LRBa0691

2003 DRAFTING REQUEST

Assembly Amendment (AA-AB413)

Received: **06/19/2003**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Miller (608) 266-5342**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters: **rmarchan**

Subject: **Tax - corp. inc. and fran.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Miller@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**
robert.marchant@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

AA (combined reporting) to AB413 (single sales factor)

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	jkreye 06/19/2003	csicilia 06/20/2003		_____ _____			
/1			pgreensl 06/20/2003	_____ _____	lemery 06/20/2003	lemery 06/20/2003	

FE Sent For:

<END>

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/?	jkreye	/1 cjs 6/19/03	6/20 P8	6/20 P8 1ch			

FE Sent For:

<END>

Kreye, Joseph

From: Miller, Mark

Sent: Thursday, June 19, 2003 8:53

To: Kreye, Joseph

Cc: Kuhn, Jamie

Subject: Amendment Request for AB413

Mr. Kreye,
Please prepare LRB 1251/1 as a simple amendment to AB413. AB413 will be considered on Monday.
Thank you.
Mark

Mark Miller

48th Assembly District
P.O. Box 8953
Madison, WI 53708
Phone 608.266.5342, FAX 608.282.3648
rep.miller@legis.state.wi.us

2003 Date (time) needed FRI 6/20

RMNR

LRBa 0691 / 1

JK : CS :

AMENDMENT

See form **AMENDMENTS — COMPONENTS & ITEMS.**

S (A) AMENDMENT

~~**TO S A AMENDMENT** (LRBa~~

~~**TO S A SUBSTITUTE AMENDMENT** (LRBs~~

TO 2003 SB SJR SR (AB) AJR AR 413 (LRB– /)

At the locations indicated, amend the bill as follows:

(fill ONLY if "engrossed ...." or "as shown by .....")

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

2003 – 2004 LEGISLATURE

LRB-~~1251/1~~ a0691/1

JK:~~cs:ls~~

AA-AB413

bill hist ✓
SA ✓

2003 BILL

m 6-19-03

due Friday 6-20

At the locations .... amend the bill as follows:

#. Page 1, line 8: after "purposes" insert "; ;".

no ¶

AN ACT ~~*to repeal*~~ 71.46 (3); ~~*to amend*~~ 71.25 (9) (a), 71.26 (3) (x), 71.26 (4), 71.29 (2), 71.44 (1) (a), 71.48 and 71.84 (2) (a); and ~~*to create*~~ 71.255 and 71.44 (1) (e) of the statutes; ~~**relating to:**~~ combined tax reporting for income and franchise tax purposes ~~and granting rule-making authority.~~

Analysis by the Legislative Reference Bureau

Under current law, each separate corporation doing business in this state must file a tax return with the Department of Revenue (DOR) reporting its net income. A corporation's net income includes interest, dividends and the sale of intangible assets received by the corporation from another corporation if the corporations are a unitary business. A unitary business is, generally, an affiliated group of corporations that operate as a unit and is characterized by centralized management and decision making. Under current law, separate corporations that are part of a unitary business are not required to file a combined tax return. Instead, a corporation doing business in this state that is part of a unitary business files a separate return.

This bill requires that an affiliated group of corporations that is part of a unitary business file a combined tax return with DOR. The bill creates a presumption that all corporations that are part of an affiliated group are unitary and must file a combined return.

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

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

#. 11, 5: after line: (22m)

"SECTION 1. 71.25 (9) (a) of the statutes is amended to read:

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

#. 12, 22: after line:

"SECTION 2. 71.255 of the statutes is created to read: (26d)

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

(a) "Brother–sister parent corporation" means a parent corporation that is a member of a commonly controlled group, if any members of the commonly controlled group are not connected to the parent corporation by stock ownership or interest ownership as described in par. (d).

