accumulations from prior years in reverse order of accumulation. An

21 intercompany transaction includes the following:

22 1. Income from sales of inventory from one member of ^{the} ~~any~~ affiliated group to
23 another member of ^{the} ~~any~~ affiliated group.

24 2. Gain or loss from sales of intangible assets from one member of ^{the} ~~an~~ affiliated
25 group to another member of ^{the} ~~an~~ affiliated group.

1 3. Gain or loss on sales of fixed assets or capitalized intercompany charges from
2 one member of ~~an~~^{the} affiliated group to another member of ~~an~~^{the} affiliated group.

3 4. Loans, advances, receivables and similar items ~~from~~^{that} one member of ~~an~~^{the}
4 affiliated group ~~to~~^{owes} another member of ~~an~~^{the} affiliated group, including interest income
5 and interest expense related to these items.

6 5. Stock or other equity of one member of ~~an~~^{the} affiliated group that is owned or
7 controlled by another member of ~~an~~^{the} affiliated group.

8 6. Except as provided in par. (d) (intro.), intercompany dividends paid out of
9 earnings ~~and~~^{or} profits from a unitary business income.

10 7. Annual rent paid by one member of ~~an~~^{the} affiliated group to another member
11 of ~~an~~^{the} affiliated group.

12 8. Management or service fees paid by one member of ~~an~~^{the} affiliated group to
13 another member of ~~an~~^{the} affiliated group.

14 9. Income or expenses allocated or charged by one member of ~~an~~^{the} affiliated group
15 to another member of ~~an~~^{the} affiliated group.

16 ~~(e)~~ ^d ~~To~~^{From} the amount determined under par. (d) for each corporation, ~~from~~^{add}
17 nonbusiness income, net of related expenses, and ~~subtract~~^{subtract} nonbusiness losses, net
18 of related expenses, to determine each corporation's apportionable ~~income or loss.~~^{net apportionable net}

19 ~~(f)~~ ^e Calculate the apportionment factors under sub. (6) and multiply each
20 corporation's apportionable ~~income or loss,~~^{net apportionable net} as determined under par. (e), by the
21 corporation's apportionment ~~percentage.~~^{fraction as} determined under ~~71.25(6)~~^{s.}

22 ~~(g)~~ Allocate the combined net income attributable to this state among the
23 corporations subject to this state's income or franchise tax, according to the ratio of
24 each corporation's income factors attributable to this state compared to the affiliated
25 group's aggregated income factors attributable to this state.

~~(f) For each corporation, combine the apportionable net income and the apportionable net loss as determined under par. (e).~~

1 To the amount determined under par. (a), add each corporation's
2 nonbusiness income attributable to this state and subtract each corporation's
3 nonbusiness losses attributable to this state.

4 To the amount determined under par. (a), subtract each corporation's net
5 business loss carry-forward under s. 71.26 (4) or 71.45 (4). A corporation ~~shall~~ ^{may} not
6 ~~carry forward a business loss from taxable years ending~~ ~~apply s. 71.26 (4) or 71.45 (4) to the amount determined under par. (h)~~ if the
7 corporation ~~did not file a tax return in this state for taxable years ending~~ ^{was subject to this state's income or franchise tax} before
8 ~~December 31, 1999.~~ ^{January 1, 2000}

9 (6) APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING. Under the
10 ~~water's edge or worldwide~~ ^{combined reporting} method, this state's apportionment factors are determined
11 as follows: ^{Determine} numerator and denominator of each corporation's
12 (a) The apportionment factors of each corporation as determined under s. 71.25
13 or 71.45 ^{of the numerator and denominator}
14 ~~to the amount determined under par. (a)~~ ^{the} and a general or limited partner's
15 share of the apportionment factors to the extent that the general or limited partner
16 and the partnership in which the general or limited partner invests are engaged in
17 a unitary business, regardless of the percentage of the general or limited partner's
18 ownership in the partnership.

19 (b) ~~To the amount determined under par. (a)~~ ^{combined report} subtract intercompany
20 transactions under sub. (5) (d). ^{from} ~~both the numerators and~~ ~~the denominators~~ ^{as determined} ~~under~~ ~~par. (a)~~

21 (7) NET OPERATING LOSSES. For the first 2 taxable years that a group return is
22 filed under this section, the net operating loss for each member of an affiliated group
23 that files a ~~group return~~ ^{to} is determined by each member's share of business income
24 ~~losses~~ ^{combined report} adding each member's share of nonbusiness income and
25 subtracting each member's share of nonbusiness loss. Beginning with the 3rd

Insert 13-21

each member's share of business loss

before January 1, 2000,

[Handwritten signature]

1 taxable year that a ~~group return~~ ^{combined report} is filed under this section, if a member of an
 2 affiliated group that files a ~~group return~~ ^{combined report} has a positive net income as determined
 3 under sub. (5), the affiliated group shall only deduct the amount of the net operating
 4 loss carry-forward attributable to ~~the~~ ^{that} member.

