

2001 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB55)

Received: 06/15/2001

Received By: jkreyc

Wanted: As time permits

Identical to LRB:

For: Senate Democratic Caucus

By/Representing: Keckhaver

This file may be shown to any legislator: NO

Drafter: jkreyc

May Contact:

Addl. Drafters: champra

Subject: Tax - miscellaneous

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Pre Topic:

SDC:.....Keckhaver - CN1111,

Topic:

Modifications to JCF motion #1643, related to general fund taxes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreyc 06/16/2001 champra 06/16/2001	csicilia 06/16/2001 csicilia 06/17/2001		_____			
/1	jkreyc 06/19/2001	csicilia 06/19/2001	haugeca 06/18/2001	_____	lrb_docadmin 06/18/2001		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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			06/19/2001	_____	06/19/2001		

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	champra 06/16/2001	csicilia 06/17/2001		_____			
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Make the following modifications to Motion #1643, relating to General Fund Taxes:

RAC

4. Delete the phase-in of single sales factor apportionment and maintain current law.

JK
6. Delete the authorization for the Department of Commerce to create up to nine technology development zones and maintain current law.

12. Adopt Alternative #2 in LFB Paper #122, related to the estate tax. Do not rereference the federal law for deaths occurring on or after October 1, 2002.

17. Delete the provision which increases the tobacco products tax from 20% of the manufacturer's selling price to 30%, and maintain current law. This would decrease general fund tax revenues by \$4.6 million in 01-02 and \$6.5 million in 02-03.

25. Delete the provision which provides for refunding tax supporting and self-amortizing general obligation bonds. This would increase costs to the general fund by \$50 million in 02-03.

28. Modify this provision to provide that after the \$115 million aid delay is "bought back," the next monies received would be used to increase the statutory balance/reserve to 2% of general fund appropriations. Delete the provision which creates a tax relief credit and tax relief fund, and instead create a "debt retirement fund" which provides for the early retirement of state debt, per instructions from LFB.

NEW ITEM: Require corporations to use the combined reporting method of determining income, per 1999 AB 133. LFB is doing an estimate on the expected revenue increase.

~~XXXXXXXXXX~~

CN1111

GENERAL FUND TAXES AND BUDGET BALANCE

Motion:

Move to incorporate the Governor's recommendations in LFB Issue Papers #100 through #107, #110, #111, #115, #121, #122, #123, #886 and #887 with the following modifications:

1. LFB Paper #100. Modification. Reestimate the fiscal effect of the indexing provision to be a reduction of \$750,000 in 2002-03. Compared to the bill, the revised estimates would reduce general fund tax collections by \$300,000 in 2002-03.
2. LFB Paper #101. Modification. Reestimate funding for the EITC under current law for 2002-03 at \$64,700,000 (\$12,500,000 GPR and \$52,200,000 PR). Compared to the bill, the revised estimate reduces funding for the second year by \$334,500 GPR and \$1,465,500 PR, for a total reduction of \$1,800,000. Federal TANF funding in DWD would also be reduced by \$1,465,500.
3. LFB Paper #102. Modification. Reduce the amounts in the appropriation for the Illinois-Wisconsin income tax benchmark study by \$11,750,000 GPR in 2001-02 and \$12,500,000 GPR in 2002-03 and specify that these amounts would, instead, be provided under the sum sufficient appropriation for Illinois income tax reciprocity payments. In addition, eliminate base funding of \$50,700 GPR in each year for the Illinois-Wisconsin income tax benchmark appropriation.
4. LFB Paper #103. Delay the starting date for the phase-in of single sales factor apportionment to tax years beginning after December 31, 2003. Compared to the Governor's recommendation this would increase general fund taxes by \$8.0 million in 2002-03. Adopt technical changes to address computation of the sales factor when the numerator or denominator in the apportionment formula is negative or zero.
5. LFB Paper #104. Alt. 2. Modify the Governor's recommendation to specify that owning an LLC would be considered doing business in the state only if the LLC is treated as a partnership for federal income tax purposes and include a severability provision in the definition of "doing business."
6. LFB Paper #106. Modify provisions as follows: (a) authorize the Department of Commerce to create up to nine technology zones but provide that the Department could not designate more than three zones without approval of the Joint Committee on Finance; and (b) limit the total amount of technology zones tax credits that could be claimed in a zone to \$3.0 million.

Also, provide that partnerships, limited liability companies and S corporations could pass the technology zones credit on to partners and members.

7. LFB Paper #107. Alt. 2. Update state tax references to the federal IRC in effect as of December 31, 2000, except for provisions relating to: (a) environmental remediation costs; (b) corporate donations of computer technology; and (c) foreign sales corporations. This option would not adopt the new federal provisions that would result in decreased state tax revenues. This would increase revenues by an estimated \$100,000 annually.

8. LFB Paper #110. Alt. 1. Reestimate the fiscal effect of the Governor's recommendation to subject custom computer programs to the sales and use tax to be an increase in revenues of \$20.5 million in 2001-02 and \$31.0 million in 2002-03. This estimate assumes that the change would take effect on October 1, 2001. These amounts are higher than the Governor's estimates by \$4.5 million in 2001-02 and lower by \$5.0 million in 2002-03.

9. LFB Paper #111. Alt. 1. Adopt the Governor's recommendation regarding the sales tax on tangible personal property with technical modifications recommended by DOR.

10. LFB Paper #115. Alt. 2. Reduce the gross revenues tax rate for wholesale electricity sales to 1.59%. However, specify that the reduced rate would apply to tax assessments starting May 1, 2005, and ending with the assessment on May 1, 2010 (these assessments would be based on gross revenues from calendar years 2004 through 2009). Provide that the tax rate would return to 3.19% of gross revenues earned starting January 1, 2010.

11. LFB Paper #121. Alt. 2. Approve the Governor's recommendations regarding the regulation of cigarette sales with the following modifications: (a) expand authority for state enforcement action by allowing the state to take action against every person in the gray-market distribution chain rather than against only the tax stampers or against tax stamped product; (b) prohibit the sale of cigarettes for which the manufacturer has not submitted ingredient information to the federal government, as required by law; (c) revise the Governor's proposal to reflect the provisions of the new federal gray market law and the federal labeling law, that requires cigarettes sold in the U.S. to bear the Surgeon General's warning; (d) clarify that the prohibitions on gray-market cigarettes would not apply to cigarettes imported into the U.S. for personal use or to cigarettes sold at duty free stores, unless the cigarettes are brought into the U.S. for resale; (e) eliminate the provision in the bill that would allow possession of up to 400 [20 cartons] of gray-market cigarettes; (f) narrow the right to bring an action for appropriate injunctive relief from "any person" to any person who sells, distributes or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation; and (g) require the destruction of all gray-market cigarettes seized by the state.

12. LFB Paper #122. For deaths occurring prior to October 1, 2002, modify the state estate tax statutes to reference the federal law in effect on December 31, 2000. For deaths occurring on or after October 1, 2002, reference the federal law in effect at that time.

13. LFB Paper #122. Modification. Modify the bill to increase estimated general fund revenues by \$4,500,000 in 2001-02 to reflect offsets of delinquent state taxes from federal income

tax rebates.

14. LFB Paper #123. Modification. Increase the estimated general fund opening balance for the 2001-03 biennium by \$11,700,000 to correctly account for expenditures on the sales tax rebate.

15. Motion #1640. Create an Artistic Endowment Foundation and require DOT to issue Arts Board license plates as a funding mechanism for the foundation.

16. Increase the cigarette tax by 9 cents per pack (from 59 cents to 68 cents), effective October 1, 2001. This would increase general fund tax revenues by an estimated \$29.8 million in 2001-02 and \$33.8 million in 2002-03.

17. Increase the tobacco products tax from 20% of the manufacturer's selling price to 30% effective October 1, 2001. This would increase general fund tax revenues by an estimated \$4.6 million in 2001-02 and \$6.5 million in 2002-03.

18. LFB Paper #886. Modification. Reestimate the settlement monies to be received under the MSA and deposited into the general fund or flowing through the permanent endowment fund, depending on the timing of the sale of bonds, by an additional \$2,112,000 in 2001-02 and \$2,162,000 in 2002-03.

19. LFB Paper #887. Alt. A1 (modified). Modify the Governor's recommendations to securitize the state's annual tobacco settlement payments and deposit the proceeds from the transaction into a newly-created segregated permanent endowment fund and transfer \$450 million SEG from the endowment fund to the general fund.

20. LFB Paper #887. Alt. B3 and B4. Require that after any bonds secured by the state's tobacco payments are issued, the DOA Secretary must submit a report to the Committee on the transaction and on the distribution of the bond proceeds. Delete the authority provided to the DOA Secretary to annually direct SWIB to transfer amounts from the permanent endowment fund and, instead, provide the Committee the authority to transfer these amounts at its fourth quarter meeting under s. 13.10 of the statutes.

21. LFB Paper #887. Alt. C2. Delete the authority of the DOA Secretary to direct SWIB on the types of assets in which the Board could invest the permanent endowment fund and the exemption of SWIB's fiduciary responsibilities in the investments of those assets. Specify that SWIB could hold: (a) evidences of indebtedness, including subordinated obligations, that are secured by tobacco settlement revenues, and that are issued by nonstock corporations or limited liability companies or by the Wisconsin Health and Educational Facilities Authority (WHEFA); and (b) certificates or other evidences of ownership interest in all or any portion of tobacco settlement revenues.

22. LFB Paper #887. Alt. D3. Delete the Governor's recommendation to provide \$500,000 GPR in 2001-02 for contracting for financial services related to tobacco securitization.

23. LFB Paper #887. Alt. E2. Delete the provisions that would exempt the contracting of financial service related to the proposed tobacco securitization transaction from the state's competitive, public notice and minority-owned business bidding requirements for state contracts.

24. Direct DOA to convert the principal payment amounts of state general fund supported commercial paper short term borrowing program that are due in the 2001-03 biennium to long-term general obligation borrowing. Estimated lapses to the general fund would increase by \$25 million annually.

25. Provide \$75 million of general obligation bonding in a new bonding appropriation for refunding tax-supported and self-amortizing general obligation bonds. Specify that no bonds could be issued after June 30, 2003. Increase estimated GPR-Lapses by \$50 million in 2002-03 to reflect projected savings from refunding \$50 million of general fund supported bonds that otherwise would be paid off in that year.

26. Delay the payment of \$115,000,000 GPR of general school aids scheduled to be made on the third Monday in June 2003 until the fourth Monday in July, 2003. Provide \$700,000 GPR in 2002-03 in a separate sum sufficient appropriation created for this purpose to pay interest to school districts for their portion of the delayed payment. Specify that this interest payment for each school district would be calculated using the annualized state investment fund earnings rate for April 2003, to provide each school district with the amount of interest it would have earned using that earnings rate on its portion of the payment delay for the period of the delay. Provide that this payment of interest would be made by DPI on the third Monday in June, 2003. Specify that this payment of interest would be outside of revenue limits and would not count towards two-thirds funding of partial school revenues.

27. Specify that the statutory balance only for 2002-03 would be \$50 million.

28. Modify the proposed tax relief fund and tax relief credit to specify that the first \$115 million of monies received that otherwise would be deposited in the tax relief fund, would instead be used to buy back the \$115 million school aid payment delay.

29. Reserve \$44 million in 2002-03 for prescription drug legislation.

30. Exclude community service levies from the limited levy under revenue limits. Specify that the community service levy would be excluded from a district's prior year base revenues and from a district's current year revenue limit beginning with revenue limits calculated for the 2001-02 school year. Exclude these levies from the definition of partial school revenues. Delete \$11,333,900 GPR annually in general school aids to adjust two-thirds funding.

31. Eliminate the December 31, 2003, scheduled termination of the sales tax exemption on gross receipts from the sale or use of a one-time seat license for Green Bay Packers football games.

32. Create an individual income tax checkoff for donations to a local professional baseball park district (Baseball District). Provide that the revenues from the individual income tax

checkoff would be distributed to the Baseball District for the repayment of bonds. Specify that provisions parallel to the current law provisions for a local professional football stadium district (Stadium District) would apply in the case of the proposed Baseball District checkoff, including the following: (a) voluntary payments; (b) errors; (c) conditions; (d) void designation; (e) tax return; (f) certification; and (g) amounts subject to refund. Specify that these provisions would first apply to taxable years beginning on January 1 of the year of the general effective date of the bill, unless the bill's general effective date is after July 31. In that case, the provisions would first apply to taxable years beginning January 1 of the year following the year in which the bill generally takes effect.

33. Require DOR to work with the Internal Revenue Service and the University of Wisconsin Extension to undertake a program to: (a) promote volunteering among the state's financial and legal professionals in the Volunteer Income Tax Assistance program; (b) provide training for the volunteers; and (c) assist with creating mobile sites offering assistance to rural and underserved areas. Require the Department to provide reasonable access for Wisconsin working families to free help preparing and filing their state income tax returns by January 1, 2002.

