

**SENATE AMENDMENT 15,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 44**

June 18, 2003 – Offered by Senators BRESKE, CARPENTER, CHVALA, DECKER, ERPENBACH, GEORGE, HANSEN, JAUCH, LASSA, M. MEYER, MOORE, PLALE, RISSER, ROBSON and WIRCH.

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

2 **1.** Page 613, line 14: after that line insert:

3 “**SECTION 1580eb.** 71.04 (4) of the statutes is renumbered 71.04 (4) (intro.) and
4 amended to read:

5 71.04 **(4)** NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)
6 Nonresident individuals and nonresident estates and trusts engaged in business
7 within and without the state shall be taxed only on such income as is derived from
8 business transacted and property located within the state. The amount of such
9 income attributable to Wisconsin may be determined by an allocation and separate
10 accounting thereof, when the business of such nonresident individual or nonresident
11 estate or trust within the state is not an integral part of a unitary business, but the
12 department of revenue may permit an allocation and separate accounting in any case

1 in which it is satisfied that the use of such method will properly reflect the income
2 taxable by this state. In all cases in which allocation and separate accounting is not
3 permissible, the determination shall be made in the following manner: for all
4 businesses except air carriers, financial organizations, pipeline companies, public
5 utilities, railroads, sleeping car companies and car line companies there shall first
6 be deducted from the total net income of the taxpayer the part thereof (less related
7 expenses, if any) that follows the situs of the property or the residence of the
8 recipient. The remaining net income shall be apportioned to Wisconsin this state by
9 use of an apportionment fraction composed of a sales factor representing 50% of the
10 fraction, a property factor representing 25% of the fraction and a payroll factor
11 representing 25% of the fraction. the following:

12 **SECTION 1580ec.** 71.04 (4) (a) of the statutes is created to read:

13 71.04 (4) (a) For taxable years beginning before January 1, 2004, an
14 apportionment fraction composed of a sales factor under sub. (7) representing 50%
15 of the fraction, a property factor under sub. (5) representing 25% of the fraction, and
16 a payroll factor under sub. (6) representing 25% of the fraction.

17 **SECTION 1580ed.** 71.04 (4) (b) of the statutes is created to read:

18 71.04 (4) (b) For taxable years beginning after December 31, 2003, and before
19 January 1, 2005, an apportionment fraction composed of a sales factor under sub. (7)
20 representing 60% of the fraction, a property factor under sub. (5) representing 20%
21 of the fraction, and a payroll factor under sub. (6) representing 20% of the fraction.

22 **SECTION 1580ee.** 71.04 (4) (c) of the statutes is created to read:

23 71.04 (4) (c) For taxable years beginning after December 31, 2004, and before
24 January 1, 2006, an apportionment fraction composed of a sales factor under sub. (7)

1 representing 80% of the fraction, a property factor under sub. (5) representing 10%
2 of the fraction, and a payroll factor under sub. (6) representing 10% of the fraction.

3 **SECTION 1580ef.** 71.04 (4) (d) of the statutes is created to read:

4 71.04 (4) (d) For taxable years beginning after December 31, 2005, an
5 apportionment fraction composed of the sales factor under sub. (7).

6 **SECTION 1580eg.** 71.04 (4) (e) of the statutes is created to read:

7 71.04 (4) (e) For taxable years beginning after December 31, 2003, and before
8 January 1, 2006, the apportionment fraction for the remaining net income of a
9 financial organization shall include a sales factor that represents more than 50% of
10 the apportionment fraction, as determined by rule by the department. For taxable
11 years beginning after December 31, 2005, the apportionment fraction for the
12 remaining net income of a financial organization is composed of a sales factor, as
13 determined by rule by the department.

14 **SECTION 1580eh.** 71.04 (4m) of the statutes is created to read:

15 71.04 (4m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
16 beginning before January 1, 2006, if both the numerator and the denominator of the
17 sales factor under sub. (7) related to a taxpayer's remaining net income are zero, the
18 sales factor under sub. (7) is eliminated from the apportionment formula to
19 determine the taxpayer's remaining net income under sub. (4).

20 2. For taxable years beginning after December 31, 2005, if both the numerator
21 and the denominator of the sales factor under sub. (7) related to a taxpayer's
22 remaining net income are zero, none of the taxpayer's remaining net income is
23 apportioned to this state.

24 (b) 1. For taxable years beginning before January 1, 2006, if the numerator of
25 the sales factor under sub. (7) related to a taxpayer's remaining net income is a

1 negative number and the denominator of the sales factor under sub. (7) related to a
2 taxpayer's remaining net income is a positive number, a negative number, or zero,
3 the sales factor under sub. (7) is zero.

4 2. For taxable years beginning after December 31, 2005, if the numerator of the
5 sales factor under sub. (7) related to a taxpayer's remaining net income is a negative
6 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
7 remaining net income is a positive number, a negative number, or zero, none of the
8 taxpayer's remaining net income is apportioned to this state.

