



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2520/P2

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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

in 5-16-03

by Monday
5-19-03

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

Analysis by the Legislative Reference Bureau

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

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

Under current law, the income of an electric or gas utility is apportioned by rules established by the Department of Revenue (DOR). Under the bill, for taxable years beginning after December 31, 2005, and before January 1, 2008, the income of an electric or gas utility is apportioned in the same manner as the income of a corporation under the bill. Beginning on January 1, 2008, the sales factor will be the only factor used to attribute a portion of the income of an electric or gas utility to this state.

Under current law, the income of a financial organization is apportioned, for corporate income tax and franchise tax purposes, by rules established by DOR. Under the bill, for taxable years beginning after December 31, 2005, and before January 1, 2008, the income of a financial organization is apportioned by multiplying that income by a fraction that includes a sales factor representing more than 50% of the fraction, as determined by rule by DOR. For taxable years beginning after December 31, 2007, the income of a financial organization is apportioned by using a sales factor, as determined by DOR.

Under current law and under the bill, the income of air carriers and pipeline companies is apportioned by rules established by DOR.

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

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

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

3 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)
4 Nonresident individuals and nonresident estates and trusts engaged in business
5 within and without the state shall be taxed only on such income as is derived from
6 business transacted and property located within the state. The amount of such
7 income attributable to Wisconsin may be determined by an allocation and separate

1 accounting thereof, when the business of such nonresident individual or nonresident
 2 estate or trust within the state is not an integral part of a unitary business, but the
 3 department of revenue may permit an allocation and separate accounting in any case
 4 in which it is satisfied that the use of such method will properly reflect the income
 5 taxable by this state. In all cases in which allocation and separate accounting is not
 6 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 and car line companies there shall first
 9 be deducted from the total net income of the taxpayer the part thereof (less related
 10 expenses, if any) that follows the situs of the property or the residence of the
 11 recipient. The remaining net income shall be apportioned to ~~Wisconsin~~ this state by
 12 use of ~~an apportionment fraction composed of a sales factor representing 50% of the~~
 13 ~~fraction, a property factor representing 25% of the fraction and a payroll factor~~
 14 ~~representing 25% of the fraction.~~ the following:

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

16 71.04 (4) (a) ~~For~~ ^{Except as provided in par. (f), for} taxable years beginning before January 1, 2006, an
 17 apportionment fraction composed of a sales factor under sub. (7) representing 50%
 18 of the fraction, a property factor under sub. (5) representing 25% of the fraction, and
 19 a payroll factor under sub. (6) representing 25% of the fraction.

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

21 71.04 (4) (b) ~~For~~ taxable years beginning after December 31, 2005, and before
 22 January 1, 2007, an apportionment fraction composed of a sales factor under sub. (7)
 23 representing 60% of the fraction, a property factor under sub. (5) representing 20%
 24 of the fraction, and a payroll factor under sub. (6) representing 20% of the fraction.

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

Except as provided in par. (A), for part.

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

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

6 71.04 (4) (d) ~~for~~ taxable years beginning after December 31, 2007, an
7 apportionment fraction composed of the sales factor under sub. (7).

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

9 71.04 (4) (e) ~~for~~ taxable years beginning after December 31, 2005, and before
10 January 1, 2008, the apportionment fraction for the remaining net income of a
11 financial organization shall include a sales factor that represents more than 50% of
12 the apportionment fraction, as determined by rule by the department. For taxable
13 years beginning after December 31, 2007, the apportionment fraction for the
14 remaining net income of a financial organization is composed of a sales factor, as
15 determined by rule by the department.

16 **SECTION #** 71.04 (4m) of the statutes is created to read:

17 71.04 (4m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
18 beginning before January 1, 2008, if both the numerator and the denominator of the
19 sales factor under sub. (7) related to a taxpayer's remaining net income are zero, the
20 sales factor under sub. (7) is eliminated from the apportionment formula to
21 determine the taxpayer's remaining net income under sub. (4).

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

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

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

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

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

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

22 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
23 years beginning before January 1, 2008:

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

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

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

4 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
5 state if the income-producing activity is performed in this state. If the
6 income-producing activity is performed both in and outside this state the sales shall
7 be divided between those states having jurisdiction to tax such business in
8 proportion to the direct costs of performance incurred in each such state in rendering
9 this service. Services performed in states which do not have jurisdiction to tax the
10 business shall be deemed to have been performed in the state to which compensation
11 is allocated by ~~sub. s. 71.04 (6), 2001 stats.~~

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

14 71.04 (8) (b) 1. ~~Public~~ For taxable years beginning before January 1, 2006,
15 “public utility”, as used in this section, means any business entity described under
16 subd. 2. and any business entity which owns or operates any plant, equipment,
17 property, franchise, or license for the transmission of communications or the
18 production, transmission, sale, delivery, or furnishing of electricity, water or steam,
19 the rates of charges for goods or services of which have been established or approved
20 by a federal, state or local government or governmental agency. “Public

21 2. In this section, for taxable years beginning after December 31, 2005, “public
22 utility” also means any business entity providing service to the public and engaged
23 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
24 regardless of whether or not the entity’s rates or charges for services have been

1 established or approved by a federal, state or local government or governmental
2 agency.

