



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0678/A
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

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

2 **1.** Page 837, line 14: after “is” insert “renumbered 71.04 (4) (intro) and”.

3 **2.** Page 837, line 15: after “FORMULA.” insert “(intro.)”.

4 **3.** Page 838, line 1: delete “financial organizations” and substitute “financial
5 organizations telecommunications companies”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 71.04 (7) (dt) 1. For taxable years beginning after December 31, 1999, the gross
21 receipts from radio and television broadcasting, including advertising revenue, are
22 attributed to this state in proportion to the audience in this state as compared to the
23 total audience.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 71.25 (6) (b) For taxable years beginning after December 31, 2001, and before
13 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (9)
14 representing 85% of the fraction, a property factor under sub. (7) representing 7.5%
15 of the fraction and a payroll factor under sub. (8) representing 7.5% of the fraction.

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

17 71.25 (6) (c) For taxable years beginning after December 31, 2002, an
18 apportionment fraction composed of the sales factor under sub. (9).”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 in this state during the taxable year and that has a denominator the taxpayer's total
2 gross receipts during the taxable year. The following sources of a taxpayer's business
3 income are subject to apportionment:

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

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

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

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

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

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

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

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

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

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

16 8. 'Credit card reimbursement fees.' The numerator of the apportionment
17 fraction includes credit card reimbursement fees, multiplied by a fraction that has
18 as a numerator the amount included in the numerator under subd. 6. and that has
19 as a denominator the total amount of interest, fees and penalties that are charged
20 to credit card holders.

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

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

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

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

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

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

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

24 (c) *Receipts not taxed.* Fifty percent of the gross receipts of the taxpayer that
25 are apportioned under this subsection to a state in which the taxpayer is not taxable

1 is included in the numerator of the apportionment fraction under par. (b), if the
2 taxpayer's business is principally managed at a location in this state.

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

4 71.25 (9g) BROKERS AND UNDERWRITERS. (a) *Definitions.* In this subsection:

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

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

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

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

20 (b) *Apportionment.* For taxable years beginning after December 31, 1999, a
21 broker or an underwriter who does business in this state and outside this state shall
22 apportion its net business income as provided under this subsection. A taxpayer that
23 is subject to this subsection shall apportion its nonbusiness income under sub. (5) (b)
24 and shall deduct the net business income that follows the situs of its property from
25 its total net business income. The taxpayer's remaining net business income shall

1 be apportioned to this state by multiplying the remaining net business income by an
2 apportionment fraction that has as a numerator the gross receipts of the taxpayer
3 in this state during the taxable year and that has a denominator the taxpayer's total
4 gross receipts during the taxable year. The following sources of a taxpayer's business
5 income are subject to apportionment:

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

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

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

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

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

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

1 71.25 (10) (title) RAILROADS, ~~FINANCIAL ORGANIZATIONS~~ TELECOMMUNICATIONS
2 COMPANIES AND PUBLIC UTILITIES.

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

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

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

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

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

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

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

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

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

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

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

2 “71.45 (3) (b) 1. ~~The Subject to par. (c), the percentage of determined by dividing~~
3 total payroll, exclusive of life insurance payroll, paid everywhere in the taxable year
4 ~~as reflects such compensation by the payroll, exclusive of life insurance payroll, paid~~
5 ~~outside in~~ this state in the taxable year.”.

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

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

8 71.45 (3) (c) 1. For taxable years beginning after December 31, 2000, and before
9 January 1, 2002, the percentage under par. (a) represents 63% of the arithmetic
10 average of the amounts under pars. (a) and (b) 1.

11 2. For taxable years beginning after December 31, 2001, and before January
12 1, 2003, the percentage under par. (a) represents 85% of the arithmetic average of the
13 amounts under pars. (a) and (b) 1.

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

18 **20.** Page 881, line 11: delete “pars. (a) and (b)” and substitute “sub. (3) (c)”.

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

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

22 “(7to) APPORTIONMENT FACTORS. The treatment of sections 71.04 (4) (a), (b) and
23 (c), (5) (intro.), (6) (intro.) and (7) (d), (dc), (dg), (dn), (dr), (ds), (dt) and (dw), 71.25
24 (6) (a), (b) and (c), (7) (intro.), (8) (intro.) and (9) (d), (dc), (dg), (dn), (dr), (ds), (dt) and

1 (dw), 71.28 (4) (a) and (am) 1., 71.45 (3) (intro.), (a) and (c) and (3m) and 71.47 (4) (a)
2 and (am) of the statutes and the renumbering and amendment of sections 71.04 (4),
3 71.25 (6) and 71.45 (3) (b) of the statutes take effect on the January 1 after
4 publication.”.

