

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

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

2 **1.** Page 10, line 5: delete “(h)” and substitute “(g)”.

3 **2.** Page 11, line 10: delete lines 10 and 11.

4 **3.** Page 47, line 4: delete “**tax relief**” and substitute “**cash building**
5 **projects**”.

6 **4.** Page 48, line 1: after “(4)” insert “(a)”.

7 **5.** Page 48, line 6: delete lines 6 to 8 and substitute “sub. (3).”.

8 **6.** Page 48, line 8: after that line insert:

1 “(b) If the amount calculated under par. (a) is at least \$115,000,000, the
2 secretary shall calculate the difference between the amount that exceeds
3 \$115,000,000 and the amount that is necessary to maintain a required general fund
4 balance under s. 20.003 (4) of 2%, less the amount designated as “Less Required
5 Statutory Balance” in the summary for that fiscal year.

6 (c) The secretary shall transfer from the general fund to the cash building
7 projects fund the amount that exceeds the sum of \$115,000,000 and the amount
8 calculated under par. (b).”.

9 **7.** Page 292, line 1: before that line insert:

10 “(4m) CASH BUILDING PROJECTS FUND

11 (q) Payment of cash in lieu of bor-
12 rowing SEG S -0- -0-”.

13 **8.** Page 293, line 1: delete lines 1 to 5.

14 **9.** Page 420, line 3: delete lines 3 to 13.

15 **10.** Page 424, line 22: after that line insert:

16 “**SECTION 980c.** 20.867 (4m) of the statutes is created to read:

17 20.867 (4m) CASH BUILDING PROJECTS FUND. (q) *Payment of cash in lieu of*
18 *borrowing.* A sum sufficient from the cash buildings projects fund to permit payment
19 of cash in lieu of borrowing for the purposes for which the contracting of public debt
20 is authorized under s. 20.866 (2).”.

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

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

23 “**SECTION 1104r.** 25.17 (1) (aq) of the statutes is created to read:

1 25.17 (1) (aq) Cash building projects fund (s. 25.91).”.

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

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

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

5 “SECTION 1145g. 25.91 of the statutes is created to read:

6 **25.91 Cash building projects fund.** There is created a separate nonlapsible
7 fund designated as the cash building projects fund, consisting of moneys transferred
8 from the general fund under s. 16.518 (4).”.

9 **16.** Page 723, line 19: delete the material beginning with that line and ending
10 with page 728, line 17.

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

13 **18.** Page 763, line 5: after that line insert:

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

15 71.25 (5) (a) 9. Interest and dividends ~~if the operations of the payer are unitary~~
16 ~~with those of the payee, or if those operations are not unitary but the investment~~
17 ~~activity from which that income is derived is an integral part of a unitary business~~
18 ~~and the payer and payee are neither affiliates nor related as parent company and~~
19 ~~subsidiary. In this subdivision, “investment activity” includes decision making~~
20 ~~relating to the purchase and sale of stocks and other securities, investing surplus~~
21 ~~funds and the management and record keeping associated with corporate~~
22 ~~investments, not including activities of a broker or other agent in maintaining an~~
23 ~~investment portfolio.~~

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

1 71.25 (5) (a) 10. ~~Sale of intangible assets if the operations of the company in~~
2 ~~which the investment was made were unitary with those of the investing company,~~
3 ~~or if those operations were not unitary but the investment activity from which that~~
4 ~~gain or loss was derived is an integral part of a unitary business and the companies~~
5 ~~were neither affiliates nor related as parent company and subsidiary. In this~~
6 ~~subdivision, “investment activity” has the meaning given under subd. 9.~~

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

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

9 **19.** Page 763, line 6: delete the material beginning with that line and ending
10 with page 768, line 6, and substitute:

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

12 71.25 (9) (a) The sales factor is a fraction, the numerator of which is the total
13 sales of the taxpayer in this state during the tax period, and the denominator of
14 which is the total sales of the taxpayer everywhere during the tax period. For sales
15 of tangible personal property, the numerator of the sales factor is the sales of the
16 taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the
17 taxpayer during the tax period under pars. (b) 2m. and 3. and (c). For purposes of
18 determining the numerator of the sales factor for a member of a combined reporting
19 group under s. 71.255 (7), “taxpayer” means the member of a combined reporting
20 group, as defined in s. 71.255 (1) (c), that transferred title to tangible personal
21 property or, for sales other than sales of tangible personal property, that made the
22 sale.”.