3 SECTION ~~12~~[#] 71.04 (8) (c) of the statutes is amended to read:

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

9 SECTION ~~13~~[#] 71.04 (10) of the statutes is amended to read:

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

21 SECTION ~~14~~[#] 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and
22 amended to read:

23 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.
24 (intro.) Corporations engaged in business within and without the state shall be taxed
25 only on such income as is derived from business transacted and property located

1 within the state. The amount of such income attributable to Wisconsin may be
2 determined by an allocation and separate accounting thereof, when the business of
3 such corporation within the state is not an integral part of a unitary business, but
4 the department of revenue may permit an allocation and separate accounting in any
5 case in which it is satisfied that the use of such method will properly reflect the
6 income taxable by this state. In all cases in which allocation and separate accounting
7 is not permissible, the determination shall be made in the following manner: for all
8 businesses except air carriers, financial organizations, pipeline companies, public
9 utilities, railroads, sleeping car companies, car line companies and corporations or
10 associations that are subject to a tax on unrelated business income under s. 71.26 (1)

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

18 SECTION ~~15~~[#]. 71.25 (6) (a) of the statutes is created to read:

19 71.25 (6) (a) ~~For~~ taxable years beginning before January 1, 2006, an
20 apportionment fraction composed of a sales factor under sub. (9) representing 50%
21 of the fraction, a property factor under sub. (7) representing 25% of the fraction, and
22 a payroll factor under sub. (8) representing 25% of the fraction.

23 SECTION ~~16~~[#]. 71.25 (6) (b) of the statutes is created to read:

24 71.25 (6) (b) ~~For~~ taxable years beginning after December 31, 2005, and before
25 January 1, 2007, an apportionment fraction composed of a sales factor under sub. (9)

Except as provided in par. (f), for

Except as provided in par. (A), for

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

4 71.25 (6) (c) ~~from~~ taxable years beginning after December 31, 2006, and before
5 January 1, 2008, 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 ~~18~~ 71.25 (6) (d) of the statutes is created to read:

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

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

12 71.25 (6) (e) ~~from~~ taxable years beginning after December 31, 2005, and before
13 January 1, 2008, 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, 2007, 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 ~~20~~ 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, 2008, 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).

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1 2. For taxable years beginning after December 31, 2007, 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, 2008, 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, 2007, 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, 2008, 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, 2007, 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 ~~21~~[#] 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, 2008:

3 SECTION ~~22~~ [#] 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, 2008:

6 SECTION ~~23~~ [#] 71.25 (9) (d) of the statutes is amended to read:

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

15 SECTION ~~24~~ [#] 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and
16 amended to read:

17 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,
18 2006, “public utility” means any business entity described under subd. 2. and any
19 business entity which owns or operates any plant, equipment, property, franchise,
20 or license for the transmission of communications or the production, transmission,
21 sale, delivery, or furnishing of electricity, water or steam the rates of charges for
22 goods or services of which have been established or approved by a federal, state or
23 local government or governmental agency. “Public

24 2. In this section, for taxable years beginning after December 31, 2005, “public
25 utility” also means any business entity providing service to the public and engaged

1 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
2 regardless of whether or not the entity's rates or charges for services have been
3 established or approved by a federal, state or local government or governmental
4 agency.

5 SECTION ~~25~~[#]. 71.25 (10) (c) of the statutes is amended to read:

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

11 SECTION ~~26~~[#]. 71.25 (11) of the statutes is amended to read:

12 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
13 engaged in business ~~within in~~ and ~~without the~~ outside this state of Wisconsin and
14 required to apportion its income as provided in sub. (6), it shall be shown to the
15 satisfaction of the department of revenue that the use of any one of the 3 factors
16 provided in sub. (6) gives an unreasonable or inequitable final average ratio because
17 of the fact that such corporation does not employ, to any appreciable extent in its
18 trade or business in producing the income taxed, the factors made use of in obtaining
19 such ratio, this factor may, with the approval of the department of revenue, be
20 omitted in obtaining the final average ratio which is to be applied to the remaining
21 net income. This subsection does not apply to taxable years beginning after
22 December 31, 2007.

23 SECTION ~~27~~[#]. 71.45 (3) (intro.) of the statutes is amended to read:

24 71.45 (3) APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in sub. (3d),
25 to determine Wisconsin income for purposes of the franchise tax, domestic insurers

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

8 **SECTION ~~28~~[#].** 71.45 (3) (a) of the statutes is amended to read:

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

1 SECTION ~~29~~[#] 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and
2 amended to read:

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

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

17 SECTION ~~30~~[#] 71.45 (3d) of the statutes is created to read:

18 71.45 (3d) PHASE IN; DOMESTIC INSURERS. (a) ~~for~~ taxable years beginning after
19 December 31, 2005, and before January 1, 2007, a domestic insurer that is subject
20 to apportionment under sub. (3) and this subsection shall multiply the net income
21 figure derived by the application of sub. (2) by an apportionment fraction composed
22 of the percentage under sub. (3) (a) representing 60% of the fraction and the
23 percentage under sub. (3) (b) 1. representing 40% of the fraction.

24 (b) ~~for~~ taxable years beginning after December 31, 2006, and before January
25 1, 2008, a domestic insurer that is subject to apportionment under sub. (3) and this

Except as provided in par. (d), for

Except as provided in par. (d), for

1 subsection shall multiply the net income figure derived by the application of sub. (2)
2 by an apportionment fraction composed of the percentage under sub. (3) (a)
3 representing 80% of the fraction and the percentage under sub. (3) (b) 1. representing
4 20% of the fraction.

