

2003 SENATE BILL 450

February 10, 2004 – Introduced by Senators KANAVAS, REYNOLDS, SCHULTZ, STEPP, WELCH, BROWN and ROESSLER, cosponsored by Representatives NISCHKE, J. FITZGERALD, LADWIG, MUSSER, JESKEWITZ, M. LEHMAN, TOWNS, VAN ROY, VUKMIR, ALBERS, OTT, F. LASEE, HINES, TOWNSEND, GUNDERSON and PETROWSKI. Referred to Committee on Economic Development, Job Creation and Housing.

1 **AN ACT** *to amend* 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4)
 2 (e), 71.25 (6) (a), 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d), 71.25 (6) (e), 71.45 (3d)
 3 (a), 71.45 (3d) (b) and 71.45 (3d) (c); and *to create* 71.04 (4) (f), 71.25 (6) (f) and
 4 71.45 (3d) (d) of the statutes; **relating to:** apportioning remaining net income
 5 by using a single sales factor based on creating and retaining new jobs.

Analysis by the Legislative Reference Bureau

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

Under current law, beginning on January 1, 2008, the sales factor will be the only factor used to attribute a portion of a corporation's income to this state. The property and payroll factors will be decreased, and eventually phased out, over four years as the sales factor is increased and becomes the only factor. Beginning on January 1, 2008, the premium factor will be the only factor used to attribute a portion of an insurance company's income to this state. The payroll factor will be decreased, and eventually phased out, over four years as the premium factor is increased and becomes the only factor.

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Under this bill, a corporation may use only the sales factor to attribute a portion of the corporation's income to this state before taxable years beginning on January 1, 2008, if the corporation has a net gain of 100 employees in the taxable year and retains the employees for three consecutive years.

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

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

1 **SECTION 1.** 71.04 (4) (a) of the statutes, as created by 2003 Wisconsin Act 37,
2 is amended to read:

3 71.04 (4) (a) ~~For~~ Except as provided in par. (f), for taxable years beginning
4 before January 1, 2006, an apportionment fraction composed of a sales factor under
5 sub. (7) representing 50% of the fraction, a property factor under sub. (5)
6 representing 25% of the fraction, and a payroll factor under sub. (6) representing 25%
7 of the fraction.

8 **SECTION 2.** 71.04 (4) (b) of the statutes, as created by 2003 Wisconsin Act 37,
9 is amended to read:

10 71.04 (4) (b) ~~For~~ Except as provided in par. (f), for taxable years beginning after
11 December 31, 2005, and before January 1, 2007, an apportionment fraction
12 composed of a sales factor under sub. (7) representing 60% of the fraction, a property
13 factor under sub. (5) representing 20% of the fraction, and a payroll factor under sub.
14 (6) representing 20% of the fraction.

15 **SECTION 3.** 71.04 (4) (c) of the statutes, as created by 2003 Wisconsin Act 37,
16 is amended to read:

17 71.04 (4) (c) ~~For~~ Except as provided in par. (f), for taxable years beginning after
18 December 31, 2006, and before January 1, 2008, an apportionment fraction
19 composed of a sales factor under sub. (7) representing 80% of the fraction, a property

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1 factor under sub. (5) representing 10% of the fraction, and a payroll factor under sub.
2 (6) representing 10% of the fraction.

3 **SECTION 4.** 71.04 (4) (d) of the statutes, as created by 2003 Wisconsin Act 37,
4 is amended to read:

5 71.04 (4) (d) ~~For~~ Except as provided in par. (f), for taxable years beginning after
6 December 31, 2007, an apportionment fraction composed of the sales factor under
7 sub. (7).

8 **SECTION 5.** 71.04 (4) (e) of the statutes, as created by 2003 Wisconsin Act 37,
9 is amended to read:

10 71.04 (4) (e) ~~For~~ Except as provided in par. (f), for taxable years beginning after
11 December 31, 2005, and before January 1, 2008, the apportionment fraction for the
12 remaining net income of a financial organization shall include a sales factor that
13 represents more than 50% of the apportionment fraction, as determined by rule by
14 the department. For taxable years beginning after December 31, 2007, the
15 apportionment fraction for the remaining net income of a financial organization is
16 composed of a sales factor, as determined by rule by the department.

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

18 71.04 (4) (f) If a taxpayer who is subject to apportionment under this subsection
19 has a net gain of 100 employees in this state in any taxable year beginning after the
20 effective date of this paragraph [revisor inserts date], and before January 1, 2008,
21 the taxpayer's remaining net income may, at the taxpayer's option, be apportioned
22 to this state by an apportionment fraction composed of the sales factor under sub. (7)
23 or, for a financial organization, under par. (e) beginning with the taxable year in
24 which the employees are hired, except that, if the taxpayer does not retain the net
25 gain of employees in this state for at least 3 consecutive taxable years, or until

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1 January 1, 2008, the taxpayer shall apportion the taxpayer's remaining net income
2 as provided under pars. (a) to (e), as appropriate, and shall file amended returns to
3 reflect the change of apportionment.

4 **SECTION 7.** 71.25 (6) (a) of the statutes, as created by 2003 Wisconsin Act 37,
5 is amended to read:

6 71.25 **(6)** (a) ~~For~~ Except as provided in par. (f), for taxable years beginning
7 before January 1, 2006, an apportionment fraction composed of a sales factor under
8 sub. (9) representing 50% of the fraction, a property factor under sub. (7)
9 representing 25% of the fraction, and a payroll factor under sub. (8) representing 25%
10 of the fraction.