23 **20.** Page 768, line 16: after that line insert:

24 **“SECTION 2173d.** 71.255 of the statutes is created to read:

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

2 (a) “Brother–sister parent corporation” means a parent corporation that is a
3 member of a commonly controlled group, if any members of the commonly controlled
4 group are not connected to the parent corporation by stock ownership as described
5 in par. (d) 1. to 5.

6 (b) “Combined report” means a form prescribed by the department that
7 specifies the income of each taxpayer member of a commonly controlled group
8 operating as a unitary business.

9 (c) “Combined reporting group” means the members of a commonly controlled
10 group that are included in a combined report under sub. (2).

11 (d) “Commonly controlled group” means any of the following, but does not
12 include an insurer that is exempt from taxation under s. 71.45 (1):

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

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

22 3. A partnership or limited liability company if a parent corporation or any
23 corporation connected to the parent corporation by common ownership directly or
24 indirectly owns shares representing more than 50% of the shares of the partnership
25 or limited liability company.

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

3 5. Any 2 or more corporations if stock representing more than 50% of the voting
4 power is directly owned by, or for the benefit of, family members. In this subdivision,
5 “family members” means an individual or a spouse related by blood, marriage or
6 adoption within the 2nd degree of kinship as computed under s. 852.03 (2), 1995
7 stats.

8 (e) “Corporation” has the meaning given in s. 71.22 (1) or 71.42 (1).

9 (f) “Department” means the department of revenue.

10 (g) “Designated agent” means the taxpayer member of a commonly controlled
11 group who files a group return on behalf of the commonly controlled group.

12 (h) “Group return” means a tax return filed on behalf of the taxpayer members
13 of a commonly controlled group.

14 (i) “Intercompany transaction” means a transaction between corporations,
15 partnerships, or limited liability companies that become members of the same
16 commonly controlled group that is engaged in a unitary business immediately after
17 the transaction.

18 (im) “Partnership” means any entity considered a partnership under section
19 7701 of the Internal Revenue Code.

20 (j) “Separate return” means a return filed by a corporation, regardless of
21 whether the corporation is required to file a tax return under s. 71.24 or 71.44.

22 (k) “Taxpayer member” means a corporation that is subject to tax under s. 71.23
23 (1) or (2) or 71.43, that is a member of a combined reporting group, and that files a
24 combined report under this section.

1 (L) “Top tier corporation” means a member of a commonly controlled group that
2 is not connected with a parent corporation by stock ownership as described in par.
3 (d) 1. to 5., is a parent corporation, or is a brother–sister parent corporation,
4 regardless of whether it is doing business in this state or deriving income from
5 sources in this state, and regardless of whether its income and apportionment factors
6 are excluded from a combined report filed under this section.

7 (m) “Unitary business” means the business activities or operations of an entity
8 that are of mutual benefit to, integrated with, or dependent upon or contribute to
9 activities of at least one other entity, including transactions that serve an operational
10 function, as determined by the department. Two or more businesses are presumed
11 to be a unitary business if the businesses have unity of ownership, operation, and use
12 as indicated by centralized management or a centralized executive force; centralized
13 purchasing, advertising, or accounting; intercorporate sales or leases; intercorporate
14 services; intercorporate debts; intercorporate use of proprietary materials;
15 interlocking directorates; or interlocking corporate officers.

16 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) Except as provided
17 in par. (b), a corporation that is subject to the tax imposed under s. 71.23 (1) or (2)
18 or 71.43, that is a member of a commonly controlled group, and that is engaged, in
19 whole or in part, in a unitary business with one or more members of the commonly
20 controlled group shall compute the corporation’s income attributable to this state by
21 using the income computation under s. 71.26 or 71.45, the apportionment formula
22 under s. 71.25 (6) or 71.45 (3) and (3m), and the tax credits under s. 71.28 or 71.47
23 of all of the following that are members of the commonly controlled group:

24 1. Any corporation organized or incorporated under the laws of the United
25 States, any state of the United States, the District of Columbia, the Commonwealth

1 of Puerto Rico, any possession of the United States, or any subdivision of the United
2 States, including corporations under sections 931 to 936 of the Internal Revenue
3 Code.

4 2. Any domestic international sales corporation under sections 991 to 994 of the
5 Internal Revenue Code.

6 3. Any foreign sales corporation under sections 921 to 927 of the Internal
7 Revenue Code.

8 4. Any export trade corporation under sections 970 and 971 of the Internal
9 Revenue Code.

10 5. Any corporation regardless of its place of incorporation if the average of its
11 property factor under s. 71.25 (7) and its payroll factor under s. 71.25 (8), for property
12 and payroll within the United States and computed on an annual basis, is at least
13 20% during any part of the taxable year that a corporation is a member of the
14 commonly controlled group.