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

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

10 71.45 (3e) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
11 beginning before January 1, 2008, if both the numerator and the denominator used
12 to determine the percentage under sub. (3) (a) related to a taxpayer's net income are
13 zero, the percentage under sub. (3) (a) is eliminated from the apportionment formula
14 to determine the taxpayer's income under sub. (3).

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

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

24 2. For taxable years beginning after December 31, 2007, if the numerator used
25 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is

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

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

9 2. For taxable years beginning after December 31, 2007, 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, all of the
13 taxpayer's net income is apportioned to this state.

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

15 71.45 (3m) ARITHMETIC AVERAGE. ~~The~~ Except as provided in sub. (3d), the
16 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the
17 net income figure arrived at by the successive application of sub. (2) (a) and (b) with
18 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have
19 collected received premiums, other than life insurance premiums, written upon for
20 insurance, other than life insurance, where the subject of such insurance was on
21 property or risks resident, located or to be performed outside this state, to arrive at
22 Wisconsin income constituting the measure of the franchise tax.

23 SECTION ~~33~~ # 33. Nonstatutory provisions; revenue.

24 (1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. The
25 department of revenue shall submit in proposed form rules related to the

1 appportionment of the income of financial organizations under sections 71.04 (4) (e)
2 and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff
3 under section 227.15 (1) of the statutes no later than the first day of the 4th month
4 beginning after the effective date of this subsection.

5 **SECTION ~~33~~ 34. Initial applicability.**

6 (1) 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, 2005.

9 (END)

Insert 4 - 15

1 ~~SECTION 1~~ 71.04 (4) (f) of the statutes is created to read:

2 71.04 (4) (f) If a taxpayer who is subject to apportionment under this subsection
3 has a net gain of 100 employees in this state in any taxable year beginning after
4 December 31, 2005, and before January 1, 2008, the taxpayer's remaining net income
5 shall be apportioned to this state by an apportionment fraction composed of the sales
6 factor under sub. (7) or, for a financial organization, under par. (e) beginning with the
7 taxable year in which the employees are hired, except that if the taxpayer does not
8 retain such employees for at least 3 consecutive taxable years, the taxpayer shall
9 apportion the taxpayer's remaining net income as provided under pars. (a) to (e), as
10 appropriate.

Insert 9 - 18

11 ~~SECTION 2~~ 71.25 (6) (f) of the statutes is created to read:

12 71.25 (6) (f) If a taxpayer who is subject to apportionment under this subsection
13 has a net gain of 100 employees in this state in any taxable year beginning after
14 December 31, 2005, and before January 1, 2008, the taxpayer's remaining net income
15 shall be apportioned to this state by an apportionment fraction composed of the sales
16 factor under sub. (9) or, for a financial organization, under par. (e) beginning with the
17 taxable year in which the employees are hired, except that if the taxpayer does not
18 retain such employees for at least 3 consecutive taxable years, the taxpayer shall
19 apportion the taxpayer's remaining net income as provided under pars. (a) to (e), as
20 appropriate.

Insert 15 - 8

sub. (3)

1 (d) If a taxpayer who is subject to apportionment under ~~this subsection~~ has a
2 net gain of 100 employees in this state in any taxable year beginning after December
3 31, 2005, and before January 1, 2008, the taxpayer's remaining net income shall be
4 apportioned to this state by an apportionment fraction composed of the percentage
5 under sub. (3) (a) beginning with the taxable year in which the employees are hired,
6 except that if the taxpayer does not retain such employees for at least 3 consecutive
7 taxable years, the taxpayer shall apportion the taxpayer's remaining net income as
8 provided under pars. (a) to (c), as appropriate.

Jeremy

2520/1

1) p 4 - L 22 - starting on 10 effective

2) make optional not mandatory

p 4 L 23 "may" "with the option"

3) p. 5 L 1 - employees "in this state"



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2520/1
JK:kjf:jf

RM not R

2003 BILL

M 5-16-03

Regen

Mon.
5-19

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

Analysis by the Legislative Reference Bureau

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

BILL

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

Under current law, the income of an electric or gas utility is apportioned by rules established by the Department of Revenue (DOR). Under the bill, for taxable years beginning after December 31, 2005, and before January 1, 2008, the income of an electric or gas utility is apportioned in the same manner as the income of a corporation under the bill. Beginning on January 1, 2008, the sales factor will be the only factor used to attribute a portion of the income of an electric or gas utility to this state.

Under current law, the income of a financial organization is apportioned, for corporate income tax and franchise tax purposes, by rules established by DOR. Under the bill, for taxable years beginning after December 31, 2005, and before January 1, 2008, the income of a financial organization is apportioned by multiplying that income by a fraction that includes a sales factor representing more than 50% of the fraction, as determined by rule by DOR. For taxable years beginning after December 31, 2007, the income of a financial organization is apportioned by using a sales factor, as determined by DOR.

Under current law and under the bill, the income of air carriers and pipeline companies is apportioned by rules established by DOR.