34. Restore dislocated workers in the definition of target group members used for the development zones tax credit.

35. Delete \$2,001,900 GPR and \$51,700 PR, and 10.0 GPR and 1.0 PR positions annually and eliminate the Division of International and Export Services and its functions from the Department of Commerce.

[Change to Bill: \$190,874,000 GPR-REV, -\$141,907,500 GPR, \$11,700,000 GPR-Balance, -\$83,000,000 GPR-Required Balance, \$100,000,000 GPR-Lapse, \$44,000,000 GPR-Reserve, -\$1,465,500 FED, -\$1,568,900 PR, \$100,000,000 SEG, -10.00 GPR positions and -1.00 PR position]

Technical Corrections to Combined Reporting Legislation

- in the budget*
- I. Create a definition of "doing business in this state" in sec. 71.22 as follows:

"Doing business in this state" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. A corporation that directly or indirectly owns a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership, or that directly or indirectly owns an interest in a limited liability company that does business in this state, regardless of the percentage of ownership, is doing business in this state in a corporate capacity, subject to constitutional limitations. A corporation that issues credit, debit, travel, entertainment or similar charge cards to customers located in this state is doing business in this state.

- II. Amend secs. 71.23(1) and 71.43(1) as follows:

out 9

71.23 Imposition of tax. (1) INCOME TAX. For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax as provided under this chapter on all Wisconsin net incomes of corporations which are not subject to the franchise tax under sub. (2) and which own property within this state, derive income from sources within the state or from activities attributable to this state or whose business within this state during the taxable year, except as provided under sub. (3), consists exclusively of foreign commerce, interstate commerce, or both; except as exempted under s. 71.26(1). This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years under s. 71.74(1) and (2).

out 9

71.43 Imposition of tax. (1) INCOME TAX. For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax as provided under this chapter on all Wisconsin net incomes of corporations which are not subject to the franchise tax under sub. (2) and which own property within this state, derive income from sources within the state or from activities attributable to this state or whose business within this state during the taxable year, except as provided under s. 71.23(3), consists exclusively of foreign commerce, interstate commerce, or both; except as exempted under ss. 71.26(1) and 71.45(1). This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years under s. 71.74(1) and (2).

- III. **Bill Section 1724.** Amend sec. 71.25(5)(a) as amended by the bill as follows:

✓ **71.25(5)(a) Apportionable income.** (intro.) Except as provided in sub. (6), corporations engaged in business both within and without this state are subject to apportionment. Income, gain or loss from the sources listed in this paragraph is

~~presumed apportionable, subject to constitutional limitations. Apportionable income includes all income or loss of corporations, other than nonapportionable income as specified in par. (b), including, but not limited to, income, gain or loss from the following sources:~~

IV. ~~Create a provision in sec. 71.25 and in sec. 71.45 to address the treatment of a partner's share of the partnership's apportionment factors and, for a limited liability company treated as a partnership, a member's share of the LLC's apportionment factors. Following is suggested language:~~

in the budget

~~A general or limited partner's share of the numerator and the denominator of the partnership's apportionment factors are included in the numerator and the denominator of the general or limited partner's apportionment factors and for a limited liability company treated as a partnership a member's share of the numerator and the denominator of the limited liability company's apportionment factors are included in the numerator and the denominator of the member's apportionment factors.~~

V. **Bill Section 1739.** Clarify the definitions relating to combined reporting. Replace sec. 71.255(1)(a) through (g) as created by the bill with the following definitions:

(a) "Affiliated corporation" means a corporation that is a member of a commonly controlled group.

(b) "Brother-sister parent corporation" means a parent corporation that is a member of a commonly controlled group, some of whose members are not connected through stock ownership with that parent within the meaning of par. (f).

in this definition used anywhere in the draft?

(c) "Combined report" means a form prescribed by the department that is required to be attached to the tax return of a taxpayer member of the combined reporting group and that shows each taxpayer member's income from sources within this state under the combined reporting method.

this is the requirement not defined

(d) "Combined reporting group" means those corporations that are required to be included in a combined report, depending on whether the commonly controlled group elects to use the water's edge or the worldwide combined reporting method.

(e) "Combined reporting method" means the method under which the total apportionable income or loss of all members of the combined reporting group engaged in a unitary business is apportioned to this state, to determine each taxpayer member's income from sources within this state.

redundant? covered by commonly controlled group?

note = parent corporation is undefined.

(f) "Commonly controlled group" does not include an insurance company that is exempt from taxation under s. 71.45(1). "Commonly controlled group" includes any of the following:

1. A parent corporation and any corporation or chain of corporations that are connected to the parent corporation by direct or indirect ownership by the parent corporation if the parent corporation owns stock representing more than 50% of the voting power of at least one of the connected corporations or if the parent corporation or any of the connected corporations owns stock that cumulatively represents more than 50% of the voting power of each of the connected corporations.

2. Any 2 or more corporations if a common corporate or noncorporate owner owns directly or indirectly stock representing more than 50% of the voting power of the corporations or connected corporations.

3. A partnership or limited liability company if a parent corporation or any corporation connected to the parent corporation by common ownership directly or indirectly holds more than a 50% ownership interest in the partnership or limited liability company.

4. Any 2 or more corporations if stock representing more than 50% of the voting power in each corporation are interests that cannot be separately transferred.

5. Any 2 or more corporations if stock representing more than 50% of the voting power is directly owned by or for the benefit of, members of the same family. Members of the same family are limited to an individual, the individual's spouse, parents, brothers or sisters, grandparents, children and grandchildren, and their respective spouses.

6. A corporation, partnership or limited liability company if a parent corporation or any corporation connected to the parent corporation by common ownership does not hold more than a 50% ownership interest in the corporation, partnership or limited liability company but does effectively control the corporation, partnership or limited liability company.

(g) "Corporation" has the meaning given in s. 71.22(1) or 71.42(1).

(h) "Department" means the department of revenue.

(i) "Designated agent" means the taxpayer member which files a group return on behalf of the electing taxpayer members of the combined reporting group as agent and surety for the electing members.

redundant — *how is it different from combined report? doesn't say!*

(j) "Group return" means a return filed on behalf of eligible electing taxpayer members of a combined reporting group by the designated agent.

(k) "Intercompany transaction" means a transaction between corporations, partnerships or limited liability companies that are members of the same combined reporting group immediately after the transaction.

✓ (L) "Partnership" means any entity considered a partnership under section 7701 of the Internal Revenue Code.

✓ (m) "Separate return" means a return filed by one corporation, whether or not it is a member of a combined reporting group.

✓ (n) "Taxpayer member" means a corporation that is a member of a combined reporting group and that is required to file a tax return in this state under s.71.23 or 71.43.

✓ (o) "Top tier corporation" means a member of an commonly controlled group and is either a parent corporation, a brother-sister parent corporation or any other member of the group that is not connected through stock ownership with a parent corporation within the meaning of par. (f). A corporation is a top tier corporation whether or not it is doing business in or deriving income from sources within this state, or whether or not its income and apportionment factors are excluded from a combined report under the water's edge combined reporting method or any other provision of law.

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(p) "Unitary business" includes, but is not limited to, business activities or operations that are of mutual benefit, integrated with, dependent upon, or contribute to the activities of one or more other entities, individually or as a group; transactions that serve an operational function; or other activities that justify the apportionment of a multistate entity's income. Unity is established whenever there is unity of ownership, operation, and use, evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction, but the absence of these centralized activities or any of these centralized activities will not necessarily evidence a nonunitary business. Other factors that may indicate the existence of a unitary business include, but are not limited to, intercorporate sales or leases, intercorporate services, intercorporate debts, intercorporate use of proprietary materials, interlocking directorates, interlocking corporate officers or any combination of the latter two.

(q) "Water's edge combined reporting method" includes the income under s. 71.26 or 71.45, apportionment factors under s. 71.25 or 71.45 and tax credits under s. 71.28 or 71.47 of any of the following unitary businesses:

1. Any corporation organized or incorporated under the laws of the United States or any state, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, or any political subdivision thereof, including corporations described in ss. 931 through 936 of the Internal Revenue Code.

2. Any domestic international sales corporation under ss. 991 through 994 of the Internal Revenue Code.

3. Any foreign sales corporation under ss. 921 through 927 of the Internal Revenue Code.

4. Any export trade corporation under ss. 970 and 971 of the Internal Revenue Code.

5. Any corporation regardless of its place of incorporation if the average of its property and payroll factors under s. 71.25(7) and (8), 1997 stats., computed on an annual basis, within the United States is 20% or more. If the corporation is a part-year member of the commonly controlled group, the 20% test applies only to that part of the year for which the corporation is a member of the commonly controlled group.

6. Any corporation not otherwise described in subds. 1. to 5. to the extent of the corporation's income within the United States and the corporation's apportionment factors assignable to a location within the United States.

(r) "Worldwide combined reporting method" means the income under s. 71.26 or 71.45, the apportionment factors under s. 71.25 or 71.45 and the tax credits under s. 71.28 or 71.47 of a unitary business regardless of the country where any member of the unitary business is organized or incorporated or conducts business.

VI. **Bill Section 1739.** Provide an election to use either the water's edge or the worldwide method of combined reporting. Replace sec. 71.255(2) as created by the bill with the following language:

(2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. A corporation that is subject to tax under s. 71.23(1) or (2) or 71.43 and that is a member of a commonly controlled group having business activities, which in whole or in part constitute parts of a unitary business, shall compute the corporation's income and apportionment factors using the combined reporting method. The commonly controlled group shall use the water's edge combined reporting method unless the commonly controlled group elects, in the manner prescribed in par. (a), to use the worldwide combined reporting method. The commonly controlled group agrees to comply with the provisions of par. (b).

(a) *Election to use worldwide combined reporting.* 1. The election to use the worldwide combined reporting method shall be made by a top tier corporation on behalf of the corporations that are members of the commonly controlled group. If there is more than one top tier corporation in the commonly controlled group, for the election to be effective, all top tier corporations shall elect.

2. The election period begins for all members of the group on the first day of the designated taxable year of a taxpayer member. The designated taxable year is the taxable year of a specific member of the commonly controlled group, which is subject to taxation in this state and is designated by the top tier corporation, or top tier corporations, with the filing of the election. A designated taxable year shall not begin before January 1, 2000. The elections of all top tier corporations shall be filed, in the form and manner prescribed by the department, at any time prior to the last day of the designated taxable year.

*above taxable year
or designated year*
~~3. If a timely election is not made, the commonly controlled group shall be deemed to have elected to use the water's edge combined reporting method.~~

4. The worldwide combined reporting election shall remain in effect for an initial term of 60 months. At the expiration of each 60-month period, the election is automatically renewed for an additional 60-month period unless one or more of the top tier corporations files written notice of nonrenewal, in a form and manner prescribed by the department, on or before the last day of the election period.

5. The department may grant a request to terminate an election under this paragraph prior to the expiration of the 60-month period for good cause. Good cause shall be determined in a manner similar to the good cause sufficient to discontinue filing a consolidated return pursuant to regulations under s. 1502 of the Internal Revenue Code.

6. If an election is terminated under subd. 5., or is not renewed, another election to use the worldwide combined reporting method may not be made under this paragraph for any taxable year beginning 60 months after the last day of the election period that was terminated or not renewed. The department may waive the application of this subdivision for good cause.

~~(b) *Requirement to provide information.* A commonly controlled group consents do all of the following:~~

~~1. Retain and make available to the department, upon request, the documents and information, including any questionnaires completed and submitted to the Internal Revenue Service or other states, that are necessary to audit issues involving attribution of income to the United States or foreign jurisdictions.~~

2. Identify, upon request, principal officers or employees who have substantial knowledge of, and access to, documents and records that discuss pricing policies, profit centers, cost centers and the methods of allocating income and expense among these centers. The information shall include the employees' titles and addresses.

3. Retain and make available, upon request, all documents and correspondence ordinarily available to a corporation included in the election that are submitted to, or obtained from, the Internal Revenue Service, foreign countries or their territories or possessions, and competent authority pertaining to ruling requests, rulings, settlement resolutions and competing claims involving jurisdictional assignment and sourcing of income that affect the assignment of income to the United States. The documents shall include all ruling requests and rulings on reorganizations involving foreign incorporation of branches, all ruling requests and rulings on changing a corporation's jurisdictional incorporation and all documents that are ordinarily available to a corporation included in the election that pertain to the determination of foreign tax liability, including examination reports issued by foreign taxing administrations. If the documents have been translated, the translations shall be furnished.

4. Retain and make available, upon request, information filed with the Internal Revenue Service to comply with ss. 6038, 6038A, 6038B, 6038C and 6041 of the Internal Revenue Code.

