

2001 DRAFTING REQUEST

Bill

Received: 03/01/2001

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: John Gard (608) 266-2343

By/Representing: matt

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Alt. Drafters:

Subject: Tax - corp. inc. and fran.

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Single sales apportionment of corporate income

Instructions:

See Attached

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>
/?	jkreye 03/01/2001	csicilia 03/01/2001		_____			State
/1			pgreensl 03/01/2001	_____	lrb_docadmin 03/01/2001	lrb_docadmin 03/02/2001	

FE Sent For:

<END>

→ At Intro .

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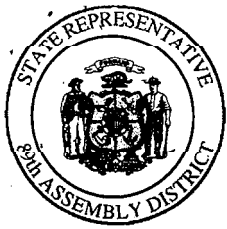
See Attached

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1?	jkreye	1 cjs 3/1 01	3/1 P8	3/1 P8/KFR			

FE Sent For:

<END>



John Gard

Assembly Chairman, Joint Committee on Finance

Memorandum

To: LRB – bill drafting

From: Matt Kussow, Rep. Gard's office
608/266-2343

Date: March 1, 2001

Regarding: Single sales factor

Please draft the language contained in the Governor's budget proposal relating to single sales factor as a separate Assembly Bill.

Thank you.

2688/1

DOA:.....Holden - Single sales factor apportionment of corporate income

FOR 2001-03 BUDGET -- NOT READY FOR INTRODUCTION

in 3-1-01 (500N)

single sales factor apportionment of income for corporate income tax and franchise tax purposes and granting rule-making authority

1 AN ACT ...; relating to: the budget

Analysis by the Legislative Reference Bureau

TAXATION
INCOME TAXATION

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a 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. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

Under this bill, beginning on January 1, 2005, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. The property and payroll factors will be decreased, and eventually phased out, over the next four years as the sales factor is increased and becomes the only factor. Beginning on January 1, 2005, the premium factor will be the only factor used to attribute a portion of an insurance company's income to this state. The payroll factor will be decreased, and eventually phased out, over the next four years as the premium factor is increased and becomes the only factor.

Under current law, the income of an electric or gas utility is apportioned by rules established by (DOR). Under the bill, for taxable years beginning after December 31, 2002, and before January 1, 2005, the income of an electric or gas

→ the department of revenue

utility is apportioned in the same manner as the income of a corporation under the bill. Beginning on January 1, 2005, the sales factor will be the only factor used to attribute a portion of the income of an electric or gas utility to this state.

Under current law, the income of a financial organization is apportioned, for corporate income tax and franchise tax purposes, by rules established by DOR. Under the bill, for taxable years beginning after December 31, 2002, and before January 1, 2005, the income of a financial organization is apportioned by multiplying that income by a fraction that includes a sales factor representing more than 50% of the fraction, as determined by rule by DOR. For taxable years beginning after December 31, 2004 the income of a financial organization is apportioned by using a sales factor, as determined by DOR.

Under current law and under the bill, the income of air carriers and pipeline companies is apportioned by rules established by DOR.

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:

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

3 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)
4 Nonresident individuals and nonresident estates and trusts engaged in business
5 within and without the state shall be taxed only on such income as is derived from
6 business transacted and property located within the state. The amount of such
7 income attributable to Wisconsin may be determined by an allocation and separate
8 accounting thereof, when the business of such nonresident individual or nonresident
9 estate or trust within the state is not an integral part of a unitary business, but the
10 department of revenue may permit an allocation and separate accounting in any case
11 in which it is satisfied that the use of such method will properly reflect the income
12 taxable by this state. In all cases in which allocation and separate accounting is not
13 permissible, the determination shall be made in the following manner: for all
14 businesses except air carriers, financial organizations, pipeline companies, public

1 utilities, railroads, sleeping car companies and car line companies there shall first
2 be deducted from the total net income of the taxpayer the part thereof (less related
3 expenses, if any) that follows the situs of the property or the residence of the
4 recipient. The remaining net income shall be apportioned to ~~Wisconsin~~ this state by
5 use of ~~an apportionment fraction composed of a sales factor representing 50% of the~~
6 ~~fraction, a property factor representing 25% of the fraction and a payroll factor~~
7 ~~representing 25% of the fraction.~~ the following:

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

9 71.04 (4) (a) For taxable years beginning before January 1, 2003, an
10 apportionment fraction composed of a sales factor under sub. (7) representing 50%
11 of the fraction, a property factor under sub. (5) representing 25% of the fraction, and
12 a payroll factor under sub. (6) representing 25% of the fraction.

