



State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

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

Date Transfer Requested: 02/07/2008 (Per: PG)





Appendix A (Compile Draft)

 The 2007 drafting file for LRB-3832

has been copied/added to the drafting file for

2007 LRB-4036

 The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2007 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 2007 drafting file. The drafting file was then returned, intact, to its folder and filed.

2007 DRAFTING REQUEST

Bill

Received: 01/14/2008

Received By: jkreye

Wanted: Today

Identical to LRB:

For: Russell Decker (608) 266-2502

By/Representing: barb

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.Decker@legis.wisconsin.gov

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

Pre Topic:

No specific pre topic given

Topic:

Combined reporting

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>
/?	jkreye 01/14/2008	csicilia 01/14/2008		_____			State
/1			rschluet 01/14/2008	_____	lparisi 01/14/2008		

FE Sent For:

<END>

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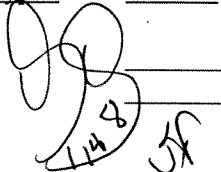
See Attached

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>
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1 cjs 1/14
08


1/14 08 jk

FE Sent For:

<END>



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3832?

JK:.....

per mtr

m 1-14-08

Tracy

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Gen Cat

wlj & cjs

1 AN ACT...; relating to: requiring the combined reporting of corporate income and
2 franchise taxes.

Analysis by the Legislative Reference Bureau

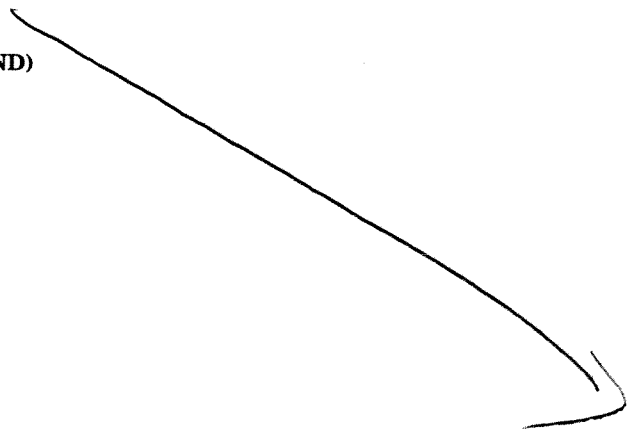
This bill requires that all corporations and their subsidiaries file combined reports and tax returns for state income and franchise tax purposes.

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

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

3

(END)



LFB:.....Shanovich (RR) - Combined tax reporting
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION
SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 40

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

1. Page 922, line 2: after that line insert:

~~SECTION 71.22~~ SECTION ~~71.22~~ ^{##} 71.22 (9) of the statutes is amended to read:

71.22 (9) "Person" includes corporations, unless the context requires otherwise. "Person" may include, as determined by the department, any individual, partnership, general partner of a partnership, limited liability company, registered limited liability partnership, foreign limited liability partnership, syndicate, estate, trust, trustee in bankruptcy, receiver, executor, administrator, assignee, or organization.

2. Page 922, line 19: after that line insert:

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CP
~~SECTION 71.255~~

1 SECTION 71.255 of the statutes is created to read:

2 **71.255 Combined reporting. (1) DEFINITIONS.** In this section:

3 (a) "Combined group" means the group of all persons whose income and
4 apportionment factors are considered under sub. (2) to determine the taxpayer's
5 share of the net business income or loss that is apportionable to this state.

6 (b) "Combined report" means a return under s. 71.24 that is filed on a form
7 prescribed by the department that specifies the income, credits, and tax of each
8 taxpayer member of a commonly controlled group operating as a unitary business.

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

11 1. A parent corporation and any corporation or chain of corporations that are
12 connected to the parent corporation by direct or indirect ownership by the parent
13 corporation if the parent corporation owns stock representing more than 50 percent
14 of the voting power of at least one of the connected corporations or if the parent
15 corporation or any of the connected corporations owns stock that cumulatively
16 represents more than 50 percent of the voting power of each of the connected
17 corporations.

18 2. Any 2 or more corporations if a common owner, regardless of whether or not
19 the owner is a corporation, directly or indirectly owns stock representing more than
20 50 percent of the voting power of the corporations or the connected corporations.

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

23 4. Any 2 or more corporations if stock representing more than 50 percent of the
24 voting power in each corporation is directly owned by, or for the benefit of, family
25 members. In this subdivision, "family member" means an individual related by

1 blood, marriage, or adoption within the 2nd degree of kinship as computed under s.
2 852.03 (2), 1995 stats., or the spouse of such an individual.

3 (d) "Corporation" means a corporation, as defined in s. 71.22 (1k), that,
4 regardless of where the corporation is located, would be subject to the taxes imposed
5 under this chapter, if the corporation were doing business in this state. For purposes
6 of this section, the business conducted by a pass-through entity that is directly or
7 indirectly held by a corporation is considered the corporation's business
8 proportionate to the corporation's distributive share of the pass-through entity's
9 income. "Corporation" does not include a tax-option corporation.

10 (e) "Department" means the department of revenue.

11 (f) "Internal Revenue Code" means the Internal Revenue Code as defined in s.
12 71.22 (4) and (4m), including any provision of a federal tax treaty that expressly
13 applies to the states of the United States, but not including any other application of
14 a federal tax treaty.

15 (g) "Pass-through entity" means a general or limited partnership, any
16 organization that is treated as a partnership for purposes of this chapter, a real
17 estate investment trust, a regulated investment company, a real estate mortgage
18 investment conduit, a financial asset securitization investment trust, a trust, or an
19 estate.

20 (h) "Tax haven" means a jurisdiction that, for any taxable year, is identified by
21 the organization for economic cooperation and development as a tax haven or as
22 having a harmful, preferential tax regime or has no, or a nominal, effective tax on
23 income and all of the following apply:

1 1. The jurisdiction has laws or practices that prevent the effective exchange of
2 information, for tax purposes, with other governments on taxpayers benefiting from
3 the tax regime.

4 2. The details of the legislative, legal, or administrative provisions of the
5 jurisdiction's tax regime are not publicly available and apparent or are not
6 consistently applied to similarly situated taxpayers or the information needed by tax
7 authorities to determine a taxpayer's correct tax liability, including accounting
8 records and underlying documentation, is not adequately available.