5 (8) ESTIMATED TAX PAYMENTS. (a) For the first 2 taxable years that a ~~group~~
 6 ~~return~~ ^{combined report} is filed under this section, estimated taxes may be paid on a group ^{basis} or on a
 7 separate basis. The amount of any separate estimated taxes paid in the first 2
 8 taxable years that a ~~group return~~ ^{combined report} is filed shall be credited against the group's tax
 9 liability. The designated agent shall notify the department of any estimated taxes
 10 paid on a separate basis in the first 2 taxable years that a ~~group return~~ ^{combined report} is filed.

11 (b) If a ~~group return~~ ^{combined report} under this section is filed for 2 consecutive taxable years,
 12 estimated taxes shall be paid on a group basis for each subsequent taxable year and
 13 until such time as separate returns [✓] are filed by the corporations that were members
 14 of an affiliated group that filed ~~group returns~~ ^{combined reports} under this section. For ~~the~~ ^{each} taxable
 15 year in which combined estimated payments are required under this subsection, the
 16 department shall consider the affiliated group filing ~~a group return~~ ^{a combined report to be} one taxpayer.
 17 If a corporation subject to this section files a separate return in a taxable year
 18 following a year in which the corporation joined in filing a ~~group return~~ ^{combined report}, the amount
 19 of any estimated tax payments made on a group basis for the previous year shall be
 20 credited against the tax liability of the corporation that files a separate return, as
 21 allocated by the designated agent with the department's approval.

22 (c) If an affiliated group pays estimated taxes on a group basis for a taxable year
 23 or for any part of a taxable year, and the members of the affiliated group file separate
 24 returns for the taxable year, the designated agent, with the department's approval,

1 shall allocate the estimated tax payments among the members of the affiliated
2 group.

3 *insert or (d)*
4 (9) INTEREST FOR UNDERPAYMENT OF ESTIMATED TAX. (a) General. ~~Under this~~
5 ~~subsection~~ ^{under sub. (8)} the amount of interest that is due for an underpayment of estimated
6 taxes shall be computed as follows: *combined report*

7 1. For the first year in which a ~~group return~~ ^{combined report} is filed, the amount of interest that
8 is due for an underpayment of estimated taxes shall be determined by using the
9 aggregate of the tax and income shown on the returns filed by the members of the
10 group for the previous year.

11 2. For estimated taxes paid under sub. (7) (c), the amount of interest that is due
12 from a group member for an underpayment of estimated taxes paid by the group
13 member shall be determined by using the group member's separate ~~group~~ items
14 from the combined report filed for the previous year and the group member's
15 allocated share of the combined estimated payments for the current year. The
16 designated agent shall report the group member's allocated share of the combined
17 estimated payments for the current year to ^{the} department, in the manner prescribed
18 by the department.

18 *(d)* If estimated taxes are paid on a group basis for a taxable year but the group
19 does not file a ~~group return~~ ^{combined report} for the ~~current~~ taxable year and did not file a ~~group return~~ ^{combined report}
20 for the previous taxable year, the estimated tax shall be credited to the corporation
21 that made the estimated tax payment on the group's behalf.

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

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1 1. If a corporation becomes a member of an affiliated group at the beginning
 2 of a common accounting period, the corporation shall include with the corresponding
 3 items on the ~~separate return~~ ^{combined report} for the previous common accounting period the separate
 4 ~~separate~~ items shown on the corporation's return for the previous taxable year.

5 2. If a corporation is not a member of an affiliated group for an entire common
 6 accounting period, the corporation shall include with the corresponding items on the
 7 ~~separate return~~ ^{combined report} for the current taxable year the corporation's separate ~~separate~~ items
 8 for that portion of the common accounting period that the corporation was a member
 9 of the affiliated group.

10 3. To determine the separate ~~separate~~ items under subd. 1. and 2., if a
 11 corporation is a member of an affiliated group during a portion of a common
 12 accounting period in which the corporation becomes a member of another affiliated
 13 group, the corporation's separate ~~separate~~ items shall include the separate ~~separate~~
 14 items that are attributed to the corporation by the designated agent of the first
 15 affiliated group.

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

19 1. The separate ~~separate~~ items attributed by the designated agent to the
 20 corporation for the common accounting period during which the corporation leaves
 21 the affiliated group shall be excluded from the corresponding items of the affiliated
 22 group for the current common accounting period and all the common accounting
 23 periods following the corporation's departure from the affiliated group.

