State of Wisconsin
1999 – 2000 LEGISLATURE

LRBb0678/~~1~~ 2
JK:kg:ksh

in 6-14-99

LFB:......Shanovich (RR) – 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

Today

At the locations indicated, amend the bill as follows:

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

2. Page 837, line 15: after "FORMULA." insert "(intro.)".

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

4. Page 838, line 4: delete the material beginning with "For" and ending with "(7)." on line 10 and substitute "Except as provided under s. 71.25 (9d) and (9g), the remaining net income shall be apportioned to ~~Wisconsin~~ 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.~~ the following:".

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

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

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

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

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

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

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

6. Page 838, line 13: on lines 13 and 16, delete "2000" and substitute "2003".

7. Page 839, line 2: delete "1999" and substitute "2002".

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

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

2. 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 while leased or rented in the taxable year and having as a denominator the total number of landings of the aircraft while leased or rented in the taxable year.

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

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

SECTION 1681. 71.04 (7) (dn) of the statutes is created to read:

71.04 **(7)** (dn) For taxable years beginning after December 31, 1999, gross royalties and gross income received for the use of intangible property, excluding securities, are attributed to this state if any of the following applies:

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

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

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

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

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

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

71.04 **(7)** (dr) 1. For taxable years beginning after December 31, 1999, receipts from a service are attributed to the state where the purchaser of the service received the benefit of the service. The benefit of a service is received in this state if any of the following applies:

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

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

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

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

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

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

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

SECTION 1682b. 71.04 (7) (ds) of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

71.04 **(8)** (title) RAILROADS, ~~FINANCIAL ORGANIZATIONS~~ TELECOMMUNICATIONS COMPANIES AND PUBLIC UTILITIES.

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

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

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

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

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

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

11. Page 858, line 22: delete the material beginning with "or the" and ending with "(9)." on page 859, line 4, and substitute "~~or the residence of the recipient. The~~ . Except as provide in subs. (9d) and (9g), the remaining net income shall be apportioned to ~~Wisconsin~~ this state by use of ~~an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.~~ the following:".

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

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

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

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

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

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

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

13. Page 859, line 7: on lines 7 and 10, delete "2000" and substitute "2003".

14. Page 859, line 20: delete "1999" and substitute "2002".

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

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

2. 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 while leased or rented in the taxable year and having as a denominator the total number of landings of the aircraft while leased or rented in the taxable year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. “Taxpayer” means a financial organization that is subject to apportionment under this subsection.

(b) *Apportionment.* For taxable years beginning after December 31, 1999, a financial organization that does business in this state and outside this state shall apportion its net business income as provided in this subsection. A taxpayer that is subject to this subsection shall apportion its nonbusiness income under sub. (5) (b) and shall deduct the net business income that follows the situs of its property from its total net business income. The taxpayer’s remaining net business income shall be apportioned to this state by multiplying the remaining net business income by an apportionment fraction that has as a numerator the gross receipts of the taxpayer in this state during the taxable year and that has a denominator the taxpayer's total gross receipts during the taxable year. The following sources of a taxpayer's business income are subject to apportionment:

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

3. 'Gross interest from loans secured by real property.' The numerator of the apportionment fraction includes gross interest, fees or penalties from loans that are secured by real property if the real property is located in this state at the time the loan is secured. If the real property that is used to secure a loan is located in this state and in another state or a foreign country, the gross interest, fees or penalties from the loan are included in the numerator of the apportionment fraction, if at least 50% of the fair market value of the real property is located within this state or if the loan borrower is located in this state.

4. 'Gross interest from loans.' The numerator of the apportionment fraction includes gross interest, fees or penalties from loans that are not secured by real property, if the loan borrower is located in this state.

5. 'Sale of loans.' The numerator of the apportionment fraction includes income from the sale of loans and income under section 1286 of the Internal Revenue Code. The income that is included in the numerator is determined as follows:

a. The gross receipts from the sale of loans secured by real property is multiplied by a fraction that has as a numerator the amount included in the numerator under subd. 3 and that has as a denominator the total amount of interest, fees and penalties from loans that are secured by real property.

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

6. 'Credit card receivables.' The numerator of the apportionment fraction includes gross interest, fees or penalties from credit card receivables and gross receipts from fees charged to credit card holders, if the billing address of the credit card holder is in this state.

7. 'Gross receipts from the sale of credit card receivables.' The numerator of the apportionment fraction includes gross receipts from the sale of credit card receivables, multiplied by a fraction 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.

8. 'Credit card reimbursement fees.' The numerator of the apportionment fraction includes credit card reimbursement fees, multiplied by a fraction 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.

9. 'Gross receipts from a merchant discount.' The numerator of the apportionment fraction includes gross receipts from a merchant discount if the merchant's business is principally managed from a location in this state. The gross receipts from a merchant discount shall not include credit card holder charge backs.

The amount of gross receipts from a merchant discount shall not be reduced by interchange transaction fees or by a credit card reimbursement fee.

10. 'Loan servicing fees.' a. The numerator of the apportionment fraction includes loan servicing fees derived from loans that are secured by real property, multiplied by a fraction that has as a numerator the amount included in the numerator under subd. 3. and that has as a denominator the total amount of interest, fees and penalties from loans that are secured by real property. The numerator of the apportionment fraction also includes loan servicing fees derived from loans that are not secured by real property, multiplied by a fraction that has as a numerator the amount included in the numerator under subd. 4. and that has as a denominator the total amount of interest, fees and penalties from loans that are not secured by real property.

b. If the taxpayer receives loan servicing fees for servicing a loan, the numerator of the apportionment fraction shall include such fees if the borrower of the loan is located in this state.

