



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1837/2
JK:jlg&kmg:ijs

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SOON

DOA:.....Holden - Single sales factor for corporate income and franchise tax
FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

D-N

do not gen

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

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a corporation's income to this state. The formula has three factors: a sales factor, a property factor and a payroll factor. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

Under this bill, beginning on January 1, 2000, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state and the premiums factor will be the only factor used to attribute a portion of an insurance company's income to this state.

The bill broadens the definition of "sales" as it relates to the sales factor used to apportion income for tax purposes. Receipts from the lease or rental of motor vehicles, rolling stock, aircraft and vessels used in this state are included in the sales factor. The sales factor also includes the royalties for the use of intangible property, the sales of intangible property and receipts from the performance of services.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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

2 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. Nonresident
3 individuals and nonresident estates and trusts engaged in business within and
4 without the state shall be taxed only on such income as is derived from business
5 transacted and property located within the state. The amount of such income
6 attributable to Wisconsin may be determined by an allocation and separate
7 accounting thereof, when the business of such nonresident individual or nonresident
8 estate or trust within the state is not an integral part of a unitary business, but the
9 department of revenue may permit an allocation and separate accounting in any case
10 in which it is satisfied that the use of such method will properly reflect the income
11 taxable by this state. In all cases in which allocation and separate accounting is not
12 permissible, the determination shall be made in the following manner: for all
13 businesses except financial organizations, public utilities, railroads, sleeping car
14 companies and car line companies there shall first be deducted from the total net
15 income of the taxpayer the part thereof (less related expenses, if any) that follows the
16 situs of the property or the residence of the recipient. The For taxable years ending
17 on or before December 31, 1999, the remaining net income shall be apportioned to
18 Wisconsin this state by use of an apportionment fraction composed of a sales factor
19 representing 50% of the fraction, a property factor representing 25% of the fraction
20 and a payroll factor representing 25% of the fraction. For taxable years beginning

1 on or after January 1, 2000, the remaining net income shall be apportioned to this
2 state by use of an apportionment fraction composed of the sales factor under sub. (7).

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

4 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
5 years ending on or before December 31, 1999:

6 **SECTION 3.** 71.04 (6) (intro.) of the statutes is amended to read:

7 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years
8 ending on or before December 31, 1999:

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

10 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
11 state if the income-producing activity is performed in this state. If the
12 income-producing activity is performed both in and outside this state the sales shall
13 be divided between those states having jurisdiction to tax such business in
14 proportion to the direct costs of performance incurred in each such state in rendering
15 this service. Services performed in states which do not have jurisdiction to tax the
16 business shall be deemed to have been performed in the state to which compensation
17 is allocated by sub. (6). This paragraph does not apply to taxable years beginning
18 after December 31, 1999.

19 **SECTION 5.** 71.04 (7) (dc) of the statutes is created to read:

20 71.04 (7) (dc) For taxable years beginning after December 31, 1999, sales,
21 rents, royalties, and other income from real property, and the receipts from the lease
22 or rental of tangible personal property, are attributed to the state in which the
23 property is located.

24 **SECTION 6.** 71.04 (7) (dg) of the statutes is created to read:

1 71.04 (7) (dg) For taxable years beginning after December 31, 1999, receipts
2 from the lease or rental of moving property including but not limited to motor
3 vehicles, rolling stock, aircraft, vessels, or mobile equipment are included in the
4 numerator of the sales factor under par. (a) to the extent that the property is used
5 in this state. The use of moving property in this state is determined as follows:

6 1. A motor vehicle is used in this state if it is registered in this state and used
7 wholly in this state.

8 2. The use of rolling stock in this state is determined by multiplying the receipts
9 from the lease or rental of the rolling stock by a fraction having as a numerator the
10 miles traveled within this state by the leased or rented rolling stock and having as
11 a denominator the total miles traveled by the leased or rented rolling stock.

12 3. The use of an aircraft in this state is determined by multiplying the receipts
13 from the lease or rental of the aircraft by a fraction having as a numerator the
14 number of landings of the aircraft in this state and having as a denominator the total
15 number of landings anywhere of the aircraft.

16 4. The use of a vessel, mobile equipment or other mobile property in this state
17 is determined by multiplying the receipts from the lease or rental of the property by
18 a fraction having as a numerator the number of days in the taxable year that the
19 vessel, mobile equipment or other mobile property was in this state and having as
20 a denominator the number of days in the taxable year that the vessel, mobile
21 equipment or other mobile property was rented or leased.

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

23 71.04 (7) (dn) 1. For taxable years beginning after December 31, 1999, royalties
24 and other income received for the use of intangible property are attributed to the
25 state where the purchaser uses the intangible property. If intangible property is used

1 in more than one state, the royalties and other income received for the use of the
2 intangible property shall be apportioned to this state according to the portion of the
3 intangible property's use in this state. If the portion of intangible property's use in
4 this state cannot be determined, the royalties and other income received for the use
5 of the intangible property shall be excluded from the numerator and the denominator
6 of the sales factor under par. (a). Intangible property is used in this state if a
7 purchaser uses the intangible property or uses the rights to intangible property in
8 the regular course of the purchaser's business in this state, regardless of where the
9 purchaser's customers are located.

10 2. For taxable years beginning after December 31, 1999, sales of intangible
11 property are attributed to the state where a purchaser uses the intangible property.
12 If intangible property is used in more than one state, the sales of the intangible
13 property shall be apportioned to this state according to the portion of the intangible
14 property's use in this state. If the portion of intangible property's use in this state
15 cannot be determined, the sales of the intangible property shall be excluded from the
16 numerator and the denominator of the sales factor under par. (a). Intangible
17 property is used in this state if a purchaser uses the intangible property in the
18 regular course of the purchaser's business in this state, regardless of where the
19 purchaser's customers are located.

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

21 71.04 (7) (dr) For taxable years beginning after December 31, 1999, receipts
22 from the performance of services are attributed to the state where the purchaser
23 received the benefit of the services. If a purchaser receives the benefit of a service
24 in more than one state, the receipts from the performance of the service are included
25 in the numerator of the sales factor under par. (a) according to the portion of the

1 benefit of the service received in this state. If the state where a purchaser received
2 the benefit of a service cannot be determined, the benefit of a service is received in
3 the state where the purchaser, in the regular course of the purchaser's business,
4 ordered the service. If the state where a purchaser ordered a service cannot be
5 determined, the benefit of the service is received in the state where the purchaser,
6 in the regular course of the purchaser's business, receives a bill for the service.

7 ~~SECTION 9. 71.25 (5) (b) 2 of the statutes is repealed.~~

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

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

10 Corporations engaged in business within and without the state shall be taxed only
11 on such income as is derived from business transacted and property located within
12 the state. The amount of such income attributable to Wisconsin may be determined
13 by an allocation and separate accounting thereof, when the business of such
14 corporation within the state is not an integral part of a unitary business, but the
15 department of revenue may permit an allocation and separate accounting in any case
16 in which it is satisfied that the use of such method will properly reflect the income
17 taxable by this state. In all cases in which allocation and separate accounting is not
18 permissible, the determination shall be made in the following manner: for all
19 businesses except financial organizations, public utilities, railroads, sleeping car
20 companies, car line companies and corporations or associations that are subject to
21 a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted
22 from the total net income of the taxpayer the part thereof (less related expenses, if
23 any) that follows the situs of the property or the residence of the recipient. The For
24 taxable years ending on or before December 31, 1999, the remaining net income shall
25 be apportioned to Wisconsin this state by use of an apportionment fraction composed

1 of a sales factor under sub. (9) representing 50% of the fraction, a property factor
2 under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8)
3 representing 25% of the fraction. For taxable years beginning on or after January
4 1, 2000, the remaining net income shall be apportioned to this state by use of an
5 apportionment fraction composed of the sales factor under sub. (9).

