

**ASSEMBLY AMENDMENT 5,
TO 2003 ASSEMBLY BILL 413**

June 24, 2003 - Offered by Representatives MILLER, BLACK, POCAN, BERCEAU, HEBL,
COGGS, TURNER, CULLEN, PLOUFF and BOYLE.

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

2 **1.** Page 1, line 8: after "purposes" insert ", combined tax reporting for income
3 and franchise tax purposes,".

4 **2.** Page 11, line 5: after that line insert:

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5 ~~SECTION 22m.~~ SECTION 71.25 (9) (a) of the statutes is amended to read:

6 71.25 (9) (a) The sales factor is a fraction, the numerator of which is the total
7 sales of the taxpayer in this state during the tax period, and the denominator of
8 which is the total sales of the taxpayer everywhere during the tax period. For sales
9 of tangible personal property, the numerator of the sales factor is the sales of the
10 taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the
11 taxpayer during the tax period under pars. (b) 2m. and 3. and (c). For purposes of
12 determining the numerator of the sales factor for a member of a combined reporting
13 group under s. 71.255 (7), "taxpayer" means the member of a combined reporting

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

4 ~~3. Page 12, line 22: after that line insert:~~

5 "SECTION 26d. 71.255 of the statutes is created to read:

6 **71.255 Combined reporting. (1) DEFINITIONS.** In this section:

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

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

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

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

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

1 2. Any 2 or more corporations if a common owner directly or indirectly owns
2 stock representing more than 50%^{SP} of the voting power of the corporations or the
3 connected corporations.

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

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

10 5. Any 2 or more corporations if stock representing more than 50%^{SP} of the voting
11 power in each corporation is directly owned by, or for the benefit of, family members.
12 In this subdivision, "family members" means an individual related by blood,
13 marriage, or adoption within the 2nd degree of kinship as computed under s. 852.03
14 (2), 1995 stats., or the spouse of such an individual.

15 6. A corporation, partnership, or limited liability company if a parent
16 corporation or any corporation connected to the parent corporation by common
17 ownership does not hold more than a 50%^{SP} ownership interest in the corporation,
18 partnership, or limited liability company but effectively controls the corporation,
19 partnership, or limited liability company.

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

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

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

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

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

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

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

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

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

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

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1 and payroll within the United States and computed on an annual basis, is at least
2 20% during any part of the taxable year that a corporation is a member of the
3 commonly controlled group.

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

8 (b) A corporation that is subject to the tax imposed under s. 71.23 (1) or (2) or
9 71.43, that is a member of a commonly controlled group, and that is engaged, in whole
10 or in part, in a unitary business with one or more members of the commonly
11 controlled group may, subject to sub. (6), compute the corporation's income
12 attributable to this state by using the income computation under s. 71.26 or 71.45,
13 the apportionment formula under s. 71.25 (6) or 71.45, and the tax credits under s.
14 71.28 or 71.47 of all the members of the commonly controlled group, regardless of the
15 country in which any member of the commonly controlled group is organized or
16 incorporated or conducts business, if all top tier corporations that are members of the
17 commonly controlled group elect under sub. (3) to compute the corporation's income
18 as provided under this paragraph.

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

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

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

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

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

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

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

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

13 (4) ACCOUNTING PERIOD. For purposes of this section, the income ^{computations} under ss. 71.26
14 and 71.45, the apportionment factors under ss. 71.25 and 71.45 and the tax credits
15 under ss. 71.28 and 71.47 of all corporations that are members of a combined
16 reporting group shall be determined by using the same accounting period. If the
17 combined reporting group has a common parent corporation, the accounting period
18 of the common parent corporation shall be used to determine the income, the ^{computations}
19 apportionment factors, and the tax credits of all the corporations that are members
20 of the combined reporting group. If the combined reporting group has no common
21 parent corporation, the income, ^{computations} the apportionment factors, and the tax credits of the
22 combined reporting group shall be determined using the accounting period of the
23 member of the combined reporting group that has the most significant operations on
24 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 ^{compute} 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 ^{compute} 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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1 reporting group is the sole designated agent for each member of the combined
2 reporting group including the parent corporation, if the parent corporation is a
3 taxpayer member of the combined reporting group and income of the parent
4 corporation is included on the group return. If the parent corporation is not a
5 taxpayer member or if the parent corporation's income is not included on the group
6 return, the taxpayer members may appoint a taxpayer member to be the designated
7 agent. If the parent corporation of the combined reporting group is not eligible to be
8 the designated agent and no taxpayer member is appointed to be the designated
9 agent, the designated agent is the taxpayer member that has the most significant
10 operations in this state on a recurring basis, as determined by the department. The
11 designated agent, as determined under this subdivision, remains the designated
12 agent until the designated agent is no longer a taxpayer member or until the
13 taxpayer members appoint a different designated agent. If the designated agent
14 changes, the combined reporting group shall notify the department of such a change,
15 in a manner prescribed by the department.

