

2001 DRAFTING REQUEST

Bill

Received: **11/16/2000**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-8593**

By/Representing: **Holden**

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:

DOA:.....Holden -

Topic:

Single sales factor 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>
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/1	jkreye 01/03/2001	csicilia 01/03/2001	pgreensl 11/22/2000	_____	lrb_docadmin 11/22/2000		State
/2	jkreye 02/07/2001	csicilia 02/07/2001	rschluet 01/05/2001	_____	lrb_docadmin 01/05/2001		State
/3	jkreye 02/08/2001	csicilia 02/08/2001	jfrantze 02/07/2001	_____	lrb_docadmin 02/08/2001		State
/4	jkreye	csicilia	martykr	_____	lrb_docadmin		State

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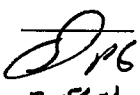
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16 ejs 2/9
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 JMS 2/8
 PG KM 2/8

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STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



Division of Executive Budget and Finance
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1736
Fax (608) 267-0372
TTY (608) 267-9629

Date: November 15, 2000
To: Steve Miller, LRB
From: Kerry Holden, DOA KH
266-8593
Subject: Single Factor Sales Apportionment

Please draft statutory language for inclusion in the budget regarding the phasing-in of sales as the single factor for apportioning corporate income. This draft can be based on 1999 Assembly Bill 735, with any necessary changes to effective dates to reflect its inclusion as a budget proposal and not a separate bill. Please call if you have any questions.

Thanks!

Handwritten initials and marks: "JK" and "gjs" with a vertical line and a horizontal line intersecting.

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

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

11-16-00

INSERT

SOON

LPS: please
proof with
folio as
indicated

Do NOT GEN

the budget.

1 AN ACT ... relating to: ???

Analysis by the Legislative Reference Bureau

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

2 (END)



1059/1

1999 ASSEMBLY BILL 735

February 10, 2000 - Introduced by Representatives M. LEHMAN, JENSEN, ZIEGELBAUER, GARD, PLALE, VRAKAS, GROTHMAN, RILEY, GOETSCH, AINSWORTH, ALBERS, DUFF, HOVEN, HAHN, JESKEWITZ, KAUFERT, KELSO, KLUSMAN, KREIBICH, F. LASEE, MUSSER, OWENS, STONE, SUDER, SYKORA and WALKER, cosponsored by Senators SHIBILSKI, PANZER, GROBSCHMIDT, RUDE, FARROW, DARLING, HUELSMAN, ROESSLER, WELCH, ZIEN and BRESKE. Referred to Committee on Ways and Means.

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, 2004, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. The property

TAXATION (hand)
 = INCOME TAXATION (sub)

ASSEMBLY BILL 735

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, 2004, 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.

INSERT
A

Under current law, the income of a financial organization is apportioned, for corporate income tax and franchise tax purposes, by rules established by ~~the~~ Department of Revenue (DOR). Under the bill, for taxable years beginning after December 31, 2001, and before January 1, 2004, 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, 2003, 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.

and the income of an electric or gas utility

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

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

71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)
Nonresident individuals and nonresident estates and trusts engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such nonresident individual or nonresident estate or trust within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not

p.w.f.

found the income from electric and gas utility

ASSEMBLY BILL 735

p.w.f.

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

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

11 71.04 (4) (a) For taxable years beginning before January 1, 2002, an
12 apportionment fraction composed of a sales factor under sub. (7) representing 50%
13 of the fraction, a property factor under sub. (5) representing 25% of the fraction, and
14 a payroll factor under sub. (6) representing 25% of the fraction. ✓

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

16 71.04 (4) (b) For taxable years beginning after December 31, 2001, and before
17 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (7)
18 representing 63% of the fraction, a property factor under sub. (5) representing 18.5%
19 of the fraction, and a payroll factor under sub. (6) representing 18.5% of the fraction. ✓

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

21 71.04 (4) (c) For taxable years beginning after December 31, 2002, and before
22 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (7)
23 representing 85% of the fraction, a property factor under sub. (5) representing 7.5%
24 of the fraction, and a payroll factor under sub. (6) representing 7.5% of the fraction. ✓

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

ASSEMBLY BILL 735

SECTION 5

1 71.04 (4) (d) For taxable years beginning after December 31, 2003, an
2 apportionment fraction composed of the sales factor under sub. (7). ✓

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

4 71.04 (4) (e) For taxable years beginning after December 31, 2001, and before
5 January 1, 2004, the apportionment fraction for the remaining net income of a
6 financial organization shall include a sales factor that represents more than 50% of
7 the apportionment fraction, as determined by rule by the department. For taxable
8 years beginning after December 31, 2003, the apportionment fraction for the
9 remaining net income of a financial organization is composed of a sales factor, as
10 determined by rule by the department.

