

2001 DRAFTING REQUEST

Assembly Amendment (AA-AB380)

Received: 10/02/2001

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: John Townsend (608) 266-3156

By/Representing: minette

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - corp. inc. and fran.

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Technical amendment to single sales factor apportionment

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> |
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| /1 | jkreye 10/02/2001 | gilfokm 10/02/2001 | pgreensl 10/03/2001 | _____ | lrb_docadmin 10/03/2001 | lrb_docadmin 10/03/2001 | |
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| /2 | | | rschluet 10/04/2001 | _____ | lrb_docadmin 10/04/2001 | lrb_docadmin 10/04/2001 | |

FE Sent For:

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1/2 WLJ 10/4

 10-4-01

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| /1 | jkreye | 1-10/2 Kmg | 10/3 P8 | 10/3 P8/KJF | | | |

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10-2-01

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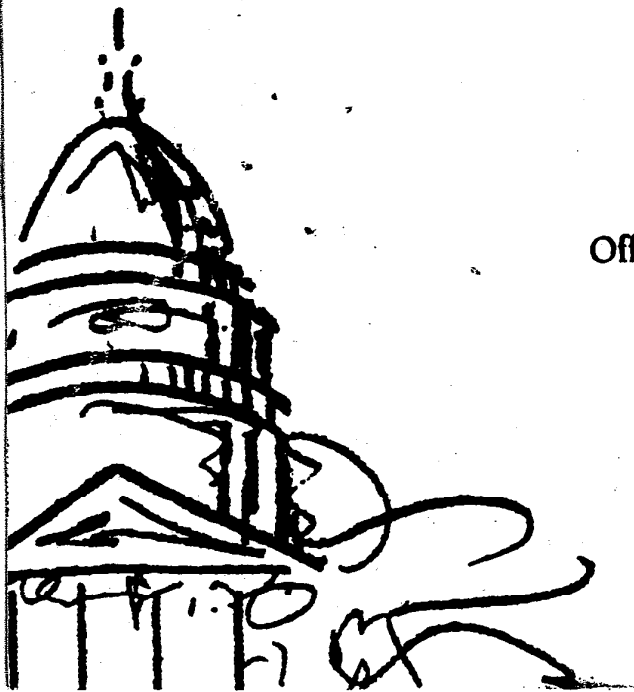
Minette Rep. Townsend

- amendment to AB 380 (single rules)

wanted by the end of the week

(for exec on Tues, 10-8)

- based on DOR memo



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Scott McCallum
Governor

Richard G. Chandler
Secretary of Revenue

Joe
Here is the request
for amendment from
Chandler &
Tom Curada

September 26, 2001

The Honorable John F. Townsend
Room 22 West, State Capitol
Madison, WI 53702

Members of the Assembly Committee on Economic Development

Dear Representative Townsend and Committee Members:

Thank you for the opportunity to testify in support of 2001 Assembly Bill 380, which would change Wisconsin's three factor apportionment formula to single sales factor apportionment of corporate income. As we indicated, the Department has the following technical concerns about effective date language and the computation of the apportionment factor when sales are negative or zero.

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 percentages 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. To avoid potential litigation, the Department 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).

2001 ASSEMBLY BILL 380

May 8, 2001 – Introduced by Representatives GARD, M. LEHMAN, RILEY, JENSEN, HUEBSCH, STARZYK, MONTGOMERY, KRAWCZYK, TOWNSEND, RHOADES, KEDZIE, GUNDRUM, LADWIG, ZIEGELBAUER, SERATTI, GROTHMAN, AINSWORTH, OTT, JESKEWITZ, SYKORA, POWERS, HUNDERTMARK, VRAKAS, WALKER, NASS, PETTIS, LEIBHAM, HAHN, J. FITZGERALD, STONE, GUNDERSON and HOVEN, cosponsored by Senators HUELSMAN, DARLING, WELCH, PLACHE, SCHULTZ and ROESSLER. Referred to Committee on Economic Development.

1 **AN ACT to renumber and amend** 71.04 (4), 71.04 (8) (b), 71.25 (6), 71.25 (10) (b)
2 and 71.45 (3) (b); **to amend** 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04 (7) (d),
3 71.04 (8) (c), 71.04 (10), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d), 71.25
4 (10) (c), 71.25 (11), 71.45 (3) (intro.), 71.45 (3) (a) and 71.45 (3m); and **to create**
5 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4) (e), 71.25 (6) (a),
6 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d), 71.25 (6) (e) and 71.45 (3d) of the statutes;
7 **relating to:** single sales factor apportionment of income for corporate income
8 tax and franchise tax purposes and granting rule-making authority.

