

2003 Senate Bill 197

Date of enactment: **July 31, 2003**
Date of publication*: **August 14, 2003**

2003 WISCONSIN ACT 37

AN ACT *to renumber and amend* 71.04 (4), 71.04 (8) (b), 71.25 (6), 71.25 (10) (b) and 71.45 (3) (b); *to amend* 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04 (7) (d), 71.04 (8) (c), 71.04 (10), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d), 71.25 (10) (c), 71.25 (11), 71.45 (3) (intro.), 71.45 (3) (a) and 71.45 (3m); and *to create* 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4) (e), 71.04 (4m), 71.25 (6) (a), 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d), 71.25 (6) (e), 71.25 (6m), 71.45 (3d) and 71.45 (3e) of the statutes; **relating to:** single sales factor apportionment of income for corporate income tax and franchise tax purposes and granting rule-making authority.

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

SECTION 1. 71.04 (4) of the statutes is renumbered 71.04 (4) (intro.) and amended to read:

71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.) Nonresident individuals and nonresident estates and trusts engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such nonresident individual or nonresident estate or trust within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all businesses except air carriers, financial organizations, telecommunications companies,

pipeline companies, public utilities, railroads, sleeping car companies and car line companies there shall first be deducted from the total net income of the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property or the residence of the recipient. The remaining net income shall be apportioned to Wisconsin this state by use of an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. the following:

SECTION 2. 71.04 (4) (a) of the statutes is created to read:

71.04 (4) (a) For taxable years beginning before January 1, 2006, an apportionment fraction composed of a sales factor under sub. (7) representing 50% of the fraction, a property factor under sub. (5) representing 25% of the fraction, and a payroll factor under sub. (6) representing 25% of the fraction.

SECTION 3. 71.04 (4) (b) of the statutes is created to read:

71.04 (4) (b) For taxable years beginning after December 31, 2005, and before January 1, 2007, an apportionment fraction composed of a sales factor under sub. (7) representing 60% of the fraction, a property fac-

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

tor under sub. (5) representing 20% of the fraction, and a payroll factor under sub. (6) representing 20% of the fraction.

SECTION 4. 71.04 (4) (c) of the statutes is created to read:

71.04 (4) (c) For taxable years beginning after December 31, 2006, and before January 1, 2008, an apportionment fraction composed of a sales factor under sub. (7) representing 80% of the fraction, a property factor under sub. (5) representing 10% of the fraction, and a payroll factor under sub. (6) representing 10% of the fraction.

SECTION 5. 71.04 (4) (d) of the statutes is created to read:

71.04 (4) (d) For taxable years beginning after December 31, 2007, an apportionment fraction composed of the sales factor under sub. (7).

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

71.04 (4) (e) For taxable years beginning after December 31, 2005, and before January 1, 2008, the apportionment fraction for the remaining net income of a financial organization shall include a sales factor that represents more than 50% of the apportionment fraction, as determined by rule by the department. For taxable years beginning after December 31, 2007, the apportionment fraction for the remaining net income of a financial organization is composed of a sales factor, as determined by rule by the department.

SECTION 7. 71.04 (4m) of the statutes is created to read:

71.04 (4m) APPORTIONMENT FORMULA COMPUTATION.

(a) 1. For taxable years beginning before January 1, 2008, if both the numerator and the denominator of the sales factor under sub. (7) related to a taxpayer's remaining net income are zero, the sales factor under sub. (7) is eliminated from the apportionment formula to determine the taxpayer's remaining net income under sub. (4).

2. For taxable years beginning after December 31, 2007, if both the numerator and the denominator of the sales factor under sub. (7) related to a taxpayer's remaining net income are zero, none of the taxpayer's remaining net income is apportioned to this state.

(b) 1. For taxable years beginning before January 1, 2008, if the numerator of the sales factor under sub. (7) related to a taxpayer's remaining net income is a negative number and the denominator of the sales factor under sub. (7) related to a taxpayer's remaining net income is a positive number, a negative number, or zero, the sales factor under sub. (7) is zero.

2. For taxable years beginning after December 31, 2007, if the numerator of the sales factor under sub. (7) related to a taxpayer's remaining net income is a negative number and the denominator of the sales factor under sub. (7) related to a taxpayer's remaining net income is a positive number, a negative number, or zero, none of the

taxpayer's remaining net income is apportioned to this state.