15 6. Any corporation not described in subds. 1. to 5. to the extent of the
16 corporation's income within the United States and the corporation's property factor
17 under s. 71.25 (7) and payroll factor under s. 71.25 (8) assignable to a location within
18 the United States.

19 (b) A corporation that is subject to the tax imposed under s. 71.23 (1) or (2) or
20 71.43, that is a member of a commonly controlled group, and that is engaged, in whole
21 or in part, in a unitary business with one or more members of the commonly
22 controlled group may compute the corporation's income attributable to this state by
23 using the income computation under s. 71.26 or 71.45, the apportionment formula
24 under s. 71.25 (6) or 71.45 (3) and (3m), and the tax credits under s. 71.28 or 71.47
25 of all the members of the commonly controlled group, regardless of the country in

1 which any member of the commonly controlled group is organized or incorporated or
2 conducts business, if all top tier corporations that are members of the commonly
3 controlled group elect under sub. (3) to compute the corporation's income as provided
4 under this paragraph.

5 (3) COMPUTATION ELECTION. (a) A top tier corporation that is a member of a
6 commonly controlled group may elect on the commonly controlled group's behalf, and
7 in the manner prescribed by the department, to compute the income of each
8 corporation that is a member of the commonly controlled group under sub. (2) (b).
9 If more than one member of the commonly controlled group is a top tier corporation,
10 an election under this subsection is not effective unless all top tier corporations elect
11 on the commonly controlled group's behalf, and in the manner prescribed by the
12 department, to compute income under sub. (2) (b).

13 (b) A top tier corporation shall file an election made under par. (a) with the
14 department before the last day of the taxable year. The top tier corporation shall
15 designate a taxable year that corresponds with the taxable year of any taxpayer
16 member that is subject to the tax imposed under s. 71.23 (1) or (2) or 71.43. If the
17 top tier corporation fails to file the election before the last day of the taxable year
18 designated under this paragraph, all members of the commonly controlled group to
19 which the top tier corporation belongs, including the top tier corporation, shall
20 compute income under sub. (2) (a).

21 (c) Except as provided under par. (d), the members of the commonly controlled
22 group subject to an election under this subsection shall compute their income under
23 sub. (2) (b) for 5 taxable years, beginning with the taxable year designated under par.
24 (b). Thereafter, the members of the commonly controlled group shall compute their
25 income under sub. (2) (b) for periods of 5 taxable years and until any top tier

1 corporation that is a member of the commonly controlled group notifies the
2 department, in a manner prescribed by the department, before the last day of the last
3 taxable year in any period of 5 taxable years that the top tier corporation is
4 terminating the election under this subsection. A termination under this paragraph
5 takes effect on the first day of the first taxable year beginning after the top tier
6 corporation notifies the department under this paragraph.

7 (d) The department may grant a request by a top tier corporation to terminate
8 an election under this subsection before the first period of 5 taxable years under par.
9 (c) expires, if the top tier corporation shows good cause for granting the request, as
10 determined by the department and consistent with section 1502 of the Internal
11 Revenue Code.

12 (e) Except as provided in par. (f), if an election by a top tier corporation on behalf
13 of the members of a commonly controlled group under this subsection is terminated,
14 no top tier corporation may make an election on behalf of the members of the same
15 commonly controlled group until 5 taxable years have elapsed from the day that the
16 termination of the original election took effect.

17 (f) The department may grant a request by a top tier corporation to make an
18 election under this subsection before the period of 5 taxable years under par. (e) have
19 elapsed, if the top tier corporation shows good cause for granting the request, as
20 determined by the department and consistent with section 1502 of the Internal
21 Revenue Code.

22 (4) ACCOUNTING PERIOD. For purposes of this section, the income under ss. 71.26
23 and 71.45, the apportionment factors under ss. 71.25 and 71.45 and the tax credits
24 under ss. 71.28 and 71.47 of all corporations that are members of a combined
25 reporting group shall be determined by using the same accounting period. If the

1 combined reporting group has a common parent corporation, the accounting period
2 of the common parent corporation shall be used to determine the income, the
3 apportionment factors, and the tax credits of all the corporations that are members
4 of the combined reporting group. If the combined reporting group has no common
5 parent corporation, the income, the apportionment factors, and the tax credits of the
6 combined reporting group shall be determined using the accounting period of the
7 member of the combined reporting group that has the most significant operations on
8 a recurring basis in this state, as determined by the department.