11. 'Gross income from investment banking services.' The numerator of the apportionment fraction includes gross income, including commissions, management fees or underwriting fees, earned from investment banking services if the purchaser of the services is located in this state.

12. 'Gross receipts from other services.' The gross receipts from services that are not described under subds. 1. to 11. shall be apportioned under sub. (9) (dr).

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

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

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

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

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

2. "Brokerage commission" includes sales fees on agency or principal transactions.

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

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

(b) *Apportionment*. For taxable years beginning after December 31, 1999, a broker or an underwriter who does business in this state and outside this state shall apportion its net business income as provided under this subsection. A taxpayer that is subject to this subsection shall apportion its nonbusiness income under sub. (5) (b) and shall deduct the net business income that follows the situs of its property from its total net business income. The taxpayer's remaining net business income shall be apportioned to this state by multiplying the remaining net business income by an apportionment fraction that has as a numerator the gross receipts of the taxpayer in this state during the taxable year and that has a denominator the taxpayer's total gross receipts during the taxable year. The following sources of a taxpayer's business income are subject to apportionment:

1. 'Security brokerage services.' The numerator of the apportionment fraction 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

71.45 **(3)** APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in par. (c), to determine Wisconsin income for purposes of the franchise tax, domestic insurers ~~not engaged in the sale of life insurance but which~~ that, 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:

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

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

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

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

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

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

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

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

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

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

21. Page 882, line 24: delete the material beginning with that line and ending with page 884, line 3.

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

"(7to) APPORTIONMENT FACTORS. The treatment of sections 71.04 (4) (a), (b) and (c), (5) (intro.), (6) (intro.) and (7) (d), (dc), (dg), (dn), (dr), (ds), (dt) and (dw), 71.25 (6) (a), (b) and (c), (7) (intro.), (8) (intro.) and (9) (d), (dc), (dg), (dn), (dr), (ds), (dt) and (dw), 71.28 (4) (a) and (am) 1., 71.45 (3) (intro.), (a) and (c) and (3m) and 71.47 (4) (a) and (am) of the statutes and the renumbering and amendment of sections 71.04 (4), 71.25 (6) and 71.45 (3) (b) of the statutes take effect on the January 1 after publication.".

(END)

6/14/99 6 pages

To: Tom Ourada

From Carol Held

Here are comments on the single sales factor draft

LRB 678/1

1. Page 1, line 5; page 6, line 33; page 7, li[ne] page 19, lines 1 and 5: The term "telecommu[n]ications companies" is added. Is it necessary to define this term in the statutes? Is a telecommunications company something other than a public utility? If so, we're going to have to write a special administrative rule to explain how to apportion the income of telecommunications companies.

2. Page 2, line 18; page 8, line 20: The date should not be changed.

3. Page 3, line 21; page 9, line 23: We ha[d] proposed listing the kinds of intangibles that would be included. In addition, we had proposed stating that stocks, bond[s] and other securities would not be included. How does the language includ[ed] in the amendment affect our interpreta[tion]? Are we going to run into IBM + US Steel ty[pe] issues?

4. Page 3, line 21; page 9, line 23: The wor[ds] "if any of the following applies" could

lead to income being sourced to more tha[n]
one state. The intent was that if the
location of the customer could be
determined, that's how the income wou[ld]
be sourced. If the customer's location
couldn't be determined, then the othe[r]
factors would be taken into consideratio[n]

5. In numerous places, we had recommen[ded]
that the term "commercial domicile" [be]
defined and used. The drafter believ[es]
this term is archaic, and substitute[s]
" trade or business is managed at a
location in this state." What problem[s]
could this create? Is the Legal Staf[f]
comfortable with this terminology?
(For example, see page 4, lines 8-10.)

6. Page 5, lines; page 11, line 9. The dr[aft]
does not include a throwback provisi[on]
"If the taxpayer is not within the
jurisdiction of the state in which the
benefit is received, the benefit of the
service is received in this state to t[he]
extent that the taxpayers employees or
representatives performed services from a
location in this state." Was it intentio[nal]

that this be omitted?

7. Page 5, lines 7-18, page 11, lines 11-22: The language has been changed from what was proposed. The language relat to gate receipts is confusing. Gate receipts should include instate receip for a Wisconsin sports club plus its share of any out-of-state receipts.

8. Page 7, line 6, page 19, line 9: Should "financial institutions" be changed to "financial organizations"? Alternatively should the term "financial organizations" be changed to "finan institutions" on page 12, line 25?

9. Page 12, line 24 and following. Many the definitions proposed for financial institutions were not included. For example, "billing address," "borrower or credit card holder located in this state" and "loan" were not defined. What problems will this create? We had wa to avoid putting definitions in rules becau of the opposition of some financial institutions.

10. Page 17, lines 4 and following. Why was the term "dealer" omitted? Why was the definition of "billing address" left out?

11. Page 18, line 20: The sales should be thrown back to Wisconsin at sc

12. Page 20, line 13: The word "resident" was added in the wrong place, and "on all property and risks" should h been stricken. It would read: " direct premiums written ~~on all property and risks~~ for insurance, other than l insurance, on subjects of insurance resident, located or to be performed i this state."

13. Page 20, line 15: The word "resident was added in the wrong place. Langu for reinsurance should be similar to #

14. Page 20, line 19: The word "resident" should not have been added.

15. Page 20, line 22: The definition of "assumed premiums" should be separa

from the definition of "direct premiums." In addition, "assumed premiums" should more closely pattern the language that had been recommended. This language came from the commissioner of insurance. Assumed premiums written for reinsurance is limited to that from domestic insurance companies.

16 Page 21, lines 1-5: Wisconsin payroll should be divided by total payroll

17 Page 21, lines 8 - 13: Should the word "arithmetic" before average be deleted? Can it be an arithmetic average when one part of the formula is given more weight than the other part?