(c) 1. For taxable years beginning before January 1, 2008, if the numerator of the sales factor under sub. (7) related to a taxpayer's remaining net income is a positive number and the denominator of the sales factor under sub. (7) related to a taxpayer's remaining net income is zero or a negative number, the sales factor under sub. (7) is one.

2. For taxable years beginning after December 31, 2007, if the numerator of the sales factor under sub. (7) related to a taxpayer's remaining net income is a positive number and the denominator of the sales factor under sub. (7) related to a taxpayer's remaining net income is zero or a negative number, all of the taxpayer's remaining net income is apportioned to this state.

SECTION 8. 71.04 (5) (intro.) of the statutes is amended to read:

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

SECTION 9. 71.04 (6) (intro.) of the statutes is amended to read:

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

SECTION 10. 71.04 (7) (d) of the statutes is amended to read:

71.04 (7) (d) Sales, other than sales of tangible personal property, are in this state if the income-producing activity is performed in this state. If the income-producing activity is performed both in and outside this state the sales shall be divided between those states having jurisdiction to tax such business in proportion to the direct costs of performance incurred in each such state in rendering this service. Services performed in states which do not have jurisdiction to tax the business shall be deemed to have been performed in the state to which compensation is allocated by ~~sub. s. 71.04 (6), 2001 stats.~~

SECTION 11. 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and amended to read:

71.04 (8) (b) 1. "Public For taxable years beginning before January 1, 2006, "public utility", as used in this section, means any business entity described under subd. 2. and any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications or the production, transmission, sale, delivery, or furnishing of electricity, water or steam, the rates of charges for goods or services of which have been established or approved by a federal, state or local government or governmental agency. "Public

2. In this section, for taxable years beginning after December 31, 2005, "public utility" also means any business entity providing service to the public and engaged in the transportation of goods and persons for hire, as

defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges for services have been established or approved by a federal, state or local government or governmental agency.

SECTION 12. 71.04 (8) (c) of the statutes is amended to read:

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

SECTION 13. 71.04 (10) of the statutes is amended to read:

71.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident individual or nonresident estate or trust engaged in business ~~within~~ in and ~~without~~ the outside of this state of Wisconsin and required to apportion its income as provided in this section, it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or inequitable final average ratio because of the fact that such nonresident individual or nonresident estate or trust does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income. This subsection does not apply to taxable years beginning after December 31, 2007.

SECTION 14. 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and amended to read:

71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA. (intro.) Corporations engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such corporation within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all businesses except air carriers, financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, sleeping car companies, car line companies and corporations or associations that are subject to a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted from the total net income of

the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property or the residence of the recipient. The remaining net income shall be apportioned to ~~Wisconsin~~ this state by use of an ~~apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.~~ the following:

SECTION 15. 71.25 (6) (a) of the statutes is created to read:

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

SECTION 16. 71.25 (6) (b) of the statutes is created to read:

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

SECTION 17. 71.25 (6) (c) of the statutes is created to read:

71.25 (6) (c) For taxable years beginning after December 31, 2006, and before January 1, 2008, an apportionment fraction composed of a sales factor under sub. (9) representing 80% of the fraction, a property factor under sub. (7) representing 10% of the fraction, and a payroll factor under sub. (8) representing 10% of the fraction.

SECTION 18. 71.25 (6) (d) of the statutes is created to read:

71.25 (6) (d) For taxable years beginning after December 31, 2007, an apportionment fraction composed of the sales factor under sub. (9).

SECTION 19. 71.25 (6) (e) of the statutes is created to read:

71.25 (6) (e) For taxable years beginning after December 31, 2005, and before January 1, 2008, the apportionment fraction for the remaining net income of a financial organization shall include a sales factor that represents more than 50% of the apportionment fraction, as determined by rule by the department. For taxable years beginning after December 31, 2007, the apportionment fraction for the remaining net income of a financial organization is composed of a sales factor, as determined by rule by the department.

SECTION 20. 71.25 (6m) of the statutes is created to read:

71.25 (6m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years beginning before January 1,

2008, if both the numerator and the denominator of the sales factor under sub. (9) related to a taxpayer's remaining net income are zero, the sales factor under sub. (9) is eliminated from the apportionment formula to determine the taxpayer's remaining net income under sub. (6).

