

**1999 DRAFTING REQUEST****Assembly Amendment (AA-AB133)**Received: **06/11/99**Received By: **jkreye**Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau 6-8849**By/Representing: **Shanovich (RR)**This file may be shown to any legislator: **NO**Drafter: **jkreye**

May Contact:

Alt. Drafters:

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

Extra Copies:

**Pre Topic:**

LFB:.....Shanovich (RR) -

**Topic:**

Phase in single sales factor apportionment and adopt recommendations regarding moving property, insurance companies and financial institutions

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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(RR)

Phase-in (noun & adj)

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Instructions:

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the maximum income for the homestead credit from \$19,154 to \$20,290 beginning with credit claims filed in 2000 for property taxes accrued during the previous year. Decrease funding from the amount provided in the bill by \$100,000 in 1999-00 and \$800,000 in 2000-01 to reflect a reestimate of the cost of the expansion.

9. LFB Paper #111. Modify the Governor's recommendation to phase-in the corporate income tax single-sales apportionment formula over three years, beginning with tax year 2001 by increasing the sales factor each year and decreasing the payroll and property factors equally. Increase the sales factor as follows: tax year 2001 - 63%; tax year 2002 - 85%; and tax year 2003 - 100%. In addition, do not apply the single-sales apportionment formula to public utilities, telecommunications, transportation and pipeline companies. \*

10. Modify current corporate income and franchise tax provisions as follows:

a. Define "doing business in this state" to mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. A corporation that directly or indirectly owns a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership, or that directly or indirectly owns an interest in a limited liability company that does business in the state, regardless of the percentage of ownership, would be doing business in this state in a corporate capacity, subject to constitutional limitations.

b. Provide that the corporate income and franchise tax would be imposed on corporations that derive income from sources within the state or from activities attributable to the state.

c. Provide that income, gain or loss that is defined as apportionable under Wisconsin law would be apportionable, subject to constitutional limitations, rather than being presumed apportionable.

d. Provide that a general or limited partner's share of the numerator and the denominator of the partnership's apportionment factors would be included in the numerator and the denominator of the general or limited partner's apportionment factors and for a limited liability company treated as a partnership a member's share of the numerator and the denominator of the limited liability company's apportionment factors would be included in the numerator and the denominator of the member's apportionment factors.

e. Provide that these provisions would first apply to tax years beginning on or after January 1, 1999.

11. LFB Paper #112. Alternative 5. Eliminate the corporate income tax combined reporting provisions.

12. LFB Paper #113. Alternative 2. Eliminate the Governor's proposal regarding nexus for corporate income tax purposes.

**Shanovich, Ron**

*f. 0678*

**From:** Ourada, Thomas D  
**nt:** Tuesday, June 08, 1999 3:57 PM  
**To:** Shanovich, Ron  
**Subject:** FW: Revised Technical Corrections to Single Sales Factor Legislation  
**Importance:** High

Ron, there are a few changes added in this version. They are basically confined to pages 12 and 13 and relate to the use of "gross receipts" rather than "net gains" or "income" rather than "net gains". See part VII item I. which is on pages 12-14. Thanks.



Tech Corrections  
Single Sales ...

## Technical Corrections to Single Sales Factor Legislation

- I. Bill Sections 1675, 1676, 1677, 1678, 1729, 1730, 1731, and 1732. Instead of adopting the single sales factor for taxable years beginning January 1, 2000, phase it in over 3 years beginning in 2001. For taxable years beginning on or after January 1, 2001, and before January 1, 2002, the sales factor should equal 65% of the apportionment fraction and the property and payroll factors should each equal 17.5% of the fraction. For taxable years beginning on or after January 1, 2002, and before January 1, 2003, the sales factor should equal 80% of the apportionment fraction and the property and payroll factors should each equal 10% of the fraction. For taxable years beginning on or after January 1, 2003, the apportionment fraction should be composed of the sales factor.
- II. Bill Sections 1680 and 1734. Clarify that periods of time when moving property is not being leased or rented are excluded from the computation of the percentage of receipts attributed to this state. Specify the treatment of moving property when the owner of the property does not know where the lessee or renter is using it. These provisions should first apply for taxable years beginning January 1, 2000.

Amend secs. 71.04(7)(dg)1. through 4. and 71.25(9)(dg)1. through 4., relating to the use of moving property, as created by this bill, as follows:

1. ~~A motor vehicle is used in this state if it is registered in this state and used wholly in this state~~ The use of a motor vehicle in this state is determined by multiplying the gross receipts from the lease or rental of the motor vehicle by a fraction having as a numerator the miles traveled within this state during the lease or rental period in the taxable year and having as a denominator the total miles traveled during the lease or rental period in the taxable year by the leased or rented motor vehicle. If the physical location of the property during the lease or rental period is unknown or unascertainable by the taxpayer, the motor vehicle is used in the state in which the property was located at the time the lessee or renter obtained possession.

2. The use of rolling stock in this state is determined by multiplying the gross receipts from the lease or rental of the rolling stock by a fraction having as a numerator the miles traveled within this state during the lease or rental period in the taxable year by the leased or rented rolling stock and having as a denominator the total miles traveled during the lease or rental period in the taxable year by the leased or rented rolling stock. If the physical location of the property during the lease or rental period is unknown or unascertainable by the taxpayer, the rolling stock is used in the state in which the property was located at the time the lessee or renter obtained possession.

3. The use of an aircraft in this state is determined by multiplying the gross receipts from the lease or rental of the aircraft by a fraction having as a

numerator the number of landings of the aircraft in this state during the lease or rental period in the taxable year and having as a denominator the total number of landings anywhere during the lease or rental period in the taxable year. If the physical location of the property during the lease or rental period is unknown or unascertainable by the taxpayer, the aircraft is used in the state in which the property was located at the time the lessee or renter obtained possession.

4. The use of a vessel, mobile equipment or other mobile property in this state is determined by multiplying the gross receipts from the lease or rental of the property by a fraction having as a numerator the number of days during the lease or rental period in the taxable year that the vessel, mobile equipment or other mobile property was in this state and having as a denominator the number of days during the lease or rental period in the taxable year that the vessel, mobile equipment or other mobile property was rented or leased. If the physical location of the property during the lease or rental period is unknown or unascertainable by the taxpayer, the vessel, mobile equipment or other mobile property is used in the state in which the property was located at the time the lessee or renter obtained possession.

III. Bill Sections 1681 and 1735. Limit receipts from intangible property that are includable in the sales factor to gross income from the use of patents, copyrights, trademarks, trade names, service names, service marks, logos, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, customer lists, contracts, technical know-how, trade secrets and other proprietary materials. Exclude income relating to stocks, bonds or other securities. These provisions should first apply for taxable years beginning January 1, 2000.

A. Amend secs. 71.04(7)(dn)1. and 71.25(9)(dn)1., relating to the use of intangibles, as created by this bill as follows:

(dn) For taxable years beginning after December 31, 1999, gross royalties and other gross income received for the use of patents, copyrights, trademarks, trade names, service names, service marks, logos, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, customer lists, contracts, technical know-how, trade secrets, other proprietary materials or similar intangible property are attributed to the this state if any of the following occur:

1. where the The purchaser uses the intangible property in the production, fabrication, manufacturing or other processing of a product that is sold to a customer located in this state. If the location of the purchaser's customers is unknown or unascertainable by the taxpayer, the receipts are attributable to this state if the purchaser uses the intangible property in the production, fabrication, manufacturing or other processing of a product in this state.

