

2003 DRAFTING REQUEST

Bill

Received: **10/01/2003**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **jeremey**

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

Drafter: **jkreye**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

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

Pre Topic:

No specific pre topic given

Topic:

Single sales factor; creating new jobs

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	jkreye 10/02/2003	jdyer 10/21/2003	rschluet 10/22/2003	_____	mbarman 10/22/2003	lnorthro 01/28/2004	
		jdyer 10/21/2003		_____			

01/28/2004 01:10:44 PM
Page 2

FE Sent For:

AA
Intro.

<END>

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LRB-3414

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Page 2

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<END>

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1?	jkreye	11/21 jld					
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Handwritten signatures and dates: 11/21/03, 10/21/03, and a large signature.

FE Sent For:

<END>

10-1-03

Jeremy - Jan Kanavas SB197

amendment related to creating

100 new jobs in this state = "net" jobs

retain jobs for 3 years (?)

— until single rule is
fully implemented

Commerce clause issue?



Jld

2003 BILL

in 10-2-03

SDON

D-N

Gen

1 AN ACT ...; relating to: apportioning remaining net income by using a single sales
2 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.

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.

BILL

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) ^X 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.

History: 1987 a. 312; 1987 a. 411 ss. 34 to 40, 61; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39, 189, 269; 1993 a. 112, 204, 491; 1995 a. 27; 1997 a. 27, 237; 1999 a. 9; 2003 a. 37.
8 **SECTION 2.** 71.04 (4) (b) ^X 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.

History: 1987 a. 312; 1987 a. 411 ss. 34 to 40, 61; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39, 189, 269; 1993 a. 112, 204, 491; 1995 a. 27; 1997 a. 27, 237; 1999 a. 9; 2003 a. 37.
15 **SECTION 3.** 71.04 (4) (c) ^X 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

BILL

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

History: 1987 a. 312; 1987 a. 411 ss. 34 to 40, 61; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39, 189, 269; 1993 a. 112, 204, 491; 1995 a. 27; 1997 a. 27, 237; 1999 a. 9; 2003 a. 37.

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).

History: 1987 a. 312; 1987 a. 411 ss. 34 to 40, 61; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39, 189, 269; 1993 a. 112, 204, 491; 1995 a. 27; 1997 a. 27, 237; 1999 a. 9; 2003 a. 37.

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.

History: 1987 a. 312; 1987 a. 411 ss. 34 to 40, 61; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39, 189, 269; 1993 a. 112, 204, 491; 1995 a. 27; 1997 a. 27, 237; 1999 a. 9; 2003 a. 37.

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

BILL

SECTION 6

1 which the employees are hired, except that, if the taxpayer does not retain ^{the net gain of} ~~such~~ employees in this state for at least 3 consecutive taxable years, or until January 1, 2008, the taxpayer shall apportion the taxpayer's remaining net income as provided

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

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

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

History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9; 2001 a. 16; 2003 a. 37.

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

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

History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9; 2001 a. 16; 2003 a. 37.

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

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

BILL

1 factor under sub. (7) representing 10% of the fraction, and a payroll factor under sub.
2 (8) representing 10% of the fraction.

3 History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9; 2001 a. 16; 2003 a. 37.

4 **SECTION 10.** 71.25 (6) (d) of the statutes, as created by 2003 Wisconsin Act 37,

5 is amended to read:

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

9 History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9; 2001 a. 16; 2003 a. 37.

10 **SECTION 11.** 71.25 (6) (e) of the statutes, as created by 2003 Wisconsin Act 37,

11 is amended to read:

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

19 History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9; 2001 a. 16; 2003 a. 37.

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

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

BILL

SECTION 12

1 employees in this state for at least 3 consecutive taxable years, or until January 1,

2 2008, the taxpayer shall apportion the taxpayer's remaining net income as provided

3 under pars. (a) to (e), as appropriate,

and shall file amended returns to reflect the change of apportionment

4 SECTION 13. 71.45 (3d) (a) of the statutes, as created by 2003 Wisconsin Act 37,

5 is amended to read:

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

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37.

12 SECTION 14. 71.45 (3d) (b) of the statutes, as created by 2003 Wisconsin Act 37,

13 is amended to read:

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

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37.