9 3. The jurisdiction facilitates the establishment of foreign-owned entities
10 without requiring a local substantive presence or prohibits such entities from having
11 any commercial impact on the local economy.

12 4. The tax regime explicitly or implicitly excludes the jurisdiction's resident
13 taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises
14 that benefit from the regime from operating in the jurisdiction's domestic market.

15 5. The jurisdiction has created a tax regime that is favorable for tax avoidance,
16 based upon an overall assessment of relevant factors, including whether the
17 jurisdiction has a significant untaxed offshore financial or other services sector
18 relative to its overall economy.

19 (i) "Taxpayer member" means a corporation that is subject to tax under s. 71.23
20 (1) or (2) and that is a member of a combined group.

21 (j) "Unitary business" means a single economic enterprise that consists of
22 separate parts of a single business entity or of a commonly controlled group of
23 business entities that are sufficiently interdependent, integrated, and interrelated
24 by their activities so as to provide a synergy and a mutual benefit that produces a
25 sharing or exchange of value among them and a significant flow of value to the

1 separate parts. For purposes of this section, 2 or more business entities are
2 considered a unitary business if the entities have unity of ownership, operation, and
3 use, as indicated by centralized management or a centralized executive force;
4 centralized purchasing, advertising, or accounting; intercorporate sales or leases;
5 intercorporate services; intercorporate debts; intercorporate use of proprietary
6 materials; interlocking directorates; or interlocking corporate officers. Any business
7 conducted by a pass-through entity that is owned directly or indirectly by a
8 corporation is considered conducted by the corporation, to the extent of the
9 corporation's distributive share of the pass-through entity's income, regardless of
10 the percentage of the corporation's ownership interest. A business conducted
11 directly or indirectly by one corporation is unitary with that portion of a business
12 conducted by another corporation through its direct or indirect interest in a
13 pass-through entity, if the corporations are sufficiently interdependent, integrated,
14 and interrelated by their activities so as to provide a synergy and a mutual benefit
15 that produces a sharing or exchange of value among them and a significant flow of
16 value to the separate parts and the two corporations are members of the same
17 commonly controlled group.

18 **(2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING.** (a) A corporation
19 engaged in a unitary business with any other corporation shall file a combined report
20 that includes the income, determined under sub. (3), and apportionment factor,
21 determined under sub. (5) and s. 71.25, of the following members of the unitary
22 business:

23 1. Any member incorporated in the United States, including the District of
24 Columbia and any territory or possession of the United States, or formed under the

1 laws of any state, the District of Columbia, or any territory or possession of the
2 United States.

3 2. Any member, regardless of where the entity is incorporated or formed, if the
4 average of the following ratios is 20 percent or more:

5 a. The value of the member's real property and tangible personal property
6 located in the United States, including the District of Columbia and any territory or
7 possession of the United States, not including property that is used to produce
8 nonapportionable income, divided by the value of all of the member's real property
9 and tangible personal property, not including property that is used to produce
10 nonapportionable income. For purposes of this subd. 2. a., the value of property that
11 the member rents is the net annual rental amount for the property, multiplied by 8.

12 b. The amount of the member's payroll that is paid in the United States,
13 including the District of Columbia and any territory or possession of the United
14 States, divided by the amount of the member's total payroll. For purposes of this
15 subd. 2. b., payroll includes compensation paid to employees, but does not include
16 payroll used to produce nonapportionable income. The payroll paid in the United
17 States, including the District of Columbia and any territory or possession of the
18 United States, shall be determined in the same manner as payroll is determined for
19 this state under s. 71.25 (8) (b) 1. to 5.

20 c. The member's sales in the United States, including the District of Columbia
21 and any territory or possession of the United States, divided by the member's total
22 sales. For purposes of this subd. 2. c., sales include items identified in s. 71.25 (9) (e),
23 but not items identified in s. 71.25 (9) (f), and the situs of a sale shall be determined
24 in the same manner as for state sales in s. 71.25 (9) (b), (d), (df), and (dh), not
25 including s. 71.25 (9) (b) 2m. and 3., (c), (df) 3., and (dh) 4.

1 3. Any member that is a domestic international sales corporation as described
2 in sections 991 to 994 of the Internal Revenue Code, a foreign sales corporation as
3 described in sections 921 to 927 of the Internal Revenue Code, or an export trade
4 corporation as described in sections 970 to 971 of the Internal Revenue Code.

5 4. Any member that is a controlled foreign corporation as defined in section 957
6 of the Internal Revenue Code, to the extent of the member's income that is defined
7 in section 952 of of the Internal Revenue Code, including any lower-tier subsidiary's
8 distribution of such income that was previously taxed, determined without regard
9 to federal treaties, and the apportionment factors related to that income. For
10 purposes of this subdivision, any item of income received by a controlled foreign
11 corporation is excluded if the income was subject to an income tax imposed by a
12 foreign country at an effective tax rate greater than 90 percent of the maximum tax
13 rate specified in section 11 of the Internal Revenue Code.

14 5. Any member that earns more than 20 percent of its income, directly or
15 indirectly, from intangible property or service-related activities that are deductible
16 against the business income of other members of the combined group, to the extent
17 of that income and the apportionment factors related to that income.

18 6. Any member that is doing business in a tax haven, if the member is engaged
19 in an activity that is sufficient for that tax haven jurisdiction to impose a tax under
20 federal law. If the member's business activity in a tax haven is entirely outside the
21 scope of the laws and practices that cause the jurisdiction to be a tax haven, the
22 member's business activity is not considered to be conducted in a tax haven for
23 purposes of this section.

24 7. Any member not described in subds. 1. to 6., to the extent that its income is
25 derived from or attributable to sources within the United States, including the

1 District of Columbia and any territory or possession of the United States, as
2 determined under the Internal Revenue Code and by its apportionment factors
3 related to that income.

4 (b) The department may require that a combined report filed under this section
5 include the income and associated apportionment factors of any persons not
6 described under par. (a) that are members of a unitary business to reflect the proper
7 apportionment of income of the entire unitary business, including persons that are
8 not, or would not be, subject to the taxes imposed under this chapter if doing business
9 in this state.