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

7 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (5) and for taxable
8 years ending on or before December 31, 1999:

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

10 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. (5) and for taxable years
11 ending on or before December 31, 1999:

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

13 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
14 state if the income-producing activity is performed in this state. If the
15 income-producing activity is performed both in and outside this state the sales shall
16 be divided between those states having jurisdiction to tax such business in
17 proportion to the direct costs of performance incurred in each such state in rendering
18 this service. Services performed in states which do not have jurisdiction to tax the
19 business shall be deemed to have been performed in the state to which compensation
20 is allocated by sub. (8). This paragraph does not apply to taxable years beginning
21 after December 31, 1999.

22 **SECTION 14.** 71.25 (9) (dc) of the statutes is created to read:

23 71.25 (9) (dc) For taxable years beginning after December 31, 1999, sales,
24 rents, royalties, and other income from real property, and the receipts from the lease

1 or rental of tangible personal property are attributed to the state in which the
2 property is located.

3 **SECTION 15.** 71.25 (9) (dg) of the statutes is created to read:

4 71.25 (9) (dg) For taxable years beginning after December 31, 1999, receipts
5 from the lease or rental of moving property including but not limited to motor
6 vehicles, rolling stock, aircraft, vessels, or mobile equipment are included in the
7 numerator of the sales factor under par. (a) to the extent that the property is used
8 in this state. The use of moving property in this state is determined as follows:

9 1. A motor vehicle is used in this state if it is registered in this state and used
10 wholly in this state.

11 2. The use of rolling stock in this state is determined by multiplying the receipts
12 from the lease or rental of the rolling stock by a fraction having as a numerator the
13 miles traveled within this state by the leased or rented rolling stock and having as
14 a denominator the total miles traveled by the leased or rented rolling stock.

15 3. The use of an aircraft in this state is determined by multiplying the receipts
16 from the lease or rental of the aircraft by a fraction having as a numerator the
17 number of landings of the aircraft in this state and having as a denominator the total
18 number of landings anywhere of the aircraft.

19 4. The use of a vessel, mobile equipment or other mobile property in this state
20 is determined by multiplying the receipts from the lease or rental of the property by
21 a fraction having as a numerator the number of days in the taxable year that the
22 vessel, mobile equipment or other mobile property was in this state and having as
23 a denominator the number of days in the taxable year that the vessel, mobile
24 equipment or other mobile property was rented or leased.

25 **SECTION 16.** 71.25 (9) (dn) of the statutes is created to read:

1 71.25 (9) (dn) 1. For taxable years beginning after December 31, 1999, royalties
2 and other income received for the use of intangible property are attributed to the
3 state where the purchaser uses the intangible property. If intangible property is used
4 in more than one state, the royalties and other income received for the use of the
5 intangible property shall be apportioned to this state according to the portion of the
6 intangible property's use in this state. If the portion of intangible property's use in
7 this state cannot be determined, the royalties and other income received for the use
8 of intangible property shall be excluded from the numerator and the denominator of
9 the sales factor under par. (a). Intangible property is used in this state if a purchaser
10 uses the intangible property or uses the rights to intangible property in the regular
11 course of the purchaser's business in this state, regardless of where the purchaser's
12 customers are located.

13 2. For taxable years beginning after December 31, 1999, sales of intangible
14 property are attributed to the state where a purchaser uses the intangible property.
15 If intangible property is used in more than one state, the sales of the intangible
16 property shall be apportioned to this state according to the portion of the intangible
17 property's use in this state. If the portion of intangible property's use in this state
18 cannot be determined, the sales of the intangible property shall be excluded from the
19 numerator and the denominator of the sales factor under par. (a). Intangible
20 property is used in this state if a purchaser uses the intangible property in the
21 regular course of the purchaser's business in this state, regardless of where the
22 purchaser's customers are located.

23 **SECTION 17.** 71.25 (9) (dr) of the statutes is created to read:

24 71.25 (9) (dr) For taxable years beginning after December 31, 1999, receipts
25 from the performance of services are attributed to the state where the purchaser

1 received the benefit of the services. If a purchaser receives the benefit of a service
2 in more than one state, the receipts from the performance of the service are included
3 in the numerator of the sales factor under par. (a) according to the portion of the
4 benefit of the service received in this state. If the state where a purchaser received
5 the benefit of a service cannot be determined, the benefit of a service is received in
6 the state where the purchaser, in the regular course of the purchaser's business,
7 ordered the service. If the state where a purchaser ordered a service cannot be
8 determined, the benefit of the service is received in the state where the purchaser,
9 in the regular course of the purchaser's business, receives a bill for the service.

10 **SECTION 18.** 71.25 (9) (e) (title) of the statutes is repealed.

11 **SECTION 19.** 71.25 (9) (f) (title) of the statutes is repealed.

12 **SECTION 20.** 71.28 (4) (a) of the statutes is amended to read:

13 71.28 (4) (a) *Credit.* Any corporation may credit against taxes otherwise due
14 under this chapter an amount equal to 5% of the amount obtained by subtracting
15 from the corporation's qualified research expenses, as defined in section 41 of the
16 internal revenue code, except that "qualified research expenses" includes only
17 expenses incurred by the claimant, incurred for research conducted in this state for
18 the taxable year, except that a taxpayer may elect the alternative computation under
19 section 41 (c) (4) of the Internal Revenue Code and that election applies until the
20 department permits its revocation and except that "qualified research expenses"
21 does not include compensation used in computing the credit under subs. (1dj) and
22 (1dx), the corporation's base amount, as defined in section 41 (c) of the internal
23 revenue code, except that gross receipts used in calculating the base amount means
24 gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. and,

1 (d), (dc), (dg), (dn) and (dr). Section 41 (h) of the internal revenue code does not apply
2 to the credit under this paragraph.

3 **SECTION 21.** 71.28 (4) (am) 1. of the statutes is amended to read:

4 71.28 (4) (am) *Development zone additional research credit.* 1. In addition to
5 the credit under par. (a), any corporation may credit against taxes otherwise due
6 under this chapter an amount equal to 5% of the amount obtained by subtracting
7 from the corporation's qualified research expenses, as defined in section 41 of the
8 internal revenue code, except that "qualified research expenses" include only
9 expenses incurred by the claimant in a development zone under subch. VI of ch. 560,
10 except that a taxpayer may elect the alternative computation under section 41 (c) (4)
11 of the Internal Revenue Code and that election applies until the department permits
12 its revocation and except that "qualified research expenses" do not include
13 compensation used in computing the credit under sub. (1dj) nor research expenses
14 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
15 corporation's base amount, as defined in section 41 (c) of the internal revenue code,
16 in a development zone, except that gross receipts used in calculating the base amount
17 means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and
18 2. and, (d), (dc), (dg), (dn) and (dr) and research expenses used in calculating the base
19 amount include research expenses incurred before the claimant is certified for tax
20 benefits under s. 560.765 (3), in a development zone, if the claimant submits with the
21 claimant's return a copy of the claimant's certification for tax benefits under s.
22 560.765 (3) and a statement from the department of commerce verifying the
23 claimant's qualified research expenses for research conducted exclusively in a
24 development zone. The rules under s. 73.03 (35) apply to the credit under this
25 subdivision. The rules under sub. (1di) (f) and (g) as they apply to the credit under

1 that subsection apply to claims under this subdivision. Section 41 (h) of the internal
2 revenue code does not apply to the credit under this subdivision.