5. Upon request, prepare and make available for each corporation organized or created under the laws of the United States or a political subdivision thereof, of which 50% or more of its voting stock is directly or indirectly owned or controlled, the information that would be included in the forms described in subdivision paragraph d. if those forms were required for United States corporations.

6. Retain and make available, upon request, all state tax returns filed by each corporation included in the election in each state including the District of Columbia.

7. Comply with reasonable requests for information necessary to determine or verify its net income, apportionment factors or the geographic source of that income pursuant to the Internal Revenue Code.

8. For purposes of this paragraph, information for any year shall be retained for that period of time in which the taxpayer's franchise or income tax liability to this state may be subject to adjustment, including all periods in which additional income or franchise taxes may be assessed or during which an appeal is pending before the tax appeals commission or a lawsuit is pending in the courts of this state or the United States with respect to Wisconsin franchise or income tax.

- VII. **Bill Section 1739.** Revise the language relating to the accounting period using the terms defined in Part V. Amend sec. 71.255(3), as created by the bill, as follows:

(3) ACCOUNTING PERIOD. For purposes of this section, the income under ss. 71.26, ~~71.34~~ and 71.45, the apportionment factors under ss. 71.25 and 71.45 and the tax credits under ss. 71.28 and 71.47 of all corporations ~~that are members of an affiliated group and that are engaged in a unitary business in the combined reporting group~~ shall be determined by using the same accounting period. If the ~~affiliated group that is engaged in a unitary business combined reporting group~~ has a common parent corporation, the accounting period of the common parent corporation shall be used to determine the income, the apportionment factors and the tax credits of all the corporations that are members of the ~~affiliated group that is engaged in a unitary business combined reporting group~~. If the ~~affiliated group that is engaged in a unitary business combined reporting group~~ has no common parent corporation, the income, the apportionment factors and the tax credits of the ~~affiliated group that is engaged in a unitary business combined reporting group~~ shall be determined using the accounting period of the taxpayer member of the ~~affiliated group combined reporting group~~ that has the most significant operations on a recurring basis in this state.

- VIII. **Bill Section 1739.** Revise the language relating to the filing returns using the terms defined in Part V. In addition, clarify the treatment of part-year members of combined groups. Amend sec. 71.255(4), as created by the bill, as follows:

(4) FILING RETURNS. (a) *Corporations with the same accounting period.* Corporations that are required to file a ~~return~~ combined report under this section and that have the same accounting period may elect to file a combined report ~~under par. (c) group return~~ that reports the aggregate state franchise or state income tax liability of all of the members of the ~~affiliated group that are engaged in a unitary business combined reporting group~~. Corporations that are required to file a combined report under this section may file separate returns reporting the respective apportionment of the corporation's state franchise or state income tax liability as determined under the combined reporting method, if each corporation filing a separate return pays its own apportionment of its state franchise or state income tax liability.

(b) *Corporations with different accounting periods.* Corporations that are required to file a combined report under this section and that have different accounting periods shall file separate returns. Corporations that are required to file a combined report and that have different accounting periods shall use the actual figures from the corporations' financial records to determine the proper income and income-related computations to convert to a common accounting period. Corporations that are required to file a combined report may use a

proportional method to convert income to a common accounting period if the results of the proportional method do not materially misrepresent the income apportioned to this state. The apportionment factors under ss. 71.25 and 71.45 and the tax credits under ss. 71.28 and 71.47 shall be computed according to the same method used to determine the income under ss. 71.26, ~~71.34~~ and 71.45 for the common accounting period. If a corporation performs an interim closing of its financial records to determine the income attributable to the common accounting period, the actual figures from the interim closing shall be used to convert the apportionment factors and tax credits to the common accounting period.

(c) *Designated agent.* If corporations that are subject to this section file a ~~combined report group return~~ under par. (a), the parent corporation of the affiliated combined reporting group shall be the sole designated agent for each member of the affiliated combined reporting group including the parent corporation unless the parent corporation is not a taxpayer member of the combined reporting group or does not participate in the group return. If the parent corporation is not a taxpayer member of the combined reporting group, the taxpayer members may appoint a designated agent. If the parent corporation does not qualify to be the designated agent and the taxpayer members do not appoint a designated agent, the department shall select the member that is expected to have the most significant operations on a recurring basis in this state to be the designated agent. Once a taxpayer member of a combined reporting group is appointed the designated agent, the taxable member shall remain the designated agent for all future years unless the designated agent ceases to be a member of the combined reporting group or the taxpayer members appoint a new designated agent. The combined reporting group shall notify the department, in the manner prescribed by the department, of any change in the designated agent. ² ~~The designated agent shall file the combined report group return under par. (a), shall file for any extensions under s. 71.24(7) or 71.44(3), shall file amended returns and claims for refund or credit, and shall send and receive all correspondence with the department regarding a combined report group return.~~ Any notice the department sends to the designated agent is considered a notice sent to all members of the affiliated combined reporting group. Any refund with respect to a group return shall be paid to and in the name of the designated agent and shall discharge any liability of the state to any member of an ~~affiliated group~~ the combined reporting group that has joined in filing a group return regarding the refund. The ~~affiliated group filing a combined report combined reporting group filing a group return~~ under par. (a) shall pay all taxes, including estimated taxes, in the designated agent's name. The designated agent shall participate on behalf of the affiliated group members of the combined reporting group that are included in the group return in any investigation or hearing requested by the department regarding a ~~combined report group return~~ and shall produce all information requested by the department regarding a ~~combined report group return~~. The designated agent may execute a power of attorney on behalf of the members of the ~~affiliated group combined reporting group that have joined in filing a group return.~~ The

designated agent shall execute waivers, closing agreements and other documents regarding a ~~report~~ group return filed under par. (a) and any waiver, agreement or document executed by the designated agent shall be considered as executed by all members of the ~~affiliated group~~ combined reporting group that have joined in filing a group return. If the department acts in good faith with an ~~affiliated~~ a combined reporting group member that represents itself as the designated agent for the ~~affiliated~~ combined reporting group but that ~~affiliated~~ combined reporting group member is not the designated agent, any action taken by the department with that ~~affiliated~~ combined reporting group member has the same effect as if that ~~affiliated~~ combined reporting group member were the actual designated agent for the ~~affiliated~~ combined reporting group.

(d) *Part-year members.* If a corporation becomes a member of an ~~affiliated group engaged in a unitary business~~ a combined reporting group or ceases to be a member of an ~~affiliated group engaged in a unitary business~~ a combined reporting group after the beginning of a common accounting period, the corporation's income shall be apportioned to this state as follows:

1. If the corporation is required to file 2 or more short period federal returns for the common accounting period, the income for the short period that the corporation was a member of an ~~affiliated group engaged in a unitary business~~ a combined reporting group shall be determined by using the combined reporting method and the corporation shall join in filing a combined report for that short period and the corporation may join in filing a group return for that short period. The income for the remaining short period shall be ~~by separate reporting~~ reported on a separate return under s. 71.25 or 71.45. If the corporation becomes a member of another ~~affiliated group that is engaged in a unitary business~~ combined reporting group in the remaining short period, the corporation's income shall be determined for the remaining short period by using the combined reporting method.

2. If the corporation is not required to file federal short period returns, the corporation shall file a separate return. Income shall be determined as follows:

a. By the combined reporting method for any period that the corporation was a member of an ~~affiliated group that was engaged in a unitary business~~ a combined reporting group.

b. ~~By separate reporting~~ On a separate return under s. 71.25 or 71.45 for any period that the corporation was not a member of an ~~affiliated group that was engaged in a unitary business~~ a combined reporting group.

(e) *Amended combined-report group return.* The election to file a ~~combined-report group return~~ combined-report group return under this section applies to an amended ~~combined-report group return~~ combined-report group return that includes the same corporations that joined in

the filing of the original ~~combined report group return~~. Under this section, an amended ~~combined report group return~~ shall be filed as follows:

1. If an election to file a ~~combined report group return~~ that is in effect for a taxable year is revoked for the taxable year because the affiliated combined reporting group that filed the ~~combined report group return~~ is not a ~~unitary business eligible to be a combined reporting group~~, as determined by the department, the designated agent for the affiliated combined reporting group may not file an amended ~~combined report group return~~. The designated agent and each corporation that joined in filing the ~~combined report group return~~ shall file a separate amended return. To compute the tax due on a separate amended return, a corporation that files a separate amended return shall consider all of the payments, credits or other amounts, including refunds, that the designated agent allocated to the corporation.

2. If a change in tax liability under this section is the result of the removal of a corporation from an affiliated a combined reporting group because the corporation was not eligible to be a member of the affiliated combined reporting group for the taxable year, as determined by the department, the designated agent shall file an amended ~~combined report group return~~ and the ineligible corporation shall file a separate amended return.

3. If a corporation erroneously fails to join in the filing of a ~~combined report group return~~, the designated agent shall file an amended ~~combined report group return~~ that includes the corporation. If a corporation that erroneously fails to join in the filing of a ~~combined report group return~~ has filed a separate return, the corporation shall file an amended separate return that shows no net income, overpayment or underpayment, and shows that the corporation has joined in the filing of a ~~combined report group return~~.

4. If a corporation erroneously joins in the filing of a group return, the designated agent shall file an amended group return that excludes the corporation. The corporation shall file an amended separate return.

IX. **Bill Section 1739.** Revise the language relating to the computation of income under combined reporting using the terms defined in Part V. Amend sec. 71.255(5), as created by the bill, as follows:

(5) INCOME COMPUTATION UNDER COMBINED REPORTING. Under the combined reporting method, income attributable to this state shall be determined as follows:

(a) Determine the net income of each corporation under s. 71.26, ~~71.34(1)~~ or s. 71.45, including a general or limited partner's share of partnership income to the extent that the general or limited partner and the partnership in which the general or limited partner invests are engaged in a unitary business, regardless

of the percentage of the general or limited partner's ownership in the partnership before the deduction for net business losses.

1. A member of the combined reporting group may elect to determine the member's income or loss under a method of accounting or an election authorized under s. 71.26(3)(y), 71.30(1), 71.45(2)(a)13. or 71.49(2), as appropriate, independently of the method of accounting or elections used in determining the net income or loss of the other members of the combined reporting group. Once an accounting method or other election is made for each member, that member's net income or loss must be consistently determined in the combined report of all members of the combined reporting group and in the group return filed by the taxpayer members or in the separate return filed by that taxpayer member.

2. The income of a unitary business with operations in foreign countries shall be computed as follows: *determined by rule by the department*

a. Prepare a profit and loss statement for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained.

b. Adjust the profit and loss statement to conform it to the accounting principles generally accepted in the United States. Currency gains or losses on closed transactions are includable. A closed transaction is one where any foreign exchange position taken by a corporation has been terminated by exchanging the foreign currency for the currency in which the individual corporation maintains its books and records and normally conducts its business affairs. In the case of a borrowing in a foreign currency, the transaction shall not be deemed closed until repayment is made. No adjustments shall be made or otherwise reflected for unrealized gains or losses resulting from the restatement or revaluation of assets or liabilities to reflect changes or fluctuations in currency values.

c. Adjust the profit and loss statement to conform it to the provisions of this chapter.

d. Translate the profit or loss statement of each branch or corporation into United States dollars. Depreciation, depletion or amortization shall be translated at the appropriate exchange rate for the translation period in which the historical cost of the underlying asset was incurred. All other items shall be translated at either the end-of-year exchange rate or at the simple average exchange rate for the translation period. Income repatriated during the year shall be translated at the exchange rate at the date of repatriation. It is presumed that the translation rate used in preparing the consolidated profit and loss statement for financial reporting purposes is proper absent a showing that some other method is appropriate. The exchange rates may be determined by reference to the free market rates set forth in the publications of the International Monetary Fund.

(b) Adjust each corporation's income, as determined under par. (a), as provided under s. 71.30.

