State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–1656/1 2
JK:jld:rs
RMR+NLJ

DOA:.....Koskinen, BB0425 – Single sales factor apportionment for computer software, intellectual property, and services

FOR 2005–07 BUDGET — NOT READY FOR INTRODUCTION

in 1-23-05

DO NOT GEN

1 AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, for purposes of 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 percent of the formula and the property and payroll factors each represent 25 percent of the formula. Under current law, 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. This bill modifies the sales factor to provide for the apportionment of income derived from the lease, rental, or licensing of real property and moving property, the use of computer software, and the sale or use of intangible property and services.

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

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

1 **SECTION 1.** 71.01 (1b) of the statutes is created to read:

2 71.01 **(1b)** For purposes of s. 71.04 (7) (df), (dg), and (dh), "commercial domicile"
3 means the location from which a trade or business is principally managed and
4 directed, based on any factors the department determines are appropriate, including
5 the location where the greatest number of employees of the trade or business work,
6 have their office or base of operations, or from which the employees are directed or
7 controlled.

permanently and

8 **SECTION 2.** 71.01 (1n) of the statutes is created to read:

9 71.01 **(1n)** For purposes of s. 71.04 (7) (df), (dg), and (dh), "domicile" means an
10 individual's true, fixed, and permanent home where the individual intends to remain
11 indefinitely and to which, whenever absent, the individual intends to return, except
12 that no individual may have more than one domicile at any time.

***NOTE: It is not clear to me what the terms "true" and "fixed" mean in this context. I also eliminated the phrase that describes a domicile as the permanent home "where the person intends to remain permanently" because it is problematic as well as redundant. I have lived at my current address for 10 years, but I have no intention of living there permanently. I have a feeling, however, that, for tax purposes, DOR would want me to consider my current address as my "domicile."

13 **SECTION 3.** 71.01 (8g) of the statutes is amended to read:

14 71.01 **(8g)** "Member" does not include a member of a limited liability company
15 treated as a corporation under s. 71.22 ~~(1)~~ (1k).

16 **SECTION 4.** 71.01 (8m) of the statutes is amended to read:

17 71.01 **(8m)** "Partner" does not include a partner of a publicly traded
18 partnership treated as a corporation under s. 71.22 ~~(1)~~ (1k).

19 **SECTION 5.** 71.01 ~~(9g)~~ (10g) of the statutes is created to read:

20 71.01 ~~**(9g)**~~ (10g) For purposes of s. 71.04 (7) (df), (dg), and (dh), "state" means a state
21 of the United States, the District of Columbia, the commonwealth of Puerto Rico, or

1 any territory or possession of the United States, unless the context requires that
2 "state" means only the state of Wisconsin.

3 **SECTION 6.** 71.03 (1) of the statutes is amended to read:

4 71.03 **(1)** DEFINITION. In this section, "gross income" means all income, from
5 whatever source derived and in whatever form realized, whether in money, property
6 or services, which is not exempt from Wisconsin income taxes. "Gross income"
7 includes, but is not limited to, the following items: compensation for services,
8 including salaries, wages and fees, commissions and similar items; gross income
9 derived from business; interest; rents; royalties; dividends; alimony and separate
10 maintenance payments; annuities; income from life insurance and endowment
11 contracts; pensions; income from discharge of indebtedness; distributive shares of
12 partnership gross income except distributive shares of the income of publicly traded
13 partnerships treated as corporations under s. 71.22 ~~(1)~~ (1k); distributive shares of
14 limited liability company gross income except distributive shares of the income of
15 limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1k); income in
16 respect of a decedent; and income from an interest in an estate or trust. "Gross
17 income" from a business or farm consists of the total gross receipts without reduction
18 for cost of goods sold, expenses or any other amounts. The gross rental amounts
19 received from rental properties are included in gross income without reduction for
20 expenses or any other amounts. "Gross income" from the sale of securities, property
21 or other assets consists of the gross selling price without reduction for the cost of the
22 assets, expenses of sale or any other amounts. "Gross income" from an annuity,
23 retirement plan or profit sharing plan consists of the gross amount received without
24 reduction for the employee's contribution to the annuity or plan.

25 **SECTION 7.** 71.04 (7) (d) of the statutes is repealed.

1 **SECTION 8.** 71.04 (7) (db) of the statutes is created to read:

2 71.04 **(7)** (db) Gross receipts from the lease, rental, or licensing of real property
3 owned by the taxpayer and the sublease of real property are in this state if the real
4 property is located in this state.

5 **SECTION 9.** 71.04 (7) (dd) of the statutes is created to read:

6 71.04 **(7)** (dd) 1. Except as provided in subd. 2., gross receipts from the lease,
7 rental, or licensing of tangible personal property owned by the taxpayer and the
8 sublease of tangible personal property are in this state if the property is located in
9 this state during the entire period of lease, rental, licensing, sublease, or other use.
10 If the property is used in and outside this state during the period of lease, rental,
11 licensing, or sublease, gross receipts are in this state to the extent that the property
12 is used in this state. The proportion of use in this state is determined by multiplying
13 the gross receipts from the lease, rental, licensing, sublease, or other use of the
14 property by a fraction having as a numerator the amount of time the property was
15 used in this state in the taxable year and having as a denominator the total time the
16 property was used in all states having jurisdiction to impose an income tax on the
17 taxpayer in the taxable year.

18 2. Gross receipts from the lease, rental, or licensing of moving property,
19 including motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, owned
20 by the taxpayer and the sublease of moving property are in this state to the extent
21 that the property is used in this state. The proportion of use of moving property in
22 this state is determined as follows:

23 a. The proportion of use of a motor vehicle or rolling stock in this state is
24 determined by multiplying the gross receipts from the lease, rental, licensing, or
25 sublease of the motor vehicle or rolling stock by a fraction having as a numerator the

1 number of miles traveled within this state by the motor vehicle or rolling stock while
2 leased, rented, licensed, or subleased in the taxable year and having as a
3 denominator the total number of miles traveled by the motor vehicle or rolling stock
4 while leased, rented, licensed, or subleased in the taxable year.

5 b. The proportion of use of an aircraft in this state is determined by multiplying
6 the gross receipts from the lease, rental, licensing, or sublease of the aircraft by a
7 fraction having as a numerator the number of takeoffs and landings of the aircraft
8 in this state while leased, rented, licensed, or subleased in the taxable year and
9 having as a denominator the total number of takeoffs and landings of the aircraft
10 while leased, rented, licensed, or subleased in the taxable year.

11 c. The proportion of use of a vessel or mobile equipment in this state is
12 determined by multiplying the gross receipts from the lease, rental, licensing, or
13 sublease of the vessel or mobile equipment by a fraction having as a numerator the
14 number of days that the vessel or mobile equipment is in this state while leased,
15 rented, licensed, or subleased in the taxable year and having as a denominator the
16 total number of days that the vessel or mobile equipment is leased, rented, licensed,
17 or subleased in the taxable year.

