



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

m 2-8-01

Do NOT
GEN

TODAY

DOA

D-N

insert

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

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a corporation's income to this state. The formula has three factors: a sales factor, a property factor, and a payroll factor. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

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

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

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

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

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

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

INSERT
A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 inequitable final average ratio because of the fact that such nonresident individual
2 or nonresident estate or trust does not employ, to any appreciable extent in its trade
3 or business in producing the income taxed, the factors made use of in obtaining such
4 ratio, this factor may, with the approval of the department of revenue, be omitted in
5 obtaining the final average ratio which is to be applied to the remaining net income.
6 This subsection does not apply to taxable years beginning after December 31, 2004.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,
23 2003, “public utility” means any business entity described under subd. 2. and 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, 2002, "public

5 utility" also means any business entity providing service to the public and engaged
6 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
7 regardless of whether or not the entity's rates or charges for services have been
8 established or approved by a federal, state or local government or governmental
9 agency. any telecommunications company and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **SECTION 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)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1059/3/ins
JK:cjs:jf

Insert A

1 ~~X~~
SECTION 1. 71.01 (12m) of the statutes is created to read:

2 71.01 (12m) "Telecommunications company" includes a telephone company; an
3 interexchange carrier and a local exchange carrier; a reseller of telephone services;
4 a cellular phone company; a personal communication service provider; a paging
5 service provider; a radio communication provider and any other wireless
6 communication provider; and an Internet service provider affiliated with any
7 interexchange carrier, local exchange carrier, or wireless communication provider.
8 "Telecommunications company" does not include a broadcast radio and television
9 company; a cable, satellite, or community antenna television provider; an Internet
10 service provider not affiliated with any interexchange carrier, local exchange carrier,
11 or wireless communications provider; or any entity that provides some
12 telecommunications service incidental to its principal business activities.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1059/^uβdn
JK:ejs:jf

↑
Stays

February 8, 2001

Kerry Holden:

This draft includes the changes related to telecommunications companies.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1059/4dn

JK:cjs:km

February 8, 2001

Kerry Holden:

This draft includes the changes related to telecommunications companies.

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

Kreye, Joseph

To: Koskinen, John
Subject: RE: Single Factor Apportionment--Excluding Telecommunications Companies

Will do.

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

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

From: Koskinen, John
Sent: Thursday, February 08, 2001 5:03 PM
To: Kreye, Joseph
Subject: FW: Single Factor Apportionment--Excluding Telecommunications Companies

I ran this past DOR. They suggest also including the telecommunications company definition in s.71.22

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

From: **Held, Carol L**
Sent: Thursday, February 08, 2001 4:12 PM
To: Koskinen, John; Ourada, Thomas D; Chandler, Rick
Cc: Holden, Kerry
Subject: RE: Single Factor Apportionment--Excluding Telecommunications Companies

The definition of "telecommunications company" is currently included under the definitions applicable to individuals. It should also be included in sec. 71.22, which are the definitions applicable to corporations.

It is my understanding that the definition of "telecommunications company" is merely a "place-holder" that could be refined at a later date. It is going to take more time to study whether this is a workable definition and which corporations would be affected so that there aren't any surprises after the legislation is enacted. I would like to be able to obtain input from auditors who specialize in the telecommunications industry.

It appears that all of the date changes have been made.

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

From: Koskinen, John
Sent: Thursday, February 08, 2001 2:51 PM
To: Ourada, Thomas D; Chandler, Rick
Cc: Held, Carol L; Holden, Kerry
Subject: Single Factor Apportionment--Excluding Telecommunications Companies

This is the draft the LRB returned to me. Please look it over and provide any comments as soon as you can.
Thanks.

<< File: 01-10594.pdf >>

wi 71.22 (10M)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1059/A

JK:cjs:km

RM
not run

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in 2-9-01
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1 AN ACT...; relating to: the budget.