Analysis by the Legislative Reference Bureau

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

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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 the department of revenue (DOR). Under the bill, for taxable years beginning after December 31, 2002, and before January 1, 2005, the income of an electric or gas 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

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1 estate or trust within the state is not an integral part of a unitary business, but the
2 department of revenue may permit an allocation and separate accounting in any case
3 in which it is satisfied that the use of such method will properly reflect the income
4 taxable by this state. In all cases in which allocation and separate accounting is not
5 permissible, the determination shall be made in the following manner: for all
6 businesses except air carriers, financial organizations, pipeline companies, public
7 utilities, railroads, sleeping car companies and car line companies there shall first
8 be deducted from the total net income of the taxpayer the part thereof (less related
9 expenses, if any) that follows the situs of the property or the residence of the
10 recipient. The remaining net income shall be apportioned to Wisconsin this state by
11 use of an apportionment fraction composed of a sales factor representing 50% of the
12 fraction, a property factor representing 25% of the fraction and a payroll factor
13 representing 25% of the fraction. the following:

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

15 71.04 (4) (a) For taxable years beginning before January 1, 2003, an
16 apportionment fraction composed of a sales factor under sub. (7) representing 50%
17 of the fraction, a property factor under sub. (5) representing 25% of the fraction, and
18 a payroll factor under sub. (6) representing 25% of the fraction.

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

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

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

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

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

6 71.04 (4) (d) For taxable years beginning after December 31, 2004, an
7 apportionment fraction composed of the sales factor under sub. (7).

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

9 71.04 (4) (e) For taxable years beginning after December 31, 2002, and before
10 January 1, 2005, the apportionment fraction for the remaining net income of a
11 financial organization shall include a sales factor that represents more than 50% of
12 the apportionment fraction, as determined by rule by the department. For taxable
13 years beginning after December 31, 2004, the apportionment fraction for the
14 remaining net income of a financial organization is composed of a sales factor, as
15 determined by rule by the department.

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

17 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
18 years beginning before January 1, 2005:

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

20 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years
21 beginning before January 1, 2005:

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

23 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
24 state if the income-producing activity is performed in this state. If the
25 income-producing activity is performed both in and outside this state the sales shall

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1 be divided between those states having jurisdiction to tax such business in
2 proportion to the direct costs of performance incurred in each such state in rendering
3 this service. Services performed in states which do not have jurisdiction to tax the
4 business shall be deemed to have been performed in the state to which compensation
5 is allocated by sub. s. 71.04 (6), 1999 stats.

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

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

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

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

22 71.04 (8) (c) The net business income of railroads, sleeping car companies, car
23 line companies, pipeline companies, financial organizations, air carriers and public
24 utilities requiring apportionment shall be apportioned pursuant to rules of the

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1 department of revenue, but the income taxed is limited to the income derived from
2 business transacted and property located within the state.

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

4 71.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident
5 individual or nonresident estate or trust engaged in business ~~within in~~ and ~~without~~
6 ~~the outside this~~ state of Wisconsin and required to apportion its income as provided
7 in this section, it shall be shown to the satisfaction of the department of revenue that
8 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or
9 inequitable final average ratio because of the fact that such nonresident individual
10 or nonresident estate or trust does not employ, to any appreciable extent in its trade
11 or business in producing the income taxed, the factors made use of in obtaining such
12 ratio, this factor may, with the approval of the department of revenue, be omitted in
13 obtaining the final average ratio which is to be applied to the remaining net income.
14 This subsection does not apply to taxable years beginning after December 31, 2004.