20 SECTION 15. 71.45 (3d) (c) of the statutes, as created by 2003 Wisconsin Act 37,

21 is amended to read:

22 71.45 (3d) (c) ~~For~~ Except as provided in par. (d), for taxable years beginning
 23 after December 31, 2007, a domestic insurer that is subject to apportionment under

BILL

1 sub. (3) and this subsection shall multiply the net income figure derived by the
2 application of sub. (2) by the percentage under sub. (3) (a).

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37.

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

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

(END)

and shall file amended returns to reflect the change of apportionment

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3414/1dn

JK: ^:...

Jkd

Senator Kanavas:

* Please review this draft carefully to ensure that it is consistent with your intent. The bill includes the jobs creation and retention provision contained in the unamended version of 2001 Senate Bill 197. Please note that the department of revenue indicated in a technical memorandum to SB[^]197 that it was concerned that the provision may violate the Commerce and Equal Protection clauses of the U.S. Constitution because the provision applies only to activities within this state. Please contact me if you have any questions.

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

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3414/1dn
JK:jld:rs

October 21, 2003

Senator Kanavas:

Please review this draft carefully to ensure that it is consistent with your intent. The bill includes the jobs creation and retention provision contained in the unamended version of 2001 Senate Bill 197. Please note that the department of revenue indicated in a technical memorandum to SB-197 that it was concerned that the provision may violate the Commerce and Equal Protection clauses of the U.S. Constitution because the provision applies only to activities within this state. Please contact me if you have any questions.

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

Northrop, Lori

From: Sen.Kanavas
Sent: Wednesday, January 28, 2004 12:55 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3414/1 Topic: Single sales factor; creating new jobs

It has been requested by <Sen.Kanavas> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-3414/1 Topic: Single sales factor; creating new jobs



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

1 EAST MAIN, SUITE 200
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 264-6948

STEPHEN R. MILLER
CHIEF

February 27, 2004

MEMORANDUM

To: Senator Kanavas

From: Joseph T. Kreye, Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **SB-450** (LRB 03-3414/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

February 16, 2004

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on AB 450: Single Sales Factor; Creating New Jobs

The Department has the following comments regarding the bill:

- Provisions that apply a more favorable treatment to companies that create jobs in the state could violate the Commerce and Equal Protection clauses of the U.S. Constitution that restrict the types of provisions a state can enact for its own benefit.
- The amendments to sections 71.04(4)(d), 71.25(6)(d), and 71.45(3d)(c) are unnecessary because all taxpayers subject to the standard apportionment formula will apportion their income based on the sales factor for taxable years beginning on or after January 1, 2008.
- In secs. 71.04(4)(f), 71.25(6)(f), and 71.45(3d)(d):
 - a. The sponsor should clarify the meaning of "net gain of 100 employees." It appears that a taxpayer could take 100 full-time positions and change them to 200 part-time positions and qualify under this provision. Also, the taxpayer could lay off 100 employees in one year and then reinstate the positions some time during the next taxable year in order to qualify for the special treatment.
 - b. It appears that a comma is missing after the words "par. (e)".
 - c. The Department recommends that this provision first apply for employees hired in taxable years beginning on January 1, 2005, rather than in taxable years beginning after the effective date of the bill. Under the current effective date, the Department would have to promulgate emergency rules for the apportionment of income of financial organizations. The 2004 corporation forms would have to have separate apportionment instructions for fiscal year filers.
 - d. The bill requires a taxpayer who does not retain employees for three years to file amended returns:
 1. There is no penalty if the taxpayer does not comply with this provision.

2. It is likely that the statute of limitations would be closed by the time the Department were to determine that the taxpayer had not retained the employees. A provision should be added to sec. 71.77 to allow the Department an additional four years after the end of the three-year period to adjust the apportionment formula for a taxpayer who does not retain employees the required length of time. For example, if a taxpayer adds 100 new employees in 2005 but lays them off in 2007, the department should have four years from the due date of the 2007 return to adjust the taxpayer's returns for 2005 and 2006.
 3. It is unclear what would happen if a taxpayer added positions that were unfilled.
- The proposed legislation makes no provision for the funding of the costs involved in administering the activities required. The Department anticipates one-time costs for computer programming and program development. If the author wishes to provide funding, appropriation language could be developed and costs allocated in the following manner:

	<u>Chapter 20</u>	<u>Amount</u>
one-time	s. 20.566 (1) (a)	\$21,000

If you have any questions regarding this technical memorandum, please contact Pam Walgren at 266-7817; for administrative costs contact Julie Feavel at 267-9892.