✓ 2. The purchaser uses the intangible property in the printing or other publication of materials that are sold or delivered to a customer located in this state. If the location of the purchaser's customers is unknown or unascertainable by the taxpayer, the receipts are attributable to this state if the purchaser uses the intangible property in the printing or other publication of materials in this state.

3. The purchaser uses the intangible property in the operation of a trade or business at a location in this state.

✓ 4. The purchaser uses the ~~if~~ intangible property is used in more than one in the operation of a trade or business at locations within and without the state, ~~the~~. The gross royalties and other gross income received for the use of the intangible property shall be apportioned to this state according to the portion of the intangible property's use in this state. ~~If the portion of intangible property's use in this state cannot be determined, the royalties and other income received for the use of intangible property shall be excluded from the numerator and the denominator of the sales factor under par. (a).~~ Intangible property is used in this state if a purchaser uses the intangible property or uses the rights to intangible property in the regular course of the purchaser's business in this state, regardless of where the purchaser's customers are located.

✓ 5. The taxpayer is unable to determine where the purchaser uses the intangible property but the purchaser's billing address is in this state.

✓ 6. The taxpayer is not within the jurisdiction, for income tax purposes, of the state in which the intangible property is used but the taxpayer's commercial domicile is in this state.

B. Eliminate secs. 71.04(7)(dn)2. and 71.25(9)(dn)2.

IV. Bill Sections 1682 and 1736. Define "where the purchaser received the benefit of the services." These provisions should first apply for taxable years beginning January 1, 2000.

✓ Make the following changes to secs. 71.04(7)(dr) and 71.25(9)(dr) as created by this bill:

A. Renumber sec. 71.04(7)(dr) to 71.04(7)(dr)1. and sec. 71.25(9)(dr) to 71.25(9)(dr)1.

B. Create secs. 71.04(7)(dr)2. And 71.25(9)(dr)2. To read as follows:

For purposes of determining where the purchaser receives the benefit of the services, the following shall apply:

a. If the service directly relates to or benefits specific real property, the benefit of the service is received where the real property is located.

b. If the service directly relates to or benefits specific tangible personal property, the benefit of the service is received where that property is located at the time the service is received.

c. If the service is represented by tangible personal property that is forwarded to the purchaser, the benefit of the service is received where the purchaser receives the tangible personal property.

d. If the service is provided to a person wholly doing business in this state, the benefit of the service is received in this state.

e. If the service is provided to a person at a location within this state, the benefit of the service is received in this state.

f. If the service is provided to a person engaged in business in and outside this state, the benefit of the service is received in this state to the extent that the gross receipts are based on the purchaser's sales in this state.

g. If the taxpayer is not within the jurisdiction, for income tax purposes, of the state in which the benefit of the service is received under subd. 2.a. through 2.f., the benefit of the service is received in this state to the extent that the taxpayer's employes or representatives performed the service from a location in this state.

Bill Sections 1746 and 1759. Since the development zones research credit may not be computed for taxable years that begin on January 1, 1998, or thereafter, secs. 71.28(4)(am)1. and 71.47(4)(am) should not be amended.

VI. Bill Sections 1750 through 1753. Instead of adopting the single sales factor for taxable years beginning January 1, 2000, phase it in over 3 years beginning in 2001. For taxable years beginning on or after January 1, 2001, and before January 1, 2002, the sales factor should equal 65% of the apportionment fraction and the payroll factor should equal 35% of the fraction. For taxable years beginning on or after January 1, 2002, and before January 1, 2003, the sales factor should equal 80% of the apportionment fraction and the payroll factor should equal 20% of the fraction. For taxable years beginning on or after January 1, 2003, the apportionment fraction should be composed of the sales factor.

In addition, the treatment of reinsurance premiums should be addressed for years beginning on or after January 1, 2000. Following is suggested language:

A. Section 71.45(3)(intro.): Amend this section for taxable years beginning on

or after January 1, 2000, so that the apportionment percentage is used to determine the Wisconsin income rather than to determine the non-Wisconsin income.

71.45(3) APPORTIONMENT. (intro.) ~~With respect to domestic Domestic~~ insurers ~~not engaged in the sale of life insurance but~~ which, in the taxable year, have ~~collected received~~ premiums, ~~other than life insurance premiums,~~ written on ~~subjects of for insurance on property or risks~~ resident, located or to be performed outside this state, ~~there shall be subtracted from multiply~~ the net income figure derived by application of sub.(2)(a) ~~to arrive at Wisconsin income constituting the measure of the franchise tax an amount calculated by multiplying such adjusted federal taxable income by the arithmetic average of the following 2 percentages:~~

B. Section 71.45(3)(a): Amend this section as follows:

71.45(3)(a) The percentage derived by dividing the sum of total direct premiums written on all property and risks for insurance, other than life insurance, on subjects of insurance resident, located or to be performed in this state and assumed premiums written for reinsurance, other than life insurance, in respect to properties and risks resident, located or to be performed in this state by the sum of direct premiums written on all property and risks, other than life insurance, wherever located during the taxable year, as reflects premiums written on insurance, other than life insurance, where the subject of insurance was resident, located or to be performed outside this state plus assumed premiums written for reinsurance in respect to properties and risks, other than life insurance, wherever located.

1. For purposes of this paragraph "direct premiums written" means direct premiums written as reported for the taxable year on the annual statement filed by the company with the commissioner of insurance.

2. For purposes of this paragraph "assumed premiums written for reinsurance, other than life insurance, in respect to property and risks resident, located or to be performed in this state" means assumed reinsurance premiums from domestic insurance companies as reported for the taxable year on the annual statement filed by the company with the commissioner of insurance.

C. Section 71.45(3)(b): Amend this section so that it is the percentage of Wisconsin payroll to total payroll. (See sec. 71.25(8), Stats.)

D. Section 71.45(3m): Replace the language that was added with "For taxable years beginning before January 1, 2003, the".

E. Insert a new subsection to read as follows:



71.45(3n) APPORTIONMENT FRACTION. (a) For taxable years beginning after December 31, 2002, to arrive at Wisconsin income domestic insurers that have received premiums, other than life insurance premiums, written for insurance on property or risks resident, located or to be performed outside this state during the taxable year shall multiply the net income figure derived under sub. (2) by a fraction, the numerator of which is the sum of direct premiums written for insurance, other than life insurance, on subjects of insurance resident, located or to be performed in this state and assumed premiums written for reinsurance, other than life insurance, in respect to properties and risks resident, located or to be performed in this state, and the denominator of which is the sum of direct premiums written on all property and risks, other than life insurance, wherever located plus assumed premiums written for reinsurance in respect to properties and risks, other than life insurance, wherever located.

(b) For purposes of this subsection "direct premiums written" means direct premiums written as reported for the taxable year on the annual statement filed by the company with the commissioner of insurance.

(c) For purposes of this subsection "assumed premiums written for reinsurance, other than life insurance, in respect to property and risks resident, located or to be performed in this state" means assumed reinsurance premiums from domestic insurance companies as reported for the taxable year on the annual statement filed by the company with the commissioner of insurance.