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

17 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.
18 (intro.) Corporations engaged in business within and without the state shall be taxed
19 only on such income as is derived from business transacted and property located
20 within the state. The amount of such income attributable to Wisconsin may be
21 determined by an allocation and separate accounting thereof, when the business of
22 such corporation within the state is not an integral part of a unitary business, but
23 the department of revenue may permit an allocation and separate accounting in any
24 case in which it is satisfied that the use of such method will properly reflect the
25 income taxable by this state. In all cases in which allocation and separate accounting

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1 is not permissible, the determination shall be made in the following manner: for all
2 businesses except air carriers, financial organizations, pipeline companies, public
3 utilities, railroads, sleeping car companies, car line companies and corporations or
4 associations that are subject to a tax on unrelated business income under s. 71.26 (1)
5 (a) there shall first be deducted from the total net income of the taxpayer the part
6 thereof (less related expenses, if any) that follows the situs of the property or the
7 residence of the recipient. The remaining net income shall be apportioned to
8 ~~Wisconsin this state~~ by use of ~~an apportionment fraction composed of a sales factor~~
9 ~~under sub. (9) representing 50% of the fraction, a property factor under sub. (7)~~
10 ~~representing 25% of the fraction and a payroll factor under sub. (8) representing 25%~~
11 ~~of the fraction. the following:~~

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

13 71.25 (6) (a) For taxable years beginning before January 1, 2003, an
14 apportionment fraction composed of a sales factor under sub. (9) representing 50%
15 of the fraction, a property factor under sub. (7) representing 25% of the fraction, and
16 a payroll factor under sub. (8) representing 25% of the fraction.

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

18 71.25 (6) (b) For taxable years beginning after December 31, 2002, and before
19 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (9)
20 representing 60% of the fraction, a property factor under sub. (7) representing 20%
21 of the fraction, and a payroll factor under sub. (8) representing 20% of the fraction.

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

23 71.25 (6) (c) For taxable years beginning after December 31, 2003, and before
24 January 1, 2005, an apportionment fraction composed of a sales factor under sub. (9)

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1 representing 80% of the fraction, a property factor under sub. (7) representing 10%
2 of the fraction, and a payroll factor under sub. (8) representing 10% of the fraction.

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

4 71.25 (6) (d) For taxable years beginning after December 31, 2004, an
5 apportionment fraction composed of the sales factor under sub. (9).

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

7 71.25 (6) (e) For taxable years beginning after December 31, 2002, and before
8 January 1, 2005, the apportionment fraction for the remaining net income of a
9 financial organization shall include a sales factor that represents more than 50% of
10 the apportionment fraction, as determined by rule by the department. For taxable
11 years beginning after December 31, 2004, the apportionment fraction for the
12 remaining net income of a financial organization is composed of a sales factor, as
13 determined by rule by the department.

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

15 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
16 years beginning before January 1, 2005:

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

18 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
19 years beginning before January 1, 2005:

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

21 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
22 state if the income-producing activity is performed in this state. If the
23 income-producing activity is performed both in and outside this state the sales shall
24 be divided between those states having jurisdiction to tax such business in
25 proportion to the direct costs of performance incurred in each such state in rendering

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1 this service. Services performed in states which do not have jurisdiction to tax the
2 business shall be deemed to have been performed in the state to which compensation
3 is allocated by ~~sub. s. 71.25 (8), 1999 stats.~~

4 SECTION 22. 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and
5 amended to read:

6 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,
7 2003, “public utility” means any business entity described under subd. 2. and any
8 business entity which owns or operates any plant, equipment, property, franchise,
9 or license for the transmission of communications or the production, transmission,
10 sale, delivery, or furnishing of electricity, water or steam the rates of charges for
11 goods or services of which have been established or approved by a federal, state or
12 local government or governmental agency. “Public

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

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

20 71.25 (10) (c) The net business income of railroads, sleeping car companies, car
21 line companies, pipeline companies, financial organizations, air carriers and public
22 utilities requiring apportionment shall be apportioned pursuant to rules of the
23 department of revenue, but the income taxed is limited to the income derived from
24 business transacted and property located within the state.

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

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SECTION 24

1 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
2 engaged in business ~~within in and without the~~ outside this state of Wisconsin and
3 required to apportion its income as provided in sub. (6), it shall be shown to the
4 satisfaction of the department of revenue that the use of any one of the 3 factors
5 provided in sub. (6) gives an unreasonable or inequitable final average ratio because
6 of the fact that such corporation does not employ, to any appreciable extent in its
7 trade or business in producing the income taxed, the factors made use of in obtaining
8 such ratio, this factor may, with the approval of the department of revenue, be
9 omitted in obtaining the final average ratio which is to be applied to the remaining
10 net income. This subsection does not apply to taxable years beginning after
11 December 31, 2004.