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

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

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

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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.** 71.01 (12m) of the statutes is created to read:

2 71.01 (12m) "Telecommunications company" includes a telephone company; an
3 interexchange carrier and a local exchange carrier; a reseller of telephone services;
4 a cellular phone company; a personal communication service provider; a paging
5 service provider; a radio communication provider and any other wireless
6 communication provider; and an Internet service provider affiliated with any
7 interexchange carrier, local exchange carrier, or wireless communication provider.
8 "Telecommunications company" does not include a broadcast radio and television
9 company; a cable, satellite, or community antenna television provider; an Internet
10 service provider not affiliated with any interexchange carrier, local exchange carrier,
11 or wireless communications provider; or any entity that provides some
12 telecommunications service incidental to its principal business activities.

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

1 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)
2 Nonresident individuals and nonresident estates and trusts engaged in business
3 within and without the state shall be taxed only on such income as is derived from
4 business transacted and property located within the state. The amount of such
5 income attributable to Wisconsin may be determined by an allocation and separate
6 accounting thereof, when the business of such nonresident individual or nonresident
7 estate or trust within the state is not an integral part of a unitary business, but the
8 department of revenue may permit an allocation and separate accounting in any case
9 in which it is satisfied that the use of such method will properly reflect the income
10 taxable by this state. In all cases in which allocation and separate accounting is not
11 permissible, the determination shall be made in the following manner: for all
12 businesses except air carriers, financial organizations, pipeline companies, public
13 utilities, railroads, sleeping car companies and car line companies there shall first
14 be deducted from the total net income of the taxpayer the part thereof (less related
15 expenses, if any) that follows the situs of the property or the residence of the
16 recipient. The remaining net income shall be apportioned to ~~Wisconsin~~ this state by
17 use of an apportionment fraction composed of a sales factor representing 50% of the
18 fraction, a property factor representing 25% of the fraction and a payroll factor
19 representing 25% of the fraction. the following:

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

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

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

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

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

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

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

11 71.04 (4) (d) For taxable years beginning after December 31, 2004, an
12 apportionment fraction composed of the sales factor under sub. (7).

13 **SECTION 7.** 71.04 (4) (e) of the statutes is created to read:

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

21 **SECTION 8.** 71.04 (5) (intro.) of the statutes is amended to read:

22 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
23 years beginning before January 1, 2005:

24 **SECTION 9.** 71.04 (6) (intro.) of the statutes is amended to read:

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

3 **SECTION 10.** 71.04 (7) (d) of the statutes is amended to read:

4 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
5 state if the income-producing activity is performed in this state. If the
6 income-producing activity is performed both in and outside this state the sales shall
7 be divided between those states having jurisdiction to tax such business in
8 proportion to the direct costs of performance incurred in each such state in rendering
9 this service. Services performed in states which do not have jurisdiction to tax the
10 business shall be deemed to have been performed in the state to which compensation
11 is allocated by ~~sub. s. 71.04 (6), 1999 stats.~~

12 **SECTION 11.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and
13 amended to read:

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

21 2. In this section, for taxable years beginning after December 31, 2002, “public
22 utility” also means any telecommunications company and any business entity
23 providing service to the public and engaged in the transportation of goods and
24 persons for hire, as defined in s. 194.01 (4), regardless of whether or not the entity’s

1 rates or charges for services have been established or approved by a federal, state or
2 local government or governmental agency.

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

4 71.04 (8) (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 13.** 71.04 (10) of the statutes is amended to read:

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

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

21 **SECTION 14.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and
22 amended to read:

23 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.
24 (intro.) Corporations engaged in business within and without the state shall be taxed
25 only on such income as is derived from business transacted and property located

INSERT 6-20

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

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

19 71.25 (6) (a) For taxable years beginning before January 1, 2003, an
20 apportionment fraction composed of a sales factor under sub. (9) representing 50%
21 of the fraction, a property factor under sub. (7) representing 25% of the fraction, and
22 a payroll factor under sub. (8) representing 25% of the fraction.

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

24 71.25 (6) (b) For taxable years beginning after December 31, 2002, and before
25 January 1, 2004, an apportionment fraction composed of a sales factor under sub. (9)

1 representing 60% of the fraction, a property factor under sub. (7) representing 20%
2 of the fraction, and a payroll factor under sub. (8) representing 20% of the fraction.

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

4 71.25 (6) (c) For taxable years beginning after December 31, 2003, and before
5 January 1, 2005, an apportionment fraction composed of a sales factor under sub. (9)
6 representing 80% of the fraction, a property factor under sub. (7) representing 10%
7 of the fraction, and a payroll factor under sub. (8) representing 10% of the fraction.