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

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

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

3 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)
4 Nonresident individuals and nonresident estates and trusts engaged in business
5 within and without the state shall be taxed only on such income as is derived from
6 business transacted and property located within the state. The amount of such
7 income attributable to Wisconsin may be determined by an allocation and separate

BILL

1 accounting thereof, when the business of such nonresident individual or nonresident
2 estate or trust within the state is not an integral part of a unitary business, but the
3 department of revenue may permit an allocation and separate accounting in any case
4 in which it is satisfied that the use of such method will properly reflect the income
5 taxable by this state. In all cases in which allocation and separate accounting is not
6 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 and car line companies there shall first
9 be deducted from the total net income of the taxpayer the part thereof (less related
10 expenses, if any) that follows the situs of the property or the residence of the
11 recipient. The remaining net income shall be apportioned to ~~Wisconsin~~ this state by
12 use of ~~an apportionment fraction composed of a sales factor representing 50% of the~~
13 ~~fraction, a property factor representing 25% of the fraction and a payroll factor~~
14 ~~representing 25% of the fraction.~~ the following:

15 **SECTION 2.** 71.04 (4)[✓](a) of the statutes is created to read:

16 71.04 (4) (a) Except as provided in par. (f), for taxable years beginning before
17 January 1, 2006, an apportionment fraction composed of a sales factor under sub. (7)
18 representing 50% of the fraction, a property factor under sub. (5) representing 25%
19 of the fraction, and a payroll factor under sub. (6) representing 25% of the fraction.

20 **SECTION 3.** 71.04 (4)[✓](b) of the statutes is created to read:

21 71.04 (4) (b) Except as provided in par. (f), for taxable years beginning after
22 December 31, 2005, and before January 1, 2007, an apportionment fraction
23 composed of a sales factor under sub. (7) representing 60% of the fraction, a property
24 factor under sub. (5) representing 20% of the fraction, and a payroll factor under sub.
25 (6) representing 20% of the fraction.

BILL

1 SECTION 4. 71.04[✓](4) (c) of the statutes is created to read:

2 71.04 (4) (c) Except as provided in par. (f), for taxable years beginning after
3 December 31, 2006, and before January 1, 2008, an apportionment fraction
4 composed of a sales factor under sub. (7) representing 80% of the fraction, a property
5 factor under sub. (5) representing 10% of the fraction, and a payroll factor under sub.
6 (6) representing 10% of the fraction.

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

8 71.04 (4) (d) Except as provided in par. (f), for taxable years beginning after
9 December 31, 2007, an apportionment fraction composed of the sales factor under
10 sub. (7).

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

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

19 SECTION 7. 71.04 (4)[✓](f) of the statutes is created to read:

20 71.04 (4) (f) If a taxpayer who is subject to apportionment under this subsection
21 has a net gain of 100 employees in this state in any taxable year beginning after

22 ~~December 31, 2005,~~ and before January 1, 2008, the taxpayer's remaining net income
23 ~~shall~~ ^{may, at the taxpayer's option,} be apportioned to this state by an apportionment fraction composed of the sales
24 factor under sub. (7) or, for a financial organization, under par. (e) beginning with the
25 taxable year in which the employees are hired, except that if the taxpayer does not
the effective date of this paragraph... [revisor inserts date]

BILL

1 retain such employees ^{in this state} for at least 3 consecutive taxable years, the taxpayer shall
2 apportion the taxpayer's remaining net income as provided under pars. (a) to (e), as
3 appropriate.

4 **SECTION 8.** 71.04 (4m) of the statutes is created to read:

5 **71.04 (4m) APPORTIONMENT FORMULA COMPUTATION.** (a) 1. For taxable years
6 beginning before January 1, 2008, if both the numerator and the denominator of the
7 sales factor under sub. (7) related to a taxpayer's remaining net income are zero, the
8 sales factor under sub. (7) is eliminated from the apportionment formula to
9 determine the taxpayer's remaining net income under sub. (4).

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

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

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

24 (c) 1. For taxable years beginning before January 1, 2008, if the numerator of
25 the sales factor under sub. (7) related to a taxpayer's remaining net income is a

BILL**SECTION 8**

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

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

9 **SECTION 9.** 71.04 (5) (intro.) of the statutes is amended to read:

10 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
11 years beginning before January 1, 2008:

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

13 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years
14 beginning before January 1, 2008:

15 **SECTION 11.** 71.04 (7) (d) of the statutes is amended to read:

16 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
17 state if the income-producing activity is performed in this state. If the
18 income-producing activity is performed both in and outside this state the sales shall
19 be divided between those states having jurisdiction to tax such business in
20 proportion to the direct costs of performance incurred in each such state in rendering
21 this service. Services performed in states which do not have jurisdiction to tax the
22 business shall be deemed to have been performed in the state to which compensation
23 is allocated by ~~sub. s.~~ 71.04 (6), 2001 stats.

24 **SECTION 12.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and
25 amended to read:

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

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

14 **SECTION 13.** 71.04 (8) (c) of the statutes is amended to read:

15 71.04 (8) (c) The net business income of railroads, sleeping car companies, car
16 line companies, pipeline companies, financial organizations, air carriers, and public
17 utilities requiring apportionment shall be apportioned pursuant to rules of the
18 department of revenue, but the income taxed is limited to the income derived from
19 business transacted and property located within the state.

