

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2001 ASSEMBLY BILL 380**

October 23, 2001 – Offered by Representative ZIEGELBAUER.

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

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

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

11 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)
12 Nonresident individuals and nonresident estates and trusts engaged in business

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 air carriers, financial organizations, pipeline companies, public
11 utilities, railroads, sleeping car companies and car line companies there shall first
12 be deducted from the total net income of the taxpayer the part thereof (less related
13 expenses, if any) that follows the situs of the property or the residence of the
14 recipient. The remaining net income shall be apportioned to Wisconsin this state by
15 use of an apportionment fraction composed of a sales factor representing 50% of the
16 fraction, a property factor representing 25% of the fraction and a payroll factor
17 representing 25% of the fraction. the following:

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

19 71.04 (4) (a) For taxable years beginning before July 1, 2003, an apportionment
20 fraction composed of a sales factor under sub. (7) representing 50% of the fraction,
21 a property factor under sub. (5) representing 25% of the fraction, and a payroll factor
22 under sub. (6) representing 25% of the fraction.

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

24 71.04 (4) (b) For taxable years beginning after June 30, 2003, an
25 apportionment fraction composed of the sales factor under sub. (7).

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

2 71.04 **(4)** (c) For taxable years beginning after June 30, 2003, the
3 apportionment fraction for the remaining net income of a financial organization is
4 composed of a sales factor, as determined by rule by the department.

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

6 71.04 **(4m)** APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
7 beginning before July 1, 2003, if both the numerator and the denominator of the sales
8 factor under sub. (7) related to a taxpayer's remaining net income are zero, the sales
9 factor under sub. (7) is eliminated from the apportionment formula to determine the
10 taxpayer's remaining net income under sub. (4).

11 2. For taxable years beginning after June 30, 2003, if both the numerator and
12 the denominator of the sales factor under sub. (7) related to a taxpayer's remaining
13 net income are zero, none of the taxpayer's remaining net income is apportioned to
14 this state.

15 (b) 1. For taxable years beginning before July 1, 2003, if the numerator of the
16 sales factor under sub. (7) related to a taxpayer's remaining net income is a negative
17 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
18 remaining net income is a positive number, a negative number, or zero, the sales
19 factor under sub. (7) is zero.

20 2. For taxable years beginning after June 30, 2003, if the numerator of the sales
21 factor under sub. (7) related to a taxpayer's remaining net income is a negative
22 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
23 remaining net income is a positive number, a negative number, or zero, none of the
24 taxpayer's remaining net income is apportioned to this state.

1 (c) 1. For taxable years beginning before July 1, 2003, if the numerator of the
2 sales factor under sub. (7) related to a taxpayer's remaining net income is a positive
3 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
4 remaining net income is zero or a negative number, the sales factor under sub. (7) is
5 one.

6 2. For taxable years beginning after June 30, 2003, if the numerator of the sales
7 factor under sub. (7) related to a taxpayer's remaining net income is a positive
8 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
9 remaining net income is zero or a negative number, all of the taxpayer's remaining
10 net income is apportioned to this state.

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

12 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
13 years beginning before July 1, 2003:

14 **SECTION 7.** 71.04 (6) (intro.) of the statutes is amended to read:

15 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years
16 beginning before July 1, 2003:

17 **SECTION 8.** 71.04 (7) (d) of the statutes is amended to read:

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

1 **SECTION 9.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and
2 amended to read:

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

10 2. In this section, for taxable years beginning after June 30, 2003, “public
11 utility” also means any business entity providing service to the public and engaged
12 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
13 regardless of whether or not the entity’s rates or charges for services have been
14 established or approved by a federal, state or local government or governmental
15 agency.

16 **SECTION 10.** 71.04 (8) (c) of the statutes is amended to read:

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

22 **SECTION 11.** 71.04 (10) of the statutes is amended to read:

23 71.04 **(10)** DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident
24 individual or nonresident estate or trust engaged in business within in and without
25 the outside this state of Wisconsin and required to apportion its income as provided

1 in this section, it shall be shown to the satisfaction of the department of revenue that
2 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or
3 inequitable final average ratio because of the fact that such nonresident individual
4 or nonresident estate or trust does not employ, to any appreciable extent in its trade
5 or business in producing the income taxed, the factors made use of in obtaining such
6 ratio, this factor may, with the approval of the department of revenue, be omitted in
7 obtaining the final average ratio which is to be applied to the remaining net income.
8 This subsection does not apply to taxable years beginning after June 30, 2003.

9 **SECTION 12.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and
10 amended to read:

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

1 residence of the recipient. The remaining net income shall be apportioned to
2 Wisconsin this state by use of ~~an apportionment fraction composed of a sales factor~~
3 ~~under sub. (9) representing 50% of the fraction, a property factor under sub. (7)~~
4 ~~representing 25% of the fraction and a payroll factor under sub. (8) representing 25%~~
5 ~~of the fraction. the following:~~

6 **SECTION 13.** 71.25 (6) (a) of the statutes is created to read:

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

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

12 71.25 (6) (b) For taxable years beginning after June 30, 2003, an
13 apportionment fraction composed of the sales factor under sub. (9).