5 (END)

6/14/99

6 pages

To: Tom OURADA

From: CAROL HELD

Here are comments on the single sales
factor draft

②

LRB 678/1

1. Page 1, line 5; page 6, line 33; page 7, line 1; page 19, lines 1 and 5: The term "telecommunications companies" is added. Is it necessary to define this term in the statute? 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 had proposed listing the kinds of intangibles that would be included. In addition, we had proposed stating that stocks, bonds and other securities would not be included. How does the language included in the amendment affect our interpretation? Are we going to run into IBM - US Steel type issues?

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

lead to income being sourced to more than one state. The intent was that if the location of the customer could be determined, that's how the income would be sourced. If the customer's location couldn't be determined, then the other factors would be taken into consideration.

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

6. Page 5, line 5; page 11, line 9. The draft does not include a throwback provision: "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 the extent that the taxpayer's employees or representatives performed services from a location in this state." Was it intended?

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 relating to gate receipts is confusing. Gate receipts should include in-state receipts 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 "financial institutions" on page 12, line 25?

9. Page 12, line 24 and following. Many of 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 wanted to avoid putting definitions in rules because 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 50

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

13. Page 20, line 15: The word "resident" was added in the wrong place. Language 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?



3

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

Insert 1-1

~~SOON~~
Today

D-N

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 837, line 14: after "is" insert "renumbered 71.04 (4) (intro) and".
- 3 **2.** Page 837, line 15: after "FORMULA." insert "(intro.)".
- 4 **3.** Page 838, line 1: delete "financial organizations" and substitute "financial
- 5 organizations telecommunications companies".
- 6 **4.** Page 838, line 4: delete the material beginning with "For" and ending with
- 7 "(7)." on line 10 and substitute "Except as provided under s. 71.25 (9d) and (9g), the
- 8 remaining net income shall be apportioned to ~~Wisconsin~~ this state by use of an
- 9 ~~apportionment fraction composed of a sales factor representing 50% of the fraction,~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 71.04 (7) (dn) For taxable years beginning after December 31, 1999, gross
20 royalties and gross income received for the use of intangible property ~~excluding~~

21 ~~activities~~ are attributed to this state if any of the following applies:

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

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

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

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

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

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

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

- 16 a. The service relates to real property that is located in this state.
- 17 b. The service relates to tangible personal property that is located in this state
- 18 at the time that the service is received.
- 19 c. The service is provided to a person who is located in this state.
- 20 d. The service is provided to a person doing business in this state.
- 21 e. The service is performed at a location in this state.

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

taxpayer is not subject to income tax in the state in which the intangible property is used
taxpayer's commercial domicile

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

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

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

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

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

20 71.04 (7) (dt) 1. For taxable years beginning after December 31, 1999, the gross
21 receipts from radio and television broadcasting, including advertising revenue, are
22 attributed to this state in proportion to the audience in this state as compared to the
23 total audience.

Q3.

If the taxpayer is not subject to income tax in the state in which the benefit 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.

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

of the service subject

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **11.** Page 858, line 22: delete the material beginning with "or the" and ending
23 with "(9)." on page 859, line 4, and substitute "~~or the residence of the recipient.~~ The

24 Except as provide in subs. (9d) and (9g), the remaining net income shall be

Insert 7-19 ✓

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

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

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

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

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

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

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

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

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

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

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

12 71.25 (6) (b) For taxable years beginning after December 31, 2001, and before
13 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (9)
14 representing 85% of the fraction, a property factor under sub. (7) representing 7.5%
15 of the fraction and a payroll factor under sub. (8) representing 7.5% of the fraction.

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

17 71.25 (6) (c) For taxable years beginning after December 31, 2002, an
18 apportionment fraction composed of the sales factor under sub. (9).”.

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

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

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

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

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

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

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

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

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

taxpayer is not subject to income tax in the state in which is used
taxpayer's commercial domicile

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

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

- 19 a. The service relates to real property that is located in this state.
- 20 b. The service relates to tangible personal property that is located in this state
- 21 at the time that the service is received.
- 22 c. The service is provided to a person who is located in this state.
- 23 d. The service is provided to a person doing business in this state.
- 24 e. The service is performed at a location in this state.

