

2003 SENATE BILL 532

March 5, 2004 – Introduced by Senator CARPENTER, cosponsored by Representative POCAN. Referred to Committee on Economic Development, Job Creation and Housing.

1 **AN ACT** *to repeal* 71.04 (4) (a) to (e), 71.04 (4m), 71.25 (6) (a) to (e), 71.25 (6m),
2 71.45 (3d) and 71.45 (3e); *to renumber and amend* 71.04 (4) (intro.) and 71.25
3 (6) (intro.); *to consolidate, renumber and amend* 71.04 (8) (b) 1. and 2. and
4 71.25 (10) (b) 1. and 2.; and *to amend* 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04
5 (7) (d), 71.04 (8) (c), 71.04 (10), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d),
6 71.25 (10) (c), 71.25 (11), 71.45 (3) (intro.), 71.45 (3) (a), 71.45 (3) (b) 1. and 71.45
7 (3m) of the statutes; **relating to:** the repeal of single sales factor apportionment
8 of corporate income.

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 percent of the formula and the property and payroll factors each represent 25 percent 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 and the

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premium factor will be the only factor used to attribute a portion of an insurance company's income to this state.

Under this bill, the formula for attributing a portion of a corporation's income to this state will continue to have a sales factor, a property factor, and a payroll factor, rather than just a sales factor. Under this bill, the formula for attributing a portion of an insurance company's income to this state will continue to have a premium factor and a payroll factor, rather than just a premium factor.

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) (intro.) of the statutes, as affected by 2003 Wisconsin Act
2 37, is renumbered 71.04 (4) and amended to read:
3 **71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA.** Nonresident
4 individuals and nonresident estates and trusts engaged in business within and
5 without the state shall be taxed only on such income as is derived from business
6 transacted and property located within the state. The amount of such income
7 attributable to Wisconsin may be determined by an allocation and separate
8 accounting thereof, when the business of such nonresident individual or nonresident
9 estate or trust within the state is not an integral part of a unitary business, but the
10 department of revenue may permit an allocation and separate accounting in any case
11 in which it is satisfied that the use of such method will properly reflect the income
12 taxable by this state. In all cases in which allocation and separate accounting is not
13 permissible, the determination shall be made in the following manner: for all
14 businesses except ~~air carriers,~~ financial organizations, ~~telecommunications~~
15 ~~companies,~~ ~~pipeline companies,~~ public utilities, railroads, sleeping car companies
16 and car line companies there shall first be deducted from the total net income of the
17 taxpayer the part thereof (less related expenses, if any) that follows the situs of the

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1 property or the residence of the recipient. The remaining net income shall be
2 apportioned to this state by use of the following: an apportionment fraction composed
3 of a sales factor representing 50 percent of the fraction, a property factor
4 representing 25 percent of the fraction, and a payroll factor representing 25 percent
5 of the fraction.

6 **SECTION 2.** 71.04 (4) (a) to (e) of the statutes, as created by 2003 Wisconsin Act
7 37, are repealed.

8 **SECTION 3.** 71.04 (4m) of the statutes, as created by 2003 Wisconsin Act 37, is
9 repealed.

10 **SECTION 4.** 71.04 (5) (intro.) of the statutes, as affected by 2003 Wisconsin Act
11 37, is amended to read:

12 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) ~~and for taxable~~
13 ~~years beginning before January 1, 2008:~~

14 **SECTION 5.** 71.04 (6) (intro.) of the statutes, as affected by 2003 Wisconsin Act
15 37, is amended to read:

16 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) ~~and for taxable years~~
17 ~~beginning before January 1, 2008:~~

18 **SECTION 6.** 71.04 (7) (d) of the statutes, as affected by 2003 Wisconsin Act 37,
19 is amended to read:

20 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
21 state if the income-producing activity is performed in this state. If the
22 income-producing activity is performed both in and outside this state the sales shall
23 be divided between those states having jurisdiction to tax such business in
24 proportion to the direct costs of performance incurred in each such state in rendering
25 this service. Services performed in states which do not have jurisdiction to tax the

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1 business shall be deemed to have been performed in the state to which compensation
2 is allocated by ~~s. 71.04 sub. (6), 2001 stats.~~

3 **SECTION 7.** 71.04 (8) (b) 1. and 2. of the statutes, as affected by 2003 Wisconsin
4 Act 37, are consolidated, renumbered 71.04 (8) (b) and amended to read:

5 71.04 **(8)** (b) ~~For taxable years beginning before January 1, 2006, “public “Public~~
6 ~~utility”, as used in this section, means any business entity described under subd. 2.~~
7 ~~and any business entity which owns or operates any plant, equipment, property,~~
8 ~~franchise, or license for the transmission of communications or the production,~~
9 ~~transmission, sale, delivery, or furnishing of electricity, water or steam, the rates of~~
10 ~~charges for goods or services of which have been established or approved by a federal,~~
11 ~~state or local government or governmental agency. 2. In this section, for taxable~~
12 ~~years beginning after December 31, 2005, “public “Public utility” also means any~~
13 ~~business entity providing service to the public and engaged in the transportation of~~
14 ~~goods and persons for hire, as defined in s. 194.01 (4), regardless of whether or not~~
15 ~~the entity’s rates or charges for services have been established or approved by a~~
16 ~~federal, state or local government or governmental agency.~~

17 **SECTION 8.** 71.04 (8) (c) of the statutes, as affected by 2003 Wisconsin Act 37,
18 is amended to read:

19 71.04 **(8)** (c) The net business income of railroads, sleeping car companies, car
20 line companies, ~~pipeline companies,~~ financial organizations, ~~telecommunications~~
21 ~~companies,~~ ~~air carriers,~~ and public utilities requiring apportionment shall be
22 apportioned pursuant to rules of the department of revenue, but the income taxed
23 is limited to the income derived from business transacted and property located
24 within the state.

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1 **SECTION 9.** 71.04 (10) of the statutes, as affected by 2003 Wisconsin Act 37, is
2 amended to read:

3 **71.04 (10) DEPARTMENT MAY WAIVE FACTOR.** Where, in the case of any nonresident
4 individual or nonresident estate or trust engaged in business in and outside of this
5 state and required to apportion its income as provided in this section, it shall be
6 shown to the satisfaction of the department of revenue that the use of any one of the
7 3 factors provided under sub. (4) gives an unreasonable or inequitable final average
8 ratio because of the fact that such nonresident individual or nonresident estate or
9 trust does not employ, to any appreciable extent in its trade or business in producing
10 the income taxed, the factors made use of in obtaining such ratio, this factor may,
11 with the approval of the department of revenue, be omitted in obtaining the final
12 average ratio which is to be applied to the remaining net income. ~~This subsection~~
13 ~~does not apply to taxable years beginning after December 31, 2007.~~

14 **SECTION 10.** 71.25 (6) (intro.) of the statutes, as affected by 2003 Wisconsin Act
15 37, is renumbered 71.25 (6) and amended to read:

16 **71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.**
17 Corporations engaged in business within and without the state shall be taxed only
18 on such income as is derived from business transacted and property located within
19 the state. The amount of such income attributable to Wisconsin may be determined
20 by an allocation and separate accounting thereof, when the business of such
21 corporation within the state is not an integral part of a unitary business, but the
22 department of revenue may permit an allocation and separate accounting in any case
23 in which it is satisfied that the use of such method will properly reflect the income
24 taxable by this state. In all cases in which allocation and separate accounting is not
25 permissible, the determination shall be made in the following manner: for all

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1 businesses except ~~air carriers,~~ financial organizations, telecommunications
2 ~~companies, pipeline companies,~~ public utilities, railroads, sleeping car companies,
3 car line companies and corporations or associations that are subject to a tax on
4 unrelated business income under s. 71.26 (1) (a) there shall first be deducted from
5 the total net income of the taxpayer the part thereof (less related expenses, if any)
6 that follows the situs of the property or the residence of the recipient. The remaining
7 net income shall be apportioned to this state by use of ~~the following:~~ an
8 apportionment fraction composed of a sales factor under sub. (9) representing 50
9 percent of the fraction, a property factor under sub. (7) representing 25 percent of the
10 fraction, and a payroll factor under sub. (8) representing 25 percent of the fraction.

11 **SECTION 11.** 71.25 (6) (a) to (e) of the statutes, as created by 2003 Wisconsin Act
12 37, are repealed.

13 **SECTION 12.** 71.25 (6m) of the statutes, as created by 2003 Wisconsin Act 37,
14 is repealed.

15 **SECTION 13.** 71.25 (7) (intro.) of the statutes, as affected by 2003 Wisconsin Act
16 37, is amended to read:

17 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (6) ~~and for taxable~~
18 ~~years beginning before January 1, 2008:~~

19 **SECTION 14.** 71.25 (8) (intro.) of the statutes, as affected by 2003 Wisconsin Act
20 37, is amended to read:

21 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. (6) ~~and for taxable years~~
22 ~~beginning before January 1, 2008:~~

23 **SECTION 15.** 71.25 (9) (d) of the statutes, as affected by 2003 Wisconsin Act 37,
24 is amended to read:

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1 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
2 state if the income-producing activity is performed in this state. If the
3 income-producing activity is performed both in and outside this state the sales shall
4 be divided between those states having jurisdiction to tax such business in
5 proportion to the direct costs of performance incurred in each such state in rendering
6 this service. Services performed in states which do not have jurisdiction to tax the
7 business shall be deemed to have been performed in the state to which compensation
8 is allocated by ~~s. 71.25 sub. (8), 2001 stats.~~

9 **SECTION 16.** 71.25 (10) (b) 1. and 2. of the statutes, as affected by 2003
10 Wisconsin Act 37, are consolidated, renumbered 71.25 (10) (b) and amended to read:

11 71.25 (10) (b) In this section, ~~for taxable years beginning before January 1,~~
12 ~~2006,~~ “public utility” means ~~any business entity described under subd. 2. and any~~
13 business entity which owns or operates any plant, equipment, property, franchise,
14 or license for the transmission of communications or the production, transmission,
15 sale, delivery, or furnishing of electricity, water or steam the rates of charges for
16 goods or services of which have been established or approved by a federal, state or
17 local government or governmental agency. ~~2. In this section, for taxable years~~
18 ~~beginning after December 31, 2005,~~ “Public utility” also means any business
19 entity providing service to the public and engaged in the transportation of goods and
20 persons for hire, as defined in s. 194.01 (4), regardless of whether or not the entity’s
21 rates or charges for services have been established or approved by a federal, state or
22 local government or governmental agency.

23 **SECTION 17.** 71.25 (10) (c) of the statutes, as affected by 2003 Wisconsin Act 37,
24 is amended to read:

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1 71.25 **(10)** (c) The net business income of railroads, sleeping car companies, car
2 line companies, ~~pipeline companies,~~ financial organizations, telecommunications
3 ~~companies, air carriers,~~ and public utilities requiring apportionment shall be
4 apportioned pursuant to rules of the department of revenue, but the income taxed
5 is limited to the income derived from business transacted and property located
6 within the state.

7 **SECTION 18.** 71.25 (11) of the statutes, as affected by 2003 Wisconsin Act 37,
8 is amended to read:

9 71.25 **(11)** DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
10 engaged in business in and outside of this state and required to apportion its income
11 as provided in sub. (6), it shall be shown to the satisfaction of the department of
12 revenue that the use of any one of the 3 factors provided in sub. (6) gives an
13 unreasonable or inequitable final average ratio because of the fact that such
14 corporation does not employ, to any appreciable extent in its trade or business in
15 producing the income taxed, the factors made use of in obtaining such ratio, this
16 factor may, with the approval of the department of revenue, be omitted in obtaining
17 the final average ratio which is to be applied to the remaining net income. This
18 ~~subsection does not apply to taxable years beginning after December 31, 2007.~~

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

21 71.45 **(3)** APPORTIONMENT. (intro.) ~~Except as provided in sub. (3d), to~~ To
22 determine Wisconsin income for purposes of the franchise tax, domestic insurers
23 that, in the taxable year, have received premiums, other than life insurance
24 premiums, written for insurance on property or risks resident, located or to be

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1 performed outside this state shall multiply the net income figure derived by
2 application of sub. (2) by the arithmetic average of the following 2 percentages:

3 **SECTION 20.** 71.45 (3) (a) of the statutes, as affected by 2003 Wisconsin Act 37,
4 is amended to read:

5 71.45 (3) (a) ~~Subject to sub. (3d), the~~ The percentage determined by dividing
6 the sum of direct premiums written for insurance other than life insurance, with
7 respect to all property and risks resident, located, or to be performed in this state,
8 and assumed premiums written for reinsurance, other than life insurance, with
9 respect to all property and risks resident, located, or to be performed in this state,
10 by the sum of direct premiums written for insurance on all property and risks, other
11 than life insurance, wherever located, and assumed premiums written for
12 reinsurance on all property and risks, other than life insurance, wherever located.
13 In this paragraph, “direct premiums” means direct premiums as reported for the
14 taxable year on an annual statement that is filed by the insurer with the
15 commissioner of insurance under s. 601.42 (1g) (a). In this paragraph, “assumed
16 premiums” means assumed reinsurance premiums from domestic insurance
17 companies as reported for the taxable year on an annual statement that is filed with
18 the commissioner of insurance under s. 601.42 (1g) (a).

19 **SECTION 21.** 71.45 (3) (b) 1. of the statutes, as affected by 2003 Wisconsin Act
20 37, is amended to read:

21 71.45 (3) (b) 1. ~~Subject to sub. (3d), the~~ The percentage determined by dividing
22 the payroll, exclusive of life insurance payroll, paid in this state in the taxable year
23 by total payroll, exclusive of life insurance payroll, paid everywhere in the taxable
24 year.