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

1 (c) "Combined reporting group" means the members of a commonly controlled
2 group that are included in a combined report under sub. (2).
3 (d) "Commonly controlled group" means any of the following, but does not
4 include an insurer that is exempt from taxation under s. 71.45 (1):
5 1. A parent corporation and any corporation or chain of corporations that are
6 connected to the parent corporation by direct or indirect ownership by the parent
7 corporation if the parent corporation owns stock representing more than 50% of the
8 voting power of at least one of the connected corporations or if the parent corporation
9 or any of the connected corporations owns stock that cumulatively represents more
10 than 50% of the voting power of each of the connected corporations.
11 2. Any 2 or more corporations if a common owner directly or indirectly owns
12 stock representing more than 50% of the voting power of the corporations or the
13 connected corporations.
14 3. A partnership or limited liability company if a parent corporation or any
15 corporation connected to the parent corporation by common ownership directly or
16 indirectly owns more than a 50% interest in the capital and profits of the partnership
17 or limited liability company.
18 4. Any 2 or more corporations if stock representing more than 50% of the voting
19 power in each corporation are interests that cannot be separately transferred.
20 5. Any 2 or more corporations if stock representing more than 50% of the voting
21 power in each corporation is directly owned by, or for the benefit of, family members.
22 In this subdivision, "family members" means an individual related by blood,
23 marriage, or adoption within the 2nd degree of kinship as computed under s. 852.03
24 (2), 1995 stats., or the spouse of such an individual.

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

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

7 (f) "Department" means the department of revenue.

8 (g) "Designated agent" means the taxpayer member of a commonly controlled
9 group who files a group return on behalf of the taxpayer members of a combined
10 reporting group.

11 (h) "Group return" means a tax return filed on behalf of the taxpayer members
12 of a combined reporting group.

13 (i) "Intercompany transaction" means a transaction between corporations,
14 partnerships, or limited liability companies that become members of the same
15 combined reporting group immediately after the transaction.

16 (im) "Partnership" means any entity considered a partnership under section
17 7701 of the Internal Revenue Code.

18 (j) "Separate return" means a return filed by a corporation, regardless of
19 whether the corporation is a member of a combined reporting group or is required
20 to file a tax return under s. 71.24 or 71.44.

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

24 (L) "Top tier corporation" means a member of a commonly controlled group that
25 is not connected with a parent corporation by stock ownership or interest ownership

as described in par. (d), is a parent corporation, or is a brother–sister parent corporation, regardless of whether it is doing business in this state or deriving income from sources in this state, and regardless of whether its income and apportionment factors are excluded from a combined report filed under this section.

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

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

1. Any corporation organized or incorporated under the laws of the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, or any political subdivision of the

1 United States, including corporations under sections 931 to 936 of the Internal
2 Revenue Code.

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

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

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

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

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

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

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

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

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

20 (c) Except as provided under par. (d), the members of the commonly controlled
21 group subject to an election under this subsection shall compute their income under
22 sub. (2) (b) for 7 taxable years, beginning with the taxable year designated under par.
23 (b). Thereafter, the members of the commonly controlled group shall compute their
24 income under sub. (2) (b) for periods of 7 taxable years and until any top tier
25 corporation that is a member of the commonly controlled group notifies the

1 department, in a manner prescribed by the department, before the last day of the last
2 taxable year in any period of 7 taxable years that the top tier corporation is
3 terminating the election under this subsection. A termination under this paragraph
4 takes effect on the first day of the first taxable year beginning after the top tier
5 corporation notifies the department under this paragraph.

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

11 (e) Except as provided in par. (f), if an election by a top tier corporation on behalf
12 of the members of a commonly controlled group under this subsection is terminated,
13 no top tier corporation may make an election on behalf of the members of the same
14 commonly controlled group until 7 taxable years have elapsed from the day that the
15 termination of the original election took effect.

16 (f) The department may grant a request by a top tier corporation to make an
17 election under this subsection before the period of 7 taxable years under par. (e) have
18 elapsed, if the top tier corporation shows good cause for granting the request, as
19 determined by the department and consistent with section 1502 of the Internal
20 Revenue Code.

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

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

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

17 (b) *Corporations with different accounting periods.* Corporations that are
18 required to file a combined report and that have different accounting periods shall
19 file separate returns and shall use the actual figures from the corporations' financial
20 records to determine the proper income and income–related computations to convert
21 to a common accounting period. Corporations that are required to file a combined
22 report may use a proportional method to convert income to a common accounting
23 period if the results of the proportional method do not materially misrepresent the
24 income apportioned to this state. The apportionment factors under ss. 71.25 and
25 71.45 and the tax credits under ss. 71.28 and 71.47 shall be computed according to

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

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

23 2. The designated agent shall file the group return under par. (a), shall file for
24 any extensions under s. 71.24 (7) or 71.44 (3), shall file amended reports and claims
25 for refund or credit, and shall send and receive all correspondence with the

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

21 (d) *Part-year members.* If a corporation becomes a member of a combined
22 reporting group or ceases to be a member of a combined reporting group after the
23 beginning of a common accounting period, the corporation's income shall be
24 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 a combined reporting group shall be determined as provided under sub. (2), 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 reported on a separate return under s. 71.26 or 71.45. If the corporation becomes a member of another combined reporting group in the remaining short period, the corporation's income shall be determined for the remaining short period 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. As provided under sub. (2) for any period that the corporation was a member of a combined reporting group.

b. As a separate entity under s. 71.26 or 71.45 for any period that the corporation was not a member of a combined reporting group.