9 (5) FILING RETURNS. (a) *Corporations with the same accounting period.*
10 Corporations that must file a combined report under this section and that have the
11 same accounting period may file a group return, as prescribed by the department,
12 that reports the aggregate state franchise or state income tax liability of all of the
13 members of the combined reporting group. Corporations that are required to file a
14 combined report under this section may file separate returns reporting the
15 respective apportionment of the corporation's state franchise or state income tax
16 liability as determined under sub. (2) (a), if each corporation filing a separate return
17 pays its own apportionment of its state franchise or state income tax liability.

18 (b) *Corporations with different accounting periods.* Corporations that are
19 required to file a combined report and that have different accounting periods shall
20 file separate returns and shall use the actual figures from the corporations' financial
21 records to determine the proper income and income-related computations to convert
22 to a common accounting period. Corporations that are required to file a combined
23 report may use a proportional method to convert income to a common accounting
24 period if the results of the proportional method do not materially misrepresent the
25 income apportioned to this state. The apportionment factors under ss. 71.25 and

1 71.45 and the tax credits under ss. 71.28 and 71.47 shall be computed according to
2 the same method used to determine the income under ss. 71.26 and 71.45 for the
3 common accounting period. If a corporation performs an interim closing of its
4 financial records to determine the income attributable to the common accounting
5 period, the actual figures from the interim closing shall be used to convert the
6 apportionment factors and tax credits to the common accounting period.

7 (c) *Designated agent.* 1. For corporations that are subject to this section and
8 that file a group return under par. (a), the parent corporation of the combined
9 reporting group is the sole designated agent for each member of the combined
10 reporting group including the parent corporation, if the parent corporation is a
11 taxpayer member of the combined reporting group and income of the parent
12 corporation is included on the group return. If the parent corporation is not a
13 taxpayer member or if the parent corporation's income is not included on the group
14 return, the taxpayer members may appoint a taxpayer member to be the designated
15 agent. If the parent corporation of the combined reporting group is not eligible to be
16 the designated agent and no taxpayer member is appointed to be the designated
17 agent, the designated agent is the taxpayer member that has the most significant
18 operations in this state on a recurring basis, as determined by the department. The
19 designated agent, as determined under this subdivision, remains the designated
20 agent until the designated agent is no longer a taxpayer member or until the
21 taxpayer members appoint a different designated agent. If the designated agent
22 changes, the combined reporting group shall notify the department of such a change,
23 in a manner prescribed by the department.

24 2. The designated agent shall file the group return under par. (a), shall file for
25 any extensions under s. 71.24 (7) or 71.44 (3), shall file amended reports and claims

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

22 (d) *Part-year members.* If a corporation becomes a member of a combined
23 reporting group or ceases to be a member of a combined reporting group after the
24 beginning of a common accounting period, the corporation's income shall be
25 apportioned to this state as follows:

1 1. If the corporation is required to file 2 or more short period federal returns
2 for the common accounting period, the income for the short period that the
3 corporation was a member of a combined reporting group shall be determined as
4 provided under sub. (2), the corporation shall join in filing a combined report for that
5 short period, and the corporation may join in filing a group return for that short
6 period. The income for the remaining short period shall be reported on a separate
7 return under s. 71.25 or 71.45. If the corporation becomes a member of another
8 combined reporting group in the remaining short period, the corporation's income
9 shall be determined for the remaining short period as provided under sub. (2).

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

12 a. As provided under sub. (2) for any period that the corporation was a member
13 of a combined reporting group.

14 b. On a separate report under s. 71.25 or 71.45 for any period that the
15 corporation was not a member of a combined reporting group.

16 (e) *Amended group return.* The election to file a group return under this section
17 applies to an amended group return that includes the same corporations that joined
18 in the filing of the original group return. Under this section, an amended group
19 return shall be filed as follows:

20 1. If an election to file a group return that is in effect for a taxable year is
21 revoked for the taxable year because the combined reporting group that filed the
22 group return is not subject to sub. (2), as determined by the department, the
23 designated agent for the combined reporting group may not file an amended group
24 return. The designated agent and each corporation that joined in filing the group
25 return shall file a separate amended return. To compute the tax due on a separate

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

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

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

15 (6) INCOME COMPUTATION UNDER COMBINED REPORTING. For the purposes of sub.
16 (2), income attributable to this state shall be determined as follows:

17 (a) Determine the net income of each member of a combined reporting group
18 under s. 71.26 or 71.45, as appropriate, before deducting net business losses. A
19 member of a combined reporting group may determine its loss or net income under
20 s. 71.26 (3) (y), 71.45 (2) (a) 13., or 71.49 (2), as appropriate, regardless of the
21 accounting method used to determine the loss or net income of other members of the
22 combined reporting group. A unitary business with operations in a foreign country
23 shall compute its loss or net income as provided by rule by the department.