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

13 71.45 (3) APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in sub. (3d),
14 to determine Wisconsin income for purposes of the franchise tax, domestic insurers
15 ~~not engaged in the sale of life insurance but which that,~~ in the taxable year, have
16 ~~collected~~ received premiums, ~~other than life insurance premiums,~~ written ~~on~~
17 ~~subjects of~~ for insurance on property or risks resident, located or to be performed
18 outside this state, ~~there shall be subtracted from~~ multiply the net income figure
19 derived by application of sub. (2) (a) ~~to arrive at Wisconsin income constituting the~~
20 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~
21 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:

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

23 71.45 (3) (a) The Subject to sub. (3d), the percentage of total determined by
24 dividing the sum of direct premiums written ~~on all property and risks for insurance~~
25 other than life insurance, with respects to all property and risks resident, located,

1 or to be performed in this state, and assumed premiums written for reinsurance,
2 other than life insurance, with respect to all property and risks resident, located, or
3 to be performed in this state, by the sum of direct premiums written for insurance
4 on all property and risks, other than life insurance, wherever located during the
5 taxable year, as reflects, and assumed premiums written on insurance for
6 reinsurance on all property and risks, other than life insurance, where the subject
7 of insurance was resident, located or to be performed outside this state wherever
8 located. In this paragraph, “direct premiums” means direct premiums as reported
9 for the taxable year on an annual statement that is filed by the insurer with the
10 commissioner of insurance under s. 601.42 (1g) (a). In this paragraph, “assumed
11 premiums” means assumed reinsurance premiums from domestic insurance
12 companies as reported for the taxable year on an annual statement that is filed with
13 the commissioner of insurance under s. 601.42 (1g) (a).

14 SECTION 27. 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and
15 amended to read:

16 71.45 (3) (b) 1. The Subject to sub. (3d), the percentage of determined by
17 dividing the payroll, exclusive of life insurance payroll, paid in this state in the
18 taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in
19 the taxable year as reflects such compensation paid outside this state.
20 Compensation.

21 2. Under subd. 1., payroll is paid outside in this state if the individual’s service
22 is performed entirely outside in this state; or the individual’s service is performed
23 both within and without in and outside this state, but the service performed within
24 outside this state is incidental to the individual’s service without in this state; or
25 some service is performed without in this state and the base of operations, or if there

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1 is no base of operations, the place from which the service is directed or controlled is
2 ~~without~~ in this state, or the base of operations or the place from which the service is
3 directed or controlled is not in any state in which some part of the service is
4 performed, but the individual's residence is ~~outside~~ in this state.

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

6 71.45 (3d) PHASE IN; DOMESTIC INSURERS. (a) For taxable years beginning after
7 December 31, 2002, and before January 1, 2004, a domestic insurer that is subject
8 to apportionment under sub. (3) and this subsection shall multiply the net income
9 figure derived by the application of sub. (2) by an apportionment fraction composed
10 of the percentage under sub. (3) (a) representing 60% of the fraction and the
11 percentage under sub. (3) (b) 1. representing 40% of the fraction.

12 (b) For taxable years beginning after December 31, 2003, and before January
13 1, 2005, a domestic insurer that is subject to apportionment under sub. (3) and this
14 subsection shall multiply the net income figure derived by the application of sub. (2)
15 by an apportionment fraction composed of the percentage under sub. (3) (a)
16 representing 80% of the fraction and the percentage under sub. (3) (b) 1. representing
17 20% of the fraction.

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

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

23 71.45 (3m) ARITHMETIC AVERAGE. ~~The~~ Except as provided in sub. (3d), the
24 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the
25 net income figure arrived at by the successive application of sub. (2) (a) and (b) with

ASSEMBLY BILL 380

1 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have
2 ~~collected~~ received premiums, other than life insurance premiums, written upon for
3 ~~insurance, other than life insurance, where the subject of such insurance was on~~
4 property or risks resident, located or to be performed outside this state, to arrive at
5 Wisconsin income constituting the measure of the franchise tax.

6 **SECTION 30. Nonstatutory provisions; revenue.**

7 (1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. The
8 department of revenue shall submit in proposed form rules related to the
9 apportionment of the income of financial organizations under sections 71.04 (4) (e)
10 and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff
11 under section 227.15 (1) of the statutes no later than the first day of the 4th month
12 beginning after the effective date of this subsection.