10 **(3) COMPONENTS OF INCOME SUBJECT TO TAX.** Each taxpayer member is
11 responsible for the tax imposed under this chapter based on its taxable income or loss
12 apportioned or allocated to this state, including:

13 (a) Its share of any business income apportionable to this state of each of the
14 combined groups of which it is a member, as determined under subs. (4) and (5).

15 (b) Its share of any business income apportionable to this state of a distinct
16 business activity conducted in and outside this state wholly by the taxpayer member,
17 as determined under s. 71.25.

18 (c) Its income from a business conducted wholly by the taxpayer member
19 entirely in this state.

20 (d) Its income sourced to this state from the sale or exchange of capital or assets
21 and from involuntary conversions, as determined under sub. (4) (a) 8.

22 (e) Its nonbusiness income or loss allocable to this state.

23 (f) Its income or loss allocated or apportioned in an earlier year that is state
24 source income during the income year, other than a net business loss carry-forward.

1 (g) Its net business loss carry-forward. If the taxable income computed under
2 this subsection and subs. (4) and (5) results in a loss for a taxpayer member of the
3 combined group, the taxpayer member has a net business loss, subject to the net
4 business loss limitations and carry-forward provisions in s. 71.26 (4). The business
5 loss is applied as a deduction in a subsequent year only if the taxpayer member has
6 net income sourced to this state, regardless of whether the taxpayer is a member of
7 a combined group in the subsequent year.

8 **(4) BUSINESS INCOME OF THE COMBINED GROUP.** The business income of a
9 combined group is determined as follows:

10 (a) Compute the sum of the income of each member of the combined group as
11 determined for federal income tax purposes, as if the members were not consolidated
12 for federal purposes, and modified as provided under s. 71.26. Each member of the
13 combined group shall determine its income as follows:

14 1. For any member incorporated in the United States, including the District of
15 Columbia and any territory or possession of the United States, or included in a
16 consolidated federal corporate income tax return, the income included in the total
17 income of the combined group is the corporation's taxable income as determined
18 under s. 71.26.

19 2. Except as provided in subd. 3, for any member not included in subd. 1., the
20 income included in the total income of the combined group shall be determined as
21 follows:

22 a. Each foreign branch or foreign corporation shall prepare a profit and loss
23 statement in the currency in which the branch's or corporation's books of account are
24 regularly maintained.

1 b. The member shall adjust any statement prepared under subd. 2. a. to
2 conform to the accounting principles generally accepted in the United States for the
3 preparation of profit and loss statements.

4 c. The member shall adjust any statement prepared under subd. 2. a. to
5 conform to the tax accounting standards required by the department for the
6 administration of this chapter.

7 d. Each member of the combined group shall translate its profit and loss
8 statements, and the related apportionment factors, into the currency in which the
9 parent corporation maintains its books and records.

10 e. Each member shall express in U.S. dollars the income apportioned to this
11 state.

12 3. If the department determines that the income determination under this
13 subsection reasonably approximates income as determined under s. 71.26, any
14 member not included in subd. 1. may determine its income based on a consolidated
15 profit and loss statement that includes the member and that is prepared for the
16 purpose of filing, by related corporations, with the securities and exchange
17 commission. If the member is not required to file with the securities and exchange
18 commission, the department may allow, for purposes of this subdivision, the use of
19 the consolidated profit and loss statement prepared for reporting to shareholders
20 and subject to review by an independent auditor. If a statement described in this
21 subdivision does not reasonably approximate income as determined under s. 71.26,
22 the department may accept the statement if the member makes appropriate
23 adjustments to the statement, as determined by the department, to approximate the
24 income determined under s. 71.26.

1 4. If a unitary business includes income from a pass-through entity, the total
2 income of the combined group includes the member's direct and indirect distributive
3 share of the pass-through entity's unitary business income.

4 5. All dividends paid by one member to another are not included in the
5 recipients income, if the dividends are paid out of the earnings and profits of the
6 unitary business in the current taxable year or in an earlier taxable year. This
7 subdivision does not apply to dividends received from members of a unitary business
8 that are not a part of the combined group.

9 6. Except as provided by the department by rule, business income or loss from
10 an intercompany transaction between members of the same combined group shall be
11 deferred in a manner similar to 26 CFR 1.1502-13. Upon the occurrence of any of
12 the following events, deferred business income or loss resulting from an
13 intercompany transaction between members of a combined group shall be included
14 in the income of the seller and shall be apportioned as business income earned
15 immediately before the event:

16 a. The object of the deferred intercompany transaction is sold by the buyer to
17 an entity that is not a member of the combined group.

18 b. The object of the deferred intercompany transaction is sold by the buyer to
19 an entity that is a member of the combined group for use outside the unitary business
20 in which the buyer and seller are engaged.

21 c. The object of the deferred intercompany transaction is converted by the buyer
22 to a use outside the unitary business in which the buyer and seller are engaged.

23 d. The buyer and seller are no longer members of the same combined group,
24 regardless of whether the members remain a unitary business.

1 7. A charitable expense incurred by a member of a combined group, to the
2 extent allowable as a deduction under section 170 of the Internal Revenue Code,
3 shall be subtracted first from the business income of the combined group, subject to
4 the income limitations of section 170 of the Internal Revenue Code as it applies to
5 the entire business income of the group, and any remaining amount shall be treated
6 as a nonbusiness expense allocable to the member that incurred the expense, subject
7 to the income limitations of section 170 of the Internal Revenue Code as it applies
8 to the nonbusiness income of that member. Any charitable deduction described
9 under this subdivision that is allowed as a carryover deduction in a subsequent year
10 is considered to be originally incurred in the subsequent year by the same member,
11 and this section applies in the subsequent year for purposes of determining the
12 allowable deduction in that year.

13 8. Gain or loss from the sale or exchange of capital assets, property described
14 in section 1231 (a) (3) of the Internal Revenue Code, and property subject to an
15 involuntary conversion, is removed from the total separate net income of each
16 member of a combined group and is apportioned and allocated as follows:

17 a. For short-term capital gains or losses, long-term capital gains or losses,
18 gains or losses under section 1231 of the Internal Revenue Code, and involuntary
19 conversions, the business gain and loss of all members are combined within each
20 class of net business gain or loss and each such class is separately apportioned to each
21 member using the member's apportionment percentage determined under sub. (5).