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

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

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

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

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

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

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

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 employee or representatives performed services from a location in this state.

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

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

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

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

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

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

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

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

INSERT 13-1

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

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

13 6 3. "Merchant discount" means a fee or discount that is charged to a merchant
14 for accepting a credit card as payment for merchandise or services that are sold to
15 the credit card holder.

16 8 4. "Taxpayer" means a financial organization that is subject to apportionment
17 under this subsection.

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

INSERT
13-12

INSERT
13-15

1 in this state during the taxable year and that has a denominator the taxpayer's total
2 gross receipts during the taxable year. The following sources of a taxpayer's business
3 income are subject to apportionment:

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

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

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

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

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

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

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

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

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

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

16 8. 'Credit card reimbursement fees.' The numerator of the apportionment
17 fraction includes credit card reimbursement fees, multiplied by a fraction that has
18 as a numerator the amount included in the numerator under subd. 6. and that has
19 as a denominator the total amount of interest, fees and penalties that are charged
20 to credit card holders.

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

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

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

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

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

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

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

24 (c) *Receipts not taxed.* Fifty percent of the gross receipts of the taxpayer that
25 are apportioned under this subsection to a state in which the taxpayer is not taxable

Commercial domicile is

1 is included in the numerator of the apportionment fraction under par. (b), if the
2 taxpayer's business is principally managed at a location in this state.

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

4 71.25 (9g) BROKERS AND UNDERWRITERS. (a) *Definitions.* In this subsection:

1. "Billing address" has the meaning given under ~~225~~ 725(9d)(a) 1,

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

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

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

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

20 (b) *Apportionment.* For taxable years beginning after December 31, 1999, a
21 broker or an underwriter who does business in this state and outside this state shall
22 apportion its net business income as provided under this subsection. A taxpayer that
23 is subject to this subsection shall apportion its nonbusiness income under sub. (5) (b)
24 and shall deduct the net business income that follows the situs of its property from
25 its total net business income. The taxpayer's remaining net business income shall

Broker-dealer
11
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1 be apportioned to this state by multiplying the remaining net business income by an
2 apportionment fraction that has as a numerator the gross receipts of the taxpayer
3 in this state during the taxable year and that has a denominator the taxpayer's total
4 gross receipts during the taxable year. The following sources of a taxpayer's business
5 income are subject to apportionment:

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

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

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

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

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

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

commercial domicile is

1 71.25 (10) (title) RAILROADS, ~~FINANCIAL ORGANIZATIONS~~ TELECOMMUNICATIONS
2 COMPANIES AND PUBLIC UTILITIES.

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

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

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

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

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

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

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

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

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

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

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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.

plain

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

2 "71.45 (3) (b) 1. The Subject to par. (c), the percentage of determined by dividing
3 total payroll, exclusive of life insurance payroll, paid everywhere in the taxable year
4 as reflects such compensation ~~by the payroll, exclusive of life insurance payroll, paid~~
5 outside ~~this state in the taxable year.~~"

*paid in this state
in the taxable
year by*

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

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

8 71.45 (3) (c) 1. For taxable years beginning after December 31, 2000, and before
9 January 1, 2002, the percentage under par. (a) represents 63% of the ~~arithmetic~~
10 average of the amounts under pars. (a) and (b) 1.

11 2. For taxable years beginning after December 31, 2001, and before January
12 1, 2003, the percentage under par. (a) represents 85% of the ~~arithmetic~~ average of the
13 amounts under pars. (a) and (b) 1.

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

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

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

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

22 "(7to) APPORTIONMENT FACTORS. The treatment of sections 71.04 (4) (a), (b) and ✓
23 (c), (5) (intro.), (6) (intro.) and (7) (d), (dc), (dg), (dn), (dr), (ds), (dt) and (dw), 71.25
24 (6) (a), (b) and (c), (7) (intro.), (8) (intro.) and (9) (d), (dc), (dg), (dn), (dr), (ds), (dt) and ✓

*71.01 (1g) and (1og) ✓
(5r), ✓*

*71.22 (1), (1d) and (1j) ✓
(3g), ✓*

1 (dw), 71.28 (4) (a) and (am) 1., 71.45 (3) (intro.), (a) and (c) and (3m) and 71.47 (4) (a)
2 and (am) of the statutes and the renumbering and amendment of sections 71.04 (4),
3 71.25 (6) and 71.45 (3) (b) of the statutes take effect on the January 1 after
4 publication.”.