18 d. If the taxpayer is unable to determine the use of moving property under subd.
19 2. a., b., or c. while the property is leased, rented, licensed, or subleased in the taxable
20 year, the moving property is conclusively deemed to be used in the state in which the
21 property is located at the time that the lessee, renter, licensee, or sublessee takes
22 possession of the property in the taxable year.

23 **SECTION 10.** 71.04 (7) (df) of the statutes is created to read:

71.04 **(7)** (df) 1. Gross receipts from the use of computer software are in this state if the purchaser or licensee uses the computer software at a location in this state.

2. Computer software is used at a location in this state if the purchaser or licensee uses the computer software in the regular course of business operations in this state, for personal use in this state, or if the purchaser or licensee is an individual whose domicile is in this state. If the purchaser or licensee uses the computer software in more than one state, the gross receipts shall be divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the computer software in those states. To determine computer software use in this state, the department may consider the number of users in each state where the computer software is used, the number of site licenses or workstations in this state, and any other ~~data~~ factors that reflect~~s~~ the use of computer software in this state.

3. If the taxpayer is not subject to income tax in the state in which the gross receipts are considered received under this paragraph, but the taxpayer's commercial domicile is in this state, 50 percent of those gross receipts shall be included in the numerator of the sales factor.

SECTION 11. 71.04 (7) (dg) of the statutes is created to read:

71.04 **(7)** (dg) 1. Gross royalties and other gross receipts received for the sale or use of intangible property, including, but not limited to, patents, copyrights, trademarks, trade names, service names, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, technical know–how, contracts, and customer lists, are in this state if the user, purchaser, or licensee uses the intangible property at a location in this state.

2. Intangible property is used at a location in this state if the user, purchaser, or licensee uses the property in the operation of a trade or business at a location in this state, for personal use in this state, or if the user, purchaser, or licensee is an individual whose domicile is in this state. If the user, purchaser, or licensee uses the intangible property in more than one state, the gross royalties and other gross receipts from the sale or use of the intangible property shall be divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states. To determine intangible property use in this state, the department may consider the number of licensed sites in each state, the volume of property manufactured, produced, or sold ~~pursuant to the arrangement~~ at locations in this state, or any other ~~data~~ factors that reflect the use of the intangible property in this state.

~~***NOTE: I do not know the meaning of the phrase "pursuant to the arrangement at locations in this state." What arrangement? Please clarify.~~

3. If the taxpayer is not subject to income tax in the state in which the gross royalties or other gross receipts are considered received under this paragraph, but the taxpayer's commercial domicile is in this state, 50 percent of those gross royalties or other gross receipts shall be included in the numerator of the sales factor.

SECTION 12. 71.04 (7) (dh) of the statutes is created to read:

71.04 **(7)** (dh) 1. Gross receipts from services are in this state if the purchaser of the service received the benefit of the service in this state.

2. The benefit of a service is received in this state if any of the following applies:

a. The service relates to real property that is located in this state.

b. The service relates to tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state.

c. The service is provided to an individual who is physically present in this state at the time that the service is received.

d. The service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state.

3. If the purchaser of a service receives the benefit of a service in more than one state, the gross receipts from the performance of the service are included in the numerator of the sales factor according to the portion of the service received in this state.

4. If the taxpayer is not subject to income tax in the state in which the benefit of the service is received, the benefit of the service is received in this state to the extent that the taxpayer's employees or representatives performed services from a location in this state ~~and 50~~ Fifty percent of the taxpayer's receipts that are considered received in this state under this paragraph shall be included in the numerator of the sales factor.

SECTION 13. 71.04 (7) (dm) of the statutes is created to read:

71.04 **(7)** (dm) If the income from sales ~~assigned~~ to this state ~~under pars. (db), (dd), (df), (dg), and (dh)~~ cannot be ascertained with reasonable certainty by the methods under pars. (db), (dd), (df), (dg), and (dh), the department may promulgate rules that specify how the income shall be apportioned.

SECTION 14. 71.04 (7) (e) 12. of the statutes is created to read:

71.04 **(7)** (e) 12. Gross receipts from the sale, licensing, or use of intangible property in the ordinary course of the taxpayer's trade or business.

other than sales of tangible personal property properly assignable

1 **SECTION 15.** 71.04 (7) (f) 5. of the statutes is amended to read:

2 71.04 **(7)** (f) 5. ~~Proceeds~~ Notwithstanding any other provision of this
3 subsection, proceeds and gain or loss from the redemption of securities.

4 **SECTION 16.** 71.04 (7) (f) 7. of the statutes is amended to read:

5 71.04 **(7)** (f) 7. Gross receipts and gain or loss from the sale of intangible assets,
6 except those under par. (e) 1. and 12.

7 **SECTION 17.** 71.04 (7) (f) 9. of the statutes is amended to read:

8 71.04 **(7)** (f) 9. ~~Gross~~ Notwithstanding any other provision of this subsection,
9 gross receipts and gain or loss from the sale or exchange of securities.

10 **SECTION 18.** 71.07 (2dr) (a) of the statutes is amended to read:

11 71.07 **(2dr)** (a) *Credit.* Any person may credit against taxes otherwise due
12 under this chapter an amount equal to 5% of the amount obtained by subtracting
13 from the person's qualified research expenses, as defined in section 41 of the internal
14 revenue code, except that "qualified research expenses" include only expenses
15 incurred by the claimant in a development zone under subch. VI of ch. 560, except
16 that a taxpayer may elect the alternative computation under section 41 (c) (4) of the
17 Internal Revenue Code and that election applies until the department permits its
18 revocation and except that "qualified research expenses" do not include
19 compensation used in computing the credit under sub. (2dj) nor research expenses
20 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
21 person's base amount, as defined in section 41 (c) of the internal revenue code, in a
22 development zone, except that gross receipts used in calculating the base amount
23 means gross receipts from sales attributable to Wisconsin under s. 71.04 (7) (b) 1. and
24 2. ~~and (d)~~ and research expenses used in calculating the base amount include
25 research expenses incurred before the claimant is certified for tax benefits under s.
(db), (dd), (df), (dg), (dh), and (dm)

560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit under this paragraph. The rules under sub. (2di) (f) and (g), as they apply to the credit under that subsection, apply to claims under this paragraph. Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

SECTION 19. 71.07 (3m) (a) 1. b. of the statutes is amended to read:

71.07 **(3m)** (a) 1. b. For partnerships except publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ (1k), or limited liability companies, except limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1k), "claimant" means each individual partner or member.

SECTION 20. 71.07 (10) of the statutes is amended to read:

71.07 **(10)** CREDITS NOT ALLOWED. The credits under s. 71.28 (4) and (5) may not be claimed by partners, including partners of a publicly traded partnership treated as a corporation under s. 71.22 ~~(1)~~ (1k), members of a limited liability company, including members of a limited liability company treated as a corporation under s. 77.22 ~~(1)~~ (1k), or shareholders of a tax–option corporation.