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

1. If an election to file a group return that is in effect for a taxable year is revoked for the taxable year because the combined reporting group that filed the group return is not subject to sub. (2), as determined by the department, the designated agent for the combined reporting group may not file an amended group return. The designated agent and each corporation that joined in filing the group 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 net loss or net income
20 under a method of accounting or an election authorized under s. 71.26 (3) (y), 71.30
21 (1), 71.45 (2) (a) 13., or 71.49 (2), as appropriate, regardless of the accounting method
22 used to determine the net loss or net income of other members of the combined
23 reporting group. After a member establishes an accounting method, or makes any
24 election under this section, the member's net loss or net income shall be consistently
25 determined in the combined report of all members of the combined reporting group

1 and in the group return filed by the taxpayer members or in the separate return filed
2 by the members. If a corporation is engaged in 2 or more trades or businesses that
3 are required to use different apportionment formulas under s. 71.25 or 71.45, the net
4 income for each trade or business shall be computed separately. A unitary business
5 with operations in a foreign country shall compute its net loss or net income as
6 provided by rule by the department.

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

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

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

18 2. Annual rent paid by a member of the combined reporting group to another
19 member of the combined reporting group.

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

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

1 5. Stock or other equity of a member of the combined reporting group that is
2 owned or controlled by another member of the combined reporting group.
3 6. Except as provided by rule by the department, dividends paid out of earnings
4 or profits and paid by a member of the combined reporting group to another member
5 of the combined reporting group.
6 7. Management or service fees paid by a member of the combined reporting
7 group to another member of the combined reporting group.
8 8. Income or expenses allocated or charged by a member of the combined
9 reporting group to another member of the combined reporting group.
10 (d) From the amount determined under par. (c) for each member of a combined
11 reporting group, subtract nonapportionable income, net of related expenses, and add
12 nonapportionable losses, net of related expenses, to determine each member's
13 apportionable net income or apportionable net loss.
14 (e) Calculate the apportionment factors under sub. (7) and multiply each
15 member's apportionable net income or apportionable net loss, as determined under
16 par. (d), by the member's apportionment factor as determined under sub. (7).
17 (f) For each corporation, combine the amounts determined under par. (e) for
18 each trade or business.
19 (g) To the amounts determined under par. (f), add each member's
20 nonapportionable income attributable to this state and subtract each member's
21 nonapportionable losses attributable to this state.
22 (h) If the combined reporting group is not filing a group return, combine the
23 amounts determined under par. (g) for all members of the combined reporting group.

1 (i) If the combined reporting group is filing a group return, combine the
2 amounts determined under par. (g) for all members of the combined reporting group
3 that join in filing the group return.

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

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

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

11 2. If a member of a combined reporting group is not subject to the tax imposed
12 under s. 71.23 or 71.43 because it does not have sufficient connection to this state as
13 a separate entity for income or franchise tax purposes, as determined by the
14 department, the numerator of the member's sales factor under s. 71.25 (9) or
15 apportionment factor under s. 71.45 (3) is zero. If a member of a combined reporting
16 group is a corporation engaged in business wholly within this state, as provided
17 under s. 71.25 (4), the numerator and denominator of the member's apportionment
18 factors is the same. If a member of a combined reporting group is not subject to an
19 income or franchise tax as a separate entity in the state to which a sale is attributed,
20 the sale is attributed to this state.

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

23 (c) Add the denominators of the apportionment factors for each member of the
24 combined reporting group, as determined under par. (b), to arrive at the combined
25 denominator.

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

4 **(8)** NET BUSINESS LOSS CARRY-OVER. (a) For taxable years beginning after
5 December 31, 2003, any net business loss of a corporation that is a member of a
6 combined reporting group as determined under sub. (6) for the taxable year that is
7 not offset against the net income of the other members of the combined reporting
8 group in the same taxable year may be carried forward as provided under s. 71.26
9 (4), except that any net business loss carried forward to a subsequent taxable year
10 may be offset against either the net income of the corporation that incurred the net
11 business loss or the net income of the combined reporting group of which the
12 corporation is a member, in the manner prescribed by rule by the department.