5 (END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0678/1ins
JK:kg:ksh

Insert 1 - 1 ✓

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

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

3 71.01 (1g) "Commercial domicile" means the location of a trade or business
4 from which the trade or business is principally managed in the United States,
5 regardless of whether the trade or business is organized under the laws of a foreign
6 country, the commonwealth of Puerto Rico or any territory or possession of the
7 United States.

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

9 71.01 (1g) "Intangible property" includes patents, copyrights, trademarks,
10 trade names, service names, service marks, logos, franchises, licenses, plans,
11 specifications, blueprints, processes, techniques, formulas, designs, layouts,
12 patterns, drawings, manuals, customer lists, contracts, technical know-how and
13 trade secrets. "Intangible property" does not include securities".

INSERT 7 - 19 ✓

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

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

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

17 71.22 (1d) "Commercial domicile" means the location of a trade or business
18 from which the trade or business is principally managed in the United States,
19 regardless of whether the trade or business is organized under the laws of a foreign
20 country, the commonwealth of Puerto Rico or any territory or possession of the
21 United States.

22 SECTION 1722m. 71.22 (1g) of the statutes is created to read:

1 71.22 (g) ³ "Intangible property" includes patents, copyrights, trademarks,
2 trade names, service names, service marks, logos, franchises, licenses, plans,
3 specifications, blueprints, processes, techniques, formulas, designs, layouts,
4 patterns, drawings, manuals, customer lists, contracts, technical know-how and
5 trade secrets. "Intangible property" does not include securities."

Insert 13 - 1 ✓

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

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

Insert 13 - 12 ✓

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

Insert 13 - 12 ✓

19 7. "State" means a state of the United States, the District of Columbia, the
20 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

3
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 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. Bertrand*, 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 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.

a

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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. Bertrand*, 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.

Joseph T. Kreye
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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

DOA Today

3

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

2 *✓* 1. Page 837, line 4: after that line insert:

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

4 71.01 (1g) "Commercial domicile" means the location of a trade or business
5 from which the trade or business is principally managed in the United States,
6 regardless of whether the trade or business is organized under the laws of a foreign
7 country, the commonwealth of Puerto Rico or any territory or possession of the
8 United States.

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

1 71.01 (5r) "Intangible property" includes patents, copyrights, trademarks,
 2 trade names, service names, service marks, logos, franchises, licenses, plans,
 3 specifications, blueprints, processes, techniques, formulas, designs, layouts,
 4 patterns, drawings, manuals, customer lists, contracts, technical know-how and
 5 trade secrets. "Intangible property" does not include securities.

INSERT
2-5

INSERT
2-6

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

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

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

10 5. Page 838, line 4: delete the material beginning with "For" and ending with
 11 "(7)." on line 10 and substitute "Except as provided under s. 71.25 (9d) and (9g), the
 12 remaining net income shall be apportioned to Wisconsin this state by use of an
 13 apportionment fraction composed of a sales factor representing 50% of the fraction,
 14 a property factor representing 25% of the fraction and a payroll factor representing
 15 25% of the fraction. the following:".

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

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

18 71.04 (4) (a) For taxable years beginning after December 31, 2000, and before
 19 January 1, 2002, an apportionment fraction composed of a sales factor under sub. (7)
 20 representing 63% of the fraction, a property factor under sub. (5) representing 18.5%
 21 of the fraction and a payroll factor under sub. (6) representing 18.5% of the fraction.

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

23 71.04 (4) (b) For taxable years beginning after December 31, 2001, and before
 24 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (7)

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

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

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

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

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

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

15 2. The use of an aircraft in this state is determined by multiplying the gross
16 receipts from the lease or rental of the aircraft by a fraction having as a numerator
17 the number of landings of the aircraft in this state while leased or rented in the
18 taxable year and having as a denominator the total number of landings of the aircraft
19 while leased or rented in the taxable year.