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

4 71.45 (3) APPORTIONMENT. (intro.) With Except as provided in pars. (a) and (b),
5 with respect to domestic insurers not engaged in the sale of life insurance but which,
6 in the taxable year, have collected premiums written on subjects of insurance
7 resident, located or to be performed outside this state, there shall be subtracted from
8 the net income figure derived by application of sub. (2) (a) to arrive at Wisconsin
9 income constituting the measure of the franchise tax an amount calculated by
10 multiplying such adjusted federal taxable income by the arithmetic average of the
11 following 2 percentages:

12 **SECTION 23.** 71.45 (3) (a) of the statutes is amended to read:

13 71.45 (3) (a) The percentage of total premiums written on all property and risks
14 other than life insurance, wherever located during the taxable year, as reflects
15 premiums written on insurance, other than life insurance, where the subject of
16 insurance was resident, located or to be performed outside this state. For taxable
17 years beginning after December 31, 1999, the premiums percentage under this
18 paragraph is the only percentage applied to the apportionment calculations in this
19 paragraph and in sub. (3m).

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

22 71.45 (3) (b) 1. The percentage of total payroll, exclusive of life insurance
23 payroll, paid everywhere in the taxable year as reflects such compensation paid
24 outside this state. The payroll percentage under this paragraph does not apply to

1 the apportionment calculations under this paragraph and under sub. (3m) for
2 taxable years beginning after December 31, 1999.

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

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

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

20 **SECTION 26.** 71.47 (4) (a) of the statutes is amended to read:

21 71.47 (4) (a) *Credit.* Any corporation may credit against taxes otherwise due
22 under this chapter an amount equal to 5% of the amount obtained by subtracting
23 from the corporation's qualified research expenses, as defined in section 41 of the
24 internal revenue code, except that "qualified research expenses" includes only
25 expenses incurred by the claimant, incurred for research conducted in this state for

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

10 **SECTION 27.** 71.47 (4) (am) of the statutes is amended to read:

11 71.47 (4) (am) *Development zone additional research credit.* In addition to the
12 credit under par. (a), any corporation may credit against taxes otherwise due under
13 this chapter an amount equal to 5% of the amount obtained by subtracting from the
14 corporation’s qualified research expenses, as defined in section 41 of the internal
15 revenue code, except that “qualified research expenses” include only expenses
16 incurred by the claimant in a development zone under subch. VI of ch. 560, except
17 that a taxpayer may elect the alternative computation under section 41 (c) (4) of the
18 Internal Revenue Code and that election applies until the department permits its
19 revocation and except that “qualified research expenses” do not include
20 compensation used in computing the credit under sub. (1dj) nor research expenses
21 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
22 corporation’s base amount, as defined in section 41 (c) of the internal revenue code,
23 in a development zone, except that gross receipts used in calculating the base amount
24 means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and
25 2. and, (d), (dc), (dg), (dn) and (dr) and research expenses used in calculating the base

1 amount include research expenses incurred before the claimant is certified for tax
2 benefits under s. 560.765 (3), in a development zone, if the claimant submits with the
3 claimant's return a copy of the claimant's certification for tax benefits under s.
4 560.765 (3) and a statement from the department of commerce verifying the
5 claimant's qualified research expenses for research conducted exclusively in a
6 development zone. The rules under s. 73.03 (35) apply to the credit under this
7 paragraph. The rules under sub. (1di) (f) and (g) as they apply to the credit under
8 that subsection apply to claims under this paragraph. Section 41 (h) of the internal
9 revenue code does not apply to the credit under this paragraph. No credit may be
10 claimed under this paragraph for taxable years that begin on January 1, 1998, or
11 thereafter. Credits under this paragraph for taxable years that begin before January
12 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or
13 thereafter.

14 **SECTION 9443. Effective dates; revenue.**

15 (1) APPORTIONMENT FACTORS. The treatment of sections 71.04 (4), (5) (intro.), (6)
16 (intro.) and (7) (d), (dc), (dg), (dn) and (dr), 71.25 ~~(intro.)~~ (6), (7) (intro.), (8) (intro.)
17 and (9) (d), (dc), (dg), (dn) and (dr), 71.28 (4) (a) and (am) 1., 71.45 (3) (intro.) and (a)
18 and (3m) and 71.47 (4) (a) and (am) of the statutes and the renumbering and
19 amendment of section 71.45 (3) (b) of the statutes take effect on the January 1 after
20 publication.

21

(END)

LRB-1837/4

D-N

JR

This draft reconciles LRB-1837/3 and LRB-1689/1 by deleting the repeal of section 71.25(5)(b) 2. of the statutes from LRB-1837/3. Both LRB-1837/3 and LRB-1689/1 should continue to appear in the compiled bill.

JR

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

LRB-1837/4dn
JK:jlg&kmg:hmh

Tuesday, February 2, 1999

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-18374

JK:jlg&kmg:hmh

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SOON

JK
sep

DOA:.....Holden - Single sales factor for corporate income and franchise tax
FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

Today

Adopt
Gen. Cat.

1 AN ACT relating to: the budget.

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5 transacted and property located within the state. The amount of such income
6 attributable to Wisconsin may be determined by an allocation and separate
7 accounting thereof, when the business of such nonresident individual or nonresident
8 estate or trust within the state is not an integral part of a unitary business, but the
9 department of revenue may permit an allocation and separate accounting in any case
10 in which it is satisfied that the use of such method will properly reflect the income
11 taxable by this state. In all cases in which allocation and separate accounting is not
12 permissible, the determination shall be made in the following manner: for all
13 businesses except financial organizations, public utilities, railroads, sleeping car
14 companies and car line companies there shall first be deducted from the total net
15 income of the taxpayer the part thereof (less related expenses, if any) that follows the
16 situs of the property or the residence of the recipient. ~~The~~ ^{Beginning} For taxable years
17 ~~beginning~~ ^{January 1, 2000} ~~before~~ ~~the~~ the remaining net income shall be apportioned to
18 ~~Wisconsin~~ this state by use of an apportionment fraction composed of a sales factor
19 representing 50% of the fraction, a property factor representing 25% of the fraction
20 and a payroll factor representing 25% of the fraction. For taxable years beginning

1 on or after January 1, 2000, the remaining net income shall be apportioned to this
2 state by use of an apportionment fraction composed of the sales factor under sub. (7).