VII. Bill Sections 1675 and 1729. For taxable years beginning on or after January 1, 2000, apportionment formulas for financial institutions and brokerage firms, should be included in the statutes. The following changes should be made:

A. Amend sec. 71.04(4) as amended by the bill so that it reads as follows for taxable years beginning on or after January 1, 2000:

71.04(4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA.

Nonresident individuals and nonresident estates and trusts engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such nonresident individual or nonresident estate or trust within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all businesses except ~~financial organizations~~, public utilities, railroads, sleeping car companies and car line companies there shall first be deducted from the total net income of the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property or the residence of

the recipient. The Except as provided in subs. 71.25(9d) and (9g), the remaining net income shall be apportioned to Wisconsin in this state by use of an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction.

[Note: This does not show the phase-in of the single sales factor for taxable years beginning in 2001. The percentages shown apply for taxable years beginning in 2000.]

- B. Repeal sec. 71.04(8)(a), Stats., effective for taxable years beginning on or after January 1, 2000.
- C. Amend sec. 71.04(8)(c), Stats., by deleting "financial organizations", effective for taxable years beginning after January 1, 2000.
- D. Repeal sec. 71.04(10), Stats., effective for taxable years beginning on or after January 1, 2003.

E. Amend sec. 71.25(6) as amended by the bill so that it reads as follows for taxable years beginning on or after January 1, 2000:

71.25(6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA. Corporations engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such corporation within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all businesses except ~~financial organizations~~, public utilities, railroads, sleeping car companies, car line companies and corporations or associations that are subject to a tax on unrelated business income under s. 71.26(1)(a) there shall first be deducted from the total net income of the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property ~~or the residence of the recipient~~. The Except as provided in subs. (9d) and (9g), the remaining net income shall be apportioned to Wisconsin in this state by use of an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.

[Note: This does not show the phase-in of the single sales factor for taxable years beginning in 2001. The percentages shown apply for taxable years beginning in 2000.]

- ✓ F. Repeal sec. 71.25(10)(a), Stats., effective for taxable years beginning on or after January 1, 2000.
- ✓ G. Amend sec. 71.25(10)(c), Stats., by deleting "financial organizations", effective for taxable years beginning on or after January 1, 2000.
- ✓ H. Repeal sec. 71.25(11), Stats., effective for taxable years beginning on or after January 1, 2003.

I. Create an apportionment fraction for financial institutions as follows:

71.25(9d) APPORTIONMENT OF NET BUSINESS INCOME OF INTERSTATE FINANCIAL INSTITUTIONS. A financial institution whose business activity is taxable both within and without this state shall apportion its net business income as provided in this subsection. All items of nonbusiness income shall be allocated pursuant to sub. (5)(b).

(a) DEFINITIONS. In this section, unless the context requires otherwise:

1. "Billing address" means the address indicated in the books and records of the taxpayer on the first day of the taxable year, or on a later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.
2. "Borrower or credit card holder located in this state" means either of the following:
  - a. A borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state.
  - b. A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.
3. "Credit card" means credit, debit, travel or entertainment card.
4. "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.
5. "Financial institution" means any of the following:

*how does the merchant bank enter into this.*

a. Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended.

b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 USC 21 et seq.

c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 USC 1813(b)(1).

d. Any bank or thrift institution incorporated or organized under the laws of any state or foreign country.

e. Any corporation organized under the provisions of 12 USC 611 to 631.

f. Any agency or branch of a foreign depository as defined in 12 USC 3101.

g. Any credit union to the extent not exempt under s. 71.26(1)(a) and s. 186.113(20).

h. A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

i. A corporation or other business entity that derives more than 50% of its total gross income for financial accounting purposes from finance leases. A "finance lease" means any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase includes any "direct financing lease" or "leverage lease" that meets the criteria of Financial Accounting Standards Board Statement No. 13, "Accounting for Leases," or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply, the average of the gross income in the current taxable year and immediately preceding 2 taxable years shall satisfy the more than 50% requirement and gross income from incidental or occasional transactions shall be disregarded.

j. Any other person or business entity which derives more than 50% of its gross income from activities that a person described in subd. 6.b. through 6.i. is authorized to transact, other than an insurance company taxable under s. 71.43, a real estate broker taxable under s. 71.26, or a securities dealer including a broker-dealer taxable under s. 71.26. For the purpose of this subdivision paragraph, the computation of gross income may not include income from non-recurring, extraordinary items, and the department is authorized to exclude any

*a finance lease is defined by including direct financing lease and leverage lease*

person from its application upon the person proving, by clear and convincing evidence, that the income-producing activity of the person is not in substantial competition with persons described in subd. 6.b. through 6.i.

6. "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, or the purchase, in whole or in part, of an extension of credit from another. "Loans" include participations, syndications and leases treated as loans for federal income tax purposes. "Loans" do not include properties treated as loans under s. 595 of the internal revenue code; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

7. "Loan secured by real property" means that 50% or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

8. "Merchant discount" means the fee, or negotiated discount, charged to a merchant <sup>a</sup> ~~by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.~~ <sup>to</sup> ~~to accept a credit card as payment for merchandise or services~~

9. "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower. <sup>that we refer to credit card holder.</sup>

10. "Person" means an individual, estate, trust, limited liability company, partnership, corporation or any other business entity.

11. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory or possession of the United States.

12. "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

13. "Taxable" means that either of the following situations applies:

a. A taxpayer's business activity in another state or foreign country is of such a degree that the state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer.

b. Another state or foreign country has jurisdiction to subject the taxpayer to either of the taxes listed in subd. 13.a., regardless of whether, in fact, the state or foreign country does so.

(b) APPORTIONMENT FRACTION. There shall first be deducted from the total net income of the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property. The remaining net income shall be apportioned to Wisconsin by use of an apportionment fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator shall be the same as the method used in determining receipts for purposes of the numerator. Receipts include only those receipts described in subds. 1. through 11.

11. *the following above is subject to apportionment unless this subsection.*

1. Gross receipts from the lease of real property. Gross receipts from the lease, rental or sublease of real property owned by the taxpayer are apportioned under sub. (9)(dc).

2. Gross receipts from the lease of tangible personal property. Gross receipts from the lease, rental or sublease of tangible personal property owned by the taxpayer are apportioned under sub. (9)(dc) and (dg).

3. Gross interest from loans secured by real property. a. The numerator of the receipts factor includes gross interest and fees or penalties *in the nature of interest* from loans secured by real property if the property is located within this state. If the property is located within both this state and *one or more other states* or foreign countries, the receipts described in this subdivision are included in the numerator of the receipts factor if more than 50% of the fair market value of the real property is located within this state. If more than 50% of the fair market value of the real property is not located within any one state or foreign country, the receipts described in this subdivision shall be included in the numerator of the receipts factor if the borrower is located in this state.

b. The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and all subsequent substitutions of collateral shall be disregarded.

4. Gross interest from loans not secured by real property. The numerator of the receipts factor includes gross interest and fees or penalties *in the nature of interest* from loans not secured by real property if the borrower is located in this state.

*delete "receipt" each and substitute "apportionment fraction" replace "receipt" with "interest fee" "penalty"*

*doesn't tell me anything*

*used to secure a loan of the loan used to secure a loan*



any issuer's reimbursement fees paid to another for charges made by its card holders.