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

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

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

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

8 71.04 (7) (dn) For taxable years beginning after December 31, 1999, gross
9 royalties and gross income received for the use of intangible property are attributed
10 to this state if any of the following ~~applies:~~ *occurs*

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

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

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

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

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

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

24 71.04 (7) (dr) 1. For taxable years beginning after December 31, 1999, receipts
25 from a service are attributed to the state where the purchaser of the service received

1 the benefit of the service. The benefit of a service is received in this state if any of
2 the following applies:

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

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

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

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

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

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

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

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

23 71.04 (7) (ds) 1. For taxable years beginning after December 31, 1999, the gate
24 receipts from professional sporting events are attributed to the state in which the

1 taxpayer's sports facility is located. Gate receipts include the taxpayer's in-state
2 gate receipts and the taxpayer's share of out-of-state gate receipts.

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

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

10 71.04 (7) (dt) 1. For taxable years beginning after December 31, 1999, the gross
11 receipts from radio and television broadcasting, including advertising revenue, are
12 attributed to this state in proportion to the audience in this state as compared to the
13 total audience.

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

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

18 71.04 (7) (dw) 1. Except as provided in subs. 2. and 3., if a person doing
19 business in this state and outside this state owns a business that is subject to
20 apportionment under sub. (4) or s. 71.25 (6) and a business that is subject to
21 apportionment under sub. (8), the person shall apportion income as provided under
22 sub. (4) or s. 71.25 (6).

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

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

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

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

11 71.04 (8) (title) RAILROADS, ~~FINANCIAL ORGANIZATIONS~~ TELECOMMUNICATIONS
12 COMPANIES AND PUBLIC UTILITIES.

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

14 71.04 (8) (c) The net business income of railroads, sleeping car companies, car
15 line companies, financial organizations, telecommunications companies and public
16 utilities requiring apportionment shall be apportioned pursuant to rules of the
17 department of revenue, but the income taxed is limited to the income derived from
18 business transacted and property located within the state. For taxable years
19 beginning after December 31, 1999, the net business income of financial
20 shall be apportioned under s. 71.25 (9d). *institutions*
organizations⁵

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

22 71.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident
23 individual or nonresident estate or trust engaged in business within and without the
24 state of Wisconsin and required to apportion its income as provided in this section,
25 it shall be shown to the satisfaction of the department of revenue that the use of any

1 one of the 3 factors provided under sub. (4) gives an unreasonable or inequitable final
 2 average ratio because of the fact that such nonresident individual or nonresident
 3 estate or trust does not employ, to any appreciable extent in its trade or business in
 4 producing the income taxed, the factors made use of in obtaining such ratio, this
 5 factor may, with the approval of the department of revenue, be omitted in obtaining
 6 the final average ratio which is to be applied to the remaining net income. This
 7 subsection does not apply to taxable years beginning after December 31, 2002."

✓
 INSERT
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 (7)

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

INSERT
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 (9)

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

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

11 71.22 (1d) "Commercial domicile" means the location of a trade or business
 12 from which the trade or business is principally managed in the United States,
 13 regardless of whether the trade or business is organized under the laws of a foreign
 14 country, the commonwealth of Puerto Rico or any territory or possession of the
 15 United States.

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

17 71.22 (3g) "Intangible property" includes patents, copyrights, trademarks,
 18 trade names, service names, service marks, logos, franchises, licenses, plans,
 19 specifications, blueprints, processes, techniques, formulas, designs, layouts,
 20 patterns, drawings, manuals, customer lists, contracts, technical know-how and
 21 trade secrets. "Intangible property" does not include securities."

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

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

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

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

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

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

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

15 71.25 (6) (b) For taxable years beginning after December 31, 2001, and before
16 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (9)
17 representing 85% of the fraction, a property factor under sub. (7) representing 7.5%
18 of the fraction and a payroll factor under sub. (8) representing 7.5% of the fraction.

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

20 71.25 (6) (c) For taxable years beginning after December 31, 2002, an
21 apportionment fraction composed of the sales factor under sub. (9).”.

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

23 **15.** Page 859, line 20: delete “1999” and substitute “2002”.

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

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

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

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

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

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

1 71.25 (9) (dn) For taxable years beginning after December 31, 1999, gross
2 royalties and gross income received for the use of intangible property are attributed
3 to this state if any of the following applies:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 71.25 (9) (ds) 1. For taxable years beginning after December 31, 1999, the gate
17 receipts from professional sporting events are attributed to the state in which the
18 taxpayer's sports facility is located. Gate receipts include the taxpayer's in-state
19 gate receipts and the taxpayer's share of out-of-state gate receipts.

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

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

2 71.25 (9) (dt) 1. For taxable years beginning after December 31, 1999, the gross
3 receipts from radio and television broadcasting, including advertising revenue, are
4 attributed to this state in proportion to the audience in this state as compared to the
5 total audience.