13 (b) A corporation that is a member of a combined reporting group may not carry
14 forward a net business loss from a taxable year beginning before January 1, 2004,
15 if the corporation was not subject to the tax imposed under s. 71.23 or 71.43 for the
16 same taxable year.

17 (c) A corporation that is a member of a combined reporting group and that
18 incurred a Wisconsin net business loss in a taxable year beginning before January
19 1, 2004, that has not been offset against the corporation's net income in subsequent
20 taxable years, may offset the remaining net business loss against the corporation's
21 net income as determined under sub. (6). If the corporation joins in filing a group
22 return under sub. (5) and the corporation's remaining net business loss exceeds the
23 corporation's net income as determined under sub. (6) for the first taxable year
24 beginning after December 31, 2003, that the corporation is subject to this section, the
25 corporation may annually offset up to 20% of the remaining net business loss against

1 the net income of the other members of the combined reporting group that join in
2 filing a group return under sub. (5).

3 **(9)** NET INCOME OR LOSS FOR CORPORATIONS WITH DIFFERENT ACCOUNTING PERIODS.
4 If a taxpayer member has a different accounting period than the common accounting
5 period of the combined reporting group, the combined reporting group shall assign
6 the combined report income or loss for the combined reporting group, as determined
7 under sub. (6), proportionally to the number of months in the taxpayer member's
8 taxable year that are wholly or partly within the combined reporting group's common
9 accounting period. The total amount of income or loss assigned to a taxpayer member
10 under this subsection for the portions of the common accounting period that are
11 included in the taxpayer member's taxable period shall be aggregated or netted to
12 determine the taxpayer member's apportionable income.

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

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

17 2. From the amount determined under subd. 1., subtract the corporation's tax
18 credits under s. 71.28 or 71.47 based on the corporation's expenses. The corporation
19 may not offset any of its tax credits, or tax credit carry forwards, against the tax
20 liability of any other member of the combined reporting group to which the
21 corporation belongs.

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

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

1 2. From the amount determined under subd. 1., subtract the tax credits under
2 ss. 71.28 and 71.47 for all taxpayer members of the combined reporting group.

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

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

23 (c) If a combined reporting group pays estimated taxes on a group basis for a
24 taxable year or for any part of a taxable year, and the members of the combined
25 reporting group file separate returns for the taxable year, the designated agent, with

1 the department's approval, shall allocate the estimated tax payments among the
2 members of the combined reporting group.

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

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

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

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

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

23 3. For any year in which a combined reporting group files a group return, the
24 department shall determine if the installment provisions under s. 71.29 (9) or (10)
25 apply to the combined reporting group by using the aggregate of the amount of the

1 tax liability and the amount of the net income of all members of the combined
2 reporting group.

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

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

14 1. If a corporation becomes a member of a combined reporting group at the
15 beginning of a common accounting period, the combined reporting group shall
16 include with the corresponding items on the group return for the previous common
17 accounting period the separate items shown on the corporation's return for the
18 previous taxable year.

19 2. If a corporation is not a member of a combined reporting group for an entire
20 common accounting period, the combined reporting group shall include with the
21 corresponding items on the group return for the current taxable year the
22 corporation's separate items for that portion of the common accounting period that
23 the corporation was not a member of the combined reporting group.

24 3. To determine the separate items under subds. 1. and 2., if a corporation is
25 a member of a combined reporting group during a portion of a common accounting

1 period in which the corporation becomes a member of another combined reporting
2 group, the corporation's separate items shall include the separate items that are
3 attributed to the corporation by the designated agent of the first combined reporting
4 group.

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

9 1. If a corporation leaves a combined reporting group before the first day of a
10 common accounting period, the combined reporting group shall exclude the separate
11 items that the designated agent of the combined reporting group attributed to the
12 corporation for the preceding common accounting period from the corresponding
13 items of the combined reporting group for the preceding common accounting period.

14 2. If a corporation leaves a combined reporting group after the first day of a
15 common accounting period, the combined reporting group shall exclude the separate
16 items that the designated agent of the combined reporting group attributed to the
17 corporation for the common accounting period from the corresponding items of the
18 combined reporting group for the current common accounting period.

