



# State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 06/30/2005 (Per: MES)



## Appendix – Part 03 of 05

 The 2005 drafting file for

LRB 05b0689

LRB 05b0780


LRB 05b0673


LRB 05b0759

LRB 05b0750

has been copied/added to the 2005 drafting file for

# **LRB 05b0783**

 The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

 This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.

**2005 DRAFTING REQUEST**

**Senate Amendment (SA-AB100)**

Received: 06/24/2005

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Judith Robson (608) 266-2253

By/Representing: nadine

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Business - crp inc, fran

Extra Copies:

Submit via email: YES

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

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

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Combined reporting for corporate income and franchise taxation

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**Instructions:**

See Attached

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**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>       | <u>Reviewed</u>        | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>       | <u>Jacketed</u>        | <u>Required</u> |
|--------------|----------------------|------------------------|------------------------|----------------|------------------------|------------------------|-----------------|
| /?           | jkreye<br>06/24/2005 | wjackson<br>06/24/2005 |                        | _____          |                        |                        |                 |
| /1           |                      |                        | jfrantze<br>06/24/2005 | _____          | Inorthro<br>06/24/2005 | Inorthro<br>06/24/2005 |                 |

FE Sent For:

<END>

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /?           | jkreye         | 1/1Wj 6/24      | Jb/24        | Jb/RS<br>6/24  |                  |                 |                 |

FE Sent For:

<END>

**2005**

Date (time) needed

*Today please in 6-24-05*

LRB b 067311

**BUDGET AMENDMENT**

VK:WLj :

**[Not for compile]**

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**SENATE AMENDMENT  
TO 2005 AB 100**

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

~~#. Page . . . . , line . . . . :~~

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~~#. Page . . . . , line . . . . :~~

~~#. Page . . . . , line . . . . :~~

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~~ASSEMBLY AMENDMENT ,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 100~~

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 561, line 16: after that line insert:

3 "SECTION 1275b. 71.04 (4) (intro.) of the statutes is renumbered 71.04 (4) and  
4 amended to read:

5 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. Nonresident  
6 individuals and nonresident estates and trusts engaged in business within and  
7 without the state shall be taxed only on such income as is derived from business  
8 transacted and property located within the state. The amount of such income  
9 attributable to Wisconsin may be determined by an allocation and separate  
10 accounting thereof, when the business of such nonresident individual or nonresident  
11 estate or trust within the state is not an integral part of a unitary business, but the  
12 department of revenue may permit an allocation and separate accounting in any case

1 in which it is satisfied that the use of such method will properly reflect the income  
2 taxable by this state. In all cases in which allocation and separate accounting is not  
3 permissible, the determination shall be made in the following manner: for all  
4 businesses except air carriers, financial organizations, telecommunications  
5 companies, pipeline companies, public utilities, railroads, sleeping car companies  
6 and car line companies there shall first be deducted from the total net income of the  
7 taxpayer the part thereof (less related expenses, if any) that follows the situs of the  
8 property or the residence of the recipient. The remaining net income shall be  
9 apportioned to this state by use of the following: an apportionment fraction composed  
10 of a sales factor representing 50 percent of the fraction, a property factor  
11 representing 25 percent of the fraction, and a payroll factor representing 25 percent  
12 of the fraction.

13 **SECTION 1275c.** 71.04 (4) (a) to (e) of the statutes are repealed.

14 **SECTION 1275d.** 71.04 (4m) of the statutes is repealed.

15 **SECTION 1275e.** 71.04 (5) (intro.) of the statutes is amended to read:

16 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable  
17 years beginning before January 1, 2008:

18 **SECTION 1275f.** 71.04 (6) (intro.) of the statutes is amended to read:

19 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years  
20 beginning before January 1, 2008:".

21 **2.** Page 563, line 17: after that line insert:

22 "SECTION 1281b. 71.04 (8) (b) 1. and 2. of the statutes are consolidated,  
23 renumbered 71.04 (8) (b) and amended to read:

1           71.04 (8) (b) ~~For taxable years beginning before January 1, 2006, "public~~ "Public  
2 utility", as used in this section, means ~~any business entity described under subd. 2.~~  
3 ~~and any business entity which owns or operates any plant, equipment, property,~~  
4 ~~franchise, or license for the transmission of communications or the production,~~  
5 ~~transmission, sale, delivery, or furnishing of electricity, water or steam, the rates of~~  
6 ~~charges for goods or services of which have been established or approved by a federal,~~  
7 ~~state or local government or governmental agency. 2. In this section, for taxable~~  
8 ~~years beginning after December 31, 2005, "public~~ "Public utility" also means any  
9 business entity providing service to the public and engaged in the transportation of  
10 goods and persons for hire, as defined in s. 194.01 (4), regardless of whether or not  
11 the entity's rates or charges for services have been established or approved by a  
12 federal, state or local government or governmental agency.

