LRBs0117

2003 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB197)

Received: **06/23/2003**

Received By: **jkreye**

Wanted: **Today**

Identical to LRB:

For: **Jon Erpenbach (608) 266-6670**

By/Representing: **carrie**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax - corp. inc. and fran.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Erpenbach@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Combined reporting and single sales

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	jkreye 06/23/2003	csicilia 06/23/2003		_______ _______			
/1			chaskett 06/23/2003	_______ _______	amentkow 06/23/2003	amentkow 06/23/2003	

LRBs0117

FE Sent For:

<END>

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0117/1dn
JK:cjs:cph

June 23, 2003

Senator Erpenbach:

This substitute amendment implements both combined reporting and single sales factor apportionment.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266–2263
E–mail: joseph.kreye@legis.state.wi.us

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/?	jkreye	/1 cjs 6/23/03	/1 cph 6/23	rs/cph ~~6/23~~			

FE Sent For:

<END>

6-23-03

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

Carrie — Sen Erpenbach a0661/1 — add

to single roller factor

— a; rel to SB197

S0117/1

2003 – 2004 LEGISLATURE

LRB–2520/2
JK:kjf:cph

5SA___

TO **2003 SENATE BILL 197**

Today 6-23-03

bill hist ✓ SA ✓

June 12, 2003 – Introduced by Senators STEPP, KANAVAS, PANZER, WELCH, PLALE, ROESSLER, BROWN, KEDZIE, LEIBHAM, REYNOLDS, A. LASEE, ZIEN, DARLING, S. FITZGERALD, LAZICH, HARSDORF and WIRCH, cosponsored by Representatives GARD, LADWIG, JENSEN, MCCORMICK, SUDER, GUNDERSON, J. FITZGERALD, HUEBSCH, ZIEGELBAUER, GIELOW, GROTHMAN, NISCHKE, KREIBICH, JESKEWITZ, M. LEHMAN, LEMAHIEU, NASS, MUSSER, OLSEN and ALBERS. Referred to Committee on Economic Development, Job Creation and Housing.

D-N

/ re gov

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~~ and combined tax reporting 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 the effective date of this paragraph .... [revisor inserts date], and before January 1, 2008, the taxpayer's remaining net income may, at the taxpayer's option, 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 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 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) and for taxable years beginning before January 1, 2008:

SECTION 10. 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 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.~~ s. 71.04 (6), 2001 stats.

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:

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 the effective date of this paragraph .... [revisor inserts date], and before January 1, 2008, the taxpayer's remaining net income 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)~~ (6) and for taxable years beginning before January 1, 2008:

SECTION 24. 71.25 (8) (intro.) of the statutes is amended to read:

INSERT 12-8

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

INSERT 14-2

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 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 the effective date of this paragraph .... [revisor inserts date], and before January 1, 2008, the taxpayer's remaining net income 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.

INSERT 18-11

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

SECTION 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.

INSERT 18-22

(END)

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

SECTION 10. 71.84 (2) (a) of the statutes is amended to read:

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

end of Insert 18-11

~~5. Page 18, line 22: after that line insert:~~

(#) COMBINED REPORTING. The treatment of sections 71.25 (9) (a), 71.255, 71.26 (3) (x) and (4), 71.29 (2), 71.44 (1) (e), 71.46 (3), 71.48, and 71.84 (2) (a) of the statutes first applies to taxable years beginning on January 1, 2005."