13

(END)

2001

Date (time) needed

Thurs 10-4

LRBa 0692, 1

AMENDMENT

in 10-2-01

JK: [Signature]

See form AMENDMENTS — COMPONENTS & ITEMS.

S A AMENDMENT

~~TO S A AMENDMENT (LRBa 1)~~

~~TO S A SUBSTITUTE AMENDMENT (LRBs 1)~~

TO 2001 SB SJR SR AB AJR AR 380 (LRB- 1)

At the locations indicated, amend the bill as follows:
(fill ONLY if "engrossed" or "as shown by")

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

LFB:.....Shanovich (RR) - Motion 1643: Delay single sales factor
apportionment; computation modifications

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 2001 SENATE BILL 55 AND 2001 ASSEMBLY BILL 144

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

- 2 1. Page 946, line 21: delete "2003" and substitute "2004".
- 3 2. Page 947, line 1: delete "2002" and substitute "2003".
- 4 3. Page 947, line 2: delete "2004" and substitute "2005".
- 5 4. Page 947, line 6: delete "2003" and substitute "2004".
- 6 5. Page 947, line 7: delete "2005" and substitute "2006".
- 7 6. Page 947, line 11: delete "2004" and substitute "2005".
- 8 7. Page 947, line 14: delete "2002" and substitute "2003".
- 9 8. Page 947, line 15: delete "2005" and substitute "2006".
- 10 9. Page 947, line 18: delete "2004" and substitute "2005".

1

✓ # 4 15
10. Page 947, line 20: after that line insert:

2

"SECTION ~~71.04~~ 71.04 (4m) of the statutes is created to read:

3

71.04 (4m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years

4

beginning before January 1, 2006⁵, if both the numerator and the denominator of the

5

sales factor under sub. (7) related to a taxpayer's remaining net income are zero, the

6

sales factor under sub. (7) is eliminated from the apportionment formula to

7

determine the taxpayer's remaining net income under sub. (4).

8

2. For taxable years beginning after December 31, 2005⁴, if both the numerator

9

and the denominator of the sales factor under sub. (7) related to a taxpayer's

10

remaining net income are zero, none of the taxpayer's remaining net income is

11

apportioned to this state.

12

(b) 1. For taxable years beginning before January 1, 2006⁵, if the numerator of

13

the sales factor under sub. (7) related to a taxpayer's remaining net income is a

14

negative number and the denominator of the sales factor under sub. (7) related to a

15

taxpayer's remaining net income is not zero, the sales factor under sub. (7) is zero.

16

2. For taxable years beginning after December 31, 2005⁴, if the numerator of the

17

sales factor under sub. (7) related to a taxpayer's remaining net income is a negative

18

number and the denominator of the sales factor under sub. (7) related to a taxpayer's

19

remaining net income is not zero, none of the taxpayer's remaining net income is

20

apportioned to this state.

21

(c) 1. For taxable years beginning before January 1, 2006⁵, if the numerator of

22

the sales factor under sub. (7) related to a taxpayer's remaining net income is a

23

positive number and the denominator of the sales factor under sub. (7) related to a

1 taxpayer's remaining net income is zero or a negative number, the sales factor under
2 sub. (7) is one.

3 2. For taxable years beginning after December 31, 200⁴~~5~~, if the numerator of the
4 sales factor under sub. (7) related to a taxpayer's remaining net income is a positive
5 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
6 remaining net income is zero or a negative number, all of the taxpayer's remaining
7 net income is apportioned to this state.”.

8 **11.** Page 947, line 23: delete “2005” and substitute “2006”.

9 **12.** Page 948, line 2: delete “2005” and substitute “2006”.

10 **13.** Page 948, line 14: delete “2003” and substitute “2004”.

11 **14.** Page 948, line 21: delete “2002” and substitute “2003”.

12 **15.** Page 949, line 20: delete “2004” and substitute “2005”.

13 **16.** Page 961, line 7: delete “2003” and substitute “2004”.

14 **17.** Page 961, line 12: delete “2002” and substitute “2003”.

15 **18.** Page 961, line 13: delete “2004” and substitute “2005”.

16 **19.** Page 961, line 17: delete “2003” and substitute “2004”.

17 **20.** Page 961, line 18: delete “2005” and substitute “2006”.

18 **21.** Page 961, line 22: delete “2004” and substitute “2005”.