13           **SECTION 1281d.** 71.04 (8) (c) of the statutes is amended to read:

14           71.04 (8) (c) The net business income of railroads, sleeping car companies, car  
15 line companies, ~~pipeline companies,~~ financial organizations, ~~telecommunications~~  
16 ~~companies, air carriers,~~ and public utilities requiring apportionment shall be  
17 apportioned pursuant to rules of the department of revenue, but the income taxed  
18 is limited to the income derived from business transacted and property located  
19 within the state.

20           **SECTION 1281m.** 71.04 (10) of the statutes is amended to read:

21           71.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident  
22 individual or nonresident estate or trust engaged in business in and outside of this  
23 state and required to apportion its income as provided in this section, it shall be  
24 shown to the satisfaction of the department of revenue that the use of any one of the  
25 3 factors provided under sub. (4) gives an unreasonable or inequitable final average

1 ratio because of the fact that such nonresident individual or nonresident estate or  
2 trust does not employ, to any appreciable extent in its trade or business in producing  
3 the income taxed, the factors made use of in obtaining such ratio, this factor may,  
4 with the approval of the department of revenue, be omitted in obtaining the final  
5 average ratio which is to be applied to the remaining net income. ~~This subsection~~  
6 ~~does not apply to taxable years beginning after December 31, 2007."~~

7 **3.** Page 613, line 25: after that line insert:

8 "SECTION 1343b. 71.25 (6) (intro.) of the statutes is renumbered 71.25 (6) and  
9 amended to read:

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



# page 614, line 110 after that line insert ①

1 that follows the situs of the property or the residence of the recipient. The remaining  
2 net income shall be apportioned to this state by use of the following: an  
3 apportionment fraction composed of a sales factor under sub. (9) representing 50  
4 percent of the fraction, a property factor under sub. (7) representing 25 percent of the  
5 fraction, and a payroll factor under sub. (8) representing 25 percent of the fraction.

6 SECTION 1343c. 71.25 (6) (a) to (e) of the statutes are repealed.

7 SECTION 1343d. 71.25 (6m) of the statutes is repealed.

8 SECTION 1343e. 71.25 (7) (intro.) of the statutes is amended to read:

9 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. (6) and for taxable  
10 years beginning before January 1, 2008:

11 SECTION 1343f. 71.25 (8) (intro.) of the statutes is amended to read:

12 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. (6) and for taxable years  
13 beginning before January 1, 2008:

14 ✓ SECTION 1343g. 71.25 (9) (a) of the statutes is amended to read:

15 71.25 (9) (a) The sales factor is a fraction, the numerator of which is the total  
16 sales of the taxpayer in this state during the tax period, and the denominator of  
17 which is the total sales of the taxpayer everywhere during the tax period. For sales  
18 of tangible personal property, the numerator of the sales factor is the sales of the  
19 taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the  
20 taxpayer during the tax period under pars. (b) 2m. and 3. and (c). For purposes of  
21 determining the numerator of the sales factor for a member of a combined reporting  
22 group under s. 71.255 (7), "taxpayer" means the member of a combined reporting  
23 group, as defined in s. 71.255 (1) (c), that transferred title to tangible personal  
24 property or, for sales other than sales of tangible personal property, that made the  
25 sale."

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**4.** Page 616, line 2: after that line insert:

**SECTION 1349b.** 71.25 (10) (b) 1. and 2. of the statutes are consolidated, renumbered 71.25 (10) (b) and amended to read:

71.25 (10) (b) In this section, ~~for taxable years beginning before January 1, 2006,~~ "public utility" means ~~any business entity described under subd. 2. and any~~ business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications or the production, transmission, sale, delivery, or furnishing of electricity, water or steam the rates of charges for goods or services of which have been established or approved by a federal, state or local government or governmental agency. ~~2. In this section, for taxable years beginning after December 31, 2005,~~ public "Public utility" also means any business entity providing service to the public and engaged in the transportation of goods and persons for hire, as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges for services have been established or approved by a federal, state or local government or governmental agency.