1999 – 2000 LEGISLATURE

LRBb0678/~~2~~ 3
JK:kg:ch

in 6-14-99

LFB:......Shanovich (RR) – 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~~ Today

D-N

Insert 1-1

At the locations indicated, amend the bill as follows:

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

2. Page 837, line 15: after "FORMULA." insert "(intro.)".

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

4. Page 838, line 4: delete the material beginning with "For" and ending with "(7)." on line 10 and substitute "Except as provided under s. 71.25 (9d) and (9g), the remaining net income shall be apportioned to ~~Wisconsin~~ 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.~~ the following:".

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

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

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

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

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

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

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

6. Page 838, line 13: on lines 13 and 16, delete "2000" and substitute "2003".

~~**7.** Page 839, line 2: delete "1999" and substitute "2002".~~

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

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

2. 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 while leased or rented in the taxable year and having as a denominator the total number of landings of the aircraft while leased or rented in the taxable year.

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

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

SECTION 1681. 71.04 (7) (dn) of the statutes is created to read:

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

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

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

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

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

5. The ~~purchaser of intangible property~~ taxpayer is not subject to income tax in the state in which ~~does not use~~ the intangible property is used ~~in this state~~ but the ~~trade or~~ business of ~~the seller of the intangible property is managed at a location~~ taxpayer's commercial domicile is in this state.

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

71.04 **(7)** (dr) 1. For taxable years beginning after December 31, 1999, receipts from a service are attributed to the state where the purchaser of the service received the benefit of the service. The benefit of a service is received in this state if any of the following applies:

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

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

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

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

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

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

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

(15)

SECTION 1682b. 71.04 (7) (ds) of the statutes is created to read:

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

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

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

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

3. If the taxpayer is not subject to income tax in the state in which the benefit of the service is received, the benefit of the service is received in this state to the extent that the taxpayer's employees or representatives performed services from a location in this state.

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

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

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

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

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

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

71.04 **(8)** (title) RAILROADS, ~~FINANCIAL ORGANIZATIONS~~ TELECOMMUNICATIONS COMPANIES AND PUBLIC UTILITIES.

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

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

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

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

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

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

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

Insert 7-19 ✓

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

2. 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 while leased or rented in the taxable year and having as a denominator the total number of landings of the aircraft while leased or rented in the taxable year.

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

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

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

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

apportioned to ~~Wisconsin~~ this state by use of ~~an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.~~ the following:".

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

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

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

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

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

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

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

13. Page 859, line 7: on lines 7 and 10, delete "2000" and substitute "2003".

14. Page 859, line 20: delete "1999" and substitute "2002".

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

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

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

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

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

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

5. The ~~purchaser of intangible property does not use~~ taxpayer is not subject to income tax in the state in which the intangible property is used ~~in this state~~ but the ~~trade or business of the seller of intangible property~~ taxpayer's commercial domicile is ~~managed at a location~~ in this state.

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

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

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

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

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

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

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

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

the taxpayer's in-state and the taxpayer's share of out-of-state gate receipts

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

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

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

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

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

#3. If the taxpayer is not subject to income tax in the state in which the benefit of the service is received, the benefit of the service is received in this state to the extent that the taxpayer's employees or representatives performed services from a location in this state.

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

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

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

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

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

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

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

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

INSERT 13-1

3 ~~1.~~ "Credit card reimbursement fee" means the fee that a taxpayer receives from a merchant's bank because a person to whom the taxpayer has issued a credit card 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 company; a savings and loan association; a trust company; a credit union, except a credit union that is exempt from taxes under s. 71.26 (1) (a); a production credit association; or an agency or branch of a foreign depository; whether chartered under the laws of this state, another state or territory, the laws of the United States or the laws of a foreign county. "Financial organization" includes a corporation that derives at least 50% of its total gross income from finance leases, including direct finance leases and leverage leases as defined by rule, and a corporation that derives at least 50% of its total gross income from an activity that a financial organization performs.

INSERT 13-12

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

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

INSERT 13-15

(b) *Apportionment.* For taxable years beginning after December 31, 1999, a financial organization that does business in this state and outside this state shall apportion its net business income as provided in this subsection. A taxpayer that is subject to this subsection shall apportion its nonbusiness income under sub. (5) (b) and shall deduct the net business income that follows the situs of its property from its total net business income. The taxpayer's remaining net business income shall be apportioned to this state by multiplying the remaining net business income by an apportionment fraction that has as a numerator the gross receipts of the taxpayer in this state during the taxable year and that has a denominator the taxpayer's total gross receipts during the taxable year. The following sources of a taxpayer's business income are subject to apportionment:

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

3. 'Gross interest from loans secured by real property.' The numerator of the apportionment fraction includes gross interest, fees or penalties from loans that are secured by real property if the real property is located in this state at the time the loan is secured. If the real property that is used to secure a loan is located in this state and in another state or a foreign country, the gross interest, fees or penalties from the loan are included in the numerator of the apportionment fraction, if at least 50% of the fair market value of the real property is located within this state or if the loan borrower is located in this state.

4. 'Gross interest from loans.' The numerator of the apportionment fraction includes gross interest, fees or penalties from loans that are not secured by real property, if the loan borrower is located in this state.

5. 'Sale of loans.' The numerator of the apportionment fraction includes income from the sale of loans and income under section 1286 of the Internal Revenue Code. The income that is included in the numerator is determined as follows:

a. The gross receipts from the sale of loans secured by real property is multiplied by a fraction that has as a numerator the amount included in the numerator under subd. 3 and that has as a denominator the total amount of interest, fees and penalties from loans that are secured by real property.

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

6. 'Credit card receivables.' The numerator of the apportionment fraction includes gross interest, fees or penalties from credit card receivables and gross receipts from fees charged to credit card holders, if the billing address of the credit card holder is in this state.

