State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–2520/~~P2~~ 1
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RMR

~~PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION~~

in 5-16-03

by monday 5-19-03

/rv jfw

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.

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:

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 <u>air carriers,</u> financial organizations, <u>pipeline companies,</u> 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~~ <u>this state</u> 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.~~ <u>the following:</u>

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

Except as provided in par. (f), for

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 factor 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:

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Except as provided in par. (f), for

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.

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(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, 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 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, 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)

Except as provided in par. (f), for

Except as provided in par. (f), for

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).

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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 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. 71.25 (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, 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 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 this state, but the service performed ~~within~~ outside 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

Except as provided in par. (d), for

Except as provided in par. (d), for

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).

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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~~ <u>Except as provided in sub. (3d), the</u> 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~~ <u>received</u> premiums<u>, other than life insurance premiums,</u> written ~~upon~~ <u>for</u> insurance~~, other than life insurance, where the subject of such insurance was~~ <u>on property or risks</u> 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.

(END)

2003–2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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

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

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

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

Insert 15 – 8

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

STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU – LEGAL SECTION
(608-266-3561)

Jeremy

2520/1

1) p4 – L 22 —— starting on the effective

2) make optional not mandatory

p4 L 23 "may" "at the taxpayer's option

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

LRB–2520/1 2
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2003 BILL

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Regen

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 (4) (f), 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 (6) (f), 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.

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:

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, 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) Except as provided in par. (f), 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) Except as provided in par. (f), for taxable years beginning after December 31, 2005, and before January 1, 2007, an apportionment fraction composed of a sales factor under sub. (7) representing 60% of the fraction, a property factor 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) Except as provided in par. (f), for taxable years beginning after December 31, 2006, and before January 1, 2008, an apportionment fraction composed of a sales factor under sub. (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) Except as provided in par. (f), 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) Except as provided in par. (f), 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 (4) (f) of the statutes is created to read:

71.04 **(4)** (f) If a taxpayer who is subject to apportionment under this subsection has a net gain of 100 employees in this state in any taxable year beginning after ~~December 31, 2005~~, and before January 1, 2008, the taxpayer's remaining net income
may, at the taxpayer's option,
~~shall~~ be apportioned to this state by an apportionment fraction composed of the sales factor under sub. (7) or, for a financial organization, under par. (e) beginning with the taxable year in which the employees are hired, except that if the taxpayer does not

the effective date of this paragraph .... [revisor inserts date] in this state

retain such employees for at least 3 consecutive taxable years, the taxpayer shall apportion the taxpayer's remaining net income as provided under pars. (a) to (e), as appropriate.

SECTION 8. 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 9. 71.04 (5) (intro.) of the statutes is amended to read:

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

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

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

SECTION 11. 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.~~ <u>s. 71.04</u> (6)<u>, 2001 stats</u>.

SECTION 12. 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 13. 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, 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 14. 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 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 15. 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, 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 16. 71.25 (6) (a) of the statutes is created to read:

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

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

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

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

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

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

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

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

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

71.25 **(6)** (e) Except as provided in par. (f), 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 21. 71.25 (6) (f) of the statutes is created to read:

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

SECTION 22. 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 23. 71.25 (7) (intro.) of the statutes is amended to read:

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

SECTION 24. 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 25. 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 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. 71.25 (8), 2001 stats.

SECTION 26. 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 27. 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, 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 28. 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 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 29. 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 30. 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 31. 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 this state, but the service performed ~~within~~ outside 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 32. 71.45 (3d) of the statutes is created to read:

71.45 **(3d)** PHASE IN; DOMESTIC INSURERS. (a) Except as provided in par. (d), 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) Except as provided in par. (d), 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 the effective date of this paragraph ... [revisor inserts date]

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) Except as provided in par. (d), 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).

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

SECTION 33. 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 34. 71.45 (3m) of the statutes is amended to read:

71.45 **(3m)** ARITHMETIC AVERAGE. ~~The~~ <u>Except as provided in sub. (3d), the</u> 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 35. 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 36. 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.

(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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LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
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.pdf

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

LEGISLATIVE REFERENCE BUREAU

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LEGAL SECTION: (608) 266-3561
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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 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 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:

	Chapter 20	Amount
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.