3 SECTION 2. 71.04 (5) (intro.) of the statutes is amended to read:

4 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
5 years ~~ending on or before December 31, 1999~~ ^{beginning} January 1, 2000:

6 SECTION 3. 71.04 (6) (intro.) of the statutes is amended to read:

7 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years
8 ~~ending on or before December 31, 1999~~ ^{beginning} January 1, 2000:

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

10 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
11 state if the income-producing activity is performed in this state. If the
12 income-producing activity is performed both in and outside this state the sales shall
13 be divided between those states having jurisdiction to tax such business in
14 proportion to the direct costs of performance incurred in each such state in rendering
15 this service. Services performed in states which do not have jurisdiction to tax the
16 business shall be deemed to have been performed in the state to which compensation
17 is allocated by sub. (6). This paragraph does not apply to taxable years beginning
18 after December 31, 1999.

19 SECTION 5. 71.04 (7) (dc) of the statutes is created to read:

20 71.04 (7) (dc) For taxable years beginning after December 31, 1999, sales,
21 rents, royalties, and other income from real property, and the receipts from the lease
22 or rental of tangible personal property, are attributed to the state in which the
23 property is located.

24 SECTION 6. 71.04 (7) (dg) of the statutes is created to read:

1 71.04 (7) (dg) For taxable years beginning after December 31, 1999, receipts
2 from the lease or rental of moving property including but not limited to motor
3 vehicles, rolling stock, aircraft, vessels, or mobile equipment are included in the
4 numerator of the sales factor under par. (a) to the extent that the property is used
5 in this state. The use of moving property in this state is determined as follows:

6 1. A motor vehicle is used in this state if it is registered in this state and used
7 wholly in this state.

8 2. The use of rolling stock in this state is determined by multiplying the receipts
9 from the lease or rental of the rolling stock by a fraction having as a numerator the
10 miles traveled within this state by the leased or rented rolling stock and having as
11 a denominator the total miles traveled by the leased or rented rolling stock.

12 3. The use of an aircraft in this state is determined by multiplying the receipts
13 from the lease or rental of the aircraft by a fraction having as a numerator the
14 number of landings of the aircraft in this state and having as a denominator the total
15 number of landings anywhere of the aircraft.

16 4. The use of a vessel, mobile equipment or other mobile property in this state
17 is determined by multiplying the receipts from the lease or rental of the property by
18 a fraction having as a numerator the number of days in the taxable year that the
19 vessel, mobile equipment or other mobile property was in this state and having as
20 a denominator the number of days in the taxable year that the vessel, mobile
21 equipment or other mobile property was rented or leased.

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

23 71.04 (7) (dn) 1. For taxable years beginning after December 31, 1999, royalties
24 and other income received for the use of intangible property are attributed to the
25 state where the purchaser uses the intangible property. If intangible property is used

1 in more than one state, the royalties and other income received for the use of the
2 intangible property shall be apportioned to this state according to the portion of the
3 intangible property's use in this state. If the portion of intangible property's use in
4 this state cannot be determined, the royalties and other income received for the use
5 of the intangible property shall be excluded from the numerator and the denominator
6 of the sales factor under par. (a). Intangible property is used in this state if a
7 purchaser uses the intangible property or uses the rights to intangible property in
8 the regular course of the purchaser's business in this state, regardless of where the
9 purchaser's customers are located.

10 2. For taxable years beginning after December 31, 1999, sales of intangible
11 property are attributed to the state where a purchaser uses the intangible property.
12 If intangible property is used in more than one state, the sales of the intangible
13 property shall be apportioned to this state according to the portion of the intangible
14 property's use in this state. If the portion of intangible property's use in this state
15 cannot be determined, the sales of the intangible property shall be excluded from the
16 numerator and the denominator of the sales factor under par. (a). Intangible
17 property is used in this state if a purchaser uses the intangible property in the
18 regular course of the purchaser's business in this state, regardless of where the
19 purchaser's customers are located.

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

21 71.04 (7) (dr) For taxable years beginning after December 31, 1999, receipts
22 from the performance of services are attributed to the state where the purchaser
23 received the benefit of the services. If a purchaser receives the benefit of a service
24 in more than one state, the receipts from the performance of the service are included
25 in the numerator of the sales factor under par. (a) according to the portion of the

1 benefit of the service received in this state. If the state where a purchaser received
2 the benefit of a service cannot be determined, the benefit of a service is received in
3 the state where the purchaser, in the regular course of the purchaser's business,
4 ordered the service. If the state where a purchaser ordered a service cannot be
5 determined, the benefit of the service is received in the state where the purchaser,
6 in the regular course of the purchaser's business, receives a bill for the service.

7 **SECTION 9.** 71.25 (6) of the statutes is amended to read:

8 **71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.**

9 Corporations engaged in business within and without the state shall be taxed only
10 on such income as is derived from business transacted and property located within
11 the state. The amount of such income attributable to Wisconsin may be determined
12 by an allocation and separate accounting thereof, when the business of such
13 corporation within the state is not an integral part of a unitary business, but the
14 department of revenue may permit an allocation and separate accounting in any case
15 in which it is satisfied that the use of such method will properly reflect the income
16 taxable by this state. In all cases in which allocation and separate accounting is not
17 permissible, the determination shall be made in the following manner: for all
18 businesses except financial organizations, public utilities, railroads, sleeping car
19 companies, car line companies and corporations or associations that are subject to
20 a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted
21 from the total net income of the taxpayer the part thereof (less related expenses, if
22 any) that follows the situs of the property or the residence of the recipient. The For
23 taxable years ~~beginning~~ before ~~December 31, 1999~~ ^{beginning} ~~January 1, 2000~~ ^{January 1, 2000} the remaining net income shall
24 be apportioned to Wisconsin this state by use of an apportionment fraction composed
25 of a sales factor under sub. (9) representing 50% of the fraction, a property factor

1 under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8)
2 representing 25% of the fraction. For taxable years beginning on or after January
3 1, 2000, the remaining net income shall be apportioned to this state by use of an
4 apportionment fraction composed of the sales factor under sub. (9).

5 **SECTION 10.** 71.25 (7) (intro.) of the statutes is amended to read:

6 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (5) and for taxable
7 years ~~ending on or before December 31, 1999~~ ^{beginning} after January 1, 2000:

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

9 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. (5) and for taxable years
10 ~~ending on or before December 31, 1999~~ ^{beginning} after January 1, 2000:

11 **SECTION 12.** 71.25 (9) (d) of the statutes is amended to read:

12 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
13 state if the income-producing activity is performed in this state. If the
14 income-producing activity is performed both in and outside this state the sales shall
15 be divided between those states having jurisdiction to tax such business in
16 proportion to the direct costs of performance incurred in each such state in rendering
17 this service. Services performed in states which do not have jurisdiction to tax the
18 business shall be deemed to have been performed in the state to which compensation
19 is allocated by sub. (8). This paragraph does not apply to taxable years beginning
20 after December 31, 1999.

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

22 71.25 (9) (dc) For taxable years beginning after December 31, 1999, sales,
23 rents, royalties, and other income from real property, and the receipts from the lease
24 or rental of tangible personal property are attributed to the state in which the
25 property is located.

1 **SECTION 14.** 71.25 (9) (dg) of the statutes is created to read:

2 71.25 (9) (dg) For taxable years beginning after December 31, 1999, receipts
3 from the lease or rental of moving property including but not limited to motor
4 vehicles, rolling stock, aircraft, vessels, or mobile equipment are included in the
5 numerator of the sales factor under par. (a) to the extent that the property is used
6 in this state. The use of moving property in this state is determined as follows:

7 1. A motor vehicle is used in this state if it is registered in this state and used
8 wholly in this state.