7. 'Gross receipts from the sale of credit card receivables.' The numerator of the apportionment fraction includes gross receipts from the sale of credit card receivables, multiplied by a fraction 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.

8. 'Credit card reimbursement fees.' The numerator of the apportionment fraction includes credit card reimbursement fees, multiplied by a fraction 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.

9. 'Gross receipts from a merchant discount.' The numerator of the apportionment fraction includes gross receipts from a merchant discount if the merchant's business is principally managed from a location in this state. The gross receipts from a merchant discount shall not include credit card holder charge backs.

The amount of gross receipts from a merchant discount shall not be reduced by interchange transaction fees or by a credit card reimbursement fee.

10. 'Loan servicing fees.' a. The numerator of the apportionment fraction includes loan servicing fees derived from loans that are secured by real property, multiplied by a fraction that has as a numerator the amount included in the numerator under subd. 3. and that has as a denominator the total amount of interest, fees and penalties from loans that are secured by real property. The numerator of the apportionment fraction also includes loan servicing fees derived from loans that are not secured by real property, multiplied by a fraction that has as a numerator the amount included in the numerator under subd. 4. and that has as a denominator the total amount of interest, fees and penalties from loans that are not secured by real property.

b. If the taxpayer receives loan servicing fees for servicing a loan, the numerator of the apportionment fraction shall include such fees if the borrower of the loan is located in this state.

11. 'Gross income from investment banking services.' The numerator of the apportionment fraction includes gross income, including commissions, management fees or underwriting fees, earned from investment banking services if the purchaser of the services is located in this state.

12. 'Gross receipts from other services.' The gross receipts from services that are not described under subds. 1. to 11. shall be apportioned under sub. (9) (dr).

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

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

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

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

1. "Billing address" has the meaning given ~~under s. 71.25~~ in sub. (9d) (a) 1.

broker-dealer

~~1.~~ 3. "Broker-dealer" means a person who does business as a broker of securities or commodities. "Broker-dealer" does not include a sales agent; a bank, savings institution or trust company that enters a securities or commodities transaction as an agent; a executor, guardian or conservator who enters a securities or commodities transaction as an agent for another; or a person who purchases or sells the person's own securities or commodities.

move

~~2.~~ 2. "Brokerage commission" includes sales fees on agency or principal transactions.

~~3.~~ 4. "Taxpayer" means a broker or an underwriter who is subject to apportionment under this subsection.

~~4.~~ 5. "Underwriter" means a person who guarantees to provide a definite sum of money by a definite date to a corporate or government entity in exchange for securities; who markets a corporate or government security offering to the public; or who buys a security offering for a specified price and sells the security offering to the public.

(b) *Apportionment.* For taxable years beginning after December 31, 1999, a broker or an underwriter who does business in this state and outside this state shall apportion its net business income as provided under this subsection. A taxpayer that is subject to this subsection shall apportion its nonbusiness income under sub. (5) (b) and shall deduct the net business income that follows the situs of its property from its total net business income. The taxpayer's remaining net business income shall be apportioned to this state by multiplying the remaining net business income by an apportionment fraction that has as a numerator the gross receipts of the taxpayer in this state during the taxable year and that has a denominator the taxpayer's total gross receipts during the taxable year. The following sources of a taxpayer's business income are subject to apportionment:

1. 'Security brokerage services.' The numerator of the apportionment fraction 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.

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

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

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

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

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

commercial domicile is

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

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

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

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

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

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

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

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

71.45 **(3)** APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in par. (c), to determine Wisconsin income for purposes of the franchise tax, domestic insurers ~~not engaged in the sale of life insurance but which~~ that, 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:

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

on subjects of insurance resident,

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

In this subsection, "assumed premiums" means assumed reinsurance premiums from domestic insurance companies as reported for the taxable year on an annual statement that is filed by the commissioner of insurance.

WPO: score

plain

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

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

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

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

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

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

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

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

21. Page 882, line 24: delete the material beginning with that line and ending with page 884, line 3.

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

"(7to) APPORTIONMENT FACTORS. The treatment of sections 71.01 (1g) and ~~(1og)~~ (5r), 71.04 (4) (a), (b) and (c), (5) (intro.), (6) (intro.) and (7) (d), (dc), (dg), (dn), (dr), (ds), (dt) and (dw), 71.22 (1), (1d) and ~~(1og)~~ (3g), 71.25 (6) (a), (b) and (c), (7) (intro.), (8) (intro.) and (9) (d), (dc), (dg), (dn), (dr), ~~(ds),~~ (dt) and (dw), 71.28 (4) (a) and (am) 1., 71.45 (3) (intro.), (a) and (c) and (3m) and 71.47 (4) (a) and (am) of the statutes and the renumbering and amendment of sections 71.04 (4), 71.25 (6) and 71.45 (3) (b) of the statutes take effect on the January 1 after publication.".

(END)

1999–2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0678/~~1~~3ins
JK:kg:ksh

Insert 1 – 1

1. Page 837, line 4: after that line insert:

"**SECTION 1673g.** 71.01 (1g) of the statutes is created to read:

71.01 **(1g)** "Commercial domicile" means the location of a trade or business from which the trade or business is principally managed in the United States, regardless of whether the trade or business is organized under the laws of a foreign country, the commonwealth of Puerto Rico or any territory or possession of the United States.

SECTION 1673m. 71.01 (5r) of the statutes is created to read:

71.01 **(5r)** "Intangible property" includes 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 and trade secrets. "Intangible property" does not include securities.

INSERT 7 – 19

2. Page 856, line 24: after that line insert:

"**SECTION 1722g.** 71.22 (1) of the statutes is renumbered 71.22 (1g).