(c) From the amount determined under par. (b), subtract intercompany transactions such that intercompany accounts of assets, liabilities, equities, income, costs, or expenses are ~~excluded~~ eliminated from the determination of income to accurately reflect the income, the apportionment factors and the tax credits in a combined report that is filed under this section. Except as otherwise provided, treasury regulation s. 1.1502-13 applies to the extent consistent with combined reporting principles. Exceptions include, but are not limited to, differences between the composition of the federal consolidated group and the combined reporting group, the requirements of the allocation and apportionment provisions, jurisdictional limitations and treatment of members of a combined reporting group as separate entities for certain purposes under this chapter. In the taxable year that intercompany items are taken into account, their source shall be determined as if the selling member and the buying member are divisions of a single corporation. Therefore, such intercompany items are treated as current apportionable income and apportioned to this state under s. 71.25 or 71.45 as appropriate. Intercompany transactions shall be reported in accordance with a matching rule and an acceleration rule. Under the matching rule, intercompany transactions shall be taken into account as if the selling member and the buying member were divisions of a single corporation. Under the acceleration rule, intercompany transactions shall be taken into account when the selling member and the buying member may not be treated as divisions of a single corporation, including when either the selling member or the buying member leaves the combined reporting group or the subject of the intercompany transaction is converted to nonbusiness use. Intercompany transactions do not include transactions which produce nonapportionable income or loss to the selling member or income attributable to a separate business activity of the selling member. When the subject of a transaction is acquired for the buyer's nonbusiness use or for the use of a separate business activity of the buyer, the transaction is not considered an intercompany transaction. Distributions of intercompany dividends that are paid from nonbusiness earnings or nonbusiness profits, or distributions of intercompany dividends that are paid from earnings or profits that are accumulated before the payer corporation becomes a member of an affiliated group that is engaged in a unitary business, may not be excluded from the income of the recipient corporation. An intercompany distribution that exceeds the payer corporation's earnings or profits or stock basis shall not be considered income from an intercompany sale of an asset and shall not be excluded as income from an intercompany transaction. Intercompany dividends that are paid from earnings or profits from a unitary business income shall be considered as paid first from current earnings or profits and then from accumulations from prior years in reverse order of accumulation. An intercompany transaction includes the following:

promulgated rules to implement

do not include

~~1. Income from sales of inventory from one member of the affiliated group to another member of the affiliated group~~ Income or gain from sales, exchanges, contributions or other transfers of tangible or intangible property from one member of the combined reporting group to another member of the combined reporting group.

~~2. Gain or loss from sales of intangible assets from one member of the affiliated group to another member of the affiliated group~~ Annual rent paid by one member of the combined reporting group to another member of the combined reporting group.

~~3. Gain or loss on sales of fixed assets or capitalized intercompany charges from one member of the affiliated group to another member of the affiliated group~~ Annual license fees or royalties paid by one member of the combined reporting group to another member of the combined reporting group.

4. Loans, advances, receivables, and similar items that one member of the ~~affiliated~~ combined reporting group owes to another member of the ~~affiliated~~ combined reporting group, including interest income and interest expense related to these items.

5. Stock or other equity of one member of the ~~affiliated~~ combined reporting group that is owned or controlled by another member of the ~~affiliated~~ combined reporting group.

6. ~~Except as provided in par. (c) (intro.), intercompany~~ Intercompany dividends paid out of earnings and profits from a unitary business income paid by one member of the combined reporting group to another member of the combined reporting group.

~~7. Annual rent paid by one member of the affiliated group to another member of the affiliated group.~~

~~87. Management or service fees paid by one member of the affiliated group to another member of the affiliated group.~~

~~98. Income or expenses allocated or charged by one member of the affiliated~~ combined reporting group to another member of the ~~affiliated~~ combined reporting group.

(d) From the amount determined under par. (c) for each corporation, subtract ~~nonbusiness~~ nonapportionable income, net of related expenses, and add ~~nonbusiness~~ nonapportionable losses, net of related expenses, to determine each corporation's apportionable net income or apportionable net loss.

(e) Calculate the apportionment factors under sub. (6) and multiply each corporation's apportionable net income or apportionable net loss, as determined under par. (d), by the corporation's apportionment fraction as determined under s. 71.25(6) sub. (6).

(f) To the amount determined under par. (e), add each corporation's nonbusiness nonapportionable income attributable to this state and subtract each corporation's nonbusiness nonapportionable losses attributable to this state.

(g) For each corporation, combine the amounts determined under par. (f) for each trade or business.

(h) If the combined reporting group is filing a group return, combine the amounts determined under par. (g) for the corporations participating in the group return.

~~(g) To (j) From the amount determined under par. (f) (g) or (h), as appropriate, subtract each corporation's the Wisconsin net business loss carry-forward under s. 71.26(4) or 71.45(4). A corporation may not carry forward a business loss from taxable years ending before January 1, 2000, if the corporation was not subject to this state's income or franchise tax for taxable years ending before January 1, 2000 deduction under sub. (7).~~

X. **Bill Section 1739.** Revise the language relating to the computation of the apportionment factor under combined reporting using the terms defined in Part V. In addition, address the treatment of corporations or combined reporting groups that have income from specialized industries.

(6) **APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING.** Under the combined reporting method, this state's apportionment factors are determined as follows:

(a) Determine the numerator and the denominator of each corporation's apportionment factors as determined under s. 71.25 or 71.45, ~~including a general or limited partner's share of the numerator and the denominator of the partnership's apportionment factors to the extent that the general or limited partner and the partnership in which the general or limited partner invests are engaged in a unitary business, regardless of the percentage of the general or limited partner's ownership in the partnership.~~ For purposes of determining the numerator of the sales factor under s. 71.25(9)(b), the term "taxpayer" means the specific member of the combined reporting group that transferred title to tangible personal property to the purchaser. In the case of sales other than sales of tangible personal property, "taxpayer" means the specific member of the combined reporting group that made the sale. If a member of the combined reporting group does not have sufficient nexus with this state as a separate entity to be subject to this state's franchise or income tax, the numerator of that

member's sales factor is zero. If a member of the combined reporting group is engaged in business wholly within this state under s. 71.25(4), the numerator of the member's apportionment factors shall equal the denominator of the member's apportionment factors. If a member of the combined reporting group is not within the jurisdiction for income tax purposes as a separate entity of the state to which a sale would be sourced, the sale is thrown back to this state. If a combined reporting group includes an insurance company, financial institution, broker-dealer, air carrier, motor carrier, railroad, sleeping car company, pipeline company or professional sports club, the apportionment factors for the group shall take into account the factors for the specialized companies as determined under s. 71.25 or 71.45.

(b) Subtract intercompany transactions under sub. (5)(c) from both the numerators and the denominators as determined under par. (a).

(c) Add the denominators of the apportionment factors for each corporation, as determined under par. (b), to arrive at the combined denominators.

(d) Compute each corporation's apportionment factors by dividing the corporation's numerator as determined under par. (b) by the combined denominator as determined under par. (c).

XI. **Bill Section 1739.** Delete the language relating to net operating losses and substitute the following language.

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(7) **NET BUSINESS LOSSES.** (a) For taxable years beginning on or after January 1, 2000, to the extent that a corporation that is a member of a combined reporting group determines a net business loss under sub. (5) that is not offset against the net income of the other members of the combined reporting group in the current taxable year, the unused net business loss may be carried forward as provided under s. 71.26(4) or 71.45(4). In a subsequent taxable year, the loss carry-forward may be offset against the incurring corporation's net income or the combined reporting group's net income under Treasury regulation s. 1.1502-21T, except as otherwise provided and to the extent consistent with combined reporting principles.

(b) A corporation may not carry forward a business loss from a taxable year beginning before January 1, 2000, if the corporation was not subject to this state's income or franchise tax for the same taxable year beginning before January 1, 2000.

(c) A corporation that incurred a Wisconsin net business loss in a taxable year beginning before January 1, 2000 may use its loss carry-forward to the extent of its separate net income as determined under sub. (6)(g). If the corporation incurring a Wisconsin net business loss carry-forward participates in

that is a member of a commonly controlled group

the filing of a group return, to the extent that the loss carry-forward exceeds the corporation's separate Wisconsin net income for its first taxable year beginning on or after January 1, 2000, it may annually offset against the net income of the other members participating in the group return up to 20% of that remaining net business loss carry-forward.

- XII. Create a new provision to address the computation of a corporation's net income or loss if its taxable year differs from that of the other members of the combined reporting group as follows:

71.255⁹(8) NET INCOME OR LOSS FOR CORPORATIONS WITH DIFFERENT ACCOUNTING PERIODS. If a taxpayer member of the combined reporting group has a different accounting period, the combined report income or loss as determined under sub. (5)(j) is then proportionally assigned to that portion of that member's taxable year, based on the number of months falling within the common accounting period of the combined reporting group. The resulting income or loss from such portions is then aggregated or netted together for the member's taxable year to determine that member's apportionable income attributable to the combined reporting group.

in the member's taxable year that is

- XIII. Create a new provision to address the computation of a corporation's net tax liability as follows:

71.255¹⁰(9) NET TAX LIABILITY. (a) *Separate return.* Each corporation's net tax liability shall be determined as follows:

1. Multiply each corporation's amount determined under sub. (5)(j) by the tax rate under s. 71.27 or 71.46.

2. From the amount determined under subd. 1., subtract each corporation's tax credits as determined under s. 71.28 or 71.47 based on the expenses of that corporation. Tax credits and credit carry-forwards computed by one corporation may not be offset against the tax liability of another member of the combined reporting group.

(b) *Group return.* The combined reporting group's net tax liability shall be determined as follows:

1. Multiply the combined reporting group's amount determined under sub. (5)(j) by the tax rate under s. 71.27 or 71.46.

2. From the amount determined under subd. 1., subtract the taxpayer members' tax credits as determined under s. 71.28 or 71.47.

XIV. **Bill Section 1739.** Renumber sub. (8) to sub. (10) and revise it using the terms defined in Part V as follows:

~~(8)~~(10) ESTIMATED TAX PAYMENTS. (a) For the first 2 taxable years that a ~~combined-report~~ group return is filed under this section, estimated taxes required to be paid under s. 71.29 or 71.48 may be paid on a group basis or on a separate basis. The amount of any separate estimated taxes paid in the first 2 taxable years that a ~~combined-report~~ group return is filed shall be credited against the group's franchise or income tax liability. The designated agent shall notify the department, in the manner prescribed by the department, of any estimated taxes paid on a separate basis in the first 2 taxable years that a ~~combined-report~~ group return is filed.

(b) If a ~~combined-report~~ group return is filed for 2 consecutive taxable years, estimated taxes required to be paid under s. 71.29 or 71.48 shall be paid on a group basis for each subsequent taxable year until such time as separate returns are filed by the corporations that were members of ~~an-affiliated~~ the combined reporting group that filed ~~combined-reports~~ group returns under this section. For each taxable year in which combined estimated tax payments are required under this subsection, the department shall consider the ~~affiliated~~ combined reporting group filing a ~~combined-report~~ group return to be one taxpayer for purposes of computing interest on the underpayment of estimated taxes. If a corporation subject to this section files a separate return in a taxable year following a year in which the corporation joined in filing a ~~combined-report~~ group return, the amount of any estimated tax payments made on a group basis for the previous year shall be credited against the tax liability of the corporation that files a separate return, as allocated by the designated agent with the department's approval.

(c) If ~~an-affiliated~~ a combined reporting group pays estimated taxes on a group basis for a taxable year or for any part of a taxable year, and the members of the ~~affiliated~~ combined reporting group file separate returns for the taxable year, the designated agent, with the department's approval, shall allocate the estimated tax payments among the members of the ~~affiliated~~ combined reporting group.

(d) If estimated taxes are paid on a group basis for a taxable year but the group does not file a ~~combined-report~~ group return for the taxable year and did not file a ~~combined-report~~ group return for the previous taxable year, the estimated tax shall be credited to the corporation that made the estimated tax payment on the group's behalf.

(e) If a combined reporting group that will be filing a group return applies for a refund of estimated taxes under s. 71.29(3m), eligibility for a refund shall be determined on a group basis.

XV. **Bill Section 1739.** Renumber sub. (9) to sub. (11) and revise it using the terms defined in Part V as follows:

~~(9)~~(11) INTEREST FOR UNDERPAYMENT OF ESTIMATED TAX. (a) *General.* The amount of interest that is due for an underpayment of estimated taxes under sub. ~~(8)~~(10) shall be computed as follows:

1. For the first year in which a ~~combined report~~ group return is filed, the amount of interest that is due for an underpayment of estimated taxes shall be determined by using the aggregate of the tax and income shown on the returns filed by the members of the combined reporting group for the previous year.

2. For a year in which a group return is filed, the determination of whether the group qualifies for the exception under s. 71.29(7)(b) shall be made by using the aggregate information for the members of the combined reporting group.

3. For a year in which a group return is filed, the determination of whether s. 71.29(9) or (10) applies shall be made by using the aggregate of the tax and net income for the members of the combined reporting group.

24. For estimated taxes paid under sub. ~~(8)(e)~~ (10)(c), the amount of interest that is due from a group member for an underpayment of estimated taxes paid by the group member shall be determined by using the group member's separate items from the ~~combined report~~ group return filed for the previous year and the group member's allocated share of the combined estimated tax payments for the current year. The designated agent shall report the group member's allocated share of the combined estimated tax payments for the current year to the department, in the manner prescribed by the department.

(b) *Entering a group.* For ~~if~~ if a corporation that becomes a member of an affiliated a combined reporting group during a common accounting period under sub. (3), the amount of interest that is due for an underpayment of estimated taxes shall be allocated to the corporation as follows by the combined reporting group shall be determined as follows:

1. If a corporation becomes a member of an ~~affiliated a combined~~ reporting group at the beginning of a common accounting period, the ~~corporation~~ combined reporting group shall include with the corresponding items on the ~~combined report~~ group return for the previous common accounting period the separate items shown on the corporation's return for the previous taxable year.