11 **SECTION 7.** 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 January 1, 2004: ✓

14 **SECTION 8.** 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 January 1, 2004: ✓

17 **SECTION 9.** 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), ~~1997~~ stats.

1999

P.W.F.

P.W.F.

P.W.F.

25

ASSEMBLY BILL 735

1 **SECTION 10.** 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 January 1, 2002,
4 “public utility”, as used in this section, means any business entity ~~described under~~
5 subd. 2. [✓] and any business entity which owns or operates any plant, equipment,
6 property, franchise, or license for the transmission of communications or the
7 production, transmission, sale, delivery, or furnishing of electricity, water or steam,
8 the rates of charges for goods or services of which have been established or approved
9 by a federal, state or local government or governmental agency. “Public

10 2. In this section, for taxable years beginning after December 31, 2001, “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 11.** 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 12.** 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

P.W.F.

P.W.F.

P.W.F.

ASSEMBLY BILL 735

SECTION 12

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 December 31, 2003.

9 SECTION 13. 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

P.w.f.

P.w.f.

←

ASSEMBLY BILL 735

P.W.F. | 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 14. 71.25 (6) (a) of the statutes is created to read:

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

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

12 71.25 (6) (b) For taxable years beginning after December 31, 2001, and before
13 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (9)
14 representing 63% of the fraction, a property factor under sub. (7) representing 18.5%
15 of the fraction and a payroll factor under sub. (8) representing 18.5% of the fraction.

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

17 71.25 (6) (c) For taxable years beginning after December 31, 2002, and before
18 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (9)
19 representing 85% of the fraction, a property factor under sub. (7) representing 7.5%
20 of the fraction and a payroll factor under sub. (8) representing 7.5% of the fraction.

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

22 71.25 (6) (d) For taxable years beginning after December 31, 2003, an
23 apportionment fraction composed of the sales factor under sub. (9).

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

ASSEMBLY BILL 735

1 71.25 (6) (e) For taxable years beginning after December 31, 2001, and before
2 January 1, 2004, the apportionment fraction for the remaining net income of a
3 financial organization shall include a sales factor that represents more than 50% of
4 the apportionment fraction, as determined by rule by the department. For taxable
5 years beginning after December 31, 2003, the apportionment fraction for the
6 remaining net income of a financial organization is composed of a sales factor, as
7 determined by rule by the department.

8 **SECTION 19.** 71.25 (7) (intro.) of the statutes is amended to read: (6)

9 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (5) and for taxable
10 years beginning before January 1, 2004:

11 **SECTION 20.** 71.25 (8) (intro.) of the statutes is amended to read: (6)

12 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. (5) and for taxable years
13 beginning before January 1, 2004:

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

15 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
16 state if the income-producing activity is performed in this state. If the
17 income-producing activity is performed both in and outside this state the sales shall
18 be divided between those states having jurisdiction to tax such business in
19 proportion to the direct costs of performance incurred in each such state in rendering
20 this service. Services performed in states which do not have jurisdiction to tax the
21 business shall be deemed to have been performed in the state to which compensation
22 is allocated by sub. s. 71.25 (8), ~~1997~~ ¹⁹⁹⁹ stats. ~~1997~~ ¹⁹⁹⁹

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

P.w.F.
P.w.F.

P.w.F.

(22)

ASSEMBLY BILL 735

P.W.F.

1 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,
2 2002, "public utility" means any business entity ~~as~~ ^{is} described under subd. 2. and any
3 business entity which owns or operates any plant, equipment, property, franchise,
4 or license for the transmission of communications or the production, transmission,
5 sale, delivery, or furnishing of electricity, water or steam the rates of charges for
6 goods or services of which have been established or approved by a federal, state or
7 local government or governmental agency. "Public

8 2. In this section, for taxable years beginning after December 31, 2001, "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 23. 71.25 (10) (c) of the statutes is amended to read:

P.W.F.

15 71.25 (10) (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 24. 71.25 (11) of the statutes is amended to read:

P.W.F.

21 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
22 engaged in business ~~within in and without the~~ outside this state of Wisconsin and
23 required to apportion its income as provided in sub. (6), it shall be shown to the
24 satisfaction of the department of revenue that the use of any one of the 3 factors
25 provided in sub. (6) gives an unreasonable or inequitable final average ratio because

ASSEMBLY BILL 735

SECTION 24

P.w.f.