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

14 71.04 (4) (b) For taxable years beginning after December 31, 2002, and before
15 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (7)
16 representing 60% of the fraction, a property factor under sub. (5) representing 20%
17 of the fraction, and a payroll factor under sub. (6) representing 20% of the fraction.

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

19 71.04 (4) (c) For taxable years beginning after December 31, 2003, and before
20 January 1, 2005, an apportionment fraction composed of a sales factor under sub. (7)
21 representing 80% of the fraction, a property factor under sub. (5) representing 10%
22 of the fraction, and a payroll factor under sub. (6) representing 10% of the fraction.

23 **SECTION 5.** 71.04 (4) (d) of the statutes is created to read:

24 71.04 (4) (d) For taxable years beginning after December 31, 2004, an
25 apportionment fraction composed of the sales factor under sub. (7).

1 **SECTION 6.** 71.04 (4) (e) of the statutes is created to read:

2 71.04 (4) (e) For taxable years beginning after December 31, 2002, and before
3 January 1, 2005, the apportionment fraction for the remaining net income of a
4 financial organization shall include a sales factor that represents more than 50% of
5 the apportionment fraction, as determined by rule by the department. For taxable
6 years beginning after December 31, 2004, the apportionment fraction for the
7 remaining net income of a financial organization is composed of a sales factor, as
8 determined by rule by the department.

9 **SECTION 7.** 71.04 (5) (intro.) of the statutes is amended to read:

10 71.04 (5) **PROPERTY FACTOR.** (intro.) For purposes of sub. (4) and for taxable
11 years beginning before January 1, 2005:

12 **SECTION 8.** 71.04 (6) (intro.) of the statutes is amended to read:

13 71.04 (6) **PAYROLL FACTOR.** (intro.) For purposes of sub. (4) and for taxable years
14 beginning before January 1, 2005:

15 **SECTION 9.** 71.04 (7) (d) of the statutes is amended to read:

16 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
17 state if the income-producing activity is performed in this state. If the
18 income-producing activity is performed both in and outside this state the sales shall
19 be divided between those states having jurisdiction to tax such business in
20 proportion to the direct costs of performance incurred in each such state in rendering
21 this service. Services performed in states which do not have jurisdiction to tax the
22 business shall be deemed to have been performed in the state to which compensation
23 is allocated by sub. s. 71.04 (6), 1999 stats.

24 **SECTION 10.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and
25 amended to read:

1 71.04 (8) (b) 1. ~~“Public~~ For taxable years beginning before January 1, 2003,
2 “public utility”, as used in this section, means any business entity described under
3 subd. 2. and any business entity which owns or operates any plant, equipment,
4 property, franchise, or license for the transmission of communications or the
5 production, transmission, sale, delivery, or furnishing of electricity, water or steam,
6 the rates of charges for goods or services of which have been established or approved
7 by a federal, state or local government or governmental agency. ~~“Public~~

8 2. In this section, for taxable years beginning after December 31, 2002, “public
9 utility” also means any business entity providing service to the public and engaged
10 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
11 regardless of whether or not the entity’s rates or charges for services have been
12 established or approved by a federal, state or local government or governmental
13 agency.

14 **SECTION 11.** 71.04 (8) (c) of the statutes is amended to read:

15 71.04 (8) (c) The net business income of railroads, sleeping car companies, car
16 line companies, pipeline companies, financial organizations, air carriers and public
17 utilities requiring apportionment shall be apportioned pursuant to rules of the
18 department of revenue, but the income taxed is limited to the income derived from
19 business transacted and property located within the state.