SECTION 1722h. ~~71.01~~ 71.22 (1d) of the statutes is created to read:

71.22 **(1d)** "Commercial domicile" means the location of a trade or business from which the trade or business is principally managed in the United States, regardless of whether the trade or business is organized under the laws of a foreign country, the commonwealth of Puerto Rico or any territory or possession of the United States.

SECTION 1722m. 71.22 (3g) of the statutes is created to read:

71.22 (3g) "Intangible property" includes 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 and trade secrets. "Intangible property" does not include securities.".

Insert 13 – 1

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

2. "Credit card" includes a debit card, a travel card and an entertainment card.

Insert 13 – 12

5. "Loan" means any extension of credit or creation of debt that results from direct negotiations between the taxpayer under this subsection and the taxpayer's customer; the purchase, in whole or in part, of an extension of credit; and participations, syndications and leases that are considered loans for federal income tax purposes. "Loan" does not include loans under section 595 of the Internal Revenue Code; futures or forward contracts; options; notional principal contracts; credit card receivables; purchased credit card relationships; non–interest bearing balances that are due from depository institutions; cash items in the process of collection; federal funds sold; securities; assets held in a trading account; and interest in any mortgage–backed or assets–backed security.

Insert 13 – 12

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0678/1dn
JK:kg:ksh

Please note that under sections 71.04(8)(c) and 71.25(10)(c) of the statutes "telecommunications companies" and "public utilities" are listed separately.

Ron Shanovich:

1. As we discussed, I did not include the phrase "subject to constitutional limitations" as recommended by the department of revenue (DOR). The phrase has ~~not~~ no legal effect: *all* statutes are subject to constitutional limitations. DOR gains no added protection from such a phrase. Please note that all statutes are presumed to be constitutionally valid. See *State v. Betrand*, 162 Wis.2d 411, 415 (Ct. App. 1991).

2. I did not include a definition for "telecommunications company" because a definition has not been provided. Is there a definition that DOR wishes to use? I also did not include definitions for any term, such as "borrower", that seemed, in context, to have a relatively common meanings, or for any term, such as "loan secured by real property", that seemed to contained substantive content that was addressed elsewhere in the draft.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0678/3dn
JK:kg:jf

June 15, 1999

Ron Shanovich:

1. As we discussed, I did not include the phrase "subject to constitutional limitations" as recommended by the department of revenue (DOR). The phrase has no legal effect: *all* statutes are subject to constitutional limitations. DOR gains no added protection from such a phrase. Please note that all statutes are presumed to be constitutionally valid. See *State v. Betrand*, 162 Wis.2d 411, 415 (Ct. App. 1991).

2. I did not include a definition for "telecommunications company" because a definition has not been provided. Is there a definition that DOR wishes to use? Please note that under sections 71.04 (8) (c) and 71.25 (10) (c) of the statutes "telecommunications companies" and "public utilities" are listed separately. I also did not include definitions for any term, such as "borrower", that seemed, in context, to have a relatively common meaning or for any term, such as "loan secured by real property", that seemed to contain substantive content that was addressed elsewhere in the draft.

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1999 – 2000 LEGISLATURE LRBb0678/~~3~~ 4
JK:kg:jf

in 6-15-99

LFB:......Shanovich (RR) – 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~~ Today

At the locations indicated, amend the bill as follows:

1. Page 837, line ~~4~~ 3: after that line insert:

"**SECTION 1673g.** 71.01 (1g) of the statutes is created to read:

71.01 **(1g)** "Commercial domicile" means the location of a trade or business from which the trade or business is principally managed in the United States, regardless of whether the trade or business is organized under the laws of a foreign country, the commonwealth of Puerto Rico or any territory or possession of the United States.

SECTION 1673m. 71.01 (5r) of the statutes is created to read:

71.01 **(5r)** "Intangible property" includes 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 and trade secrets. "Intangible property" does not include securities.".

INSERT 2-5

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

INSERT 2-6

3. Page 837, line 15: after "FORMULA." insert "(intro.)".

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

5. Page 838, line 4: delete the material beginning with "For" and ending with "(7)." on line 10 and substitute "Except as provided under s. 71.25 (9d) and (9g), the remaining net income shall be apportioned to ~~Wisconsin~~ 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.~~ the following:".

6. Page 838, line 10: after that line insert:

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

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

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

71.04 **(4)** (b) For taxable years beginning after December 31, 2001, and before January 1, 2003, an apportionment fraction composed of a sales factor under sub. (7)

representing 85% of the fraction, a property factor under sub. (5) representing 7.5% of the fraction and a payroll factor under sub. (6) representing 7.5% of the fraction.

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

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

7. Page 838, line 13: on lines 13 and 16, delete "2000" and substitute "2003".

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

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

2. 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 while leased or rented in the taxable year and having as a denominator the total number of landings of the aircraft while leased or rented in the taxable year.

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

having as a denominator the total number of days that the vessel or mobile equipment is leased or rented in the taxable year.

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

SECTION 1681. 71.04 (7) (dn) of the statutes is created to read:

71.04 **(7)** (dn) For taxable years beginning after December 31, 1999, gross royalties and gross income received for the use of intangible property are attributed to this state if any of the following ~~applies~~ occurs:

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

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

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

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

5. The taxpayer is not subject to income tax in the state in which the intangible property is used but the taxpayer's commercial domicile is in this state.

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

71.04 **(7)** (dr) 1. For taxable years beginning after December 31, 1999, receipts from a service are attributed to the state where the purchaser of the service received the benefit of the service. The benefit of a service is received in this state if any of the following applies:

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

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

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

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

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

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

3. If the taxpayer is not subject to income tax in the state in which the benefit of the service is received, the benefit of the service is received in this state to the extent that the taxpayer's employes or representatives performed services from a location in this state.