2. For taxable years beginning after December 31, 2007, if both the numerator and the denominator of the sales factor under sub. (9) related to a taxpayer's remaining net income are zero, none of the taxpayer's remaining net income is apportioned to this state.

(b) 1. For taxable years beginning before January 1, 2008, if the numerator of the sales factor under sub. (9) related to a taxpayer's remaining net income is a negative number and the denominator of the sales factor under sub. (9) related to a taxpayer's remaining net income is a positive number, a negative number, or zero, the sales factor under sub. (9) is zero.

2. For taxable years beginning after December 31, 2007, if the numerator of the sales factor under sub. (9) related to a taxpayer's remaining net income is a negative number and the denominator of the sales factor under sub. (9) related to a taxpayer's remaining net income is a positive number, a negative number, or zero, none of the taxpayer's remaining net income is apportioned to this state.

(c) 1. For taxable years beginning before January 1, 2008, if the numerator of the sales factor under sub. (9) related to a taxpayer's remaining net income is a positive number and the denominator of the sales factor under sub. (9) related to a taxpayer's remaining net income is zero or a negative number, the sales factor under sub. (9) is one.

2. For taxable years beginning after December 31, 2007, if the numerator of the sales factor under sub. (9) related to a taxpayer's remaining net income is a positive number and the denominator of the sales factor under sub. (9) related to a taxpayer's remaining net income is zero or a negative number, all of the taxpayer's remaining net income is apportioned to this state.

SECTION 21. 71.25 (7) (intro.) of the statutes is amended to read:

71.25 (7) **PROPERTY FACTOR.** (intro.) For purposes of sub. (5) (6) and for taxable years beginning before January 1, 2008:

SECTION 22. 71.25 (8) (intro.) of the statutes is amended to read:

71.25 (8) **PAYROLL FACTOR.** (intro.) For purposes of sub. (5) (6) and for taxable years beginning before January 1, 2008:

SECTION 23. 71.25 (9) (d) of the statutes is amended to read:

71.25 (9) (d) Sales, other than sales of tangible personal property, are in this state if the income-producing activity is performed in this state. If the income-producing activity is performed both in and outside this state the sales shall be divided between those states having juris-

dition to tax such business in proportion to the direct costs of performance incurred in each such state in rendering this service. Services performed in states which do not have jurisdiction to tax the business shall be deemed to have been performed in the state to which compensation is allocated by ~~sub. s. 71.25 (8), 2001 stats.~~

SECTION 24. 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and amended to read:

71.25 (10) (b) 1. In this section, for taxable years beginning before January 1, 2006, "public utility" means any business entity described under subd. 2. and any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications or the production, transmission, sale, delivery, or furnishing of electricity, water or steam the rates of charges for goods or services of which have been established or approved by a federal, state or local government or governmental agency. "Public

2. In this section, for taxable years beginning after December 31, 2005, "public utility" also means any business entity providing service to the public and engaged in the transportation of goods and persons for hire, as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges for services have been established or approved by a federal, state or local government or governmental agency.

SECTION 25. 71.25 (10) (c) of the statutes is amended to read:

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

SECTION 26. 71.25 (11) of the statutes is amended to read:

71.25 (11) **DEPARTMENT MAY WAIVE FACTOR.** Where, in the case of any corporation engaged in business ~~within in and without the outside of this~~ state of Wisconsin and required to apportion its income as provided in sub. (6), it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided in sub. (6) gives an unreasonable or inequitable final average ratio because of the fact that such corporation does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income. This subsection does not apply to taxable years beginning after December 31, 2007.

SECTION 27. 71.45 (3) (intro.) of the statutes is amended to read:

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

SECTION 28. 71.45 (3) (a) of the statutes is amended to read:

71.45 (3) (a) ~~The Subject to sub. (3d), the percentage of total determined by dividing the sum of direct premiums written on all property and risks for insurance other than life insurance, with respect to all property and risks resident, located, or to be performed in this state, and assumed premiums written for reinsurance, other than life insurance, with respect to all property and risks resident, located, or to be performed in this state, by the sum of direct premiums written for insurance on all property and risks, other than life insurance, wherever located during the taxable year, as reflects, and assumed premiums written on insurance for reinsurance on all property and risks, other than life insurance, where the subject of insurance was resident, located or to be performed outside this state wherever located. In this paragraph, "direct premiums" means direct premiums as reported for the taxable year on an annual statement that is filed by the insurer with the commissioner of insurance under s. 601.42 (1g) (a). In this paragraph, "assumed premiums" means assumed reinsurance premiums from domestic insurance companies as reported for the taxable year on an annual statement that is filed with the commissioner of insurance under s. 601.42 (1g) (a).~~

SECTION 29. 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and amended to read:

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

2. ~~Under subd. 1., payroll is paid outside in this state if the individual's service is performed entirely outside in this state; or the individual's service is performed both within and without in and outside of this state, but the service performed within outside of this state is incidental to the individual's service without in this state; or some service is performed without in this state and the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is without~~

in this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is ~~outside~~ in this state.

