



# State of Wisconsin













LEGISLATIVE REFERENCE BUREAU

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

Date Transfer Requested: 03/21/2008 (Per: CMH)

### **Compile Draft – Appendix A**

... Part 01 of 01 ...

- |  |   |
|--|---|
| <b>A</b>  The <u>2007</u> drafting file for<br>LRB-3832   | <b>G</b>  The <u>2007</u> drafting file for<br>LRB-4296   |
| <b>B</b>  The <u>2007</u> drafting file for<br>LRB-4188 | <b>H</b>  The <u>2007</u> drafting file for<br>LRB-4297 |
| <b>C</b>  The <u>2007</u> drafting file for<br>LRB-4292 | <b>I</b>  The <u>2007</u> drafting file for<br>LRB-4298 |
| <b>D</b>  The <u>2007</u> drafting file for<br>LRB-4293 | <b>J</b>  The <u>2007</u> drafting file for<br>LRB-4299 |
| <b>E</b>  The <u>2007</u> drafting file for<br>LRB-4294 | <b>K</b>  The <u>2007</u> drafting file for<br>LRB-4300 |
| <b>F</b>  The <u>2007</u> drafting file for<br>LRB-4295 | <b>L</b>  The <u>2007</u> drafting file for<br>LRB-4301 |

**2007 LRB-3832** has been copied/added to the drafting file for

**2007 LRBb1275**

(SA 1 to AB 1) (Mr8)

**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

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Combined reporting

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**Instructions:**

See Attached

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**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>       | <u>Reviewed</u>        | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>      | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|------------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | jkreye<br>01/14/2008 | csicilia<br>01/14/2008 |                        | _____          |                       |                 | State           |
| /1           |                      |                        | rschluet<br>01/14/2008 | _____          | lparisi<br>01/14/2008 |                 |                 |

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See Attached

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| /? | jkreye |  |  |  |  |  |  |
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1 cis 1/14  
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JK  
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FE Sent For:

<END>



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3832?

JK: (.....)

*per note R*

*m 1-14-08*

*Today*

*DN*

*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*

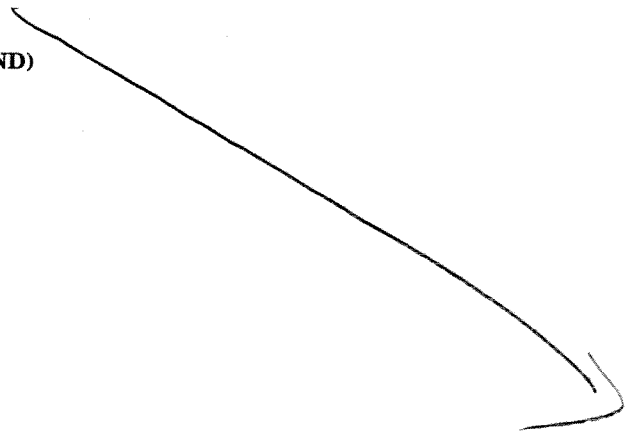
This bill requires that all corporations and their subsidiaries file combined reports and tax returns for state income and franchise tax purposes.

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~~ <sup>##</sup> 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:

*auto number  
not hard number*

~~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.

17  
18

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

auto number not  
hard number

19 SECTION 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:

④ sec #. Initial applicability. auto number not hard number

1  
2  
3  
4

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

~~71.25 (3) of the statutes first~~ applies to taxable years beginning on January 1,

2008.

**This act first**  
**(END)**

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

LRB-3832/?dn

JK:/:....

g'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  
E-mail: [joseph.kreye@legis.wisconsin.gov](mailto:joseph.kreye@legis.wisconsin.gov)

**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  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: [joseph.kreye@legis.wisconsin.gov](mailto:joseph.kreye@legis.wisconsin.gov)







State of Wisconsin  
LEGISLATIVE REFERENCE BUREAU

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

Date Transfer Requested: 03/21/2008 (Per: CMH)

**☛ Compile Draft – Appendix A**

... Part 01 of 01 ...

- |   |   |
|---|---|
| A ☛ The 2007 drafting file for LRB-3832 | G ☛ The 2007 drafting file for LRB-4296 |
| B ☛ The 2007 drafting file for LRB-4188 | H ☛ The 2007 drafting file for LRB-4297 |
| C ☛ The 2007 drafting file for LRB-4292 | I ☛ The 2007 drafting file for LRB-4298 |
| D ☛ The 2007 drafting file for LRB-4293 | J ☛ The 2007 drafting file for LRB-4299 |
| E ☛ The 2007 drafting file for LRB-4294 | K ☛ The 2007 drafting file for LRB-4300 |
| F ☛ The 2007 drafting file for LRB-4295 | L ☛ The 2007 drafting file for LRB-4301 |

**2007 LRB-3832** has been copied/added to the drafting file for

**2007 LRBb1275**

(SA 1 to AB 1) (Mr8)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3832/1  
JK:wj&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,

**BILL**

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.

**BILL**

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

**BILL**

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  
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:

**BILL**

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



**BILL**

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.

**BILL**

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.

**BILL**

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:

**BILL**

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

**BILL**

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.

**BILL**

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

**BILL**

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.