**SECTION 1349c.** 71.25 (10) (c) of the statutes is amended to read:

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

**SECTION 1349d.** 71.25 (11) of the statutes is amended to read:

# Page 616, line 120 after that line insert!

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~~71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation engaged in business in and outside of this state and required to apportion its income as provided in sub. (6), it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided in sub. (6) gives an unreasonable or inequitable final average ratio because of the fact that such corporation does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income. This subsection does not apply to taxable years beginning after December 31, 2007.~~

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SECTION 1349e. 71.255 of the statutes is created to read:

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

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

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

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

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

1. A parent corporation and any corporation or chain of corporations that are connected to the parent corporation by direct or indirect ownership by the parent

1 corporation if the parent corporation owns stock representing more than 50 percent  
2 of the voting power of at least one of the connected corporations or if the parent  
3 corporation or any of the connected corporations owns stock that cumulatively  
4 represents more than 50 percent of the voting power of each of the connected  
5 corporations.

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

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

13 4. Any 2 or more corporations if stock representing more than 50 percent of the  
14 voting power in each corporation ~~are interests~~ <sup>is interest</sup> that cannot be separately transferred.

15 5. Any 2 or more corporations if stock representing more than 50 percent of the  
16 voting power in each corporation is directly owned by, or for the benefit of, family  
17 members. In this subdivision, "family members" means an individual related by  
18 blood, marriage, or adoption within the 2nd degree of kinship as computed under s.  
19 852.03 (2), 1995 stats., or the spouse of such an individual.

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

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

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

2 (g) "Designated agent" means the taxpayer member of a commonly controlled  
3 group ~~who~~<sup>that</sup> files a group return on behalf of the taxpayer members of a combined  
4 reporting group.

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

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

10 (im) "Partnership" means any entity considered a partnership under section  
11 7701 of the Internal Revenue Code.

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

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

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

24 (m) "Unitary business" includes the business activities or operations of an  
25 entity that are of mutual benefit to, integrated with, or dependent upon or that

1 contribute to activities of at least one other entity, including transactions that serve  
2 an operational function, as determined by the department. Two or more businesses  
3 are presumed to be a unitary business if the businesses have unity of ownership,  
4 operation, and use as indicated by centralized management or a centralized  
5 executive force; centralized purchasing, advertising, or accounting; intercorporate  
6 sales or leases; intercorporate services; intercorporate debts; intercorporate use of  
7 proprietary materials; interlocking directorates; or interlocking corporate officers.

8 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) Except as provided  
9 in par. (b),<sup>✓</sup> and subject to sub. (6),<sup>✓</sup> a corporation that is subject to the tax imposed  
10 under s. 71.23 (1) or (2) or 71.43,<sup>✓</sup> that is a member of a commonly controlled group,  
11 and that is engaged, in whole or in part, in a unitary business with one or more  
12 members of the commonly controlled group shall compute the corporation's income  
13 attributable to this state by using the income computation under s. 71.26 or 71.45,<sup>✓</sup>  
14 the apportionment formula under s. 71.25 (6) or 71.45,<sup>✓</sup> and the tax credits under s.  
15 71.28<sup>✓</sup> or 71.47<sup>✓</sup> of all of the following that are members of the commonly controlled  
16 group:

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

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

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

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

3           5. Any corporation, regardless of its place of incorporation if the average of its  
4 property factor under s. 71.25 (7) and its payroll factor under s. 71.25 (8), for property  
5 and payroll within the United States and computed on an annual basis, is at least  
6 20% during any part of the taxable year that a corporation is a member of the  
7 commonly controlled group.

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

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

23           (3) COMPUTATION ELECTION. (a) A top tier corporation that is a member of a  
24 commonly controlled group may elect on the commonly controlled group's behalf, and  
25 in the manner prescribed by the department, to compute the income of each

1 corporation that is a member of the commonly controlled group under sub. (2) (b).

2 If more than one member of the commonly controlled group is a top tier corporation,

3 an election under this subsection is not effective unless all top tier corporations elect

4 on the commonly controlled group's behalf, and in the manner prescribed by the

5 department, to compute income under sub. (2) (b).