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

1 (c) From the amount determined under par. (b), subtract intercompany
2 transactions, as provided by rule by the department, such that intercompany
3 accounts of assets, liabilities, equities, income, costs or expenses are excluded from
4 the income determination to accurately reflect the income, the apportionment
5 factors and the tax credits in a combined report that is filed under this section. An
6 intercompany transaction includes the following:

7 1. Income or gain from sales, exchanges, contributions, or other transfers of
8 tangible or intangible property from a member of the combined reporting group to
9 another member of the combined reporting group.

10 2. Annual rent paid by a member of the combined reporting group to another
11 member of the combined reporting group.

12 3. Annual license fees or royalties paid by a member of the combined reporting
13 group to another member of the combined reporting group.

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

17 5. Stock or other equity of a member of the combined reporting group that is
18 owned or controlled by another member of the combined reporting group.

19 6. Dividends paid out of earnings or profits and paid by a member of the
20 combined reporting group to another member of the combined reporting group.

21 7. Management or service fees paid by a member of the combined reporting
22 group to another member of the combined reporting group.

23 8. Income or expenses allocated or charged by a member of the combined
24 reporting group to another member of the combined reporting group.

1 (d) From the amount determined under par. (c) for each member of a combined
2 reporting group, subtract nonapportionable income, net of related expenses, and add
3 nonapportionable losses, net of related expenses, to determine each member's
4 apportionable net income or apportionable net loss.

5 (e) Calculate the apportionment factors under sub. (7) and multiply each
6 member's apportionable net income or apportionable net loss, as determined under
7 par. (d), by the member's apportionment fraction as determined under sub. (7).

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

11 (g) If the combined reporting group is not filing a group return, combine the
12 amounts determined under par. (f) for all members of the combined reporting group.

13 (h) If the combined reporting group is filing a group return, combine the
14 amounts determined under par. (f) for all members of the combined reporting group
15 that join in filing the group return.

16 (i) From the amount determined under par. (g) or (h), as appropriate, subtract
17 the combined reporting group's net operating loss as determined under sub. (8).

18 **(7) APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING.** For the
19 purposes of sub. (2), this state's apportionment factors are determined as follows:

20 (a) 1. Determine the numerator and the denominator of the apportionment
21 factors as determined under s. 71.25 or 71.45, as appropriate, for each member of the
22 combined reporting group, except as provided in subd. 2.

23 2. If a member of a combined reporting group is not subject to the tax imposed
24 under s. 71.23 or 71.43 because it does not have sufficient connection to this state as
25 a separate entity for income or franchise tax purposes, as determined by the

1 department, the numerator of the member's sales factor under s. 71.25 (9) or
2 apportionment factor under s. 71.45 (3) is zero. If a member of a combined reporting
3 group is a corporation engaged in business wholly within this state, as provided
4 under s. 71.25 (4), the numerator and denominator of the member's apportionment
5 factors is the same. If a member of a combined reporting group is not subject to an
6 income or franchise tax as a separate entity in the state to which a sale is attributed,
7 the sale is attributed to this state.

8 (b) Subtract intercompany transactions under sub. (6) (c) from both the
9 numerators and the denominators as determined under par. (a).

10 (c) Add the denominators of the apportionment factors for each member of the
11 combined reporting group, as determined under par. (a), to arrive at the combined
12 denominators.

13 (d) Compute the apportionment factors for each member of the combined
14 reporting group by dividing the numerator of a member of the combined reporting
15 group as determined under par. (a) by the combined denominator as determined
16 under par. (c).

17 (8) NET BUSINESS LOSS CARRY-OVER. (a) For taxable years beginning after
18 December 31, 2001, any net business loss of a corporation that is a member of a
19 combined reporting group as determined under sub. (6) for the taxable year that is
20 not offset against the net income of the other members of the combined reporting
21 group in the same taxable year may be carried forward as provided under s. 71.26
22 (4), except that any net business loss carried forward to a subsequent taxable year
23 may be offset against either the net income of the corporation that incurred the net
24 business loss or the net income of the combined reporting group of which the
25 corporation is a member, in the manner prescribed by rule by the department.