(END)

INSERT 18-22

2003 – 2004 LEGISLATURE

~~LRBa0661/1~~
~~JK:cjs:pg~~

~~SENATE AMENDMENT ,~~

~~TO 2003 SENATE BILL 197~~

SA✓

INSERT 12-8

THAW ALL BILL SECTION #S

~~At the locations indicated, amend the bill as follows:~~

~~**1.** Page 1, line 8: delete "of income" and substitute "and combined tax reporting".~~

~~**2.** Page 12, line 8: after that line insert:~~

SECTION ~~1~~ #. 71.25 (9) (a) of the statutes is amended to read:

71.25 **(9)** (a) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period. For sales of tangible personal property, the numerator of the sales factor is the sales of the taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the taxpayer during the tax period under pars. (b) 2m. and 3. and (c). <u>For purposes of determining the numerator of the sales factor for a member of a combined reporting group under s. 71.255 (7), "taxpayer" means the member of a combined reporting</u>

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<u>group, as defined in s. 71.255 (1) (c), that transferred title to tangible personal property or, for sales other than sales of tangible personal property, that made the sale.</u>".

end of Insert 12-8

~~3. Page 14, line 2: after that line insert:~~

"SECTION ~~2~~ #. 71.255 of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

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

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

(f) "Department" means the department of revenue.

(g) "Designated agent" means the taxpayer member of a commonly controlled group who files a group return on behalf of the taxpayer members of a combined reporting group.

(h) "Group return" means a tax return filed on behalf of the taxpayer members of a combined reporting group.

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

(im) "Partnership" means any entity considered a partnership under section 7701 of the Internal Revenue Code.

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

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

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

(m) "Unitary business" includes the business activities or operations of an entity that are of mutual benefit to, integrated with, or dependent upon or that contribute to activities of at least one other entity, including transactions that serve an operational function, as determined by the department. Two or more businesses are presumed to be a unitary business if the businesses have unity of ownership, operation, and use as indicated by centralized management or a centralized

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executive force; centralized purchasing, advertising, or accounting; intercorporate sales or leases; intercorporate services; intercorporate debts; intercorporate use of proprietary materials; interlocking directorates; or interlocking corporate officers.

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

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

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

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

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

5. Any corporation regardless of its place of incorporation if the average of its property factor under s. 71.25 (7) and its payroll factor under s. 71.25 (8), for property

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and payroll within the United States and computed on an annual basis, is at least 20% during any part of the taxable year that a corporation is a member of the commonly controlled group.

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

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

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

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on the commonly controlled group's behalf, and in the manner prescribed by the department, to compute income under sub. (2) (b).

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

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

(d) The department may grant a request by a top tier corporation to terminate an election under this subsection before the first period of 7 taxable years under par. (c) expires, if the top tier corporation shows good cause for granting the request, as

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determined by the department and consistent with section 1502 of the Internal Revenue Code.

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

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

(4) ACCOUNTING PERIOD. For purposes of this section, the income under ss. 71.26 and 71.45, the apportionment factors under ss. 71.25 and 71.45 and the tax credits under ss. 71.28 and 71.47 of all corporations that are members of a combined reporting group shall be determined by using the same accounting period. If the combined reporting group has a common parent corporation, the accounting period of the common parent corporation shall be used to determine the income, the apportionment factors, and the tax credits of all the corporations that are members of the combined reporting group. If the combined reporting group has no common parent corporation, the income, the apportionment factors, and the tax credits of the combined reporting group shall be determined using the accounting period of the member of the combined reporting group that has the most significant operations on a recurring basis in this state, as determined by the department.

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

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

(c) *Designated agent.* 1. For corporations that are subject to this section and that file a group return under par. (a), the parent corporation of the combined

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reporting group is the sole designated agent for each member of the combined reporting group including the parent corporation, if the parent corporation is a taxpayer member of the combined reporting group and income of the parent corporation is included on the group return. If the parent corporation is not a taxpayer member or if the parent corporation's income is not included on the group return, the taxpayer members may appoint a taxpayer member to be the designated agent. If the parent corporation of the combined reporting group is not eligible to be the designated agent and no taxpayer member is appointed to be the designated agent, the designated agent is the taxpayer member that has the most significant operations in this state on a recurring basis, as determined by the department. The designated agent, as determined under this subdivision, remains the designated agent until the designated agent is no longer a taxpayer member or until the taxpayer members appoint a different designated agent. If the designated agent changes, the combined reporting group shall notify the department of such a change, in a manner prescribed by the department.