SECTION 1682b. 71.04 (7) (ds) of the statutes is created to read:

71.04 (7) **(ds)** 1. For taxable years beginning after December 31, 1999, the gate receipts from professional sporting events are attributed to the state in which the taxpayer's sports facility is located. Gate receipts include the taxpayer's in–state gate receipts and the taxpayer's share of out–of–state gate receipts.

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

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

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

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

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

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

2. A person who has filed a tax return and who has reported income on the return as apportioned under subd. 1 may request permission from the department to use an alternative apportionment method in the next taxable year, if the person

receives at least 50% of the person's total gross receipts in a taxable year from a business described under sub. (8) (c). If the department grants permission to a person to use an alternative apportionment method under this subdivision, the person may not use the alternative method, and shall apportion income under subd. 1., if the person receives less than 50% of the person's total gross receipts in a taxable year from a business described under sub. (8) (c).

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

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

71.04 **(8)** (title) RAILROADS, ~~FINANCIAL ORGANIZATIONS~~ TELECOMMUNICATIONS COMPANIES AND PUBLIC UTILITIES.

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

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

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

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

INSERT 8-7

9. Page 856, line 24: after that line insert:

INSERT 8-8

"SECTION **1722g.** 71.22 (1) of the statutes is renumbered 71.22 (1g).

SECTION **1722h.** 71.22 (1d) of the statutes is created to read:

71.22 **(1d)** "Commercial domicile" means the location of a trade or business from which the trade or business is principally managed in the United States, regardless of whether the trade or business is organized under the laws of a foreign country, the commonwealth of Puerto Rico or any territory or possession of the United States.

SECTION **1722m.** 71.22 (3g) of the statutes is created to read:

71.22 **(3g)** "Intangible property" includes 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 and trade secrets. "Intangible property" does not include securities.".

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

11. Page 858, line 8: after "FORMULA." insert "(intro.)".

12. Page 858, line 22: delete the material beginning with "or the" and ending with "(9)." on page 859, line 4, and substitute "~~or the residence of the recipient. The~~ . Except as provide in subs. (9d) and (9g), the remaining net income shall be apportioned to ~~Wisconsin~~ this state by use of ~~an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.~~ the following:".

13. Page 859, line 4: after that line insert:

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

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

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

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

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

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

14. Page 859, line 7: on lines 7 and 10, delete "2000" and substitute "2003".

~~**15.** Page 859, line 20: delete "1999" and substitute "2002".~~

16. Page 860, line 7: delete the material beginning with that line and ending with page 862, line 7, and substitute:

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

2. 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 while leased or rented in the taxable year and having as a denominator the total number of landings of the aircraft while leased or rented in the taxable year.

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

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

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

71.25 **(9)** (dn) For taxable years beginning after December 31, 1999, gross royalties and gross income received for the use of intangible property are attributed to this state if any of the following applies:

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

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

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

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

5. The taxpayer is not subject to income tax in the state in which the intangible property is used but the taxpayer's commercial domicile is in this state.

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

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

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

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

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

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

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

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

3. If the taxpayer is not subject to income tax in the state in which the benefit of the service is received, the benefit of the service is received in this state to the extent that the taxpayer's employes or representatives performed services from a location in this state.

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

71.25 (9) **(ds)** 1. For taxable years beginning after December 31, 1999, the gate receipts from professional sporting events are attributed to the state in which the taxpayer's sports facility is located. Gate receipts include the taxpayer's in–state gate receipts and the taxpayer's share of out–of–state gate receipts.

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

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

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

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

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

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

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

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

"SECTION 1738g. 71.25 (9d) of the statutes is created to read:

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

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

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

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

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

5. "Loan" means any extension of credit or creation of debt that results from direct negotiations between the taxpayer under this subsection and the taxpayer's customer; the purchase, in whole or in part, of an extension of credit; and participations, syndications and leases that are considered loans for federal income tax purposes. "Loan" does not include loans under section 595 of the Internal

, except that "financial organization" does not include an insurance company that is taxable under s. 71.43 or a real estate broker, securities dealer or broker-dealer that is taxable under s. 71.26.

#. Page 862, line 9: after that line insert:

Revenue Code; futures or forward contracts; options; notional principal contracts; credit card receivables; purchased credit card relationships; noninterest bearing balances that are due from depository institutions; cash items in the process of collection; federal funds sold; securities; assets held in a trading account; and interest in any mortgage–backed or assets–backed security.

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

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

8. "Taxpayer" means a financial organization that is subject to apportionment under this subsection.

(b) *Apportionment.* For taxable years beginning after December 31, 1999, a financial organization that does business in this state and outside this state shall apportion its net business income as provided in this subsection. A taxpayer that is subject to this subsection shall apportion its nonbusiness income under sub. (5) (b) and shall deduct the net business income that follows the situs of its property from its total net business income. The taxpayer's remaining net business income shall be apportioned to this state by multiplying the remaining net business income by an apportionment fraction that has as a numerator the gross receipts of the taxpayer in this state during the taxable year and that has a denominator the taxpayer's total gross receipts during the taxable year. The following sources of a taxpayer's business income are subject to apportionment:

, and if the value of the real property represents at least 50% of the aggregate value of the collateral that is used to secure the loan

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

3. 'Gross interest from loans secured by real property.' The numerator of the apportionment fraction includes gross interest, fees or penalties from loans that are secured by real property if the real property is located in this state at the time the loan is secured. If the real property that is used to secure a loan is located in this state and in another state or a foreign country, the gross interest, fees or penalties from the loan are included in the numerator of the apportionment fraction, if at least 50% of the fair market value of the real property is located within this state or if the loan borrower is located in this state.