SECTION 30. 71.45 (3d) of the statutes is created to read:

71.45 (3d) PHASE IN; DOMESTIC INSURERS. (a) For taxable years beginning after December 31, 2005, and before January 1, 2007, a domestic insurer that is subject to apportionment under sub. (3) and this subsection shall multiply the net income figure derived by the application of sub. (2) by an apportionment fraction composed of the percentage under sub. (3) (a) representing 60% of the fraction and the percentage under sub. (3) (b) 1. representing 40% of the fraction.

(b) For taxable years beginning after December 31, 2006, and before January 1, 2008, a domestic insurer that is subject to apportionment under sub. (3) and this subsection shall multiply the net income figure derived by the application of sub. (2) by an apportionment fraction composed of the percentage under sub. (3) (a) representing 80% of the fraction and the percentage under sub. (3) (b) 1. representing 20% of the fraction.

(c) For taxable years beginning after December 31, 2007, a domestic insurer that is subject to apportionment under sub. (3) and this subsection shall multiply the net income figure derived by the application of sub. (2) by the percentage under sub. (3) (a).

SECTION 31. 71.45 (3e) of the statutes is created to read:

71.45 (3e) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years beginning before January 1, 2008, if both the numerator and the denominator used to determine the percentage under sub. (3) (a) related to a taxpayer's net income are zero, the percentage under sub. (3) (a) is eliminated from the apportionment formula to determine the taxpayer's income under sub. (3).

2. For taxable years beginning after December 31, 2007, if both the numerator and the denominator used to determine the percentage under sub. (3) (a) related to a taxpayer's net income are zero, none of the taxpayer's net income is apportioned to this state.

(b) 1. For taxable years beginning before January 1, 2008, if the numerator used to determine the percentage under sub. (3) (a) related to a taxpayer's net income is a negative number and the denominator used to determine the percentage under sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number, or zero, the percentage under sub. (3) (a) is zero.

2. For taxable years beginning after December 31, 2007, if the numerator used to determine the percentage under sub. (3) (a) related to a taxpayer's net income is a negative number and the denominator used to determine the percentage under sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number, or

zero, none of the taxpayer's net income is apportioned to this state.

(c) 1. For taxable years beginning before January 1, 2008, if the numerator used to determine the percentage under sub. (3) (a) related to a taxpayer's net income is a positive number and the denominator used to determine the percentage under sub. (3) (a) related to a taxpayer's net income is zero or a negative number, the percentage under sub. (3) (a) is one.

2. For taxable years beginning after December 31, 2007, if the numerator used to determine the percentage under sub. (3) (a) related to a taxpayer's net income is a positive number and the denominator used to determine the percentage under sub. (3) (a) related to a taxpayer's net income is zero or a negative number, all of the taxpayer's net income is apportioned to this state.

SECTION 32. 71.45 (3m) of the statutes is amended to read:

71.45 (3m) ARITHMETIC AVERAGE. ~~The Except as provided in sub. (3d), the~~ arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the net income figure arrived at by the successive application of sub. (2) (a) and (b) with respect to Wisconsin insurers to

which sub. (2) (a) and (b) applies and which have ~~collected received~~ premiums, ~~other than life insurance premiums,~~ written upon for insurance, ~~other than life insurance,~~ where the subject of such insurance was ~~on property or risks~~ resident, located or to be performed outside this state, to arrive at Wisconsin income constituting the measure of the franchise tax.

SECTION 33. Nonstatutory provisions; revenue.

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

SECTION 34. Initial applicability.

(1) SINGLE SALES FACTOR APPORTIONMENT. The treatment of section 71.45 (3) (intro.), (a), and (b) and (3m) of the statutes first applies to taxable years beginning after December 31, 2005.