9 (c) 1. For taxable years beginning before January 1, 2006, if the numerator of
10 the sales factor under sub. (7) related to a taxpayer's remaining net income is a
11 positive number and the denominator of the sales factor under sub. (7) related to a
12 taxpayer's remaining net income is zero or a negative number, the sales factor under
13 sub. (7) is one.

14 2. For taxable years beginning after December 31, 2005, if the numerator of the
15 sales factor under sub. (7) related to a taxpayer's remaining net income is a positive
16 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
17 remaining net income is zero or a negative number, all of the taxpayer's remaining
18 net income is apportioned to this state.

19 **SECTION 1580ej.** 71.04 (5) (intro.) of the statutes is amended to read:

20 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
21 years beginning before January 1, 2006:

22 **SECTION 1580ek.** 71.04 (6) (intro.) of the statutes is amended to read:

23 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years
24 beginning before January 1, 2006:

25 **SECTION 1580eL.** 71.04 (7) (d) of the statutes is amended to read:

1 71.04 (7) (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 ~~sub. s. 71.04 (6), 2001 stats.~~

9 **SECTION 1580em.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and
10 amended to read:

11 71.04 (8) (b) 1. ~~“Public~~ For taxable years beginning before January 1, 2004,
12 “public utility”, as used in this section, means any business entity described under
13 subd. 2. and any business entity which owns or operates any plant, equipment,
14 property, franchise, or license for the transmission of communications or the
15 production, transmission, sale, delivery, or furnishing of electricity, water or steam,
16 the rates of charges for goods or services of which have been established or approved
17 by a federal, state or local government or governmental agency. “Public

18 2. In this section, for taxable years beginning after December 31, 2003, “public
19 utility” also means any business entity providing service to the public and engaged
20 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
21 regardless of whether or not the entity’s rates or charges for services have been
22 established or approved by a federal, state or local government or governmental
23 agency.

24 **SECTION 1580en.** 71.04 (8) (c) of the statutes is amended to read:

1 71.04 **(8)** (c) The net business income of railroads, sleeping car companies, car
2 line companies, pipeline companies, financial organizations, air carriers, and public
3 utilities requiring apportionment shall be apportioned pursuant to rules of the
4 department of revenue, but the income taxed is limited to the income derived from
5 business transacted and property located within the state.

6 **SECTION 1580ep.** 71.04 (10) of the statutes is amended to read:

7 71.04 **(10)** DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident
8 individual or nonresident estate or trust engaged in business ~~within in~~ and without
9 ~~the~~ outside of this state of ~~Wisconsin~~ and required to apportion its income as provided
10 in this section, it shall be shown to the satisfaction of the department of revenue that
11 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or
12 inequitable final average ratio because of the fact that such nonresident individual
13 or nonresident estate or trust does not employ, to any appreciable extent in its trade
14 or business in producing the income taxed, the factors made use of in obtaining such
15 ratio, this factor may, with the approval of the department of revenue, be omitted in
16 obtaining the final average ratio which is to be applied to the remaining net income.
17 This subsection does not apply to taxable years beginning after December 31, 2005.”.

18 **2.** Page 633, line 4: after that line insert:

19 **“SECTION 1582dpb.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.)
20 and amended to read:

21 71.25 **(6)** ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.
22 (intro.) Corporations engaged in business within and without the state shall be taxed
23 only on such income as is derived from business transacted and property located
24 within the state. The amount of such income attributable to Wisconsin may be

1 determined by an allocation and separate accounting thereof, when the business of
2 such corporation within the state is not an integral part of a unitary business, but
3 the department of revenue may permit an allocation and separate accounting in any
4 case in which it is satisfied that the use of such method will properly reflect the
5 income taxable by this state. In all cases in which allocation and separate accounting
6 is not permissible, the determination shall be made in the following manner: for all
7 businesses except air carriers, financial organizations, pipeline companies, public
8 utilities, railroads, sleeping car companies, car line companies and corporations or
9 associations that are subject to a tax on unrelated business income under s. 71.26 (1)
10 (a) there shall first be deducted from the total net income of the taxpayer the part
11 thereof (less related expenses, if any) that follows the situs of the property or the
12 residence of the recipient. The remaining net income shall be apportioned to
13 ~~Wisconsin this state~~ by use of ~~an apportionment fraction composed of a sales factor~~
14 ~~under sub. (9) representing 50% of the fraction, a property factor under sub. (7)~~
15 ~~representing 25% of the fraction and a payroll factor under sub. (8) representing 25%~~
16 ~~of the fraction.~~ the following:

17 **SECTION 1582dpc.** 71.25 (6) (a) of the statutes is created to read:

18 71.25 (6) (a) For taxable years beginning before January 1, 2004, an
19 apportionment fraction composed of a sales factor under sub. (9) representing 50%
20 of the fraction, a property factor under sub. (7) representing 25% of the fraction, and
21 a payroll factor under sub. (8) representing 25% of the fraction.