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

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

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

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

19 **SECTION 20.** 71.25 (7) (intro.) of the statutes is amended to read:

20 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
21 years beginning before January 1, 2005:

22 **SECTION 21.** 71.25 (8) (intro.) of the statutes is amended to read:

23 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
24 years beginning before January 1, 2005:

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

1 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
2 state if the income-producing activity is performed in this state. If the
3 income-producing activity is performed both in and outside this state the sales shall
4 be divided between those states having jurisdiction to tax such business in
5 proportion to the direct costs of performance incurred in each such state in rendering
6 this service. Services performed in states which do not have jurisdiction to tax the
7 business shall be deemed to have been performed in the state to which compensation
8 is allocated by sub. s. 71.25 (8), 1999 stats.

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

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

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

24 **SECTION 24.** 71.25 (10) (c) of the statutes is amended to read:

1 71.25 (10) (c) The net business income of railroads, sleeping car companies, car
2 line companies, pipeline companies, financial organizations, air carriers and public
3 utilities requiring apportionment shall be apportioned pursuant to rules of the
4 department of revenue, but the income taxed is limited to the income derived from
5 business transacted and property located within the state.

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

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

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

19 71.45 (3) APPORTIONMENT. (intro.) With respect Except as provided in sub. (3d),
20 to determine Wisconsin income for purposes of the franchise tax, domestic insurers
21 ~~not engaged in the sale of life insurance but which~~ that, in the taxable year, have
22 ~~collected~~ received premiums, other than life insurance premiums, written on
23 ~~subjects of~~ for insurance on property or risks resident, located or to be performed
24 outside this state, ~~there shall be subtracted from~~ multiply the net income figure
25 derived by application of sub. (2) (a) ~~to arrive at Wisconsin income constituting the~~

1 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~
2 ~~federal taxable income by the arithmetic average of the following 2 percentages:~~

3 **SECTION 27.** 71.45 (3) (a) of the statutes is amended to read:

4 71.45 (3) (a) The Subject to sub. (3d), the percentage of total determined by
5 dividing the sum of direct premiums written on all property and risks for insurance
6 other than life insurance, with respects to all property and risks resident, located,
7 or to be performed in this state, and assumed premiums written for reinsurance,
8 other than life insurance, with respect to all property and risks resident, located, or
9 to be performed in this state, by the sum of direct premiums written for insurance
10 on all property and risks, other than life insurance, wherever located during the
11 taxable year, as reflects, and assumed premiums written on insurance for
12 reinsurance on all property and risks, other than life insurance, where the subject
13 of insurance was resident, located or to be performed outside this state wherever
14 located. In this paragraph, “direct premiums” means direct premiums as reported
15 for the taxable year on an annual statement that is filed by the insurer with the
16 commissioner of insurance under s. 601.42 (1g) (a). In this paragraph, “assumed
17 premiums” means assumed reinsurance premiums from domestic insurance
18 companies as reported for the taxable year on an annual statement that is filed with
19 the commissioner of insurance under s. 601.42 (1g) (a).

20 **SECTION 28.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and
21 amended to read:

22 71.45 (3) (b) 1. The Subject to sub. (3d), the percentage of determined by
23 dividing the payroll, exclusive of life insurance payroll, paid in this state in the
24 taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in

1 the taxable year as ~~reflects such compensation paid outside this state.~~
2 ~~Compensation.~~

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

12 **SECTION 29.** 71.45 (3d) of the statutes is created to read:

13 71.45 (3d) PHASE IN; DOMESTIC INSURERS. (a) For taxable years beginning after
14 December 31, 2002, and before January 1, 2004, a domestic insurer that is subject
15 to apportionment under sub. (3) and this subsection shall multiply the net income
16 figure derived by the application of sub. (2) by an apportionment fraction composed
17 of the percentage under sub. (3) (a) representing 60% of the fraction and the
18 percentage under sub. (3) (b) 1. representing 40% of the fraction.