SECTION 21. 71.195 of the statutes is amended to read:

71.195 Definition. In this subchapter, "partnership" includes limited liability companies and other entities that are treated as partnerships under the Internal Revenue Code, and "partnership" does not include publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ (1k).

SECTION 22. 71.22 (1) of the statutes is renumbered 71.22 (1k).

1 **SECTION 23.** 71.22 (1g) of the statutes is created to read:

2 71.22 **(1g)** For purposes of s. 71.25 (9) (df), (dg), and (dh), "commercial domicile"
3 means the location from which a trade or business is principally managed and
4 directed, based on any factors the department determines are appropriate, including
5 the location where the greatest number of employees of the trade or business work,
6 have their office or base of operations, or from which the employees are directed or
7 controlled.

8 **SECTION 24.** 71.22 (1t) of the statutes is created to read:

9 71.22 **(1t)** For purposes of s. 71.25 (9) (df), (dg), and (dh), "domicile" means an
10 individual's true, fixed, and permanent home where the individual intends to remain
11 indefinitely and to which, whenever absent, the individual intends to return, except
12 that no individual may have more than one domicile at any time.

~~****NOTE: See the note following s. 71.01 (1m).~~

13 **SECTION 25.** 71.22 (6m) of the statutes is amended to read:

14 71.22 **(6m)** "Member" does not include a member of a limited liability company
15 treated as a corporation under sub. ~~(1)~~ (1k).

16 **SECTION 26.** 71.22 (7m) of the statutes is amended to read:

17 71.22 **(7m)** "Partner" does not include a partner of a publicly traded
18 partnership treated as a corporation under sub. ~~(1)~~ (1k).

19 **SECTION 27.** 71.22 (9g) of the statutes is created to read:

20 71.22 **(9g)** For purposes of s. 71.25 (9) (df), (dg), and (dh), "state" means a state
21 of the United States, the District of Columbia, the commonwealth of Puerto Rico, or
22 any territory or possession of the United States, unless the context requires that
23 "state" means only the state of Wisconsin.

24 **SECTION 28.** 71.25 (9) (d) of the statutes is repealed.

1 **SECTION 29.** 71.25 (9) (db) of the statutes is created to read:

2 71.25 **(9)** (db) Gross receipts from the lease, rental, or licensing of real property
3 owned by the taxpayer and the sublease of real property are in this state if the real
4 property is located in this state.

5 **SECTION 30.** 71.25 (9) (dd) of the statutes is created to read:

6 71.25 **(9)** (dd) 1. Except as provided in subd. 2., gross receipts from the lease,
7 rental, or licensing of tangible personal property owned by the taxpayer and the
8 sublease of tangible personal property are in this state if the property is located in
9 this state during the entire period of lease, rental, licensing, sublease, or other use.
10 If the property is used in and outside this state during the period of lease, rental,
11 licensing, or sublease, gross receipts are in this state to the extent that the property
12 is used in this state. The proportion of use in this state is determined by multiplying
13 the gross receipts from the lease, rental, licensing, sublease, or other use of the
14 property by a fraction having as a numerator the amount of time the property was
15 used in this state in the taxable year and having as a denominator the total time the
16 property was used in all states having jurisdiction to impose an income tax on the
17 taxpayer in the taxable year.

18 2. Gross receipts from the lease, rental, or licensing of moving property,
19 including motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, owned
20 by the taxpayer and the sublease of moving property are in this state to the extent
21 that the property is used in this state. The proportion of use of moving property in
22 this state is determined as follows:

23 a. The proportion of use of a motor vehicle or rolling stock in this state is
24 determined by multiplying the gross receipts from the lease, rental, licensing, or
25 sublease of the motor vehicle or rolling stock by a fraction having as a numerator the

1 number of miles traveled within this state by the motor vehicle or rolling stock while
2 leased, rented, licensed, or subleased in the taxable year and having as a
3 denominator the total number of miles traveled by the motor vehicle or rolling stock
4 while leased, rented, licensed, or subleased in the taxable year.

5 b. The proportion of use of an aircraft in this state is determined by multiplying
6 the gross receipts from the lease, rental, licensing, or sublease of the aircraft by a
7 fraction having as a numerator the number of takeoffs and landings of the aircraft
8 in this state while leased, rented, licensed, or subleased in the taxable year and
9 having as a denominator the total number of takeoffs and landings of the aircraft
10 while leased, rented, licensed, or subleased in the taxable year.

11 c. The proportion of use of a vessel or mobile equipment in this state is
12 determined by multiplying the gross receipts from the lease, rental, licensing, or
13 sublease of the vessel or mobile equipment by a fraction having as a numerator the
14 number of days that the vessel or mobile equipment is in this state while leased,
15 rented, licensed, or subleased in the taxable year and having as a denominator the
16 total number of days that the vessel or mobile equipment is leased, rented, licensed,
17 or subleased in the taxable year.

18 d. If the taxpayer is unable to determine the use of moving property under subd.
19 2. a., b., or c. while the property is leased, rented, licensed, or subleased in the taxable
20 year, the moving property is conclusively deemed to be used in the state in which the
21 property is located at the time that the lessee, renter, licensee, or sublessee takes
22 possession of the property in the taxable year.

23 **SECTION 31.** 71.25 (9) (df) of the statutes is created to read:

71.25 **(9)** (df) 1. Gross receipts from the use of computer software are in this state if the purchaser or licensee uses the computer software at a location in this state.

2. Computer software is used at a location in this state if the purchaser or licensee uses the computer software in the regular course of business operations in this state, for personal use in this state, or if the purchaser or licensee is an individual whose domicile is in this state. If the purchaser or licensee uses the computer software in more than one state, the gross receipts shall be divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the computer software in those states. To determine computer software use in this state, the department may consider the number of users in each state where the computer software is used, the number of site licenses or workstations in this state, and any other ~~data~~ factor that reflect~~s~~ the use of computer software in this state.

3. If the taxpayer is not subject to income tax in the state in which the gross receipts are considered received under this paragraph, but the taxpayer's commercial domicile is in this state, 50 percent of those gross receipts shall be included in the numerator of the sales factor.

SECTION 32. 71.25 (9) (dg) of the statutes is created to read:

71.25 **(9)** (dg) 1. Gross royalties and other gross receipts received for the sale or use of intangible property, including, but not limited to, patents, copyrights, trademarks, trade names, service names, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, technical know–how, contracts, and customer lists, are in this state if the user, purchaser, or licensee uses the intangible property at a location in this state.

2. Intangible property is used at a location in this state if the user, purchaser, or licensee uses the property in the operation of a trade or business at a location in this state, for personal use in this state, or if the user, purchaser, or licensee is an individual whose domicile is in this state. If the user, purchaser, or licensee uses the intangible property in more than one state, the gross royalties and other gross receipts from the sale or use of the intangible property shall be divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states. To determine intangible property use in this state, the department may consider the number of licensed sites in each state, the volume of property manufactured, produced, or sold ~~pursuant to the arrangement~~ at locations in this state, or any other factor that reflects the use of the intangible property in this state.