20 **SECTION 14.** 71.04 (10) of the statutes is amended to read:

21 71.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident
22 individual or nonresident estate or trust engaged in business ~~within in~~ and ~~without~~
23 the outside this state of Wisconsin and required to apportion its income as provided
24 in this section, it shall be shown to the satisfaction of the department of revenue that
25 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or

BILL**SECTION 14**

1 inequitable final average ratio because of the fact that such nonresident individual
2 or nonresident estate or trust does not employ, to any appreciable extent in its trade
3 or business in producing the income taxed, the factors made use of in obtaining such
4 ratio, this factor may, with the approval of the department of revenue, be omitted in
5 obtaining the final average ratio which is to be applied to the remaining net income.

6 This subsection does not apply to taxable years beginning after December 31, 2007.

7 **SECTION 15.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and
8 amended to read:

9 **71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.**
10 (intro.) Corporations engaged in business within and without the state shall be taxed
11 only on such income as is derived from business transacted and property located
12 within the state. The amount of such income attributable to Wisconsin may be
13 determined by an allocation and separate accounting thereof, when the business of
14 such corporation within the state is not an integral part of a unitary business, but
15 the department of revenue may permit an allocation and separate accounting in any
16 case in which it is satisfied that the use of such method will properly reflect the
17 income taxable by this state. In all cases in which allocation and separate accounting
18 is not permissible, the determination shall be made in the following manner: for all
19 businesses except air carriers, financial organizations, pipeline companies, public
20 utilities, railroads, sleeping car companies, car line companies and corporations or
21 associations that are subject to a tax on unrelated business income under s. 71.26 (1)
22 (a) there shall first be deducted from the total net income of the taxpayer the part
23 thereof (less related expenses, if any) that follows the situs of the property or the
24 residence of the recipient. The remaining net income shall be apportioned to
25 Wisconsin this state by use of an apportionment fraction composed of a sales factor

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1 ~~under sub. (9) representing 50% of the fraction, a property factor under sub. (7)~~
2 ~~representing 25% of the fraction and a payroll factor under sub. (8) representing 25%~~
3 ~~of the fraction. the following:~~

4 **SECTION 16.** 71.25 (6) (a) of the statutes is created to read:

5 71.25 (6) (a) Except as provided in par. (f), for taxable years beginning before
6 January 1, 2006, an apportionment fraction composed of a sales factor under sub. (9)
7 representing 50% of the fraction, a property factor under sub. (7) representing 25%
8 of the fraction, and a payroll factor under sub. (8) representing 25% of the fraction.

9 **SECTION 17.** 71.25 (6) (b) of the statutes is created to read:

10 71.25 (6) (b) Except as provided in par. (f), for taxable years beginning after
11 December 31, 2005, and before January 1, 2007, an apportionment fraction
12 composed of a sales factor under sub. (9) representing 60% of the fraction, a property
13 factor under sub. (7) representing 20% of the fraction, and a payroll factor under sub.
14 (8) representing 20% of the fraction.

15 **SECTION 18.** 71.25 (6) (c) of the statutes is created to read:

16 71.25 (6) (c) Except as provided in par. (f), for taxable years beginning after
17 December 31, 2006, and before January 1, 2008, an apportionment fraction
18 composed of a sales factor under sub. (9) representing 80% of the fraction, a property
19 factor under sub. (7) representing 10% of the fraction, and a payroll factor under sub.
20 (8) representing 10% of the fraction.

21 **SECTION 19.** 71.25 (6) (d) of the statutes is created to read:

22 71.25 (6) (d) Except as provided in par. (f), for taxable years beginning after
23 December 31, 2007, an apportionment fraction composed of the sales factor under
24 sub. (9).

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

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the effective date of this paragraph SECTION 20
[revisor inserts date]

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

8 **SECTION 21.** 71.25 (6) (f) of the statutes is created to read:

9 71.25 (6) (f) If a taxpayer who is subject to apportionment under this subsection
10 has a net gain of 100 employees in this state in any taxable year beginning after

11 ~~December 31, 2005~~ and before January 1, 2008, the taxpayer's remaining net income
12 ~~shall~~ *may, at the taxpayer's option,* be apportioned to this state by an apportionment fraction composed of the sales
13 factor under sub. (9) or, for a financial organization, under par. (e) beginning with the
14 taxable year in which the employees are hired, except that if the taxpayer does not
15 retain such employees *in this state* for at least 3 consecutive taxable years, the taxpayer shall
16 apportion the taxpayer's remaining net income as provided under pars. (a) to (e), as
17 appropriate.

18 **SECTION 22.** 71.25 (6m) of the statutes is created to read:

19 71.25 (6m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
20 beginning before January 1, 2008, if both the numerator and the denominator of the
21 sales factor under sub. (9) related to a taxpayer's remaining net income are zero, the
22 sales factor under sub. (9) is eliminated from the apportionment formula to
23 determine the taxpayer's remaining net income under sub. (6).

24 2. For taxable years beginning after December 31, 2007, if both the numerator
25 and the denominator of the sales factor under sub. (9) related to a taxpayer's

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

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

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

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

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

23 **SECTION 23.** 71.25 (7) (intro.) of the statutes is amended to read:

24 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
25 years beginning before January 1, 2008:

BILL**SECTION 24**

1 **SECTION 24.** 71.25[✓] (8) (intro.) of the statutes is amended to read:

2 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
3 years beginning before January 1, 2008:

4 **SECTION 25.** 71.25[✓] (9) (d) of the statutes is amended to read:

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

13 **SECTION 26.** 71.25[✓] (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and
14 amended to read:

15 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,
16 2006, “public utility” means any business entity described under subd. 2. and any
17 business entity which owns or operates any plant, equipment, property, franchise,
18 or license for the transmission of communications or the production, transmission,
19 sale, delivery, or furnishing of electricity, water or steam the rates of charges for
20 goods or services of which have been established or approved by a federal, state or
21 local government or governmental agency. “Public

22 2. In this section, for taxable years beginning after December 31, 2005, “public
23 utility” also means any business entity providing service to the public and engaged
24 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
25 regardless of whether or not the entity’s rates or charges for services have been

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1 established or approved by a federal, state or local government or governmental
2 agency.