6 (b) A top tier corporation shall file an election made under par. (a) with the

7 department before the last day of the taxable year. The top tier corporation shall

8 designate a taxable year that corresponds with the taxable year of any taxpayer

9 member that is subject to the tax imposed under s. 71.23 (1) or (2) or 71.43. If the

10 top tier corporation fails to file the election before the last day of the taxable year

11 designated under this paragraph, all members of the commonly controlled group to

12 which the top tier corporation belongs, including the top tier corporation, shall

13 compute income under sub. (2) (a).

14 (c) Except as provided under par. (d), the members of the commonly controlled

15 group subject to an election under this subsection shall compute their income under

16 sub. (2) (b) for 7 taxable years, beginning with the taxable year designated under par.

17 (b). Thereafter, the members of the commonly controlled group shall compute their

18 income under sub. (2) (b) for periods of 7 taxable years and until any top tier

19 corporation that is a member of the commonly controlled group notifies the

20 department, in a manner prescribed by the department, before the last day of the last

21 taxable year in any period of 7 taxable years that the top tier corporation is

22 terminating the election under this subsection. A termination under this paragraph

23 takes effect on the first day of the first taxable year beginning after the top tier

24 corporation notifies the department under this paragraph.



1 (d) The department may grant a request by a top tier corporation to terminate  
2 an election under this subsection before the first period of 7 taxable years under par.  
3 (c) expires, if the top tier corporation shows good cause for granting the request, as  
4 determined by the department and consistent with section 1502 of the Internal  
5 Revenue Code.

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

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

16 (4) ACCOUNTING PERIOD. For purposes of this section, the income under ss. 71.26  
17 and 71.45, the apportionment factors under ss. 71.25 and 71.45 and the tax credits  
18 under ss. 71.28 and 71.47 of all corporations that are members of a combined  
19 reporting group shall be determined by using the same accounting period. If the  
20 combined reporting group has a common parent corporation, the accounting period  
21 of the common parent corporation shall be used to determine the income, the  
22 apportionment factors, and the tax credits of all the corporations that are members  
23 of the combined reporting group. If the combined reporting group has no common  
24 parent corporation, the income, the apportionment factors, and the tax credits of the  
25 combined reporting group shall be determined using the accounting period of the

1 member of the combined reporting group that has the most significant operations on  
2 a recurring basis in this state, as determined by the department.

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

12 (b) *Corporations with different accounting periods.* Corporations that are  
13 required to file a combined report and that have different accounting periods shall  
14 file separate returns and shall use the actual figures from the corporations' financial  
15 records to determine the proper income and income-related computations to convert  
16 to a common accounting period. Corporations that are required to file a combined  
17 report may use a proportional method to convert income to a common accounting  
18 period if the results of the proportional method do not materially misrepresent the  
19 income apportioned to this state. The apportionment factors under ss. 71.25 and  
20 71.45 and the tax credits under ss. 71.28 and 71.47 shall be computed according to  
21 the same method used to determine the income under ss. 71.26 and 71.45 for the  
22 common accounting period. If a corporation performs an interim closing of its  
23 financial records to determine the income attributable to the common accounting  
24 period, the actual figures from the interim closing shall be used to convert the  
25 apportionment factors and tax credits to the common accounting period.

1           (c) *Designated agent.* 1. For corporations that are subject to this section and  
2 that file a group return under par. (a), the parent corporation of the combined  
3 reporting group is the sole designated agent for each member of the combined  
4 reporting group including the parent corporation, if the parent corporation is a  
5 taxpayer member of the combined reporting group and income of the parent  
6 corporation is included on the group return. If the parent corporation is not a  
7 taxpayer member or if the parent corporation's income is not included on the group  
8 return, the taxpayer members may appoint a taxpayer member to be the designated  
9 agent. If the parent corporation of the combined reporting group is not eligible to be  
10 the designated agent and no taxpayer member is appointed to be the designated  
11 agent, the designated agent is the taxpayer member that has the most significant  
12 operations in this state on a recurring basis, as determined by the department. The  
13 designated agent, as determined under this subdivision, remains the designated  
14 agent until the designated agent is no longer a taxpayer member or until the  
15 taxpayer members appoint a different designated agent. If the designated agent  
16 changes, the combined reporting group shall notify the department of such a change,  
17 in a manner prescribed by the department.

