

**2001 DRAFTING REQUEST****Bill**Received: **09/05/2000**Received By: **jkreye**Wanted: **As time permits**

Identical to LRB:

For: **Robert Ziegelbauer (608) 266-0315**By/Representing: **Tom Kelly**This file may be shown to any legislator: **NO**Drafter: **jkreye**

May Contact:

Alt. Drafters:

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

Extra Copies:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Single sales factor apportionment of corporate income

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	jkreye 09/06/2000	csicilia 09/11/2000	jfrantze 09/12/2000	_____	lrb_docadmin 09/12/2000	lrb_docadminState 11/15/2000	

FE Sent For:

&lt;END&gt;

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1?	jkreye	9/11 gjs / 1 oo	9/12	9/2			

FE Sent For:

<END>

**LEGISLATIVE REFERENCE BUREAU**

**BILL REQUEST FORM**

Legal Section, 5<sup>th</sup> Floor, 100 N. Hamilton St.  
(608) 266-3561

JK

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.  
Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: 7-11-00	Legislator or agency requesting this draft: Rep. Ziegelbauer
Name/phone number of person submitting request: Tom Kelly / 266-0315	
Persons to contact for questions about this draft (names and phone numbers please): Tom Kelly or Luanne Kostelic / 266-0315	
Describe the problem, including any helpful examples. How do you want to solve the problem? Rep. Ziegelbauer would like to reintroduce 1999 AB 74 (1999 LRB 0569/1) in the 2001-02 Legislative Session.	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67): 1999 AB 74

**Requests are confidential unless stated otherwise.**

May we tell others that we are working on this for you?  YES  NO  
If yes, anyone who asks?  YES  NO  
Any legislator?  YES  NO  ONLY the following persons:

Do you consider this urgent?  YES  NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?  
 YES  NO If yes, please sign your name here:

# 1999 ASSEMBLY BILL 74

February 2, 1999 - Introduced by Representatives ZIEGELBAUER, PLALE, GOETSCH, GROTHMAN, F. LASEE, SYKORA, RYBA, SERATTI and POWERS, cosponsored by Senator WELCH. Referred to Joint survey committee on Tax Exemptions.

1) add <sup>similar</sup> change to 71.04(4) and 71.04(7)(d)  
2) create DN to notify Rep. of connection

1 AN ACT to repeal 71.25 (7) and (8); and to amend 71.25 (6) and 71.25 (9) (d) of  
2 the statutes; relating to: changing the formula for apportioning income to this  
3 state in computing corporate income taxes and franchise taxes.

### *Analysis by the Legislative Reference Bureau*

In computing corporate income taxes and franchise taxes, 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 payroll factor and a property factor. The sales factor is weighted double. Under this bill, the sales factor will be the only factor used.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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:*

4 SECTION 1. 71.25 (6) of the statutes is amended to read:

5 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.

6 Corporations engaged in business within and without the state shall be taxed only

**ASSEMBLY BILL 74**

1 on such income as is derived from business transacted and property located within  
2 the state. The amount of such income attributable to Wisconsin may be determined  
3 by an allocation and separate accounting thereof, when the business of such  
4 corporation within the state is not an integral part of a unitary business, but the  
5 department of revenue may permit an allocation and separate accounting in any case  
6 in which it is satisfied that the use of such method will properly reflect the income  
7 taxable by this state. In all cases in which allocation and separate accounting is not  
8 permissible, the determination shall be made in the following manner: for all  
9 businesses except financial organizations, public utilities, railroads, sleeping car  
10 companies, car line companies and corporations or associations that are subject to  
11 a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted  
12 from the total net income of the taxpayer the part thereof (less related expenses, if  
13 any) that follows the situs of the property or the residence of the recipient. The  
14 remaining net income shall be apportioned to Wisconsin by use of an apportionment  
15 fraction composed of a the sales factor under sub. (9) representing 50% of the fraction,  
16 a property factor under sub. (7) representing 25% of the fraction and a payroll factor  
17 under sub. (8) representing 25% of the fraction.

18 **SECTION 2.** 71.25 (7) and (8) of the statutes are repealed.

19 **SECTION 3.** 71.25 (9) (d) of the statutes is amended to read:

20 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this  
21 state if the income-producing activity is performed in this state. If the  
22 income-producing activity is performed both in and outside this state the sales shall  
23 be divided between those states having jurisdiction to tax such business in  
24 proportion to the direct costs of performance incurred in each such state in rendering  
25 this service. Services performed in states which do not have jurisdiction to tax the

**ASSEMBLY BILL 74**

1 business shall be deemed to have been performed in the state to which compensation  
2 is would be allocated by sub. (8), 1997 stats.

3 **SECTION 4. Initial applicability.**

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

8 (END)



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-01087

JK:j:....

gjs

RMR

in 9-6-00

D-N

WPD: please  
proof w/ ~~copy~~  
as indicated

gen.

