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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **98-184**

AN ORDER to amend Tax 2.39 (3) (a) (intro.); and to create Tax 2.395, relating to the use of an alternative apportionment method.

Submitted by **DEPARTMENT OF REVENUE**

11-12-98 RECEIVED BY LEGISLATIVE COUNCIL.

11-25-98 REPORT SENT TO AGENCY.

RNS:WF:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☑

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☑ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☑

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☐ NO ☑

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☑ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment Attached YES ☐ NO ☑

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☑

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CLEARINGHOUSE RULE 98–184

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

Section Tax 2.395 (1) (a) is drafted incorrectly because definitions may not be drafted to include substantive provisions. [See s. 1.01 (7) (b), Manual.] The requirements that a corporation retain direct or indirect ownership of 100% of the subsidiary stocks and that a subsidiary is eligible to participate in a restructuring only if it has been "completely inactive" are substantive provisions and should be placed elsewhere in Clearinghouse Rule 98-184.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section Tax 2.395 (1) (a) could be drafted more clearly in a number of respects. First, would it be more accurate to state that a corporate restructuring means the transfer by a corporation of ***property***, rather than "operations," in exchange for 100% of the subsidiary's stock? Second, is it intended that a corporate restructuring includes the transfer by a corporation of "all" of its operations to a subsidiary? Third, it is suggested that the phrase "newly organized or existing" in the first sentence of s. Tax 2.395 (1) (a) be deleted because it is ambiguous. A "newly organized" subsidiary is an existing subsidiary. Similarly, the word "existing" should be deleted from the third sentence of s. Tax 2.395 (1) (a). Fourth, would it be more accurate in the last sentence of s. Tax 2.395 (1) (a) to require that a corporation "has not been engaged in business" rather than "has been completely inactive" in order to be eligible to participate in a corporate restructuring? The phrase "completely inactive" appears to be vague in the context in which it is used because there are activities that probably must be undertaken for a corporation to become organized before it conducts business.

b. The phrase "that files an application under this section and" in s. Tax 2.395 (1) (b) should be deleted. Section Tax 2.395 (2) (intro.) states that "(a) corporation may file an application . . . ."

c. The phrase "will file" in s. Tax 2.395 (1) (c) should be replaced with the word "files." [See s. 1.01 (1), Manual.] In addition, s. Tax 2.395 (1) (c), when read in conjunction with s. Tax 2.395 (2), is confusing as to whether the corporation or its subsidiary, or both the corporation and its subsidiary, must file an application. Section Tax 2.395 (1) (c) defines subsidiary as a corporation that will file an application with a corporation. Section Tax 2.395 (2) states that a corporation may file an application but does not address whether the subsidiary has to file an application either with the corporation or separately. This ambiguity in Clearinghouse Rule 98-184 should be addressed.

d. Section Tax 2.395 (1) (d) defines "unfair representation of the degree of business activity in this state," in part, as meaning that the sum of the Wisconsin tax liability of a corporation and its subsidiaries exceeds 200% of the Wisconsin tax liability that the corporation would have "computed" if the corporation "did not contribute business operations to one or more subsidiaries." It is suggested that the word "owed" be substituted for the word "computed." In addition, it is suggested that the phrase "if corporate restructuring had not occurred" be substituted for the term "if the corporation did not contribute business operations to one or more subsidiaries," since "corporate restructuring" is a defined term.

e. It is suggested that the phrase "under this section" be placed after the word "apportionment" in s. Tax 2.395 (2).

f. It is suggested that the word "present" be substituted for the word "current" in s. Tax 2.395 (3) (j), in order to more clearly refer back to the allocation or apportionment method described in s. Tax 2.395 (3) (g).

g. Section Tax 2.395 (3) (m) would be more clear if the information requested was whether the corporation is being audited by the department at the time of the application. [See s. 1.01 (9) (b), Manual.]

h. Section Tax 2.395 (7) (b) appears to conflict with the definition of "unfair representation of the degree of business activity in this state" in s. Tax 2.395 (1) (d). The defined term specifies when unfair representation of the degree of business activity exists, so it is unclear what is meant by s. Tax 2.395 (7) (b) and (c).

i. The meaning of s. Tax 2.395 (7) (d) is unclear. Does this paragraph mean that if the department terminates an approved alternative apportionment method, a corporation has the right to request a new alternative apportionment method and the department ***must*** resubmit the proposed alternative method to the Joint Committee for Review of Administrative Rules (JCRAR)? If so, the paragraph conflicts with s. 71.25 (14), Stats., which provides that the Department of Revenue may authorize an alternative apportionment method. Alternatively, does the paragraph mean that the Department of Revenue must submit to the JCRAR the alternative apportionment method that has been terminated by the department? The department should clarify the meaning of this paragraph of the rule.