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

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

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

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

#. Page 860, line 9: after that line insert.

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

4 " SECTION 173^g (9d) of the statutes is created to read:

5 71.25 (9d) FINANCIAL ORGANIZATIONS. (a) *Definitions*. In this subsection:

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

8 2. "Credit card" includes a debit card ^{and} a travel ~~card~~ and ~~an~~ entertainment card.

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

12 4. "Financial organization" means a bank; a savings bank; a bank holding
13 company; a savings and loan association; a trust company; a credit union, except a
14 credit union that is exempt from taxes under s. 71.26 (1) (a); a production credit
15 association; or an agency or branch of a foreign depository; whether chartered under
16 the laws of this state, another state or territory, the laws of the United States or the
17 laws of a foreign county. "Financial organization" includes a corporation that derives
18 at least 50% of its total gross income from finance leases, including direct finance
19 leases and leverage leases as defined by rule, and a corporation that derives at least
20 50% of its total gross income from an activity that a financial organization performs.

21 5. "Loan" means any extension of credit or creation of debt that results from
22 direct negotiations between the taxpayer under this subsection and the taxpayer's
23 customer; the purchase, in whole or in part, of an extension of credit; and
24 participations, syndications and leases that are considered loans for federal income
25 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.

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

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

9 7. “State” means a state of the United States, the District of Columbia, the
10 commonwealth of Puerto Rico or a territory or possession of the United States.

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

13 (b) *Apportionment.* For taxable years beginning after December 31, 1999, a
14 financial organization that does business in this state and outside this state shall
15 apportion its net business income as provided in this subsection. A taxpayer that is
16 subject to this subsection shall apportion its nonbusiness income under sub. (5) (b)
17 and shall deduct the net business income that follows the situs of its property from
18 its total net business income. The taxpayer’s remaining net business income shall
19 be apportioned to this state by multiplying the remaining net business income by an
20 apportionment fraction that has as a numerator the gross receipts of the taxpayer
21 in this state during the taxable year and that has a denominator the taxpayer’s total
22 gross receipts during the taxable year. The following sources of a taxpayer’s business
23 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

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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.

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

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

9 7. 'Gross receipts from the sale of credit card receivables.' The numerator of
10 the apportionment fraction includes gross receipts from the sale of credit card
11 receivables, multiplied by a fraction that has as a numerator the amount included
12 in the numerator under subd. 6. and that has as a denominator the total amount of
13 interest, fees and penalties that are charged to credit card holders.

14 8. 'Credit card reimbursement fees.' The numerator of the apportionment
15 fraction includes credit card reimbursement fees, multiplied by a fraction that has
16 as a numerator the amount included in the numerator under subd. 6. and that has
17 as a denominator the total amount of interest, fees and penalties that are charged
18 to credit card holders.

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

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

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

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

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

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

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

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

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

3 1. “Billing address” has the meaning given in sub. (9d) (a) 1.

4 2. “Brokerage commission” includes sales fees on agency or principal
5 transactions.

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

12 4. “Taxpayer” means a broker or an underwriter who is subject to
13 apportionment under this subsection.

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

19 (b) *Apportionment*. For taxable years beginning after December 31, 1999, a
20 broker or an underwriter who does business in this state and outside this state shall
21 apportion its net business income as provided under this subsection. A taxpayer that
22 is subject to this subsection shall apportion its nonbusiness income under sub. (5) (b)
23 and shall deduct the net business income that follows the situs of its property from
24 its total net business income. The taxpayer’s remaining net business income shall
25 be apportioned to this state by multiplying the remaining net business income by an

1 apportionment fraction that has as a numerator the gross receipts of the taxpayer
2 in this state during the taxable year and that has a denominator the taxpayer's total
3 gross receipts during the taxable year. The following sources of a taxpayer's business
4 income are subject to apportionment:

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

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

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

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

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

23 SECTION 173⁸m. 71.25 (10) (title) of the statutes is amended to read:

24 71.25 (10) (title) RAILROADS, ~~FINANCIAL ORGANIZATIONS~~ TELECOMMUNICATIONS
25 COMPANIES AND PUBLIC UTILITIES.