2. The designated agent shall file the group return under par. (a), shall file for any extensions under s. 71.24 (7) or 71.44 (3), shall file amended reports and claims for refund or credit, and shall send and receive all correspondence with the department regarding a group return. Any notice the department sends to the designated agent is considered a notice sent to all members of the combined reporting group. Any refund with respect to a group return shall be paid to and in the name of the designated agent and shall discharge any liability of the state to any member of a combined reporting group regarding the refund. The combined reporting group filing a group return under par. (a) shall pay all taxes, including estimated taxes, in the designated agent's name. The designated agent shall participate on behalf of the

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members of the combined reporting group in any investigation or hearing requested by the department regarding a group return and shall produce all information requested by the department regarding a group return. The designated agent may execute a power of attorney on behalf of the members of the combined reporting group. The designated agent shall execute waivers, closing agreements, and other documents regarding a group return filed under par. (a) and any waiver, agreement, or document executed by the designated agent shall be considered as executed by all members of the combined reporting group. If the department acts in good faith with a combined reporting group member that represents itself as the designated agent for the combined reporting group but that combined reporting group member is not the designated agent, any action taken by the department with that combined reporting group member has the same effect as if that combined reporting group member were the actual designated agent for the combined reporting group.

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

1. If the corporation is required to file 2 or more short period federal returns for the common accounting period, the income for the short period that the corporation was a member of a combined reporting group shall be determined as provided under sub. (2), the corporation shall join in filing a combined report for that short period, and the corporation may join in filing a group return for that short period. The income for the remaining short period shall be reported on a separate return under s. 71.26 or 71.45. If the corporation becomes a member of another

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combined reporting group in the remaining short period, the corporation's income shall be determined for the remaining short period as provided under sub. (2).

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

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

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

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

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

2. If a change in tax liability under this section is the result of the removal of a corporation from a combined reporting group because the corporation was not eligible to be a member of the combined reporting group for the taxable year, as

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determined by the department, the designated agent shall file an amended group return and the ineligible corporation shall file a separate amended return.

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

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

(a) Determine the net income of each member of a combined reporting group under s. 71.26 or 71.45, as appropriate, before deducting net business losses. A member of a combined reporting group may determine its net loss or net income under a method of accounting or an election authorized under s. 71.26 (3) (y), 71.30 (1), 71.45 (2) (a) 13., or 71.49 (2), as appropriate, regardless of the accounting method used to determine the net loss or net income of other members of the combined reporting group. After a member establishes an accounting method, or makes any election under this section, the member's net loss or net income shall be consistently determined in the combined report of all members of the combined reporting group and in the group return filed by the taxpayer members or in the separate return filed by the members. If a corporation is engaged in 2 or more trades or businesses that are required to use different apportionment formulas under s. 71.25 or 71.45, the net income for each trade or business shall be computed separately. A unitary business with operations in a foreign country shall compute its net loss or net income as provided by rule by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) NET BUSINESS LOSS CARRY-OVER. (a) For taxable years beginning after December 31, 2003, any net business loss of a corporation that is a member of a combined reporting group as determined under sub. (6) for the taxable year that is not offset against the net income of the other members of the combined reporting

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group in the same taxable year may be carried forward as provided under s. 71.26 (4), except that any net business loss carried forward to a subsequent taxable year may be offset against either the net income of the corporation that incurred the net business loss or the net income of the combined reporting group of which the corporation is a member, in the manner prescribed by rule by the department.

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

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

(9) NET INCOME OR LOSS FOR CORPORATIONS WITH DIFFERENT ACCOUNTING PERIODS. If a taxpayer member has a different accounting period than the common accounting period of the combined reporting group, the combined reporting group shall assign the combined report income or loss for the combined reporting group, as determined under sub. (6), proportionally to the number of months in the taxpayer member's

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taxable year that are wholly or partly within the combined reporting group's common accounting period. The total amount of income or loss assigned to a taxpayer member under this subsection for the portions of the common accounting period that are included in the taxpayer member's taxable period shall be aggregated or netted to determine the taxpayer member's apportionable income.