1 of the fact that such corporation does not employ, to any appreciable extent in its
 2 trade or business in producing the income taxed, the factors made use of in obtaining
 3 such ratio, this factor may, with the approval of the department of revenue, be
 4 omitted in obtaining the final average ratio which is to be applied to the remaining
 5 net income. This subsection does not apply to taxable years beginning after
 6 December 31, 2003.

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

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

P.w.f.

17 SECTION 1751. 71.45 (3) (a) of the statutes is amended to read:

18 71.45 (3) (a) The Subject to sub. (3d), the percentage of total determined by
 19 dividing the sum of direct premiums written on all property and risks for insurance
 20 other than life insurance, ~~on subjects of insurance~~ resident, located, or to be
 21 performed in this state, and assumed premiums written for reinsurance, other than
 22 life insurance, with respect to all property and risks resident, located, or to be
 23 performed in this state, by the sum of direct premiums written for insurance on all
 24 property and risks, other than life insurance, wherever located during the taxable
 25 year, as reflects, and assumed premiums written on insurance for reinsurance on all

P.w.f.

with respect to all property and risks

ASSEMBLY BILL 735

SECTION 1751

under s. 601.42(1g)(a)

P.W.F.

1 property and risks, other than life insurance, where the subject of insurance was
2 resident, located or to be performed outside this state wherever located. In this
3 paragraph, "direct premiums" means direct premiums as reported for the taxable
4 year on an annual statement that is filed by the insurer with the commissioner of
5 insurance. In this paragraph, "assumed premiums" means assumed reinsurance
6 premiums from domestic insurance companies as reported for the taxable year on an
7 annual statement that is filed with the commissioner of insurance. *under s. 601.42(1g)(a)*

8 **SECTION 26.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and
9 amended to read:

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

payroll

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

P.W.F.

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

ASSEMBLY BILL 735

SECTION 27

1 71.45 (3d) PHASE IN; DOMESTIC INSURERS. (a) For taxable years beginning after
2 December 31, 2001, and before January 1, 2003, a domestic insurer that is subject
3 to apportionment under sub. (3) and this subsection shall multiply the net income
4 figure derived by the application of sub. (2) by an apportionment fraction composed
5 of the percentage under sub. (3) (a) representing 63% of the fraction and the
6 percentage under sub. (3) (b) 1. representing 37% of the fraction. 2

7 (b) For taxable years beginning after December 31, 2002, and before January
8 1, 2004, a domestic insurer that is subject to apportionment under sub. (3) and this
9 subsection shall multiply the net income figure derived by the application of sub. (2)
10 by an apportionment fraction composed of the percentage under sub. (3) (a)
11 representing 85% of the fraction and the percentage under sub. (3) (b) 1. representing
12 15% of the fraction.

13 (c) For taxable years beginning after December 31, 2003, a domestic insurer
14 that is subject to apportionment under sub. (3) and this subsection shall multiply the
15 net income figure derived by the application of sub. (2) by the percentage under sub.
16 (3) (a).

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

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

P.W.F.

ASSEMBLY BILL 735

9144

revenue

1 SECTION 29. Nonstatutory provisions.

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

8 ~~SECTION 30. Initial applicability.~~

9 ~~(1) APPORTIONMENT FACTORS. This act first applies to taxable years beginning~~
10 ~~after December 31, 2001.~~

11

(END)

INSERT A

¶ 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, 2001, and before January 1, 2004, 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, 2004, 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.

Kreye, Joseph

From: Holden, Kerry
Sent: Wednesday, January 03, 2001 12:17 PM
To: Kreye, Joseph
Subject: Draft 1059/1 - single factor sales

Hello Joe-

Could you please change draft 1059/1 so that the phase-in to single factor sales is 60-80-100% instead of 63-85-100%. There would be no changes to the years, just the percentages. Please call if you have any questions. Thanks!

Kerry Holden

Tax, Finance & Local Government Team
DOA State Budget Office
Phone: (608)266-8593
Fax: (608)267-0372
Email: Kerry.Holden@doa.state.wi.us



DOA:.....Holden – Single sales factor apportionment of corporate income
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

m 1-3-01

SOON

DO NOT
GEN

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, 2004, 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, 2004, 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, 2001, and before January 1, 2004, 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, 2004, 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, 2001, and before January 1, 2004, 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, 2003, 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:

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, 2002, 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.

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, 2001, and before
 15 January 1, 2003, an apportionment fraction composed of a sales factor under sub. (7)
 16 representing ~~50%~~ ^{60%} of the fraction, a property factor under sub. (5) representing ~~25%~~ ^{15%}
 17 of the fraction, and a payroll factor under sub. (6) representing ~~25%~~ ^{20%} of the fraction.