1 **SECTION 1736^gp.** 71.25 (10) (c) of the statutes is amended to read:

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

9 **SECTION 1736^gr.** 71.25 (11) of the statutes is amended to read:

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

20 **17.** Page 878, line 13: delete the material beginning with that ^{line} and ending with
21 page 879, line 12, ^{and substitute:}

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

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

INSERT 21-19

INSERT 21-21

↑
that

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

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

11 71.45 (3) (a) The Subject to par. (c), the percentage determined by dividing the
12 sum of total direct premiums written on all property and risks for insurance other
13 than life insurance, on subjects of insurance resident, located or to be performed in
14 this state, and assumed premiums written for reinsurance, other than life insurance,
15 with respect to all property and risks resident, located or to be performed in this
16 state, by the sum of direct premiums written for insurance on all property and risks,
17 other than life insurance, wherever located during the taxable year, as reflects, and
18 assumed premiums written on insurance for reinsurance on all property and risks,
19 other than life insurance, where the subject of insurance was resident, located or to
20 be performed outside this state wherever located. In this ~~subsection~~ ^{paragraph} "direct
21 premiums" means direct premiums as reported for the taxable year on an annual
22 statement that is filed by the insurer with the commissioner of insurance. In this
23 subsection, "assumed premiums" means assumed reinsurance premiums from
24 domestic insurance companies as reported for the taxable year on an annual
25 statement that is filed by the commissioner of insurance."

paragraph

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

2 "71.45 (3) (b) 1. The Subject to par. (c), the percentage of determined by dividing
3 the payroll, exclusive of life insurance payroll, paid in this state in the taxable year
4 by total payroll, exclusive of life insurance payroll, paid everywhere in the taxable
5 year as reflects such compensation paid outside this state."

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

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

8 71.45 (3) (c) 1. For taxable years beginning after December 31, 2000, and before
9 January 1, 2002, the percentage under par. (a) represents 63% of the average of the
10 amounts under pars. (a) and (b) 1.

11 2. For taxable years beginning after December 31, 2001, and before January
12 1, 2003, the percentage under par. (a) represents 85% of the average of the amounts
13 under pars. (a) and (b) 1.

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

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

19 **22.** Page 882, line 24: delete the material beginning with that line and ending
20 with page 884, line 3, and substitute: ← **INSERT 23-20** 71.03(1)

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

22 "(7to) APPORTIONMENT FACTORS. The treatment of sections 71.01 (1g) and (5r),
23 71.04 (4) (a), (b) and (c), (5) (intro.), (6) (intro.) and (7) (d), (dc), (dg), (dn), (dr), (ds),
24 (dt) and (dw), 71.22 (1), (1d) and (3g), 71.25 (6) (a), (b) and (c), (7) (intro.), (8) (intro.)

INSERT 23-18

71.07(3m)(a), b, and (10), 71.195,

(2M) (a) i. b. and

(2M) (a) i. b. and (i)

1

and (9) (d), (dc), (dg), (dn), (dr), (ds), ~~(dt)~~ and (dw), 71.28 (4) (a), ~~and~~ (am) 1., 71.45 (3)

2

(intro.), (a) and (c) and (3m), ~~and~~ 71.47 (4) (a), ~~and~~ (am) of the statutes and the

3

renumbering and amendment of sections 71.04 (4), 71.25 (6) and 71.45 (3) (b) of the

4

statutes take effect on the January 1 after publication."

5

(END)

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

1999-2000 DRAFTING INSERT
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LEGISLATIVE REFERENCE BUREAU

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JK:kg:ch

1673P
Insert 2-5

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

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

3 71.01 (8g) "Member" does not include a member of a limited liability company
4 treated as a corporation under s. 71.22 (1) (1g).

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

6 71.01 (8m) "Partner" does not include a partner of a publicly traded
7 partnership treated as a corporation under s. 71.22 (1) (1g). "

1674M
Insert 2-6

8 ✓ 2. Page 837, line 13: after that line insert:

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

10 71.03 (1) DEFINITION. In this section, "gross income" means all income, from
11 whatever source derived and in whatever form realized, whether in money, property
12 or services, which is not exempt from Wisconsin income taxes. "Gross income"
13 includes, but is not limited to, the following items: compensation for services,
14 including salaries, wages and fees, commissions and similar items; gross income
15 derived from business; interest; rents; royalties; dividends; alimony and separate
16 maintenance payments; annuities; income from life insurance and endowment
17 contracts; pensions; income from discharge of indebtedness; distributive shares of
18 partnership gross income except distributive shares of the income of publicly traded
19 partnerships treated as corporations under s. 71.22 (1) (1g); distributive shares of
20 limited liability company gross income except distributive shares of the income of
21 limited liability companies treated as corporations under s. 71.22 (1) (1g); income in
22 respect of a decedent; and income from an interest in an estate or trust. "Gross