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

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

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

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

1 combined reporting group in the remaining short period, the corporation's income
2 shall be ^{computed &} ~~determined~~ for the remaining short period as provided under sub. (2). ✓

3 2. If the corporation is not required to file ~~federal~~ ^{short period} returns, the
4 corporation shall file a separate return. Income shall be ^{computed &} ~~determined~~ as follows:

5 a. As provided under sub. (2) [✓] for any period ^{& in which} ~~that~~ the corporation was a member
6 of a combined reporting group.

7 b. As a separate entity under s. 71.26 [✓] or 71.45 [✓] for any period ^{& in which} ~~that~~ the
8 corporation was not a member of a combined reporting group.

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

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

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

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

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

9 (6) INCOME COMPUTATION UNDER COMBINED REPORTING. For the purposes of sub.
10 (2), income attributable to this state shall be ^{computed} ~~determined~~ as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **(8) NET BUSINESS LOSS CARRY-OVER.** (a) For taxable years beginning after
23 December 31, ~~2003~~ ²⁰⁰⁴, any net business loss of a corporation that is a member of a
24 combined reporting group as determined under sub. (6) for the taxable year that is
25 not offset against the net income of the other members of the combined reporting

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

6 (b) A corporation that is a member of a combined reporting group may not carry
7 forward a net business loss from a taxable year beginning before January 1, 2004,²⁰⁰⁵
8 if the corporation was not subject to the tax imposed under s. 71.23 or 71.43 for the
9 same taxable year.

10 (c) A corporation that is a member of a combined reporting group and that
11 incurred a Wisconsin net business loss in a taxable year beginning before January
12 1, 2004,²⁰⁰⁵ that has not been offset against the corporation's net income in subsequent
13 taxable years, may offset the remaining net business loss against the corporation's
14 net income as determined under sub. (6). If the corporation joins in filing a group
15 return under sub. (5) and the corporation's remaining net business loss exceeds the
16 corporation's net income as determined under sub. (6) for the first taxable year
17 beginning after December 31, 2003,²⁰⁰⁴ that the corporation is subject to this section, the
18 corporation may annually offset up to 20%^{SP} of the remaining net business loss against
19 the net income of the other members of the combined reporting group that join in
20 filing a group return under sub. (5).

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

22 If a taxpayer member has a different accounting period than the common accounting
23 period of the combined reporting group, the combined reporting group shall assign
24 the combined report income or loss for the combined reporting group, as determined
25 under sub. (6), proportionally to the number of months in the taxpayer member's

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 3. For any year in which a combined reporting group files a group return, the
17 department shall determine if the installment provisions[✓] under s. 71.29 (9) or (10)
18 apply^{g. applies} to the combined reporting group by using the aggregate of the amount of the
19 tax liability and the amount of the net income of all members of the combined
20 reporting group.

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

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

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

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

12 2. If a corporation is not a member of a combined reporting group for an entire
13 common accounting period, the combined reporting group shall include with the
14 corresponding items on the group return for the current taxable year the
15 corporation's separate items for that portion of the common accounting period ^{in which} that
16 the corporation was not a member of the combined reporting group.

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

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

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

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

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

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

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

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

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

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

24 (16) INFORMATION. (a) A member of a commonly controlled group shall retain
25 any information, and provide such information to the department at the

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1 department's request, that the department considers necessary to administer this
2 section, including all documents submitted to or obtained from the Internal Revenue
3 Service or other states regarding income and taxing jurisdiction.

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

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

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

19 SECTION 26f. 71.26 (3) (x) of the statutes is amended to read:

20 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
21 consolidated returns) are excluded, except to the extent that they pertain to
22 intercompany transactions and the carry forward of net business loss under s. 71.255
23 and except that they are modified so that more than 50% ownership is substituted
24 for at least 80% ownership.