2. If a corporation is not a member of an ~~affiliated a combined~~ reporting group for an entire common accounting period, the corporation shall include with the corresponding items on the ~~combined report~~ group return for the current taxable year the corporation's separate items for that portion of the common

This return does not actually indicate how any of these adjustments affect the net tax

accounting period that the corporation was not a member of the affiliated combined reporting group.

3. To determine the separate items under subds. 1. and 2., if a corporation is a member of an affiliated a combined reporting group during a portion of a common accounting period in which the corporation becomes a member of another affiliated combined reporting group, the corporation's separate items shall include the separate items that are attributed to the corporation by the designated agent of the first affiliated combined reporting group.

(c) *Leaving a group.* For a corporation that leaves an affiliated a combined reporting group during a common accounting period under sub. (3), the amount of interest that is due for an underpayment of estimated taxes by the combined reporting group shall be allocated determined as follows:

1. ~~The separate items attributed by the designated agent to the corporation for the common accounting period during which the corporation leaves the affiliated group shall be excluded from the corresponding items of the affiliated group for the current common accounting period and all the common accounting periods following the corporation's departure from the affiliated group~~ If a corporation leaves a combined reporting group ~~at the beginning of a common accounting period, the combined reporting group shall exclude the separate items attributed by the designated agent to the corporation for the preceding common accounting period from the corresponding items of the combined reporting group for the preceding common accounting period.~~

*the first day of 3?
before the
first day?*

2. ~~A corporation that leaves an affiliated group shall consider the separate items attributed to the corporation by the designated agent of the affiliated group to determine the amount of interest that is due from the corporation for an underpayment of estimated taxes under sub. (8)~~ If a corporation leaves a combined reporting group after the beginning of the common accounting period, the separate items attributed to the corporation by the designated agent shall be excluded from the corresponding items of the combined reporting group as if the corporation had not been a member of the combined reporting group during that portion of the common accounting period.

3. A corporation that leaves a combined reporting group shall consider the separate items attributed to the corporation by the designated agent of the combined reporting group to determine the amount of interest that is due for an underpayment of estimated taxes under sub. (10) for the first taxable year beginning after the date of departure or for the portion of the corporation's separate taxable year remaining after the date of departure.

XVI. **Bill Section 1739.** Renumber sub. (10) to sub. (12) and revise it using the terms defined in Part V as follows:

(10)(12) ASSESSMENT NOTICE. If the department sends a notice of taxes that are owed by an affiliated a combined reporting group that filed a group return to the designated agent, the notice shall name each corporation that is ~~a member of the affiliated group~~ joined in the filing of a group return during any part of the period covered by the notice. The department's failure to name a ~~member of the affiliated group~~ corporation that joined in the filing of a group return on a notice under this subsection shall not invalidate the notice as to the unnamed ~~member of the affiliated group~~ corporation. Any levy, lien or other proceeding to collect the amount of a tax assessment under this section shall name the corporation from which the department shall collect the assessment. If a corporation that joined in the filing of a ~~combined report group return~~ leaves the affiliated combined reporting group, the department shall send the corporation a copy of any notice sent to the affiliated combined reporting group under this subsection if the corporation notifies the department that the corporation is no longer a member of the affiliated combined reporting group and if the corporation requests in writing that the department send notices under this subsection to the corporation. The department's failure to comply with a corporation's request to receive a notice does not affect the tax liability of the corporation.

XVII. **Bill Section 1739.** Renumber sub. (11) to sub. (13) and revise it using the terms defined in Part V as follows:

(11)(13) LIABILITY FOR TAX, INTEREST AND PENALTY. If members of an affiliated a combined reporting group file a ~~combined report group return~~, the members of the affiliated combined reporting group shall be jointly and severally liable for any combined tax, interest or penalty. The liability of a member of an affiliated a combined reporting group for any combined tax, interest or penalty shall not be reduced by an agreement with another member of the affiliated combined reporting group or by an agreement with another person.

XVIII. Create a new provision to address the treatment of nonfilers as follows:

This is really a compliance issue cover by the 71.255(2)

~~71.255(14) NONFILERS. If a corporation that is liable to report under this section directly or indirectly owns or controls one or more other corporations or a corporation that is liable to report under this section is directly or indirectly owned or controlled by another corporation, the department may require a combined report showing the combined net income or loss and other facts as the department deems necessary. The department may assess the tax against any of the corporations whose net income is involved in the combined report upon the basis of the combined net income and other information that the department may possess.~~

XIX. **Bill Section 1739.** Renumber sub. (12) to sub. (15) and revise it using the terms defined in Part V as follows:

~~(12)~~(15) PRESUMPTIONS AND BURDEN OF PROOF. ~~An affiliated~~ A commonly controlled group shall be presumed to be engaged in a unitary business and all of the income of the unitary business shall be presumed to be apportionable ~~business~~ income under this section. A corporation, partnership, or limited liability company ~~or tax-option corporation~~ has the burden of proving that it is not a member of ~~an affiliated~~ a commonly controlled group that is subject to this section.

XX. Amend sec. 71.26(3)(x) as follows:

71.26(3)(x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to consolidated returns) are excluded, except to the extent that they pertain to the treatment of intercompany transactions and net business loss carryforwards under s. 71.255 and except that more than 50% ownership is substituted for at least 80% ownership.

XXI. Amend sec. 71.26(4) as follows:

71.26(4) NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option corporation or in insurer to which s. 71.45(4) applies, may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the next 15 preceding taxable years, if the corporation was subject to taxation under this chapter in the taxable year in which the loss was sustained, to the extent not offset by other items of Wisconsin income in the loss year and by Wisconsin net business income of any year between the loss year and the taxable year for which an offset is claimed. For purposes of this subsection Wisconsin net business income or loss shall consist of all the income attributable to the operation of a trade or business in this state, less the business expenses allowed as deductions in computing net income. The Wisconsin net business income or loss of corporations engaged in business within and without the state shall be determined under s. 71.255 or 71.25(6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25(5)(b) shall be included in Wisconsin net business loss; and apportionable income having a Wisconsin situs under s. 71.25(5)(b), whether taxable or exempt, shall be included in other items of Wisconsin income and Wisconsin net business income for purposes of this subsection.

this is under §. 1504(a)(2) dealing with affiliated groups, but is it excluded or not?

XXII. **Bill Section 1747.** Amend sec. 71.29(2) as amended by the bill as follows:

71.29(2) WHO SHALL PAY. Except as provided in s. ~~71.255(8)~~ 71.255(10), a corporation subject to tax under s. 71.23(1) or (2) and every virtually exempt entity subject to tax under s. 71.125 or 71.23(1) or (2) shall pay an estimated tax.

XXIII. **Bill Section 1749.** Amend sec. 71.44(1)(e) as created by the bill to read as follows:

71.44(1)(e) A corporation that is a member of an ~~affiliated~~ a commonly controlled group, as defined in s. ~~71.255(1)(a)~~ 71.255(1)(f), and engaged in a unitary business, as defined in s. ~~71.255(1)(g)~~ 71.255(1)(p), shall file a tax return under s. 71.255.

XXIV. **Bill Section 1760.** Amend sec. 71.48 as amended by the bill as follows:

71.48 **Payments of estimated taxes.** Except as provided in s. ~~71.255(8)~~ 71.255(10), ss. 71.29 and 71.84(2) shall apply to insurers subject to taxation under this chapter.

XXV. **Bill Section 9343.** Amend the initial applicability provision as follows.

(17) ~~CONSOLIDATED RETURNS COMBINED REPORTING.~~ The treatment of sections ~~71.22, 71.23(1), 71.25(5)(a)9. and 10. and (b)2., 71.25(?), 71.255, 71.26(3)(L) and (x) and (4), 71.29(2), 71.43(1), 71.44(1)(e), 71.45(?), 71.48 and 71.84(2)(a) of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31 the treatment of sections 71.25(5)(a)9. and 10. and (b)2., 71.255, 71.26(3)(L), 71.29(2), 71.44(1)(e), 71.48 and 71.84(2)(a) of the statutes first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect, 2000.~~

Make the following modifications to Motion #1643, relating to General Fund Taxes:

- JK 4. Delete the phase-in of single sales factor apportionment and maintain current law.
- 6. Delete the authorization for the Department of Commerce to create up to nine technology development zones and maintain current law.
- JK 12. Adopt Alternative #2 in LFB Paper #122, related to the estate tax. Do not rereference the federal law for deaths occurring on or after October 1, 2002.
- 17. Delete the provision which increases the tobacco products tax from 20% of the manufacturer's selling price to 30%, and maintain current law. This would decrease general fund tax revenues by \$4.6 million in 01-02 and \$6.5 million in 02-03.

25. Delete the provision which provides for refunding tax supporting and self-amortizing general obligation bonds. This would increase costs to the general fund by \$50 million in 02-03.

28. Modify this provision to provide that after the \$115 million aid delay is "bought back," the next monies received would be used to increase the statutory balance/reserve to 2% of general fund appropriations. Delete the provision which creates a tax relief credit and tax relief fund, and instead create a "debt retirement fund" which provides for the early retirement of state debt, per instructions from LFB.

NEW ITEM: Require corporations to use the combined reporting method of determining income, per 1999 AB 133. LFB is doing an estimate on the expected revenue increase.

delete
20806
(2)(7e)

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PK

~~XXXXXXXXXX~~

CN1111

20904

12.1.15

JK



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb0904/?

JK:.....

(CX)

SDC:.....Keckhaver - CN1111, Modifications to JCF motion #1643, related to
general fund taxes

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

D-N

JMS RAC
1-1

JMS
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1-3

1

At the locations indicated, amend the substitute amendment as follows:

2

1. Page 723, line 19: delete the material beginning with that line and ending
on page 728, line 17.

3

WMM

4

2. Page 763, line 5: after that line insert:

5

“SECTION 2160d. 71.25 (5) (a) 9. of the statutes is amended to read:

6

71.25 (5) (a) 9. Interest and dividends ~~if the operations of the payer are unitary~~

7

~~with those of the payee, or if those operations are not unitary but the investment~~

8

~~activity from which that income is derived is an integral part of a unitary business~~

9

~~and the payer and payee are neither affiliates nor related as parent company and~~

10

~~subsidiary. In this subdivision, “investment activity” includes decision making~~

plain space

1 ~~relating to the purchase and sale of stocks and other securities, investing surplus~~
2 ~~funds and the management and record keeping associated with corporate~~
3 ~~investments, not including activities of a broker or other agent in maintaining an~~
4 ~~investment portfolio.~~

plainspace

History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9.

5 **SECTION 2160e.** 71.25 (5) (a) 10. of the statutes is amended to read:

6 71.25 (5) (a) 10. Sale of intangible assets ~~if the operations of the company in~~
7 ~~which the investment was made were unitary with those of the investing company,~~
8 ~~or if those operations were not unitary but the investment activity from which that~~
9 ~~gain or loss was derived is an integral part of a unitary business and the companies~~
10 ~~were neither affiliates nor related as parent company and subsidiary. In this~~
11 ~~subdivision, "investment activity" has the meaning given under subd. 9.~~

History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9.

12 **SECTION 2160g.** 71.25 (5) (b) 1. of the statutes is renumbered 71.25 (5) (b).

13 **SECTION 2160h.** 71.25 (5) (b) 2. of the statutes is repealed."

with

14 **3.** Page 763, line 6: delete the material beginning with that line and ending
15 ~~on~~ page 768, line 6, and substitute:

16 **"SECTION 2169d.** 71.25 (9) (a) of the statutes is amended to read:

17 71.25 (9) (a) The sales factor is a fraction, the numerator of which is the total
18 sales of the taxpayer in this state during the tax period, and the denominator of
19 which is the total sales of the taxpayer everywhere during the tax period. For sales
20 of tangible personal property, the numerator of the sales factor is the sales of the
21 taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the
22 taxpayer during the tax period under pars. (b) 2m. and 3. and (c). For purposes of
23 determining the numerator of the sales factor for a member of a combined reporting
24 group under s. 71.255 (7), "taxpayer" means the member of a combined reporting

1 group, as defined in s. 71.255 (1) (c), that transferred title to tangible personal
 2 property or, for sales other than sales of tangible personal property, that made the
 3 sale.”.

History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9.