20 **SECTION 12.** 71.04 (10) of the statutes is amended to read:

21 71.04 (10) ~~DEPARTMENT MAY WAIVE FACTOR.~~ Where, in the case of any nonresident
22 individual or nonresident estate or trust engaged in business ~~within in~~ and ~~without~~
23 ~~the~~ outside this state of Wisconsin and required to apportion its income as provided
24 in this section, it shall be shown to the satisfaction of the department of revenue that
25 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or

1 inequitable final average ratio because of the fact that such nonresident individual
2 or nonresident estate or trust does not employ, to any appreciable extent in its trade
3 or business in producing the income taxed, the factors made use of in obtaining such
4 ratio, this factor may, with the approval of the department of revenue, be omitted in
5 obtaining the final average ratio which is to be applied to the remaining net income.

6 This subsection does not apply to taxable years beginning after December 31, 2004.

7 **SECTION 13.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and
8 amended to read:

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

1 ~~under sub. (9) representing 50% of the fraction, a property factor under sub. (7)~~
2 ~~representing 25% of the fraction and a payroll factor under sub. (8) representing 25%~~
3 ~~of the fraction. the following:~~

4 **SECTION 14.** 71.25 (6) (a) of the statutes is created to read:

5 71.25 (6) (a) For taxable years beginning before January 1, 2003, an
6 apportionment fraction composed of a sales factor under sub. (9) representing 50%
7 of the fraction, a property factor under sub. (7) representing 25% of the fraction, and
8 a payroll factor under sub. (8) representing 25% of the fraction.

9 **SECTION 15.** 71.25 (6) (b) of the statutes is created to read:

10 71.25 (6) (b) For taxable years beginning after December 31, 2002, and before
11 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (9)
12 representing 60% of the fraction, a property factor under sub. (7) representing 20%
13 of the fraction, and a payroll factor under sub. (8) representing 20% of the fraction.

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

15 71.25 (6) (c) For taxable years beginning after December 31, 2003, and before
16 January 1, 2005, an apportionment fraction composed of a sales factor under sub. (9)
17 representing 80% of the fraction, a property factor under sub. (7) representing 10%
18 of the fraction, and a payroll factor under sub. (8) representing 10% of the fraction.

19 **SECTION 17.** 71.25 (6) (d) of the statutes is created to read:

20 71.25 (6) (d) For taxable years beginning after December 31, 2004, an
21 apportionment fraction composed of the sales factor under sub. (9).

22 **SECTION 18.** 71.25 (6) (e) of the statutes is created to read:

23 71.25 (6) (e) For taxable years beginning after December 31, 2002, and before
24 January 1, 2005, the apportionment fraction for the remaining net income of a
25 financial organization shall include a sales factor that represents more than 50% of

1 the apportionment fraction, as determined by rule by the department. For taxable
2 years beginning after December 31, 2004, the apportionment fraction for the
3 remaining net income of a financial organization is composed of a sales factor, as
4 determined by rule by the department.

5 **SECTION 19.** 71.25 (7) (intro.) of the statutes is amended to read:

6 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
7 years beginning before January 1, 2005:

8 **SECTION 20.** 71.25 (8) (intro.) of the statutes is amended to read:

9 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
10 years beginning before January 1, 2005:

11 **SECTION 21.** 71.25 (9) (d) of the statutes is amended to read:

12 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
13 state if the income-producing activity is performed in this state. If the
14 income-producing activity is performed both in and outside this state the sales shall
15 be divided between those states having jurisdiction to tax such business in
16 proportion to the direct costs of performance incurred in each such state in rendering
17 this service. Services performed in states which do not have jurisdiction to tax the
18 business shall be deemed to have been performed in the state to which compensation
19 is allocated by ~~sub. s. 71.25 (8), 1999 stats.~~

20 **SECTION 22.** 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and
21 amended to read:

22 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,
23 2003, “public utility” means any business entity described under subd. 2. and
24 any business entity which owns or operates any plant, equipment, property, franchise,
25 or license for the transmission of communications or the production, transmission,

1 sale, delivery, or furnishing of electricity, water or steam the rates of charges for
2 goods or services of which have been established or approved by a federal, state or
3 local government or governmental agency. “Public

4 2. In this section, for taxable years beginning after December 31, 2002, “public
5 utility” also means any business entity providing service to the public and engaged
6 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
7 regardless of whether or not the entity’s rates or charges for services have been
8 established or approved by a federal, state or local government or governmental
9 agency.