24 2. A corporation that leaves an affiliated group shall consider the separate
 25 ~~separate~~ items attributed to the corporation by the designated agent of the affiliated

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group to determine the ~~tax~~ amount of interest that is due from the corporation for an underpayment of estimated taxes under sub. (1).

If the department sends a notice to the designated agent, the notice that files a return under this section
(10) ASSESSMENT NOTICE. ~~A~~ notice of taxes that are owed by an affiliated group shall name each corporation that is a member

of the affiliated group during any part of the period covered by the notice. The department's failure to name a member of ~~an~~ ^{the} affiliated group on a notice under this subsection shall not invalidate the notice as to ~~an~~ ^{the} unnamed member of the affiliated group. Any levy, lien or other proceeding to collect the amount of a tax assessment under this section shall name the corporation ~~from~~ ^{from which} the department shall collect the assessment ~~from~~. If a corporation that joined in the filing of a ~~combined report~~ ^{combined report} under

~~this section~~ leaves the affiliated group, the department shall send the corporation a copy of any notice sent to the affiliated group under this subsection if the corporation notifies the department that the corporation is no longer a member of the affiliated group and if the corporation requests in writing that the department send notices under this subsection to the corporation. The department's failure to comply with a corporation's request to receive a notice ~~under this subsection~~ does not effect the tax liability of the corporation. *a*

combined report
(11) LIABILITY FOR TAX, INTEREST AND PENALTY. If members of an affiliated group file a ~~group return~~ ^{combined report} 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.

(12) PRESUMPTIONS AND BURDEN OF PROOF. An affiliated group ~~under sub. (10)~~ ^{of} shall be presumed to be engaged in a unitary business ~~under sub. (10)~~ and all the

1 income of the unitary business shall be presumed to be apportionable business
2 income under this section. A corporation, partnership, limited liability company or
3 tax-option corporation ~~shall have~~ ^{has} the burden of proving that it is not a member of
4 an affiliated group ^{that is} (subject to this section). *The department shall promulgate*

5 **SECTION 7.** 71.26 (3) (L) of the statutes is amended to read: *rules to implement*
this section.

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

23 **SECTION 8.** 71.29 (2) of the statutes is amended to read:

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

4 **SECTION 9.** 71.44 (1) (e) of the statutes is created to read:

5 71.44 (1) (e) A corporation that is a member of an affiliated group, as defined
6 in s. 71.255 (1) (a), and engaged in a unitary business, as defined in s. 71.255 (1) (g),
7 shall file a tax return under s. 71.255.

8 **SECTION 10.** 71.46 (3) of the statutes is repealed.

9 **SECTION 11.** 71.48 of the statutes is amended to read:

10 **71.48 Payments of estimated taxes.** Sections Except as provided in s.
11 71.255 (8), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under
12 this chapter.

13 **SECTION 12.** 71.84 (2) (a) of the statutes is amended to read:

14 71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment
15 of estimated tax under s. ~~71.29~~ ^{71.255)} or 71.48 there shall be added to the aggregate
16 tax for the taxable year interest at the rate of 12% per year on the amount of the
17 underpayment for the period of the underpayment. For corporations, except as
18 provided in par. (b), “period of the underpayment” means the time period from the
19 due date of the instalment until either the 15th day of the 3rd month beginning after
20 the end of the taxable year or the date of payment, whichever is earlier. If 90% of the
21 tax shown on the return is not paid by the 15th day of the 3rd month following the
22 close of the taxable year, the difference between that amount and the estimated taxes
23 paid, along with any interest due, shall accrue delinquent interest under s. 71.91 (1)
24 (a).

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

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1689/3ins
JK:...:hmh

Insert 6 - 13

NO 9T
Any corporation, regardless of the country where the corporation is organized or incorporated or conducts business, and any tax-option corporation, if the department determines that combined reporting is necessary to accurately report the income of the tax-option corporation apportioned to this state, shall file a combined report if the corporation is a member of an affiliated group that is engaged in a unitary business.

Insert 13-21 ✓

JK

ⓐ

~~(d)~~ Add the denominators^s of the apportionment factors^s for each corporation, as determined under par. (f), to arrive at the combined denominators^s.

d

~~(d)~~ Compute each corporation's apportionment factor by dividing the corporation's numerator^{as} as determined under par. (f) by the combined denominator^{as} as determined under par. (f).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1689/3dn

JK...:hmh

ing

I don't believe that is a valid concern because both methods use the exact same computations and one is a subset of the other.