19 **22.** Page 962, line 1: delete “2002” and substitute “2003”.

20 **23.** Page 962, line 2: delete “2005” and substitute “2006”.

21 **24.** Page 962, line 5: delete “2004” and substitute “2005”.

22 **25.** Page 962, line 7: after that line insert.

* Page 8, line 13: after that line insert:

① "SECTION ~~18~~¹⁸ m. 71.25 (6m) of the statutes is created to read:

2 71.25 (6m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
③ beginning before January 1, 2006⁵, if both the numerator and the denominator of the
4 sales factor under sub. (9) related to a taxpayer's remaining net income are zero, the
5 sales factor under sub. (9) is eliminated from the apportionment formula to
6 determine the taxpayer's remaining net income under sub. (6).

⑦ 2. For taxable years beginning after December 31, 2005^u, if both the numerator
8 and the denominator of the sales factor under sub. (9) related to a taxpayer's
9 remaining net income are zero, none of the taxpayer's remaining net income is
10 apportioned to this state.

⑪ (b) 1. For taxable years beginning before January 1, 2006⁵, if the numerator of
12 the sales factor under sub. (9) related to a taxpayer's remaining net income is a
13 negative number and the denominator of the sales factor under sub. (9) related to a
14 taxpayer's remaining net income is not zero, the sales factor under sub. (9) is zero.

⑮ 2. For taxable years beginning after December 31, 2005^u, if the numerator of the
16 sales factor under sub. (9) related to a taxpayer's remaining net income is a negative
17 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
18 remaining net income is not zero, none of the taxpayer's remaining net income is
19 apportioned to this state.

⑳ (c) 1. For taxable years beginning before January 1, 2006⁵, if the numerator of
21 the sales factor under sub. (9) related to a taxpayer's remaining net income is a
22 positive number and the denominator of the sales factor under sub. (9) related to a
23 taxpayer's remaining net income is zero or a negative number, the sales factor under
24 sub. (9) is one.

- ① 2. For taxable years beginning after December 31, 200⁴~~5~~, if the numerator of the
 2 sales factor under sub. (9) related to a taxpayer's remaining net income is a positive
 3 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
 4 remaining net income is zero or a negative number, all of the taxpayer's remaining
 5 net income is apportioned to this state."

6 ~~26. Page 962, line 10: delete "2005" and substitute "2006".~~

7 ~~27. Page 962, line 13: delete "2005" and substitute "2006".~~

8 ~~28. Page 963, line 2: delete "2003" and substitute "2004".~~

9 ~~29. Page 963, line 8: delete "2002" and substitute "2003".~~

10 ~~30. Page 964, line 6: delete "2004" and substitute "2005".~~

11 ~~31. Page 972, line 21: delete "2002, and before January 1, 2004," and
 12 substitute "2003, and before January 1, 2005,".~~

13 ~~32. Page 973, line 1: delete "2003" and substitute "2004".~~

14 ~~33. Page 973, line 2: delete "2005" and substitute "2006".~~

15 ~~34. Page 973, line 7: delete "2004" and substitute "2005".~~

16 ~~35. Page 973, line 10:~~ ¹² after that line insert: ²¹

17 "SECTION ~~35.01~~²⁸m. 71.45 (3e) of the statutes is created to read:

18 71.45 (3e) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
 19 beginning before January 1, 200⁵~~6~~, if both the numerator and the denominator used
 20 to determine the percentage under sub. (3) (a) related to a taxpayer's net income are
 21 zero, the percentage under sub. (3) (a) is eliminated from the apportionment formula
 22 to determine the taxpayer's income under sub. (3).

1 2. For taxable years beginning after December 31, 200~~5~~⁴, if both the numerator
2 and the denominator used to determine the percentage under sub. (3) (a) related to
3 a taxpayer's net income are zero, none of the taxpayer's net income is apportioned
4 to this state.

5 (b) 1. For taxable years beginning before January 1, 200~~6~~⁵, if the numerator
6 used to determine the percentage under sub. (3) (a) related to a taxpayer's net income
7 is a negative number and the denominator used to determine the percentage under
8 sub. (3) (a) related to a taxpayer's net income is not zero, the percentage under sub.
9 (3) (a) is zero.