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

15 71.25 (6) (c) For taxable years beginning after June 30, 2003, the
16 apportionment fraction for the remaining net income of a financial organization is
17 composed of a sales factor, as determined by rule by the department.

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

19 71.25 (6m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
20 beginning before July 1, 2003, if both the numerator and the denominator of the sales
21 factor under sub. (9) related to a taxpayer's remaining net income are zero, the sales
22 factor under sub. (9) is eliminated from the apportionment formula to determine the
23 taxpayer's remaining net income under sub. (6).

24 2. For taxable years beginning after June 30, 2003, if both the numerator and
25 the denominator of the sales factor under sub. (9) related to a taxpayer's remaining

1 net income are zero, none of the taxpayer's remaining net income is apportioned to
2 this state.

3 (b) 1. For taxable years beginning before July 1, 2003, if the numerator of the
4 sales factor under sub. (9) related to a taxpayer's remaining net income is a negative
5 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
6 remaining net income is a positive number, a negative number, or zero, the sales
7 factor under sub. (9) is zero.

8 2. For taxable years beginning after June 30, 2003, if the numerator of the sales
9 factor under sub. (9) related to a taxpayer's remaining net income is a negative
10 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
11 remaining net income is a positive number, a negative number, or zero, none of the
12 taxpayer's remaining net income is apportioned to this state.

13 (c) 1. For taxable years beginning before July 1, 2003, if the numerator of the
14 sales factor under sub. (9) related to a taxpayer's remaining net income is a positive
15 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
16 remaining net income is zero or a negative number, the sales factor under sub. (9) is
17 one.

18 2. For taxable years beginning after June 30, 2003, if the numerator of the sales
19 factor under sub. (9) related to a taxpayer's remaining net income is a positive
20 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
21 remaining net income is zero or a negative number, all of the taxpayer's remaining
22 net income is apportioned to this state.

23 **SECTION 17.** 71.25 (7) (intro.) of the statutes is amended to read:

24 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (5) (6) and for taxable
25 years beginning before July 1, 2003:

1 **SECTION 18.** 71.25 (8) (intro.) of the statutes is amended to read:

2 71.25 **(8)** PAYROLL FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
3 years beginning before July 1, 2003:

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

5 71.25 **(9)** (d) Sales, other than sales of tangible personal property, are in this
6 state if the income-producing activity is performed in this state. If the
7 income-producing activity is performed both in and outside this state the sales shall
8 be divided between those states having jurisdiction to tax such business in
9 proportion to the direct costs of performance incurred in each such state in rendering
10 this service. Services performed in states which do not have jurisdiction to tax the
11 business shall be deemed to have been performed in the state to which compensation
12 is allocated by sub. ~~s. 71.25 (8), 1999 stats.~~

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

15 71.25 **(10)** (b) 1. In this section, for taxable years beginning before July 1, 2003,
16 “public utility” means any business entity described under subd. 2. and any business
17 entity which owns or operates any plant, equipment, property, franchise, or license
18 for the transmission of communications or the production, transmission, sale,
19 delivery, or furnishing of electricity, water or steam the rates of charges for goods or
20 services of which have been established or approved by a federal, state or local
21 government or governmental agency. ~~“Public~~

22 2. In this section, for taxable years beginning after June 30, 2003, “public
23 utility” also means any business entity providing service to the public and engaged
24 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
25 regardless of whether or not the entity’s rates or charges for services have been

1 established or approved by a federal, state or local government or governmental
2 agency.

3 **SECTION 21.** 71.25 (10) (c) of the statutes is amended to read:

4 71.25 (10) (c) The net business income of railroads, sleeping car companies, car
5 line companies, pipeline companies, financial organizations, air carriers and public
6 utilities requiring apportionment shall be apportioned pursuant to rules of the
7 department of revenue, but the income taxed is limited to the income derived from
8 business transacted and property located within the state.

9 **SECTION 22.** 71.25 (11) of the statutes is amended to read:

10 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
11 engaged in business ~~within in~~ and ~~without the~~ outside this state of Wisconsin and
12 required to apportion its income as provided in sub. (6), it shall be shown to the
13 satisfaction of the department of revenue that the use of any one of the 3 factors
14 provided in sub. (6) gives an unreasonable or inequitable final average ratio because
15 of the fact that such corporation does not employ, to any appreciable extent in its
16 trade or business in producing the income taxed, the factors made use of in obtaining
17 such ratio, this factor may, with the approval of the department of revenue, be
18 omitted in obtaining the final average ratio which is to be applied to the remaining
19 net income. This subsection does not apply to taxable years beginning after June 30,
20 2003.