10. Loan servicing fees. a. The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subd. 3 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property. The numerator of the receipts factor also includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subd. 4 and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

b. In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include these fees if the borrower is located in this state.

11. Gross receipts from investment banking services. The numerator of the receipts factor includes gross commissions, gross management or underwriting fees or other gross income earned in performing investment banking activities on behalf of a customer if the customer's commercial domicile is located in this state.

12. Gross receipts from other services. Gross receipts from services not included in subds. 1 through 11, including but not limited to, overdraft charges, account service charges, automated teller machine transaction fees, debit card transaction fees, electronic funds transfer fees, safety deposit rental fees, cashiers check fees, certified check fees, travelers check fees, payables management, letters of credit, bankers acceptance notes, and microfilming services, shall be attributed pursuant to the rules set forth in sub. (9)(d).

13. Other receipts. Receipts included in the definition of sales under sub. (9) not otherwise apportioned under this subsection are attributed pursuant to the rules set forth in sub. (9).

(c) ATTRIBUTION OF CERTAIN RECEIPTS TO COMMERCIAL DOMICILE. All receipts which would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor at 50% if the taxpayer's commercial domicile is in this state.

J. Create an apportionment fraction for stock brokerage firms as follows:

71.25(9g) APPORTIONMENT OF NET BUSINESS INCOME OF INTERSTATE BROKER-DEALERS AND UNDERWRITERS. A broker-dealer or underwriter whose business



activity is taxable both within and without this state shall apportion its net business income as provided in this subsection. All items of nonbusiness income shall be allocated pursuant to the provisions of sub. (5)(b). *apportioned*

(a) DEFINITIONS. In this section, unless the context requires otherwise:

1. "Billing address" means the address indicated in the books and records of the taxpayer on the first day of the taxable year, or on a later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

2. "Brokerage commission" includes, but is not limited to, all sales fees on agency or principal transactions whether charged explicitly or implicitly. *apportioned*

3. "Broker-dealer" means a person engaged in the business of effecting transactions in securities, commodities and related financial instruments for the account of other or for the person's own account. "Broker-dealer" does not include a sales agent; an issuer with respect to purchasing and selling the issuer's own securities; a bank, savings institution or trust company, when effecting transactions for its own account or as an agent; an executor, administrator, guardian, conservator or pledgee; or any other person the division of securities designates. *also where*

4. "Underwriter" means a person who guarantees to furnish a definite sum of money by a definite date to a corporate or government entity in return for an issue of bonds or stock or who handles the marketing of a corporate or government security offering to the public; An underwriter either buys all or a part of a new security offering for a specified price and then sells it to the public, either directly or through dealers, or takes a commission on the securities if actually sells. *provide*

(b) APPORTIONMENT FRACTION. There shall first be deducted from the total net income of the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property. The remaining net income shall be apportioned to Wisconsin by use of an apportionment fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. Receipts shall include only those receipts described in subds. 1. through 4. Gross receipts or net gains from sales of securities may not be included in the apportionment fraction. *apportionment fraction*

1. Security brokerage services. The numerator of the receipts factor includes gross brokerage commissions and total margin interest paid on behalf of brokerage accounts owned by customers if the billing address of the customer is in this state.

*'s made in business  
generally managed  
in this state*

*including*

**2. Underwriting services.** The numerator of the receipts factor includes gross commissions, gross management or underwriting fees or other gross income earned in performing underwriting activities on behalf of the issuer of the securities if the commercial domicile of the corporate issuer or the location of the governmental issuer is located in this state.

*including*

**3. Other financial services.** The numerator of the receipts factor includes gross commissions, gross management fees or other gross income earned in providing investment research, management services and advice and other financial services to a customer if the customer's billing address is in this state.

*ed*

**4. Other receipts.** Receipts included in the definition of sales under sub. (9) or (9d) not otherwise apportioned under this subsection are attributed pursuant to the rules set forth in sub. (9) or (9d), as appropriate.

*defined  
apportioned  
under*

(c) **ATTRIBUTION OF CERTAIN RECEIPTS TO COMMERCIAL DOMICILE.** All receipts which would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

*see  
913(c)*

*not exempt NOT TAXED IN ANOTHER STATE.*

K. Create a paragraph in secs. 71.04(7) and 71.25(9) to prescribe the treatment of receipts from professional sports clubs.

*(ds) (ds)*

**1. Gate receipts.** Gate receipts include all receipts from games played at the taxpayer's home facility plus any gate receipts received from games played away from the taxpayer's home facility. The numerator of the receipts factor for taxpayers whose home facility is in this state shall include all gate receipts from games played in its home facility. The numerator of the receipts factor for taxpayers whose home facility is outside this state shall include the percentage of gate receipts received from games played in this state.

**2. Radio and television receipts.** Radio and television receipts received by the taxpayer as its proportionate share from a league or association contract with the major communications networks are in this state in proportion to the number of games played in this state to total games played by the taxpayer covered by the contract during the season. Local television and radio receipts are in this state if the games are played in this state.

*(dt) (dt)*

L. Create a paragraph in secs. 71.04(7) and 71.25(9) to prescribe the treatment of receipts from broadcasting and publishing.

**1. Gross receipts, including advertising revenues, from television and radio broadcasting within and without the state shall be attributed to the numerator of the receipts factor based on the ratio of the audience within this state to the audience everywhere.**

(dw) (dw)

2. Gross receipts, including advertising revenues, from newspapers and magazines shall be attributed to the numerator of the receipts factor based on the ratio of circulation within this state to circulation everywhere.

✓ M. Create a paragraph in secs. 71.04(7) and 71.25(9) to prescribe the treatment of diversified businesses.

*under s. 71*

Except as provided in subds. 1. and 2., if a person engaged in business within and without the state has two or more trades or businesses that would be subject to different apportionment formulas, the person shall use the standard apportionment formula prescribed in s. 71.04(4) or 71.25(6).

✓ 1. The taxpayer may request permission from the Department of Revenue to use an alternative apportionment method effective the next tax year if the taxpayer derives more than 50% of its worldwide gross receipts from one of the specialized industries excluded from sec. 71.04(4) or 71.25(6). This method remains in effect until such gross receipts fall below 50%.

2. The Department of Revenue may require a taxpayer to use an alternative apportionment method to clearly reflect income properly assignable to this state.

VIII. Create a definition of "doing business in this state" in sec. 71.22 as follows:

"Doing business in this state" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. A corporation that directly or indirectly owns a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership, or that directly or indirectly owns an interest in a limited liability company that does business in this state, regardless of the percentage of ownership, is doing business in this state in a corporate capacity, subject to constitutional limitations. A corporation that issues credit, debit, travel, entertainment or similar charge cards to customers located in this state is doing business in this state.

IX. Create a definition of "commercial domicile" in sec. 71.22 as follows:

"Commercial domicile" means either of the following:

✓ 1. The headquarters of the trade or business, from which the trade or business is principally managed and directed.

2. If a taxpayer is organized under the laws of a foreign country, the commonwealth of Puerto Rico or any territory or possession of the United States, "commercial domicile" shall be deemed for the purposes of this subsection to be the state of the United States or the District of Columbia from which the taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the

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taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of the employees are performed, as of the last day of the taxable year.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb06787

JK

(RR) (A) in 6-12-99

KG  
RMR

LFB:.....Shanovich - Phase in single sales factor apportionment and adopt recommendations regarding moving property, insurance companies and financial institutions

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

SOON

WPO:  
Fix Request sheet

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 837, line 14: after "is" insert "renumbered 71.04 (4) (intro) and".