22 **SECTION 1582dpd.** 71.25 (6) (b) of the statutes is created to read:

23 71.25 (6) (b) For taxable years beginning after December 31, 2003, and before
24 January 1, 2005, an apportionment fraction composed of a sales factor under sub. (9)

1 representing 60% of the fraction, a property factor under sub. (7) representing 20%
2 of the fraction, and a payroll factor under sub. (8) representing 20% of the fraction.

3 **SECTION 1582dpe.** 71.25 (6) (c) of the statutes is created to read:

4 71.25 (6) (c) For taxable years beginning after December 31, 2004, and before
5 January 1, 2006, an apportionment fraction composed of a sales factor under sub. (9)
6 representing 80% of the fraction, a property factor under sub. (7) representing 10%
7 of the fraction, and a payroll factor under sub. (8) representing 10% of the fraction.

8 **SECTION 1582dpf.** 71.25 (6) (d) of the statutes is created to read:

9 71.25 (6) (d) For taxable years beginning after December 31, 2005, an
10 apportionment fraction composed of the sales factor under sub. (9).

11 **SECTION 1582dpg.** 71.25 (6) (e) of the statutes is created to read:

12 71.25 (6) (e) For taxable years beginning after December 31, 2003, and before
13 January 1, 2006, the apportionment fraction for the remaining net income of a
14 financial organization shall include a sales factor that represents more than 50% of
15 the apportionment fraction, as determined by rule by the department. For taxable
16 years beginning after December 31, 2005, the apportionment fraction for the
17 remaining net income of a financial organization is composed of a sales factor, as
18 determined by rule by the department.

19 **SECTION 1582dph.** 71.25 (6m) of the statutes is created to read:

20 71.25 (6m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
21 beginning before January 1, 2006, if both the numerator and the denominator of the
22 sales factor under sub. (9) related to a taxpayer's remaining net income are zero, the
23 sales factor under sub. (9) is eliminated from the apportionment formula to
24 determine the taxpayer's remaining net income under sub. (6).

1 2. For taxable years beginning after December 31, 2005, if both the numerator
2 and the denominator of the sales factor under sub. (9) related to a taxpayer's
3 remaining net income are zero, none of the taxpayer's remaining net income is
4 apportioned to this state.

5 (b) 1. For taxable years beginning before January 1, 2006, if the numerator of
6 the sales factor under sub. (9) related to a taxpayer's remaining net income is a
7 negative number and the denominator of the sales factor under sub. (9) related to a
8 taxpayer's remaining net income is a positive number, a negative number, or zero,
9 the sales factor under sub. (9) is zero.

10 2. For taxable years beginning after December 31, 2005, if the numerator of the
11 sales factor under sub. (9) related to a taxpayer's remaining net income is a negative
12 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
13 remaining net income is a positive number, a negative number, or zero, none of the
14 taxpayer's remaining net income is apportioned to this state.

15 (c) 1. For taxable years beginning before January 1, 2006, if the numerator of
16 the sales factor under sub. (9) related to a taxpayer's remaining net income is a
17 positive number and the denominator of the sales factor under sub. (9) related to a
18 taxpayer's remaining net income is zero or a negative number, the sales factor under
19 sub. (9) is one.

20 2. For taxable years beginning after December 31, 2005, if the numerator of the
21 sales factor under sub. (9) related to a taxpayer's remaining net income is a positive
22 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
23 remaining net income is zero or a negative number, all of the taxpayer's remaining
24 net income is apportioned to this state.

25 **SECTION 1582dpi.** 71.25 (7) (intro.) of the statutes is amended to read:

1 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
2 years beginning before January 1, 2006:

3 **SECTION 1582dpj.** 71.25 (8) (intro.) of the statutes is amended to read:

4 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
5 years beginning before January 1, 2006:

6 **SECTION 1582dpjm.** 71.25 (9) (a) of the statutes is amended to read:

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

18 **SECTION 1582dpk.** 71.25 (9) (d) of the statutes is amended to read:

19 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
20 state if the income-producing activity is performed in this state. If the
21 income-producing activity is performed both in and outside this state the sales shall
22 be divided between those states having jurisdiction to tax such business in
23 proportion to the direct costs of performance incurred in each such state in rendering
24 this service. Services performed in states which do not have jurisdiction to tax the

1 business shall be deemed to have been performed in the state to which compensation
2 is allocated by ~~sub. s. 71.25 (8), 2001 stats.~~

3 **SECTION 1582dpL.** 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b)
4 1. and amended to read:

5 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,
6 2004, “public utility” means any business entity described under subd. 2. and any
7 business entity which owns or operates any plant, equipment, property, franchise,
8 or license for the transmission of communications or the production, transmission,
9 sale, delivery, or furnishing of electricity, water or steam the rates of charges for
10 goods or services of which have been established or approved by a federal, state or
11 local government or governmental agency. ~~“Public~~

12 2. In this section, for taxable years beginning after December 31, 2003, “public
13 utility” ~~also~~ means any business entity providing service to the public and engaged
14 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
15 regardless of whether or not the entity’s rates or charges for services have been
16 established or approved by a federal, state or local government or governmental
17 agency.