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

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

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

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

for which  
for which

1 return under s. 71.26 or 71.45. If the corporation becomes a member of another  
2 combined reporting group in the remaining short period, the corporation's income  
3 shall be determined for the remaining short period as provided under sub. (2).

4 2. If the corporation is not required to file federal short<sup>o</sup> period returns, the  
5 corporation shall file a separate return. Income shall be determined as follows:

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

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

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

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

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

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 determined as follows:

11 (a) 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.

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.

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) 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:



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<sup>✓</sup> 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)<sup>✓</sup> or  
8 apportionment factor under s. 71.45 (3)<sup>✓</sup> 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)<sup>✓</sup>, the numerator and denominator of the member's apportionment  
11 factors <sup>are</sup> ~~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)<sup>✓</sup> from both the  
15 numerators and the denominators as determined under par. (a).<sup>✓</sup>

16 (c) Add the denominators of the apportionment factors for each member of the  
17 combined reporting group, as determined under par. (b)<sup>✓</sup>, 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)<sup>✓</sup> by the combined denominator  
21 as determined under par. (c).<sup>✓</sup>

22 (8) NET BUSINESS LOSS CARRY-OVER. (a) For taxable years beginning after  
23 December 31, 2005, 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

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, 2006,  
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, 2006, that has not been offset against the corporation's net income in subsequent  
13 taxable years<sup>g</sup> 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, 2005, that the corporation is subject to this section, the  
18 corporation may annually offset up to 20 percent of the remaining net business loss  
19 against the net income of the other members of the combined reporting group that  
20 join in 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 <sup>from</sup> ~~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

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<sup>ca</sup>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

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.

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)<sup>✓</sup>, 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 filed  
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 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

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),<sup>✓</sup> 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 that  
16 the corporation was not a member of the combined reporting group.

17 3. To determine the separate items under subds. 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),<sup>✓</sup> the combined reporting group shall make

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 that the corporation leaves the combined reporting group or, for a corporation that  
18 has a different accounting period <sup>from</sup> ~~than~~ the combined reporting group, for the portion  
19 of the corporation's separate taxable year that remains after the day 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 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

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



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 <sup>646 4</sup> **5.** Page ~~645~~, line ~~190~~ after that line insert:

20 "SECTION 1363d. 71.26 (3) (x) of the statutes is amended to read:  
 21 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to  
 22 consolidated returns) are excluded, except to the extent that they pertain to  
 23 intercompany transactions and the carry forward of net business loss under s. 71.255

1 and except that they are modified so that more than 50 percent ownership is  
2 substituted for at least 80 percent ownership.

3 **SECTION 1363m.** 71.26 (4) of the statutes is amended to read:

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

21 ✓ 6. Page 653, line 12 after that line insert:

22 “SECTION 1385m. 71.29 (2) of the statutes is amended to read:

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

4           7. Page 681, line 13<sup>17</sup> after that line insert:

5           “SECTION 1406b. 71.44 (1) (a) of the statutes is amended to read:

6           71.44 (1) (a) Every Except as provided in par. (e), every corporation, except  
7 corporations all of whose income is exempt from taxation and except as provided in  
8 sub. (1m), shall furnish to the department a true and accurate statement, on or before  
9 March 15 of each year, except that returns for fiscal years ending on some other date  
10 than December 31 shall be furnished on or before the 15th day of the 3rd month  
11 following the close of such fiscal year and except that returns for less than a full  
12 taxable year shall be furnished on or before the date applicable for federal income  
13 taxes under the internal revenue code, in such manner and form and setting forth  
14 such facts as the department deems necessary to enforce this chapter. Every  
15 corporation that is required to furnish a statement under this paragraph and that  
16 has income that is not taxable under this subchapter shall include with its statement  
17 a report that identifies each item of its nontaxable income. The statement shall be  
18 subscribed by the president, vice president, treasurer, assistant treasurer, chief  
19 accounting officer or any other officer duly authorized so to act. In the case of a return  
20 made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The  
21 fact that an individual’s name is subscribed on the return shall be prima facie  
22 evidence that the individual is authorized to subscribe the return on behalf of the  
23 corporation.

24           SECTION 1406c. 71.44 (1) (e)<sup>1</sup> of the statutes is created to read:

1           71.44 (1) (e) A corporation that is a member of a commonly controlled group,  
2 as defined in s. 71.255 (1) (d), and engaged in a unitary business, as defined in s.  
3 71.255 (1) (m), shall file a tax return under s. 71.255.”.