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, 2002, and before
 20 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (7)
 21 representing ~~50%~~ ^{80%} of the fraction, a property factor under sub. (5) representing ~~25%~~ ^{10%}
 22 of the fraction, and a payroll factor under sub. (6) representing ~~25%~~ ^{10%} of the fraction.

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, 2003, 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, 2001, and before
3 January 1, 2004, 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, 2003, 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, 2004:

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, 2004:

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, 2002,
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, 2001, “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, 2003.

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, 2002, 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, 2001, and before
11 January 1, 2003, 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, 2002, and before
16 January 1, 2004, 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, 2003, 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, 2001, and before
24 January 1, 2004, 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, 2003, 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, 2004:

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, 2004:

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 2002, “public utility” means any business entity described under subd. 2. and any
24 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, 2001, “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~~ 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, 2003.

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 1751.** 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 26.** 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 27.** 71.45 (3d) of the statutes is created to read:

22 71.45 (3d) ~~PIIASE IN; DOMESTIC INSURERS.~~ (a) For taxable years beginning after
23 December 31, 2001, and before January 1, 2003, 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%} ~~63%~~ of the fraction and the
2 percentage under sub. (3) (b) 1. representing ^{40%} ~~37%~~ of the fraction.

3 (b) For taxable years beginning after December 31, 2002, and before January
4 1, 2004, 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%} ~~85%~~ of the fraction and the percentage under sub. (3) (b) 1. representing
8 ^{20%} ~~15%~~ of the fraction.

9 (c) For taxable years beginning after December 31, 2003, 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 28. 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 9144. 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)

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)

Kreye, Joseph

From: Koskinen, John
Sent: Wednesday, February 07, 2001 4:03 PM
To: Kreye, Joseph
Cc: Holden, Kerry
Subject: LRB draft 1059 Single Sales Factor Apportionment of Corporate Income

We have the effective date wrong. The phase-in should start with calendar year 2003. The sales factor should be the sole factor to apportion income beginning January 1, 2005.

An issue has also come up on the treatment of telecommunications companies. In the last session, as passed by the Assembly, the single sales factor excluded interstate telecommunications carriers. Could we recapture that language? We probably need two drafts. One with the interstate telco's retaining current apportionment. One with the interstate telco's also subject to single sales apportionment.

DOR has promised me suggested change. If and when I get them, I will forward them to you.

Thanks

John Koskinen
266-2081



TODAY

DOA:.....Holden – Single sales factor apportionment of corporate income
FOR 2001-03 BUDGET – NOT READY FOR INTRODUCTION

m 2-7-01
Do NOT GEN D-N

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

Analysis by the Legislative Reference Bureau
TAXATION
INCOME TAXATION

2005

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, 2004, 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, 2004, 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, 2001, and before January 1, 2004, the income of an electric or gas

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utility is apportioned in the same manner as the income of a corporation under the bill. Beginning on January 1, ~~2004~~, 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, ~~2001~~, and before January 1, ~~2004~~, 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, ~~2003~~, 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, ~~2002~~, 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 ²⁰⁰⁴ 71.04 (4) (b) For taxable years beginning after December 31, ~~2001~~, and before
15 January 1, ~~2003~~, 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, ~~2002~~, and before
20 January 1, ~~2004~~, 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, ~~2003~~, an
25 apportionment fraction composed of the sales factor under sub. (7).

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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, ~~2001~~²⁰⁰², and before
3 January 1, ~~2004~~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, ~~2003~~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, 2004: 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, 2004: 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:

2003

1 71.04 (8) (b) 1. ~~Public~~ For taxable years beginning before January 1, 2002,
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~~

2002

8 2. In this section, for taxable years beginning after December 31, 2001, “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~~ 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, 2003. 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, ~~2002~~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, ~~2001~~²⁰⁰², and before
11 January 1, ~~2003~~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, ~~2002~~²⁰⁰³, and before
16 January 1, ~~2004~~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, ~~2003~~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, ~~2001~~²⁰⁰², and before
24 January 1, ~~2004~~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, ~~2003~~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, ~~2004~~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, ~~2004~~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 ²⁰⁰³ 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,
23 ~~2002~~ "public utility" means any business entity described under subd. 2. and any
24 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, 2001, "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, 2003. 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 1751. 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

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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 26.** 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 27.** 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, ~~2001~~²⁰⁰², and before January 1, ~~2003~~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, ~~2002~~²⁰⁰³, and before January
4 1, ~~2004~~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, ~~2003~~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 28.** 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 9144. 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)

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)

1059/3
M:ej's

D-N

date

Kerry Holden:

A This draft changes the dates as requested. The draft does not change the treatment of telecommunications companies.