19 (b) For taxable years beginning after December 31, 2003, and before January
20 1, 2005, a domestic insurer that is subject to apportionment under sub. (3) and this
21 subsection shall multiply the net income figure derived by the application of sub. (2)
22 by an apportionment fraction composed of the percentage under sub. (3) (a)
23 representing 80% of the fraction and the percentage under sub. (3) (b) 1. representing
24 20% of the fraction.

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

5 **SECTION 30.** 71.45 (3m) of the statutes is amended to read:

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

14 **SECTION 9144. Nonstatutory provisions; revenue.**

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

21

(END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1059/4ins
JK:ej:s:km

Insert 6 - 20

SECTION 1. 71.09 (10m) of the statutes is created to read:

71.22 (10m) "Telecommunications company" includes a telephone company; an interexchange carrier and a local exchange carrier; a reseller of telephone services; a cellular phone company; a personal communication service provider; a paging service provider; a radio communication provider and any other wireless communication provider; and an Internet service provider affiliated with any interexchange carrier, local exchange carrier, or wireless communication provider. "Telecommunications company" does not include a broadcast radio and television company; a cable, satellite, or community antenna television provider; an Internet service provider not affiliated with any interexchange carrier, local exchange carrier, or wireless communications provider; or any entity that provides some telecommunications service incidental to its principal business activities.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1059/4dn

JK:cjs:km

~~JK~~
stays

February 9, 2001

Kerry Holden:

This draft adds a definition for "telecommunications company" in subchapter IV of chapter 71 of the statutes related to taxation of corporations.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1059/5dn
JK:cjs:kll

February 9, 2001

Kerry Holden:

This draft adds a definition for "telecommunications company" in subchapter IV of chapter 71 of the statutes related to taxation of corporations.

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

Kreye, Joseph

To: Koskinen, John
Subject: RE: Single Factor Apportionment--Excluding Telecommunications Companies

No problem.

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

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

From: Koskinen, John
Sent: Friday, February 09, 2001 2:35 PM
To: Kreye, Joseph
Cc: Holden, Kerry
Subject: RE: Single Factor Apportionment--Excluding Telecommunications Companies

I appreciate your prompt attention on this. And thanks for all your efforts to help us get this straight.

Now, of course, I have just received word that the decision to exclude telco's has been reversed.

SO, telcos are included in single factor apportionment. This means we should revert to draft 1059/3 in the budget bill.

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

From: **Kreye, Joseph**
Sent: Friday, February 09, 2001 8:30 AM
To: Koskinen, John
Subject: RE: Single Factor Apportionment--Excluding Telecommunications Companies

Will do.

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

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

From: Koskinen, John
Sent: Thursday, February 08, 2001 5:03 PM
To: Kreye, Joseph
Subject: FW: Single Factor Apportionment--Excluding Telecommunications Companies

I ran this past DOR. They suggest also including the telecommunications company definition in s.71.22

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

From: **Held, Carol L**
Sent: Thursday, February 08, 2001 4:12 PM
To: Koskinen, John; Ourada, Thomas D; Chandler, Rick
Cc: Holden, Kerry
Subject: RE: Single Factor Apportionment--Excluding Telecommunications Companies

The definition of "telecommunications company" is currently included under the definitions applicable to individuals. It should also be included in sec. 71.22, which are the definitions applicable to corporations.

It is my understanding that the definition of "telecommunications company" is merely a "place-holder" that could be refined at a later date. It is going to take more time to study whether this is a workable definition and which corporations would be affected so that there aren't any surprises after the legislation is enacted. I would like to be able to obtain input from auditors who specialize in the telecommunications industry.

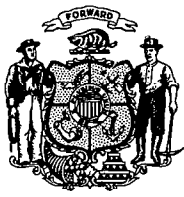
It appears that all of the date changes have been made.

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

From: Koskinen, John
Sent: Thursday, February 08, 2001 2:51 PM
To: Ourada, Thomas D; Chandler, Rick
Cc: Held, Carol L; Holden, Kerry
Subject: Single Factor Apportionment--Excluding Telecommunications Companies

This is the draft the LRB returned to me. Please look it over and provide any comments as soon as you can. Thanks.