10 **SECTION 23.** 71.25 (10) (c) of the statutes is amended to read:

11 71.25 (10) (c) The net business income of railroads, sleeping car companies, car
12 line companies, pipeline companies, financial organizations, air carriers and public
13 utilities requiring apportionment shall be apportioned pursuant to rules of the
14 department of revenue, but the income taxed is limited to the income derived from
15 business transacted and property located within the state.

16 **SECTION 24.** 71.25 (11) of the statutes is amended to read:

17 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
18 engaged in business ~~within in and without the~~ outside this state of Wisconsin and
19 required to apportion its income as provided in sub. (6), it shall be shown to the
20 satisfaction of the department of revenue that the use of any one of the 3 factors
21 provided in sub. (6) gives an unreasonable or inequitable final average ratio because
22 of the fact that such corporation does not employ, to any appreciable extent in its
23 trade or business in producing the income taxed, the factors made use of in obtaining
24 such ratio, this factor may, with the approval of the department of revenue, be
25 omitted in obtaining the final average ratio which is to be applied to the remaining

1 net income. This subsection does not apply to taxable years beginning after
2 December 31, 2004.

3 **SECTION 25.** 71.45 (3) (intro.) of the statutes is amended to read:

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

13 **SECTION 26.** 71.45 (3) (a) of the statutes is amended to read:

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

1 commissioner of insurance under s. 601.42 (1g) (a). In this paragraph, “assumed
2 premiums” means assumed reinsurance premiums from domestic insurance
3 companies as reported for the taxable year on an annual statement that is filed with
4 the commissioner of insurance under s. 601.42 (1g) (a).

5 **SECTION 27.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and
6 amended to read:

7 71.45 (3) (b) 1. The Subject to sub. (3d), the percentage of determined by
8 dividing the payroll, exclusive of life insurance payroll, paid in this state in the
9 taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in
10 the taxable year as reflects such compensation paid outside this state.
11 Compensation.

12 2. Under subd. 1., payroll is paid outside in this state if the individual’s service
13 is performed entirely ~~outside~~ in this state; or the individual’s service is performed
14 both ~~within and without~~ in and outside this state, but the service performed ~~within~~
15 outside this state is incidental to the individual’s service ~~without~~ in this state; or
16 some service is performed ~~without~~ in this state and the base of operations, or if there
17 is no base of operations, the place from which the service is directed or controlled is
18 ~~without~~ in this state, or the base of operations or the place from which the service is
19 directed or controlled is not in any state in which some part of the service is
20 performed, but the individual’s residence is ~~outside~~ in this state.

21 **SECTION 28.** 71.45 (3d) of the statutes is created to read:

22 71.45 (3d) PHASE IN; DOMESTIC INSURERS. (a) For taxable years beginning after
23 December 31, 2002, and before January 1, 2004, a domestic insurer that is subject
24 to apportionment under sub. (3) and this subsection shall multiply the net income
25 figure derived by the application of sub. (2) by an apportionment fraction composed

1 of the percentage under sub. (3) (a) representing 60% of the fraction and the
2 percentage under sub. (3) (b) 1. representing 40% of the fraction.

3 (b) For taxable years beginning after December 31, 2003, and before January
4 1, 2005, a domestic insurer that is subject to apportionment under sub. (3) and this
5 subsection shall multiply the net income figure derived by the application of sub. (2)
6 by an apportionment fraction composed of the percentage under sub. (3) (a)
7 representing 80% of the fraction and the percentage under sub. (3) (b) 1. representing
8 20% of the fraction.

9 (c) For taxable years beginning after December 31, 2004, a domestic insurer
10 that is subject to apportionment under sub. (3) and this subsection shall multiply the
11 net income figure derived by the application of sub. (2) by the percentage under sub.
12 (3) (a).