↓
Kerry Holden:

Except for some of the recommendations regarding definitions, I have drafted this bill according to the instructions I received from the department of revenue (DOR). I did not define "water's edge method" or "worldwide method" because it is not necessary to use these terms. The method for computing the income and the apportionment factors under combined reporting are exactly the same regardless of whether it's called "water's edge" or "worldwide". As far as the types of corporations covered under each method, DOR has informed me that the corporations covered by the "water's edge method" are a subset of the corporations covered by the "worldwide method". Therefore, because both methods use the exact same computations, I have simply combined the respective lists of corporations covered by each "method". DOR expressed concerns about the constitutionality of combined reporting if the terms "water's edge method" and "worldwide method" are not explicitly used in the combined reporting statute. DOR is concerned that the use of combined reporting may discriminate against interstate commerce if both "methods" are not explicitly indicated. ~~I believe I have addressed that concern by merging both methods and simply referring to it as "combined reporting."~~ explicitly

I did not include a definition for "doing business in this state" because the recommended language for that definition is vague and overly broad. For example, the phrase "actively engaged in any transaction" is vague and may actually limit the meaning of "doing business in this state". The phrase "doing business in this state" is not used in section 71.255 of the statutes and has no bearing on whether a business meets the criteria for combined reporting.

I also did not make the suggested changes to the definition of "unitary business". Most of the suggested changes are already in that definition. The remaining suggestions seem vague, overly broad or redundant. The phrase "operational function" is not defined and the phrase "other activities that justify apportionment of a multi-state entity's income" is so vague and overly broad that an effort to collect the income and franchise tax under that language would probably be unconstitutional because it gives no notice to a corporation as to what activities may result in tax liability to this state.

As we have discussed previously, this is a complicated bill. I have been told by DOR that the instructions I received from DOR are the result of researching tax statutes

↳ that

from several states and using the California combined reporting statute as a model. I have talked to Carol Held at DOR in an effort to clarify the intent of this bill. In an attempt to define a term used in this bill, Carol spoke with legal counsel in California who told her that California's combined reporting law has been administratively difficult to implement and enforce. As a result, California will be changing its combined reporting law. On Wednesday, February 3, after completing the most current draft of this bill, I received a rather lengthy document from DOR that supposedly specifies the proposed changes to California's combined reporting law. I have no idea if those proposed changes address whatever problem California is having with its combined reporting law. In fact, neither I nor anyone at DOR knows the nature and extent of California's alleged problems with combined reporting. You may want to consider California's experience with combined reporting when analyzing this bill. If you have any questions, please do not hesitate to contact me.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1689/4dn
JK:jlg&kmg:km

February 4, 1999

Kerry Holden:

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As we have discussed previously, this is a complicated bill. I have been told by DOR that the instructions that I received from DOR are the result of researching tax

statutes from several states and using the California combined reporting statute as a model. I have talked to Carol Held at DOR in an effort to clarify the intent of this bill. In an attempt to define a term used in this bill, Carol spoke with legal counsel in California who told her that California's combined reporting law has been administratively difficult to implement and enforce. As a result, California will be changing its combined reporting law. On Wednesday, February 3, after completing the most current draft of this bill, I received a rather lengthy document from DOR that supposedly specifies the proposed changes to California's combined reporting law. I have no idea if those proposed changes address whatever problem California is having with its combined reporting law. In fact, neither I nor anyone at DOR knows the nature and extent of California's alleged problems with combined reporting. You may want to consider California's experience with combined reporting when analyzing this bill. If you have any questions, please do not hesitate to contact me.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1689/4
JK:jl&kmg:km

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 business. A unitary business 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 business are not required to file a combined tax return. Instead, a corporation doing business in this state that is part of a unitary business files a separate return.

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

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.~~

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 ownership by the parent corporation if the
11 parent corporation owns stock representing at least 50% of the voting stock of at least
12 one of the connected corporations or if the parent corporation or any of the connected
13 corporations owns stock that cumulatively represents at least 50% of the voting stock
14 of each of the connected corporations.

15 2. Any 2 or more corporations if a common owner owns stock representing at
16 least 50% of the voting stock of the corporations or the connected corporations.

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

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

23 5. Any 2 or more corporations if stock representing at least 50% of the voting
24 stock is directly owned by, or for the benefit of, family members. In this subdivision,
25 “family members” means an individual or a spouse related by blood, marriage or

1 adoption within the 2nd degree of kinship as computed under s. 852.03 (2), 1995
2 stats.

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

7 (c) “Corporation” has the meaning given in s. 71.22 (1) or 71.42 (1).

8 (d) “Department” means the department of revenue.