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

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

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

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

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

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

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

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of any estimated taxes paid on a separate basis in the first 2 taxable years that a group return is filed.

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

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

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

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

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

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

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

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

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

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shall report the member's allocated share of the combined estimated tax payments for the current year to the department, in the manner prescribed by the department.

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

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

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

3. To determine the separate items under subds. 1. and 2., if a corporation is a member of a combined reporting group during a portion of a common accounting period in which the corporation becomes a member of another combined reporting group, the corporation's separate items shall include the separate items that are attributed to the corporation by the designated agent of the first combined reporting group.

(c) *Leaving a group.* If a corporation leaves a combined reporting group during a common accounting period under sub. (4), the combined reporting group shall make

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the following adjustments to determine the amount of interest that is due for an underpayment of estimated taxes:

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

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

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

(13) ASSESSMENT NOTICE. If the department sends a notice of taxes that are owed by a combined reporting group to the designated agent of a combined reporting group, the notice shall name each corporation that joined in filing the group return related to the notice during any part of the period covered by the notice. The department's failure to name a corporation on a notice under this subsection shall

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not invalidate the notice as to the unnamed corporation. Any levy, lien, or other proceeding to collect the amount of a tax assessment under this section shall name the corporation from which the department shall collect the assessment. If a corporation that joined in the filing of a group return leaves the combined reporting group, the department shall send the corporation a copy of any notice sent to the combined reporting group under this subsection if the corporation notifies the department that the corporation is no longer a member of the combined reporting group and if the corporation requests in writing that the department send notices under this subsection to the corporation. The department's failure to comply with a corporation's request to receive a notice does not affect the tax liability of the corporation.

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

(15) PRESUMPTIONS AND BURDEN OF PROOF. A commonly controlled group shall be presumed to be engaged in a unitary business and all of the income of the unitary business shall be presumed to be apportionable business income under this section. A corporation, partnership, or limited liability company has the burden of proving that it is not a member of a commonly controlled group that is subject to this section. The department shall promulgate rules to implement this subsection.

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

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

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

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

SECTION 3. 71.26 (3) (x) of the statutes is amended to read:

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

SECTION 4. 71.26 (4) of the statutes is amended to read:

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

SECTION 5. 71.29 (2) of the statutes is amended to read:

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

SECTION 6. 71.44 (1) (a) of the statutes is amended to read:

71.44 **(1)** (a) ~~Every~~ Except as provided in par. (e), every corporation, except corporations all of whose income is exempt from taxation and except as provided in sub. (1m), shall furnish to the department a true and accurate statement, on or before

March 15 of each year, except that returns for fiscal years ending on some other date than December 31 shall be furnished on or before the 15th day of the 3rd month following the close of such fiscal year and except that returns for less than a full taxable year shall be furnished on or before the date applicable for federal income taxes under the internal revenue code, in such manner and form and setting forth such facts as the department deems necessary to enforce this chapter. Every corporation that is required to furnish a statement under this paragraph and that has income that is not taxable under this subchapter shall include with its statement a report that identifies each item of its nontaxable income. The statement shall be subscribed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The fact that an individual's name is subscribed on the return shall be prima facie evidence that the individual is authorized to subscribe the return on behalf of the corporation.

SECTION 7. 71.44 (1) (e) of the statutes is created to read:

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

end of Insert 14-2

~~4. Page 18, line 11: after that line insert:~~

"**SECTION 8.** 71.46 (3) of the statutes is repealed.

SECTION 9. 71.48 of the statutes is amended to read:

INSERT 18-11

5017/1dn
JK

Senator Erpenbach:

This substitute amendment implements both combined reporting and single sales factor apportionment.

JK