9 2. The use of rolling stock in this state is determined by multiplying the receipts
10 from the lease or rental of the rolling stock by a fraction having as a numerator the
11 miles traveled within this state by the leased or rented rolling stock and having as
12 a denominator the total miles traveled by the leased or rented rolling stock.

13 3. The use of an aircraft in this state is determined by multiplying the receipts
14 from the lease or rental of the aircraft by a fraction having as a numerator the
15 number of landings of the aircraft in this state and having as a denominator the total
16 number of landings anywhere of the aircraft.

17 4. The use of a vessel, mobile equipment or other mobile property in this state
18 is determined by multiplying the receipts from the lease or rental of the property by
19 a fraction having as a numerator the number of days in the taxable year that the
20 vessel, mobile equipment or other mobile property was in this state and having as
21 a denominator the number of days in the taxable year that the vessel, mobile
22 equipment or other mobile property was rented or leased.

23 **SECTION 15.** 71.25 (9) (dn) of the statutes is created to read:

24 71.25 (9) (dn) 1. For taxable years beginning after December 31, 1999, royalties
25 and other income received for the use of intangible property are attributed to the

1 state where the purchaser uses the intangible property. If intangible property is used
2 in more than one state, the royalties and other income received for the use of the
3 intangible property shall be apportioned to this state according to the portion of the
4 intangible property's use in this state. If the portion of intangible property's use in
5 this state cannot be determined, the royalties and other income received for the use
6 of intangible property shall be excluded from the numerator and the denominator of
7 the sales factor under par. (a). Intangible property is used in this state if a purchaser
8 uses the intangible property or uses the rights to intangible property in the regular
9 course of the purchaser's business in this state, regardless of where the purchaser's
10 customers are located.

11 2. For taxable years beginning after December 31, 1999, sales of intangible
12 property are attributed to the state where a purchaser uses the intangible property.
13 If intangible property is used in more than one state, the sales of the intangible
14 property shall be apportioned to this state according to the portion of the intangible
15 property's use in this state. If the portion of intangible property's use in this state
16 cannot be determined, the sales of the intangible property shall be excluded from the
17 numerator and the denominator of the sales factor under par. (a). Intangible
18 property is used in this state if a purchaser uses the intangible property in the
19 regular course of the purchaser's business in this state, regardless of where the
20 purchaser's customers are located.

21 **SECTION 16.** 71.25 (9) (dr) of the statutes is created to read:

22 71.25 (9) (dr) For taxable years beginning after December 31, 1999, receipts
23 from the performance of services are attributed to the state where the purchaser
24 received the benefit of the services. If a purchaser receives the benefit of a service
25 in more than one state, the receipts from the performance of the service are included

1 in the numerator of the sales factor under par. (a) according to the portion of the
2 benefit of the service received in this state. If the state where a purchaser received
3 the benefit of a service cannot be determined, the benefit of a service is received in
4 the state where the purchaser, in the regular course of the purchaser's business,
5 ordered the service. If the state where a purchaser ordered a service cannot be
6 determined, the benefit of the service is received in the state where the purchaser,
7 in the regular course of the purchaser's business, receives a bill for the service.

8 **SECTION 17.** 71.25 (9) (e) (title) of the statutes is repealed.

9 **SECTION 18.** 71.25 (9) (f) (title) of the statutes is repealed.

10 **SECTION 19.** 71.28 (4) (a) of the statutes is amended to read:

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

25 **SECTION 20.** 71.28 (4) (am) 1. of the statutes is amended to read:

1 71.28 (4) (am) *Development zone additional research credit.* 1. In addition to
2 the credit under par. (a), any corporation may credit against taxes otherwise due
3 under this chapter an amount equal to 5% of the amount obtained by subtracting
4 from the corporation's qualified research expenses, as defined in section 41 of the
5 internal revenue code, except that "qualified research expenses" include only
6 expenses incurred by the claimant in a development zone under subch. VI of ch. 560,
7 except that a taxpayer may elect the alternative computation under section 41 (c) (4)
8 of the Internal Revenue Code and that election applies until the department permits
9 its revocation and except that "qualified research expenses" do not include
10 compensation used in computing the credit under sub. (1dj) nor research expenses
11 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
12 corporation's base amount, as defined in section 41 (c) of the internal revenue code,
13 in a development zone, except that gross receipts used in calculating the base amount
14 means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and
15 2. and, (d), (dc), (dg), (dn) and (dr) and research expenses used in calculating the base
16 amount include research expenses incurred before the claimant is certified for tax
17 benefits under s. 560.765 (3), in a development zone, if the claimant submits with the
18 claimant's return a copy of the claimant's certification for tax benefits under s.
19 560.765 (3) and a statement from the department of commerce verifying the
20 claimant's qualified research expenses for research conducted exclusively in a
21 development zone. The rules under s. 73.03 (35) apply to the credit under this
22 subdivision. The rules under sub. (1di) (f) and (g) as they apply to the credit under
23 that subsection apply to claims under this subdivision. Section 41 (h) of the internal
24 revenue code does not apply to the credit under this subdivision.

25 **SECTION 21.** 71.45 (3) (intro.) of the statutes is amended to read:

1 71.45 (3) APPORTIONMENT. (intro.) With Except as provided in pars. (a) and (b),
2 with respect to domestic insurers not engaged in the sale of life insurance but which,
3 in the taxable year, have collected premiums written on subjects of insurance
4 resident, located or to be performed outside this state, there shall be subtracted from
5 the net income figure derived by application of sub. (2) (a) to arrive at Wisconsin
6 income constituting the measure of the franchise tax an amount calculated by
7 multiplying such adjusted federal taxable income by the arithmetic average of the
8 following 2 percentages:

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

10 71.45 (3) (a) The percentage of total premiums written on all property and risks
11 other than life insurance, wherever located during the taxable year, as reflects
12 premiums written on insurance, other than life insurance, where the subject of
13 insurance was resident, located or to be performed outside this state. For taxable
14 years beginning after December 31, 1999, the premiums percentage under this
15 paragraph is the only percentage applied to the apportionment calculations in this
16 paragraph and in sub. (3m).

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

19 71.45 (3) (b) 1. The percentage of total payroll, exclusive of life insurance
20 payroll, paid everywhere in the taxable year as reflects such compensation paid
21 outside this state. The payroll percentage under this paragraph does not apply to
22 the apportionment calculations under this paragraph and under sub. (3m) for
23 taxable years beginning after December 31, 1999.