4           <sup>682</sup> <sup>3</sup> ~~8.~~ Page ~~681~~ <sup>682</sup> line ~~24~~ <sup>24</sup> after that line insert:

5           ~~SECTION 1406mb. 71.45 (3) (intro.) of the statutes is amended to read:~~  
6           71.45 (3) APPORTIONMENT. (intro.) ~~Except as provided in sub. (3d), to~~ ~~To~~  
7 determine Wisconsin income for purposes of the franchise tax, domestic insurers  
8 that, in the taxable year, have received premiums, other than life insurance  
9 premiums, written for insurance on property or risks resident, located or to be  
10 performed outside this state shall multiply the net income figure derived by  
11 application of sub. (2) by the arithmetic average of the following 2 percentages:

12           SECTION 1406mc. 71.45 (3) (a) of the statutes is amended to read:  
13           71.45 (3) (a) ~~Subject to sub. (3d), the~~ ~~The~~ percentage determined by dividing  
14 the sum of direct premiums written for insurance other than life insurance, with  
15 respect to all property and risks resident, located, or to be performed in this state,  
16 and assumed premiums written for reinsurance, other than life insurance, with  
17 respect to all property and risks resident, located, or to be performed in this state,  
18 by the sum of direct premiums written for insurance on all property and risks, other  
19 than life insurance, wherever located, and assumed premiums written for  
20 reinsurance on all property and risks, other than life insurance, wherever located.  
21 In this paragraph, “direct premiums” means direct premiums as reported for the  
22 taxable year on an annual statement that is filed by the insurer with the  
23 commissioner of insurance under s. 601.42 (1g) (a). In this paragraph, “assumed  
24 premiums” means assumed reinsurance premiums from domestic insurance

1 companies as reported for the taxable year on an annual statement that is filed with  
2 the commissioner of insurance under s. 601.42 (1g) (a).

3 **SECTION 1406md.** 71.45 (3) (b) 1. of the statutes is amended to read:

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

8 **SECTION 1406me.** 71.45 (3d) of the statutes is repealed.

9 **SECTION 1406mf.** 71.45 (3e) of the statutes is repealed.

10 **SECTION 1406mg.** 71.45 (3m) of the statutes is amended to read:

11 71.45 (3m) **ARITHMETIC AVERAGE.** ~~Except as provided in sub. (3d), the~~ The  
12 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the  
13 net income figure arrived at by the successive application of sub. (2) (a) and (b) with  
14 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have  
15 received premiums, other than life insurance premiums, written for insurance on  
16 property or risks resident, located or to be performed outside this state, to arrive at  
17 Wisconsin income constituting the measure of the franchise tax.

18 ~~SECTION 1406mh.~~ 71.46 (3) of the statutes is repealed.”.

19 ✓ ~~10~~ Page 689, line ~~10~~<sup>15</sup> after that line insert:

20 “SECTION 1428m. 71.48 of the statutes is amended to read:

21 71.48 **Payments of estimated taxes.** Sections Except as provided in s.  
22 71.255 (11), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under  
23 this chapter.”.

24 ✓ ~~10~~ Page 695, line ~~10~~<sup>14</sup> after that line insert:

1           **"SECTION 1432n.** 71.84 (2) (a) of the statutes is amended to read:

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

13           **11.** Page ~~1036~~<sup>1037</sup>, line ~~24~~<sup>25</sup> after that line insert:

14           ~~"(5f) ELIMINATING SINGLE SALES FACTOR. The treatment of sections 71.04 (4)~~  
15           ~~(intro.) and (a) to (e), (4m), (5) (intro.), (6) (intro.), (8) (b) 1. and 2. and (c), and (10),~~  
16           ~~71.25 (6) (intro.) and (a) to (e), (6m), (7) (intro.), (8) (intro.), (10) (b) 1. and 2. and (c),~~  
17           ~~and (11), and 71.45 (3) (intro.), (a), and (b) 1., (3d), (3e), and (3m) of the statutes first~~  
18           ~~applies to January 1, 2006.~~

19           ~~(5g)~~<sup>(5g)</sup> COMBINED REPORTING. The treatment of sections 71.25 (9) (a), 71.255, 71.26  
20           (3) (x) and (4), 71.29 (2), 71.44 (1) (a) and (e), 71.46 (3), 71.48, and 71.84 (2) (a) of the  
21           statutes first applies to taxable years beginning on January 1, 2006."