19 3. A corporation that leaves a combined reporting group shall use the separate
20 items that the designated agent of the combined reporting group attributed to the
21 corporation to determine the amount of interest that is owed for any underpayment
22 of estimated taxes under sub. (11) for the first taxable year beginning after the day
23 that the corporation leaves the combined reporting group or, for a corporation that
24 has a different accounting period than the combined reporting group, for the portion

1 of the corporation's separate taxable year that remains after the day that the
2 corporation leaves the combined reporting group.

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

19 **(14)** LIABILITY FOR TAX, INTEREST, AND PENALTY. If members of a combined
20 reporting group file a group return, the members of the combined reporting group
21 shall be jointly and severally liable for any combined tax, interest, or penalty. The
22 liability of a member of a combined reporting group for any combined tax, interest,
23 or penalty shall not be reduced by an agreement with another member of the
24 combined reporting group or by an agreement with another person.

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

7 **(16)** INFORMATION. (a) A member of a commonly controlled group shall retain
8 any information, and provide such information to the department at the
9 department's request, that the department considers necessary to administer this
10 section, including all documents submitted to or obtained from the Internal Revenue
11 Service or other states regarding income and taxing jurisdiction.

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

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

22 **(17)** CORPORATIONS NOT FILING. If a corporation that is required to report under
23 this section directly or indirectly owns or controls any other corporation, or is directly
24 or indirectly owned or controlled by another corporation, the department may

1 require that such other corporations join in filing a combined report under this
2 section. 26f

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

4 71.26 **(3)** (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
5 consolidated returns) are excluded, except to the extent that they pertain to
6 intercompany transactions and the carry forward of net business loss under s. 71.255
7 and except that they are modified so that more than 50% ownership is substituted
8 for at least 80% ownership. 26h

9 SECTION 4. 71.26 (4) of the statutes is amended to read:

10 71.26 **(4)** NET BUSINESS LOSS CARRY–FORWARD. A corporation, except a tax–option
11 corporation or an insurer to which s. 71.45 (4) applies, may offset against its
12 Wisconsin net business income any Wisconsin net business loss sustained in any of
13 the next 15 preceding taxable years, if the corporation was subject to taxation under
14 this chapter in the taxable year in which the loss was sustained, to the extent not
15 offset by other items of Wisconsin income in the loss year and by Wisconsin net
16 business income of any year between the loss year and the taxable year for which an
17 offset is claimed. For purposes of this subsection Wisconsin net business income or
18 loss shall consist of all the income attributable to the operation of a trade or business
19 in this state, less the business expenses allowed as deductions in computing net
20 income. The Wisconsin net business income or loss of corporations engaged in
21 business within and without the state shall be determined under s. 71.255 or 71.25
22 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25
23 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income
24 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. 26j

SECTION 5. 71.29 (2) of the statutes is amended to read:

71.29 **(2)** WHO SHALL PAY. ~~Every~~ Except as provided in s. 71.255 (11), every 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.

26L **SECTION 6.** 71.44 (1) (a) of the statutes is amended to read:

71.44 **(1)** (a) ~~Every~~ Except as provided in par. (e), every corporation, except corporations all of whose income is exempt from taxation and except as provided in sub. (1m), shall furnish to the department a true and accurate statement, on or before March 15 of each year, except that returns for fiscal years ending on some other date than December 31 shall be furnished on or before the 15th day of the 3rd month following the close of such fiscal year and except that returns for less than a full taxable year shall be furnished on or before the date applicable for federal income taxes under the internal revenue code, in such manner and form and setting forth such facts as the department deems necessary to enforce this chapter. Every corporation that is required to furnish a statement under this paragraph and that has income that is not taxable under this subchapter shall include with its statement a report that identifies each item of its nontaxable income. The statement shall be subscribed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The fact that an individual's name is subscribed on the return shall be prima facie evidence that the individual is authorized to subscribe the return on behalf of the corporation.

26n

SECTION 7. 71.44 (1) (e) of the statutes is created to read:

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

#. 16, 22: after line: 32g

"SECTION 8. 71.46 (3) of the statutes is repealed.

32r

SECTION 9. 71.48 of the statutes is amended to read:

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

32w

SECTION 10. 71.84 (2) (a) of the statutes is amended to read:

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

~~SECTION 11. Initial applicability.~~

#. 17, 8 : after line :

1 2d "(1) COMBINED REPORTING. The treatment of sections 71.25 (9) (a), 71.255, 71.26
2 (3) (x) and (4), 71.29 (2), 71.44 (1) (e), 71.46 (3), 71.48, and 71.84 (2) (a) of the statutes
3 first applies to taxable years beginning on January 1, 2005." .
4

(END)