3 **SECTION 27.** 71.25[✓] (10) (c) of the statutes is amended to read:

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

9 **SECTION 28.** 71.25[✓] (11) of the statutes is amended to read:

10 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
11 engaged in business ~~within in~~ and ~~without the~~ outside this state of Wisconsin and
12 required to apportion its income as provided in sub. (6), it shall be shown to the
13 satisfaction of the department of revenue that the use of any one of the 3 factors
14 provided in sub. (6) gives an unreasonable or inequitable final average ratio because
15 of the fact that such corporation does not employ, to any appreciable extent in its
16 trade or business in producing the income taxed, the factors made use of in obtaining
17 such ratio, this factor may, with the approval of the department of revenue, be
18 omitted in obtaining the final average ratio which is to be applied to the remaining
19 net income. This subsection does not apply to taxable years beginning after
20 December 31, 2007.

21 **SECTION 29.** 71.45 (3) (intro.) of the statutes is amended to read:

22 71.45 (3) APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in sub. (3d),
23 to determine Wisconsin income for purposes of the franchise tax, domestic insurers
24 ~~not engaged in the sale of life insurance but which~~ that, in the taxable year, have
25 collected received premiums, other than life insurance premiums, written on

BILL**SECTION 29**

1 subjects of for insurance on property or risks resident, located or to be performed
2 outside this state, ~~there shall be subtracted from~~ multiply the net income figure
3 derived by application of sub. (2) (a) ~~to arrive at Wisconsin income constituting the~~
4 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~
5 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:

6 **SECTION 30.** 71.45 (3) (a) of the statutes is amended to read:

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

23 **SECTION 31.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and
24 amended to read:

BILL

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

6 2. Under subd. 1., payroll is paid outside in this state if the individual's service
7 is performed entirely ~~outside in~~ this state; or the individual's service is performed
8 both ~~within and without~~ in and outside this state, but the service performed ~~within~~
9 outside this state is incidental to the individual's service ~~without in~~ this state; or
10 some service is performed ~~without in~~ this state and the base of operations, or if there
11 is no base of operations, the place from which the service is directed or controlled is
12 ~~without in~~ this state, or the base of operations or the place from which the service is
13 directed or controlled is not in any state in which some part of the service is
14 performed, but the individual's residence is ~~outside in~~ this state.

15 **SECTION 32.** 71.45 (3d) of the statutes is created to read:

16 71.45 (3d) PHASE IN; DOMESTIC INSURERS. (a) Except as provided in par. (d), for
17 taxable years beginning after December 31, 2005, and before January 1, 2007, a
18 domestic insurer that is subject to apportionment under sub. (3) and this subsection
19 shall multiply the net income figure derived by the application of sub. (2) by an
20 apportionment fraction composed of the percentage under sub. (3) (a) representing
21 60% of the fraction and the percentage under sub. (3) (b) 1. representing 40% of the
22 fraction.

23 (b) Except as provided in par. (d), for taxable years beginning after December
24 31, 2006, and before January 1, 2008, a domestic insurer that is subject to
25 apportionment under sub. (3) and this subsection shall multiply the net income

BILL

SECTION 32

the effective date of this paragraph *... [revisor inserts date]*

1 figure derived by the application of sub. (2) by an apportionment fraction composed
2 of the percentage under sub. (3) (a) representing 80% of the fraction and the
3 percentage under sub. (3) (b) 1. representing 20% of the fraction.

4 (c) Except as provided in par. (d), for taxable years beginning after December
5 31, 2007, 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 the percentage under sub. (3) (a).

8 (d) If a taxpayer who is subject to apportionment under sub. (3) has a net gain
9 of 100 employees in this state in any taxable year beginning after ~~December 31, 2005,~~
10 and before January 1, 2008, the taxpayer's remaining net income ~~shall~~ be
11 apportioned to this state by an apportionment fraction composed of the percentage
12 under sub. (3) (a) beginning with the taxable year in which the employees are hired,
13 except that if the taxpayer does not retain such employees ^{in this state} for at least 3 consecutive
14 taxable years, the taxpayer shall apportion the taxpayer's remaining net income as
15 provided under pars. (a) to (c), as appropriate.

16 **SECTION 33.** 71.45[✓] (3e) of the statutes is created to read:

17 71.45 (3e) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
18 beginning before January 1, 2008, if both the numerator and the denominator used
19 to determine the percentage under sub. (3) (a) related to a taxpayer's net income are
20 zero, the percentage under sub. (3) (a) is eliminated from the apportionment formula
21 to determine the taxpayer's income under sub. (3).

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

may, at the taxpayer's option,

BILL

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

6 2. For taxable years beginning after December 31, 2007, if the numerator used
7 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
8 a negative number and the denominator used to determine the percentage under
9 sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number,
10 or zero, none of the taxpayer's net income is apportioned to this state.