18 **SECTION 1582dpm.** 71.25 (10) (c) of the statutes is amended to read:

19 71.25 (10) (c) The net business income of railroads, sleeping car companies, car
20 line companies, pipeline companies, financial organizations, air carriers, and public
21 utilities requiring apportionment shall be apportioned pursuant to rules of the
22 department of revenue, but the income taxed is limited to the income derived from
23 business transacted and property located within the state.

24 **SECTION 1582dpm.** 71.25 (11) of the statutes is amended to read:

1 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
2 engaged in business ~~within in~~ and ~~without the~~ outside of this state of Wisconsin and
3 required to apportion its income as provided in sub. (6), it shall be shown to the
4 satisfaction of the department of revenue that the use of any one of the 3 factors
5 provided in sub. (6) gives an unreasonable or inequitable final average ratio because
6 of the fact that such corporation does not employ, to any appreciable extent in its
7 trade or business in producing the income taxed, the factors made use of in obtaining
8 such ratio, this factor may, with the approval of the department of revenue, be
9 omitted in obtaining the final average ratio which is to be applied to the remaining
10 net income. This subsection does not apply to taxable years beginning after
11 December 31, 2005.

12 **SECTION 1582dpo.** 71.255 of the statutes is created to read:

13 **71.255 Combined reporting. (1) DEFINITIONS.** In this section:

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

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

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

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

1 1. A parent corporation and any corporation or chain of corporations that are
2 connected to the parent corporation by direct or indirect ownership by the parent
3 corporation if the parent corporation owns stock representing more than 50% of the
4 voting power of at least one of the connected corporations or if the parent corporation
5 or any of the connected corporations owns stock that cumulatively represents more
6 than 50% of the voting power of each of the connected corporations.

7 2. Any 2 or more corporations if a common owner directly or indirectly owns
8 stock representing more than 50% of the voting power of the corporations or the
9 connected corporations.

10 3. A partnership or limited liability company if a parent corporation or any
11 corporation connected to the parent corporation by common ownership directly or
12 indirectly owns more than a 50% interest in the capital and profits of the partnership
13 or limited liability company.

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

16 5. Any 2 or more corporations if stock representing more than 50% of the voting
17 power in each corporation is directly owned by, or for the benefit of, family members.
18 In this subdivision, “family members” means an individual related by blood,
19 marriage, or adoption within the 2nd degree of kinship as computed under s. 852.03
20 (2), 1995 stats., or the spouse of such an individual.

21 6. A corporation, partnership, or limited liability company if a parent
22 corporation or any corporation connected to the parent corporation by common
23 ownership does not hold more than a 50% ownership interest in the corporation,
24 partnership, or limited liability company but effectively controls the corporation,
25 partnership, or limited liability company.

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

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

3 (g) “Designated agent” means the taxpayer member of a commonly controlled
4 group who files a group return on behalf of the taxpayer members of a combined
5 reporting group.

6 (h) “Group return” means a tax return filed on behalf of the taxpayer members
7 of a combined reporting group.

8 (i) “Intercompany transaction” means a transaction between corporations,
9 partnerships, or limited liability companies that become members of the same
10 combined reporting group immediately after the transaction.

11 (im) “Partnership” means any entity considered a partnership under section
12 7701 of the Internal Revenue Code.

13 (j) “Separate return” means a return filed by a corporation, regardless of
14 whether the corporation is a member of a combined reporting group or is required
15 to file a tax return under s. 71.24 or 71.44.

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

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

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

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

19 1. Any corporation organized or incorporated under the laws of the United
20 States, any state of the United States, the District of Columbia, the Commonwealth
21 of Puerto Rico, any possession of the United States, or any political subdivision of the
22 United States, including corporations under sections 931 to 936 of the Internal
23 Revenue Code.

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

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

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

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

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

14 (b) A corporation that is subject to the tax imposed under s. 71.23 (1) or (2) or
15 71.43, that is a member of a commonly controlled group, and that is engaged, in whole
16 or in part, in a unitary business with one or more members of the commonly
17 controlled group may, subject to sub. (6), compute the corporation's income
18 attributable to this state by using the income computation under s. 71.26 or 71.45,
19 the apportionment formula under s. 71.25 (6) or 71.45, and the tax credits under s.
20 71.28 or 71.47 of all the members of the commonly controlled group, regardless of the
21 country in which any member of the commonly controlled group is organized or
22 incorporated or conducts business, if all top tier corporations that are members of the
23 commonly controlled group elect under sub. (3) to compute the corporation's income
24 as provided under this paragraph.