1

AN ACT ...; relating to: single sales factor apportionment of income for corporate

2

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:*

3

SECTION 1. 71.04 (4) of the statutes is renumbered 71.04 (4) (intro.) and

4

amended to read:

5

71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)

6

Nonresident individuals and nonresident estates and trusts engaged in business

Amend  
w/  
intro



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

1/10  
w/ panel

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

18 71.04 (4) (a) For taxable years beginning before January 1, 2002, an  
 19 apportionment fraction composed of a sales factor under sub. (7) representing 50%  
 20 of the fraction, a property factor under sub. (5) representing 25% of the fraction, and  
 21 a payroll factor under sub. (6) representing 25% of the fraction.

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

23 71.04 (4) (b) For taxable years beginning after December 31, 2001, an  
 24 apportionment fraction composed of the sales factor under sub. (7).

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

*Proof w/ [unclear] R/10*

*Proof w/ [unclear] R/10*

*Proof w/ [unclear] R/10*

*Proof w/ [unclear] R/10*

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

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

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

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

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

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

16           71.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident  
17 individual or nonresident estate or trust engaged in business within and without the  
18 this state of Wisconsin and required to apportion its income as provided in this  
19 section, it shall be shown to the satisfaction of the department of revenue that the  
20 use of any one of the 3 factors provided under sub. (4) gives an unreasonable or  
21 inequitable final average ratio because of the fact that such nonresident individual  
22 or nonresident estate or trust does not employ, to any appreciable extent in its trade  
23 or business in producing the income taxed, the factors made use of in obtaining such  
24 ratio, this factor may, with the approval of the department of revenue, be omitted in

*Proof w/ Folio*

1 obtaining the final average ratio which is to be applied to the remaining net income.

2 This subsection does not apply to taxable years beginning after December 31, 2001.

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

5 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.

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

*Proof w/ Folio*

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

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

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

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

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

9 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. ~~(5)~~ and for taxable  
10 years beginning before January 1, 2002:

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

12 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. ~~(5)~~ and for taxable years  
13 beginning before January 1, 2002:

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

15 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this  
16 state if the income-producing activity is performed in this state. If the  
17 income-producing activity is performed both in and outside this state the sales shall  
18 be divided between those states having jurisdiction to tax such business in  
19 proportion to the direct costs of performance incurred in each such state in rendering  
20 this service. Services performed in states which do not have jurisdiction to tax the  
21 business shall be deemed to have been performed in the state to which compensation  
22 is allocated by sub. s. 71.25 (8), 1999 stats. ✓

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

24 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation  
25 engaged in business within and without the this state of Wisconsin and required to

would be

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1 apportion its income as provided in sub. (6), it shall be shown to the satisfaction of  
 2 the department of revenue that the use of any one of the 3 factors provided in sub.  
 3 (6) gives an unreasonable or inequitable final average ratio because of the fact that  
 4 such corporation does not employ, to any appreciable extent in its trade or business  
 5 in producing the income taxed, the factors made use of in obtaining such ratio, this  
 6 factor may, with the approval of the department of revenue, be omitted in obtaining  
 7 the final average ratio which is to be applied to the remaining net income. This  
 8 subsection does not apply to taxable years beginning after December 31, 2001.

*proof  
w/  
Colio*

9 **SECTION 15. Initial applicability.**

10 (1) This act first applies to taxable years ~~beginning after December 31, 2001~~ ✓

11 (END)

*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*

✓

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0108/2dn

JK./.....

ej<sup>s</sup>

September 6, 2000

Representative Ziegelbauer:

Please review this draft carefully to ensure that it is consistent with your intent. This bill is based on 1999 Assembly Bill 74, but it includes certain technical corrections not included in 1999 Assembly Bill 74. Also, the bill does not affect the income apportionment of an insurance company. Under current law, the income of a insurance company that sells policies on property located inside and outside this state is apportioned by using a formula that includes a premiums factor and a payroll factor. Do you want the apportionment formula for an insurance company to have only a premiums factor? Please contact me if you have any questions.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: joseph.kreye@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0108/1dn  
JK:cjs:jf

September 12, 2000

Representative Ziegelbauer:

Please review this draft carefully to ensure that it is consistent with your intent. This bill is based on 1999 Assembly Bill 74, but it includes certain technical corrections not included in 1999 Assembly Bill 74. Also, the bill does not affect the income apportionment of an insurance company. Under current law, the income of a insurance company that sells policies on property located inside and outside this state is apportioned by using a formula that includes a premiums factor and a payroll factor. Do you want the apportionment formula for an insurance company to have only a premiums factor? Please contact me if you have any questions.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: [joseph.kreye@legis.state.wi.us](mailto:joseph.kreye@legis.state.wi.us)



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

STEPHEN R. MILLER  
CHIEF

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

September 12, 2000

### MEMORANDUM

To: Representative Ziegelbauer

From: Joseph T. Kreye, Legislative Attorney

Re: LRB-0108 Single sales factor apportionment of corporate income

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY     JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-2263 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.