State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WI 53708-8933
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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

January 12, 1999

Honorable Fred Risser
President, State Senate
Room 220 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Honorable Scott Jensen
Speaker, State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison, WI 53708

Re: Clearinghouse Rule 98-184

Dear Senator Risser and Representative Jensen:

Pursuant to s. 227.19(2), Stats., this is to notify you that the proposed rule order relating to the use of an alternative apportionment method is in final draft form. The proposed rule order was published in the ***Wisconsin Administrative Register*** in Mid-December 1998. A public hearing was held on December 28, 1998.

Copies of the proposed rule order and Report required under s. 227.19(2) and (3), Stats., are enclosed. A brief summary of the proposed rule order follows.

Summary of Proposed Rule Order

Statutory authority: s. 71.80(1)(c), Stats. (1995) and s. 71.25(14)(b), Stats., as created by 1997 Wis. Act 299

Statutes interpreted: s. 71.25(14), Stats.

SECTION 1. Tax 2.39(3)(a)(intro.) is amended, to exclude corporations that qualify for the use of an alternative apportionment method from the rule relating to the general apportionment method.

A second note at the end of Tax 2.39(3) is created, to include a reference to Tax 2.395.

SECTION 2. Tax 2.395 is created, to address the use of an alternative apportionment method. This alternative was created by s. 2r, 1997 Wis. Act 299, effective for taxable years beginning on January 1, 1998.

SECTION 4. Tax 11.28(2)(b) and (f), (3)(c)1.b. and (4)(c) are amended, to clarify that sales and use tax on property given away need not be measured by the cost of the property (e.g., the tax may be measured by its market value if the requirements of s. 77.57, Stats., are met).

Sincerely,

Cate Zeuske
Secretary of Revenue

CZ:MPW:cll
i:/rules/239 Committees – President, Speaker

Enclosure

DEPARTMENT OF REVENUE

CLEARINGHOUSE RULE NUMBER 98-184

SECTION 227.19(2) AND (3), STATS., REPORT

Need For Proposed Rule

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment method, the circumstances under which the department may grant such a request and the alternative methods that the department may authorize under s. 71.25(14), Stats.

Public Hearing

A public hearing was held on December 28, 1998. Nobody appeared at the hearing, to offer testimony.

Legislative Council Staff Recommendations

All recommendations of the Legislative Council staff have been incorporated into the proposed order.

Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

i:rules/239 Committees - Report

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE AMENDING AND CREATING RULES

The Wisconsin Department of Revenue hereby proposes an order to: amend Tax 2.39(3)(a)(intro.); and create Tax 2.395, relating to the use of an alternative apportionment method.

Analysis by the Department of Revenue

Statutory authority: s. 71.80(1)(c), Stats., and s. 71.25(14)(b), Stats., as created by 1997 Wis. Act 299

Statutes interpreted: s. 71.25(14), Stats.

SECTION 1. Tax 2.39(3)(a)(intro.) is amended, to exclude corporations that qualify for the use of an alternative apportionment method from the rule relating to the general apportionment method.

A second note at the end of Tax 2.39(3) is created, to include a reference to Tax 2.395.

SECTION 2. Tax 2.395 is created, to address the use of an alternative apportionment method. This alternative was created by s. 2r, 1997 Wis. Act 299, effective for taxable years beginning on January 1, 1998.

SECTION 1. Tax 2.39(3)(a)(intro.) is amended to read:

Tax 2.39(3)(a)(intro.) For the reporting of income for the purposes of franchise or income taxation, all businesses except financial organizations and public utilities as defined in ss. 71.04(8) and 71.25(10), Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25(14), Stats., shall use an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. Property, payroll or sales related to the production of nonapportionable income described in s. 71.04(1) and (4) or 71.25(5)(b), Stats., may not be included in either the numerator or the denominator of any of the apportionment factors. If one of these factors is omitted pursuant to s. 71.04(10) or 71.25(11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

Note to Revisor: Insert the following note after the first note at the end of Tax 2.39(3):

Note: See s. Tax 2.395 for an alternative method of apportioning the income of certain corporations.

SECTION 2. Tax 2.395 is created to read:

Tax 2.395 Alternative method of apportionment. (1) DEFINITIONS. In this section:

(a) "Corporate restructuring" means the transfer by a corporation of part or all of its property and employes to one or more subsidiaries in exchange for 100% of the subsidiary's stock.