22

(END)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

~~June 21, 2005~~

LRBb0530/1dn

JK:krh

Wlj

20673/dn

Senator Robson

Representative Kreuser

This amendment ~~eliminates the single sales factor and~~ adopts combined reporting.

Joseph T. Kreye  
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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb0673/1dn  
JK:wlj:jf

June 24, 2005

Senator Robson:

This amendment adopts combined reporting.

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State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBb0673/1  
JK:wlj:jf

SENATE AMENDMENT ,  
TO 2005 ASSEMBLY BILL 100

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

2 1. Page 614, line 11: after that line insert:

3 "SECTION 1343g. 71.25 (9) (a) of the statutes is amended to read:

4 71.25 (9) (a) The sales factor is a fraction, the numerator of which is the total  
5 sales of the taxpayer in this state during the tax period, and the denominator of  
6 which is the total sales of the taxpayer everywhere during the tax period. For sales  
7 of tangible personal property, the numerator of the sales factor is the sales of the  
8 taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the  
9 taxpayer during the tax period under pars. (b) 2m. and 3. and (c). For purposes of  
10 determining the numerator of the sales factor for a member of a combined reporting  
11 group under s. 71.255 (7), "taxpayer" means the member of a combined reporting  
12 group, as defined in s. 71.255 (1) (c), that transferred title to tangible personal

1 property or, for sales other than sales of tangible personal property, that made the  
2 sale.”.

3 **2.** Page 616, line 12: after that line insert:

4 “SECTION 1349e. 71.255 of the statutes is created to read:

5 **71.255 Combined reporting.** (1) DEFINITIONS. In this section:

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

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

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

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

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

1           2. Any 2 or more corporations if a common owner directly or indirectly owns  
2 stock representing more than 50 percent of the voting power of the corporations or  
3 the 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 percent interest in the capital and profits of the  
7 partnership or limited liability company.

8           4. Any 2 or more corporations if stock representing more than 50 percent of the  
9 voting power in each corporation is interest that cannot be separately transferred.

10          5. Any 2 or more corporations if stock representing more than 50 percent of the  
11 voting power in each corporation is directly owned by, or for the benefit of, family  
12 members. In this subdivision, “family member” means an individual related by  
13 blood, marriage, or adoption within the 2nd degree of kinship as computed under s.  
14 852.03 (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 percent ownership interest in the  
18 corporation, partnership, or limited liability company but effectively controls the  
19 corporation, 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 that files a group return on behalf of the taxpayer members of a combined  
24 reporting group.

1           (h) “Group return” means a tax return filed on behalf of the taxpayer members  
2 of a combined reporting group.

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

6           (im) “Partnership” means any entity considered a partnership under section  
7 7701 of the Internal Revenue Code.

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

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

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

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

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

1 and payroll within the United States and computed on an annual basis, is at least  
2 20 percent 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 subs. 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  
17 the commonly controlled group elect under sub. (3) to compute the corporation's  
18 income 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 subsection is not effective unless all top-tier corporations elect

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 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. 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 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

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  
4 behalf of the members of a commonly controlled group under this subsection is  
5 terminated, no top-tier corporation may make an election on behalf of the members  
6 of the same commonly controlled group until 7 taxable years have elapsed from the  
7 day that the 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 before the period of 7 taxable years under par. (e) have  
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 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  
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, 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.



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

10           (b) *Corporations with different accounting periods.* Corporations that are  
11           required to file a combined report and that have different accounting periods shall  
12           file separate returns and shall use the actual figures from the corporations' financial  
13           records to determine the proper income and income-related computations to convert  
14           to a common accounting period. Corporations that are required to file a combined  
15           report may use a proportional method to convert income to a common accounting  
16           period if the results of the proportional method do not materially misrepresent the  
17           income apportioned to this state. The apportionment factors under ss. 71.25 and  
18           71.45 and the tax credits under ss. 71.28 and 71.47 shall be computed according to  
19           the same method used to determine the income under ss. 71.26 and 71.45 for the  
20           common accounting period. If a corporation performs an interim closing of its  
21           financial records to determine the income attributable to the common accounting  
22           period, the actual figures from the interim closing shall be used to convert the  
23           apportionment factors and tax credits to the common accounting period.