~~***NOTE: I do not know the meaning of the phrase "pursuant to the arrangement at locations in this state." What arrangement? Please clarify.~~

3. If the taxpayer is not subject to income tax in the state in which the gross royalties or other gross receipts are considered received under this paragraph, but the taxpayer's commercial domicile is in this state, 50 percent of those gross royalties or other gross receipts shall be included in the numerator of the sales factor.

SECTION 33. 71.25 (9) (dh) of the statutes is created to read:

71.25 **(9)** (dh) 1. Gross receipts from services are in this state if the purchaser of the service received the benefit of the service in this state.

2. The benefit of a service is received in this state if any of the following applies:

a. The service relates to real property that is located in this state.

b. The service relates to tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state.

c. The service is provided to an individual who is physically present in this state at the time that the service is received.

d. The service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state.

3. If the purchaser of a service receives the benefit of a service in more than one state, the gross receipts from the performance of the service are included in the numerator of the sales factor according to the portion of the service received in this state.

4. If the taxpayer is not subject to income tax in the state in which the benefit of the service is received, the benefit of the service is received in this state to the extent that the taxpayer's employees or representatives performed services from a location in this state and 50 percent of the taxpayer's receipts that are considered received in this state under this paragraph shall be included in the numerator of the sales factor.

SECTION 34. 71.25 (9) (dm) of the statutes is created to read:

71.25 **(9)** (dm) If the income from sales assigned to this state under pars. (db), (dd), (df), (dg), and (dh) cannot be ascertained with reasonable certainty by the methods under pars. (db), (dd), (df), (dg), and (dh), the department may promulgate rules that specify how the income shall be apportioned.

SECTION 35. 71.25 (9) (e) 12. of the statutes is created to read:

71.25 **(9)** (e) 12. Gross receipts from the sale, licensing, or use of intangible property in the ordinary course of the taxpayer's trade or business.

1 **SECTION 36.** 71.25 (9) (f) 5. of the statutes is amended to read:

2 71.25 **(9)** (f) 5. ~~Proceeds~~ Notwithstanding any other provision of this
3 subsection, proceeds and gain or loss from the redemption of securities.

4 **SECTION 37.** 71.25 (9) (f) 7. of the statutes is amended to read:

5 71.25 **(9)** (f) 7. Gross receipts and gain or loss from the sale of intangible assets,
6 except those under par. (e) 1. and 12.

7 **SECTION 38.** 71.25 (9) (f) 9. of the statutes is amended to read:

8 71.25 **(9)** (f) 9. ~~Gross~~ Notwithstanding any other provision of this subsection,
9 gross receipts and gain or loss from the sale or exchange of securities.

10 **SECTION 39.** 71.28 (2m) (a) 1. b. of the statutes is amended to read:

11 71.28 **(2m)** (a) 1. b. For partnerships, except publicly traded partnerships
12 treated as corporations under s. 71.22 ~~(1)~~ (1k), or limited liability companies, except
13 limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1k), "claimant"
14 means each individual partner or member.

15 **SECTION 40.** 71.28 (4) (a) of the statutes is amended to read:

16 71.28 **(4)** (a) *Credit.* Any corporation may credit against taxes otherwise due
17 under this chapter an amount equal to 5% of the amount obtained by subtracting
18 from the corporation's qualified research expenses, as defined in section 41 of the
19 internal revenue code, except that "qualified research expenses" includes only
20 expenses incurred by the claimant, incurred for research conducted in this state for
21 the taxable year, except that a taxpayer may elect the alternative computation under
22 section 41 (c) (4) of the Internal Revenue Code and that election applies until the
23 department permits its revocation and except that "qualified research expenses"
24 does not include compensation used in computing the credit under subs. (1dj) and
25 (1dx), the corporation's base amount, as defined in section 41 (c) of the internal

(db), (dd), (df), (dg), (dh), and (dm)

revenue code, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d).~~ Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

SECTION 41. 71.28 (4) (am) 1. of the statutes is amended to read:

71.28 **(4)** (am) 1. In addition to the credit under par. (a), any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (1dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~ and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit

1 under this subdivision. The rules under sub. (1di) (f) and (g) as they apply to the
2 credit under that subsection apply to claims under this subdivision. Section 41 (h)
3 of the internal revenue code does not apply to the credit under this subdivision.

4 **SECTION 42.** 71.28 (4) (i) of the statutes is amended to read:

5 71.28 **(4)** (i) *Nonclaimants.* The credits under this subsection may not be
6 claimed by a partnership, except a publicly traded partnership treated as a
7 corporation under s. 71.22 ~~(1)~~ (1k), limited liability company, except a limited
8 liability company treated as a corporation under s. 71.22 ~~(1)~~ (1k), or tax–option
9 corporation or by partners, including partners of a publicly traded partnership,
10 members of a limited liability company or shareholders of a tax–option corporation.

11 **SECTION 43.** 71.42 (3d) of the statutes is amended to read:

12 71.42 **(3d)** "Member" does not include a member of a limited liability company
13 treated as a corporation under s. 71.22 ~~(1)~~ (1k).

14 **SECTION 44.** 71.42 (3h) of the statutes is amended to read:

15 71.42 **(3h)** "Partner" does not include a partner of a publicly traded partnership
16 treated as a corporation under s. 71.22 ~~(1)~~ (1k).

17 **SECTION 45.** 71.47 (2m) (a) 1. b. of the statutes is amended to read:

18 71.47 **(2m)** (a) 1. b. For partnerships, except publicly traded partnerships
19 treated as corporations under s. 71.22 ~~(1)~~ (1k), or limited liability companies, except
20 limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1k), "claimant"
21 means each individual partner or member.

22 **SECTION 46.** 71.47 (4) (a) of the statutes is amended to read:

23 71.47 **(4)** (a) *Credit.* Any corporation may credit against taxes otherwise due
24 under this chapter an amount equal to 5% of the amount obtained by subtracting
25 from the corporation's qualified research expenses, as defined in section 41 of the

(db), (dd), (df), (dg), (dh), and (dm)

internal revenue code, except that "qualified research expenses" includes only expenses incurred by the claimant, incurred for research conducted in this state for the taxable year, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" does not include compensation used in computing the credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~ Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

plain language

SECTION 47. 71.47 (4) (am) of the statutes is amended to read:

71.47 **(4)** (am) *Development zone additional research credit.* In addition to the credit under par. (a), any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (1dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount

(dh), (dd), (df), (dg), and (dm)

means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~ and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit under this paragraph. The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to claims under this paragraph. Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph. No credit may be claimed under this paragraph for taxable years that begin on January 1, 1998, or thereafter. Credits under this paragraph for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

SECTION 48. 71.47 (4) (i) of the statutes is amended to read:

71.47 **(4)** (i) *Nonclaimants.* The credits under this subsection may not be claimed by a partnership, except a publicly traded partnership treated as a corporation under s. 71.22 ~~(1)~~ (1k), limited liability company, except a limited liability company treated as a corporation under s. 71.22 ~~(1)~~ (1k), or tax–option corporation or by partners, including partners of a publicly traded partnership, members of a limited liability company or shareholders of a tax–option corporation.