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

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

17 (c) Except as provided under par. (d), the members of the commonly controlled
18 group subject to an election under this subsection shall compute their income under
19 sub. (2) (b) for 7 taxable years, beginning with the taxable year designated under par.
20 (b). Thereafter, the members of the commonly controlled group shall compute their
21 income under sub. (2) (b) for periods of 7 taxable years and until any top tier
22 corporation that is a member of the commonly controlled group notifies the
23 department, in a manner prescribed by the department, before the last day of the last
24 taxable year in any period of 7 taxable years that the top tier corporation is
25 terminating the election under this subsection. A termination under this paragraph

1 takes effect on the first day of the first taxable year beginning after the top tier
2 corporation notifies the department under this paragraph.

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

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

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

18 **(4) ACCOUNTING PERIOD.** For purposes of this section, the income under ss. 71.26
19 and 71.45, the apportionment factors under ss. 71.25 and 71.45 and the tax credits
20 under ss. 71.28 and 71.47 of all corporations that are members of a combined
21 reporting group shall be determined by using the same accounting period. If the
22 combined reporting group has a common parent corporation, the accounting period
23 of the common parent corporation shall be used to determine the income, the
24 apportionment factors, and the tax credits of all the corporations that are members
25 of the combined reporting group. If the combined reporting group has no common

1 parent corporation, the income, the apportionment factors, and the tax credits of the
2 combined reporting group shall be determined using the accounting period of the
3 member of the combined reporting group that has the most significant operations on
4 a recurring basis in this state, as determined by the department.

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

14 (b) *Corporations with different accounting periods.* Corporations that are
15 required to file a combined report and that have different accounting periods shall
16 file separate returns and shall use the actual figures from the corporations' financial
17 records to determine the proper income and income-related computations to convert
18 to a common accounting period. Corporations that are required to file a combined
19 report may use a proportional method to convert income to a common accounting
20 period if the results of the proportional method do not materially misrepresent the
21 income apportioned to this state. The apportionment factors under ss. 71.25 and
22 71.45 and the tax credits under ss. 71.28 and 71.47 shall be computed according to
23 the same method used to determine the income under ss. 71.26 and 71.45 for the
24 common accounting period. If a corporation performs an interim closing of its
25 financial records to determine the income attributable to the common accounting

1 period, the actual figures from the interim closing shall be used to convert the
2 apportionment factors and tax credits to the common accounting period.

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

20 2. The designated agent shall file the group return under par. (a), shall file for
21 any extensions under s. 71.24 (7) or 71.44 (3), shall file amended reports and claims
22 for refund or credit, and shall send and receive all correspondence with the
23 department regarding a group return. Any notice the department sends to the
24 designated agent is considered a notice sent to all members of the combined reporting
25 group. Any refund with respect to a group return shall be paid to and in the name

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

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

22 1. If the corporation is required to file 2 or more short period federal returns
23 for the common accounting period, the income for the short period that the
24 corporation was a member of a combined reporting group shall be determined as
25 provided under sub. (2), the corporation shall join in filing a combined report for that

1 short period, and the corporation may join in filing a group return for that short
2 period. The income for the remaining short period shall be reported on a separate
3 return under s. 71.26 or 71.45. If the corporation becomes a member of another
4 combined reporting group in the remaining short period, the corporation's income
5 shall be determined for the remaining short period as provided under sub. (2).

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

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

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

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

16 1. If an election to file a group return that is in effect for a taxable year is
17 revoked for the taxable year because the combined reporting group that filed the
18 group return is not subject to sub. (2), as determined by the department, the
19 designated agent for the combined reporting group may not file an amended group
20 return. The designated agent and each corporation that joined in filing the group
21 return shall file a separate amended return. To compute the tax due on a separate
22 amended return, a corporation that files a separate amended return shall consider
23 all of the payments, credits, or other amounts, including refunds, that the designated
24 agent allocated to the corporation.

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

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

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

14 (a) Determine the net income of each member of a combined reporting group
15 under s. 71.26 or 71.45, as appropriate, before deducting net business losses. A
16 member of a combined reporting group may determine its net loss or net income
17 under a method of accounting or an election authorized under s. 71.26 (3) (y), 71.30
18 (1), 71.45 (2) (a) 13., or 71.49 (2), as appropriate, regardless of the accounting method
19 used to determine the net loss or net income of other members of the combined
20 reporting group. After a member establishes an accounting method, or makes any
21 election under this section, the member's net loss or net income shall be consistently
22 determined in the combined report of all members of the combined reporting group
23 and in the group return filed by the taxpayer members or in the separate return filed
24 by the members. If a corporation is engaged in 2 or more trades or businesses that
25 are required to use different apportionment formulas under s. 71.25 or 71.45, the net

1 income for each trade or business shall be computed separately. A unitary business
2 with operations in a foreign country shall compute its net loss or net income as
3 provided by rule by the department.

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

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

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

15 2. Annual rent paid by a member of the combined reporting group to another
16 member of the combined reporting group.

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

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

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

1 6. Except as provided by rule by the department, dividends paid out of earnings
2 or profits and paid by a member of the combined reporting group to another member
3 of the combined reporting group.