<< File: 01-10594.pdf >>



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1059/5⁶

JK:cjs:km
2

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

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

in 2-9-01
Do NOT GEN
TODAY

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

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a corporation's income to this state. The formula has three factors: a sales factor, a property factor, and a payroll factor. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

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

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

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

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

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

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 71.01 (12m) of the statutes is created to read:

2 71.01 (12m) "Telecommunications company" includes a telephone company; an
3 interexchange carrier and a local exchange carrier; a reseller of telephone services;
4 a cellular phone company; a personal communication service provider; a paging
5 service provider; a radio communication provider and any other wireless
6 communication provider; and an Internet service provider affiliated with any
7 interexchange carrier, local exchange carrier, or wireless communication provider.

8 "Telecommunications company" does not include a broadcast radio and television
9 company; a cable, satellite, or community antenna television provider; an Internet
10 service provider not affiliated with any interexchange carrier, local exchange carrier,
11 or wireless communications provider; or any entity that provides some
12 telecommunications service incidental to its principal business activities.

13 **SECTION 2.** 71.04 (4) of the statutes is renumbered 71.04 (4) (intro.) and

14 amended to read:

1 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)
2 Nonresident individuals and nonresident estates and trusts engaged in business
3 within and without the state shall be taxed only on such income as is derived from
4 business transacted and property located within the state. The amount of such
5 income attributable to Wisconsin may be determined by an allocation and separate
6 accounting thereof, when the business of such nonresident individual or nonresident
7 estate or trust within the state is not an integral part of a unitary business, but the
8 department of revenue may permit an allocation and separate accounting in any case
9 in which it is satisfied that the use of such method will properly reflect the income
10 taxable by this state. In all cases in which allocation and separate accounting is not
11 permissible, the determination shall be made in the following manner: for all
12 businesses except air carriers, financial organizations, pipeline companies, public
13 utilities, railroads, sleeping car companies and car line companies there shall first
14 be deducted from the total net income of the taxpayer the part thereof (less related
15 expenses, if any) that follows the situs of the property or the residence of the
16 recipient. The remaining net income shall be apportioned to ~~Wisconsin~~ this state by
17 use of ~~an apportionment fraction composed of a sales factor representing 50% of the~~
18 ~~fraction, a property factor representing 25% of the fraction and a payroll factor~~
19 ~~representing 25% of the fraction.~~ the following:

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

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

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

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

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

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

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

11 71.04 (4) (d) For taxable years beginning after December 31, 2004, an
12 apportionment fraction composed of the sales factor under sub. (7).

13 **SECTION 7.** 71.04 (4) (e) of the statutes is created to read:

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

21 **SECTION 8.** 71.04 (5) (intro.) of the statutes is amended to read:

22 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
23 years beginning before January 1, 2005:

24 **SECTION 9.** 71.04 (6) (intro.) of the statutes is amended to read:

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

3 **SECTION 10.** 71.04 (7) (d) of the statutes is amended to read:

4 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
5 state if the income-producing activity is performed in this state. If the
6 income-producing activity is performed both in and outside this state the sales shall
7 be divided between those states having jurisdiction to tax such business in
8 proportion to the direct costs of performance incurred in each such state in rendering
9 this service. Services performed in states which do not have jurisdiction to tax the
10 business shall be deemed to have been performed in the state to which compensation
11 is allocated by ~~sub. s.~~ 71.04 (6), 1999 stats.

12 **SECTION 11.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and
13 amended to read:

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

21 2. In this section, for taxable years beginning after December 31, 2002, “public
22 utility” also means ~~any telecommunications company and~~ any business entity
23 providing service to the public and engaged in the transportation of goods and
24 persons for hire, as defined in s. 194.01 (4), regardless of whether or not the entity’s

1 rates or charges for services have been established or approved by a federal, state or
2 local government or governmental agency.

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

4 71.04 (8) (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 13.** 71.04 (10) of the statutes is amended to read:

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

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

21 **SECTION 14.** 71.22 (10m) of the statutes is created to read:

22 71.22 (10m) "Telecommunications company" includes a telephone company; an
23 interexchange carrier and a local exchange carrier; a reseller of telephone services;
24 a cellular phone company; a personal communication service provider; a paging
25 service provider; a radio communication provider and any other wireless

1 communication provider; and an Internet service provider affiliated with any
2 interexchange carrier, local exchange carrier, or wireless communication provider.
3 "Telecommunications company" does not include a broadcast radio and television
4 company; a cable, satellite, or community antenna television provider; an Internet
5 service provider not affiliated with any interexchange carrier, local exchange carrier,
6 or wireless communications provider; or any entity that provides some
7 telecommunications service incidental to its principal business activities.