25 SECTION 26h. 71.26 (4) of the statutes is amended to read:

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1 71.26 (4) NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option
2 corporation or an insurer to which s. 71.45 (4) applies, may offset against its
3 Wisconsin net business income any Wisconsin net business loss sustained in any of
4 the next 15 preceding taxable years, if the corporation was subject to taxation under
5 this chapter in the taxable year in which the loss was sustained, to the extent not
6 offset by other items of Wisconsin income in the loss year and by Wisconsin net
7 business income of any year between the loss year and the taxable year for which an
8 offset is claimed. For purposes of this subsection Wisconsin net business income or
9 loss shall consist of all the income attributable to the operation of a trade or business
10 in this state, less the business expenses allowed as deductions in computing net
11 income. The Wisconsin net business income or loss of corporations engaged in
12 business within and without the state shall be determined under s. 71.255 or 71.25
13 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25
14 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income
15 having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be
16 included in other items of Wisconsin income and Wisconsin net business income for
17 purposes of this subsection.

18 **SECTION 26j.** 71.29 (2) of the statutes is amended to read:

19 71.29 (2) WHO SHALL PAY. Every Except as provided in s. 71.255 (11), every
20 corporation subject to tax under s. 71.23 (1) or (2) and every virtually exempt entity
21 subject to tax under s. 71.125 or 71.23 (1) or (2) shall pay an estimated tax.

22 **SECTION 26L.** 71.44 (1) (a) of the statutes is amended to read:

23 71.44 (1) (a) Every Except as provided in par. (e), every corporation, except
24 corporations all of whose income is exempt from taxation and except as provided in
25 sub. (1m), shall furnish to the department a true and accurate statement, on or before

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

16 ~~SECTION 26n.~~ 71.44 (1) (e) of the statutes is created to read:

17 71.44 (1) (e) A corporation that is a member of a commonly controlled group,
 18 as defined in s. 71.255 (1) (d), and engaged in a unitary business, as defined in s.
 19 71.255 (1) (m), shall file a tax return under s. 71.255.

20 ~~4. Page 16, line 22: after that line insert:~~

21 ~~SECTION 32g.~~ 71.46 (3) of the statutes is repealed.

22 ~~SECTION 32r.~~ 71.48 of the statutes is amended to read:



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

0576/P1dn
LRB-3470/P1dn
JK:wlj:rs

November 10, 2003

Representative Black:

Please review this draft carefully to ensure that it is consistent with your intent.

Also, please be aware that the homeowner's property tax credit, as created in the bill, and the computer property tax exemption as amended in the bill, could be challenged as a violation of the uniformity clause of article VIII, section 1, of the Wisconsin Constitution. The uniformity clause requires that the taxation of real property be uniform.

The Wisconsin Supreme Court has held that reducing the taxes on some property but not exempting the property is a partial exemption that violates the uniformity clause. See *State ex rel. La Follette v. Torphy*, 85 Wis. 2d 94, 105-108 (1978) and *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 427-428 (1859). A court could find that the homeowner's property tax credit created in the bill creates a partial exemption because it disproportionately reduces the tax liability of homeowners. In other words, because the credit is based on the first \$60,000 of property value, a homeowner whose property is valued at \$60,000, for example, will receive a credit that represents a greater percentage of his or her total tax liability than a homeowner whose property value exceeds \$60,000. See also, 52 Opinion of the Attorney General 143 (1963) which opines that exempting the first \$3,750 of the assessed value of homesteads creates a partial exemption.

With regards to the computer property tax exemption, a court could find that applying the exemption only to computers owned by certain businesses, based on gross receipts, creates an unreasonable classification for property tax purposes and, therefore, violates the uniformity clause. See *Gottlieb*.

Although I am not certain how a court would rule on a constitutional challenge to the bill, should it become law, you should be aware of possible challenges to the bill. Please contact me if you have any questions.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0576/P1dn

JK:wlj:ch

November 8, 2004

Representative Black:

Please review this draft carefully to ensure that it is consistent with your intent.

Also, please be aware that the homeowner's tax credit, as created in the bill, and the computer property tax exemption as amended in the bill, could be challenged as a violation of the uniformity clause of article VIII, section 1, of the Wisconsin Constitution. The uniformity clause requires that the taxation of real property be uniform.

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Kreye, Joseph

From: Rep.Black
Sent: Friday, November 19, 2004 12:58 PM
To: Kreye, Joseph
Subject: revisions to drafts

Hi Joe

Thanks for the drafts:

here are two relatively small changes.

[REDACTED]

LRB-0576/P1

please change back to last years's draft, that is,delete combined reporting and add back 2003 AB 461.

Sorry I asked for this change and I am now going back, but it is necessary because of a LFB memo I received.

Thanks Call if questions

Spence