1 (b) A corporation that is a member of a combined reporting group may not carry
2 forward a net business loss from a taxable year beginning before January 1, 2002,
3 if the corporation was not subject to the tax imposed under s. 71.23 or 71.43 for the
4 same taxable year.

5 (c) A corporation that is a member of a combined reporting group and that
6 incurred a Wisconsin net business loss in a taxable year beginning before January
7 1, 2002, that has not been offset against the corporation's net income in subsequent
8 taxable years, may offset the remaining net business loss against the corporation's
9 net income as determined under sub. (6) (i). If the corporation joins in filing a group
10 return under sub. (5) and the corporation's remaining net business loss exceeds the
11 corporation's net income as determined under sub. (6) (i) for the first taxable year
12 beginning after December 31, 2001, that the corporation is subject to this section, the
13 corporation may annually offset up to 20% of the remaining net business loss against
14 the net income of the other members of the combined reporting group that join in
15 filing a group return under sub. (5).

16 **(9) NET INCOME OR LOSS FOR CORPORATIONS WITH DIFFERENT ACCOUNTING PERIODS.**
17 If a taxpayer member has a different accounting period than the common accounting
18 period of the combined reporting group, the combined reporting group shall assign
19 the combined report income or loss for the combined reporting group, as determined
20 under sub. (6) (i), proportionally to the number of months in the taxpayer member's
21 taxable year that are wholly or partly within the combined reporting group's common
22 accounting period. The total amount of income or loss assigned to a taxpayer member
23 under this subsection for the common accounting period shall be used to attribute
24 the taxpayer member's apportionable income to the combined reporting group for the
25 common accounting period.

1 **(10) NET TAX LIABILITY.** (a) A corporation that files a separate return under this
2 section shall determine its net tax liability as follows:

3 1. Multiply the amount determined under sub. (6) (i) for the corporation by the
4 tax rate under s. 71.27 or 71.46, as appropriate.

5 2. From the amount determined under subd. 1., subtract the corporation's tax
6 credits under s. 71.28 or 71.47 based on the corporation's expenses. A corporation
7 may not offset any of its tax credits, or tax credit carry forwards, against the tax
8 liability of any other member of the combined reporting group to which the
9 corporation belongs.

10 (b) A combined reporting group that files a group return under this section shall
11 determine its net tax liability as follows:

12 1. Multiply the amount determined under sub. (6) (i) for the combined reporting
13 group by the tax rate under s. 71.27 or 71.46, as appropriate.

14 2. From the amount determined under subd. 1., subtract the tax credits under
15 s. 71.27 and 71.47 for all taxpayer members of the combined reporting group.

16 **(11) ESTIMATED TAX PAYMENTS.** (a) For the first 2 taxable years that a group
17 return is filed under this section, estimated taxes under s. 71.29 and 71.48 may be
18 paid on a group basis or on a separate basis. The amount of any separate estimated
19 taxes paid in the first 2 taxable years that a group return is filed shall be credited
20 against the group's tax liability. The designated agent shall notify the department
21 of any estimated taxes paid on a separate basis in the first 2 taxable years that a
22 group return is filed.

23 (b) If a group return is filed for 2 consecutive taxable years, estimated taxes
24 under s. 71.29 and 71.48 shall be paid on a group basis for each subsequent taxable
25 year until such time as separate returns are filed by the corporations that were

1 members of a combined reporting group that filed group returns under this section.
2 For each taxable year in which combined estimated taxes are paid under this
3 subsection, the department shall consider the combined reporting group filing a
4 group return to be one taxpayer for purposes of computing interest on the
5 underpayment of estimated taxes. If a corporation subject to this section files a
6 separate return in a taxable year following a year in which the corporation joined in
7 filing a group return, the amount of any estimated tax payments made on a group
8 basis for the previous year shall be credited against the tax liability of the corporation
9 that files a separate return, as allocated by the designated agent with the
10 department's approval.

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

16 (d) If estimated taxes are paid on a group basis for a taxable year but the group
17 does not file a group return for the taxable year and did not file a group return for
18 the previous taxable year, the estimated tax shall be credited to the member of the
19 combined reporting group that made the estimated tax payment on the group's
20 behalf.

21 (e) If a combined reporting group that will file a group return applies for a
22 refund of estimated taxes under s. 71.29 (3m), the department shall determine the
23 combined reporting group's eligibility for a refund on a group basis.

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

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

8 2. For any year in which a combined reporting group files a group return, the
9 department shall determine if the combined reporting group qualifies for the
10 exception to interest under s. 71.29 (7) (b) by using the aggregate of the amount of
11 the tax liability and the amount of the net income of all members of the combined
12 reporting group.