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

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

1 ~~Wisconsin this state by use of an apportionment fraction composed of a sales factor~~
2 ~~under sub. (9) representing 50% of the fraction, a property factor under sub. (7)~~
3 ~~representing 25% of the fraction and a payroll factor under sub. (8) representing 25%~~
4 ~~of the fraction. the following:~~

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

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

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

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

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

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

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

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

23 **SECTION 20.** 71.25 (6) (e) of the statutes is created to read:

24 71.25 (6) (e) For taxable years beginning after December 31, 2002, and before
25 January 1, 2005, the apportionment fraction for the remaining net income of a

1 financial organization shall include a sales factor that represents more than 50% of
2 the apportionment fraction, as determined by rule by the department. For taxable
3 years beginning after December 31, 2004, the apportionment fraction for the
4 remaining net income of a financial organization is composed of a sales factor, as
5 determined by rule by the department.

6 **SECTION 21.** 71.25 (7) (intro.) of the statutes is amended to read:

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

9 **SECTION 22.** 71.25 (8) (intro.) of the statutes is amended to read:

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

12 **SECTION 23.** 71.25 (9) (d) of the statutes is amended to read:

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

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

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

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

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

11 **SECTION 25.** 71.25 (10) (c) of the statutes is amended to read:

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

17 **SECTION 26.** 71.25 (11) of the statutes is amended to read:

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

1 omitted in obtaining the final average ratio which is to be applied to the remaining
2 net income. This subsection does not apply to taxable years beginning after
3 December 31, 2004.

4 **SECTION 27.** 71.45 (3) (intro.) of the statutes is amended to read:

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

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

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

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

6 **SECTION 29.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and
7 amended to read:

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

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

22 **SECTION 30.** 71.45 (3d) of the statutes is created to read:

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

1 figure derived by the application of sub. (2) by an apportionment fraction composed
2 of the percentage under sub. (3) (a) representing 60% of the fraction and the
3 percentage under sub. (3) (b) 1. representing 40% of the fraction.

4 (b) For taxable years beginning after December 31, 2003, and before January
5 1, 2005, a domestic insurer that is subject to apportionment under sub. (3) and this
6 subsection shall multiply the net income figure derived by the application of sub. (2)
7 by an apportionment fraction composed of the percentage under sub. (3) (a)
8 representing 80% of the fraction and the percentage under sub. (3) (b) 1. representing
9 20% of the fraction.

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

14 **SECTION 31.** 71.45 (3m) of the statutes is amended to read:

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

23 **SECTION 9144. Nonstatutory provisions; revenue.**

24 (1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. The
25 department of revenue shall submit in proposed form rules related to the

SECTION 9144

1 appportionment of the income of financial organizations under sections 71.04 (4) (e)
2 and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff
3 under section 227.15 (1) of the statutes no later than the first day of the 4th month
4 beginning after the effective date of this subsection.

5 **(END)**



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

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, when computing corporate income taxes and franchise taxes, a formula is used to attribute a portion of a corporation's income to this state. The formula has three factors: a sales factor, a property factor, and a payroll factor. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula. When computing income taxes and franchise taxes for an insurance company, a formula with a premium factor and a payroll factor is used to attribute a portion of an insurance company's income to this state.

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

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

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

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

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

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 inequitable final average ratio because of the fact that such nonresident individual
2 or nonresident estate or trust does not employ, to any appreciable extent in its trade
3 or business in producing the income taxed, the factors made use of in obtaining such
4 ratio, this factor may, with the approval of the department of revenue, be omitted in
5 obtaining the final average ratio which is to be applied to the remaining net income.
6 This subsection does not apply to taxable years beginning after December 31, 2004.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,
23 2003, “public utility” means any business entity described under subd. 2. and 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, 2002, “public
5 utility” also means any business entity providing service to the public and engaged
6 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
7 regardless of whether or not the entity’s rates or charges for services have been
8 established or approved by a federal, state or local government or governmental
9 agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **SECTION 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)