4 **4.** Page 768, line 16: after that line insert: **Insert Alfonso**

5 **5.** Page 793, line 5: after that line insert:

6 **“SECTION 2175dn.** 71.26 (3) (L) of the statutes is amended to read:

7 71.26 (3) (L) Section 265 is excluded and replaced by the rule that any amount
 8 otherwise deductible under this chapter that is directly or indirectly related to
 9 income wholly exempt from taxes imposed by this chapter or to losses from the sale
 10 or other disposition of assets the gain from which would be exempt under this
 11 paragraph if the assets were sold or otherwise disposed of at a gain is not deductible.
 12 In this paragraph, “wholly exempt income”, for corporations subject to franchise or
 13 income taxes, ~~includes amounts received from affiliated or subsidiary corporations~~
 14 ~~for interest, dividends or capital gains that, because of the degree of common~~
 15 ~~ownership, control or management between the payor and payee, are not subject to~~
 16 taxes under this chapter. In this paragraph, “wholly exempt income”, for
 17 corporations subject to income taxation under this chapter, also includes interest on
 18 obligations of the United States. In this paragraph, “wholly exempt income” does not
 19 include income excludable, not recognized, exempt or deductible under specific
 20 provisions of this chapter. If any expense or amount otherwise deductible is
 21 indirectly related both to wholly exempt income or loss and to other income or loss,
 22 a reasonable proportion of the expense or amount shall be allocated to each type of
 23 income or loss, in light of all the facts and circumstances.”.

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428;
 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; s. 13.93 (2) (c).

1 **6.** Page 793, line 22: after that line insert:

2 “**SECTION 2176dm.** 71.26 (3) (x) of the statutes is amended to read:

3 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
4 consolidated returns) are excluded, except to the extent that they pertain to
5 intercompany transactions and the carry forward of net business loss under s.
6 71.255.

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 836; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428;
1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; s. 13.93 (2) (c).

7 **SECTION 2176dp.** 71.26 (4) of the statutes is amended to read:

8 71.26 (4) NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option
9 corporation or an insurer to which s. 71.45 (4) applies, may offset against its
10 Wisconsin net business income any Wisconsin net business loss sustained in any of
11 the next 15 preceding taxable years, if the corporation was subject to taxation under
12 this chapter in the taxable year in which the loss was sustained, to the extent not
13 offset by other items of Wisconsin income in the loss year and by Wisconsin net
14 business income of any year between the loss year and the taxable year for which an
15 offset is claimed. For purposes of this subsection Wisconsin net business income or
16 loss shall consist of all the income attributable to the operation of a trade or business
17 in this state, less the business expenses allowed as deductions in computing net
18 income. The Wisconsin net business income or loss of corporations engaged in
19 business within and without the state shall be determined under s. 71.255 or 71.25
20 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25
21 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income
22 having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be

1 included in other items of Wisconsin income and Wisconsin net business income for
2 purposes of this subsection.” ✓

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; s. 13.93 (2) (c).

3 **7.** Page 798, line 22: after that line insert:

4 “SECTION 2179m. 71.29 (2) of the statutes is amended to read: ✓

5 71.29 (2) WHO SHALL PAY. Every Except as provided in s. 71.255 (11), every
6 corporation subject to tax under s. 71.23 (1) or (2) and every virtually exempt entity
7 subject to tax under s. 71.125 or 71.23 (1) or (2) shall pay an estimated tax.” ✓

History: 1987 a. 312; 1987 a. 411 ss. 111, 140 to 143; 1989 a. 31; 1991 a. 39; 1993 a. 16, 204; 1997 a. 27.

8 **8.** Page 821, line 17: after that line insert:

9 “SECTION 2184d. 71.44 (1) (e) of the statutes is created to read:

10 71.44 (1) (e) A corporation that is a member of a commonly controlled group,
11 as defined in s. 71.255 (1) (d), and engaged in a unitary business, as defined in s.
12 71.255 (1) (m), shall file a tax return under s. 71.255.” ✓

13 **9.** Page 822, line 7: delete the material beginning with that line and ending
14 with on page 826, line 6.

15 **10.** Page 826, line 16: after that line insert: ✓

16 “SECTION 2190m. 71.46 (3) of the statutes is repealed.” ✓

17 **11.** Page 831, line 18: after that line insert:

18 “SECTION 2193m. 71.48 of the statutes is amended to read:

19 **71.48 Payments of estimated taxes.** Sections Except as provided in s.
20 71.255 (11), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under
21 this chapter.” ✓

History: 1987 a. 312.

22 **12.** Page 831, line 23: after that line insert:

23 “SECTION 2199m. 71.84 (2) (a) of the statutes is amended to read: ✓

1 71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment
 2 of estimated tax under s. 71.255, 71.29 or 71.48 there shall be added to the aggregate
 3 tax for the taxable year interest at the rate of 12% per year on the amount of the
 4 underpayment for the period of the underpayment. For corporations, except as
 5 provided in par. (b), "period of the underpayment" means the time period from the
 6 due date of the instalment until either the 15th day of the 3rd month beginning after
 7 the end of the taxable year or the date of payment, whichever is earlier. If 90% of the
 8 tax shown on the return is not paid by the 15th day of the 3rd month following the
 9 close of the taxable year, the difference between that amount and the estimated taxes
 10 paid, along with any interest due, shall accrue delinquent interest under s. 71.91 (1)
 11 (a)."/>

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 39.

12 **13.** Page 832, line 8: delete lines 8 to 11 and substitute:

13 [^]
 14 "72.01 (11m) "Federal credit" means the federal estate tax credit in effect on
 15 December 31, 2000." ✓

15 **14.** Page 832, line 13: delete lines 13 to 16 and substitute:

16 [^]
 17 "72.01 (11n) "Federal estate tax" means the federal estate tax in effect on
 18 December 31, 2000." ✓

19 **15.** Page 833, line 13: delete the material beginning with "and" and ending
 20 with "2002," on line 14. ✓

21 **16.** Page 944, line 15: delete the material beginning with that line and ending
 22 ^{with} on page 945, line 8. ✓

23 **17.** Page 1352, line 20: delete lines 20 to 25. ✓

24 **18.** Page 1408, line 7: delete lines 7 to 9 and substitute:

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6-19-18
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6-22-21

1. and 9

1 “(29~~9~~) COMBINED REPORTING. The treatment of sections 71.25 (5) (a) 9. and 10.,
2 (b) 2. and (9) (a), 71.255, 71.26 (3) (L) and (x) and (4), 71.29 (2), 71.44 (1) (e), 71.46
3 (3), 71.48, and 71.84 (2) (a) of the statutes first applies to taxable years beginning on
4 January 1, 2002.”

INT
APP

5 **19.** Page 1424, line 4: delete lines 4 and 5.

6 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0904/lrcins
.....

RAC
1-1

- 1 **1.** Page 10, line 5: delete "(h)" and substitute "(g)".
- 2 **2.** Page 11, line 10: delete lines 10 and 11.
- 3 **3.** Page 47, line 4: delete "tax relief" and substitute "cash building
- 4 **projects**".
- 5 **4.** Page 48, line 1: after "(4)" insert "(a)".
- 6 **5.** Page 48, line 6: delete lines 6 to 8 and substitute "sub. (3)".
- 7 **6.** Page 48, line 8: after that line insert:
- 8 "(b) If the amount calculated under par. (a) is at least \$115,000,000, the
- 9 secretary shall calculate the difference between the amount that exceeds
- 10 \$115,000,000 and the amount that is necessary to maintain a required general fund
- 11 balance under s. 20.003 (4) of 2%, less the amount designated as "Less Required
- 12 Statutory Balance" in the summary for that fiscal year.
- 13 (c) The secretary shall transfer from the general fund to the cash building
- 14 projects fund the amount that exceeds the sum of \$115,000,000 and the amount
- 15 calculated under par. (b)."
- 16 **7.** Page 292, line 1: before that line insert:
- 17 **8.** Page 293, line 1: delete lines 1 to 5.
- 18 **9.** Page 420, line 3: delete lines 3 to 13. ✓
- 19 **10.** Page 424, line 22: after that line insert:
- 20 "SECTION 980c. 20.867 (4m) of the statutes is created to read:

MS
1-17
①7 →
→

✓

1 20.867 (4m) CASH BUILDING PROJECTS FUND. (q) *Payment of cash in lieu of*
 2 *from the cash building projects fund*
 (2) *borrowing.* A sum sufficient to permit payment of cash in lieu of borrowing for the
 3 purposes for which the contracting of public debt is authorized under s. 20.866 (2).".

4 **11.** Page 425, line 1: delete lines 1 to 9. ✓

5 **12.** Page 468, line 19: after that line insert:

6 "SECTION 1104r. 25.17 (1) (aq) of the statutes is created to read:
 7 "25.17 (1) (aq) Cash building projects fund (s. 25.91)". ✓

8 **13.** Page 469, line 1: delete lines 1 and 2.

9 **14.** Page 473, line 15: delete lines 15 to 18.

10 **15.** Page 477, line 12: after that line insert:

11 "SECTION 1145g. 25.91 of the statutes is created to read:

12 **25.91 Cash building projects fund.** There is created a separate nonlapsible
 13 fund designated as the cash building projects fund, consisting of moneys transferred
 14 from the general fund under s. 16.518 (4)". ✓

and of 1-1

15 **16.** Page 736, line 12: delete the material beginning with that line and ending
 16 with page 738, line 1.

RAC 1-3

17 **17.** Page 1405, line 22: delete the material beginning with that line and
 18 ending with page 1406, line 2. ✓

RAC 6-22

2001

AMS to 090411AEINS
1-18

LRB

File With Statute **20.005 (3)** Schedule

\$\$\$ SCHEDULE

In the component bar:

For the action phrase, execute: create → action: → ch20

For the table layout, execute: create → <Table> → \$sched

SECTION #. 20.005 (3) (schedule) of the statutes: at the appropriate place,

insert the following amounts for the purposes indicated:

	2001-02	2002-03
20. _____		

→ CC (4M) CASH BUILDING PROJECTS

..... FUND

(9) Payment of cash in lieu of borrowing

lieu

..... SEG 0/S -0- -0-) ←

↑

~~20. _____~~

~~.....~~

~~() _____~~

~~.....~~

~~() _____~~

~~.....~~

~~.....~~

86-19
b/45

page 928, line 5: delete line 5 and
6 and substitute:

a. Determine the amount calculated
under s. 16.518 (4)(a) that does not
exceed \$115,000,000."

INSERT
ALFONSO

1 gain or loss was derived is an integral part of a unitary business and the companies
2 were neither affiliates nor related as parent company and subsidiary. In this
3 subdivision, "investment activity" has the meaning given under subd. 9.

4 SECTION 4. 71.25 (5) (b) 1. of the statutes is renumbered 71.25 (5) (b).

5 SECTION 5. 71.25 (5) (b) 2. of the statutes is repealed.

6 SECTION 6. 71.255 of the statutes is created to read:

INSERT
3-7

7 **71.255 Combined reporting.** (1) DEFINITIONS. In this section:

8 (a) "Affiliated group" means any of the following:

9 1. A parent corporation and any corporation or chain of corporations that are
10 connected to the parent corporation by ^{direct or indirect} ownership by the parent corporation if the
11 parent corporation owns stock representing ^{more than} ~~at least~~ 50% of the voting ^{power} ~~stock~~ of at least
12 one of the connected corporations or if the parent corporation or any of the connected
13 corporations owns stock that cumulatively represents ^{more than} ~~at least~~ 50% of the voting ^{power} ~~stock~~
14 of each of the connected corporations.

15 2. Any 2 or more corporations if a common owner ^{directly or indirectly} owns stock representing ^{at} ~~at least~~
16 ^{more than} ~~least~~ 50% of the voting ^{power} ~~stock~~ of the corporations or the connected corporations.

17 3. A partnership, ^{or} limited liability company ~~or tax-option corporation~~ if a
18 parent corporation or any corporation connected to the parent corporation by
19 common ownership ^{directly or indirectly} owns shares representing ^{more than} ~~at least~~ 50% of the shares of the
20 partnership, ^{or} limited liability company ~~or tax-option corporation~~.

21 4. Any 2 or more corporations if stock representing ^{more than} ~~at least~~ 50% of the voting
22 ^{power} ~~stock~~ in each corporation are interests that cannot be separately transferred.

23 5. Any 2 or more corporations if stock representing ^{more than} ~~at least~~ 50% of the voting
24 ^{power} ~~stock~~ is directly owned by, or for the benefit of, family members. In this subdivision,

25 "family members" means an individual or a spouse related by blood, marriage or



ALFONSO

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4-8

1 adoption within the 2nd degree of kinship as computed under s. 852.03 (2), 1995
2 stats.

3 (b) "Combined report" means a form prescribed by the department that shows
4 the calculations under this section to divide the income of an affiliated group
5 conducting a unitary business among the jurisdictions where the affiliated group
6 conducts its trade or business.

7 (2) "Corporation" has the meaning given in s. 71.22 (1) or 71.42 (1).

8 (3) "Department" means the department of revenue.

9 (4) "Intercompany transaction" means a transaction between corporations,
10 partnerships, limited liability companies ~~or tax-option corporations~~ that become
11 members of the same ~~affiliated~~ ^{STET} group that is engaged in a unitary business
12 immediately after the transaction. *commonly controlled*

13 (5) "Partnership" means any entity considered a partnership under section
14 7701 of the Internal Revenue Code.