3 ✓ 2. Page 837, line 15: <sup>keep</sup> after ~~FORMULA~~ insert "(intro.)". <sup>before</sup> ~~nonresident~~ "nonresident"

4 ✓ 3. Page 838, line 1: delete "financial organizations" and substitute "financial  
5 organizations telecommunications companies".

6 ✓ 4. Page 838, line 4: delete the material beginning with "For" and ending with  
7 "(7)." on line 10 and substitute <sup>add period</sup> "Except as provided under ~~s.~~ <sup>s.</sup> 71.25 (9d) and (9g),  
8 the remaining net income shall be apportioned to Wisconsin this state by use of an  
9 ~~apportionment fraction composed of a sales factor representing 50% of the fraction,~~

1 a property factor representing 25% of the fraction and a payroll factor representing  
2 25% of the fraction. the following.”.

3 **5.** Page 838, line 10: after that line insert:

4 “SECTION 1675b. 71.04 (4) (a) of the statutes is created to read:

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

9 **SECTION 1675c.** 71.04 (4) (b) of the statutes is created to read:

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

14 **SECTION 1675d.** 71.04 (4) (c) of the statutes is created to read:

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

17 **6.** Page 838, line 13: on lines 13 and 16 delete “2000” and substitute “2003”.

18 **7.** Page 839, line 2: ~~///~~ delete “1999” and substitute “2002”.

19 **8.** Page 839, line 14: delete the material beginning with that line and ending  
20 with page 841, line 14 and substitute:

21 “1. The use of a motor vehicle or rolling stock in this state is determined by  
22 multiplying the gross receipts from the lease or rental of the motor vehicle or rolling  
23 stock by a fraction having as a numerator the number of miles traveled within this  
24 state by the motor vehicle or rolling stock while leased or rented in the taxable year

1 and having as a denominator the total number of miles traveled by the motor vehicle  
2 or rolling stock while leased or rented in the taxable year.

3 2. The use of an aircraft in this state is determined by multiplying the gross  
4 receipts from the lease or rental of the aircraft by a fraction having as a numerator  
5 the number of landings of the aircraft in this state while leased or rented in the  
6 taxable year and having as a denominator the total number of landings of the aircraft  
7 while leased or rented in the taxable year.

8 3. The use of a vessel or mobile equipment in this state is determined by  
9 multiplying the gross receipts from the lease or rental of the vessel or mobile  
10 equipment by a fraction having as a numerator the number of days that the vessel  
11 or mobile equipment is in this state while leased or rented in the taxable year and  
12 having as a denominator the total number of days that the vessel or mobile  
13 equipment is leased or rented in the taxable year.

14 4. If the taxpayer does not know the location of moving property while such  
15 property is leased or rented in the taxable year, the moving property is used in the  
16 state in which such property is located at the time the lessee or renter takes  
17 possession of the property.

18 SECTION 1681. <sup>WE</sup> 71.04 (7) (dn) of the statutes is created to read:

19 71.04 (7) (dn) ~~intangible~~ For taxable years beginning after December 31, 1999,  
20 gross royalties and gross income received for the use of intangible property, excluding  
21 securities, are attributed to this state if any of the following ~~apply~~: <sup>applies</sup>

22 1. The purchaser of intangible property uses the intangible property in the  
23 production, fabrication or manufacturing of a product that is sold to a customer who  
24 is located in this state.

1           2. The purchaser of intangible property uses the intangible property in the  
2 printing or publication of materials that are sold to a customer who is located in this  
3 state.

4           3. The purchaser of intangible property uses the intangible property in the  
5 operation of a trade or business at a location in this state.

6           4. The purchaser of intangible property is billed for the purchase of the  
7 intangible property at a location in this state.

8           5. The purchaser of intangible property does not use the intangible property  
9 in this state but the trade or business of the seller of the intangible property is  
10 managed ~~from~~<sup>at</sup> a location in this state.

11           **SECTION 1682** 71.04 (7) (dr) of the statutes is created to read:

12           71.04 (7) (dr) 1. For taxable years beginning after December 31, 1999, receipts  
13 from a service are attributed to the state where the purchaser of the service received  
14 the benefit of the service. The benefit of a service is received in this state if any of  
15 the following ~~apply~~<sup>apply</sup>:

16           a. The service relates to real property that is located in this state.

17           b. The service relates to tangible personal property that is located in this state  
18 at the time that the service is received.

19           c. The service is provided to a person who is located in this state.

20           d. The service is provided to a person doing business in this state.

21           e. The service is performed at a location in this state.

22           2. If the purchaser of a service receives the benefit of a service in more than one  
23 state, the receipts from the performance of the service are included in the numerator  
24 of the sales factor under par. (a) according to the portion of the service received in this  
25 state. If the state where a purchaser received the benefit of a service cannot be



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

6 **SECTION 1682<sup>(b)</sup>** 71.04 (7) (ds) of the statutes is created to read:  
7 *stat*

8 71.04 (7) (ds) 1. For taxable years beginning after December 31, 1999, the gate  
9 receipts from professional sporting events are attributed to the state in which the  
10 taxpayer's sports facility is located. Gate receipts include gate receipts from events  
11 held at the taxpayer's sports facility and gate receipts from events that are held away  
12 from the taxpayer's sports facility, if the taxpayer's team is a participant in the event  
13 and the taxpayer sells admissions to that event.

14 2. For taxable years beginning after December 31, 1999, radio and television  
15 receipts received by the taxpayer from a professional sports association contract with  
16 a communications network are attributed to this state in proportion to the number  
17 of events held in this state in which the taxpayer's team is a participant and that are  
18 related to the contract compared to the total number of events in which the  
19 taxpayer's team is a participant and that are related to the contract.

20 **SECTION 1682c.** 71.04 (7) (dt) of the statutes is created to read:

21 71.04 (7) (dt) 1. For taxable years beginning after December 31, 1999, the gross  
22 receipts from radio and television broadcasting, including advertising revenue, are  
23 attributed to this state in proportion to the audience in this state as compared to the  
total audience.

1           2. For taxable years beginning after December 31, 1999, the gross receipts from  
2 newspapers and magazines, including advertising revenue, are attributed to this  
3 state in proportion to the circulation in this state as compared to the total circulation.

4           **SECTION 1682d.** 71.04 (7) (dw ) of the statutes is created to read:

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

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

19           3. The department may require that a person who is subject to apportionment  
20 under this subsection <sup>✓</sup> use an alternative apportionment method to accurately reflect  
21 income that is attributable to this state.

22           **SECTION 1682m.** 71.04 (8) (title) of the statutes is amended to read:

23           71.04 (8) (title) RAILROADS, FINANCIAL ORGANIZATIONS TELECOMMUNICATIONS  
24 COMPANIES AND PUBLIC UTILITIES.