10 2. For taxable years beginning after December 31, 200~~5~~⁴, if the numerator used
11 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
12 a negative number and the denominator used to determine the percentage under
13 sub. (3) (a) related to a taxpayer's net income is not zero, none of the taxpayer's net
14 income is apportioned to this state.

15 (c) 1. For taxable years beginning before January 1, 200~~6~~⁵, if the numerator used
16 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
17 a positive number and the denominator used to determine the percentage under sub.
18 (3) (a) related to a taxpayer's net income is zero or a negative number, the percentage
19 under sub. (3) (a) is one.

20 2. For taxable years beginning after December 31, 200~~5~~⁴, if the numerator used
21 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
22 a positive number and the denominator used to determine the percentage under sub.
23 (3) (a) related to a taxpayer's net income is zero or a negative number, all of the
24 taxpayer's net income is apportioned to this state.”

1
2
3
4
5

13 12
36. Page 1809, line 3: after that line insert:

IX
SINGLE SALES FACTOR APPORTIONMENT. The treatment of section 71.45 (3)
(intro.), (a), and (b) and (3m) of the statutes first applies to taxable years beginning
after December 31, 2002."

(END)

SECTION 30m. Initial applicability.

FACSIMILE COVER SHEET

State of Wisconsin
Department of Revenue

P.O. Box 8933
Madison, WI 53708-8933

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282-3652

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MEMORANDUM

October 4, 2001

TO: Tom Ourada
FROM: Pam Walgren and Clay Seth
SUBJECT: Assembly Amendment to AB 380

0692/1

As drafted, both for taxable years beginning before January 1, 2005, and after December 31, 2004, if the numerator of the sales factor is a negative number and the denominator is not zero, the sales factor is zero or no income is apportioned to this state. This language does not address the rare instances in which the denominator is zero.

We recommend that sections 71.04 (4m)(b)1, 71.25 (6m)(b)1, and 71.45 (3e)(b)1 be changed to state that if the numerator is a negative number and the denominator is a positive number, a negative number or zero, the sales factor is zero.

Similarly, we recommend that sections 71.04 (4m)(b)2, 71.25 (6m)(b)2, and 71.45 (3e)(b)2 be changed to state that if the numerator is a negative number and the denominator is a positive number, a negative number or zero, no income is apportioned to the state.

PW:skr
t:\memo\pw\ourada.doc

cc: Clay Seth
Sherry Gates-Hendrix
Dennis Collier
Brian Pahnke
Carol Held



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBa06924
JK:kmg:pg

2
EWJ
RM mtr R

ASSEMBLY AMENDMENT,
TO 2001 ASSEMBLY BILL 380

now 10-4-01

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

2 1. Page 4, line 15: after that line insert:

3 "SECTION 6m. 71.04 (4m) of the statutes is created to read:

4 71.04 (4m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
5 beginning before January 1, 2005, if both the numerator and the denominator of the
6 sales factor under sub. (7) related to a taxpayer's remaining net income are zero, the
7 sales factor under sub. (7) is eliminated from the apportionment formula to
8 determine the taxpayer's remaining net income under sub. (4).

9 2. For taxable years beginning after December 31, 2004, if both the numerator
10 and the denominator of the sales factor under sub. (7) related to a taxpayer's
11 remaining net income are zero, none of the taxpayer's remaining net income is
12 apportioned to this state.

1 (b) 1. For taxable years beginning before January 1, 2005, if the numerator of
2 the sales factor under sub. (7) related to a taxpayer's remaining net income is a
3 negative number and the denominator of the sales factor under sub. (7) related to a
4 taxpayer's remaining net income is ~~not~~ zero, the sales factor under sub. (7) is zero.

5 2. For taxable years beginning after December 31, 2004, if the numerator of the
6 sales factor under sub. (7) related to a taxpayer's remaining net income is a negative
7 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
8 remaining net income is ~~not~~ zero, none of the taxpayer's remaining net income is
9 apportioned to this state.

10 (c) 1. For taxable years beginning before January 1, 2005, if the numerator of
11 the sales factor under sub. (7) related to a taxpayer's remaining net income is a
12 positive number and the denominator of the sales factor under sub. (7) related to a
13 taxpayer's remaining net income is zero or a negative number, the sales factor under
14 sub. (7) is one.