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

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

15 (g) “Unitary business” means 2 or more businesses that have common
16 ownership or are integrated with or dependent upon each other. Two or more
17 businesses are presumed to be a unitary business if the businesses have centralized
18 management or a centralized executive force; centralized purchasing, advertising or
19 accounting; intercorporate sales or leases; intercorporate services; intercorporate
20 debts; intercorporate use of proprietary materials; interlocking directorates or
21 interlocking corporate officers; or if a business conducted in this state is owned by
22 a person that conducts a business entirely outside of this state that is different from
23 the business conducted in this state.

24 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. A corporation that is
25 subject to tax under s. 71.23 (1) or (2) or 71.43, that is a member of an affiliated group

1 and that is engaged in a unitary business with one or more members of the affiliated
2 group shall compute the corporation's income using the combined reporting method
3 under this section. Any corporation, regardless of the country where the corporation
4 is organized or incorporated or conducts business, and any tax-option corporation,
5 if the department determines that combined reporting is necessary to accurately
6 report the income of the tax-option corporation apportioned to this state, shall file
7 a combined report if the corporation is a member of an affiliated group that is
8 engaged in a unitary business.

9 (3) ACCOUNTING PERIOD. For purposes of this section, the income under ss.
10 71.26, 71.34 and 71.45, the apportionment factors under ss. 71.25 and 71.45 and the
11 tax credits under ss. 71.28 and 71.47 of all corporations that are members of an
12 affiliated group and that are engaged in a unitary business shall be determined by
13 using the same accounting period. If the affiliated group that is engaged in a unitary
14 business has a common parent corporation, the accounting period of the common
15 parent corporation shall be used to determine the income, the apportionment factors
16 and the tax credits of all the corporations that are members of the affiliated group
17 that is engaged in a unitary business. If the affiliated group that is engaged in a
18 unitary business has no common parent corporation, the income, the apportionment
19 factors and the tax credits of the affiliated group that is engaged in a unitary business
20 shall be determined using the accounting period of the member of the affiliated group
21 that has the most significant operations on a recurring basis in this state.

22 (4) FILING RETURNS. (a) *Corporations with the same accounting period.*
23 Corporations that must file a return under this section and that have the same
24 accounting period may file a combined report under par. (c) that reports the
25 aggregate state franchise or state income tax liability of all of the members of the

1 affiliated group that are engaged in a unitary business. Corporations that are
2 required to file a combined report under this section may file separate returns
3 reporting the respective apportionment of the corporation's state franchise or state
4 income tax liability as determined under the combined reporting method, if each
5 corporation filing a separate return pays its own apportionment of its state franchise
6 or state income tax liability.

7 (b) *Corporations with different accounting periods.* Corporations that are
8 required to file a combined report and that have different accounting periods shall
9 use the actual figures from the corporations' financial records to determine the
10 proper income and income-related computations to convert to a common accounting
11 period. Corporations that are required to file a combined report may use a
12 proportional method to convert income to a common accounting period if the results
13 of the proportional method do not materially misrepresent the income apportioned
14 to this state. The apportionment factors under ss. 71.25 and 71.45 and the tax credits
15 under ss. 71.28 and 71.47 shall be computed according to the same method used to
16 determine the income under ss. 71.26, 71.34 and 71.45 for the common accounting
17 period. If a corporation performs an interim closing of its financial records to
18 determine the income attributable to the common accounting period, the actual
19 figures from the interim closing shall be used to convert the apportionment factors
20 to the common accounting period.

21 (c) *Designated agent.* If corporations that are subject to this section file a
22 combined report under par. (a), the parent corporation of the affiliated group shall
23 be the sole designated agent for each member of the affiliated group including the
24 parent corporation. The designated agent shall file the combined report under par.
25 (a), shall file for any extensions under s. 71.24 (7) or 71.44 (3), shall file amended

1 reports and claims for refund or credit, and shall send and receive all correspondence
2 with the department regarding a combined report. Any notice the department sends
3 to the designated agent is considered a notice sent to all members of the affiliated
4 group. Any refund shall be paid to and in the name of the designated agent and shall
5 discharge any liability of the state to any member of an affiliated group regarding
6 the refund. The affiliated group filing a combined report under par. (a) shall pay all
7 taxes, including estimated taxes, in the designated agent's name. The designated
8 agent shall participate on behalf of the affiliated group in any investigation or
9 hearing requested by the department regarding a combined report and shall produce
10 all information requested by the department regarding a combined report. The
11 designated agent may execute a power of attorney on behalf of the members of the
12 affiliated group. The designated agent shall execute waivers, closing agreements
13 and other documents regarding a report filed under par. (a) and any waiver,
14 agreement or document executed by the designated agent shall be considered as
15 executed by all members of the affiliated group. If the department acts in good faith
16 with an affiliated group member that represents itself as the designated agent for
17 the affiliated group but that affiliated group member is not the designated agent, any
18 action taken by the department with that affiliated group member has the same
19 effect as if that affiliated group member were the actual designated agent for the
20 affiliated group.