25           **SECTION 1682p.** 71.04 (8) (c) of the statutes is amended to read:

1           71.04 (8) (c) The net business income of railroads, sleeping car companies, car  
 2 line companies, financial organizations, telecommunications companies and public  
 3 utilities requiring apportionment shall be apportioned pursuant to rules of the  
 4 department of revenue, but the income taxed is limited to the income derived from  
 5 business transacted and property located within the state. For taxable years  
 6 beginning after December 31, 1999, the net business income of financial institutions  
 7 shall be apportioned under sub. (9d). <sup>5</sup> 71.25

8           **SECTION 1682r.** 71.04 (10) of the statutes is amended to read:

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

20           **9.** Page 858, line 7: after "is" insert "renumbered 71.25 (6) (intro) and".

21           **10.** Page 858, line 8: after "FORMULA" insert "(intro.)".

22           **11.** Page 858, line 22: delete the material beginning with "or" and ending with  
 23 "(9)." on page 859, line 4 and substitute "or the residence of the recipient. The Except  
 24 as provide in subs. (9d) and (9g), the remaining net income shall be apportioned to

1 Wisconsin ~~this state~~ by use of an apportionment fraction composed of a sales factor  
2 under sub. (9) representing 50% of the fraction, a property factor under sub. (7)  
3 representing 25% of the fraction and a payroll factor under sub. (8) representing 25%  
4 of the fraction. the following.”

5 **12.** Page 859, line 4: after that line insert:

6 “SECTION 1729b. 71.25 (6) (a) of the statutes is created to read:

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

11 SECTION 1729c. 71.25 (6) (b) of the statutes is created to read:

12 71.25 (b) For taxable years beginning after December 31, 2001, and before  
13 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (9)  
14 representing 85% of the fraction, a property factor under sub. (7) representing 7.5%  
15 of the fraction and a payroll factor under sub. (8) representing 7.5% of the fraction.

16 SECTION 1729d. 71.25 (6) (c) of the statutes is created to read:

17 71.25 (c) For taxable years beginning after December 31, 2002, an  
18 apportionment fraction composed of the sales factor under sub. (9).”

19 **13.** Page 859, line 7: on lines 7 and 10 delete “2000” and substitute “2003”.

20 **14.** Page 859, line 20: on delete “1999” and substitute “2002”.

21 **15.** Page 860, line 7: delete the material beginning with that line and ending  
22 with page 862, line 7, and substitute:

23 “1. The use of a motor vehicle or rolling stock in this state is determined by  
24 multiplying the gross receipts from the lease or rental of the motor vehicle or rolling

1 stock by a fraction having as a numerator the number of miles traveled within this  
2 state by the motor vehicle or rolling stock while leased or rented in the taxable year  
3 and having as a denominator the total number of miles traveled by the motor vehicle  
4 or rolling stock while leased or rented in the taxable year.

5 2. The use of an aircraft in this state is determined by multiplying the gross  
6 receipts from the lease or rental of the aircraft by a fraction having as a numerator  
7 the number of landings of the aircraft in this state while leased or rented in the  
8 taxable year and having as a denominator the total number of landings of the aircraft  
9 while leased or rented in the taxable year.

10 3. The use of a vessel or mobile equipment in this state is determined by  
11 multiplying the gross receipts from the lease or rental of the vessel or mobile  
12 equipment by a fraction having as a numerator the number of days that the vessel  
13 or mobile equipment is in this state while leased or rented in the taxable year and  
14 having as a denominator the total number of days that the vessel or mobile  
15 equipment is leased or rented in the taxable year.

16 4. If the taxpayer does not know the location of moving property while such  
17 property is leased or rented in the taxable year, the moving property is used in the  
18 state in which such property is located at the time the lessee or renter takes  
19 possession of the property.

20 **SECTION 1735.** 71.25 (9) (dn) of the statutes is created to read:

21 71.25 (9) (dn) ~~(dn)~~ For taxable years beginning after December 31, 1999,  
22 gross royalties and gross income received for the use of intangible property, excluding  
23 securities, are attributed to this state if any of the following ~~apply~~:

*applies*

1           1. The purchaser of intangible property uses the intangible property in the  
2 production, fabrication or manufacturing of a product that is sold to a customer who  
3 is located in this state.

4           2. The purchaser of intangible property uses the intangible property in the  
5 printing or publication of materials that are sold to a customer who is located in this  
6 state.

7           3. The purchaser of intangible property uses the intangible property in the  
8 operation of a trade or business at a location in this state.

9           4. The purchaser of intangible property is billed for the purchase of the  
10 intangible property at a location in this state.

11           5. The purchaser of intangible property does not use the intangible property  
12 in this state but the trade or business of the seller of intangible property is managed  
13 *at* *location*  
in this state.

14           **SECTION 1736.** 71.25 (9) (dr) of the statutes is created to read:

15           71.25 (9) (dr) 1. For taxable years beginning after December 31, 1999, receipts  
16 from a service are attributed to the state where the purchaser of the service received  
17 the benefit of the service. The benefit of a service is received in this state if any of  
18 the following ~~apply~~ *applies*:

19           a. The service relates to real property that is located in this state.

20           b. The service relates to tangible personal property that is located in this state  
21 at the time that the service is received.

22           c. The service is provided to a person who is located in this state.

23           d. The service is provided to a person doing business in this state.

24           e. The service is performed at a location in this state.

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

10           **SECTION 1736b.** 71.25 (9) (ds) of the statutes is created to read:

11           71.25 (9) (ds) 1. For taxable years beginning after December 31, 1999, the gate  
12 receipts from professional sporting events are attributed to the state in which the  
13 taxpayer's sports facility is located. Gate receipts include gate receipts from events  
14 held at the taxpayer's sports facility and gate receipts from events that are held away  
15 from the taxpayer's sports facility, if the taxpayer's team is a participant in the event  
16 and the taxpayer sells admissions to that event.

17           2. For taxable years beginning after December 31, 1999, radio and television  
18 receipts received by the taxpayer from a professional sports association contract with  
19 a communications network are attributed to this state in proportion to the number  
20 of events held in this state in which the taxpayer's team is a participant and that are  
21 related to the contract compared to the total number of events in which the  
22 taxpayer's team is a participant and that are related to the contract.

23           **SECTION 1736c.** 71.25 (9) (dt) of the statutes is created to read:

24           71.25 (9) (dt) 1. For taxable years beginning after December 31, 1999, the gross  
25 receipts from radio and television broadcasting, including advertising revenue, are

1 attributed to this state in proportion to the audience in this state as compared to the  
2 total audience.

3 2. For taxable years beginning after December 31, 1999, the gross receipts from  
4 newspapers and magazines, including advertising revenue, are attributed to this  
5 state in proportion to the circulation in this state as compared to the total circulation.

6 **SECTION 1736d.** 71.25 (9) (dw ) of the statutes is created to read:

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

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

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

24 **SECTION 1736g.** 71.25 (9d) of the statutes is created to read:

25 71.25 (9d) FINANCIAL ORGANIZATIONS. (a) *Definitions.* In this subsection:



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

4           2. "Financial organization" means a bank; a savings bank; a bank holding  
5 company; a savings and loan association; a trust company; a credit union, except a  
6 credit union that is exempt from taxes under s. 71.26 (1) (a); a production credit  
7 association; or an agency or branch of a foreign depository, whether chartered under  
8 the laws of this state, another state or territory, the laws of the United States or the  
9 laws of a foreign county. "Financial organization" includes a corporation that derives  
10 at least 50% of its total gross income from finance leases, including direct finance  
11 leases and leverage leases as defined by rule, and a corporation that derives at least  
12 50% of its total gross income from an activity that a financial organization performs.