24 2. Compensation is paid outside this state if the individual's service is
25 performed entirely outside this state; or the individual's service is performed both

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

8 **SECTION 24.** 71.45 (3m) of the statutes is amended to read:

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

16 **SECTION 25.** 71.47 (4) (a) of the statutes is amended to read:

17 71.47 (4) (a) *Credit.* Any corporation may credit against taxes otherwise due
18 under this chapter an amount equal to 5% of the amount obtained by subtracting
19 from the corporation's qualified research expenses, as defined in section 41 of the
20 internal revenue code, except that "qualified research expenses" includes only
21 expenses incurred by the claimant, incurred for research conducted in this state for
22 the taxable year, except that a taxpayer may elect the alternative computation under
23 section 41 (c) (4) of the Internal Revenue Code and that election applies until the
24 department permits its revocation and except that "qualified research expenses"
25 does not include compensation used in computing the credit under subs. (1dj) and

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

6 **SECTION 26.** 71.47 (4) (am) of the statutes is amended to read:

7 71.47 (4) (am) *Development zone additional research credit.* In addition to the
8 credit under par. (a), any corporation may credit against taxes otherwise due under
9 this chapter an amount equal to 5% of the amount obtained by subtracting from the
10 corporation's qualified research expenses, as defined in section 41 of the internal
11 revenue code, except that "qualified research expenses" include only expenses
12 incurred by the claimant in a development zone under subch. VI of ch. 560, except
13 that a taxpayer may elect the alternative computation under section 41 (c) (4) of the
14 Internal Revenue Code and that election applies until the department permits its
15 revocation and except that "qualified research expenses" do not include
16 compensation used in computing the credit under sub. (1dj) nor research expenses
17 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
18 corporation's base amount, as defined in section 41 (c) of the internal revenue code,
19 in a development zone, except that gross receipts used in calculating the base amount
20 means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and
21 2. ~~and~~, ~~(d)~~, ~~(dc)~~, ~~(dg)~~, ~~(dn)~~ and ~~(dr)~~ and research expenses used in calculating the base
22 amount include research expenses incurred before the claimant is certified for tax
23 benefits under s. 560.765 (3), in a development zone, if the claimant submits with the
24 claimant's return a copy of the claimant's certification for tax benefits under s.
25 560.765 (3) and a statement from the department of commerce verifying the

1 claimant's qualified research expenses for research conducted exclusively in a
2 development zone. The rules under s. 73.03 (35) apply to the credit under this
3 paragraph. The rules under sub. (1di) (f) and (g) as they apply to the credit under
4 that subsection apply to claims under this paragraph. Section 41 (h) of the internal
5 revenue code does not apply to the credit under this paragraph. No credit may be
6 claimed under this paragraph for taxable years that begin on January 1, 1998, or
7 thereafter. Credits under this paragraph for taxable years that begin before January
8 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or
9 thereafter.

10 **SECTION 9443. Effective dates; revenue.**

11 (1) APPORTIONMENT FACTORS. The treatment of sections 71.04 (4), (5) (intro.), (6)
12 (intro.) and (7) (d), (dc), (dg), (dn) and (dr), 71.25 (6), (7) (intro.), (8) (intro.) and (9)
13 (d), (dc), (dg), (dn) and (dr), 71.28 (4) (a) and (am) 1., 71.45 (3) (intro.) and (a) and (3m)
14 and 71.47 (4) (a) and (am) of the statutes and the renumbering and amendment of
15 section 71.45 (3) (b) of the statutes take effect on the January 1 after publication.

16

(END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1837/5
JK:jlg&kmg:lp

DOA:.....Holden - Single sales factor for corporate income and franchise tax
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, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a corporation's income to this state. The formula has three factors: a sales factor, a property factor and a payroll factor. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

Under this bill, beginning on January 1, 2000, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state and the premiums factor will be the only factor used to attribute a portion of an insurance company's income to this state.

The bill broadens the definition of "sales" as it relates to the sales factor used to apportion income for tax purposes. Receipts from the lease or rental of motor vehicles, rolling stock, aircraft and vessels used in this state are included in the sales factor. The sales factor also includes the royalties for the use of intangible property, the sales of intangible property and receipts from the performance of services.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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

2 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. Nonresident
3 individuals and nonresident estates and trusts engaged in business within and
4 without the state shall be taxed only on such income as is derived from business
5 transacted and property located within the state. The amount of such income
6 attributable to Wisconsin may be determined by an allocation and separate
7 accounting thereof, when the business of such nonresident individual or nonresident
8 estate or trust within the state is not an integral part of a unitary business, but the
9 department of revenue may permit an allocation and separate accounting in any case
10 in which it is satisfied that the use of such method will properly reflect the income
11 taxable by this state. In all cases in which allocation and separate accounting is not
12 permissible, the determination shall be made in the following manner: for all
13 businesses except financial organizations, public utilities, railroads, sleeping car
14 companies and car line companies there shall first be deducted from the total net
15 income of the taxpayer the part thereof (less related expenses, if any) that follows the
16 situs of the property or the residence of the recipient. ~~The~~ For taxable years
17 beginning before January 1, 2000, the remaining net income shall be apportioned to
18 Wisconsin this state by use of an apportionment fraction composed of a sales factor
19 representing 50% of the fraction, a property factor representing 25% of the fraction
20 and a payroll factor representing 25% of the fraction. For taxable years beginning

1 on or after January 1, 2000, the remaining net income shall be apportioned to this
2 state by use of an apportionment fraction composed of the sales factor under sub. (7).

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

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

6 **SECTION 3.** 71.04 (6) (intro.) of the statutes is amended to read:

7 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years
8 beginning before January 1, 2000:

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

10 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
11 state if the income-producing activity is performed in this state. If the
12 income-producing activity is performed both in and outside this state the sales shall
13 be divided between those states having jurisdiction to tax such business in
14 proportion to the direct costs of performance incurred in each such state in rendering
15 this service. Services performed in states which do not have jurisdiction to tax the
16 business shall be deemed to have been performed in the state to which compensation
17 is allocated by sub. (6). This paragraph does not apply to taxable years beginning
18 after December 31, 1999.

19 **SECTION 5.** 71.04 (7) (dc) of the statutes is created to read:

20 71.04 (7) (dc) For taxable years beginning after December 31, 1999, sales,
21 rents, royalties, and other income from real property, and the receipts from the lease
22 or rental of tangible personal property, are attributed to the state in which the
23 property is located.

24 **SECTION 6.** 71.04 (7) (dg) of the statutes is created to read:

1 71.04 (7) (dg) For taxable years beginning after December 31, 1999, receipts
2 from the lease or rental of moving property including but not limited to motor
3 vehicles, rolling stock, aircraft, vessels, or mobile equipment are included in the
4 numerator of the sales factor under par. (a) to the extent that the property is used
5 in this state. The use of moving property in this state is determined as follows:

6 1. A motor vehicle is used in this state if it is registered in this state and used
7 wholly in this state.

8 2. The use of rolling stock in this state is determined by multiplying the receipts
9 from the lease or rental of the rolling stock by a fraction having as a numerator the
10 miles traveled within this state by the leased or rented rolling stock and having as
11 a denominator the total miles traveled by the leased or rented rolling stock.

12 3. The use of an aircraft in this state is determined by multiplying the receipts
13 from the lease or rental of the aircraft by a fraction having as a numerator the
14 number of landings of the aircraft in this state and having as a denominator the total
15 number of landings anywhere of the aircraft.

16 4. The use of a vessel, mobile equipment or other mobile property in this state
17 is determined by multiplying the receipts from the lease or rental of the property by
18 a fraction having as a numerator the number of days in the taxable year that the
19 vessel, mobile equipment or other mobile property was in this state and having as
20 a denominator the number of days in the taxable year that the vessel, mobile
21 equipment or other mobile property was rented or leased.