13 3. For any year in which a combined reporting group files a group return, the
14 department shall determine if the installment provisions under s. 71.29 (9) or (10)
15 apply to the combined reporting group by using the aggregate of the amount of the
16 tax liability and the amount of the net income of all members of the combined
17 reporting group.

18 4. For estimated taxes paid under sub. (11) (c), the amount of interest that is
19 due from a member of a combined reporting group for an underpayment of estimated
20 taxes paid by the member shall be determined by using the member's separate items
21 from the group return filed for the previous year and the member's allocated share
22 of the combined estimated tax payments for the current year. The designated agent
23 shall report the member's allocated share of the combined estimated tax payments
24 for the current year to the department, in the manner prescribed by the department.

1 (b) *Entering a group.* If a corporation becomes a member of a combined
2 reporting group during a common accounting period under sub. (4), the combined
3 reporting group shall make the following adjustments to determine the amount of
4 interest that is due for an underpayment of estimated taxes:

5 1. If a corporation becomes a member of a combined reporting group at the
6 beginning of a common accounting period, the combined reporting group shall
7 include with the corresponding items on the group return for the previous common
8 accounting period the separate items shown on the corporation's return for the
9 previous taxable year.

10 2. If a corporation is not a member of a combined reporting group for an entire
11 common accounting period, the combined reporting group shall include with the
12 corresponding items on the group return for the current taxable year the
13 corporation's separate items for that portion of the common accounting period that
14 the corporation was a member of the combined reporting group.

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

21 (c) *Leaving a group.* If a corporation leaves a combined reporting group during
22 a common accounting period under sub. (4), the combined reporting group shall make
23 the following adjustments to determine the amount of interest that is due for an
24 underpayment of estimated taxes:

1 1. If a corporation leaves a combined reporting group before the first day of a
2 common accounting period, the commonly controlled group shall exclude the
3 separate items that the designated agent of the combined reporting group attributed
4 to the corporation for the preceding common accounting period from the
5 corresponding items of the combined reporting group for the preceding common
6 accounting period.

7 2. If a corporation leaves a combined reporting group after the first day of a
8 common accounting period, the combined reporting group shall exclude the separate
9 items that the designated agent of the combined reporting group attributed to the
10 corporation for the common accounting period from the corresponding items of the
11 combined reporting group for the current common accounting period.

12 3. A corporation that leaves a combined reporting group shall use the separate
13 items that the designated agent of the combined reporting group attributed to the
14 corporation to determine the amount of interest that is owed for any underpayment
15 of estimated taxes under sub. (12) for the first taxable year beginning after the day
16 that the corporation leaves the combined reporting group or, for a corporation that
17 has a different accounting period than the combined reporting group, for the portion
18 of the corporation's separate taxable year that remains after the day that the
19 corporation leaves the combined reporting group.

20 **(13) ASSESSMENT NOTICE.** If the department sends a notice of taxes that are
21 owed by a combined reporting group to the designated agent of a combined reporting
22 group, the notice shall name each corporation that joined in filing the group return
23 related to the notice during any part of the period covered by the notice. The
24 department's failure to name a corporation on a notice under this subsection shall
25 not invalidate the notice as to the unnamed corporation. Any levy, lien or other

1 proceeding to collect the amount of a tax assessment under this section shall name
2 the corporation from which the department shall collect the assessment. If a
3 corporation that joined in the filing of a group return leaves the combined reporting
4 group, the department shall send the corporation a copy of any notice sent to the
5 combined reporting group under this subsection if the corporation notifies the
6 department that the corporation is no longer a member of the combined reporting
7 group and if the corporation requests in writing that the department send notices
8 under this subsection to the corporation. The department's failure to comply with
9 a corporation's request to receive a notice does not affect the tax liability of the
10 corporation.

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

17 (15) PRESUMPTIONS AND BURDEN OF PROOF. A commonly controlled group shall
18 be presumed to be engaged in a unitary business and all of the income of the unitary
19 business shall be presumed to be apportionable business income under this section.
20 A corporation, partnership or limited liability company has the burden of proving
21 that it is not a member of a commonly controlled group that is subject to this section.
22 The department shall promulgate rules to implement this subsection.

23 (16) INFORMATION. (a) A member of a commonly controlled group shall retain
24 any information, and provide such information to the department at the
25 department's request, that the department considers necessary to administer this

1 section, including all documents submitted to or obtained from the Internal Revenue
2 Service or other states regarding income and taxing jurisdiction.