13           3. "Merchant discount" means a fee or discount that is charged to a merchant  
14 for accepting a credit card as payment for merchandise or services that are sold to  
15 the credit card holder.

16           4. "Taxpayer" means a financial organization that is subject to apportionment  
17 under this subsection.

*For taxable years beginning after December 31, 1999,* <sup>9</sup><sub>a</sub>

18           (b) *Apportionment.* ~~§~~ financial organization that does business in this state  
19 and outside this state shall apportion its net business income as provided in this  
20 subsection. A taxpayer that is subject to this subsection shall apportion its  
21 nonbusiness income under sub. (5) (b) and shall deduct the net business income that  
22 follows the situs of its property from its total net business income. The taxpayer's  
23 remaining net business income shall be apportioned to this state by ~~multiply~~  
24 the remaining net business income by an apportionment fraction that has as a  
25 numerator the gross receipts of the taxpayer in this state during the taxable year and

*multiply*

1 that has a denominator the taxpayer's total gross receipts during the taxable year.

2 The following sources of a taxpayer's business income are subject to apportionment:

3 1. <sup>c</sup>Gross receipts from the lease of real property.<sup>g</sup> Gross receipts from the lease,  
4 rental or sublease of real property owned by the taxpayer shall be apportioned under  
5 sub. (9) (dc).

6 2. <sup>c</sup>Gross receipts from the lease of tangible personal property.<sup>g</sup> Gross receipts  
7 from the lease, rental or sublease of tangible personal property owned by the  
8 taxpayer shall be apportioned under sub. (9) (dc) and (dg).

9 3. <sup>c</sup>Gross interest from loans secured by real property.<sup>g</sup> The numerator of the  
10 apportionment fraction includes gross interest, fees or penalties from loans that are  
11 secured by real property if the real property is located in this state at the time the  
12 loan is secured. If the real property that is used to secure a loan is located in this state  
13 and in another state or a foreign country, the gross interest, fees or penalties from  
14 the loan are included in the numerator of the apportionment fraction, if at least 50%  
15 of the fair market value of the real property is located within this state or if the loan  
16 borrower is located in this state.

17 4. <sup>c</sup>Gross interest from loans.<sup>g</sup> The numerator of the apportionment fraction  
18 includes gross interest, fees or penalties from loans that are not secured by real  
19 property, if the loan borrower is located in this state.

20 5. <sup>c</sup>Sale of loans.<sup>g</sup> The numerator of the apportionment fraction includes income  
21 from the sale of loans and income under section 1286 of the Internal Revenue Code.  
22 The income that is included in the numerator is determined as follows:

23 a. The gross receipts from the sale of loans secured by real property is  
24 multiplied by a fraction that has as a numerator the amount included in the

1 numerator under subd. 3 and that has as a denominator the total amount of interest,  
2 fees and penalties from loans that are secured by real property.

3 b. The net gains from the sale of loans that are not secured by real property is  
4 multiplied by a fraction that has as a numerator the amount included in the  
5 numerator under subd. 4. and that has as a denominator the total amount of interest,  
6 fees and penalties from loans that are not secured by real property.

7 6. <sup>(</sup>“Credit card receivables.”) The numerator of the apportionment fraction  
8 includes gross interest, fees or penalties from credit card receivables and gross  
9 receipts from fees charged to credit card holders, if the billing address of the credit  
10 card holder is in this state.

11 7. <sup>(</sup>“Gross receipts from the sale of credit card receivables.”) The numerator of  
12 the apportionment fraction includes gross receipts from the sale of credit card  
13 receivables, multiplied by a fraction that has as a numerator the amount included  
14 in the numerator under subd. 6. and that has as a denominator the total amount of  
15 interest, fees and penalties that are charged to credit card holders.

16 8. <sup>(</sup>“Credit card reimbursement fees.”) The numerator of the apportionment  
17 fraction includes credit card reimbursement fees, multiplied by <sup>a</sup>the fraction ~~under~~

18 ~~said~~.  
19 9. <sup>(</sup>“Gross receipts from a merchant discount.”) The numerator of the  
20 apportionment fraction includes gross receipts from a merchant discount if the  
21 merchant’s business is principally managed from a location in this state. The gross  
22 receipts from a merchant discount shall not include credit card holder charge backs.  
23 The amount of gross receipts from a merchant discount shall not be reduced by  
24 interchange transaction fees or by a credit card reimbursement fee.

*that has as a numerator the amount included in the numerator under subd. 6. and that has as a denominator the total amount of interest, fees and penalties that are charged to credit card holders*

1           10. <sup>c</sup> ~~Loan servicing fees~~<sup>s)</sup> a. The numerator of the apportionment fraction  
2 includes loan servicing fees derived from loans that are secured by real property,  
3 multiplied by a fraction that has as a numerator the amount included in the  
4 numerator under subd. 3. and that has as a denominator the total amount of interest,  
5 fees and penalties from loans that are secured by real property. The numerator of  
6 the apportionment fraction also includes loan servicing fees derived from loans that  
7 are not secured by real property, multiplied by a fraction that has as a numerator the  
8 amount included in the numerator under subd. 4. and that has as a denominator the  
9 total amount of interest, fees and penalties from loans that are not secured by real  
10 property.

11           b. If the taxpayer receives loan servicing fees for servicing a ~~secured or an~~  
12 ~~unsecured~~ loan, the numerator of the apportionment fraction shall include such fees  
13 if the borrower of the loan is located in this state.

14           11. <sup>s)</sup> ~~Gross income from investment banking services~~<sup>s)</sup> The numerator of the  
15 apportionment fraction includes gross income, including commissions, management  
16 fees or underwriting fees, earned from investment banking services if the purchaser  
17 of the services is located in this state.

18           12. <sup>s)</sup> ~~Gross receipts from other services~~<sup>s)</sup> The gross receipts from services that  
19 are not described under subds. 1. to 11. shall be apportioned under sub. (9) (dr).

20           13. <sup>s)</sup> ~~Other sales~~<sup>s)</sup> Sales under sub. (9) that are not apportioned under this  
21 subsection shall be apportioned under sub. (9).

22           (c) *Receipts not taxed.* Fifty percent of the gross receipts of the taxpayer that  
23 are apportioned under this subsection to a state in which the taxpayer is not taxable  
24 is included in the numerator of the apportionment fraction under par. (b), if the  
25 taxpayer's business is principally managed at a location in this state.

1 SECTION 1736k. 71.25 (9g) of the statutes is created to read:

2 71.25 (9g) BROKERS AND UNDERWRITERS. (a) Definitions. In this subsection:

3 1. "Brokerage commission" includes sales fees on agency or principal  
4 transactions.

5 1. "Broker" means a person who does business as a broker of securities or  
6 commodities. "Broker" does not include a sales agent; a bank, savings institution or  
7 trust company that enters a securities or commodities transaction as an agent; a  
8 executor, guardian or conservator who enters a securities or commodities transaction  
9 as an agent for another; or a person who purchases or sells the person's own securities  
10 or commodities.