15 2. For taxable years beginning after December 31, 2004, if the numerator of the
16 sales factor under sub. (7) related to a taxpayer's remaining net income is a positive
17 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
18 remaining net income is zero or a negative number, all of the taxpayer's remaining
19 net income is apportioned to this state."

20 **2.** Page 8, line 13: after that line insert:

21 "SECTION 18m. 71.25 (6m) of the statutes is created to read:

22 71.25 (6m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
23 beginning before January 1, 2005, if both the numerator and the denominator of the
24 sales factor under sub. (9) related to a taxpayer's remaining net income are zero, the

a positive number, a negative number, or

1 sales factor under sub. (9) is eliminated from the apportionment formula to
2 determine the taxpayer's remaining net income under sub. (6).

3 2. For taxable years beginning after December 31, 2004, if both the numerator
4 and the denominator of the sales factor under sub. (9) related to a taxpayer's
5 remaining net income are zero, none of the taxpayer's remaining net income is
6 apportioned to this state.

7 (b) 1. For taxable years beginning before January 1, 2005, if the numerator of
8 the sales factor under sub. (9) related to a taxpayer's remaining net income is a
9 negative number and the denominator of the sales factor under sub. (9) related to a
10 taxpayer's remaining net income is ~~not~~ zero, the sales factor under sub. (9) is zero.

11 2. For taxable years beginning after December 31, 2004, if the numerator of the
12 sales factor under sub. (9) related to a taxpayer's remaining net income is a negative
13 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
14 remaining net income is ~~not~~ zero, none of the taxpayer's remaining net income is
15 apportioned to this state.

16 (c) 1. For taxable years beginning before January 1, 2005, if the numerator of
17 the sales factor under sub. (9) related to a taxpayer's remaining net income is a
18 positive number and the denominator of the sales factor under sub. (9) related to a
19 taxpayer's remaining net income is zero or a negative number, the sales factor under
20 sub. (9) is one.

21 2. For taxable years beginning after December 31, 2004, if the numerator of the
22 sales factor under sub. (9) related to a taxpayer's remaining net income is a positive
23 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
24 remaining net income is zero or a negative number, all of the taxpayer's remaining
25 net income is apportioned to this state.".

1 **3.** Page 12, line 21: after that line insert:

2 “**SECTION 28m.** 71.45 (3e) of the statutes is created to read:

3 71.45 (3e) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
4 beginning before January 1, 2005, if both the numerator and the denominator used
5 to determine the percentage under sub. (3) (a) related to a taxpayer's net income are
6 zero, the percentage under sub. (3) (a) is eliminated from the apportionment formula
7 to determine the taxpayer's income under sub. (3).

8 2. For taxable years beginning after December 31, 2004, if both the numerator
9 and the denominator used to determine the percentage under sub. (3) (a) related to
10 a taxpayer's net income are zero, none of the taxpayer's net income is apportioned
11 to this state.

12 (b) 1. For taxable years beginning before January 1, 2005, if the numerator
13 used to determine the percentage under sub. (3) (a) related to a taxpayer's net income
14 is a negative number and the denominator used to determine the percentage under

15 sub. (3) (a) related to a taxpayer's net income is ~~not~~ zero, the percentage under sub.
16 (3) (a) is zero.

17 2. For taxable years beginning after December 31, 2004, if the numerator used
18 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
19 a negative number and the denominator used to determine the percentage under

20 sub. (3) (a) related to a taxpayer's net income is ~~not~~ zero, none of the taxpayer's net
21 income is apportioned to this state.

22 (c) 1. For taxable years beginning before January 1, 2005, if the numerator used
23 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
24 a positive number and the denominator used to determine the percentage under sub.

a positive number, a negative number, or

1 (3) (a) related to a taxpayer's net income is zero or a negative number, the percentage
2 under sub. (3) (a) is one.

3 2. For taxable years beginning after December 31, 2004, if the numerator used
4 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
5 a positive number and the denominator used to determine the percentage under sub.
6 (3) (a) related to a taxpayer's net income is zero or a negative number, all of the
7 taxpayer's net income is apportioned to this state.”

8 **4.** Page 13, line 12: after that line insert:

9 **“SECTION 30m. Initial applicability.**

10 **“(1x) SINGLE SALES FACTOR APPORTIONMENT.** The treatment of section 71.45 (3)
11 (intro.), (a), and (b) and (3m) of the statutes first applies to taxable years beginning
12 after December 31, 2002.”.

13

(END)