11 **SECTION 8.** 71.25 (6) (b) of the statutes, as created by 2003 Wisconsin Act 37,
12 is amended to read:

13 71.25 **(6)** (b) ~~For~~ Except as provided in par. (f), for taxable years beginning after
14 December 31, 2005, and before January 1, 2007, an apportionment fraction
15 composed of a sales factor under sub. (9) representing 60% of the fraction, a property
16 factor under sub. (7) representing 20% of the fraction, and a payroll factor under sub.
17 (8) representing 20% of the fraction.

18 **SECTION 9.** 71.25 (6) (c) of the statutes, as created by 2003 Wisconsin Act 37,
19 is amended to read:

20 71.25 **(6)** (c) ~~For~~ Except as provided in par. (f), for taxable years beginning after
21 December 31, 2006, and before January 1, 2008, an apportionment fraction
22 composed of a sales factor under sub. (9) representing 80% of the fraction, a property
23 factor under sub. (7) representing 10% of the fraction, and a payroll factor under sub.
24 (8) representing 10% of the fraction.

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1 **SECTION 10.** 71.25 (6) (d) of the statutes, as created by 2003 Wisconsin Act 37,
2 is amended to read:

3 71.25 **(6)** (d) ~~For~~ Except as provided in par. (f), for taxable years beginning after
4 December 31, 2007, an apportionment fraction composed of the sales factor under
5 sub. (9).

6 **SECTION 11.** 71.25 (6) (e) of the statutes, as created by 2003 Wisconsin Act 37,
7 is amended to read:

8 71.25 **(6)** (e) ~~For~~ Except as provided in par. (f), for taxable years beginning after
9 December 31, 2005, and before January 1, 2008, the apportionment fraction for the
10 remaining net income of a financial organization shall include a sales factor that
11 represents more than 50% of the apportionment fraction, as determined by rule by
12 the department. For taxable years beginning after December 31, 2007, the
13 apportionment fraction for the remaining net income of a financial organization is
14 composed of a sales factor, as determined by rule by the department.

15 **SECTION 12.** 71.25 (6) (f) of the statutes is created to read:

16 71.25 **(6)** (f) If a taxpayer who is subject to apportionment under this subsection
17 has a net gain of 100 employees in this state in any taxable year beginning after the
18 effective date of this paragraph [revisor inserts date], and before January 1, 2008,
19 the taxpayer's remaining net income may, at the taxpayer's option, be apportioned
20 to this state by an apportionment fraction composed of the sales factor under sub. (9)
21 or, for a financial organization, under par. (e) beginning with the taxable year in
22 which the employees are hired, except that, if the taxpayer does not retain the net
23 gain of employees in this state for at least 3 consecutive taxable years, or until
24 January 1, 2008, the taxpayer shall apportion the taxpayer's remaining net income

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1 as provided under pars. (a) to (e), as appropriate, and shall file amended returns to
2 reflect the change of apportionment.

3 **SECTION 13.** 71.45 (3d) (a) of the statutes, as created by 2003 Wisconsin Act 37,
4 is amended to read:

5 71.45 (3d) (a) ~~For~~ Except as provided in par. (d), for taxable years beginning
6 after December 31, 2005, and before January 1, 2007, a domestic insurer that is
7 subject to apportionment under sub. (3) and this subsection shall multiply the net
8 income figure derived by the application of sub. (2) by an apportionment fraction
9 composed of the percentage under sub. (3) (a) representing 60% of the fraction and
10 the percentage under sub. (3) (b) 1. representing 40% of the fraction.

11 **SECTION 14.** 71.45 (3d) (b) of the statutes, as created by 2003 Wisconsin Act 37,
12 is amended to read:

13 71.45 (3d) (b) ~~For~~ Except as provided in par. (d), for taxable years beginning
14 after December 31, 2006, and before January 1, 2008, a domestic insurer that is
15 subject to apportionment under sub. (3) and this subsection shall multiply the net
16 income figure derived by the application of sub. (2) by an apportionment fraction
17 composed of the percentage under sub. (3) (a) representing 80% of the fraction and
18 the percentage under sub. (3) (b) 1. representing 20% of the fraction.

19 **SECTION 15.** 71.45 (3d) (c) of the statutes, as created by 2003 Wisconsin Act 37,
20 is amended to read:

21 71.45 (3d) (c) ~~For~~ Except as provided in par. (d), for taxable years beginning
22 after December 31, 2007, a domestic insurer that is subject to apportionment under
23 sub. (3) and this subsection shall multiply the net income figure derived by the
24 application of sub. (2) by the percentage under sub. (3) (a).

25 **SECTION 16.** 71.45 (3d) (d) of the statutes is created to read:

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1 71.45 **(3d)** (d) If a taxpayer who is subject to apportionment under sub. (3) has
2 a net gain of 100 employees in this state in any taxable year beginning after the
3 effective date of this paragraph ... [revisor inserts date], and before January 1, 2008,
4 the taxpayer's remaining net income may, at the taxpayer's option, be apportioned
5 to this state by an apportionment fraction composed of the percentage under sub. (3)
6 (a) beginning with the taxable year in which the employees are hired, except that,
7 if the taxpayer does not retain the net gain of employees in this state for at least 3
8 consecutive taxable years, or until January 1, 2008, the taxpayer shall apportion the
9 taxpayer's remaining net income as provided under pars. (a) to (c), as appropriate,
10 and shall file amended returns to reflect the change of apportionment.

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(END)