21 (d) *Part-year members.* If a corporation becomes a member of an affiliated
22 group engaged in a unitary business or ceases to be a member of an affiliated group
23 engaged in a unitary business after the beginning of a common accounting period,
24 the corporation's income shall be apportioned to this state as follows:

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

10 2. If the corporation is not required to file federal short period returns, the
11 corporation shall file a separate return. Income shall be determined as follows:

12 a. By the combined reporting method for any period that the corporation was
13 a member of an affiliated group that was engaged in a unitary business.

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

17 (e) *Amended combined report.* The election to file a combined report under this
18 section applies to an amended combined report that includes the same corporations
19 that joined in the filing of the original combined report. Under this section, an
20 amended combined report shall be filed as follows:

21 1. If an election to file a combined report that is in effect for a taxable year is
22 revoked for the taxable year because the affiliated group that filed the combined
23 report is not a unitary business, as determined by the department, the designated
24 agent for the affiliated group may not file an amended combined report. The
25 designated agent and each corporation that joined in filing the combined report shall

1 file a separate amended return. To compute the tax due on a separate amended
2 return, a corporation that files a separate amended return shall consider all of the
3 payments, credits or other amounts, including refunds, that the designated agent
4 allocated to the corporation.

5 2. If a change in tax liability under this section is the result of the removal of
6 a corporation from an affiliated group because the corporation was not eligible to be
7 a member of the affiliated group for the taxable year, as determined by the
8 department, the designated agent shall file an amended combined report and the
9 ineligible corporation shall file a separate amended return.

10 3. If a corporation erroneously fails to join in the filing of a combined report,
11 the designated agent shall file an amended combined report that includes the
12 corporation. If a corporation that erroneously fails to join in the filing of a combined
13 report has filed a separate return, the corporation shall file an amended separate
14 return that shows no net income, overpayment or underpayment, and shows that the
15 corporation has joined in the filing of a combined report.

16 (5) INCOME COMPUTATION UNDER COMBINED REPORTING. Under the combined
17 reporting method, income attributable to this state shall be determined as follows:

18 (a) Determine the net income of each corporation under s. 71.26, 71.34 (1) or
19 71.45, including a general or limited partner's share of income to the extent that the
20 general or limited partner and the partnership in which the general or limited
21 partner invests are engaged in a unitary business, regardless of the percentage of the
22 general or limited partner's ownership in the partnership.

23 (b) Adjust each corporation's income, as determined under par. (a), as provided
24 under s. 71.30.

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

17 1. Income from sales of inventory from one member of the affiliated group to
18 another member of the affiliated group.

19 2. Gain or loss from sales of intangible assets from one member of the affiliated
20 group to another member of the affiliated group.

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

23 4. Loans, advances, receivables and similar items that one member of the
24 affiliated group owes to another member of the affiliated group, including interest
25 income and interest expense related to these items.

1 5. Stock or other equity of one member of the affiliated group that is owned or
2 controlled by another member of the affiliated group.

3 6. Except as provided in par. (c) (intro.), intercompany dividends paid out of
4 earnings or profits from a unitary business income.

5 7. Annual rent paid by one member of the affiliated group to another member
6 of the affiliated group.

7 8. Management or service fees paid by one member of the affiliated group to
8 another member of the affiliated group.

9 9. Income or expenses allocated or charged by one member of the affiliated
10 group to another member of the affiliated group.

11 (d) From the amount determined under par. (c) for each corporation, subtract
12 nonbusiness income, net of related expenses, and add nonbusiness losses, net of
13 related expenses, to determine each corporation's apportionable net income or
14 apportionable net loss.

15 (e) Calculate the apportionment factors under sub. (6) and multiply each
16 corporation's apportionable net income or apportionable net loss, as determined
17 under par. (d), by the corporation's apportionment fraction as determined under s.
18 71.25 (6).

19 (f) To the amount determined under par. (e), add each corporation's
20 nonbusiness income attributable to this state and subtract each corporation's
21 nonbusiness losses attributable to this state.

22 (g) To the amount determined under par. (f), subtract each corporation's net
23 business loss carry-forward under s. 71.26 (4) or 71.45 (4). A corporation may not
24 carry forward a business loss from taxable years ending before January 1, 2000, if

1 the corporation was not subject to this state's income or franchise tax for taxable years
2 ending before January 1, 2000.