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

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

21 **SECTION 34.** 71.45 (3m) of the statutes is amended to read:

22 71.45 (3m) ARITHMETIC AVERAGE. ~~The~~ Except as provided in sub. (3d), the
23 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the
24 net income figure arrived at by the successive application of sub. (2) (a) and (b) with
25 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have

BILL

SECTION 34

1 ~~collected received premiums, other than life insurance premiums, written upon for~~
2 ~~insurance, other than life insurance, where the subject of such insurance was on~~
3 ~~property or risks resident, located or to be performed outside this state, to arrive at~~
4 Wisconsin income constituting the measure of the franchise tax.

5 **SECTION 35. Nonstatutory provisions; revenue.**

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

12 **SECTION 36. Initial applicability.**

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

16 (END)

Barman, Mike

From: Kreye, Joseph
Sent: Monday, June 09, 2003 8:06 AM
To: Barman, Mike
Subject: FW: fiscal note

Joseph T. Kreye
Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

-----Original Message-----

From: Risch, Jay
Sent: Friday, June 06, 2003 3:33 PM
To: Kreye, Joseph
Subject: fiscal note

Hi Joe,

Would you get the ball rolling on a fiscal note on this bill? Thanks.



03-25202.pdf

PS - we got the amendment you drafted - thanks

Barman, Mike

From: Barman, Mike
Sent: Tuesday, June 10, 2003 2:53 PM
To: Risch, Jay
Subject: RE: Please do email me that single sales draft - thanks

Jay -

Your request was submitted to DOA yesterday (06/09/2003). DOA has since assigned DOR to prepare a fiscal estimate on your draft (LRB 03-2520/2). The fiscal estimate is due 06/16/2003. I sent DOR a note informing them that you were anxious to see this estimate but DOR tends to run a little late with their FE's. If the draft is assigned a hearing date (before you receive the fiscal estimate) let me know and I will give them another push. Let me know if you have any questions.

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

-----Original Message-----

From: Risch, Jay
Sent: Tuesday, June 10, 2003 2:11 PM
To: Barman, Mike
Subject: FW: Please do email me that single sales draft - thanks

<< File: 03-25202.pdf >>

Hi Mike,

This was the draft I mentioned in my voice mail. When is the soonest we could have a fiscal note?

Thanks -

Jay Risch
Office of Senator Cathy Stepp
266-1832

LRB



State of Wisconsin

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FAX: (608) 266-5648

STEPHEN R. MILLER
CHIEF

June 13, 2003

MEMORANDUM

To: Senator Stepp

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

Subject: Technical Memorandum to **2003 SB 197** (LRB-2520/2)

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

LRB

MEMORANDUM

June 12, 2003

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on LRB 2520/2: Single Sales Factor Apportionment

The Department has several concerns regarding the provision that allows taxpayers the option of using single sales factor apportionment rather than phasing it in if they add at least 100 employees.

- The provision may be unconstitutional. A provision that applies only to activities within the state may violate the Commerce and Equal Protection clauses of the U.S. Constitution, which restrict the types of requirements a state may impose for its own benefit.
- It is unclear what is meant by a "net gain of 100 employees." This provision could be interpreted to include a situation in which an employer lays off 100 full-time employees and hires 200 half-time employees.
- It appears that a comma is missing after the words "par. (e)."
- The consequence of not retaining the 100 new employees for three years is unclear since the provision does not require the taxpayer to amend its returns if it does not retain the employees.
- It is unclear if the taxpayer must retain the specific new employees hired or maintain the 100 employee net gain for three years.

It appears that the reference to par. (f) in secs. 71.01 (4)(d) and 71.25 (6)(d) is unnecessary if the intent of the sponsor is for all taxpayers to use single sales factor apportionment beginning in 2008.

Sections 71.04(7)(d) and 71.25(9)(d) of current law relating to sourcing income from services and intangibles are unworkable for several reasons. The Department would be interested in discussing the problem and some method of addressing it in conjunction with single sales factor apportionment with the sponsor. The problem relates to the use of the terms "income-producing activity" and "direct costs of performance" without defining what those terms mean. The problem is becoming more complicated since so many transactions are conducted by telephone or over the Internet. Since certain services are attributed to the state where the payroll would be allocated, some service businesses will still have to figure a payroll factor under single sales factor apportionment. With the sales factor becoming the sole basis for sourcing income and the economy becoming more service-oriented than in the late 1950s,

when this language was developed, it is important to provide an easily understandable and workable method of allocation.

The Department expects to have costs in administering the bill, but an estimate of those costs is not available at this time. The bill does not provide funding for costs.

If you have any questions regarding this technical memorandum, please contact Pam Walgren at 266-7817.

Emery, Lynn

From: Emery, Lynn
Sent: Friday, June 13, 2003 9:16 AM
To: Sen.Stepp
Subject: Tech. Memo to SB-197 (attached)



TechMemoSB197.p
df

Lynn Emery
Program Assistant
Legislative Reference Bureau
608-266-3561
lynn.emery@legis.state.wi.us



State of Wisconsin

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FAX: (608) 264-6948

STEPHEN R. MILLER
CHIEF

June 18, 2003

MEMORANDUM

To: Senator Stepp

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

Subject: Technical Memorandum to 2003 SB-197 (LRB 03-2520/2)

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

MEMORANDUM

June 16, 2003

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Yeang-Eng Braun
Department of Revenue

SUBJECT: Technical Memorandum on LRB 2520/2: Single Sales Factor Apportionment

The Department has several concerns regarding the provision that allows taxpayers the option of using single sales factor apportionment rather than phasing it in if they add at least 100 employees.