(b) "Corporation" means a corporation for profit that is incorporated under ch. 180, Stats., or under the law of another state, the District of Columbia or a foreign country and is subject to tax under s. 71.23(1) or (2), Stats.

(c) "Subsidiary" means a corporation that files an application under this section with a corporation that directly or indirectly owns 100 % of the total value or share of all classes of its stock outstanding.

(d) "Unfair representation of the degree of business activity in this state" means that the sum of the Wisconsin tax liability of the corporation and its subsidiaries calculated under s. 71.25(6), Stats., exceeds 200% of the Wisconsin tax liability that the corporation would have owed if corporate restructuring had not occurred and results in at least $2 million of additional Wisconsin tax liability.

Note: This definition applies only for purposes of s. 71.25(14), Stats.

(e) "Wisconsin tax liability" means the gross tax computed under s. 71.23(1) or (2), Stats.

(2) WHO MAY FILE AN APPLICATION. A corporation together with its subsidiary may

file an application on or before January 1, 2000 to use an alternative method of apportionment under this section if all of the following conditions are met:

(a) The corporation is not a financial organization as defined in s. 71.25(10)(a), Stats., a public utility as defined in s. 71.25(10)(b), Stats., or a tax-option corporation as defined in s. 71.34(2), Stats.

(b) The corporation is a party to a corporate restructuring that occurs after June 30, 1998 and before January 1, 2000.

(c) The corporation retains direct or indirect ownership of 100% of the subsidiary's stock and the subsidiary has not been engaged in business in or outside this state since the date of its incorporation.

(d) As a result of the corporate restructuring, the use of the allocation and separate accounting method or the apportionment method prescribed under s. 71.25(6), Stats., would result in an unfair representation of the degree of business activity in this state, given the same level of sales, payroll and property for the corporation and its subsidiaries.

(3) CONTENT OF THE APPLICATION. The application shall set forth a complete statement of the facts and reasons relating to the request to use an alternative method of apportioning income to Wisconsin, including the following:

(a) The full name, address and federal employer identification number of the corporation applying for the change in apportionment method.

(b) The full name, address and federal employer identification number of the subsidiaries that are a party to the corporate restructuring. If this information is not available when the application is filed, it shall be provided to the department as an amendment to the application at least 60 days before a return using an alternative apportionment method is filed.

(c) The corporation's and the subsidiaries' taxable year. The subsidiaries shall have the same taxable year as the corporation.

(d) The taxable year for which the corporation wishes the change to become effective.

(e) A detailed description of the corporate structure and business operations before the corporate restructuring.

(f) A detailed description of the corporate structure and business operations after the corporate restructuring.

(g) The present allocation or apportionment method used in Wisconsin.

(h) A description of the alternative apportionment method requested.

(i) A complete and precise statement of the reasons for the modification requested, including why the present method does not fairly represent the activities of the corporation and its subsidiaries in Wisconsin.

(j) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the present method of allocation or apportionment would result in an unfair representation of the degree of business activity in this state.

(k) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the proposed alternative method of apportionment does not result in less Wisconsin franchise or income tax than the corporation would be liable for without restructuring.

(L) Any other information relevant to the application the department requires or the corporation believes may have a bearing on the department's decision about whether to grant the apportionment method requested.

(m) Whether the corporation is being audited by the department at the time of the application.

Note: The application shall be mailed to the following address: Administrator of the Division of Income, Sales and Excise Taxes, Wisconsin Department of Revenue, P.O. Box 8933, Madison, WI 53708-8933.

(4) ALTERNATIVE METHODS OF APPORTIONMENT. The department may authorize any one or a combination of the following alternative methods of apportionment:

(a) Excluding any one or more of the property, payroll and sales factors.

(b) Weighting the factors other than 50% sales, 25% property and 25% payroll.

(c) Allocating sales, other than sales of tangible personal property, to the state in which the corporation's customers are located for purposes of computing the numerator of the sales factor. For purposes of this paragraph:

1. A sale is allocated to the location where the customer receives the benefit of the service.

2. If the customer receives the benefit of the service in more than one state, the gross receipts are includable in the numerator of the apportionment factor in proportion to the extent the recipient receives the benefit of the service in each state.

(d) Including one or more additional factors which will fairly represent the corporation's or the subsidiaries' business activity in this state.

(e) Allowing one method for apportioning the business income of the corporation and another method for apportioning the business income of a subsidiary.

(f) Allowing the corporation and one or more subsidiaries to compute their Wisconsin tax liability by adding together their apportionable income and apportionment factors, eliminating any intercompany transactions, computing the Wisconsin tax liability as though the group were one taxpayer and dividing the combined Wisconsin tax liability among the corporations based on their share of the group's Wisconsin business income.

(g) Allowing any other apportionment method that will fairly represent the corporation's and the subsidiaries' business activity in this state.

(5) REVIEW OF THE APPLICATION. The department shall review the information submitted and follow the procedure specified in s. 71.25(14)(c), Stats., before issuing a written decision regarding the use of an alternative method of apportionment. The corporation shall receive written approval before using the alternative method.

(6) YEARS FOR WHICH USE OF ALTERNATIVE METHOD OF APPORTIONMENT APPLIES. (a) Except as provided in par. (b), once an alternative method of apportionment has been approved for a taxable year, the corporation shall use it for that taxable year and all subsequent taxable years, unless the department finds the use of the alternative apportionment method is no longer appropriate as determined under sub. (7)(b).

(b) Notwithstanding par. (a), the aggregate of the corporation's and the subsidiaries' Wisconsin tax liability shall be the greater of the Wisconsin tax liability calculated using the approved alternative apportionment or the Wisconsin tax liability calculated as if the corporate restructuring had not taken place.

(7) REVOCATION OF USE OF ALTERNATIVE METHOD OF APPORTIONMENT. (a) 1. If the department upon audit or review finds that the use of the apportionment method prescribed in s. 71.25(6), Stats., does not result in an unfair representation of the degree of business activity in this state for the first taxable year for which an alternative method of apportionment was approved, the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25(6), Stats.

2. If the department upon audit or review finds that the use of the alternative apportionment method in subsequent taxable years is no longer appropriate as determined under par. (b), the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities

under s. 71.25(6), Stats., for each of the subsequent taxable years.

(b) In determining whether a corporation may continue to use the alternative method of apportionment, the department shall look for a continued substantial amount of difference between the tax liability calculated pursuant to s. 71.25(6), Stats., and the tax liability had the restructuring not taken place. The department shall also consider any additional information the corporation has submitted pursuant to sub. (8).

(c) If the department finds for a period of at least three consecutive taxable years that a substantial difference in tax liability as determined in par. (b) no longer exists, the corporation may no longer use the approved alternative apportionment method.

(d) If the department terminates the approved alternative apportionment method, in a subsequent taxable year the corporation may request a new alternative method of apportionment. The department shall submit the new proposed alternative method of apportionment to the co-chairpersons of the joint committee for review of administrative rules pursuant to s. 71.25(14)(c), Stats.

(8) FILING OF RETURN. For each taxable year, the corporation and its subsidiaries shall file with their Wisconsin corporate franchise or income tax returns schedules setting forth the calculations required under sub.(6), as well as a calculation of the tax liability of the corporation and its subsidiaries under s. 71.25(6), Stats. The corporation and its subsidiaries shall attach a copy of the department's approval to use an alternative apportionment method to the front of each return filed. The corporation may also include additional explanatory material relative to its business activity. The returns shall be filed with the department's audit bureau.

Note: The address for mailing the returns is: Audit Bureau, Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708-8906.

(9) CONFIDENTIALITY. All documents related to a request for an alternative method of

apportionment shall be subject to the confidentiality provisions of s. 71.78, Stats.

Note: Section Tax 2.395 interprets s. 71.25(14), Stats.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: Nov 30 '98

By: Cate Zeuske

Cate Zeuske
Secretary of Revenue

i.rules\239 Proposed Order

1997 Session

LRB or Bill No./Adm. Rule No.

TAX 2.39 and 2.395

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

Subject

Alternative Apportionment Method

Fiscal Effect **Unknown**

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs - May be Possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☐ No Local Government Costs

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others ______ ☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Under provisions of 1997 Wisconsin Act 299, corporations may request, and the Department may approve, an alternative method of apportionment of income in the event of a corporate restructuring that would result in unfair representation of the degree of business activity in the state. The alternative method may not result in less franchise or income tax revenue to the state than the current corporate structure is liable for, given the same overall level of sales, payroll and property.

Before granting a request for alternative apportionment, Act 299 requires the Department to promulgate rules specifying the circumstances in which alternative apportionment may be granted and the kinds of alternatives that may be authorized. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998, and corporations must request use of an alternative method on or before January 1, 2000.