21 **SECTION 23.** 71.45 (3) (intro.) of the statutes is amended to read:

22 71.45 (3) APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in sub. (3d),
23 to determine Wisconsin income for purposes of the franchise tax, domestic insurers
24 ~~not engaged in the sale of life insurance but which~~ that, in the taxable year, have
25 ~~collected~~ received premiums, other than life insurance premiums, written on

1 subjects of ~~for insurance on property or risks~~ resident, located or to be performed
2 outside this state, ~~there shall be subtracted from multiply~~ the net income figure
3 derived by application of sub. (2) (a) ~~to arrive at Wisconsin income constituting the~~
4 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~
5 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:

6 **SECTION 24.** 71.45 (3) (a) of the statutes is amended to read:

7 71.45 (3) (a) ~~The Subject to sub. (3d), the percentage of total determined by~~
8 ~~dividing the sum of direct premiums written on all property and risks for insurance~~
9 ~~other than life insurance, with respects to all property and risks resident, located,~~
10 ~~or to be performed in this state, and assumed premiums written for reinsurance,~~
11 ~~other than life insurance, with respect to all property and risks resident, located, or~~
12 ~~to be performed in this state, by the sum of direct premiums written for insurance~~
13 ~~on all property and risks, other than life insurance, wherever located during the~~
14 ~~taxable year, as reflects, and assumed premiums written on insurance for~~
15 ~~reinsurance on all property and risks, other than life insurance, where the subject~~
16 ~~of insurance was resident, located or to be performed outside this state wherever~~
17 ~~located. In this paragraph, “direct premiums” means direct premiums as reported~~
18 ~~for the taxable year on an annual statement that is filed by the insurer with the~~
19 ~~commissioner of insurance under s. 601.42 (1g) (a). In this paragraph, “assumed~~
20 ~~premiums” means assumed reinsurance premiums from domestic insurance~~
21 ~~companies as reported for the taxable year on an annual statement that is filed with~~
22 ~~the commissioner of insurance under s. 601.42 (1g) (a).~~

23 **SECTION 25.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and
24 amended to read:

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

6 2. Under subd. 1., payroll is paid outside in this state if the individual's service
7 is performed entirely outside in this state; or the individual's service is performed
8 both within and without in and outside this state, but the service performed within
9 outside this state is incidental to the individual's service without in this state; or
10 some service is performed without in this state and the base of operations, or if there
11 is no base of operations, the place from which the service is directed or controlled is
12 without in this state, or the base of operations or the place from which the service is
13 directed or controlled is not in any state in which some part of the service is
14 performed, but the individual's residence is outside in this state.

15 **SECTION 26.** 71.45 (3d) of the statutes is created to read:

16 71.45 (3d) PREMIUMS FACTOR; DOMESTIC INSURERS. For taxable years beginning
17 after June 30, 2003, a domestic insurer that is subject to apportionment under sub.
18 (3) and this subsection shall multiply the net income figure derived by the
19 application of sub. (2) by the percentage under sub. (3) (a).

20 **SECTION 27.** 71.45 (3e) of the statutes is created to read:

21 71.45 (3e) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
22 beginning before July 1, 2003, if both the numerator and the denominator used to
23 determine the percentage under sub. (3) (a) related to a taxpayer's net income are
24 zero, the percentage under sub. (3) (a) is eliminated from the apportionment formula
25 to determine the taxpayer's income under sub. (3).

1 2. For taxable years beginning after June 30, 2003, if both the numerator and
2 the denominator used to determine the percentage under sub. (3) (a) related to a
3 taxpayer's net income are zero, none of the taxpayer's net income is apportioned to
4 this state.

5 (b) 1. For taxable years beginning before July 1, 2003, if the numerator used
6 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
7 a negative number and the denominator used to determine the percentage under
8 sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number,
9 or zero, the percentage under sub. (3) (a) is zero.

10 2. For taxable years beginning after June 30, 2003, if the numerator used to
11 determine the percentage under sub. (3) (a) related to a taxpayer's net income is a
12 negative number and the denominator used to determine the percentage under sub.
13 (3) (a) related to a taxpayer's net income is a positive number, a negative number, or
14 zero, none of the taxpayer's net income is apportioned to this state.

15 (c) 1. For taxable years beginning before July 1, 2003, 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 June 30, 2003, if the numerator used to
21 determine the percentage under sub. (3) (a) related to a taxpayer's net income is a
22 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.

25 **SECTION 28.** 71.45 (3m) of the statutes is amended to read:

1 71.45 (3m) ARITHMETIC AVERAGE. ~~The~~ Except as provided in sub. (3d), the
 2 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the
 3 net income figure arrived at by the successive application of sub. (2) (a) and (b) with
 4 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have
 5 ~~collected~~ received premiums, ~~other than life insurance premiums,~~ written upon for
 6 insurance, ~~other than life insurance, where the subject of such insurance was on~~
 7 property or risks resident, located or to be performed outside this state, to arrive at
 8 Wisconsin income constituting the measure of the franchise tax.

9 **SECTION 29. Nonstatutory provisions; revenue.**

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

16 **SECTION 30. Initial applicability.**

17 (1) SINGLE SALES FACTOR APPORTIONMENT. The treatment of section 71.45 (3)
 18 (intro.), (a), and (b) and (3m) of the statutes first applies to taxable years beginning
 19 after June 30, 2003.

20 (END)