3 **(6) APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING.** Under the
4 combined reporting method, this state's apportionment factors are determined as
5 follows:

6 (a) Determine the numerator and the denominator of each corporation's
7 apportionment factors as determined under s. 71.25 or 71.45, including a general or
8 limited partner's share of the numerator and the denominator of the apportionment
9 factors to the extent that the general or limited partner and the partnership in which
10 the general or limited partner invests are engaged in a unitary business, regardless
11 of the percentage of the general or limited partner's ownership in the partnership.

12 (b) Subtract intercompany transactions under sub. (5) (c) from both the
13 numerators and the denominators as determined under par. (b).

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

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

19 **(7) NET OPERATING LOSSES.** For the first 2 taxable years that a combined report
20 is filed under this section, the net operating loss for each member of an affiliated
21 group that files a combined report is determined by adding each member's share of
22 nonbusiness income to each member's share of business income and subtracting each
23 member's share of nonbusiness loss from each member's share of business loss.
24 Beginning with the 3rd taxable year that a combined report is filed under this
25 section, if a member of an affiliated group that files a combined report has a positive

1 net income as determined under sub. (5), the affiliated group shall only deduct the
2 amount of the net operating loss carry-forward attributable to that member.

3 (8) ESTIMATED TAX PAYMENTS. (a) For the first 2 taxable years that a combined
4 report is filed under this section, estimated taxes may be paid on a group basis or on
5 a separate basis. The amount of any separate estimated taxes paid in the first 2
6 taxable years that a combined report is filed shall be credited against the group's tax
7 liability. The designated agent shall notify the department of any estimated taxes
8 paid on a separate basis in the first 2 taxable years that a combined report is filed.

9 (b) If a combined report is filed for 2 consecutive taxable years, estimated taxes
10 shall be paid on a group basis for each subsequent taxable year until such time as
11 separate returns are filed by the corporations that were members of an affiliated
12 group that filed combined reports under this section. For each taxable year in which
13 combined estimated payments are required under this subsection, the department
14 shall consider the affiliated group filing a combined report to be one taxpayer. If a
15 corporation subject to this section files a separate return in a taxable year following
16 a year in which the corporation joined in filing a combined report, the amount of any
17 estimated tax payments made on a group basis for the previous year shall be credited
18 against the tax liability of the corporation that files a separate return, as allocated
19 by the designated agent with the department's approval.

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

1 (d) If estimated taxes are paid on a group basis for a taxable year but the group
2 does not file a combined report for the taxable year and did not file a combined report
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 (9) INTEREST FOR UNDERPAYMENT OF ESTIMATED TAX. (a) *General*. The amount
6 of interest that is due for an underpayment of estimated taxes under sub. (8) shall
7 be computed as follows:

8 1. For the first year in which a combined report is filed, the amount of interest
9 that is due for an underpayment of estimated taxes shall be determined by using the
10 aggregate of the tax and income shown on the returns filed by the members of the
11 group for the previous year.

12 2. For estimated taxes paid under sub. (8) (c), the amount of interest that is due
13 from a group member for an underpayment of estimated taxes paid by the group
14 member shall be determined by using the group member's separate items from the
15 combined report filed for the previous year and the group member's allocated share
16 of the combined estimated payments for the current year. The designated agent shall
17 report the group member's allocated share of the combined estimated payments for
18 the current year to the department, in the manner prescribed by the department.

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

23 1. If a corporation becomes a member of an affiliated group at the beginning
24 of a common accounting period, the corporation shall include with the corresponding

1 items on the combined report for the previous common accounting period the
2 separate items shown on the corporation's return for the previous taxable year.

3 2. If a corporation is not a member of an affiliated group for an entire common
4 accounting period, the corporation shall include with the corresponding items on the
5 combined report for the current taxable year the corporation's separate items for that
6 portion of the common accounting period that the corporation was a member of the
7 affiliated group.

8 3. To determine the separate items under subds. 1. and 2., if a corporation is
9 a member of an affiliated group during a portion of a common accounting period in
10 which the corporation becomes a member of another affiliated group, the
11 corporation's separate items shall include the separate items that are attributed to
12 the corporation by the designated agent of the first affiliated group.

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

16 1. The separate items attributed by the designated agent to the corporation for
17 the common accounting period during which the corporation leaves the affiliated
18 group shall be excluded from the corresponding items of the affiliated group for the
19 current common accounting period and all the common accounting periods following
20 the corporation's departure from the affiliated group.

21 2. A corporation that leaves an affiliated group shall consider the separate
22 items attributed to the corporation by the designated agent of the affiliated group to
23 determine the amount of interest that is due from the corporation for an
24 underpayment of estimated taxes under sub. (8).