SECTION 49. 71.58 (1) (c) of the statutes is amended to read:

71.58 **(1)** (c) For partnerships except publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ (1k), "claimant" means each individual partner.

SECTION 50. 71.58 (1) (cm) of the statutes is amended to read:

71.58 **(1)** (cm) For limited liability companies, except limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1k), "claimant" means each individual member.

SECTION 9341. Initial applicability; revenue.

(1) SINGLE SALES FACTOR APPORTIONMENT. The treatment of sections 71.01 (1b), (1n), (8g), (8m), and (~~9g~~ 10g), 71.03 (1), 71.04 (7) (d), (db), (dd), (df), (dg), (dh), (dm), (e) 12., and (f) 5., 7., and 9., 71.07 (2dr) (a), (3m) (a) 1. b., and (10), 71.195, 71.22 (1), (1g), (1t), (6m), (7m), and (9g), 71.25 (9) (d), (db), (dd), (df), (dg), (dh), (dm), (e) 12., and (f) 5., 7., and 9., 71.28 (2m) (a) 1. b. and (4) (a), (am) 1., and (i), 71.42 (3d) and (3h), 71.47 (2m) (a) 1. b. and (4) (a), (am), and (i), and 71.58 (1) (c) and (cm) of the statutes first applies to taxable years beginning on January 1, 2005.

(END)

2005 – 2006 LEGISLATURE

LRB–1656/2
JK:jld&wlj:pg

DOA:.....Koskinen, BB0425 – Single sales factor apportionment for computer software, intellectual property, and services

FOR 2005–07 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, for purposes of 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 percent of the formula and the property and payroll factors each represent 25 percent of the formula. Under current law, 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. This bill modifies the sales factor to provide for the apportionment of income derived from the lease, rental, or licensing of real property and moving property, the use of computer software, and the sale or use of intangible property and services.

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

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

1 **SECTION 1.** 71.01 (1b) of the statutes is created to read:

2 71.01 **(1b)** For purposes of s. 71.04 (7) (df), (dg), and (dh), "commercial domicile"
3 means the location from which a trade or business is principally managed and
4 directed, based on any factors the department determines are appropriate, including
5 the location where the greatest number of employees of the trade or business work,
6 have their office or base of operations, or from which the employees are directed or
7 controlled.

8 **SECTION 2.** 71.01 (1n) of the statutes is created to read:

9 71.01 **(1n)** For purposes of s. 71.04 (7) (df), (dg), and (dh), "domicile" means an
10 individual's true, fixed, and permanent home where the individual intends to remain
11 permanently and indefinitely and to which, whenever absent, the individual intends
12 to return, except that no individual may have more than one domicile at any time.

13 **SECTION 3.** 71.01 (8g) of the statutes is amended to read:

14 71.01 **(8g)** "Member" does not include a member of a limited liability company
15 treated as a corporation under s. 71.22 ~~(1)~~ (1k).

16 **SECTION 4.** 71.01 (8m) of the statutes is amended to read:

17 71.01 **(8m)** "Partner" does not include a partner of a publicly traded
18 partnership treated as a corporation under s. 71.22 ~~(1)~~ (1k).

19 **SECTION 5.** 71.01 (10g) of the statutes is created to read:

20 71.01 **(10g)** For purposes of s. 71.04 (7) (df), (dg), and (dh), "state" means a state
21 of the United States, the District of Columbia, the commonwealth of Puerto Rico, or
22 any territory or possession of the United States, unless the context requires that
23 "state" means only the state of Wisconsin.

24 **SECTION 6.** 71.03 (1) of the statutes is amended to read:

71.03 **(1)** DEFINITION. In this section, "gross income" means all income, from whatever source derived and in whatever form realized, whether in money, property or services, which is not exempt from Wisconsin income taxes. "Gross income" includes, but is not limited to, the following items: compensation for services, including salaries, wages and fees, commissions and similar items; gross income derived from business; interest; rents; royalties; dividends; alimony and separate maintenance payments; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive shares of partnership gross income except distributive shares of the income of publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ (1k); distributive shares of limited liability company gross income except distributive shares of the income of limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1k); income in respect of a decedent; and income from an interest in an estate or trust. "Gross income" from a business or farm consists of the total gross receipts without reduction for cost of goods sold, expenses or any other amounts. The gross rental amounts received from rental properties are included in gross income without reduction for expenses or any other amounts. "Gross income" from the sale of securities, property or other assets consists of the gross selling price without reduction for the cost of the assets, expenses of sale or any other amounts. "Gross income" from an annuity, retirement plan or profit sharing plan consists of the gross amount received without reduction for the employee's contribution to the annuity or plan.

SECTION 7. 71.04 (7) (d) of the statutes is repealed.

SECTION 8. 71.04 (7) (db) of the statutes is created to read:

71.04 **(7)** (db) Gross receipts from the lease, rental, or licensing of real property owned by the taxpayer and the sublease of real property are in this state if the real property is located in this state.

SECTION 9. 71.04 (7) (dd) of the statutes is created to read:

71.04 **(7)** (dd) 1. Except as provided in subd. 2., gross receipts from the lease, rental, or licensing of tangible personal property owned by the taxpayer and the sublease of tangible personal property are in this state if the property is located in this state during the entire period of lease, rental, licensing, sublease, or other use. If the property is used in and outside this state during the period of lease, rental, licensing, or sublease, gross receipts are in this state to the extent that the property is used in this state. The proportion of use in this state is determined by multiplying the gross receipts from the lease, rental, licensing, sublease, or other use of the property by a fraction having as a numerator the amount of time the property was used in this state in the taxable year and having as a denominator the total time the property was used in all states having jurisdiction to impose an income tax on the taxpayer in the taxable year.

2. Gross receipts from the lease, rental, or licensing of moving property, including motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, owned by the taxpayer and the sublease of moving property are in this state to the extent that the property is used in this state. The proportion of use of moving property in this state is determined as follows:

a. The proportion of use of a motor vehicle or rolling stock in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the motor vehicle or rolling stock by a fraction having as a numerator the number of miles traveled within this state by the motor vehicle or rolling stock while

leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of miles traveled by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year.

b. The proportion of use of an aircraft in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the aircraft by a fraction having as a numerator the number of takeoffs and landings of the aircraft in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of takeoffs and landings of the aircraft while leased, rented, licensed, or subleased in the taxable year.

c. The proportion of use of a vessel or mobile equipment in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the vessel or mobile equipment by a fraction having as a numerator the number of days that the vessel or mobile equipment is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the vessel or mobile equipment is leased, rented, licensed, or subleased in the taxable year.

d. If the taxpayer is unable to determine the use of moving property under subd. 2. a., b., or c. while the property is leased, rented, licensed, or subleased in the taxable year, the moving property is conclusively deemed to be used in the state in which the property is located at the time that the lessee, renter, licensee, or sublessee takes possession of the property in the taxable year.