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

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

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

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

15 (f) For each corporation, combine the amounts determined under par. (e) for
16 each trade or business.

17 (g) To the amounts determined under par. (f), add each member's
18 nonapportionable income attributable to this state and subtract each member's
19 nonapportionable losses attributable to this state.

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

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

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

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

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

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

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

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

23 (d) Compute each corporation's apportionment factors by dividing the
24 corporation's numerator as determined under par. (b) by the combined denominator
25 as determined under par. (c).

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

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

14 (c) A corporation that is a member of a combined reporting group and that
15 incurred a Wisconsin net business loss in a taxable year beginning before January
16 1, 2004, that has not been offset against the corporation's net income in subsequent
17 taxable years, may offset the remaining net business loss against the corporation's
18 net income as determined under sub. (6). If the corporation joins in filing a group
19 return under sub. (5) and the corporation's remaining net business loss exceeds the
20 corporation's net income as determined under sub. (6) for the first taxable year
21 beginning after December 31, 2003, that the corporation is subject to this section, the
22 corporation may annually offset up to 20% of the remaining net business loss against
23 the net income of the other members of the combined reporting group that join in
24 filing a group return under sub. (5).

1 **(9) NET INCOME OR LOSS FOR CORPORATIONS WITH DIFFERENT ACCOUNTING PERIODS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 3. To determine the separate items under subs. 1. and 2., if a corporation is
23 a member of a combined reporting group during a portion of a common accounting
24 period in which the corporation becomes a member of another combined reporting
25 group, the corporation's separate items shall include the separate items that are

1 attributed to the corporation by the designated agent of the first combined reporting
2 group.

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

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

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

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

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

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

23 **(15) PRESUMPTIONS AND BURDEN OF PROOF.** A commonly controlled group shall
24 be presumed to be engaged in a unitary business and all of the income of the unitary
25 business shall be presumed to be apportionable business income under this section.

1 A corporation, partnership, or limited liability company has the burden of proving
2 that it is not a member of a commonly controlled group that is subject to this section.
3 The department shall promulgate rules to implement this subsection.

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

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

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

19 **(17) CORPORATIONS NOT FILING.** If a corporation that is required to report under
20 this section directly or indirectly owns or controls any other corporation, or is directly
21 or indirectly owned or controlled by another corporation, the department may
22 require that such other corporations join in filing a combined report under this
23 section.”.

24 **3.** Page 655, line 2: after that line insert:

1 **“SECTION 1582dyb.** 71.26 (3) (x) of the statutes is amended to read:

2 71.26 **(3)** (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
3 consolidated returns) are excluded, except to the extent that they pertain to
4 intercompany transactions and the carry forward of net business loss under s. 71.255
5 and except that they are modified so that more than 50% ownership is substituted
6 for at least 80% ownership.

7 **SECTION 1582dyc.** 71.26 (4) of the statutes is amended to read:

8 71.26 **(4)** NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option
9 corporation or an insurer to which s. 71.45 (4) applies, may offset against its
10 Wisconsin net business income any Wisconsin net business loss sustained in any of
11 the next 15 preceding taxable years, if the corporation was subject to taxation under
12 this chapter in the taxable year in which the loss was sustained, to the extent not
13 offset by other items of Wisconsin income in the loss year and by Wisconsin net
14 business income of any year between the loss year and the taxable year for which an
15 offset is claimed. For purposes of this subsection Wisconsin net business income or
16 loss shall consist of all the income attributable to the operation of a trade or business
17 in this state, less the business expenses allowed as deductions in computing net
18 income. The Wisconsin net business income or loss of corporations engaged in
19 business within and without the state shall be determined under s. 71.255 or 71.25
20 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25
21 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income
22 having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be
23 included in other items of Wisconsin income and Wisconsin net business income for
24 purposes of this subsection.

25 **SECTION 1582dyd.** 71.29 (2) of the statutes is amended to read:

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

4 **4.** Page 674, line 18: after that line insert:

5 “**SECTION 1583dpc.** 71.44 (1) (a) of the statutes is amended to read:

6 71.44 (1) (a) ~~Every~~ Except as provided in par. (e), every corporation, except
7 corporations all of whose income is exempt from taxation and except as provided in
8 sub. (1m), shall furnish to the department a true and accurate statement, on or before
9 March 15 of each year, except that returns for fiscal years ending on some other date
10 than December 31 shall be furnished on or before the 15th day of the 3rd month
11 following the close of such fiscal year and except that returns for less than a full
12 taxable year shall be furnished on or before the date applicable for federal income
13 taxes under the internal revenue code, in such manner and form and setting forth
14 such facts as the department deems necessary to enforce this chapter. Every
15 corporation that is required to furnish a statement under this paragraph and that
16 has income that is not taxable under this subchapter shall include with its statement
17 a report that identifies each item of its nontaxable income. The statement shall be
18 subscribed by the president, vice president, treasurer, assistant treasurer, chief
19 accounting officer or any other officer duly authorized so to act. In the case of a return
20 made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The
21 fact that an individual’s name is subscribed on the return shall be prima facie
22 evidence that the individual is authorized to subscribe the return on behalf of the
23 corporation.