1 **(10) ASSESSMENT NOTICE.** If the department sends a notice of taxes that are
2 owed by an affiliated group to the designated agent, the notice shall name each
3 corporation that is a member of the affiliated group during any part of the period
4 covered by the notice. The department's failure to name a member of the affiliated
5 group on a notice under this subsection shall not invalidate the notice as to the
6 unnamed member of the affiliated group. Any levy, lien or other proceeding to collect
7 the amount of a tax assessment under this section shall name the corporation from
8 which the department shall collect the assessment. If a corporation that joined in
9 the filing of a combined report leaves the affiliated group, the department shall send
10 the corporation a copy of any notice sent to the affiliated group under this subsection
11 if the corporation notifies the department that the corporation is no longer a member
12 of the affiliated group and if the corporation requests in writing that the department
13 send notices under this subsection to the corporation. The department's failure to
14 comply with a corporation's request to receive a notice does not affect the tax liability
15 of the corporation.

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

22 **(12) PRESUMPTIONS AND BURDEN OF PROOF.** An affiliated group shall be presumed
23 to be engaged in a unitary business and all of the income of the unitary business shall
24 be presumed to be apportionable business income under this section. A corporation,
25 partnership, limited liability company or tax-option corporation has the burden of

1 proving that it is not a member of an affiliated group that is subject to this section.
2 The department shall promulgate rules to implement this section.

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

4 71.26 (3) (L) Section 265 is excluded and replaced by the rule that any amount
5 otherwise deductible under this chapter that is directly or indirectly related to
6 income wholly exempt from taxes imposed by this chapter or to losses from the sale
7 or other disposition of assets the gain from which would be exempt under this
8 paragraph if the assets were sold or otherwise disposed of at a gain is not deductible.
9 In this paragraph, “wholly exempt income”, for corporations subject to franchise or
10 income taxes, includes ~~amounts received from affiliated or subsidiary corporations~~
11 ~~for~~ interest, dividends or capital gains that, ~~because of the degree of common~~
12 ~~ownership, control or management between the payor and payee,~~ are not subject to
13 taxes under this chapter. In this paragraph, “wholly exempt income”, for
14 corporations subject to income taxation under this chapter, also includes interest on
15 obligations of the United States. In this paragraph, “wholly exempt income” does not
16 include income excludable, not recognized, exempt or deductible under specific
17 provisions of this chapter. If any expense or amount otherwise deductible is
18 indirectly related both to wholly exempt income or loss and to other income or loss,
19 a reasonable proportion of the expense or amount shall be allocated to each type of
20 income or loss, in light of all the facts and circumstances.

21 **SECTION 8.** 71.29 (2) of the statutes is amended to read:

22 71.29 (2) WHO SHALL PAY. ~~Every~~ Except as provided in s. 71.255 (8), a
23 corporation subject to tax under s. 71.23 (1) or (2) and every virtually exempt entity
24 subject to tax under s. 71.125 or 71.23 (1) or (2) shall pay an estimated tax.

25 **SECTION 9.** 71.44 (1) (e) of the statutes is created to read:

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

4 **SECTION 10.** 71.46 (3) of the statutes is repealed.

5 **SECTION 11.** 71.48 of the statutes is amended to read:

6 **71.48 Payments of estimated taxes.** Sections Except as provided in s.
7 71.255 (8), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under
8 this chapter.

9 **SECTION 12.** 71.84 (2) (a) of the statutes is amended to read:

10 71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment
11 of estimated tax under s. 71.255, 71.29 or 71.48 there shall be added to the aggregate
12 tax for the taxable year interest at the rate of 12% per year on the amount of the
13 underpayment for the period of the underpayment. For corporations, except as
14 provided in par. (b), “period of the underpayment” means the time period from the
15 due date of the instalment until either the 15th day of the 3rd month beginning after
16 the end of the taxable year or the date of payment, whichever is earlier. If 90% of the
17 tax shown on the return is not paid by the 15th day of the 3rd month following the
18 close of the taxable year, the difference between that amount and the estimated taxes
19 paid, along with any interest due, shall accrue delinquent interest under s. 71.91 (1)
20 (a).

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

22 (1) CONSOLIDATED RETURNS. The treatment of sections 71.25 (5) (a) 9. and 10.
23 and (b) 2., 71.255, 71.26 (3) (L), 71.29 (2), 71.44 (1) (e), 71.48 and 71.84 (2) (a) of the
24 statutes first applies to taxable years beginning on January 1 of the year in which
25 this subsection takes effect, except that if this subsection takes effect after July 31

1 the treatment of sections 71.25 (5) (a) 9. and 10. and (b) 2., 71.255, 71.26 (3) (L), 71.29
2 (2), 71.44 (1) (e), 71.48 and 71.84 (2) (a) of the statutes first applies to taxable years
3 beginning on January 1 of the year following the year in which this subsection takes
4 effect.

5 (END)