22 b. Each taxpayer member shall net its apportioned business gain or loss for all
23 classes, as determined under subd. 8. a., including any such apportioned business
24 gain and loss from other combined groups, against the taxpayer member's
25 nonbusiness gain and loss for all classes allocated to this state as provided under

1 sections 1231 and 1222 of the Internal Revenue Code, not including nonbusiness
2 items allocated to another state.

3 c. Any resulting state source income or loss, if the loss is not subject to section
4 1211 of the Internal Revenue Code, of a taxpayer member produced by the
5 application of subd. 8. a. and b. shall then be applied to all other state source income
6 or loss of that member.

7 d. Any resulting state source loss of a member that is subject to section 1211
8 of the Internal Revenue Code shall be carried forward or carried back by that
9 member and shall be treated as state source short-term capital loss incurred by that
10 member for the year for which the carry-forward or carry-back applies.

11 9. Any expense of one member of the unitary business that is directly or
12 indirectly attributable to the nonbusiness or exempt income of another member of
13 the unitary business shall be allocated to that other member as corresponding
14 nonbusiness or exempt expense, as appropriate.

15 (b) Subtract any nonbusiness income of the combined group from the amount
16 determined under par. (a) and add any nonbusiness expense or loss of the combined
17 group to the amount determined under par. (a).

18 (5) TAXPAYER'S SHARE OF BUSINESS INCOME OF A COMBINED GROUP. The taxpayer's
19 share of the business income apportionable to this state of each combined group of
20 which it is a member shall be the product of the business income of the combined
21 group as determined under sub. (4) and the taxpayer member's sales factor
22 percentage, determined under s. 71.25, modified as follows:

23 (a) Include in the numerator the taxpayer member's sales associated with the
24 combined group's unitary business in this state.

1 (b) Include in the numerator the taxpayer member's sales associated with the
2 combined group's unitary business to another state in which the taxpayer member
3 is not engaged in business, regardless of whether another member of the combined
4 group is engaged in business in the other state.

5 (c) Include in the denominator the sales of all members of the combined group,
6 including the taxpayer, that are associated with the combined group's unitary
7 business regardless of where that business is located.

8 (d) Include sales of a pass-through entity owned directly or indirectly by a
9 corporation in proportion to a ratio the numerator of which is the amount of the
10 corporation's distributive share of the pass-through entity's unitary income included
11 in the income of the combined group in under sub. (4) and the denominator of which
12 is the amount of the pass-through entity's total unitary income.

13 (e) Exclude sales between members of the combined group.

14 (f) If a member of a combined group is not subject to the taxes imposed under
15 s. 71.23 because it is not engaged in business in this state, the numerator of the
16 member's sales factor is zero.

17 **(6) CREDITS AND POST-APPORTIONMENT DEDUCTIONS.** No tax credit or
18 post-apportionment deduction earned by one member of the combined group, but not
19 completed, used by, or allowed to that member, may be used in whole or in part by
20 another member of the combined group or applied in whole or in part against the total
21 income of the combined group.

22 **(7) DESIGNATED AGENT.** (a) For purposes of administering this section, each
23 combined group shall appoint a sole designated agent. The designated agent is the
24 parent corporation of the combined group, if the parent corporation is a taxpayer
25 member of the combined group and the income of the parent corporation is included

1 in the combined report. If there is no such parent corporation, the designated agent
2 may be appointed by the taxpayer members. If there is no such parent corporation
3 and no taxpayer member is appointed, the designated agent is the taxpayer member
4 that has the most significant operations in this state on a recurring basis, as
5 determined by the department. The designated agent may change only when the
6 designated agent is no longer subject to the tax imposed under s. 71.23 (1) or (2), in
7 which case the combined group shall notify the department of such a change in the
8 manner prescribed by the department.

9 (b) The designated agent is responsible for acting on behalf of the taxpayer
10 members of the combined group and shall do all of the following:

- 11 1. File with the department a combined report under sub. (1) (b).
- 12 2. File any extensions under s. 71.24.
- 13 3. File any amended combined reports and claims for refund or credit.
- 14 4. Send and receive all correspondence with the department regarding the
15 combined report.
- 16 5. Remit all taxes, including estimated taxes, to the department. For purposes
17 of computing interest on late payments, all payments remitted are considered to be
18 made on a proportionate basis by all taxpayer members of the combined group,
19 unless otherwise specified by the designated agent.
- 20 6. Participate on behalf of the combined group members in any investigation
21 or hearing requested by the department regarding a combined report, produce all
22 information requested by the department regarding the combined report, and file
23 any appeal related to a combined report. Any appeal filed by the designated agent
24 is considered filed by all members of the combined group.

1 7. Execute any waiver, closing agreement, power of attorney, or other document
2 regarding the combined report filed under sub. (1) (b). Any waiver, agreement, or
3 document executed by the designated agent is considered executed by all members
4 of the combined group.

5 8. Receive notices regarding the combined report. Any such notice the
6 department sends to the designated agent is considered sent to all taxpayer members
7 of the combined group.

8 9. Receive refunds regarding the combined report. Any such refund shall be
9 paid to and in the name of the designated agent and shall discharge any liability of
10 the state to any member of the combined group regarding the refund.

11 (c) The department may relieve the designated agent from any of the duties
12 described in par. (b) to the extent that the duties relate to income, expense, or loss
13 that is not includable in the business income of the combined group under sub. (4).
14 Unless the department provides for such relief by rule, a designated agent shall
15 obtain written approval from the department to be relieved of any such duties.

16 **(8) TAXABLE YEAR OF THE COMBINED GROUP.** (a) Except as provided in par. (b), the
17 combined group's taxable year is the designated agent's taxable year. If a member's
18 taxable year is different from the combined group's taxable year, the designated
19 agent may elect to determine the portion of each member's income to be included in
20 the combined report either from a separate income statement from each member that
21 is prepared by the member's books and records for the months that are included in
22 the combined group's taxable year or by including in the combined report all of the
23 income of each member for the year that ends during the combined group's taxable
24 year. Any election made under this paragraph remains in effect for subsequent years

1 unless the designated agent submits a request to the department to change the
2 election and the department approves in writing.

3 (b) If 2 or more members of a combined group file a federal consolidated return,
4 the combined group's taxable year is the taxable year that corresponds to the federal
5 consolidated return.

6 (9) PART-YEAR MEMBERS OF A COMBINED GROUP. If a corporation becomes a
7 member of a combined group, or ceases to be a member of a combined group, after
8 the beginning of the combined group's taxable year, the corporation's income shall
9 be determined as provided under subs. (3), (4), and (5) for that portion of the year in
10 which the corporation was a member of the combined group, and the income shall be
11 included in the combined report. The income for the remaining short period shall be
12 reported on a separate return or separate combined report.

13 (10) PRESUMPTIONS AND BURDEN OF PROOF. A commonly controlled group is
14 presumed to be engaged in a unitary business and all of the income of the unitary
15 business is presumed to be apportionable business income under this section. A
16 corporation has the burden of proving that it is not a member of a combined group
17 that is subject to this section.

18 ~~3.~~ Page 962, line 18; after that line insert:

auto number not
hardnumber

19 SECTION ~~70320~~ 71.26 (3) (x) of the statutes is amended to read:

20 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
21 consolidated returns) are excluded, except as provided under section 1502 of the U.S.
22 treasury regulations as it relates to deferred gain or loss from an intercompany
23 transaction under s. 71.255 (4) (a) 6.

24 ~~4.~~ Page 1661, line 23; after that line insert:

① sec #. Initial applicability. autonumber not hard number
←

1 ~~(a) COMBINED REPORTING. The treatment of sections 71.22 (9), 71.255, and~~

2 ~~71.26 (3) of the statutes first~~ applies to taxable years beginning on January 1,

3 2008.

This act first
~~(END)~~

4

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

LRB-3832/?dn

JK: /:....

y's

Senator Decker:

Please review this draft carefully to ensure that it is consistent with your intent. My understanding is that this draft will ultimately be included in a more comprehensive "economic development" draft.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3832/1dn
JK:cjs:rs

January 14, 2008

Senator Decker:

Please review this draft carefully to ensure that it is consistent with your intent. My understanding is that this draft will ultimately be included in a more comprehensive "economic development" draft.

Joseph T. Kreye
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State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3832/1
JK:wlj&cjs:rs

2007 BILL

1 **AN ACT** *to amend* 71.22 (9) and 71.26 (3) (x); and *to create* 71.255 of the statutes;
2 **relating to:** requiring the combined reporting of corporate income and
3 franchise taxes.

Analysis by the Legislative Reference Bureau

This bill requires that all corporations and their subsidiaries file combined reports and tax returns for state income and franchise tax purposes.

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

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

4 **SECTION 1.** 71.22 (9) of the statutes is amended to read:
5 71.22 (9) "Person" includes corporations, unless the context requires
6 otherwise. "Person" may include, as determined by the department, any individual,
7 partnership, general partner of a partnership, limited liability company, registered
8 limited liability partnership, foreign limited liability partnership, syndicate, estate,

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1 trust, trustee in bankruptcy, receiver, executor, administrator, assignee, or
2 organization.

3 **SECTION 2.** 71.255 of the statutes is created to read:

4 **71.255 Combined reporting. (1) DEFINITIONS.** In this section:

5 (a) "Combined group" means the group of all persons whose income and
6 apportionment factors are considered under sub. (2) to determine the taxpayer's
7 share of the net business income or loss that is apportionable to this state.

8 (b) "Combined report" means a return under s. 71.24 that is filed on a form
9 prescribed by the department that specifies the income, credits, and tax of each
10 taxpayer member of a commonly controlled group operating as a unitary business.

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

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

20 2. Any 2 or more corporations if a common owner, regardless of whether or not
21 the owner is a corporation, directly or indirectly owns stock representing more than
22 50 percent of the voting power of the corporations or the connected corporations.

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

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

6 (d) "Corporation" means a corporation, as defined in s. 71.22 (1k), that,
7 regardless of where the corporation is located, would be subject to the taxes imposed
8 under this chapter, if the corporation were doing business in this state. For purposes
9 of this section, the business conducted by a pass-through entity that is directly or
10 indirectly held by a corporation is considered the corporation's business
11 proportionate to the corporation's distributive share of the pass-through entity's
12 income. "Corporation" does not include a tax-option corporation.

13 (e) "Department" means the department of revenue.

14 (f) "Internal Revenue Code" means the Internal Revenue Code as defined in s.
15 71.22 (4) and (4m), including any provision of a federal tax treaty that expressly
16 applies to the states of the United States, but not including any other application of
17 a federal tax treaty.

18 (g) "Pass-through entity" means a general or limited partnership, any
19 organization that is treated as a partnership for purposes of this chapter, a real
20 estate investment trust, a regulated investment company, a real estate mortgage
21 investment conduit, a financial asset securitization investment trust, a trust, or an
22 estate.

23 (h) "Tax haven" means a jurisdiction that, for any taxable year, is identified by
24 the organization for economic cooperation and development as a tax haven or as

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1 having a harmful, preferential tax regime or has no, or a nominal, effective tax on
2 income and all of the following apply:

3 1. The jurisdiction has laws or practices that prevent the effective exchange of
4 information, for tax purposes, with other governments on taxpayers benefiting from
5 the tax regime.

6 2. The details of the legislative, legal, or administrative provisions of the
7 jurisdiction's tax regime are not publicly available and apparent or are not
8 consistently applied to similarly situated taxpayers or the information needed by tax
9 authorities to determine a taxpayer's correct tax liability, including accounting
10 records and underlying documentation, is not adequately available.

11 3. The jurisdiction facilitates the establishment of foreign-owned entities
12 without requiring a local substantive presence or prohibits such entities from having
13 any commercial impact on the local economy.

14 4. The tax regime explicitly or implicitly excludes the jurisdiction's resident
15 taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises
16 that benefit from the regime from operating in the jurisdiction's domestic market.

17 5. The jurisdiction has created a tax regime that is favorable for tax avoidance,
18 based upon an overall assessment of relevant factors, including whether the
19 jurisdiction has a significant untaxed offshore financial or other services sector
20 relative to its overall economy.

21 (i) "Taxpayer member" means a corporation that is subject to tax under s. 71.23
22 (1) or (2) and that is a member of a combined group.

23 (j) "Unitary business" means a single economic enterprise that consists of
24 separate parts of a single business entity or of a commonly controlled group of
25 business entities that are sufficiently interdependent, integrated, and interrelated

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1 by their activities so as to provide a synergy and a mutual benefit that produces a
2 sharing or exchange of value among them and a significant flow of value to the
3 separate parts. For purposes of this section, 2 or more business entities are
4 considered a unitary business if the entities have unity of ownership, operation, and
5 use, as indicated by centralized management or a centralized executive force;
6 centralized purchasing, advertising, or accounting; intercorporate sales or leases;
7 intercorporate services; intercorporate debts; intercorporate use of proprietary
8 materials; interlocking directorates; or interlocking corporate officers. Any business
9 conducted by a pass-through entity that is owned directly or indirectly by a
10 corporation is considered conducted by the corporation, to the extent of the
11 corporation's distributive share of the pass-through entity's income, regardless of
12 the percentage of the corporation's ownership interest. A business conducted
13 directly or indirectly by one corporation is unitary with that portion of a business
14 conducted by another corporation through its direct or indirect interest in a
15 pass-through entity, if the corporations are sufficiently interdependent, integrated,
16 and interrelated by their activities so as to provide a synergy and a mutual benefit
17 that produces a sharing or exchange of value among them and a significant flow of
18 value to the separate parts and the two corporations are members of the same
19 commonly controlled group.

20 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) A corporation
21 engaged in a unitary business with any other corporation shall file a combined report
22 that includes the income, determined under sub. (3), and apportionment factor,
23 determined under sub. (5) and s. 71.25, of the following members of the unitary
24 business:

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1 1. Any member incorporated in the United States, including the District of
2 Columbia and any territory or possession of the United States, or formed under the
3 laws of any state, the District of Columbia, or any territory or possession of the
4 United States.

5 2. Any member, regardless of where the entity is incorporated or formed, if the
6 average of the following ratios is 20 percent or more:

7 a. The value of the member's real property and tangible personal property
8 located in the United States, including the District of Columbia and any territory or
9 possession of the United States, not including property that is used to produce
10 nonapportionable income, divided by the value of all of the member's real property
11 and tangible personal property, not including property that is used to produce
12 nonapportionable income. For purposes of this subd. 2. a., the value of property that
13 the member rents is the net annual rental amount for the property, multiplied by 8.

14 b. The amount of the member's payroll that is paid in the United States,
15 including the District of Columbia and any territory or possession of the United
16 States, divided by the amount of the member's total payroll. For purposes of this
17 subd. 2. b., payroll includes compensation paid to employees, but does not include
18 payroll used to produce nonapportionable income. The payroll paid in the United
19 States, including the District of Columbia and any territory or possession of the
20 United States, shall be determined in the same manner as payroll is determined for
21 this state under s. 71.25 (8) (b) 1. to 5.

22 c. The member's sales in the United States, including the District of Columbia
23 and any territory or possession of the United States, divided by the member's total
24 sales. For purposes of this subd. 2. c., sales include items identified in s. 71.25 (9) (e),
25 but not items identified in s. 71.25 (9) (f), and the situs of a sale shall be determined

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1 in the same manner as for state sales in s. 71.25 (9) (b), (d), (df), and (dh), not
2 including s. 71.25 (9) (b) 2m. and 3., (c), (df) 3., and (dh) 4.

3 3. Any member that is a domestic international sales corporation as described
4 in sections 991 to 994 of the Internal Revenue Code, a foreign sales corporation as
5 described in sections 921 to 927 of the Internal Revenue Code, or an export trade
6 corporation as described in sections 970 to 971 of the Internal Revenue Code.

7 4. Any member that is a controlled foreign corporation as defined in section 957
8 of the Internal Revenue Code, to the extent of the member's income that is defined
9 in section 952 of of the Internal Revenue Code, including any lower-tier subsidiary's
10 distribution of such income that was previously taxed, determined without regard
11 to federal treaties, and the apportionment factors related to that income. For
12 purposes of this subdivision, any item of income received by a controlled foreign
13 corporation is excluded if the income was subject to an income tax imposed by a
14 foreign country at an effective tax rate greater than 90 percent of the maximum tax
15 rate specified in section 11 of the Internal Revenue Code.

16 5. Any member that earns more than 20 percent of its income, directly or
17 indirectly, from intangible property or service-related activities that are deductible
18 against the business income of other members of the combined group, to the extent
19 of that income and the apportionment factors related to that income.

20 6. Any member that is doing business in a tax haven, if the member is engaged
21 in an activity that is sufficient for that tax haven jurisdiction to impose a tax under
22 federal law. If the member's business activity in a tax haven is entirely outside the
23 scope of the laws and practices that cause the jurisdiction to be a tax haven, the
24 member's business activity is not considered to be conducted in a tax haven for
25 purposes of this section.

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1 7. Any member not described in subs. 1. to 6., to the extent that its income is
2 derived from or attributable to sources within the United States, including the
3 District of Columbia and any territory or possession of the United States, as
4 determined under the Internal Revenue Code and by its apportionment factors
5 related to that income.

6 (b) The department may require that a combined report filed under this section
7 include the income and associated apportionment factors of any persons not
8 described under par. (a) that are members of a unitary business to reflect the proper
9 apportionment of income of the entire unitary business, including persons that are
10 not, or would not be, subject to the taxes imposed under this chapter if doing business
11 in this state.

12 **(3) COMPONENTS OF INCOME SUBJECT TO TAX.** Each taxpayer member is
13 responsible for the tax imposed under this chapter based on its taxable income or loss
14 apportioned or allocated to this state, including:

15 (a) Its share of any business income apportionable to this state of each of the
16 combined groups of which it is a member, as determined under subs. (4) and (5).

17 (b) Its share of any business income apportionable to this state of a distinct
18 business activity conducted in and outside this state wholly by the taxpayer member,
19 as determined under s. 71.25.

20 (c) Its income from a business conducted wholly by the taxpayer member
21 entirely in this state.

22 (d) Its income sourced to this state from the sale or exchange of capital or assets
23 and from involuntary conversions, as determined under sub. (4) (a) 8.

24 (e) Its nonbusiness income or loss allocable to this state.

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1 (f) Its income or loss allocated or apportioned in an earlier year that is state
2 source income during the income year, other than a net business loss carry-forward.

3 (g) Its net business loss carry-forward. If the taxable income computed under
4 this subsection and subs. (4) and (5) results in a loss for a taxpayer member of the
5 combined group, the taxpayer member has a net business loss, subject to the net
6 business loss limitations and carry-forward provisions in s. 71.26 (4). The business
7 loss is applied as a deduction in a subsequent year only if the taxpayer member has
8 net income sourced to this state, regardless of whether the taxpayer is a member of
9 a combined group in the subsequent year.

10 (4) BUSINESS INCOME OF THE COMBINED GROUP. The business income of a
11 combined group is determined as follows:

12 (a) Compute the sum of the income of each member of the combined group as
13 determined for federal income tax purposes, as if the members were not consolidated
14 for federal purposes, and modified as provided under s. 71.26. Each member of the
15 combined group shall determine its income as follows:

16 1. For any member incorporated in the United States, including the District of
17 Columbia and any territory or possession of the United States, or included in a
18 consolidated federal corporate income tax return, the income included in the total
19 income of the combined group is the corporation's taxable income as determined
20 under s. 71.26.

21 2. Except as provided in subd. 3, for any member not included in subd. 1., the
22 income included in the total income of the combined group shall be determined as
23 follows:

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1 a. Each foreign branch or foreign corporation shall prepare a profit and loss
2 statement in the currency in which the branch's or corporation's books of account are
3 regularly maintained.

4 b. The member shall adjust any statement prepared under subd. 2. a. to
5 conform to the accounting principles generally accepted in the United States for the
6 preparation of profit and loss statements.

7 c. The member shall adjust any statement prepared under subd. 2. a. to
8 conform to the tax accounting standards required by the department for the
9 administration of this chapter.

10 d. Each member of the combined group shall translate its profit and loss
11 statements, and the related apportionment factors, into the currency in which the
12 parent corporation maintains its books and records.

13 e. Each member shall express in U.S. dollars the income apportioned to this
14 state.

15 3. If the department determines that the income determination under this
16 subsection reasonably approximates income as determined under s. 71.26, any
17 member not included in subd. 1. may determine its income based on a consolidated
18 profit and loss statement that includes the member and that is prepared for the
19 purpose of filing, by related corporations, with the securities and exchange
20 commission. If the member is not required to file with the securities and exchange
21 commission, the department may allow, for purposes of this subdivision, the use of
22 the consolidated profit and loss statement prepared for reporting to shareholders
23 and subject to review by an independent auditor. If a statement described in this
24 subdivision does not reasonably approximate income as determined under s. 71.26,
25 the department may accept the statement if the member makes appropriate

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1 adjustments to the statement, as determined by the department, to approximate the
2 income determined under s. 71.26.

3 4. If a unitary business includes income from a pass-through entity, the total
4 income of the combined group includes the member's direct and indirect distributive
5 share of the pass-through entity's unitary business income.

6 5. All dividends paid by one member to another are not included in the
7 recipients income, if the dividends are paid out of the earnings and profits of the
8 unitary business in the current taxable year or in an earlier taxable year. This
9 subdivision does not apply to dividends received from members of a unitary business
10 that are not a part of the combined group.

11 6. Except as provided by the department by rule, business income or loss from
12 an intercompany transaction between members of the same combined group shall be
13 deferred in a manner similar to 26 CFR 1.1502-13. Upon the occurrence of any of
14 the following events, deferred business income or loss resulting from an
15 intercompany transaction between members of a combined group shall be included
16 in the income of the seller and shall be apportioned as business income earned
17 immediately before the event:

18 a. The object of the deferred intercompany transaction is sold by the buyer to
19 an entity that is not a member of the combined group.

20 b. The object of the deferred intercompany transaction is sold by the buyer to
21 an entity that is a member of the combined group for use outside the unitary business
22 in which the buyer and seller are engaged.

23 c. The object of the deferred intercompany transaction is converted by the buyer
24 to a use outside the unitary business in which the buyer and seller are engaged.

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1 d. The buyer and seller are no longer members of the same combined group,
2 regardless of whether the members remain a unitary business.

3 7. A charitable expense incurred by a member of a combined group, to the
4 extent allowable as a deduction under section 170 of the Internal Revenue Code,
5 shall be subtracted first from the business income of the combined group, subject to
6 the income limitations of section 170 of the Internal Revenue Code as it applies to
7 the entire business income of the group, and any remaining amount shall be treated
8 as a nonbusiness expense allocable to the member that incurred the expense, subject
9 to the income limitations of section 170 of the Internal Revenue Code as it applies
10 to the nonbusiness income of that member. Any charitable deduction described
11 under this subdivision that is allowed as a carryover deduction in a subsequent year
12 is considered to be originally incurred in the subsequent year by the same member,
13 and this section applies in the subsequent year for purposes of determining the
14 allowable deduction in that year.

15 8. Gain or loss from the sale or exchange of capital assets, property described
16 in section 1231 (a) (3) of the Internal Revenue Code, and property subject to an
17 involuntary conversion, is removed from the total separate net income of each
18 member of a combined group and is apportioned and allocated as follows:

19 a. For short-term capital gains or losses, long-term capital gains or losses,
20 gains or losses under section 1231 of the Internal Revenue Code, and involuntary
21 conversions, the business gain and loss of all members are combined within each
22 class of net business gain or loss and each such class is separately apportioned to each
23 member using the member's apportionment percentage determined under sub. (5).

24 b. Each taxpayer member shall net its apportioned business gain or loss for all
25 classes, as determined under subd. 8. a., including any such apportioned business

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1 gain and loss from other combined groups, against the taxpayer member's
2 nonbusiness gain and loss for all classes allocated to this state as provided under
3 sections 1231 and 1222 of the Internal Revenue Code, not including nonbusiness
4 items allocated to another state.

5 c. Any resulting state source income or loss, if the loss is not subject to section
6 1211 of the Internal Revenue Code, of a taxpayer member produced by the
7 application of subd. 8. a. and b. shall then be applied to all other state source income
8 or loss of that member.

9 d. Any resulting state source loss of a member that is subject to section 1211
10 of the Internal Revenue Code shall be carried forward or carried back by that
11 member and shall be treated as state source short-term capital loss incurred by that
12 member for the year for which the carry-forward or carry-back applies.

13 9. Any expense of one member of the unitary business that is directly or
14 indirectly attributable to the nonbusiness or exempt income of another member of
15 the unitary business shall be allocated to that other member as corresponding
16 nonbusiness or exempt expense, as appropriate.

17 (b) Subtract any nonbusiness income of the combined group from the amount
18 determined under par. (a) and add any nonbusiness expense or loss of the combined
19 group to the amount determined under par. (a).

20 (5) TAXPAYER'S SHARE OF BUSINESS INCOME OF A COMBINED GROUP. The taxpayer's
21 share of the business income apportionable to this state of each combined group of
22 which it is a member shall be the product of the business income of the combined
23 group as determined under sub. (4) and the taxpayer member's sales factor
24 percentage, determined under s. 71.25, modified as follows:

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1 (a) Include in the numerator the taxpayer member's sales associated with the
2 combined group's unitary business in this state.

3 (b) Include in the numerator the taxpayer member's sales associated with the
4 combined group's unitary business to another state in which the taxpayer member
5 is not engaged in business, regardless of whether another member of the combined
6 group is engaged in business in the other state.

7 (c) Include in the denominator the sales of all members of the combined group,
8 including the taxpayer, that are associated with the combined group's unitary
9 business regardless of where that business is located.

10 (d) Include sales of a pass-through entity owned directly or indirectly by a
11 corporation in proportion to a ratio the numerator of which is the amount of the
12 corporation's distributive share of the pass-through entity's unitary income included
13 in the income of the combined group in under sub. (4) and the denominator of which
14 is the amount of the pass-through entity's total unitary income.

15 (e) Exclude sales between members of the combined group.

16 (f) If a member of a combined group is not subject to the taxes imposed under
17 s. 71.23 because it is not engaged in business in this state, the numerator of the
18 member's sales factor is zero.

19 **(6) CREDITS AND POST-APPORTIONMENT DEDUCTIONS.** No tax credit or
20 post-apportionment deduction earned by one member of the combined group, but not
21 completed, used by, or allowed to that member, may be used in whole or in part by
22 another member of the combined group or applied in whole or in part against the total
23 income of the combined group.

24 **(7) DESIGNATED AGENT.** (a) For purposes of administering this section, each
25 combined group shall appoint a sole designated agent. The designated agent is the

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1 parent corporation of the combined group, if the parent corporation is a taxpayer
2 member of the combined group and the income of the parent corporation is included
3 in the combined report. If there is no such parent corporation, the designated agent
4 may be appointed by the taxpayer members. If there is no such parent corporation
5 and no taxpayer member is appointed, the designated agent is the taxpayer member
6 that has the most significant operations in this state on a recurring basis, as
7 determined by the department. The designated agent may change only when the
8 designated agent is no longer subject to the tax imposed under s. 71.23 (1) or (2), in
9 which case the combined group shall notify the department of such a change in the
10 manner prescribed by the department.

11 (b) The designated agent is responsible for acting on behalf of the taxpayer
12 members of the combined group and shall do all of the following:

- 13 1. File with the department a combined report under sub. (1) (b).
- 14 2. File any extensions under s. 71.24.
- 15 3. File any amended combined reports and claims for refund or credit.
- 16 4. Send and receive all correspondence with the department regarding the
17 combined report.
- 18 5. Remit all taxes, including estimated taxes, to the department. For purposes
19 of computing interest on late payments, all payments remitted are considered to be
20 made on a proportionate basis by all taxpayer members of the combined group,
21 unless otherwise specified by the designated agent.
- 22 6. Participate on behalf of the combined group members in any investigation
23 or hearing requested by the department regarding a combined report, produce all
24 information requested by the department regarding the combined report, and file

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1 any appeal related to a combined report. Any appeal filed by the designated agent
2 is considered filed by all members of the combined group.

3 7. Execute any waiver, closing agreement, power of attorney, or other document
4 regarding the combined report filed under sub. (1) (b). Any waiver, agreement, or
5 document executed by the designated agent is considered executed by all members
6 of the combined group.

7 8. Receive notices regarding the combined report. Any such notice the
8 department sends to the designated agent is considered sent to all taxpayer members
9 of the combined group.

10 9. Receive refunds regarding the combined report. Any such refund shall be
11 paid to and in the name of the designated agent and shall discharge any liability of
12 the state to any member of the combined group regarding the refund.

13 (c) The department may relieve the designated agent from any of the duties
14 described in par. (b) to the extent that the duties relate to income, expense, or loss
15 that is not includable in the business income of the combined group under sub. (4).
16 Unless the department provides for such relief by rule, a designated agent shall
17 obtain written approval from the department to be relieved of any such duties.

18 **(8) TAXABLE YEAR OF THE COMBINED GROUP.** (a) Except as provided in par. (b), the
19 combined group's taxable year is the designated agent's taxable year. If a member's
20 taxable year is different from the combined group's taxable year, the designated
21 agent may elect to determine the portion of each member's income to be included in
22 the combined report either from a separate income statement from each member that
23 is prepared by the member's books and records for the months that are included in
24 the combined group's taxable year or by including in the combined report all of the
25 income of each member for the year that ends during the combined group's taxable

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1 year. Any election made under this paragraph remains in effect for subsequent years
2 unless the designated agent submits a request to the department to change the
3 election and the department approves in writing.

4 (b) If 2 or more members of a combined group file a federal consolidated return,
5 the combined group's taxable year is the taxable year that corresponds to the federal
6 consolidated return.

7 (9) PART-YEAR MEMBERS OF A COMBINED GROUP. If a corporation becomes a
8 member of a combined group, or ceases to be a member of a combined group, after
9 the beginning of the combined group's taxable year, the corporation's income shall
10 be determined as provided under subs. (3), (4), and (5) for that portion of the year in
11 which the corporation was a member of the combined group, and the income shall be
12 included in the combined report. The income for the remaining short period shall be
13 reported on a separate return or separate combined report.

14 (10) PRESUMPTIONS AND BURDEN OF PROOF. A commonly controlled group is
15 presumed to be engaged in a unitary business and all of the income of the unitary
16 business is presumed to be apportionable business income under this section. A
17 corporation has the burden of proving that it is not a member of a combined group
18 that is subject to this section.

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

20 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
21 consolidated returns) are excluded, except as provided under section 1502 of the U.S.
22 treasury regulations as it relates to deferred gain or loss from an intercompany
23 transaction under s. 71.255 (4) (a) 6.

24 **SECTION 4. Initial applicability.**