15 (6) "Unitary business" means ~~two or more businesses that have common~~
16 ~~ownership or are~~ integrated with, or dependent upon each other. Two or more
17 businesses are presumed to be a unitary business if the businesses have centralized
18 management or a centralized executive force; centralized purchasing, advertising or
19 accounting; intercorporate sales or leases; intercorporate services; intercorporate
20 debts; intercorporate use of proprietary materials; interlocking directorates or
21 interlocking corporate officers; or if a business conducted in this state is owned by
22 a person that conducts a business entirely outside of this state that is different from
23 the business conducted in this state.

24 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. A corporation that is
25 subject to tax under s. 71.23 (1) or (2) or 71.43, that is a member of an affiliated group

INSERT 4-14

ALFONSO

1 and that is engaged in a unitary business with one or more members of the affiliated
 2 group shall compute the corporation's income using the combined reporting method
 3 under this section. Any corporation, regardless of the country where the corporation
 4 is organized or incorporated or conducts business, and any tax-option corporation,
 5 if the department determines that combined reporting is necessary to accurately
 6 report the income of the tax-option corporation apportioned to this state, shall file
 7 a combined report if the corporation is a member of an affiliated group that is
 8 engaged in a unitary business.

9 ⁴ (b) ACCOUNTING PERIOD. For purposes of this section, the income under ss.
 10 71.26, ~~71.27~~ and 71.45, the apportionment factors under ss. 71.25 and 71.45 and the
 11 tax credits under ss. 71.28 and 71.47 of all corporations that are members of ~~an~~
 12 ~~affiliated~~ group ^{a combined reporting} and that are engaged in a ~~unitary business~~ shall be determined by
 13 using the same accounting period. If the ~~affiliated~~ group ^{combined reporting} that is engaged in a unitary
 14 ~~business~~ has a common parent corporation, the accounting period of the common
 15 parent corporation shall be used to determine the income, the apportionment factors
 16 and the tax credits of all the corporations that are members of the ~~affiliated~~ group
 17 ~~that is engaged in a unitary business~~. If the ~~affiliated~~ group ^{combined reporting} that is engaged in a
 18 ~~unitary business~~ has no common parent corporation, the income, the apportionment
 19 factors and the tax credits of the ~~affiliated~~ group ^{combined reporting} that is engaged in a unitary business
 20 shall be determined using the accounting period of the member of the ~~affiliated~~ group
 21 that has the most significant operations on a recurring basis in this state.

22 ⁵ (c) FILING RETURNS. (a) Corporations with the same accounting period.
 23 Corporations that must file a ~~return~~ ^{combined report} under this section and that have the same
 24 accounting period may file a ~~combined report~~ ^{combined report} that reports the
 25 aggregate state franchise or state income tax liability of all of the members of the

^{return}
 group return, as prescribed by the department,

combined reporting



ALFONSO

combined reporting

1 ~~affiliated group that are engaged in a unitary business.~~ Corporations that are
2 required to file a combined report under this section may file separate returns
3 reporting the respective apportionment of the corporation's state franchise or state
4 income tax liability as determined under ^{sub. (2)(a) ✓} ~~the combined reporting method~~, if each
5 corporation filing a separate return pays its own apportionment of its state franchise
6 or state income tax liability. *shall file separate returns and*

7 (b) *Corporations with different accounting periods.* Corporations that are
8 required to file a combined report and that have different accounting periods shall
9 use the actual figures from the corporations' financial records to determine the
10 proper income and income-related computations to convert to a common accounting
11 period. Corporations that are required to file a combined report may use a
12 proportional method to convert income to a common accounting period if the results
13 of the proportional method do not materially misrepresent the income apportioned
14 to this state. The apportionment factors under ss. 71.25 and 71.45 and the tax credits
15 under ss. 71.28 and 71.47 shall be computed according to the same method used to
16 determine the income under ss. 71.26, ~~71.24~~ and 71.45 for the common accounting
17 period. If a corporation performs an interim closing of its financial records to
18 determine the income attributable to the common accounting period, the actual
19 figures from the interim closing shall be used to convert the apportionment factors
20 *and tax credits* to the common accounting period. *1. For*

21 (c) *Designated agent.* ~~If~~ corporations that are subject to this section file a
22 ~~combined report~~ *group return* under par. (a), the parent corporation of the ~~affiliated~~ group shall
23 ~~be~~ *is* the sole designated agent for each member of the ~~affiliated~~ group including the
24 parent corporation. *2.* The designated agent shall file the ~~combined report~~ *group return* under par.
25 (a), shall file for any extensions under s. 71.24 (7) or 71.44 (3), shall file amended

INSERT 6-24

group return

combined reporting

ALFONSO

combined reporting

1 reports and claims for refund or credit, and shall send and receive all correspondence
 2 with the department regarding a ~~combined report~~ ^{group return}. Any notice the department sends
 3 to the designated agent is considered a notice sent to all members of the ~~affiliated~~
 4 group. Any refund ^{with respect to a group return} shall be paid to and in the name of the designated agent and shall
 5 discharge any liability of the state to any member of ~~an affiliated~~ ^a group regarding
 6 the refund. The ~~affiliated~~ ^{combined reporting} group filing a ~~combined report~~ ^{group return} under par. (a) shall pay all
 7 taxes, including estimated taxes, in the designated agent's name. The designated
 8 agent shall participate on behalf of the ~~affiliated~~ ^{members of the combined reporting} group in any investigation or
 9 hearing requested by the department regarding a ~~combined report~~ ^{group return} and shall produce
 10 all information requested by the department regarding a ~~combined report~~ ^{group return}. The
 11 designated agent may execute a power of attorney on behalf of the members of the
 12 ~~affiliated~~ ^{combined reporting} group. The designated agent shall execute waivers, closing agreements,
 13 and other documents regarding a ~~return~~ ^{group return} filed under par. (a) and any waiver,
 14 agreement or document executed by the designated agent shall be considered as
 15 executed by all members of the ~~affiliated~~ group. If the department acts in good faith
 16 with ~~an affiliated~~ group member that represents itself as the designated agent for
 17 the ~~affiliated~~ group but that ~~affiliated~~ group member is not the designated agent, any
 18 action taken by the department with that ~~affiliated~~ group member has the same
 19 effect as if that ~~affiliated~~ group member were the actual designated agent for the
 20 ~~affiliated~~ group.

21 (d) *Part-year members.* If a corporation becomes a member of ~~an affiliated~~ ^{a combined reporting}
 22 group engaged in a unitary business or ceases to be a member of ~~an affiliated~~ group
 23 engaged in ~~unitary business~~ after the beginning of a common accounting period,
 24 the corporation's income shall be apportioned to this state as follows:

combined reporting

a combined reporting



ALFONSO

and the corporation may join in filing a group return for that short period

a combined reporting

or more

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1. If the corporation is required to file 2 short period federal returns for the common accounting period, the income for the short period that the corporation was a member of ~~an affiliated~~ group ~~engaged in a unitary business~~ shall be determined ~~by using the combined reporting method~~ ^{as provided under sub. (2)} and the corporation shall join in filing a combined report for that short period. The income for the remaining short period shall be ~~by separate reporting~~ ^{reported on a separate return} under s. 71.25 or 71.45. If the corporation becomes a member of another ~~affiliated~~ ^{combined reporting} group that is engaged in a unitary business in the remaining short period, the corporation's income shall be determined for the remaining short period ~~by using the combined reporting method~~ ^{as provided under sub. (2)}.

2. If the corporation is not required to file federal short period returns, the corporation shall file a separate return. Income shall be determined as follows:

a. ~~By the combined reporting method~~ ^{As provided under sub. (2)} for any period that the corporation was a member of ~~an affiliated~~ ^{a combined reporting} group that was engaged in a unitary business.

b. ~~By separate reporting~~ ^{On a report} under s. 71.25 or 71.45 for any period that the corporation was not a member of ~~an affiliated~~ ^{a combined reporting} group that was engaged in a unitary business.

(e) Amended ~~combined report~~ ^{group return}. The election to file a ~~combined report~~ ^{group return} under this section applies to an amended ~~combined report~~ ^{group return} that includes the same corporations that joined in the filing of the original ~~combined report~~ ^{group return}. Under this section, an amended ~~combined report~~ ^{group return} shall be filed as follows:

1. If an election to file a ~~combined report~~ ^{group return} that is in effect for a taxable year is revoked for the taxable year because the ~~affiliated~~ ^{combined reporting} group that filed the ~~combined report~~ ^{group return} is not a unitary business, as determined by the department, the designated agent for the ~~affiliated~~ ^{subject to sub. (2)} group may not file an amended ~~combined report~~ ^{group return}. The designated agent and each corporation that joined in filing the ~~combined report~~ ^{group return} shall

group return



ALFONSO

1 file a separate amended return. To compute the tax due on a separate amended
2 return, a corporation that files a separate amended return shall consider all of the
3 payments, credits or other amounts, including refunds, that the designated agent
4 allocated to the corporation.

5 2. If a change in tax liability under this section is the result of the removal of
6 a corporation from ~~an affiliated~~ ^{a combined reporting} group because the corporation was not eligible to be
7 a member of the ~~affiliated~~ ^{combined reporting} group for the taxable year, as determined by the
8 department, the designated agent shall file an amended ~~combined report~~ ^{group return} and the
9 ineligible corporation shall file a separate amended return.

10 3. If a corporation erroneously fails to join in the filing of a ~~combined report~~ ^{group return},
11 the designated agent shall file an amended ~~combined report~~ ^{group return} that includes the
12 corporation. If a corporation that erroneously fails to join in the filing of a ~~combined~~
13 ~~report~~ ^{group return} has filed a separate return, the corporation shall file an amended separate
14 return that shows no net income, overpayment or underpayment, and shows that the
15 corporation has joined in the filing of a ~~combined report~~ ^{group return}.

16 ^(b) ~~(a)~~ INCOME COMPUTATION UNDER COMBINED REPORTING. ^{For the purpose of} ~~Under the combined~~
17 ~~reporting method~~ ^{subd (2)}, income attributable to this state shall be determined as follows:

18 (a) Determine the net income of each ~~corporation~~ ^{group return} under s. 71.26-~~71.31(4)~~ or
19 71.45, including a general or limited partner's share of income to the extent that the
20 general or limited partner and the partnership in which the general or limited
21 partner invests are engaged in a unitary business, regardless of the percentage of the
22 general or limited partner's ownership in the partnership. INSERT 9-22

23 (b) Adjust each ~~corporation's~~ ^{member's} income, as determined under par. (a), as provided
24 under s. 71.30.

as appropriate,

member's

member of combined reporting group

ALFONSO

as provided by rule by the department,

(c) From the amount determined under par. (b), subtract intercompany transactions such that intercompany accounts of assets, liabilities, equities, income, costs or expenses are excluded from the determination of income to accurately reflect the income, the apportionment factors and the tax credits in a combined report that is filed under this section.

~~Distributions of intercompany dividends that are paid from nonbusiness earnings or nonbusiness profits, or distributions of intercompany dividends that are paid from earnings or profits that are accumulated before the payer corporation becomes a member of an affiliated group that is engaged in a unitary business, may not be excluded from the income of the recipient corporation. An intercompany distribution that exceeds the payer corporation's earnings or profits or stock basis shall not be considered income from an intercompany sale of an asset and shall not be excluded as income from an intercompany transaction. Intercompany dividends that are paid from earnings or profits from a unitary business income shall be considered as paid first from current earnings or profits and then from accumulations from prior years in reverse order of accumulation.~~

intercompany transaction includes the following:

1. Income from sales of inventory from one member of the affiliated group to another member of the affiliated group.
2. Gain or loss from sales of intangible assets from one member of the affiliated group to another member of the affiliated group.
3. Gain or loss on sales of fixed assets or capitalized intercompany charges from one member of the affiliated group to another member of the affiliated group.
4. Loans, advances, receivables and similar items that one member of the affiliated group owes to another member of the affiliated group, including interest income and interest expense related to these items.

INSERT
10-16

combined reporting

ALFONSO

combined reporting

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5. Stock or other equity of ~~one~~^a member of the ~~affiliated~~ group that is owned or controlled by another member of the ~~affiliated~~ group.

6. ~~Except as provided in paragraph (c), intercompany dividends~~ ^d dividends paid out of earnings or profits ~~from a unitary business income~~ ^{and paid by a member of the combined reporting group} to another member of the ~~combined reporting group~~ ^{the combined reporting group}

~~Annual rent paid by one member of the affiliated group to another member of the affiliated group.~~ *combined reporting*

7. Management or service fees paid by ~~one~~^a member of the ~~affiliated~~ group to another member of the ~~affiliated~~ group.

8. Income or expenses allocated or charged by ~~one~~^a member of the ~~affiliated~~ group to another member of the ~~affiliated~~ group. *combined reporting*

(d) From the amount determined under par. (c) for each ~~corporation~~ ^{non apportionable} subtract ~~nonbusiness~~ ^{non apportionable} income, net of related expenses, and add ~~business~~ ^{non apportionable} losses, net of related expenses, to determine each ~~corporation's~~ ^{member's} apportionable net income or apportionable net loss.