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

23 71.04 (7) (dn) 1. For taxable years beginning after December 31, 1999, royalties
24 and other income received for the use of intangible property are attributed to the
25 state where the purchaser uses the intangible property. If intangible property is used

1 in more than one state, the royalties and other income received for the use of the
2 intangible property shall be apportioned to this state according to the portion of the
3 intangible property's use in this state. If the portion of intangible property's use in
4 this state cannot be determined, the royalties and other income received for the use
5 of the intangible property shall be excluded from the numerator and the denominator
6 of the sales factor under par. (a). Intangible property is used in this state if a
7 purchaser uses the intangible property or uses the rights to intangible property in
8 the regular course of the purchaser's business in this state, regardless of where the
9 purchaser's customers are located.

10 2. For taxable years beginning after December 31, 1999, sales of intangible
11 property are attributed to the state where a purchaser uses the intangible property.
12 If intangible property is used in more than one state, the sales of the intangible
13 property shall be apportioned to this state according to the portion of the intangible
14 property's use in this state. If the portion of intangible property's use in this state
15 cannot be determined, the sales of the intangible property shall be excluded from the
16 numerator and the denominator of the sales factor under par. (a). Intangible
17 property is used in this state if a purchaser uses the intangible property in the
18 regular course of the purchaser's business in this state, regardless of where the
19 purchaser's customers are located.

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

21 71.04 (7) (dr) For taxable years beginning after December 31, 1999, receipts
22 from the performance of services are attributed to the state where the purchaser
23 received the benefit of the services. If a purchaser receives the benefit of a service
24 in more than one state, the receipts from the performance of the service are included
25 in the numerator of the sales factor under par. (a) according to the portion of the

1 benefit of the service received in this state. If the state where a purchaser received
2 the benefit of a service cannot be determined, the benefit of a service is received in
3 the state where the purchaser, in the regular course of the purchaser's business,
4 ordered the service. If the state where a purchaser ordered a service cannot be
5 determined, the benefit of the service is received in the state where the purchaser,
6 in the regular course of the purchaser's business, receives a bill for the service.

7 **SECTION 9.** 71.25 (6) of the statutes is amended to read:

8 **71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.**
9 Corporations engaged in business within and without the state shall be taxed only
10 on such income as is derived from business transacted and property located within
11 the state. The amount of such income attributable to Wisconsin may be determined
12 by an allocation and separate accounting thereof, when the business of such
13 corporation within the state is not an integral part of a unitary business, but the
14 department of revenue may permit an allocation and separate accounting in any case
15 in which it is satisfied that the use of such method will properly reflect the income
16 taxable by this state. In all cases in which allocation and separate accounting is not
17 permissible, the determination shall be made in the following manner: for all
18 businesses except financial organizations, public utilities, railroads, sleeping car
19 companies, car line companies and corporations or associations that are subject to
20 a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted
21 from the total net income of the taxpayer the part thereof (less related expenses, if
22 any) that follows the situs of the property or the residence of the recipient. ~~The For~~
23 taxable years beginning before January 1, 2000, the remaining net income shall be
24 apportioned to Wisconsin this state by use of an apportionment fraction composed
25 of a sales factor under sub. (9) representing 50% of the fraction, a property factor

1 under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8)
2 representing 25% of the fraction. For taxable years beginning on or after January
3 1, 2000, the remaining net income shall be apportioned to this state by use of an
4 apportionment fraction composed of the sales factor under sub. (9).

5 **SECTION 10.** 71.25 (7) (intro.) of the statutes is amended to read:

6 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (5) and for taxable
7 years beginning before January 1, 2000:

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

9 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. (5) and for taxable years
10 beginning before January 1, 2000:

11 **SECTION 12.** 71.25 (9) (d) of the statutes is amended to read:

12 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
13 state if the income-producing activity is performed in this state. If the
14 income-producing activity is performed both in and outside this state the sales shall
15 be divided between those states having jurisdiction to tax such business in
16 proportion to the direct costs of performance incurred in each such state in rendering
17 this service. Services performed in states which do not have jurisdiction to tax the
18 business shall be deemed to have been performed in the state to which compensation
19 is allocated by sub. (8). This paragraph does not apply to taxable years beginning
20 after December 31, 1999.

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

22 71.25 (9) (dc) For taxable years beginning after December 31, 1999, sales,
23 rents, royalties, and other income from real property, and the receipts from the lease
24 or rental of tangible personal property are attributed to the state in which the
25 property is located.

1 **SECTION 14.** 71.25 (9) (dg) of the statutes is created to read:

2 71.25 (9) (dg) For taxable years beginning after December 31, 1999, receipts
3 from the lease or rental of moving property including but not limited to motor
4 vehicles, rolling stock, aircraft, vessels, or mobile equipment are included in the
5 numerator of the sales factor under par. (a) to the extent that the property is used
6 in this state. The use of moving property in this state is determined as follows:

7 1. A motor vehicle is used in this state if it is registered in this state and used
8 wholly in this state.

9 2. The use of rolling stock in this state is determined by multiplying the receipts
10 from the lease or rental of the rolling stock by a fraction having as a numerator the
11 miles traveled within this state by the leased or rented rolling stock and having as
12 a denominator the total miles traveled by the leased or rented rolling stock.

13 3. The use of an aircraft in this state is determined by multiplying the receipts
14 from the lease or rental of the aircraft by a fraction having as a numerator the
15 number of landings of the aircraft in this state and having as a denominator the total
16 number of landings anywhere of the aircraft.

17 4. The use of a vessel, mobile equipment or other mobile property in this state
18 is determined by multiplying the receipts from the lease or rental of the property by
19 a fraction having as a numerator the number of days in the taxable year that the
20 vessel, mobile equipment or other mobile property was in this state and having as
21 a denominator the number of days in the taxable year that the vessel, mobile
22 equipment or other mobile property was rented or leased.

23 **SECTION 15.** 71.25 (9) (dn) of the statutes is created to read:

24 71.25 (9) (dn) 1. For taxable years beginning after December 31, 1999, royalties
25 and other income received for the use of intangible property are attributed to the

1 state where the purchaser uses the intangible property. If intangible property is used
2 in more than one state, the royalties and other income received for the use of the
3 intangible property shall be apportioned to this state according to the portion of the
4 intangible property's use in this state. If the portion of intangible property's use in
5 this state cannot be determined, the royalties and other income received for the use
6 of intangible property shall be excluded from the numerator and the denominator of
7 the sales factor under par. (a). Intangible property is used in this state if a purchaser
8 uses the intangible property or uses the rights to intangible property in the regular
9 course of the purchaser's business in this state, regardless of where the purchaser's
10 customers are located.

11 2. For taxable years beginning after December 31, 1999, sales of intangible
12 property are attributed to the state where a purchaser uses the intangible property.
13 If intangible property is used in more than one state, the sales of the intangible
14 property shall be apportioned to this state according to the portion of the intangible
15 property's use in this state. If the portion of intangible property's use in this state
16 cannot be determined, the sales of the intangible property shall be excluded from the
17 numerator and the denominator of the sales factor under par. (a). Intangible
18 property is used in this state if a purchaser uses the intangible property in the
19 regular course of the purchaser's business in this state, regardless of where the
20 purchaser's customers are located.