13 SECTION 29. 71.45 (3m) of the statutes is amended to read:

14 71.45 (3m) ARITHMETIC AVERAGE. The Except as provided in sub. (3d), the
15 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the
16 net income figure arrived at by the successive application of sub. (2) (a) and (b) with
17 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have
18 ~~collected~~ received premiums, other than life insurance premiums, written ~~upon~~ for
19 insurance, ~~other than life insurance, where the subject of such insurance was on~~
20 property or risks resident, located or to be performed outside this state, to arrive at
21 Wisconsin income constituting the measure of the franchise tax.

22 SECTION ~~29.44~~ ²⁹. Nonstatutory provisions; revenue.

23 (1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. The
24 department of revenue shall submit in proposed form rules related to the
25 apportionment of the income of financial organizations under sections 71.04 (4) (e)

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please
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1 and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff
2 under section 227.15 (1) of the statutes no later than the first day of the 4th month
3 beginning after the effective date of this subsection.

4 (END)



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

March 1, 2001

MEMORANDUM

To: Representative Gard

From: Joseph T. Kreye, Legislative Attorney

Re: LRB-2688 Single sales 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.

Gretschmann, Karen

From: Gretschmann, Karen
Sent: Monday, April 16, 2001 10:14 AM
To: Schoenfeldt, Jeff
Subject: 01-2688/1 and 2529/2



01-2688/1



01-25292.pdf

*Karen Gretschmann
Legislative Program Assistant/Financial Specialist
Legal Section
Wisconsin Legislative Reference Bureau
(608) 266-3561*



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 266-5648

STEPHEN R. MILLER
CHIEF

May 24, 2001

MEMORANDUM

To: Representative Gard

From: Joseph T. Kreye, Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2001 AB-380** (LRB-2688/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

May 24, 2001

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on AB 380: Single Sales Apportionment of Corporate Income

The Department has the following recommendations regarding effective date language and computation of the sales factor when there are zeros or negative numbers.

Effective Date Language. Sections 71.45(a) and (b), dealing with the computation of apportionable income, state that they are "subject to sub. (3d)," which sets forth the sales factor percents during the phase in of the single factor formula. However, as drafted, it appears that the change in the computation of apportionable income, to include assumed premiums written for reinsurance, is effective with publication of the act. Because the date of publication may occur in the middle of a tax year for insurance companies, this provision would cause problems for insurance companies that have to compute income by two methods during a tax year and for the Department in auditing those returns.

The Department recommends creating initial applicability language for sec. 71.45(3)(intro), (a) and (b) so that the change in the computation of apportionable income for insurance companies first applies to taxable years that begin after December 31, 2002.

Computation of Sales Factor With Zeros or Negative Numbers. The Department also recommends that the computation of the sales factor be clarified when sales are negative or zero. Statutory language should be added to sections 71.04, 71.25 and 71.45 to clarify that:

If both the numerator and the denominator of the sales (or premiums) factor are zero:

- For taxable years beginning before January 1, 2005, the sales factor is eliminated from the apportionment formula, and
- For taxable years beginning on or after January 1, 2005, the Wisconsin apportionment percentage is zero (no income allocated to Wisconsin).

If the numerator of the sales or premiums factor is a negative number and the denominator of the sales factor is a positive or a negative number:

- For taxable years beginning before January 1, 2005, the sales factor is zero, and

- For taxable years beginning on or after January 1, 2005, the Wisconsin apportionment percentage is zero (no income allocated to Wisconsin).

If the numerator of the sales or premiums factor is a positive number and the denominator is zero or a negative number,

- For taxable years beginning before January 1, 2005, the sales factor is one, and
- For taxable years beginning on or after January 1, 2005, 100% of the net income is apportioned to Wisconsin.

The proposed legislation makes no provision for the funding of the costs involved in administering the activities required. If the author wishes to provide funding, appropriation language could be developed and costs allocated in the following manner:

	<u>Chapter 20</u>	<u>Amount</u>	<u>FTE</u>
one-time	s. 20.566 (1) (a)	\$19,700	

If you have any questions regarding this technical memorandum, please contact your name at your phone; for administrative costs contact Pam Walgren at 266-3347.

DC:PW