SECTION 10. 71.04 (7) (df) of the statutes is created to read:

71.04 **(7)** (df) 1. Gross receipts from the use of computer software are in this state if the purchaser or licensee uses the computer software at a location in this state.

2. Computer software is used at a location in this state if the purchaser or licensee uses the computer software in the regular course of business operations in this state, for personal use in this state, or if the purchaser or licensee is an individual whose domicile is in this state. If the purchaser or licensee uses the computer software in more than one state, the gross receipts shall be divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the computer software in those states. To determine computer software use in this state, the department may consider the number of users in each state where the computer software is used, the number of site licenses or workstations in this state, and any other factors that reflect the use of computer software in this state.

3. If the taxpayer is not subject to income tax in the state in which the gross receipts are considered received under this paragraph, but the taxpayer's commercial domicile is in this state, 50 percent of those gross receipts shall be included in the numerator of the sales factor.

SECTION 11. 71.04 (7) (dg) of the statutes is created to read:

71.04 **(7)** (dg) 1. Gross royalties and other gross receipts received for the sale or use of intangible property, including, but not limited to, patents, copyrights, trademarks, trade names, service names, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, technical know–how, contracts, and customer lists, are in this state if the user, purchaser, or licensee uses the intangible property at a location in this state.

2. Intangible property is used at a location in this state if the user, purchaser, or licensee uses the property in the operation of a trade or business at a location in this state, for personal use in this state, or if the user, purchaser, or licensee is an

individual whose domicile is in this state. If the user, purchaser, or licensee uses the intangible property in more than one state, the gross royalties and other gross receipts from the sale or use of the intangible property shall be divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states. To determine intangible property use in this state, the department may consider the number of licensed sites in each state, the volume of property manufactured, produced, or sold at locations in this state, or any other factors that reflect the use of the intangible property in this state.

3. If the taxpayer is not subject to income tax in the state in which the gross royalties or other gross receipts are considered received under this paragraph, but the taxpayer's commercial domicile is in this state, 50 percent of those gross royalties or other gross receipts shall be included in the numerator of the sales factor.

SECTION 12. 71.04 (7) (dh) of the statutes is created to read:

71.04 **(7)** (dh) 1. Gross receipts from services are in this state if the purchaser of the service received the benefit of the service in this state.

2. The benefit of a service is received in this state if any of the following applies:

a. The service relates to real property that is located in this state.

b. The service relates to tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state.

c. The service is provided to an individual who is physically present in this state at the time that the service is received.

d. The service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state.

3. If the purchaser of a service receives the benefit of a service in more than one state, the gross receipts from the performance of the service are included in the numerator of the sales factor according to the portion of the service received in this state.

4. If the taxpayer is not subject to income tax in the state in which the benefit of the service is received, the benefit of the service is received in this state to the extent that the taxpayer's employees or representatives performed services from a location in this state. Fifty percent of the taxpayer's receipts that are considered received in this state under this paragraph shall be included in the numerator of the sales factor.

SECTION 13. 71.04 (7) (dm) of the statutes is created to read:

71.04 **(7)** (dm) If the income from sales, other than sales of tangible personal property, properly assignable to this state cannot be ascertained with reasonable certainty by the methods under pars. (db), (dd), (df), (dg), and (dh), the department may promulgate rules that specify how the income shall be apportioned.

SECTION 14. 71.04 (7) (e) 12. of the statutes is created to read:

71.04 **(7)** (e) 12. Gross receipts from the sale, licensing, or use of intangible property in the ordinary course of the taxpayer's trade or business.

SECTION 15. 71.04 (7) (f) 5. of the statutes is amended to read:

71.04 **(7)** (f) 5. ~~Proceeds~~ <u>Notwithstanding any other provision of this subsection, proceeds</u> and gain or loss from the redemption of securities.

SECTION 16. 71.04 (7) (f) 7. of the statutes is amended to read:

71.04 **(7)** (f) 7. Gross receipts and gain or loss from the sale of intangible assets, except those under par. (e) 1. <u>and 12.</u>

SECTION 17. 71.04 (7) (f) 9. of the statutes is amended to read:

71.04 **(7)** (f) 9. ~~Gross~~ Notwithstanding any other provision of this subsection, gross receipts and gain or loss from the sale or exchange of securities.

SECTION 18. 71.07 (2dr) (a) of the statutes is amended to read:

71.07 **(2dr)** (a) *Credit.* Any person may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the person's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (2dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the person's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.04 (7) (b) 1. and 2. ~~and (d)~~, (db), (dd), (df), (dg), (dh), and (dm) and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit under this paragraph. The rules under sub. (2di) (f) and (g), as they apply to the

1 credit under that subsection, apply to claims under this paragraph. Section 41 (h)
2 of the internal revenue code does not apply to the credit under this paragraph.

3 **SECTION 19.** 71.07 (3m) (a) 1. b. of the statutes is amended to read:

4 71.07 **(3m)** (a) 1. b. For partnerships except publicly traded partnerships
5 treated as corporations under s. 71.22 ~~(1)~~ (1k), or limited liability companies, except
6 limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1k), "claimant"
7 means each individual partner or member.

8 **SECTION 20.** 71.07 (10) of the statutes is amended to read:

9 71.07 **(10)** CREDITS NOT ALLOWED. The credits under s. 71.28 (4) and (5) may not
10 be claimed by partners, including partners of a publicly traded partnership treated
11 as a corporation under s. 71.22 ~~(1)~~ (1k), members of a limited liability company,
12 including members of a limited liability company treated as a corporation under s.
13 77.22 ~~(1)~~ (1k), or shareholders of a tax–option corporation.

14 **SECTION 21.** 71.195 of the statutes is amended to read:

15 **71.195 Definition.** In this subchapter, "partnership" includes limited liability
16 companies and other entities that are treated as partnerships under the Internal
17 Revenue Code, and "partnership" does not include publicly traded partnerships
18 treated as corporations under s. 71.22 ~~(1)~~ (1k).

19 **SECTION 22.** 71.22 (1) of the statutes is renumbered 71.22 (1k).

20 **SECTION 23.** 71.22 (1g) of the statutes is created to read:

21 71.22 **(1g)** For purposes of s. 71.25 (9) (df), (dg), and (dh), "commercial domicile"
22 means the location from which a trade or business is principally managed and
23 directed, based on any factors the department determines are appropriate, including
24 the location where the greatest number of employees of the trade or business work,

permanently and

have their office or base of operations, or from which the employees are directed or controlled.

SECTION 24. 71.22 (1t) of the statutes is created to read:

71.22 **(1t)** For purposes of s. 71.25 (9) (df), (dg), and (dh), "domicile" means an individual's true, fixed, and permanent home where the individual intends to remain indefinitely and to which, whenever absent, the individual intends to return, except that no individual may have more than one domicile at any time.