24 **SECTION 1583dpc.** 71.44 (1) (e) of the statutes is created to read:

1 71.44 (1) (e) A corporation that is a member of a commonly controlled group,
2 as defined in s. 71.255 (1) (d), and engaged in a unitary business, as defined in s.
3 71.255 (1) (m), shall file a tax return under s. 71.255.

4 **SECTION 1583dpd.** 71.45 (3) (intro.) of the statutes is amended to read:

5 71.45 (3) APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in sub. (3d),
6 to determine Wisconsin income for purposes of the franchise tax, domestic insurers
7 ~~not engaged in the sale of life insurance but which that,~~ in the taxable year, have
8 ~~collected~~ received premiums, ~~other than life insurance premiums,~~ written on
9 ~~subjects of~~ for insurance on property or risks resident, located or to be performed
10 outside this state, ~~there shall be subtracted from~~ multiply the net income figure
11 derived by application of sub. (2) (a) ~~to arrive at Wisconsin income constituting the~~
12 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~
13 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:

14 **SECTION 1583dpe.** 71.45 (3) (a) of the statutes is amended to read:

15 71.45 (3) (a) ~~The~~ Subject to sub. (3d), the percentage of total determined by
16 dividing the sum of direct premiums written ~~on all property and risks for insurance~~
17 other than life insurance, with respect to all property and risks resident, located, or
18 to be performed in this state, and assumed premiums written for reinsurance, other
19 than life insurance, with respect to all property and risks resident, located, or to be
20 performed in this state, by the sum of direct premiums written for insurance on all
21 property and risks, other than life insurance, wherever located during the taxable
22 year, as reflects, and assumed premiums written ~~on insurance for reinsurance on all~~
23 property and risks, other than life insurance, ~~where the subject of insurance was~~
24 resident, located or to be performed outside this state wherever located. In this
25 paragraph, “direct premiums” means direct premiums as reported for the taxable

1 year on an annual statement that is filed by the insurer with the commissioner of
2 insurance under s. 601.42 (1g) (a). In this paragraph, “assumed premiums” means
3 assumed reinsurance premiums from domestic insurance companies as reported for
4 the taxable year on an annual statement that is filed with the commissioner of
5 insurance under s. 601.42 (1g) (a).

6 **SECTION 1583dpf.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1.
7 and amended to read:

8 71.45 (3) (b) 1. The Subject to sub. (3d), the percentage of determined by
9 dividing the payroll, exclusive of life insurance payroll, paid in this state in the
10 taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in
11 the taxable year as reflects such compensation paid outside this state.
12 Compensation.

13 2. Under subd. 1., payroll is paid outside in this state if the individual's service
14 is performed entirely outside in this state; or the individual's service is performed
15 both ~~within and without~~ in and outside of this state, but the service performed within
16 outside of this state is incidental to the individual's service ~~without~~ in this state; or
17 some service is performed ~~without~~ in this state and the base of operations, or if there
18 is no base of operations, the place from which the service is directed or controlled is
19 ~~without~~ in this state, or the base of operations or the place from which the service is
20 directed or controlled is not in any state in which some part of the service is
21 performed, but the individual's residence is ~~outside~~ in this state.

22 **SECTION 1583dpg.** 71.45 (3d) of the statutes is created to read:

23 71.45 (3d) PHASE IN; DOMESTIC INSURERS. (a) For taxable years beginning after
24 December 31, 2003, and before January 1, 2005, a domestic insurer that is subject
25 to apportionment under sub. (3) and this subsection shall multiply the net income

1 figure derived by the application of sub. (2) by an apportionment fraction composed
2 of the percentage under sub. (3) (a) representing 60% of the fraction and the
3 percentage under sub. (3) (b) 1. representing 40% of the fraction.

4 (b) For taxable years beginning after December 31, 2004, and before January
5 1, 2008, a domestic insurer that is subject to apportionment under sub. (3) and this
6 subsection shall multiply the net income figure derived by the application of sub. (2)
7 by an apportionment fraction composed of the percentage under sub. (3) (a)
8 representing 80% of the fraction and the percentage under sub. (3) (b) 1. representing
9 20% of the fraction.

10 (c) For taxable years beginning after December 31, 2005, a domestic insurer
11 that is subject to apportionment under sub. (3) and this subsection shall multiply the
12 net income figure derived by the application of sub. (2) by the percentage under sub.
13 (3) (a).

14 **SECTION 1583dph.** 71.45 (3e) of the statutes is created to read:

15 71.45 (3e) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
16 beginning before January 1, 2006, if both the numerator and the denominator used
17 to determine the percentage under sub. (3) (a) related to a taxpayer's net income are
18 zero, the percentage under sub. (3) (a) is eliminated from the apportionment formula
19 to determine the taxpayer's income under sub. (3).

