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2001 ASSEMBLY BILL 19

January 16, 2001 – Introduced by Representatives ZIEGELBAUER, M. LEHMAN, RILEY, GRONEMUS, LA FAVE, F. LASEE, PLALE, RYBA, SERATTI, SYKORA and PETTIS, cosponsored by Senators PLACHE, BRESKE, DARLING, FARROW, HARSDORF, ROESSLER, ROSENZWEIG, SCHULTZ and BAUMGART. Referred to Committee on Ways and Means.

AN ACT ***to renumber and amend*** 71.04 (4) and 71.25 (6); ***to amend*** 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04 (7) (d), 71.04 (10), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d) and 71.25 (11); and ***to create*** 71.04 (4) (a), 71.04 (4) (b), 71.25 (6) (a) and 71.25 (6) (b) of the statutes; **relating to:** single factor apportionment of income for corporate income tax and franchise tax purposes.

Analysis by the Legislative Reference Bureau

Under current law, when computing the income tax or franchise tax liability of a corporation that does business inside and outside of this state, a formula is used to attribute a portion of the corporation's income to this state. The formula has three factors: a sales factor, a property factor and a payroll factor. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula.

Under this bill, beginning on January 1, 2002, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.04 (4) of the statutes is renumbered 71.04 (4) (intro.) and amended to read:

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

SECTION 2. 71.04 (4) (a) of the statutes is created to read:

71.04 **(4)** (a) For taxable years beginning before January 1, 2002, an apportionment fraction composed of a sales factor under sub. (7) representing 50% of the fraction, a property factor under sub. (5) representing 25% of the fraction, and a payroll factor under sub. (6) representing 25% of the fraction.

SECTION 3. 71.04 (4) (b) of the statutes is created to read:

71.04 **(4)** (b) For taxable years beginning after December 31, 2001, an apportionment fraction composed of the sales factor under sub. (7).

SECTION 4. 71.04 (5) (intro.) of the statutes is amended to read:

71.04 **(5)** PROPERTY FACTOR. (intro.) For purposes of sub. (4) <u>and for taxable years beginning before January 1, 2002</u>:

SECTION 5. 71.04 (6) (intro.) of the statutes is amended to read:

71.04 **(6)** PAYROLL FACTOR. (intro.) For purposes of sub. (4) <u>and for taxable years beginning before January 1, 2002</u>:

SECTION 6. 71.04 (7) (d) of the statutes is amended to read:

71.04 **(7)** (d) Sales, other than sales of tangible personal property, are in this state if the income–producing activity is performed in this state. If the income–producing activity is performed both in and outside this state the sales shall be divided between those states having jurisdiction to tax such business in proportion to the direct costs of performance incurred in each such state in rendering this service. Services performed in states which do not have jurisdiction to tax the business shall be deemed to have been performed in the state to which compensation ~~is~~ <u>would be</u> allocated by ~~sub.~~ <u>s. 71.04</u> (6)<u>, 1999 stats</u>.

SECTION 7. 71.04 (10) of the statutes is amended to read:

71.04 **(10)** DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident individual or nonresident estate or trust engaged in business within and without ~~the~~ <u>this</u> state ~~of Wisconsin~~ and required to apportion its income as provided in this section, it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or inequitable final average ratio because of the fact that such nonresident individual or nonresident estate or trust does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income. <u>This subsection does not apply to taxable years beginning after December 31, 2001.</u>

SECTION 8. 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and amended to read:

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

~~of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.~~ the following:

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

71.25 **(6)** (a) For taxable years beginning before January 1, 2002, an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction, and a payroll factor under sub. (8) representing 25% of the fraction.

SECTION 10. 71.25 (6) (b) of the statutes is created to read:

71.25 **(6)** (b) For taxable years beginning after December 31, 2001, an apportionment fraction composed of the sales factor under sub. (9).

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

71.25 **(7)** PROPERTY FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable years beginning before January 1, 2002:

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

71.25 **(8)** PAYROLL FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable years beginning before January 1, 2002:

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

71.25 **(9)** (d) Sales, other than sales of tangible personal property, are in this state if the income–producing activity is performed in this state. If the income–producing activity is performed both in and outside this state the sales shall be divided between those states having jurisdiction to tax such business in proportion to the direct costs of performance incurred in each such state in rendering this service. Services performed in states which do not have jurisdiction to tax the business shall be deemed to have been performed in the state to which compensation ~~is~~ would be allocated by ~~sub.~~ s. 71.25 (8), 1999 stats.

SECTION 14. 71.25 (11) of the statutes is amended to read:

71.25 **(11)** DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation engaged in business within and without ~~the~~ this state ~~of Wisconsin~~ and required to apportion its income as provided in sub. (6), it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided in sub. (6) gives an unreasonable or inequitable final average ratio because of the fact that such corporation does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income. This subsection does not apply to taxable years beginning after December 31, 2001.

SECTION 15. Initial applicability.

(1) This act first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31 this act first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

(END)