4. 'Gross interest from loans.' The numerator of the apportionment fraction includes gross interest, fees or penalties from loans that are not secured by real property, if the loan borrower is located in this state.

5. 'Sale of loans.' The numerator of the apportionment fraction includes income from the sale of loans and income under section 1286 of the Internal Revenue Code. The income that is included in the numerator is determined as follows:

a. The gross receipts from the sale of loans secured by real property is multiplied by a fraction that has as a numerator the amount included in the numerator under subd. 3 and that has as a denominator the total amount of interest, fees and penalties from loans that are secured by real property.

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

6. 'Credit card receivables.' The numerator of the apportionment fraction includes gross interest, fees or penalties from credit card receivables and gross receipts from fees charged to credit card holders, if the billing address of the credit card holder is in this state.

7. 'Gross receipts from the sale of credit card receivables.' The numerator of the apportionment fraction includes gross receipts from the sale of credit card receivables, multiplied by a fraction 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.

8. 'Credit card reimbursement fees.' The numerator of the apportionment fraction includes credit card reimbursement fees, multiplied by a fraction 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.

9. 'Gross receipts from a merchant discount.' The numerator of the apportionment fraction includes gross receipts from a merchant discount if the merchant's business is principally managed from a location in this state. The gross receipts from a merchant discount shall not include credit card holder charge backs. The amount of gross receipts from a merchant discount shall not be reduced by interchange transaction fees or by a credit card reimbursement fee.

10. 'Loan servicing fees.' a. The numerator of the apportionment fraction includes loan servicing fees derived from loans that are secured by real property, multiplied by a fraction that has as a numerator the amount included in the numerator under subd. 3. and that has as a denominator the total amount of interest, fees and penalties from loans that are secured by real property. The numerator of the apportionment fraction also includes loan servicing fees derived from loans that are not secured by real property, multiplied by a fraction that has as a numerator the amount included in the numerator under subd. 4. and that has as a denominator the total amount of interest, fees and penalties from loans that are not secured by real property.

b. If the taxpayer receives loan servicing fees for servicing a loan, the numerator of the apportionment fraction shall include such fees if the borrower of the loan is located in this state.

11. 'Gross income from investment banking services.' The numerator of the apportionment fraction includes gross income, including commissions, management fees or underwriting fees, earned from investment banking services if the purchaser of the services is located in this state.

12. 'Gross receipts from other services.' The gross receipts from services that are not described under subds. 1. to 11. shall be apportioned under sub. (9) (dr).

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

(c) *Receipts not taxed.* Fifty percent of the gross receipts of the taxpayer that are apportioned under this subsection to a state in which the taxpayer is not taxable is included in the numerator of the apportionment fraction under par. (b), if the taxpayer's commercial domicile is in this state.

SECTION 173~~6~~8k. 71.25 (9g) of the statutes is created to read:

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

1. "Billing address" has the meaning given in sub. (9d) (a) 1.

2. "Brokerage commission" includes sales fees on agency or principal transactions.

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

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

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

(b) *Apportionment.* For taxable years beginning after December 31, 1999, a broker or an underwriter who does business in this state and outside this state shall apportion its net business income as provided under this subsection. A taxpayer that is subject to this subsection shall apportion its nonbusiness income under sub. (5) (b) and shall deduct the net business income that follows the situs of its property from its total net business income. The taxpayer's remaining net business income shall be apportioned to this state by multiplying the remaining net business income by an apportionment fraction that has as a numerator the gross receipts of the taxpayer in this state during the taxable year and that has a denominator the taxpayer's total gross receipts during the taxable year. The following sources of a taxpayer's business income are subject to apportionment:

1. 'Security brokerage services.' The numerator of the apportionment fraction 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.

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

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

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

(c) *Receipts not taxed.* The gross receipts of the taxpayer that are apportioned under this subsection to a state in which the taxpayer is not taxable are included in the numerator of the apportionment fraction under par. (b), if the taxpayer's commercial domicile is in this state.

SECTION 173~~6~~8m. 71.25 (10) (title) of the statutes is amended to read:

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

SECTION 173~~6~~8p. 71.25 (10) (c) of the statutes is amended to read:

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

SECTION 173~~6~~8r. 71.25 (11) of the statutes is amended to read:

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

INSERT 21-19

17. Page 878, line 13: delete the material beginning with that line and ending with page 879, line 12, and substitute:

INSERT 21-21

that

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

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

71.45 **(3)** APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in par. (c), to determine Wisconsin income for purposes of the franchise tax, domestic insurers ~~not engaged in the sale of life insurance but which~~ that, 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:

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

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

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

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

20. Page 881, line 9: after that line insert:

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

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

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

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

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

22. Page 882, line 24: delete the material beginning with that line and ending with page 884, line 3 , and substitute: INSERT 23-20

71.03(1),

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

"(7to) APPORTIONMENT FACTORS. The treatment of sections 71.01 (1g), (8g), (8m) and (5r), 71.04 (4) (a), (b) and (c), (5) (intro.), (6) (intro.) and (7) (d), (dc), (dg), (dn), (dr), (ds), (dt) and (dw), 71.07 (3m) (a) 1. b. and (10), 71.195, 71.22 (1), (1d) and (3g), 71.25 (6) (a), (b) and (c), (7) (intro.), (8) (intro.)

INSERT 23-18

(2m) (a) 1. b. and (2m) (a) 1. b. and and (i)

and (9) (d), (dc), (dg), (dn), (dr), ~~(ds), (dt)~~ and (dw), 71.28 (4) (a), ~~and~~ (am) 1., 71.45 (3) (intro.), (a) and (c) and (3m), ~~and~~ 71.47 (4) (a), ~~and~~ (am) of the statutes and the renumbering and amendment of sections 71.04 (4), 71.25 (6) and 71.45 (3) (b) of the statutes take effect on the January 1 after publication.".