(e) Calculate the apportionment factors under sub. (b) ^{member's} and multiply each ~~corporation's~~ ^{member's} apportionable net income or apportionable net loss, as determined under par. (d), by the ~~corporation's~~ ^{member's} apportionment fraction as determined under ~~sub. (b)~~ ^{sub. (7)}

(f) To the amount determined under par. (e), add each ~~corporation's~~ ^{non apportionable} ~~business~~ income attributable to this state and subtract each ~~corporation's~~ ^{nonbusiness} losses attributable to this state.

(g) ^{From} To the amount determined under par. (f), subtract each ~~corporation's~~ ^{(g) or (h) as appropriate} net business loss carry-forward under s. 71.26 (4) or 71.45 (4). ~~A corporation may not carry forward a business loss from taxable years ending before January 1, 2000, if~~

members of a combined reporting group

INSERT
11-21



ALFONSO

For the purpose of sub. (2),

1 the corporation was not subject to this state's income or franchise tax for taxable years
2 ending before January 1, 2000. *the combined reporting group's net operating*
3 *loss as determined under sub. (8)*

4 (6) APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING *Under the*

5 combined reporting method, this state's apportionment factors are determined as
6 follows: *as appropriate, for each member of the combined reporting group*

7 (a) Determine the numerator and the denominator of *the* each corporation's
8 apportionment factors as determined under s. 71.25 or 71.45 *including a general or*
9 limited partner's share of the numerator and the denominator of the apportionment
10 factors to the extent that the general or limited partner and the partnership in which
11 the general or limited partner invests are engaged in a unitary business, regardless
12 of the percentage of the general or limited partner's ownership in the partnership.

INSERT
12-11

13 (b) Subtract intercompany transactions under sub. (c) from both the
14 numerators and the denominators as determined under par. (a).

15 (c) Add the denominators of the apportionment factors for each corporation, as
16 determined under par. (a), to arrive at the combined denominators.

17 (d) Compute *each corporation's* apportionment factors *for each member of the*
18 *combined reporting group* by dividing the
19 *corporation's* numerator *as determined under par. (b)* by the combined denominator
20 *of a member of the combined reporting group* as determined under par. (c).

21 (7) NET OPERATING LOSSES. For the first 2 taxable years that a combined report
22 is filed under this section, the net operating loss for each member of an affiliated
23 group that files a combined report is determined by adding each member's share of
24 nonbusiness income to each member's share of business income and subtracting each
25 member's share of nonbusiness loss from each member's share of business loss.
Beginning with the 3rd taxable year that a combined report is filed under this
section, if a member of an affiliated group that files a combined report has a positive

INSERT 13-2

~~1 net income as determined under sub. (5), the affiliated group shall only deduct the
2 amount of the net operating loss carry-forward attributable to that member.~~

3 ~~(8)~~ ESTIMATED TAX PAYMENTS. (a) For the first 2 taxable years that a ^{group return} ~~combined~~
4 ~~report~~ is filed under this section, estimated taxes ^{under s. 71.29 and 71.48} may be paid on a group basis or on
5 a separate basis. The amount of any separate estimated taxes paid in the first 2
6 taxable years that a ^{group return} ~~combined report~~ is filed shall be credited against the group's tax
7 liability. The designated agent shall notify the department of any estimated taxes
8 paid on a separate basis in the first 2 taxable years that a ^{group return} ~~combined report~~ is filed.

9 (b) If a ^{group return} ~~combined report~~ is filed for 2 consecutive taxable years, estimated taxes
10 ^{under s. 71.29 and 71.48} shall be paid on a group basis for each subsequent taxable year until such time as
11 separate returns are filed by the corporations that were members of ^{a combined reporting} ~~an affiliated~~
12 group that filed ^{group returns} ~~combined reports~~ under this section. For each taxable year in which
13 combined estimated ^{taxes} ~~payments~~ are ^{paid} ~~required~~ under this subsection, the department
14 shall consider the ^{combined reporting} ~~affiliated~~ group filing a ^{group return} ~~combined report~~ to be one taxpayer. If a
15 corporation subject to this section files a separate return in a taxable year following
16 a year in which the corporation joined in filing a ^{group return} ~~combined report~~, the amount of any
17 estimated tax payments made on a group basis for the previous year shall be credited
18 against the tax liability of the corporation that files a separate return, as allocated
19 by the designated agent with the department's approval.

20 (c) If ^{a combined reporting} ~~an affiliated~~ group pays estimated taxes on a group basis for a taxable year
21 or for any part of a taxable year, and the members of the ^{combined reporting} ~~affiliated~~ group file separate
22 returns for the taxable year, the designated agent, with the department's approval,
23 shall allocate the estimated tax payments among the members of the ~~affiliated~~
24 group.

combined reporting

*for purposes of computing interest
on the underpayment of estimated taxes*

ALFONSO

member of the combined reporting group

INSERT
14-4

1 (d) If estimated taxes are paid on a group basis for a taxable year but the group
2 does not file a ~~combined report~~ *group return* for the taxable year and did not file a ~~combined report~~ *group return*
3 for the previous taxable year, the estimated tax shall be credited to the ~~corporation~~
4 that made the estimated tax payment on the group's behalf.

INSERT
14-11

5 ¹² (9) INTEREST FOR UNDERPAYMENT OF ESTIMATED TAX. (a) *General.* The amount
6 of interest that is due for an underpayment of estimated taxes under sub. (8) shall
7 be computed as follows: *combined reporting group files a group return*

8 1. For the first year in which a ~~combined report is filed~~ *combined reporting group*, the amount of interest
9 that is due for an underpayment of estimated taxes shall be determined by using the
10 aggregate of the tax and income shown on the returns filled by the members of the
11 ~~group~~ *combined reporting group* for the previous year.

12 2. For estimated taxes paid under sub. (8) (c), the amount of interest that is due
13 from a ~~group~~ *of a combined reporting group* member for an underpayment of estimated taxes paid by the ~~group~~
14 member shall be determined by using the ~~group~~ *group return* member's separate items from the
15 ~~combined report~~ *group return* filed for the previous year and the ~~group~~ *tax* member's allocated share
16 of the combined estimated ~~payments~~ *tax* for the current year. The designated agent shall
17 report the ~~group~~ *tax* member's allocated share of the combined estimated ~~payments~~ *tax* for
18 the current year to the department, in the manner prescribed by the department.

19 (b) *Entering a group.* For ⁴ a corporation ~~that~~ *combined reporting* becomes a member of an ~~affiliated~~
20 group during a common accounting period under sub. (3), ⁴ the amount of interest that
21 is due for an underpayment of estimated taxes ~~shall be allocated to the corporation~~
22 ~~as follows:~~

23 1. If a corporation becomes a member of an ~~affiliated~~ *combined reporting* group at the beginning
24 of a common accounting period, the ~~corporation~~ *combined reporting group* shall include with the corresponding

the combined reporting group shall make the following adjustments to determine



ALFONSO

the combined reporting group shall make the following adjustments to the determine

1 items on the ~~combined report~~ ^{group return} for the previous common accounting period the
2 separate items shown on the corporation's return for the previous taxable year.

3 2. If a corporation is not a member of ~~an affiliated~~ ^{a combined reporting} group for an entire common
4 accounting period, the ~~corporation~~ ^{combined reporting group} shall include with the corresponding items on the
5 ~~combined report~~ ^{group return} for the current taxable year the corporation's separate items for that
6 portion of the common accounting period that the corporation was a member of the
7 ~~affiliated~~ ^{combined reporting} group.

8 3. To determine the separate items under subds. 1. and 2., if a corporation is
9 a member of ~~an affiliated~~ ^{a combined reporting} group during a portion of a common accounting period in
10 which the corporation becomes a member of another ~~affiliated~~ ^{combined reporting} group, the
11 corporation's separate items shall include the separate items that are attributed to
12 the corporation by the designated agent of the first ~~affiliated~~ ^{combined reporting} group.

13 (c) *Leaving a group.* ~~For~~ ^{if} a corporation ~~that~~ leaves an affiliated group during
14 a common accounting period under sub. (8), the amount of interest that is due for an
15 underpayment of estimated taxes shall be allocated as follows:

16 ~~1. The separate items attributed by the designated agent to the corporation for~~
17 ~~the common accounting period during which the corporation leaves the affiliated~~
18 ~~group shall be excluded from the corresponding items of the affiliated group for the~~
19 ~~current common accounting period and all the common accounting periods following~~
20 ~~the corporation's departure from the affiliated group.~~
21 2. A corporation that leaves an affiliated group shall consider the separate
22 items attributed to the corporation by the designated agent of the affiliated group to
23 determine the amount of interest that is due from the corporation for an
24 underpayment of estimated taxes under sub. (8).

INSERT 15-24

ALFONSO

13

1 (10) ASSESSMENT NOTICE. If the department sends a notice of taxes that are
 2 owed by ~~an~~ ^{a combined reporting} affiliated group to the designated agent, the notice shall name each
 3 corporation that ~~is a member of the affiliated group~~ ^{joined in filing the} ~~during any part of the period~~ ^{return related to the notice}
 4 covered by the notice. The department's failure to name a ~~member of the affiliated~~
 5 ~~group~~ ^{corporation} on a notice under this subsection shall not invalidate the notice as to the
 6 unnamed ~~member of the affiliated group~~ ^{corporation}. Any levy, lien or other proceeding to collect
 7 the amount of a tax assessment under this section shall name the corporation from
 8 which the department shall collect the assessment. If a corporation that joined in
 9 the filing of a ~~combined report~~ ^{group return} leaves the ~~affiliated~~ ^{combined reporting} group, the department shall send
 10 the corporation a copy of any notice sent to the ~~affiliated~~ ^{group} under this subsection
 11 if the corporation notifies the department that the corporation is no longer a member
 12 of the ~~affiliated~~ ^{combined reporting} group and if the corporation requests in writing that the department
 13 send notices under this subsection to the corporation. The department's failure to
 14 comply with a corporation's request to receive a notice does not affect the tax liability
 15 of the corporation.

14

16 (11) LIABILITY FOR TAX, INTEREST AND PENALTY. If members of ~~an~~ ^{a combined reporting} affiliated group
 17 file a ~~combined report~~ ^{group return}, the members of the ~~affiliated~~ ^{combined reporting} group shall be jointly and
 18 severally liable for any combined tax, interest or penalty. The liability of a member
 19 of ~~an~~ ^{a combined reporting} affiliated group for any combined tax, interest or penalty shall not be reduced
 20 by an agreement with another member of the ~~affiliated~~ ^{combined reporting} group or by an agreement
 21 with another person.

15

22 (12) PRESUMPTIONS AND BURDEN OF PROOF. An ~~affiliated~~ ^{commonly controlled} group shall be presumed
 23 to be engaged in a unitary business and all of the income of the unitary business shall
 24 be presumed to be apportionable business income under this section. A corporation,
 25 partnership, limited liability company or ~~tax option corporation~~ has the burden of

15 - 21

ALFONSO

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a commonly controlled

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proving that it is not a member of ~~an affiliated~~ group that is subject to this section.

The department shall promulgate rules to implement this ^{sub} section.

END OF
ALFONSO

SECTION 7. 71.26 (3) (L) of the statutes is amended to read:

71.26 (3) (L) Section 265 is excluded and replaced by the rule that any amount otherwise deductible under this chapter that is directly or indirectly related to income wholly exempt from taxes imposed by this chapter or to losses from the sale or other disposition of assets the gain from which would be exempt under this paragraph if the assets were sold or otherwise disposed of at a gain is not deductible. In this paragraph, "wholly exempt income", for corporations subject to franchise or income taxes, includes ~~amounts received from affiliated or subsidiary corporations for interest, dividends or capital gains that, because of the degree of common ownership, control or management between the payor and payee, are not subject to taxes under this chapter.~~ In this paragraph, "wholly exempt income", for corporations subject to income taxation under this chapter, also includes interest on obligations of the United States. In this paragraph, "wholly exempt income" does not include income excludable, not recognized, exempt or deductible under specific provisions of this chapter. If any expense or amount otherwise deductible is indirectly related both to wholly exempt income or loss and to other income or loss, a reasonable proportion of the expense or amount shall be allocated to each type of income or loss, in light of all the facts and circumstances.

~~**SECTION 8.** 71.29 (2) of the statutes is amended to read:~~

~~71.29 (2) WHO SHALL PAY Every Except as provided in s. 71.255 (8), a corporation subject to tax under s. 71.23 (1) or (2) and every virtually exempt entity subject to tax under s. 71.125 or 71.23 (1) or (2) shall pay an estimated tax.~~

~~**SECTION 9.** 71.44 (1) (e) of the statutes is created to read:~~