UK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1059/3dn
JK:cjs:jf

February 7, 2001

Kerry Holden:

This draft changes the dates as requested. The draft does not change the treatment of telecommunications companies.

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

Kreye, Joseph

From: Koskinen, John
Sent: Thursday, February 08, 2001 11:12 AM
To: Kreye, Joseph
Subject: RE: LRB draft 1059 Single Sales Factor Apportionment of Corporate Income

This is the suggested language from DOR although I have made a two minor changes. As I mentioned, this will be largely placeholder language until something better can be worked out. I think you are right that it may still have to be worked out in Joint Finance. In the meantime, here it is.

- create*
71.01
(12m)
1. Amend secs. 71.04(8)(b)2 and 71.25(10)(b)2 to say that for taxable years beginning after December 31, 2002, "public utility" also means telecommunications companies.
 2. Define "telecommunications companies" to mean telephone companies, interexchange carriers and local exchange carriers, resellers of telephone services, cellular phone companies, personal communication service providers, paging service providers, radio communication providers and other wireless communication providers and internet service providers affiliated with interexchange carriers, local exchange carriers and wireless communication providers. "Telecommunications companies" excludes broadcast radio and television companies; cable, satellite, and community antenna television providers; and internet service providers not affiliated with interexchange carriers, local exchange carriers or wireless communications providers. "Telecommunications companies" also excludes any entity that provides some telecommunications service as an incident of its principal business activities.

-----Original Message-----

From: Kreye, Joseph
Sent: Thursday, February 08, 2001 8:51 AM
To: Koskinen, John
Cc: Holden, Kerry
Subject: RE: LRB draft 1059 Single Sales Factor Apportionment of Corporate Income

Thanks John. Your assumption is correct: I did mean AB 735 as amended by Assembly Amendment 4. That change is easy enough to make, but I should alert you to an issue that came up last session. Under current law, there is no definition for "telecommunications company" for chapter 71 purposes and last session DOR was either unwilling or unable to provide one. This could be a problem depending on how DOR defines the term by rule. There is no quick, easy solution to that problem. It may have to be worked out in Joint Finance. I just thought you should know.

Joseph T. Kreye, Legislative Attorney
Legislative Reference Bureau
(608) 266-2263
joseph.kreye@legis.state.wi.us

-----Original Message-----

From: Koskinen, John
Sent: Wednesday, February 07, 2001 5:08 PM
To: Kreye, Joseph
Cc: Holden, Kerry
Subject: RE: LRB draft 1059 Single Sales Factor Apportionment of Corporate Income

Thanks for the reference to 1999 AB 735. I assume you mean AB 735 as amended by Assembly Amendment 4.

Subject to change, let's leave the telco's alone. I will need a higher-level decision on whether to include them or not. I will pursue that on this end.

To clarify, by two drafts I was thinking in terms of two versions separately numbered: one with telcos in and one with telcos out. I was anticipated complex language from DOR to achieve this (which they have sent me). But it seems to me if we want to go down this road the 735 language would suffice. In that event, the drafting could be done without tracking two separate drafts.

Thanks again

John Koskinen
266-2081

-----Original Message-----

From: Kreye, Joseph
Sent: Wednesday, February 07, 2001 4:12 PM
To: Koskinen, John
Cc: Holden, Kerry
Subject: RE: LRB draft 1059 Single Sales Factor Apportionment of Corporate Income

I'll take care of the of the date change. As far as the telecommunications companies, I don't know what you mean my "2 drafts". At this stage, I need a decision regarding the treatment of telcos. Do you want me to add the telcos as they were in AB 735 or should I leave them alone?

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Legislative Reference Bureau
(608) 266-2263
joseph.kreye@legis.state.wi.us

-----Original Message-----

From: Koskinen, John
Sent: Wednesday, February 07, 2001 4:03 PM
To: Kreye, Joseph
Cc: Holden, Kerry
Subject: LRB draft 1059 Single Sales Factor Apportionment of Corporate Income

We have the effective date wrong. The phase-in should start with calendar year 2003. The sales factor should be the sole factor to apportion income beginning January 1, 2005.

An issue has also come up on the treatment of telecommunications companies. In the last session, as passed by the Assembly, the single sales factor excluded interstate telecommunications carriers. Could we recapture that language? We probably need two drafts. One with the interstate telco's retaining current apportionment. One with the interstate telco's also subject to single sales apportionment.

DOR has promised me suggested change. If and when I get them, I will forward them to you.

Thanks

John Koskinen
266-2081