(END)

and 71.58 (1) (c) and (i) and (cm)

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1673p

Insert 2-5

~~1. Page 837, line 4: after that line insert:~~

1673r

SECTION ??. 71.01 (8g) of the statutes is amended to read:

71.01 **(8g)** "Member" does not include a member of a limited liability company treated as a corporation under s. 71.22 ~~(1)~~ (1g).

SECTION ??. 71.01 (8m) of the statutes is amended to read:

71.01 **(8m)** "Partner" does not include a partner of a publicly traded partnership treated as a corporation under s. 71.22 ~~(1)~~ (1g). ".

1674M m

Insert 2-6

13

2. Page 837, line 4: after that line insert:

SECTION ?. 71.03 (1) of the statutes is amended to read:

71.03 **(1)** DEFINITION. In this section, "gross income" means all income, from whatever source derived and in whatever form realized, whether in money, property or services, which is not exempt from Wisconsin income taxes. "Gross income" includes, but is not limited to, the following items: compensation for services, including salaries, wages and fees, commissions and similar items; gross income derived from business; interest; rents; royalties; dividends; alimony and separate maintenance payments; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive shares of partnership gross income except distributive shares of the income of publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ (1g); distributive shares of limited liability company gross income except distributive shares of the income of limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1g); income in respect of a decedent; and income from an interest in an estate or trust. "Gross income" from a business or farm consists of the total gross receipts without reduction for cost of goods sold, expenses or any other amounts. The gross rental amounts received from rental properties are included in gross income without reduction for expenses or any other amounts. "Gross income" from the sale of securities, property or other assets consists of the gross selling price without reduction for the cost of the assets, expenses of sale or any other amounts. "Gross income" from an annuity, retirement plan or profit sharing plan consists of the gross amount received without reduction for the employe's contribution to the annuity or plan.".

Insert 8-7

1710d

3. Page ~~[illegible]~~ 854, line ~~24~~ 14: after that line insert:

"SECTION ??. 71.07 (3m) (a) 1. b. of the statutes is amended to read:

71.07 **(3m)** (a) 1. b. For partnerships except publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ (1g), or limited liability companies, except limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1g), "claimant" means each individual partner or member.".

~~**Insert**~~

1719d

4. Page 856, line 2: after that line insert:

"SECTION ??. 71.07 (10) of the statutes is amended to read:

71.07 **(10)** CREDITS NOT ALLOWED. The credits under s. 71.28 (4) and (5) may not be claimed by partners, including partners of a publicly traded partnership treated as a corporation under s. 71.22 ~~(1)~~ (1g), members of a limited liability company, including members of a limited liability company treated as a corporation under s. 77.22 ~~(1)~~ (1g), or shareholders of a tax–option corporation.".

~~**Insert**~~

End of Insert 8-7

1722d ✓

Insert 8-8

~~5. Page 856, line 9: after that line insert:~~

SECTION ??. 71.195 of the statutes is amended to read:

71.195 Definition. In this subchapter, "partnership" includes limited liability companies and other entities that are treated as partnerships under the Internal Revenue Code, and "partnership" does not include publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ (1g).

END

1744b

Insert 21-19

6. Page 877, line 22: after that line insert:

SECTION ??. 71.28 (2m) (a) 1. b. of the statutes is amended to read:

71.28 **(2m)** (a) 1. b. For partnerships, except publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ (1g), or limited liability companies, except limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1g), "claimant" means each individual partner or member.

1746d

Insert 21-21

~~7. Page 878, line 13: after that line insert:~~

¶ SECTION ??. 71.28 (4) (i) of the statutes is amended to read:

71.28 **(4)** (i) *Nonclaimants.* The credits under this subsection may not be claimed by a partnership, except a publicly traded partnership treated as a corporation under s. 71.22 ~~(1)~~ (1g), limited liability company, except a limited liability company treated as a corporation under s. 71.22 ~~(1)~~ (1g), or tax–option corporation or by partners, including partners of a publicly traded partnership, members of a limited liability company or shareholders of a tax–option corporation.

~~**Insert**~~

1757b

Insert 23-18

8. Page 882, line 8: after that line insert:

SECTION ??. 71.47 (2m) (a) 1. b. of the statutes is amended to read:

71.47 **(2m)** (a) 1. b. For partnerships, except publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ <u>(1g)</u>, or limited liability companies, except limited liability companies treated as corporations under s. 71.22 ~~(1)~~ <u>(1g)</u>, "claimant" means each individual partner or member.

1759d **Insert** 23-20

~~**9.** Page 882, line 23: after that line insert:~~

SECTION ??. 71.47 (4) (i) of the statutes is amended to read:

71.47 **(4)** (i) *Nonclaimants.* The credits under this subsection may not be claimed by a partnership, except a publicly traded partnership treated as a corporation under s. 71.22 ~~(1)~~ <u>(1g)</u>, limited liability company, except a limited liability company treated as a corporation under s. 71.22 ~~(1)~~ <u>(1g)</u>, or tax–option corporation or by partners, including partners of a publicly traded partnership, members of a limited liability company or shareholders of a tax–option corporation.

1764g ~~**Insert**~~ 1764s

10. Page 885, line 10: after that line insert:

SECTION ??. 71.58 (1) (c) of the statutes is amended to read:

71.58 **(1)** (c) For partnerships except publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ <u>(1g)</u>, "claimant" means each individual partner.

SECTION ??. 71.58 (1) (cm) of the statutes is amended to read:

71.58 **(1)** (cm) For limited liability companies, except limited liability companies treated as corporations under s. 71.22 ~~(1)~~ <u>(1g)</u>, "claimant" means each individual member.

end of Insert 23-20