- The provision may be unconstitutional. A provision that applies only to activities within the state may violate the Commerce and Equal Protection clauses of the U.S. Constitution, which restrict the types of requirements a state may impose for its own benefit.
- It is unclear what is meant by a "net gain of 100 employees." This provision could be interpreted to include a situation in which an employer lays off 100 full-time employees and hires 200 half-time employees.
- It appears that a comma is missing after the words "par. (e)."
- The consequence of not retaining the 100 new employees for three years is unclear since the provision does not require the taxpayer to amend its returns if it does not retain the employees.
- It is unclear if the taxpayer must retain the specific new employees hired or maintain the 100 employee net gain for three years.

It appears that the reference to par. (f) in secs. 71.01 (4)(d) and 71.25 (6)(d) is unnecessary if the intent of the sponsor is for all taxpayers to use single sales factor apportionment beginning in 2008.

The author may wish to consider adding language to clarify how diversified businesses should calculate their sales factor. A diversified business is one that has income from operations for which the regular three-factor formula would apply and from specialized industries that use different apportionment formulas. One option is to provide that each line of business must calculate its Wisconsin income using the appropriate apportionment formula and then the taxpayer must combined the results to compute net tax. Another option is to eliminate the special apportionment formulas and prescribe a receipts factor for specialized industries. Under this alternative, all businesses would be converted to single sales factor apportionment.

Sections 71.04(7)(d) and 71.25(9)(d) of current law relating to sourcing income from services and intangibles are unworkable for several reasons. The Department would be interested in discussing the problem and some method of addressing it in conjunction with single sales factor apportionment with the sponsor. The problem relates to the use of the terms "income-producing activity" and "direct costs of performance" without defining what those terms mean. The problem is becoming more complicated since so many transactions are conducted by telephone or over the Internet. Since certain services are attributed to the state where the payroll would be allocated, some service businesses will still have to figure a payroll factor under single sales factor apportionment. With the sales factor becoming the sole basis for sourcing income and the economy becoming more service-oriented than in the late 1950s, when this language was developed, it is important to provide an easily understandable and workable method of allocation.

The Department expects to have costs in administering the bill, but an estimate of those costs is not available at this time. The bill does not provide funding for costs.

If you have any questions regarding this technical memorandum, please contact Pam Walgren at 266-7817.



State of Wisconsin

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FAX: (608) 264-6948

STEPHEN R. MILLER
CHIEF

June 24, 2003

MEMORANDUM

To: Senator Stepp

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

Subject: 3rd Technical Memorandum to **SB-197** (LRB 03-2520/2)

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

MEMORANDUM

June 23, 2003

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on LRB 2520/2: Single Sales Factor Apportionment

The Department has several concerns regarding the provision that allows taxpayers the option of using single sales factor apportionment rather than phasing it in if they add at least 100 employees.

- The provision may be unconstitutional. A provision that applies only to activities within the state may violate the Commerce and Equal Protection clauses of the U.S. Constitution, which restrict the types of requirements a state may impose for its own benefit.
- It is unclear what is meant by a "net gain of 100 employees." This provision could be interpreted to include a situation in which an employer lays off 100 full-time employees and hires 200 half-time employees.
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It appears that the reference to par. (f) in secs. 71.01 (4)(d) and 71.25 (6)(d) is unnecessary if the intent of the sponsor is for all taxpayers to use single sales factor apportionment beginning in 2008.

The author may wish to consider adding language to clarify how diversified businesses should calculate their sales factor. A diversified business is one that has income from operations for which the regular three-factor formula would apply and from specialized industries that use different apportionment formulas. One option is to provide that each line of business must calculate its Wisconsin income using the appropriate apportionment formula and then the taxpayer must combine the results to compute net tax. Another option is to eliminate the special apportionment formulas and prescribe a receipts factor for specialized industries. Under this alternative, all businesses would be converted to single sales factor apportionment.

Sections 71.04(7)(d) and 71.25(9)(d) of current law relating to sourcing income from services and intangibles are unworkable for several reasons. The Department would be interested in discussing the problem and some method of addressing it in conjunction with single sales factor apportionment with the sponsor. The problem relates to the use of the terms "income-producing activity" and "direct costs of performance" without defining what those terms mean. The problem is becoming more complicated since so many transactions are conducted by telephone or over the Internet. Since certain services are attributed to the state where the payroll would be allocated, some service businesses will still have to figure a payroll factor under single sales factor apportionment. With the sales factor becoming the sole basis for sourcing income and the economy becoming more service-oriented than in the late 1950s, when this language was developed, it is important to provide an easily understandable and workable method of allocation.

The proposed legislation makes no provision for the funding of the costs involved in administering the activities required. If the author wishes to provide funding, appropriation language could be developed and costs allocated in the following manner:

	<u>Chapter 20</u>	<u>Amount</u>
one-time	s. 20.566 (1) (a)	\$25,400
annual	s. 20.566 (1) (a)	\$5,100

If you have any questions regarding this technical memorandum, please contact Pam Walgren at 266-7817.