SECTION 25. 71.22 (6m) of the statutes is amended to read:

71.22 **(6m)** "Member" does not include a member of a limited liability company treated as a corporation under sub. ~~(1)~~ (1k).

SECTION 26. 71.22 (7m) of the statutes is amended to read:

71.22 **(7m)** "Partner" does not include a partner of a publicly traded partnership treated as a corporation under sub. ~~(1)~~ (1k).

SECTION 27. 71.22 (9g) of the statutes is created to read:

71.22 **(9g)** For purposes of s. 71.25 (9) (df), (dg), and (dh), "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States, unless the context requires that "state" means only the state of Wisconsin.

SECTION 28. 71.25 (9) (d) of the statutes is repealed.

SECTION 29. 71.25 (9) (db) of the statutes is created to read:

71.25 **(9)** (db) Gross receipts from the lease, rental, or licensing of real property owned by the taxpayer and the sublease of real property are in this state if the real property is located in this state.

SECTION 30. 71.25 (9) (dd) of the statutes is created to read:

71.25 **(9)** (dd) 1. Except as provided in subd. 2., gross receipts from the lease, rental, or licensing of tangible personal property owned by the taxpayer and the sublease of tangible personal property are in this state if the property is located in this state during the entire period of lease, rental, licensing, sublease, or other use. If the property is used in and outside this state during the period of lease, rental, licensing, or sublease, gross receipts are in this state to the extent that the property is used in this state. The proportion of use in this state is determined by multiplying the gross receipts from the lease, rental, licensing, sublease, or other use of the property by a fraction having as a numerator the amount of time the property was used in this state in the taxable year and having as a denominator the total time the property was used in all states having jurisdiction to impose an income tax on the taxpayer in the taxable year.

2. Gross receipts from the lease, rental, or licensing of moving property, including motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, owned by the taxpayer and the sublease of moving property are in this state to the extent that the property is used in this state. The proportion of use of moving property in this state is determined as follows:

a. The proportion of use of a motor vehicle or rolling stock in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the motor vehicle or rolling stock by a fraction having as a numerator the number of miles traveled within this state by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of miles traveled by the motor vehicle or rolling stock while leased, rented, licensed, or subleased in the taxable year.

b. The proportion of use of an aircraft in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the aircraft by a fraction having as a numerator the number of takeoffs and landings of the aircraft in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of takeoffs and landings of the aircraft while leased, rented, licensed, or subleased in the taxable year.

c. The proportion of use of a vessel or mobile equipment in this state is determined by multiplying the gross receipts from the lease, rental, licensing, or sublease of the vessel or mobile equipment by a fraction having as a numerator the number of days that the vessel or mobile equipment is in this state while leased, rented, licensed, or subleased in the taxable year and having as a denominator the total number of days that the vessel or mobile equipment is leased, rented, licensed, or subleased in the taxable year.

d. If the taxpayer is unable to determine the use of moving property under subd. 2. a., b., or c. while the property is leased, rented, licensed, or subleased in the taxable year, the moving property is conclusively deemed to be used in the state in which the property is located at the time that the lessee, renter, licensee, or sublessee takes possession of the property in the taxable year.

SECTION 31. 71.25 (9) (df) of the statutes is created to read:

71.25 **(9)** (df) 1. Gross receipts from the use of computer software are in this state if the purchaser or licensee uses the computer software at a location in this state.

2. Computer software is used at a location in this state if the purchaser or licensee uses the computer software in the regular course of business operations in this state, for personal use in this state, or if the purchaser or licensee is an individual

1 whose domicile is in this state. If the purchaser or licensee uses the computer
2 software in more than one state, the gross receipts shall be divided among those
3 states having jurisdiction to impose an income tax on the taxpayer in proportion to
4 the use of the computer software in those states. To determine computer software
5 use in this state, the department may consider the number of users in each state
6 where the computer software is used, the number of site licenses or workstations in
7 this state, and any other factors that reflect the use of computer software in this
8 state.

9 3. If the taxpayer is not subject to income tax in the state in which the gross
10 receipts are considered received under this paragraph, but the taxpayer's
11 commercial domicile is in this state, 50 percent of those gross receipts shall be
12 included in the numerator of the sales factor.

13 **SECTION 32.** 71.25 (9) (dg) of the statutes is created to read:

14 71.25 **(9)** (dg) 1. Gross royalties and other gross receipts received for the sale
15 or use of intangible property, including, but not limited to, patents, copyrights,
16 trademarks, trade names, service names, franchises, licenses, plans, specifications,
17 blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings,
18 manuals, technical know–how, contracts, and customer lists, are in this state if the
19 user, purchaser, or licensee uses the intangible property at a location in this state.

20 2. Intangible property is used at a location in this state if the user, purchaser,
21 or licensee uses the property in the operation of a trade or business at a location in
22 this state, for personal use in this state, or if the user, purchaser, or licensee is an
23 individual whose domicile is in this state. If the user, purchaser, or licensee uses the
24 intangible property in more than one state, the gross royalties and other gross
25 receipts from the sale or use of the intangible property shall be divided among those

states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states. To determine intangible property use in this state, the department may consider the number of licensed sites in each state, the volume of property manufactured, produced, or sold at locations in this state, or any other factors that reflect the use of the intangible property in this state.

3. If the taxpayer is not subject to income tax in the state in which the gross royalties or other gross receipts are considered received under this paragraph, but the taxpayer's commercial domicile is in this state, 50 percent of those gross royalties or other gross receipts shall be included in the numerator of the sales factor.

SECTION 33. 71.25 (9) (dh) of the statutes is created to read:

71.25 **(9)** (dh) 1. Gross receipts from services are in this state if the purchaser of the service received the benefit of the service in this state.

2. The benefit of a service is received in this state if any of the following applies:

a. The service relates to real property that is located in this state.

b. The service relates to tangible personal property that is located in this state at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in this state.

c. The service is provided to an individual who is physically present in this state at the time that the service is received.

d. The service is provided to a person engaged in a trade or business in this state and relates to that person's business in this state.

3. If the purchaser of a service receives the benefit of a service in more than one state, the gross receipts from the performance of the service are included in the numerator of the sales factor according to the portion of the service received in this state.

4. If the taxpayer is not subject to income tax in the state in which the benefit of the service is received, the benefit of the service is received in this state to the extent that the taxpayer's employees or representatives performed services from a location in this state. Fifty percent of the taxpayer's receipts that are considered received in this state under this paragraph shall be included in the numerator of the sales factor.

SECTION 34. 71.25 (9) (dm) of the statutes is created to read:

71.25 **(9)** (dm) If the income from sales, other than sales of tangible personal property, properly assignable to this state cannot be ascertained with reasonable certainty by the methods under pars. (db), (dd), (df), (dg), and (dh), the department may promulgate rules that specify how the income shall be apportioned.