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

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 the  
20 corporation was a member of a combined reporting group shall be 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 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 determined as follows:

5 a. As provided under sub. (2) for any period 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 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

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 determined as follows:

11 (a) 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.

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.

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) 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:

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 are 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, 2005, 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



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, 2006,  
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, 2006, 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, 2005, that the corporation is subject to this section, the  
18 corporation may annually offset up to 20 percent of the remaining net business loss  
19 against the net income of the other members of the combined reporting group that  
20 join in 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 from 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

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

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.

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 filed  
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 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

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 that  
16 the corporation was not a member of the combined reporting group.

17 3. To determine the separate items under subds. 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

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 that the corporation leaves the combined reporting group or, for a corporation that  
18 has a different accounting period from the combined reporting group, for the portion  
19 of the corporation's separate taxable year that remains after the day 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 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

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

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 **3.** Page 646, line 4: after that line insert:

20 “SECTION 1363d. 71.26 (3) (x) of the statutes is amended to read:

21 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to  
22 consolidated returns) are excluded, except to the extent that they pertain to  
23 intercompany transactions and the carry-forward of net business loss under s.



1     71.255 and except that they are modified so that more than 50 percent ownership is  
2     substituted for at least 80 percent ownership.

3     **SECTION 1363m.** 71.26 (4) of the statutes is amended to read:

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

21           4. Page 653, line 12: after that line insert:

22           “SECTION 1385m. 71.29 (2) of the statutes is amended to read:

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

4           **5.** Page 681, line 17: after that line insert:

5           **“SECTION 1406b.** 71.44 (1) (a) of the statutes is amended to read:

6           71.44 (1) (a) Every Except as provided in par. (e), every corporation, except  
7 corporations all of whose income is exempt from taxation and except as provided in  
8 sub. (1m), shall furnish to the department a true and accurate statement, on or before  
9 March 15 of each year, except that returns for fiscal years ending on some other date  
10 than December 31 shall be furnished on or before the 15th day of the 3rd month  
11 following the close of such fiscal year and except that returns for less than a full  
12 taxable year shall be furnished on or before the date applicable for federal income  
13 taxes under the internal revenue code, in such manner and form and setting forth  
14 such facts as the department deems necessary to enforce this chapter. Every  
15 corporation that is required to furnish a statement under this paragraph and that  
16 has income that is not taxable under this subchapter shall include with its statement  
17 a report that identifies each item of its nontaxable income. The statement shall be  
18 subscribed by the president, vice president, treasurer, assistant treasurer, chief  
19 accounting officer or any other officer duly authorized so to act. In the case of a return  
20 made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The  
21 fact that an individual’s name is subscribed on the return shall be prima facie  
22 evidence that the individual is authorized to subscribe the return on behalf of the  
23 corporation.

24           **SECTION 1406c.** 71.44 (1) (e) of the statutes is created to read:

1           71.44 (1) (e) A corporation that is a member of a commonly controlled group,  
2 as defined in s. 71.255 (1) (d), and engaged in a unitary business, as defined in s.  
3 71.255 (1) (m), shall file a tax return under s. 71.255.”.

4           **6.** Page 682, line 3: after that line insert:

5           “SECTION 1406mh. 71.46 (3) of the statutes is repealed.”.

6           **7.** Page 689, line 15: after that line insert:

7           “SECTION 1428m. 71.48 of the statutes is amended to read:

8           **71.48 Payments of estimated taxes.** Sections Except as provided in s.  
9 71.255 (11), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under  
10 this chapter.”.

11          **8.** Page 695, line 14: after that line insert:

12          “SECTION 1432n. 71.84 (2) (a) of the statutes is amended to read:

13          71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment  
14 of estimated tax under s. 71.255, 71.29 or 71.48 there shall be added to the aggregate  
15 tax for the taxable year interest at the rate of 12% per year on the amount of the  
16 underpayment for the period of the underpayment. For corporations, except as  
17 provided in par. (b), “period of the underpayment” means the time period from the  
18 due date of the installment until either the 15th day of the 3rd month beginning after  
19 the end of the taxable year or the date of payment, whichever is earlier. If 90% of the  
20 tax shown on the return is not paid by the 15th day of the 3rd month following the  
21 close of the taxable year, the difference between that amount and the estimated taxes  
22 paid, along with any interest due, shall accrue delinquent interest under s. 71.91 (1)  
23 (a).”.

24          **9.** Page 1037, line 5: after that line insert:

