

**2007 DRAFTING REQUEST**

**Bill**

Received: **04/16/2007**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **jay**

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.Hansen@legis.wisconsin.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Corporate income tax disclosure

**Instructions:**

See Attached

**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> |
|--------------|----------------------|---------------------|------------------------|----------------|------------------------|-----------------------|-----------------|
| /P1          | jkreye<br>04/20/2007 | jdyer<br>05/10/2007 | sherritz<br>05/10/2007 | _____          | sbasford<br>05/10/2007 |                       |                 |
| /P2          | jkreye<br>09/18/2007 | jdyer<br>09/19/2007 | pgreensl<br>09/19/2007 | _____          | lparisi<br>09/19/2007  |                       |                 |
|              | jkreye<br>12/06/2007 | jdyer<br>12/06/2007 |                        | _____          |                        |                       |                 |
| /1           |                      |                     | pgreensl<br>12/06/2007 | _____          | lparisi<br>12/06/2007  | lparisi<br>12/06/2007 |                 |

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

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<END>

↳ Not  
Needed

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1/12/6 jld  
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PS  
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FE Sent For:

*P2 9/18 JLD*      *9/19 P8*      *9/19 P8/UN*  
**<END>**

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /P1          | jkreye         | /P1 S/10 jld    | dh<br>5/10   | dh<br>5/10     |                  |                 |                 |

FE Sent For:

<END>

## Kreye, Joseph

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**From:** Wadd, Jay  
**Sent:** Monday, April 16, 2007 2:50 PM  
**To:** Kreye, Joseph  
**Subject:** Another small tax bill drafting request

**Attachments:** Mazerov appendix A model language.pdf

Hi, again, Joe.

As if we havne't been working you hard enough:

Like Newark I have another drafting request that I'm sure will be as equally uncomplicated. Attahced is a draft of model legislation reltaing to corporate tax transparency.

We'd like to introduce similar legislation in Wisconsin. I'm hoping you can use the draft for guidance, but I'm sure for example we'll need to substitute DOR for secretary of state, etc.

Anyway for starters here is the model legislation. Let me know what else you need and I'll do my best to get it to you. I can, if you like send over background information on this if you're unfamiliar with the issue. I'll have to copy and send it hardcopy. Just let me know...

Thanks again for everything.

Jay



Mazerov appendix  
A model langu...

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## Appendix A: The Model State Corporate Income Tax Disclosure Act

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### 1 **Section 1: Definitions**

2  
3 1. As used in this Title, "corporation" means any entity subject to the tax imposed by [reference  
4 state corporate income or franchise tax statute] or by Section 11 of the Internal Revenue Code of  
5 1986 as amended, except that "qualified personal service corporations," as defined in section 448 of  
6 the Internal Revenue Code of 1986, as amended, shall be exempt from this Title.

7 2. As used in this Title, "doing business in this state" means owning or renting real or tangible  
8 personal property physically located in this state; having employees, agents, or representatives acting  
9 on the corporation's behalf in this state; making sales of tangible personal property to purchasers  
10 that take possession of such property in this state, performing services for customers located in this  
11 state, performing services in this state, earning income from intangible property that has a business  
12 situs in this state, engaging in regular and systematic solicitation of sales in this state; being a partner  
13 in a partnership engaged in any of the preceding activities in this state; or being a member of a  
14 limited liability company engaged in any of the preceding activities in this state.

### 15 **Section 2: Tax Disclosure Statement Required**

16 The following corporations, if doing business in this state, shall file with the Secretary of State  
17 the statement described by Section 3 of this Title:

18 (1) All publicly traded corporations, including corporations traded on foreign stock  
19 exchanges; and

20 (2) All corporations fifty percent or more of the voting stock of which is owned, directly or  
21 indirectly, by a publicly-traded corporation;

### 22 **Section 3: Content of Tax Disclosure Statement**

23 The statement required by Section 2 of this Title shall be filed annually in an electronic format  
24 specified by the Secretary of State no more than 30 days following the filing of the tax return  
25 required by [reference to state corporate income or franchise tax statute], or, in the case of a  
26 corporation not required to file such a tax return, within 90 days of the filing of such corporation's  
27 federal tax return, including such corporation's inclusion in a federal consolidated return. The  
28 statement shall contain the following information:

29 (1) The name of the corporation and the street address of its principal executive office;

30 (2) If different from (1), the name of any corporation that owns, directly or indirectly, 50  
31 percent or more of the voting stock of the corporation and the street address of the former  
32 corporation's principal executive office;

33 (3) The corporation's 4-digit North American Industry Classification System code number;

34 (4) A unique code number, assigned by the Secretary of State, to identify the corporation,  
35 which code number will remain constant from year to year;

36 [Note: The following (5) and (6) are applicable to non-combined-reporting states]

37 (5) The following information reported on or used in preparing the corporation's tax return  
38 filed under the requirements of [reference state corporate income or franchise tax statute],  
39 or, in the case of a corporation included in a state consolidated tax return, reported on or  
40 used in preparing the state consolidated tax return filed under the requirements of [reference  
41 state corporate income or franchise tax statute], or, in the case of a corporation not required  
42 to file a tax return under the requirements of [reference to state corporate income or  
43 franchise tax statute], the information that would be required to be reported on or used in  
44 preparing the tax return were the corporation required to file such a return:

45 (a) Total receipts; [Note: or substitute state term for total gross income]

46 (b) Total cost-of-goods-sold claimed as a deduction from gross income;

47 (c) Taxable income prior to net operating loss deductions or apportionment;

48 (d) Property, payroll, and sales apportionment factors; [Note: as applicable to state]

49 (e) Calculated overall apportionment factor in the state;

50 (f) Total business income apportioned to the state;

51 (g) Net operating loss deduction, if any;

52 (h) Total non-business income and the amount of non-business income allocated to  
53 the state;

54 (i) Total taxable income;

55 (j) Total tax before credits;

56 (k) Tax credits claimed, each credit individually enumerated; [Note: individual  
57 enumeration might be limited to credits reducing pre-credit liability for all  
58 corporations taxable in the state collectively by more than 5-10 percent]

59 (l) Alternative minimum tax [if applicable];



60 (m) Tax due;

61 (n) Tax paid;

62 (o) Amount of tax due paid under protest, if applicable.

63 (6) The following information:

64 (a) Total deductions for management services fees, for rent, and for royalty, interest,  
65 license fee, and similar payments for the use of intangible property paid to any  
66 affiliated entity that is not included in the state consolidated income tax return, if  
67 any, that includes the corporation, and the names and principal executive office  
68 addresses of the entities to which the payments were made;

69 (b) The sales factor that would be calculated for this state if the corporation [or  
70 consolidated group] were required to treat as sales in this state sales of tangible  
71 personal property to the Federal Government and sales of tangible personal property  
72 shipped or delivered to a customer in a state in which the selling corporation is  
73 neither subject to a state corporate income tax or state franchise tax measured by net  
74 income nor could be subjected to such a tax were the state to impose it; [Note: only  
75 to be reported in states not having in effect the standard "throwback rule" under the  
76 Uniform Division of Income for Tax Purposes Act]

77 (c) A description of the source of any nonbusiness income reported on the return  
78 and the identification of the state to which such income was reported;

79 [(d) A listing of all corporations included in the consolidated tax return that includes  
80 the corporation, if such a return is filed, and their state identification numbers  
81 assigned under the provisions of this section;]

82 (e) Full-time-equivalent employment of the corporation in the state on the last day of  
83 the tax year for which the return is being filed and for the three previous tax years;

84 (f) In the case of a publicly-traded corporation incorporated in the United States or  
85 an affiliate of such a publicly-traded corporation, profits before tax reported on the  
86 Securities and Exchange Commission Form 10-K for the corporation or the  
87 consolidated group of which the corporation is a member for the corporate fiscal  
88 year that contains the last day of the tax year for which the return is filed;

89 [(g) The property and payroll factors for this state calculated as required by the  
90 Uniform Division of Income for Tax Purposes Act as embodied in Article IV of the  
91 Multistate Tax Compact and Multistate Tax Commission regulations applying  
92 thereto.] [Note: this provision to be included in single sales factor formula states  
93 only]

94 (h) Accumulated tax credit carryovers, enumerated by credit.

95 *[Note: The following (5) and (6) are applicable to combined-reporting states]*

96 *(5) The following information reported on or used in preparing the corporation's tax return filed under the*  
97 *requirements of [reference state corporate income or franchise tax statute], or, in the case of a corporation not*  
98 *required to file a tax return under the requirements of [reference to state corporate income or franchise tax*  
99 *statute], the information that would be required to be reported on or used in preparing the tax return were the*  
100 *corporation required to file such a return:*

101 *(a) Total receipts of the unitary group of which the corporation is a member; [Note: or substitute*  
102 *state term for total gross income]*

103 *(b) Total cost-of-goods-sold claimed as a deduction from gross income by the unitary group of which*  
104 *the corporation is a member;*

105 *(c) Taxable income of the unitary group of which the corporation is a member prior to net operating*  
106 *loss deductions or apportionment;*

107 *(d) Property, payroll, and sales apportionment factors of the corporation as calculated on the*  
108 *combined report; [Note: as applicable to state]*

109 *(d) Calculated overall apportionment factor in the state for the corporation as calculated on the*  
110 *combined report;*

111 *(f) Total business income of the corporation apportioned to the state;*

112 *(g) Net operating loss deduction, if any, of the corporation apportioned to the state;*

113 *(h) Total non-business income of the corporation and the amount of non-business income allocated to*  
114 *the state;*

115 *(i) Total taxable income of the corporation;*

116 *(j) Total tax before credits;*

117 *(k) Tax credits claimed, each credit individually enumerated; [Note: individual enumeration might*  
118 *be limited to credits reducing pre-credit liability for all corporations taxable in the state collectively by*  
119 *more than 5-10 percent]*

120 *(l) Alternative minimum tax [if applicable];*

121 *(m) Tax due;*

122 *(n) Tax paid;*

123 *(o) Amount of tax due paid under protest, if applicable.*

124 *(6) The following information:*

125 (a) Total deductions for management services fees, for rent, and for royalty, interest, license fee, and  
126 similar payments for the use of intangible property paid to any affiliated entity that is not included in  
127 the unitary combined group that includes the corporation and the names and principal office  
128 addresses of the entities to which the payments were made;

129 (b) The sales factor that would be calculated for this state on the combined report if the corporation  
130 were required to treat as sales in this state sales of tangible personal property to the Federal  
131 Government and sales of tangible personal property shipped or delivered to a customer in a state in  
132 which the selling corporation is neither subject to a state corporate income tax or state franchise tax  
133 measured by net income nor could be subjected to such a tax were the state to impose it; [Note: only  
134 to be reported in states not having in effect the standard "throwback rule" under the Uniform  
135 Division of Income for Tax Purposes Act]

136 (c) A description of the source of any nonbusiness income reported on the return and the  
137 identification of the state to which such income was reported;

138 (d) A listing of all corporations included in the unitary group that includes the corporation, their  
139 state identification numbers assigned under the provisions of this section, if applicable, and a listing  
140 of all variations in the unitary group that includes the corporation used in filing corporate income or  
141 franchise tax returns in any of the following states: Alaska, Arizona, California, Colorado,  
142 Hawaii, Idaho, Illinois, Kansas, Maine, Minnesota, Montana, Nebraska, New Hampshire,  
143 North Dakota, Oregon, Utah, Vermont;

144 (e) Full-time-equivalent employment of the corporation in the state on the last day of the tax year for  
145 which the return is being filed and for the three previous tax years;

146 (f) In the case of a publicly-traded corporation incorporated in the United States or the affiliate of  
147 such a publicly-traded corporation, profits before tax reported on the Securities and Exchange  
148 Commission Form 10-K for the corporation or the consolidated group of which the corporation is a  
149 member for the corporate fiscal year that contains the last day of the tax year for which the return is  
150 filed;

151 [(g) Property and payroll factors for the corporation for this state calculated on the basis of combined  
152 reporting and as required by the Uniform Division of Income for Tax Purposes Act as embodied in  
153 Article IV of the Multistate Tax Compact and Multistate Tax Commission regulations applying  
154 thereto.] [Note: this provision to be included in single sales factor formula states only]

155 (h) Accumulated tax credit carryovers, enumerated by credit.

#### 156 **Section 4: Alternative Statement Option for Corporations Not Required to File Tax Return**

157 In lieu of the statement described in Section 3, a corporation doing business in this state but not  
158 required to file a tax return under the requirements of [reference state's corporate income or  
159 franchise tax statutes] may elect to file a statement with the Secretary of State containing the  
160 following information:

161 (1) The information specified in Section 3, items (1) through (4), inclusive;

162 (2) An explanation of why the corporation is not required to file a corporate income tax  
163 return in this state, which explanation may take the form of checking one or more possible  
164 explanations drafted by the Secretary of State;

165 (3) Identification of into which of the following ranges the corporation's total gross receipts  
166 from sales to purchasers in this state fell in the tax year for which this statement is filed:

167 (a) Less than \$10 million;

168 (b) \$10 million to \$50 million;

169 (c) More than \$50 million to \$100 million;

170 (d) More than \$100 million to \$250 million;

171 (e) More than \$250 million.

## 172 **Section 5: Supplemental Information Permitted**

173 Any corporation submitting a statement required by this Title shall be permitted to submit  
174 supplemental information that, in its sole judgment, could facilitate proper interpretation of the  
175 information included in the statement. The mechanisms of public dissemination of the information  
176 contained in the statements described in Section 7 of this Title shall ensure that any such  
177 supplemental information be publicly available and that notification of its availability shall be made  
178 to any person seeking information contained in a statement.

## 179 **Section 6: Amended Tax Disclosure Statements Required**

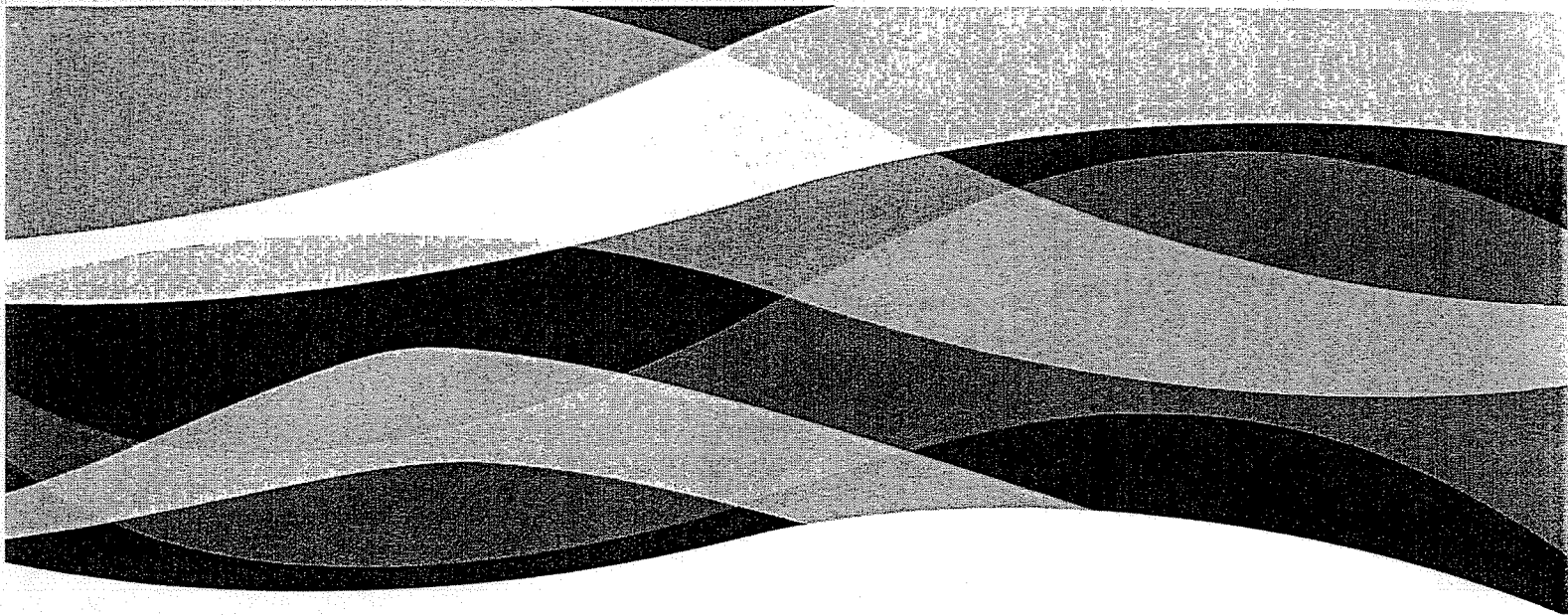
180 If a corporation files an amended tax return, the corporation shall file a revised statement under  
181 this section within sixty calendar days after the amended return is filed. If a corporation's tax  
182 liability for a tax year is changed as the result of an uncontested audit adjustment or final  
183 determination of liability by the [name state's administrative appeals body] as provided for in  
184 [reference administrative appeals portion of state statute] or by a court of law as provided for in  
185 [reference legal appeals portion of state statute], the corporation shall file a revised statement under  
186 this section within sixty calendar days of the final determination of liability.

## 187 **Section 7: Public Access to Tax Disclosure Statements**

188 The statements required under this Title shall be a public record. The Secretary of State shall  
189 make all information contained in the statements required under this Title for all filing corporations  
190 available to the public on an ongoing basis in the form of a searchable database accessible through  
191 the Internet. The Secretary of State shall make available and set charges that cover the cost to the  
192 state of providing copies on appropriate computer-readable media of the entire database for  
193 statements filed during each calendar year as well as hard copies of an individual annual statement  
194 for a specific corporation. No statement for any corporation for a particular tax year shall be  
195 publicly available until the first day of the third calendar year that follows the calendar year in which  
196 the particular tax year ends.

197 **Section 8: Enforcing Compliance**

198 The accuracy of the statements required under this Title shall be attested to in writing by the  
199 chief operating officer of the corporation and shall be subject to audit by the [department of  
200 revenue] as the agent of the Secretary of State in the course of and under the normal procedures  
201 applicable to corporate income tax return audits. The Secretary of State shall develop and implement  
202 an oversight and penalty system applicable to both the chief operating officer of the corporation and  
203 the corporation itself to ensure that corporations doing business in this state, including those not  
204 required to file a return under the requirements of [reference state corporate income or franchise tax  
205 statute], shall provide the required attestation and disclosure statements, respectively, in a timely and  
206 accurate manner. The Secretary of State shall publish the name and penalty imposed upon any  
207 corporation subject to a penalty for failing to file the required statement or filing an inaccurate  
208 statement. The Secretary of State shall promulgate appropriate rules to implement the provisions of  
209 this Title under the rulemaking procedures described in [reference state administrative procedures  
210 act].



# Stronger Corporate Tax Disclosure

Policy Options for Wisconsin

**Draft**  
Not for Circulation

C O W S  
Center for Wisconsin Studies

## **Stronger Corporate Tax Disclosure: Policy Options for Wisconsin**

Kate Gordon and Kyle Hanniman  
Center on Wisconsin Strategy

March 2007

### **The Center on Wisconsin Strategy**

The Center on Wisconsin Strategy (COWS) is a non-profit, nonpartisan "think-and-do tank" dedicated to improving economic performance and living standards in the state of Wisconsin and nationally. Based at the University of Wisconsin-Madison, COWS works to promote "high road" strategies that support living wages, environmental sustainability, strong communities, and public accountability.

For more information visit:  
[www.cows.org](http://www.cows.org)

# Stronger Corporate Tax Disclosure

## Policy Options for Wisconsin

### Executive Summary

In the past year, Wisconsin's corporate tax system has come under scrutiny. A summer 2006 Legislative Audit Bureau Report highlighted the fact that the state has dozens of programs set up to give subsidies and tax breaks to corporations, but does little to track the actual effect of these subsidies on the state's business climate. Six months later, the non-profit Institute for Wisconsin's Future presented findings that many of Wisconsin's largest and most well-known corporations pay no taxes at all. Both reports led to a public demand for more transparency and accountability.

In this report, we respond to this call for accountability and fairness by reviewing options for stronger corporate tax disclosure, including disclosure of tax information beyond bottom-line tax liability and also disclosure of state subsidies received by Wisconsin corporations. Such a policy would provide the public and policymakers with clear and measurable information about the state's corporate tax climate—information that is critical when crafting state tax reform measures that ensure a more equitable distribution of the tax burden across individuals and firms. A fairer tax system is also good for Wisconsin's business climate: it allows those companies that fully comply with tax laws to be more competitive with those that take advantage of tax loopholes, and also closes loopholes and leads to more dollars flowing to state programs such as workforce training, education, infrastructure and other economic resources that are highly valued by firms.

Our review of practice in this area identified key elements of comprehensive corporate tax disclosure at the state level. Such reform would:

- Require disclosure from all publicly-traded corporations ("C" corporations) and their subsidiaries doing business in the state.
- Require disclosure of the corporation's bottom-line tax liability in the state, along with any tax credits, exemptions, operating losses or deductions that might affect taxable income.
- Require disclosure of the share of nationwide income earned by the corporation that is taxable in the state, along with the share of employees based in Wisconsin.
- Require disclosure of subsidiary relationships that might affect taxable income, including:
  - profits reported by any other entity/entities with which the Wisconsin corporation might have combined its profits for tax reporting purposes; and
  - if the Wisconsin corporation is a subsidiary, a disclosure of the overall profit reported to the SEC by the parent corporation.
- Require disclosure of economic development deals made with the state, including:
  - The terms and conditions of any development assistance package provided to the corporation in the form of tax credits, exemptions, grants, loans, etc. (such terms and conditions generally include promises made to the state regarding job creation, including average wages, benefits, and temporary vs. permanent jobs); and
  - An accounting of the actual number of jobs created as a result of the development package, including average wages and benefits, during the past year.

These and other elements corporate tax disclosure reform (based in great part on a recent Model State Corporate Income Tax Disclosure Act published by the Center on Budget and Policy Priorities, and attached as Appendix A), as well as a detailed discussion of Wisconsin's current tax disclosure law and its inadequacies, are laid out in our full report, available at [www.cows.org](http://www.cows.org).



# 1

## Introduction

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On December 6, 2006, the Institute for Wisconsin's Future (IWF) went on a three-city tour to present corporate tax data gathered in the previous fourteen months from the Department of Revenue. These data showed that a majority of corporations in Wisconsin paid no corporate income tax in 2003 or 2004. The presentation was covered by media throughout the state, giving rise to a public outcry against corporations that are seen as not paying their "fair share" of Wisconsin taxes. At the same time, its findings were sharply disputed by a number of corporations and by the Wisconsin Manufacturers and Commerce (WMC), a trade association. Among other things, WMC claimed that the data were outdated, and that IWF may have identified some corporations as not paying taxes when those companies actually had their taxes paid by an unnamed and uninvestigated subsidiary.

About six months before the IWF presentations, the Legislative Audit Bureau (LAB) generated headlines with its own study on the relationship between corporations and the state, this one focused on state subsidies and tax breaks to corporations. The LAB report found that while Wisconsin spent \$152.8 million on economic development programs in 2003-05, there has been little organized effort to track these expenditures and measure program results. As a result, dollars are flowing from the state to private companies with relatively little oversight or accountability.

The IWF study, the WMC response, and the LAB report all point to a clear policy need in Wisconsin: the need for more accessible, transparent, and thorough state corporate tax disclosure. If corporations were responsible for disclosing information about their state income taxes to the public, policy groups like IWF would not have to spend many months and thousands of dollars to obtain that information. At the same time, if corporate disclosure included information beyond the simple dollar amount of taxes paid to the state, there would be more clarity about how much various corporations and their subsidiaries actually pay, and what relationship this number has to the amount of business they actually do in the state. Finally, if corporate tax disclosure were extended to include subsidy disclosure, the public and policymakers would have a far clearer idea of how the state spends its economic development dollars, and how effective these programs are in actually spurring business and creating jobs.

In this report, we summarize what comprehensive disclosure could look like, and offer insight into why such information is important for stronger public policy. As we explain, such a policy would be good for the public, policymakers, and Wisconsin businesses interested in making sure the state's tax system creates a level and fair playing field.

As one of only five states in the nation with an existing corporate tax disclosure law—and the only state allowing the public to find out how much specific corporations pay in income taxes each year—Wisconsin is already slightly ahead of the curve on this issue. But we Wisconsin could go further to ensure the law is more effective in shedding light on corporate taxation in the state. At the same time, we could also join with the many other states that have passed legislation demanding better disclosure of corporate tax subsidies and other tax breaks from the state, so that we can make our economic development system more transparent and accountable to all Wisconsin residents.

# 2

## What is Corporate Tax Disclosure?

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**T**he term “corporate tax disclosure” generally refers to the public disclosure by a corporation of the amount of corporate income tax it paid to the government (federal or state) in a given year. However, in this report we want to expand that definition to include tax-related information beyond this bottom-line figure, as well as subsidy and job creation data that might shed light on the efficacy of corporate tax breaks and economic development incentive programs.

Requiring corporations to disclose portions of their tax returns is a hot topic among tax reform advocates, but—at the federal level at least—the practice is hardly new. The federal Securities and Exchange Commission (SEC) already requires publicly-traded corporations to file annual reports disclosing detailed financial data, including profits, federal tax liability and, in some cases, tax breaks claimed by corporations. All tax-exempt organizations must file a detailed financial form (Form 990) with the IRS each year detailing both taxable and non-taxable activities; the organizations must make the past three years of these forms publicly available.

However, none of these reports include general corporate income tax paid at the state level. Currently only five states, Wisconsin, Massachusetts, Arkansas, North Carolina and West Virginia, require corporations to publicly disclose state tax liability or other state-specific financial information. However, these states ask for much more limited information than the SEC collects on its disclosure statements. Wisconsin allows members of the public to obtain records from the state Department of Revenue showing the “net income tax reported as paid or payable” for any corporation doing business in the state. This law has been in place since 1923 and is generally considered the most progressive corporate tax disclosure law in the country because it requires companies to disclose their names along with their tax liability. However, it is still very limited, as we will discuss in detail in section III below.

Since 1993, Massachusetts has required corporations to report information on profits, taxes paid and tax credits received. However, the law does not require the state to attach the corporation’s name or address to any publicly disclosed tax information, making it of limited value for policymakers interested in examining records for individual companies or industries, or in finding any kind of pattern in the data. Furthermore, as with the Wisconsin law, disclosure includes only bottom-line tax numbers and no information about profits, percent of business or employees located in the state, state tax credits received, or other valuable financial information.

The remaining three states with any type of disclosure law are Arkansas, West Virginia and North Carolina. Both Arkansas and West Virginia adopted statutes in 1991 requiring disclosure of the dollar amount of specific state tax credits taken by corporate and individual taxpayers. In Arkansas this information can be requested by interested parties; in West Virginia the Tax Commissioner publishes an annual report with the information listed by individual or corporation name. In North Carolina, the Department of Revenue is required to publish names of taxpayers who claim certain development credits and the amount of those credits.

Other states are actively working to pass corporate tax disclosure laws that go beyond those that exist in the five states mentioned above. For example, the Oregon Education Association, Oregon's largest teacher's union, recently headed a citizens' legislative initiative to establish a corporate tax disclosure law in Oregon. The proposed law was much more ambitious than its Wisconsin counterpart, calling for certain corporations to report the amount of taxable Oregon and U.S. profits, the extent of corporate sales, property, and payroll tied to Oregon, and total annual Oregon tax liability. Unfortunately, for a host of political reasons, this initiative never made the November ballot. Advocacy groups and policymakers in several other states have recommended similarly comprehensive disclosure laws, so far without success.

While Wisconsin is somewhat at the forefront of corporate tax disclosure, it lags behind many other states when it comes to corporate subsidy disclosure—that is, the mandatory disclosure by corporations of tax credits, exemptions, grants, and other subsidies received from the state. Many tax and government accountability experts have noted that states need additional data to realistically assess the fiscal and economic impacts of tax policies, including corporate tax incentives designed to promote economic development. For example, corporations often receive state tax benefits in return for promises to create jobs, train workers and meet other state development goals; however, most states have no mechanism to track whether these tax benefits actually lead to the promised results. To assess whether corporations are upholding their end of the bargain, twelve states (not including Wisconsin) have passed bills requiring corporations and public officials to divulge such information as the number and value of corporate tax incentives provided by the state, the jobs created and retained by incentives, and the wages and benefits paid by those jobs. Some states go further and require corporations to return subsidy money if they have not met their economic development promises.

Though both types of disclosure are important, neither simple state tax disclosure nor subsidy and job creation disclosure is enough on its own. For states interested in providing corporate tax transparency that will allow policymakers and the public to create good, fair, equitable tax policy, the best way forward is corporate tax disclosure that includes both pieces: detailed and comprehensive disclosure of tax liability, and specific information about state tax breaks and economic impacts.

# 3

## Broad Benefits of Corporate Tax Disclosure

Corporate tax disclosure provides tangible benefits to the public. Perhaps most important, it provides the public and policymakers with clear and measurable information about the corporate tax climate—information that is necessary when crafting state tax reform measures. In particular, disclosure casts light on the fiscal impacts, both to corporations and to the regions and states in which they are located, of tax breaks, loopholes, income division rules and other tax-related items. This information is invaluable in informing efforts to raise revenues for key state infrastructure items such as workforce development, healthcare, and education. It can also help states to move toward a more equitable distribution of tax burdens across individuals and corporate entities, and to develop new tax credit and subsidy programs based on sound and detailed information.

As an example, consider the WMC's response to IVF's recent corporate tax presentation. The WMC argued, among other things, that IVF's information was faulty because "IVF fails to recognize that large companies often have subsidiary corporations through which the entire company's corporate income taxes are paid." The WMC is correct that large multi-national companies sometimes create independent subsidiaries to channel the profits of the parent company and avoid taxes. The fact that policymakers and the public do not have a complete picture of how these legally separate companies are actually grouped together makes it difficult to design a state tax system that actually taxes business conducted in the state. One way to remedy this problem would be for Wisconsin corporations to disclose, as part of a comprehensive tax disclosure policy, the annual profits and tax liability of any other entity or entities with which the corporation has combined its profits for tax reporting purposes. This disclosure, which we recommend in Section IV, would make clear which corporations pay taxes on their own profits, and which move profits into their out-of-state subsidiaries for tax purposes. Understanding this tax loophole might ultimately lead the state to adopt a "combined reporting" rule which requires each multi-state corporation to add together the profits of all of its subsidiaries, regardless of their location, into one report for tax purposes.

The benefits of disclosure to policymakers have already been seen at the federal level. Most tax experts credit a report by the Citizens for Tax Justice (CTJ), in which the organization used SEC and annual shareholder reports to show that some of the nation's most profitable companies were paying little or no federal corporate taxes, with inspiring the Reagan Administration's 1986 Tax Reform Act. Responding to the public outcry generated by the report, Congress wrote the Act to eliminate a series of costly corporate tax breaks and loopholes, and simultaneously strengthened the federal Alternative Minimum Tax. This is a perfect example of public disclosure leading to good policy reform.

In short, disclosure improves the democratic accountability of the tax system. It generates a more inclusive, informed and energetic public debate on tax issues. At a time when confidence in government is at a historic low, it also allows policymakers to respond to heightened public demands for transparency and government accountability. In this way, disclosure laws can restore public faith in democratic institutions and point the way to necessary reforms.

## The Benefits of Disclosure 1: Measuring the Impact of Corporate Tax Loopholes

One benefit of corporate tax disclosure is that it can shed light on tax loopholes that allow very profitable corporations to escape state taxes. Two particularly problematic loopholes have recently been identified at the state level, both of which might be addressed through good disclosure policy. The first is the "Toys R Us-style loophole," in which multistate corporations shift taxable income from high tax states to "passive income" subsidiaries in states with low or zero corporate income tax. For years, until the practice was highlighted in a state supreme court case, South Carolina-based Toys R Us made royalty payments to Delaware-based Geoffrey Inc. for the use of Toys R Us trademarks and logos. Unlike South Carolina, Delaware does not tax companies whose only income comes from "intangible assets," such as trademarks. Thus Toys R Us was essentially moving income from taxing states like South Carolina to a non-taxing state, and deducting these royalty payments from its taxable income in the taxing states. One way to expose this loophole is to require corporate disclosure of interest and royalty payments to subsidiaries.

Multistate corporations also sometimes take advantage of lax state "nexus rules," which set the bar for how much of a "physical presence" a company must have in a state in order to be responsible for state taxes for in-state sales. One way to expose this loophole is to require out-of-state companies that believe they do not owe any taxes in a particular state to file a disclosure form explaining why they should not have to file tax returns on in-state sales.

Wal-Mart  
prop. tax  
evasion

## The Benefits of Disclosure 2: Measuring the Impact of Corporate Tax Incentives

States often provide corporations with tax incentives to promote economic development, usually in the form of new jobs promised by the corporation if it locates or expands operations in the state. However, only twelve states (not including Wisconsin) require companies to produce annual reports disclosing tax credits or other subsidies received from the state, and to give a report on job creation or other economic benefits produced because of the subsidies. Illinois and Minnesota are leading examples of this type of disclosure. Both require comprehensive and systematic reporting on project outcomes involving corporate tax incentives. The 2003 Illinois Corporate Accountability Act, for example, requires recipients to report on their progress in achieving state investment and employment goals, including conditions concerning wages and health benefits. Illinois state agencies also issue annual reports disclosing the number of tax subsidies issued as well as the number of organizations and corporations failing to meet their obligations. These reports are available online with the Department of Commerce and Economic Opportunity.

Minnesota has a similar statute, though there the onus is on the state rather than on corporations to provide disclosure. In Minnesota, all state agencies and local governments (in towns with populations over 2500) that provide financial assistance to businesses and other organizations must file annual reports with the Department of Employment and Economic Development. These reports include information on the name of the recipient and the number and value of subsidies, as well as their recipients. This information is then consolidated in a comprehensive statewide report, which compares data over the past four years and comments on the state's progress in achieving its economic development goals. The Minnesota Department of Employment and Economic Development makes this information available online.

## Why Disclosure is Good for Business

Along with providing tax transparency to policymakers and the public, comprehensive tax disclosure that leads to a fairer tax structure will also improve Wisconsin's business environment. Many businesses are attracted to states with transparent tax systems, because the policies they inspire tend to result in a more equitable tax burden across corporations. An equitable tax system creates a level playing field for business, thereby improving competition and economic efficiency. As a recent CalPIRG report pointed out, when firms are able to take advantage of corporate tax loopholes and questionable accounting practices, other firms not using these tactics are put at a competitive disadvantage. "Noncompliance with tax laws diverts resources toward firms and industries with greater opportunities for noncompliance, rather than the firms and industries that are most efficient or innovative." At the moment, it is nearly impossible for a business looking for opportunities in Wisconsin to know whether it will be competing with existing businesses that enjoy unfair tax advantages. Better disclosure would give new entrants this information, and—more important—will help to close the loopholes leading to these tax advantages.

At the same time, as policymakers reform the tax system to ensure equitable distribution of the tax burden across individuals and firms, they will end up with more revenue that they can then channel to training, education, infrastructure and other economic resources that are highly valued by firms. Increasing these services is a critical way to bring more firms into the state.

Finally, corporate tax disclosure can lead to greater trust in corporations by the public. Disclosure inevitably reveals that many corporations in a state do, in fact, pay their fair share of taxes. It can also reveal that the reduction of a particular company's liability from one year to the next is the result of legitimate profit losses or deductions rather than an elaborate tax avoidance strategy. Thus, disclosure does not automatically represent an "anti-business" policy—in fact, one of its functions is to highlight good corporate citizenship and lend strength to tax systems that equitably distribute the tax burden across companies, rather than laying it most heavily on the most honest companies. After all, when some companies do not pay taxes, the burden not only shifts to other sectors of the economy (such as individuals and property owners), but also leads to lower revenues for a state, translating into less public services and infrastructure supports. This result hurts all businesses in the state, but especially those that pay their full taxes into that public system.

Despite the positive benefits of disclosure discussed above, some members of the business community claim that it is harmful to state business interests. They argue that disclosure requires companies to reveal proprietary information, which their competitors can use against them. Some companies also put forward the general argument that disclosure laws poison the business climate of a state, making it less attractive to boards and executives making business location decisions.

These claims are easily disputed, however. First of all, the information demanded by state regulators is not deeply proprietary and thus cannot reasonably be used by out-of-state companies to undermine their in-state competitors. This information is already available in a variety of reports, including the annual shareholder reports of publicly-traded firms. Moreover, the Securities and Exchange Commission (SEC) requires publicly traded companies to report federal tax liability and few claim that this undermines competitiveness. Because this is an often-raised concern for the business community, however, the Center for Budget and Policy Project's model tax disclosure bill (recommended in Section IV below, and included as Appendix A to this report) includes a provision allowing corporations a lag time of two years between the tax data disclosed and the actual date of disclosure.

Second, as we have noted, tax rates and laws are not the only factor in firm location decisions. In fact, corporations are often even more concerned with the quality of local skills, infrastructure, supplier networks, utilities and access to finance in a particular location. What most studies show is that the very services that make a state “good for business”—schools, worker training programs, roads and other infrastructure—are the very same services that are paid for by state income taxes, including the corporate income tax.

# 4

## Inadequacies of Wisconsin's Present Tax Disclosure Laws

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**T**he benefits of a corporate disclosure system that includes financial information and subsidy information should be clear from the last section. The question becomes: how effective is Wisconsin's current system, and how can it be improved to maximize those benefits?

As discussed earlier, Wisconsin is currently the only state that requires non-anonymous disclosure of corporate income tax payments, meaning that it is the only state where the public can find out what a particular corporation paid in net state corporate taxes in a given year. Moreover, unlike the SEC's federal disclosure requirements, the Wisconsin law applies to all firms, not only to publicly traded firms. However, Wisconsin's present disclosure law is inadequate in two basic respects. First, Wisconsin's statute does not provide policymakers and concerned citizens with sufficient information to motivate and inform tax reform. The statute only provides the disclosure of "bottom-line liability"—that is, "net income tax as paid or payable." Without additional information, such as the percent of business done in the state, number of employees in the state, and tax credits and subsidies received and jobs created as a result, this information is very limited in its ability to inform policymakers trying to assess the costs and benefits of particular tax policies and structures.

Second, Wisconsin's statute puts onerous and expensive barriers in place to anyone actually hoping to access corporate tax information. Under the statute, Wisconsin citizens pay what appears to be a modest \$4 fee to learn the tax liability of any single company operating in the state. The fee is much less modest, however, for any serious researcher who requires information for multiple firms, or for multiple subsidiaries of the same firm. For example, the Institute for Wisconsin's Future's recent company-by-company study cost that non-profit organization thousands of dollars. Because the searches had to happen on a company-by-company basis, the study also took IWF fourteen months to complete.

Another onerous element of Wisconsin's law is that anyone making a request for tax information must include the exact name and address of the company as used on its tax forms (sometimes a difficult piece of information for the public to determine, especially with large corporations that have multiple subsidiaries), and must give a reason for requesting the information. This reason is then passed along to the corporation under question.

The greatest restriction, however, is a corresponding statute prohibiting those who obtain tax information through this system from sharing it with anyone else, with two exceptions: the information can be published in a newspaper, or can be disclosed in a "public address." This stipulation recently spurred IWF's Research Director to hold three public forums, in Madison, Milwaukee and Spring Green, to reveal the findings of his company-by-company research on corporate income tax payments. The IWF reported a number of important findings, including the fact that three corporations with more than \$100 million in gross sales paid no taxes at all in 2003. Without scheduling these public meetings, however, IWF would not have been able to discuss its findings with anyone. This is a bizarre feature of the Wisconsin statute, and one that severely restricts the general public and policy groups from making actual use of the limited information that is obtainable through the disclosure statute.



Because of these shortcomings, the Wisconsin statute really only makes information available to individuals and groups with considerable time, money, commitment, and the ability to publish findings in a newspaper or a public address. Moreover, the bottom-line net tax information provided gives little clue as to why some corporations failed to pay taxes in a given year—whether it was due to a general decline in profits (as the Wisconsin Manufacturers and Commerce claims), use of state tax credits, use of a tax loophole, or some other factor. Again, a corporation's explanation for not paying any taxes in a given year may be perfectly understandable and legal; the problem is that under Wisconsin's current system, no such explanation is required.

Unlike many other states, Wisconsin also lacks any clear measure of state subsidies or tax breaks given to companies for economic development purposes, and any measure of the actual job creation resulting from these expenditures. A recent report by the Legislative Audit Bureau (LAB) reveals Wisconsin's poor performance relative to other states in this regard. The LAB found that Wisconsin has 26 boards, councils and task forces responsible for overseeing the state's myriad economic development programs, and that these entities have no systematic way to evaluate the programs or even communicate with one another about who is covering which program. As the report states,

[A]gency efforts to measure and report results have been limited, responsibility for administering economic development programs is fragmented, and no single entity is responsible for ensuring that the programs are working toward common policy goals.

The LAB goes on to suggest, just as we have in this report, that “[a]ccountability could be enhanced by improving coordination, reducing the number of programs with similar purposes, consolidating agency reporting requirements, and disclosing project costs and benefits to the public.” The report refers specifically to the subsidy disclosure laws in Illinois and Minnesota as good examples of subsidy disclosure, where corporations receiving the subsidies are responsible for reporting on the cost and benefits of the subsidies on an annual basis.

And so, although Wisconsin does have the distinction of having the only non-anonymous tax disclosure law in the country, this law does not go far enough to provide the benefits discussed in Section II above. Specifically, Wisconsin's law:

- contains only bottom-line tax information;
- does not provide any clue to a company's actual presence in the state, whether through profits, sales, or employees located in the state;
- requires company-by-company disclosure requests rather than providing information for a company and all its subsidiaries on one form;
- contains no information about state tax credits or subsidies received by the corporation, nor any information on economic benefits promised in exchange for these subsidies (e.g. annual job creation, wages, and worker benefits); and
- impedes access to, and communication about, corporate tax information by requiring the public to initiate disclosure requests, and allowing communication only through newspapers and public meetings.

# 5

## Ways to Improve Wisconsin's Tax Disclosure Law

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**G**iven the benefits of corporate tax and subsidy disclosure, and the inadequacy of Wisconsin's current disclosure law, the state could adopt a new and more comprehensive law requiring disclosure of financial and tax information, as well as a report on tax credits or subsidies and the impact of these subsidies. These disclosure reports must include sufficient information so that policymakers and the public can honestly assess the fiscal and economic development impacts of tax policies. To promote transparency, such disclosure statements could be made available online, in an analytically useful format for policymakers and the public, in order to maximize the benefits of disclosure and to motivate and inform state tax reform efforts.

Appendix A contains a full model tax disclosure bill, recently put out by the Center for Budget and Policy Priorities in Washington, D.C. Appendix B contains the text of the Illinois Corporate Accountability for Tax Expenditures Act, which includes some points of development subsidy disclosure not covered by the CBPP model bill. This provides and the Illinois Act provide a strong model for Wisconsin to guide consideration of new corporate tax reform legislation. We summarize important components from these model bills below:

1. Require disclosure from all publicly traded corporations ("C" corporations) and their subsidiaries doing business in the state. Additionally, publicly traded corporations making sales in the state but not required to file a tax return in the state are required to file a statement explaining why they do not file tax returns in the state.
2. Require all disclosure to be based on the corporation's tax forms filed two years prior, to avoid any issue of competitive disadvantage.
3. Require that covered corporations disclose the following information, all of which is already compiled on corporate tax forms:
  - a. The corporation's name, headquarters address, name and address of parent corporation (if applicable), and a unique corporate ID number that can be used to track state tax liability from year to year.
  - b. The corporation's bottom line tax liability in the state;
  - c. Any tax credits or exemptions claimed from the state, or any other state subsidy (grants, loans, etc.) that affects the corporation's stated taxable income;
  - d. Any operating losses or deductions claimed for the previous year, that might affect the corporation's stated taxable income; and
  - e. The share of nationwide income earned by the corporation that is taxable in the state.
4. Require information related to other commonly-owned corporations, e.g. subsidiaries or parent corporations, whose tax situation has an effect on the corporation located in the state. This information includes:

- a. Profits reported by any other entity/entities with which the corporation might have combined its profits for tax reporting purposes; and
  - b. If the corporation is a subsidiary, a disclosure of the overall profit reported to the SEC by the parent corporation;
5. In order to determine what loopholes corporations might be using to lower state tax payments, as well as the effect of various state tax policies on corporations, the bill could also require disclosure of the following information:
- a. Whether the corporation has made royalty or rent payments to any subsidiary companies in the past year (helps to determine whether a corporation is taking advantage of the "Toys R Us loophole"); and
  - b. What the corporation's tax liability would have been in absence of Wisconsin's single sales factor apportionment rule (helps to determine efficacy of the rule, which is touted as a boon to economic development).
6. Finally, models bills require disclosure of the following important pieces of data not normally found on a tax return, but that are essential factors in making disclosure useful to policymakers or the public:
- a. The corporation's industry (NAICS) code classification;
  - b. Share (average over the year) of the corporation's employees based in Wisconsin;
  - c. The terms and conditions of any development assistance package provided to the corporation in the form of tax credits, exemptions, grants, loans, etc. (such terms and conditions generally include promises made to the state regarding job creation, including average wages, benefits, and temporary vs. permanent jobs); and
  - d. An accounting of the actual number of jobs created as a result of the development package, including average wages and benefits, during the past year.

With the exception of points 5 and 6 above, all of this information is already collected on business tax returns, and should pose no great burden for Wisconsin's corporations.

To make this information as useful as possible to the public and policymakers, corporations could file this information with the state in a form that allows the state to post the data on a publicly available, searchable database. The Illinois Corporate Accountability Act, in Attachment B, provides a good illustration of this type of public access.

## Conclusion

Since the 1920s, Wisconsin has been a leader in allowing its citizens some access to corporate tax information. But its current law is not strong enough to provide the true benefits of corporate tax disclosure to its citizens. At the same time, the state lags behind many others, including two of our closest neighbors (Illinois and Minnesota), in providing clear information about state subsidies and tax breaks to corporations. We are living in a time when public trust in both government and corporate America is at a historic low, and when public dollars are in short supply. Now is the perfect time for Wisconsin to once again step forward as a leader, and pursue stronger corporate tax disclosure that is comprehensive, fair, and transparent to the public, policymakers, and the business community.

Appendix

# A

# Model State Corporate Income Tax Disclosure Act

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CENTER FOR BUDGET AND POLICY PRIORITIES, 2007

Model Bill from Michael Mazerov, STATE CORPORATE TAX DISCLOSURE: The Next Step in Corporate Tax Reform, Center on Budget and Policy Priorities website at <http://www.cbpp.org/2-13-07sfp.pdf>

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## Appendix A: The Model State Corporate Income Tax Disclosure Act

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### 1 Section 1: Definitions

2  
3 1. As used in this Title, "corporation" means any entity subject to the tax imposed by [reference  
4 state corporate income or franchise tax statute] or by Section 11 of the Internal Revenue Code of  
5 1986 as amended, except that "qualified personal service corporations," as defined in section 448 of  
6 the Internal Revenue Code of 1986, as amended, shall be exempt from this Title.

7 2. As used in this Title, "doing business in this state" means owning or renting real or tangible  
8 personal property physically located in this state; having employees, agents, or representatives acting  
9 on the corporation's behalf in this state; making sales of tangible personal property to purchasers  
10 that take possession of such property in this state, performing services for customers located in this  
11 state, performing services in this state, earning income from intangible property that has a business  
12 situs in this state, engaging in regular and systematic solicitation of sales in this state; being a partner  
13 in a partnership engaged in any of the preceding activities in this state; or being a member of a  
14 limited liability company engaged in any of the preceding activities in this state.

### 15 Section 2: Tax Disclosure Statement Required

16 The following corporations, if doing business in this state, shall file with the Secretary of State  
17 the statement described by Section 3 of this Title:

18 (1) All publicly traded corporations, including corporations traded on foreign stock  
19 exchanges; and

20 (2) All corporations fifty percent or more of the voting stock of which is owned, directly or  
21 indirectly, by a publicly-traded corporation;

### 22 Section 3: Content of Tax Disclosure Statement

23 The statement required by Section 2 of this Title shall be filed annually in an electronic format  
24 specified by the Secretary of State no more than 30 days following the filing of the tax return  
25 required by [reference to state corporate income or franchise tax statute], or, in the case of a  
26 corporation not required to file such a tax return, within 90 days of the filing of such corporation's  
27 federal tax return, including such corporation's inclusion in a federal consolidated return. The  
28 statement shall contain the following information:

29 (1) The name of the corporation and the street address of its principal executive office;

30 (2) If different from (1), the name of any corporation that owns, directly or indirectly, 50  
31 percent or more of the voting stock of the corporation and the street address of the former  
32 corporation's principal executive office;

33 (3) The corporation's 4-digit North American Industry Classification System code number;

34 (4) A unique code number, assigned by the Secretary of State, to identify the corporation,  
35 which code number will remain constant from year to year;

36 [Note: The following (5) and (6) are applicable to non-combined-reporting states]

37 (5) The following information reported on or used in preparing the corporation's tax return  
38 filed under the requirements of [reference state corporate income or franchise tax statute],  
39 or, in the case of a corporation included in a state consolidated tax return, reported on or  
40 used in preparing the state consolidated tax return filed under the requirements of [reference  
41 state corporate income or franchise tax statute], or, in the case of a corporation not required  
42 to file a tax return under the requirements of [reference to state corporate income or  
43 franchise tax statute], the information that would be required to be reported on or used in  
44 preparing the tax return were the corporation required to file such a return:

45 (a) Total receipts; [Note: or substitute state term for total gross income]

46 (b) Total cost-of-goods-sold claimed as a deduction from gross income;

47 (c) Taxable income prior to net operating loss deductions or apportionment;

48 (d) Property, payroll, and sales apportionment factors; [Note: as applicable to state]

49 (e) Calculated overall apportionment factor in the state;

50 (f) Total business income apportioned to the state;

51 (g) Net operating loss deduction, if any;

52 (h) Total non-business income and the amount of non-business income allocated to  
53 the state;

54 (i) Total taxable income;

55 (j) Total tax before credits;

56 (k) Tax credits claimed, each credit individually enumerated; [Note: individual  
57 enumeration might be limited to credits reducing pre-credit liability for all  
58 corporations taxable in the state collectively by more than 5-10 percent]

59 (l) Alternative minimum tax [if applicable];

- 60 ✓ (m) Tax due;
- 61 ✓ (n) Tax paid;
- 62 ✓ (o) Amount of tax due paid under protest, if applicable.

63 (6) The following information:

64 ✓ (a) Total deductions for management services fees, for rent, and for royalty, interest,  
65 license fee, and similar payments for the use of intangible property paid to any  
66 affiliated entity that is not included in the state consolidated income tax return, if  
67 any, that includes the corporation, and the names and principal executive office  
68 addresses of the entities to which the payments were made;

69 (b) The sales factor that would be calculated for this state if the corporation [or  
70 consolidated group] were required to treat as sales in this state sales of tangible  
71 personal property to the Federal Government and sales of tangible personal property  
72 shipped or delivered to a customer in a state in which the selling corporation is  
73 neither subject to a state corporate income tax or state franchise tax measured by net  
74 income nor could be subjected to such a tax were the state to impose it; [Note: only  
75 to be reported in states not having in effect the standard "throwback rule" under the  
76 Uniform Division of Income for Tax Purposes Act]

77 ✓ (c) A description of the source of any nonbusiness income reported on the return  
78 and the identification of the state to which such income was reported;

79 ✓ (d) A listing of all corporations included in the consolidated tax return that includes  
80 the corporation, if such a return is filed, and their state identification numbers  
81 assigned under the provisions of this section;]

82 ✓ (e) Full-time-equivalent employment of the corporation in the state on the last day of  
83 the tax year for which the return is being filed and for the three previous tax years;

84 ✓ (f) In the case of a publicly-traded corporation incorporated in the United States or  
85 an affiliate of such a publicly-traded corporation, profits before tax reported on the  
86 Securities and Exchange Commission Form 10-K for the corporation or the  
87 consolidated group of which the corporation is a member for the corporate fiscal  
88 year that contains the last day of the tax year for which the return is filed;

89 ✓ (g) The property and payroll factors for this state calculated as required by the  
90 Uniform Division of Income for Tax Purposes Act as embodied in Article IV of the  
91 Multistate Tax Compact and Multistate Tax Commission regulations applying  
92 thereto. [Note: this provision to be included in single sales factor formula states  
93 only]

94 ✓ (h) Accumulated tax credit carryovers, enumerated by credit.

95

*[Note: The following (5) and (6) are applicable to combined-reporting states]*

96

*(5) The following information reported on or used in preparing the corporation's tax return filed under the requirements of [reference state corporate income or franchise tax statute], or, in the case of a corporation not required to file a tax return under the requirements of [reference to state corporate income or franchise tax statute], the information that would be required to be reported on or used in preparing the tax return were the corporation required to file such a return:*

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*(a) Total receipts of the unitary group of which the corporation is a member; [Note: or substitute state term for total gross income]*

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*(b) Total cost-of-goods-sold claimed as a deduction from gross income by the unitary group of which the corporation is a member;*

104

105

*(c) Taxable income of the unitary group of which the corporation is a member prior to net operating loss deductions or apportionment;*

106

107

*(d) Property, payroll, and sales apportionment factors of the corporation as calculated on the combined report; [Note: as applicable to state]*

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*(d) Calculated overall apportionment factor in the state for the corporation as calculated on the combined report;*

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111

*(f) Total business income of the corporation apportioned to the state;*

112

*(g) Net operating loss deduction, if any, of the corporation apportioned to the state;*

113

*(h) Total non-business income of the corporation and the amount of non-business income allocated to the state;*

114

115

*(i) Total taxable income of the corporation;*

116

*(j) Total tax before credits;*

117

*(k) Tax credits claimed, each credit individually enumerated; [Note: individual enumeration might be limited to credits reducing pre-credit liability for all corporations taxable in the state collectively by more than 5-10 percent]*

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*(l) Alternative minimum tax [if applicable];*

121

*(m) Tax due;*

122

*(n) Tax paid;*

123

*(o) Amount of tax due paid under protest, if applicable.*

124

*(6) The following information:*



125 (a) Total deductions for management services fees, for rent, and for royalty, interest, license fee, and  
126 similar payments for the use of intangible property paid to any affiliated entity that is not included in  
127 the unitary combined group that includes the corporation and the names and principal office  
128 addresses of the entities to which the payments were made;

129 (b) The sales factor that would be calculated for this state on the combined report if the corporation  
130 were required to treat as sales in this state sales of tangible personal property to the Federal  
131 Government and sales of tangible personal property shipped or delivered to a customer in a state in  
132 which the selling corporation is neither subject to a state corporate income tax or state franchise tax  
133 measured by net income nor could be subjected to such a tax were the state to impose it; [Note: only  
134 to be reported in states not having in effect the standard "throwback rule" under the Uniform  
135 Division of Income for Tax Purposes Act]

136 (c) A description of the source of any nonbusiness income reported on the return and the  
137 identification of the state to which such income was reported;

138 (d) A listing of all corporations included in the unitary group that includes the corporation, their  
139 state identification numbers assigned under the provisions of this section, if applicable, and a listing  
140 of all variations in the unitary group that includes the corporation used in filing corporate income or  
141 franchise tax returns in any of the following states: Alaska, Arizona, California, Colorado,  
142 Hawaii, Idaho, Illinois, Kansas, Maine, Minnesota, Montana, Nebraska, New Hampshire,  
143 North Dakota, Oregon, Utah, Vermont;

144 (e) Full-time-equivalent employment of the corporation in the state on the last day of the tax year for  
145 which the return is being filed and for the three previous tax years;

146 (f) In the case of a publicly-traded corporation incorporated in the United States or the affiliate of  
147 such a publicly-traded corporation, profits before tax reported on the Securities and Exchange  
148 Commission Form 10-K for the corporation or the consolidated group of which the corporation is a  
149 member for the corporate fiscal year that contains the last day of the tax year for which the return is  
150 filed;

151 (g) Property and payroll factors for the corporation for this state calculated on the basis of combined  
152 reporting and as required by the Uniform Division of Income for Tax Purposes Act as embodied in  
153 Article IV of the Multistate Tax Compact and Multistate Tax Commission regulations applying  
154 thereto.] [Note: this provision to be included in single sales factor formula states only]

155 (h) Accumulated tax credit carryovers, enumerated by credit.

156 **Section 4: Alternative Statement Option for Corporations Not Required to File Tax Return**

157 In lieu of the statement described in Section 3, a corporation doing business in this state but not  
158 required to file a tax return under the requirements of [reference state's corporate income or  
159 franchise tax statutes] may elect to file a statement with the Secretary of State containing the  
160 following information:

161 (1) The information specified in Section 3, items (1) through (4), inclusive;

162 (2) An explanation of why the corporation is not required to file a corporate income tax  
163 return in this state, which explanation may take the form of checking one or more possible  
164 explanations drafted by the Secretary of State;

165 (3) Identification of into which of the following ranges the corporation's total gross receipts  
166 from sales to purchasers in this state fell in the tax year for which this statement is filed:

167 (a) Less than \$10 million;

168 (b) \$10 million to \$50 million;

169 (c) More than \$50 million to \$100 million;

170 (d) More than \$100 million to \$250 million;

171 (e) More than \$250 million.

## 172 **Section 5: Supplemental Information Permitted**

173 Any corporation submitting a statement required by this Title shall be permitted to submit  
174 supplemental information that, in its sole judgment, could facilitate proper interpretation of the  
175 information included in the statement. The mechanisms of public dissemination of the information  
176 contained in the statements described in Section 7 of this Title shall ensure that any such  
177 supplemental information be publicly available and that notification of its availability shall be made  
178 to any person seeking information contained in a statement.

## 179 **Section 6: Amended Tax Disclosure Statements Required**

180 If a corporation files an amended tax return, the corporation shall file a revised statement under  
181 this section within sixty calendar days after the amended return is filed. If a corporation's tax  
182 liability for a tax year is changed as the result of an uncontested audit adjustment or final  
183 determination of liability by the [name state's administrative appeals body] as provided for in  
184 [reference administrative appeals portion of state statute] or by a court of law as provided for in  
185 [reference legal appeals portion of state statute], the corporation shall file a revised statement under  
186 this section within sixty calendar days of the final determination of liability.

## 187 **Section 7: Public Access to Tax Disclosure Statements**

188 The statements required under this Title shall be a public record. The Secretary of State shall  
189 make all information contained in the statements required under this Title for all filing corporations  
190 available to the public on an ongoing basis in the form of a searchable database accessible through  
191 the Internet. The Secretary of State shall make available and set charges that cover the cost to the  
192 state of providing copies on appropriate computer-readable media of the entire database for  
193 statements filed during each calendar year as well as hard copies of an individual annual statement  
194 for a specific corporation. No statement for any corporation for a particular tax year shall be  
195 publicly available until the first day of the third calendar year that follows the calendar year in which  
196 the particular tax year ends.

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197 **Section 8: Enforcing Compliance**

198 The accuracy of the statements required under this Title shall be attested to in writing by the  
199 chief operating officer of the corporation and shall be subject to audit by the [department of  
200 revenue] as the agent of the Secretary of State in the course of and under the normal procedures  
201 applicable to corporate income tax return audits. The Secretary of State shall develop and implement  
202 an oversight and penalty system applicable to both the chief operating officer of the corporation and  
203 the corporation itself to ensure that corporations doing business in this state, including those not  
204 required to file a return under the requirements of [reference state corporate income or franchise tax  
205 statute], shall provide the required attestation and disclosure statements, respectively, in a timely and  
206 accurate manner. The Secretary of State shall publish the name and penalty imposed upon any  
207 corporation subject to a penalty for failing to file the required statement or filing an inaccurate  
208 statement. The Secretary of State shall promulgate appropriate rules to implement the provisions of  
209 this Title under the rulemaking procedures described in [reference state administrative procedures  
210 act].

71.74 - statute