SECTION 35. 71.25 (9) (e) 12. of the statutes is created to read:

71.25 **(9)** (e) 12. Gross receipts from the sale, licensing, or use of intangible property in the ordinary course of the taxpayer's trade or business.

SECTION 36. 71.25 (9) (f) 5. of the statutes is amended to read:

71.25 **(9)** (f) 5. ~~Proceeds~~ Notwithstanding any other provision of this subsection, proceeds and gain or loss from the redemption of securities.

SECTION 37. 71.25 (9) (f) 7. of the statutes is amended to read:

71.25 **(9)** (f) 7. Gross receipts and gain or loss from the sale of intangible assets, except those under par. (e) 1. and 12.

SECTION 38. 71.25 (9) (f) 9. of the statutes is amended to read:

71.25 **(9)** (f) 9. ~~Gross~~ Notwithstanding any other provision of this subsection, gross receipts and gain or loss from the sale or exchange of securities.

SECTION 39. 71.28 (2m) (a) 1. b. of the statutes is amended to read:

71.28 **(2m)** (a) 1. b. For partnerships, except publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ (1k), or limited liability companies, except limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1k), "claimant" means each individual partner or member.

SECTION 40. 71.28 (4) (a) of the statutes is amended to read:

71.28 **(4)** (a) *Credit.* Any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" includes only expenses incurred by the claimant, incurred for research conducted in this state for the taxable year, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" does not include compensation used in computing the credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~, (db), (dd), (df), (dg), (dh), and (dm). Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

SECTION 41. 71.28 (4) (am) 1. of the statutes is amended to read:

71.28 **(4)** (am) 1. In addition to the credit under par. (a), any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone

under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (1dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~, (db), (dd), (df), (dg), (dh), and (dm) and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit under this subdivision. The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to claims under this subdivision. Section 41 (h) of the internal revenue code does not apply to the credit under this subdivision.

SECTION 42. 71.28 (4) (i) of the statutes is amended to read:

71.28 **(4)** (i) *Nonclaimants.* The credits under this subsection may not be claimed by a partnership, except a publicly traded partnership treated as a corporation under s. 71.22 ~~(1)~~ (1k), limited liability company, except a limited liability company treated as a corporation under s. 71.22 ~~(1)~~ (1k), or tax–option

corporation or by partners, including partners of a publicly traded partnership, members of a limited liability company or shareholders of a tax–option corporation.

SECTION 43. 71.42 (3d) of the statutes is amended to read:

71.42 **(3d)** "Member" does not include a member of a limited liability company treated as a corporation under s. 71.22 ~~(1)~~ (1k).

SECTION 44. 71.42 (3h) of the statutes is amended to read:

71.42 **(3h)** "Partner" does not include a partner of a publicly traded partnership treated as a corporation under s. 71.22 ~~(1)~~ (1k).

SECTION 45. 71.47 (2m) (a) 1. b. of the statutes is amended to read:

71.47 **(2m)** (a) 1. b. For partnerships, except publicly traded partnerships treated as corporations under s. 71.22 ~~(1)~~ (1k), or limited liability companies, except limited liability companies treated as corporations under s. 71.22 ~~(1)~~ (1k), "claimant" means each individual partner or member.

SECTION 46. 71.47 (4) (a) of the statutes is amended to read:

71.47 **(4)** (a) *Credit.* Any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" includes only expenses incurred by the claimant, incurred for research conducted in this state for the taxable year, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" does not include compensation used in computing the credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, except that gross receipts used in calculating the base amount means

gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~, (db), (dd), (df), (dg), (dh), and (dm). Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

SECTION 47. 71.47 (4) (am) of the statutes is amended to read:

71.47 **(4)** (am) *Development zone additional research credit.* In addition to the credit under par. (a), any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (1dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d)~~, (db), (dd), (df), (dg), (dh), and (dm) and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit

1 under this paragraph. The rules under sub. (1di) (f) and (g) as they apply to the credit
2 under that subsection apply to claims under this paragraph. Section 41 (h) of the
3 internal revenue code does not apply to the credit under this paragraph. No credit
4 may be claimed under this paragraph for taxable years that begin on January 1,
5 1998, or thereafter. Credits under this paragraph for taxable years that begin before
6 January 1, 1998, may be carried forward to taxable years that begin on January 1,
7 1998, or thereafter.

8 **SECTION 48.** 71.47 (4) (i) of the statutes is amended to read:

9 71.47 **(4)** (i) *Nonclaimants.* The credits under this subsection may not be
10 claimed by a partnership, except a publicly traded partnership treated as a
11 corporation under s. 71.22 ~~(1)~~ (1k), limited liability company, except a limited
12 liability company treated as a corporation under s. 71.22 ~~(1)~~ (1k), or tax–option
13 corporation or by partners, including partners of a publicly traded partnership,
14 members of a limited liability company or shareholders of a tax–option corporation.

15 **SECTION 49.** 71.58 (1) (c) of the statutes is amended to read:

16 71.58 **(1)** (c) For partnerships except publicly traded partnerships treated as
17 corporations under s. 71.22 ~~(1)~~ (1k), "claimant" means each individual partner.

18 **SECTION 50.** 71.58 (1) (cm) of the statutes is amended to read:

19 71.58 **(1)** (cm) For limited liability companies, except limited liability
20 companies treated as corporations under s. 71.22 ~~(1)~~ (1k), "claimant" means each
21 individual member.

22 **SECTION 9341. Initial applicability; revenue.**

23 (1) SINGLE SALES FACTOR APPORTIONMENT. The treatment of sections 71.01 (1b),
24 (1n), (8g), (8m), and (10g), 71.03 (1), 71.04 (7) (d), (db), (dd), (df), (dg), (dh), (dm), (e)
25 12., and (f) 5., 7., and 9., 71.07 (2dr) (a), (3m) (a) 1. b., and (10), 71.195, 71.22 (1), (1g),

1 (1t), (6m), (7m), and (9g), 71.25 (9) (d), (db), (dd), (df), (dg), (dh), (dm), (e) 12., and (f)
2 5., 7., and 9., 71.28 (2m) (a) 1. b. and (4) (a), (am) 1., and (i), 71.42 (3d) and (3h), 71.47
3 (2m) (a) 1. b. and (4) (a), (am), and (i), and 71.58 (1) (c) and (cm) of the statutes first
4 applies to taxable years beginning on January 1, 2005.

5 **(END)**

Kreye, Joseph

From: Kraus, Jennifer - DOA
Sent: Wednesday, January 26, 2005 10:35 AM
To: Kreye, Joseph
Subject: FW: LRB Draft: 05-1656/2 Single sales factor apportionment for computer software, intellectual property, and services

05-1656/2

-----Original Message-----
From: Lashore, Patricia M
Sent: Wednesday, January 26, 2005 9:56 AM
To: Kraus, Jennifer - DOA
Subject: FW: LRB Draft: 05-1656/2 Single sales factor apportionment for computer software, intellectual property, and services

There is one change required to this draft:

Bill section 24, page 11, line 6 -- Before "indefinitely" insert "permanently and".