Alternative Apportionment of Income

The rule specifies that certain corporations that are party to a restructuring that results in an unfair representation of business activity in the state may apply for an alternative apportionment method and specifies the required content of the application.

(continued on page two)

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue Pamela Walgren, (608) 266-7817	Yeang-Eng Braun (608) 266-2700 Yeang Eng Braun	11/12/98

The rule defines an unfair representation of business activity as combined net tax liability of the parent and subsidiaries that exceeds 200% of the net tax liability the parent corporation would have computed if it had not contributed business operations to the subsidiaries and that results in at least $2 million of additional tax liability. Calculations are based on data from the most recently filed tax return prior to July 1, 1998.

Under the rule, the Department may authorize the following alternative methods of apportionment:

1. Excluding one or more of the property, payroll or sales factors.
2. Weighting the factors differently (generally factors are weighted as 50% sales, 25% payroll and 25% property).
3. Allocating sales, other than sales of tangible personal property, to the state in which the corporation's customers are located for purposes of computing the numerator of the sales factor. Sales are allocated to the location where the customer receives the benefit of the service; multi-state benefit is allocated proportionately to each state.
4. Including one or more additional factors.
5. Allowing different methods of apportionment for the parent and subsidiaries corporations.
6. Allowing a parent and subsidiary corporations to compute net tax liability as though the group were one taxpayer by adding apportionable income and factors and eliminating intercompany transactions.
7. Allowing any other apportionment method that will fairly represent business activity in the state.

The rule specifies that the aggregate of the corporations' and the subsidiaries' Wisconsin tax liability is the greater of the Wisconsin tax liability calculated using the alternative apportionment method or the tax liability calculated using the standard apportionment method as if the corporate restructuring had not occurred. These calculations and the calculations using the standard method of apportionment after corporate restructuring must be filed for each taxable year with the returns of the corporation and subsidiaries to the Department's Audit Bureau. This last calculation measures the change in tax revenues attributable to the provision.

Once granted, the alternative apportionment method continues in subsequent years until revoked. If upon audit or review the Department finds that the use of the standard apportionment method no longer results in unfair representation of the degree of business activity in the state, the corporation and subsidiaries must recalculate their Wisconsin tax liabilities for each year the alternative method was used and unfair representation did not exist.

Once the alternative method is granted, unfair representation of business activity continues to exist if there is a substantial amount of difference between the tax liability calculated under the standard apportionment method and the tax liability had the restructuring not occurred. If a substantial difference in tax liability does not exist for three consecutive years, the corporation may no longer use the alternative apportionment method.

If the Department terminates the alternative method, the corporation may request and the Department will resubmit the proposed alternative method to the co-chairpersons of the joint committee for review of administrative rules.

YCB
11/12/98

Fiscal Effect

Since the determination to grant an alternative apportionment method is based on projections of income of restructured corporations, the Department does not have actual data to estimate the fiscal effect of this provision. Because a change in a corporation's apportionment ratio could either raise or lower it's tax, the fiscal effect could be positive or negative in any given year. Discussions with other states that have similar provisions indicate that corporations seek changes in apportionment ratio in limited instances, which implies a small fiscal effect. However, apportionment ratio changes can have a substantial effect on a corporation's tax liability, so that the change in any year could be significant.

YEB
11/12/98

1997 Session

FISCAL ESTIMATE WORKSHEET
Detailed Estimate of Annual Fiscal Effect
DOA-2047(R10/94)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB OR Bill No.\Adm. Rule No.	Amendment No.
TAX 2.39 and 2.395	

Subject

Alternative Apportionment Method

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category	**Increased Costs**	**Decreased Costs**
State Operations - Salaries and Fringe	$	$ -
(FTE Position Changes)	(FTE)	(FTE)
State Operations-Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	$	$ -
B. State Costs by Source of Funds	**Increased Costs**	**Decreased Costs**
GPR	$	$ -
FED	$	-
PRO/PRS	$	-
SEG/SEG-S		-
III. State Revenues - **Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)**	**Increased Rev.**	**Decreased Rev.**
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	$	$ -

NET ANNUALIZED FISCAL IMPACT	STATE	LOCAL
NET CHANGE IN COSTS	$	$
NET CHANGE IN REVENUES	$ Unknown	$

Agency/Prepared by: (Name & Phone No.)	**Authorized Signature/Telephone No.**	**Date**
Wisconsin Department of Revenue	**Yeang-Eng Braun**	11/12/98
Pamela Walgren, (608) 266-7817	**(608) 266-2700** Yeang Eng Braun	