11 3. "Underwriter" means a person who guarantees to provide a definite sum of  
12 money by a definite date to a corporate or government entity in exchange for  
13 securities; who markets a corporate or government security offering to the public; or  
14 who buys a security offering for a specified price and sells the security offering to the  
15 public.

16 4. "Taxpayer" means a broker or an underwriter who is subject to  
17 apportionment under this subsection.

18 (b) Apportionment. A broker or an underwriter who does business in this state  
19 and outside this state shall apportion its net business income as provided in this  
20 subsection. A taxpayer that is subject to this subsection shall apportion its  
21 nonbusiness income under sub. (5) (b) and shall deduct the net business income that  
22 follows the situs of its property from its total net business income. The taxpayer's  
23 remaining net business income shall be apportioned to this state by multiplying the  
24 remaining net business income by an apportionment fraction that has as a  
25 numerator the gross receipts of the taxpayer in this state during the taxable year and

*under multiplying*

*For taxable years beginning after December 31, 1999, a*

*M O V E*

*M O V E*

*under*

1 that has a denominator the taxpayer's total gross receipts during the taxable year.

2 The following sources of a taxpayer's business income are subject to apportionment:

3 1. Security brokerage services'. The numerator of the apportionment fraction  
4 includes gross brokerage commissions and total margin interest paid on behalf of  
5 brokerage accounts owned by customers, if the billing address of the customer is in  
6 this state.

7 2. Underwriting services'. The numerator of the apportionment fraction  
8 includes gross income, including commissions, management fees or underwriting  
9 fees, earned from underwriting services if the purchaser of the services is located in  
10 this state.

11 3. Other services'. The numerator of the apportionment fraction includes gross  
12 income, including commissions or management fees, earned from providing  
13 investment research, management services or financial services to a customer, if the  
14 customer's billing address is in this state.

15 4. Other sales'. Sales under sub. (9) that are not apportioned under this  
16 subsection shall be apportioned under sub. (9).

17 (c) *Receipts not taxed.* The gross receipts of the taxpayer that are apportioned  
18 under this subsection to a state in which the taxpayer is not taxable are included in  
19 the numerator of the apportionment fraction under par. (b), if the taxpayer's  
20 business is principally managed at a location in this state.

21 **SECTION 1736m.** 71.25 (10) (title) of the statutes is amended to read:

22 71.25 (10) (title) RAILROADS, ~~FINANCIAL ORGANIZATIONS~~ TELECOMMUNICATIONS  
23 COMPANIES AND PUBLIC UTILITIES.

24 **SECTION 1736p.** 71.25 (10) (c) of the statutes is amended to read:

1           71.25 (10) (c) The net business income of railroads, sleeping car companies, car  
2 line companies, financial organizations, telecommunications companies and public  
3 utilities requiring apportionment shall be apportioned pursuant to rules of the  
4 department of revenue, but the income taxed is limited to the income derived from  
5 business transacted and property located within the state. For taxable years  
6 beginning after December 31, 1999, the net business income of financial institutions  
7 shall be apportioned under sub. (9d).

8           **SECTION 1736r.** 71.25 (11) of the statutes is amended to read:

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

19       ✓ **16.** Page 878, line 13: delete the material beginning with that and ending with  
20 page 879, line 12.

21       **17.** Page 880, line 1: delete lines 1 to 17 and substitute:

22       “**SECTION 1750.** 71.45 (3) (intro.) of the statutes is amended to read:

23       71.45 (3) APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in par. (c),  
24 to determine Wisconsin income for purposes of the franchise tax, domestic insurers

1 not engaged in the sale of life insurance but which that, in the taxable year, have  
 2 collected ~~received~~ premiums, other than life insurance premiums, written on  
 3 subjects of for insurance on property or risks resident, located or to be performed  
 4 outside this state, ~~there shall be subtracted from multiply~~ the net income figure  
 5 derived by application of sub. (2) (a) ~~to arrive at Wisconsin income constituting the~~  
 6 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~  
 7 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:

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

9 71.45 (3) (a) The Subject to par. (c), the percentage determined by dividing the  
 10 sum of total direct premiums written for insurance on all property and risks resident,  
 11 other than life insurance, located or to be performed in this state, and assumed  
 12 premiums written for reinsurance on all property and risks resident, other than life  
 13 insurance, located or to be performed in this state, by the sum of direct premiums  
 14 written for insurance on all property and risks, other than life insurance, wherever  
 15 located during the taxable year, as reflects <sup>2</sup> and assumed premiums written on  
 16 insurance for reinsurance on all property and risks resident, other than life  
 17 insurance, where the subject of insurance was resident, located or to be performed  
 18 outside this state wherever located. <sup>1</sup> In this subsection, "direct premiums" and  
 19 "assumed premiums" mean <sup>9</sup> direct and assumed premiums as reported for the  
 20 taxable year on an annual statement that is filed by the insurer with the  
 21 commissioner of insurance. *plain*

22 18. Page 880, line 20: delete lines 20 to 24 and substitute:

23 "71.45 (3) (b) 1. The Subject to par. (c), the percentage of determined by dividing  
 24 total payroll, exclusive of life insurance payroll, paid everywhere in the taxable year



1 as reflects such compensation by the payroll, exclusive of life insurance payroll, paid  
2 outside in this state in the taxable year. ) ,

3 19. Page 881, line 9: after that line insert:

4 "SECTION 1752d. 71.45 (3) (c) of the statutes is created to read:

5 71.45 (3) (c) 1. For taxable years beginning after December 31, 2000, and before  
6 January 1, 2002, the percentage under par. (a) represents 63% of the arithmetic  
7 average of the amounts under pars. (a) and (b) 1.

8 2. For taxable years beginning after December 31, 2001, and before January  
9 1, 2003, the percentage under par. (a) represents 85% of the arithmetic average of the  
10 amounts under pars. (a) and (b) 1.

11 3. For taxable years beginning after December 31, 2002, a domestic insurer  
12 that is subject to apportionment under this subsection shall multiply the net income  
13 figure derived by application of sub. (2) by the percentage under par. (a) to determine  
14 Wisconsin income for purposes of the franchise tax."

15 20. Page 881, line 11: delete "pars. (a) and (b)" and substitute "sub. (3) (c)".

16 21. Page 882, line 24: delete the material beginning with that <sup>line</sup> and ending with  
17 page 884, line 3.

18 22. Page 1477, line 7: delete lines 7 to 11 and substitute:

19 "<sup>to</sup>(7) APPORTIONMENT FACTORS. The treatment of sections 71.04 (4) ~~intro.~~ (a) <sup>to</sup>, (b)  
20 and <sup>and</sup> (c), (5) (intro.), (6) (intro.) and (7) (d), (dc), (dg), (dn), (dr), (ds), (dt) and (dw), 71.25  
21 (6) ~~(intro.)~~ (a) <sup>(b) and</sup> (c), (7) (intro.), (8) (intro.) and (9) (d), (dc), (dg), (dn), (dr), (ds), (dt)  
22 and (dw), 71.28 (4) (a) and (am) 1., 71.45 (3) (intro.), (a), (c) and (3m) and 71.47 (4)

and

1           <sup>x</sup>       <sup>x</sup>  
2       (a) and (am) of the statutes and the renumbering and amendment of ~~section~~ 71.45  
3       (3) (b) of the statutes take effect on the January 1 after publication.”.

(END)

sections  
71.04 (4),  
71.25 (e) and