21 **SECTION 16.** 71.25 (9) (dr) of the statutes is created to read:

22 71.25 (9) (dr) For taxable years beginning after December 31, 1999, receipts
23 from the performance of services are attributed to the state where the purchaser
24 received the benefit of the services. If a purchaser receives the benefit of a service
25 in more than one state, the receipts from the performance of the service are included

1 in the numerator of the sales factor under par. (a) according to the portion of the
2 benefit of the service received in this state. If the state where a purchaser received
3 the benefit of a service cannot be determined, the benefit of a service is received in
4 the state where the purchaser, in the regular course of the purchaser's business,
5 ordered the service. If the state where a purchaser ordered a service cannot be
6 determined, the benefit of the service is received in the state where the purchaser,
7 in the regular course of the purchaser's business, receives a bill for the service.

8 **SECTION 17.** 71.25 (9) (e) (title) of the statutes is repealed.

9 **SECTION 18.** 71.25 (9) (f) (title) of the statutes is repealed.

10 **SECTION 19.** 71.28 (4) (a) of the statutes is amended to read:

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

25 **SECTION 20.** 71.28 (4) (am) 1. of the statutes is amended to read:

1 71.28 (4) (am) *Development zone additional research credit.* 1. In addition to
2 the credit under par. (a), any corporation may credit against taxes otherwise due
3 under this chapter an amount equal to 5% of the amount obtained by subtracting
4 from the corporation's qualified research expenses, as defined in section 41 of the
5 internal revenue code, except that "qualified research expenses" include only
6 expenses incurred by the claimant in a development zone under subch. VI of ch. 560,
7 except that a taxpayer may elect the alternative computation under section 41 (c) (4)
8 of the Internal Revenue Code and that election applies until the department permits
9 its revocation and except that "qualified research expenses" do not include
10 compensation used in computing the credit under sub. (1dj) nor research expenses
11 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
12 corporation's base amount, as defined in section 41 (c) of the internal revenue code,
13 in a development zone, except that gross receipts used in calculating the base amount
14 means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and
15 2. and, (d), (dc), (dg), (dn) and (dr) and research expenses used in calculating the base
16 amount include research expenses incurred before the claimant is certified for tax
17 benefits under s. 560.765 (3), in a development zone, if the claimant submits with the
18 claimant's return a copy of the claimant's certification for tax benefits under s.
19 560.765 (3) and a statement from the department of commerce verifying the
20 claimant's qualified research expenses for research conducted exclusively in a
21 development zone. The rules under s. 73.03 (35) apply to the credit under this
22 subdivision. The rules under sub. (1di) (f) and (g) as they apply to the credit under
23 that subsection apply to claims under this subdivision. Section 41 (h) of the internal
24 revenue code does not apply to the credit under this subdivision.

25 **SECTION 21.** 71.45 (3) (intro.) of the statutes is amended to read:

1 71.45 (3) APPORTIONMENT. (intro.) With Except as provided in pars. (a) and (b),
2 with respect to domestic insurers not engaged in the sale of life insurance but which,
3 in the taxable year, have collected premiums written on subjects of insurance
4 resident, located or to be performed outside this state, there shall be subtracted from
5 the net income figure derived by application of sub. (2) (a) to arrive at Wisconsin
6 income constituting the measure of the franchise tax an amount calculated by
7 multiplying such adjusted federal taxable income by the arithmetic average of the
8 following 2 percentages:

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

10 71.45 (3) (a) The percentage of total premiums written on all property and risks
11 other than life insurance, wherever located during the taxable year, as reflects
12 premiums written on insurance, other than life insurance, where the subject of
13 insurance was resident, located or to be performed outside this state. For taxable
14 years beginning after December 31, 1999, the premiums percentage under this
15 paragraph is the only percentage applied to the apportionment calculations in this
16 paragraph and in sub. (3m).

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

19 71.45 (3) (b) 1. The percentage of total payroll, exclusive of life insurance
20 payroll, paid everywhere in the taxable year as reflects such compensation paid
21 outside this state. The payroll percentage under this paragraph does not apply to
22 the apportionment calculations under this paragraph and under sub. (3m) for
23 taxable years beginning after December 31, 1999.

24 2. Compensation is paid outside this state if the individual's service is
25 performed entirely outside this state; or the individual's service is performed both

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

8 **SECTION 24.** 71.45 (3m) of the statutes is amended to read:

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

16 **SECTION 25.** 71.47 (4) (a) of the statutes is amended to read:

17 71.47 (4) (a) *Credit.* Any corporation may credit against taxes otherwise due
18 under this chapter an amount equal to 5% of the amount obtained by subtracting
19 from the corporation's qualified research expenses, as defined in section 41 of the
20 internal revenue code, except that "qualified research expenses" includes only
21 expenses incurred by the claimant, incurred for research conducted in this state for
22 the taxable year, except that a taxpayer may elect the alternative computation under
23 section 41 (c) (4) of the Internal Revenue Code and that election applies until the
24 department permits its revocation and except that "qualified research expenses"
25 does not include compensation used in computing the credit under subs. (1dj) and

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

6 **SECTION 26.** 71.47 (4) (am) of the statutes is amended to read:

7 71.47 (4) (am) *Development zone additional research credit.* In addition to the
8 credit under par. (a), any corporation may credit against taxes otherwise due under
9 this chapter an amount equal to 5% of the amount obtained by subtracting from the
10 corporation's qualified research expenses, as defined in section 41 of the internal
11 revenue code, except that "qualified research expenses" include only expenses
12 incurred by the claimant in a development zone under subch. VI of ch. 560, except
13 that a taxpayer may elect the alternative computation under section 41 (c) (4) of the
14 Internal Revenue Code and that election applies until the department permits its
15 revocation and except that "qualified research expenses" do not include
16 compensation used in computing the credit under sub. (1dj) nor research expenses
17 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
18 corporation's base amount, as defined in section 41 (c) of the internal revenue code,
19 in a development zone, except that gross receipts used in calculating the base amount
20 means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and
21 2. ~~and, (d), (dc), (dg), (dn) and (dr)~~ and research expenses used in calculating the base
22 amount include research expenses incurred before the claimant is certified for tax
23 benefits under s. 560.765 (3), in a development zone, if the claimant submits with the
24 claimant's return a copy of the claimant's certification for tax benefits under s.
25 560.765 (3) and a statement from the department of commerce verifying the

1 claimant's qualified research expenses for research conducted exclusively in a
2 development zone. The rules under s. 73.03 (35) apply to the credit under this
3 paragraph. The rules under sub. (1di) (f) and (g) as they apply to the credit under
4 that subsection apply to claims under this paragraph. Section 41 (h) of the internal
5 revenue code does not apply to the credit under this paragraph. No credit may be
6 claimed under this paragraph for taxable years that begin on January 1, 1998, or
7 thereafter. Credits under this paragraph for taxable years that begin before January
8 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or
9 thereafter.

10 **SECTION 9443. Effective dates; revenue.**

11 (1) APPORTIONMENT FACTORS. The treatment of sections 71.04 (4), (5) (intro.), (6)
12 (intro.) and (7) (d), (dc), (dg), (dn) and (dr), 71.25 (6), (7) (intro.), (8) (intro.) and (9)
13 (d), (dc), (dg), (dn) and (dr), 71.28 (4) (a) and (am) 1., 71.45 (3) (intro.) and (a) and (3m)
14 and 71.47 (4) (a) and (am) of the statutes and the renumbering and amendment of
15 section 71.45 (3) (b) of the statutes take effect on the January 1 after publication.

16 (END)