20 2. For taxable years beginning after December 31, 2005, if both the numerator
21 and the denominator used to determine the percentage under sub. (3) (a) related to
22 a taxpayer's net income are zero, none of the taxpayer's net income is apportioned
23 to this state.

24 (b) 1. For taxable years beginning before January 1, 2006, if the numerator
25 used to determine the percentage under sub. (3) (a) related to a taxpayer's net income

1 is a negative number and the denominator used to determine the percentage under
2 sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number,
3 or zero, the percentage under sub. (3) (a) is zero.

4 2. For taxable years beginning after December 31, 2005, if the numerator used
5 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
6 a negative number and the denominator used to determine the percentage under
7 sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number,
8 or zero, none of the taxpayer's net income is apportioned to this state.

9 (c) 1. For taxable years beginning before January 1, 2006, if the numerator used
10 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
11 a positive number and the denominator used to determine the percentage under sub.
12 (3) (a) related to a taxpayer's net income is zero or a negative number, the percentage
13 under sub. (3) (a) is one.

14 2. For taxable years beginning after December 31, 2005, if the numerator used
15 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
16 a positive number and the denominator used to determine the percentage under sub.
17 (3) (a) related to a taxpayer's net income is zero or a negative number, all of the
18 taxpayer's net income is apportioned to this state.

19 **SECTION 1583dpi.** 71.45 (3m) of the statutes is amended to read:

20 71.45 (3m) ARITHMETIC AVERAGE. ~~The~~ Except as provided in sub. (3d), the
21 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the
22 net income figure arrived at by the successive application of sub. (2) (a) and (b) with
23 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have
24 collected received premiums, other than life insurance premiums, written upon for
25 insurance, other than life insurance, where the subject of such insurance was on

1 property or risks resident, located or to be performed outside this state, to arrive at
2 Wisconsin income constituting the measure of the franchise tax.

3 **SECTION 1583dpj.** 71.46 (3) of the statutes is repealed.

4 **SECTION 1583dpk.** 71.48 of the statutes is amended to read:

5 **71.48 Payments of estimated taxes.** Sections Except as provided in s.
6 71.255 (11), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under
7 this chapter.”.

8 **5.** Page 677, line 25: after that line insert:

9 “**SECTION 1590m.** 71.84 (2) (a) of the statutes is amended to read:

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

21 **6.** Page 1072, line 14: after that line insert:

22 “(10wx) ESTIMATE OF INCREASED GENERAL PURPOSE REVENUES; SENIOR CARE
23 PROGRAM.

1 (a) Upon receipt of the report specified under SECTION 9145 (1wx), the
2 department of health and family services shall provide to the joint committee on
3 finance all of the following:

4 1. Any recommended decreases in copayments, deductibles, or enrollment fees
5 or any recommended income level eligibility changes for participants in the program
6 of prescription drug assistance for elderly persons under section 49.688 of the
7 statutes, as affected by this act.

8 2. Any recommended increases in the appropriation account under section
9 20.435 (4) (bv) of the statutes for fiscal years 2005–06 and 2006–07.

10 3. Any statutory language changes necessary to effect subdivision 1.

11 (b) The joint committee on finance shall incorporate the recommendations
12 under paragraph (a) into its consideration of the allocation of revenues and
13 expenditures of the biennial budget bill for the 2005–07 biennium.”.

14 **7.** Page 1090, line 1: before that line insert:

15 “(1ww) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. The
16 department of revenue shall submit in proposed form rules related to the
17 apportionment of the income of financial organizations under sections 71.04 (4) (e)
18 and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff
19 under section 227.15 (1) of the statutes no later than the first day of the 4th month
20 beginning after the effective date of this subsection.

21 (1wx) ESTIMATE OF INCREASED GENERAL PURPOSE REVENUES; SENIOR CARE
22 PROGRAM. By April 15, 2005, the department of revenue shall determine the amounts
23 of any estimated increased general purpose revenues for fiscal years 2005–06 and
24 2006–07 resulting from application of the single sales factor apportionment under

1 sections 71.04 (4) (d), 71.25 (6) (d), and 71.45 (3d) of the statutes, as created by this
2 act, and the combined reporting required under section 71.255 of the statutes, as
3 created by this act, and shall report these amounts to the department of health and
4 family services.”.

5 **8.** Page 1139, line 6: after that line insert:

6 “(2ww) SINGLE SALES FACTOR APPORTIONMENT. The treatment of section 71.45 (3)
7 (intro.), (a), and (b) and (3m) of the statutes first applies to taxable years beginning
8 after December 31, 2003.

9 (2wx) COMBINED REPORTING. The treatment of sections 71.25 (9) (a), 71.255,
10 71.26 (3) (x) and (4), 71.29 (2), 71.44 (1) (e), 71.46 (3), 71.48, and 71.84 (2) (a) of the
11 statutes first applies to taxable years beginning on January 1, 2004.”.

12

(END)