3 (b) A member of a commonly controlled group shall identify, at the department's
4 request, the name, job title, and address of the member's principal officers or
5 employees who have substantial knowledge of, and access to, documents that specify
6 the pricing policies, profit centers, cost centers, and methods of allocating income and
7 expenses among cost centers related to the operations of the member.

8 (c) A member of a commonly controlled group shall retain all information
9 provided under par. (a) during any period for which the member's tax liability to this
10 state is subject to adjustment, including any period in which the state may assess
11 additional income or franchise taxes, an appeal of the member's tax assessment is
12 pending, or a suit related to the member's tax liability is pending.”.

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

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

15 71.26 (3) (L) Section 265 is excluded and replaced by the rule that any amount
16 otherwise deductible under this chapter that is directly or indirectly related to
17 income wholly exempt from taxes imposed by this chapter or to losses from the sale
18 or other disposition of assets the gain from which would be exempt under this
19 paragraph if the assets were sold or otherwise disposed of at a gain is not deductible.
20 In this paragraph, “wholly exempt income”, for corporations subject to franchise or
21 income taxes, includes ~~amounts received from affiliated or subsidiary corporations~~
22 ~~for~~ interest, dividends or capital gains that, ~~because of the degree of common~~
23 ~~ownership, control or management between the payor and payee,~~ are not subject to
24 taxes under this chapter. In this paragraph, “wholly exempt income”, for

1 corporations subject to income taxation under this chapter, also includes interest on
2 obligations of the United States. In this paragraph, “wholly exempt income” does not
3 include income excludable, not recognized, exempt or deductible under specific
4 provisions of this chapter. If any expense or amount otherwise deductible is
5 indirectly related both to wholly exempt income or loss and to other income or loss,
6 a reasonable proportion of the expense or amount shall be allocated to each type of
7 income or loss, in light of all the facts and circumstances.”.

8 **22.** Page 793, line 22: after that line insert:

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

10 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
11 consolidated returns) are excluded, except to the extent that they pertain to
12 intercompany transactions and the carry forward of net business loss under s.
13 71.255.

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

15 71.26 (4) NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option
16 corporation or an insurer to which s. 71.45 (4) applies, may offset against its
17 Wisconsin net business income any Wisconsin net business loss sustained in any of
18 the next 15 preceding taxable years, if the corporation was subject to taxation under
19 this chapter in the taxable year in which the loss was sustained, to the extent not
20 offset by other items of Wisconsin income in the loss year and by Wisconsin net
21 business income of any year between the loss year and the taxable year for which an
22 offset is claimed. For purposes of this subsection Wisconsin net business income or
23 loss shall consist of all the income attributable to the operation of a trade or business
24 in this state, less the business expenses allowed as deductions in computing net

1 income. The Wisconsin net business income or loss of corporations engaged in
2 business within and without the state shall be determined under s. 71.255 or 71.25
3 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25
4 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income
5 having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be
6 included in other items of Wisconsin income and Wisconsin net business income for
7 purposes of this subsection.”.

8 **23.** Page 798, line 22: after that line insert:

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

10 71.29 (2) WHO SHALL PAY. ~~Every~~ Except as provided in s. 71.255 (11), every
11 corporation subject to tax under s. 71.23 (1) or (2) and every virtually exempt entity
12 subject to tax under s. 71.125 or 71.23 (1) or (2) shall pay an estimated tax.”.

13 **24.** Page 821, line 17: after that line insert:

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

15 71.44 (1) (e) A corporation that is a member of a commonly controlled group,
16 as defined in s. 71.255 (1) (d), and engaged in a unitary business, as defined in s.
17 71.255 (1) (m), shall file a tax return under s. 71.255.”.

18 **25.** Page 822, line 7: delete the material beginning with that line and ending
19 with page 826, line 6.

20 **26.** Page 826, line 16: after that line insert:

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

22 **27.** Page 831, line 18: after that line insert:

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

1 **71.48 Payments of estimated taxes.** Sections Except as provided in s.
2 71.255 (11), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under
3 this chapter.”.

4 **28.** Page 831, line 23: after that line insert:

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

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

17 **29.** Page 832, line 8: delete lines 8 to 11 and substitute:

18 “72.01 (11m) “Federal credit” means the federal estate tax credit in effect on
19 December 31, 2000.”.

20 **30.** Page 832, line 13: delete lines 13 to 16 and substitute:

21 “72.01 (11n) “Federal estate tax” means the federal estate tax in effect on
22 December 31, 2000.”.

23 **31.** Page 833, line 13: delete the material beginning with “and” and ending
24 with “2002,” on line 14.