1 income" from a business or farm consists of the total gross receipts without reduction
 2 for cost of goods sold, expenses or any other amounts. The gross rental amounts
 3 received from rental properties are included in gross income without reduction for
 4 expenses or any other amounts. "Gross income" from the sale of securities, property
 5 or other assets consists of the gross selling price without reduction for the cost of the
 6 assets, expenses of sale or any other amounts. "Gross income" from an annuity,
 7 retirement plan or profit sharing plan consists of the gross amount received without
 8 reduction for the employee's contribution to the annuity or plan." ✓

Insert 8-7 ✓

1710d
 854
 14

9 ✓ 3. Page 853, line 24: after that line insert:

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

11 71.07 (3m) (a) 1. b. For partnerships except publicly traded partnerships
 12 treated as corporations under s. 71.22 (1) (1g), or limited liability companies, except
 13 limited liability companies treated as corporations under s. 71.22 (1) (1g), "claimant"
 14 means each individual partner or member. "

~~Insert~~

1719d

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

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

17 71.07 (10) CREDITS NOT ALLOWED. The credits under s. 71.28 (4) and (5) may not
 18 be claimed by partners, including partners of a publicly traded partnership treated
 19 as a corporation under s. 71.22 (1) (1g), members of a limited liability company,
 20 including members of a limited liability company treated as a corporation under s.
 21 77.22 (1) (1g), or shareholders of a tax-option corporation. "

~~Insert~~

End of Insert 8-7

1722d ✓

Insert 88

1

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

2

SECTION 77. 71.195 of the statutes is amended to read:

3

71.195 Definition. In this subchapter, "partnership" includes limited liability

4

companies and other entities that are treated as partnerships under the Internal

5

Revenue Code, and "partnership" does not include publicly traded partnerships

6

treated as corporations under s. 71.22 (1) (1g). ~~3~~

END ... PT 8 /

b
1744b

Insert 21-19

7

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

8

SECTION 78. 71.28 (2m) (a) 1. b. of the statutes is amended to read:

9

71.28 (2m) (a) 1. b. For partnerships, except publicly traded partnerships

10

treated as corporations under s. 71.22 (1) (1g), or limited liability companies, except

11

limited liability companies treated as corporations under s. 71.22 (1) (1g), "claimant"

12

means each individual partner or member."

1746d

Insert 21-21 ✓

13

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

14

A SECTION 78. 71.28 (4) (i) of the statutes is amended to read:

15

71.28 (4) (i) *Nonclaimants.* The credits under this subsection may not be

16

claimed by a partnership, except a publicly traded partnership treated as a

17

corporation under s. 71.22 (1) (1g), limited liability company, except a limited liability

18

company treated as a corporation under s. 71.22 (1) (1g), or tax-option corporation

19

or by partners, including partners of a publicly traded partnership, members of a

20

limited liability company or shareholders of a tax-option corporation."

Insert

b
1757b

Insert 23-18

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

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

3 71.47 (2m) (a) 1. b. For partnerships, except publicly traded partnerships
4 treated as corporations under s. 71.22 (1) (1g), or limited liability companies, except
5 limited liability companies treated as corporations under s. 71.22 (1) (1g), "claimant"
6 means each individual partner or member. // ✓

→ 1759d

Insert 23-20

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

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

9 71.47 (4) (i) *Nonclaimants*. The credits under this subsection may not be
10 claimed by a partnership, except a publicly traded partnership treated as a
11 corporation under s. 71.22 (1) (1g), limited liability company, except a limited liability
12 company treated as a corporation under s. 71.22 (1) (1g), or tax-option corporation
13 or by partners, including partners of a publicly traded partnership, members of a
14 limited liability company or shareholders of a tax-option corporation. //

1764g a

Insert
S

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

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

17 71.58 (1) (c) For partnerships except publicly traded partnerships treated as
18 corporations under s. 71.22 (1) (1g), "claimant" means each individual partner.

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

20 71.58 (1) (cm) For limited liability companies, except limited liability
21 companies treated as corporations under s. 71.22 (1) (1g), "claimant" means each
22 individual member. //

end of insert 23-20