

**2009 DRAFTING REQUEST**

**Bill**

Received: **12/18/2008**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

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Addl. Drafters:

Subject: **Tax, Business - crp inc, fran**

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**Pre Topic:**

DOA:.....Lillethun, BB0285 -

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**Topic:**

Combined reporting

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**Instructions:**

See attached

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**Drafting History:**

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/?	jkreye 12/18/2008	bkraft 12/19/2008		_____			State
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/P3	jkreye 01/28/2009	bkraft 01/28/2009	phenry 01/29/2009	_____	sbasford 01/29/2009		State
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/P6	chanaman 02/11/2009	bkraft 02/12/2009	mduchek 02/09/2009	_____	lparisi 02/09/2009		State
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*John Salb*  
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Handwritten notes and signatures:

1/P4 gjs 1/30/09 [Signature]

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1215

## 2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Combined Reporting
- Tracking Code: *BB0285*
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
  - Phone: 266-7597
  - Email: Chad.Lillethun@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): High

### Intent:

Require related corporations that are engaged in the same unitary business to compute their taxable income on a combined unitary basis.

**2009-2011 Legislative Proposal  
Wisconsin Department of Revenue  
IS&E Division**

**Date:** November 21, 2008

**TITLE:** Combined Reporting

**DESCRIPTION OF CURRENT LAW AND PROBLEM**

Businesses are often composed of groups of related corporations. Under current law, each separate corporation is required to compute its tax liability independently of any related corporations, regardless of whether they are commonly owned and engaged in the same unitary business.

Transactions between related entities can be designed for the purpose of avoiding Wisconsin taxes. Some corporations have set up subsidiaries in tax-free states such as Nevada or Delaware and used various types of transactions to shift income out of Wisconsin corporations to subsidiaries which are not in Wisconsin's jurisdiction to tax. These transactions often have no business purpose other than tax avoidance.

**RECOMMENDATION FOR ACTION**

Require related corporations that are engaged in the same unitary business (a "unitary group") to compute their taxable income on a combined unitary basis. In general, a corporation's business income would be computed as follows:

1. Add together the total business income from of all corporations in the unitary group.
2. Multiply each corporation's business income by the percentage of that corporation's sales in Wisconsin versus the total unitary group's sales everywhere.
3. For corporations that do not have a presence in Wisconsin, the income allocable to Wisconsin is \$0.

This ensures that income that is economically generated in Wisconsin stays in Wisconsin, without imposing income or franchise tax on legal entities that have no business presence in Wisconsin.

**ADMINISTRATIVE IMPACT**

This law change would require an extensive implementation project including new forms, computer programming changes, taxpayer education, auditor education, and administrative rules. While additional resources may be necessary for the implementation phase, the long-term administrative impact is not significantly different than current law.

**FAIRNESS/TAX EQUITY**

Combined reporting promotes fairness and tax equity because it creates a barrier for tax avoidance activities. While large companies may have the resources to hire lawyers and tax advisors to assist them in setting up tax avoidance transactions, smaller businesses are not so able. More importantly, many taxpayers simply choose not to engage in tax avoidance transactions. Combined reporting ensures that the tax applies equally to taxpayers in equal positions.

**IMPACT ON ECONOMIC DEVELOPMENT**

The effects of combined reporting vary by company. For companies that have been using the separate entity reporting system for tax avoidance, combined reporting will increase their Wisconsin tax liability. For companies that have not been using the separate entity reporting system for tax avoidance, many would not be significantly affected by combined reporting. However, some will see their taxes increase and some will see their taxes decrease.

#### **FISCAL EFFECT**

If combined reporting is effective for tax years beginning after December 31, 2008, the fiscal effect would be a revenue increase of an estimated \$25 million in FY09, \$80 million in FY10, and \$93 million in FY11. Should combined reporting begin after December 31, 2009, the fiscal effect would be a revenue increase of an estimated \$40 million in FY10, and \$80 million in FY11. The ongoing fiscal effect for fiscal years beyond the above is estimated to be approximately \$110 million annually.

These estimates reflect current economic forecasts. In addition, the estimates reflect the experience of other states that it will take several years for businesses to adapt to and fully comply with the new reporting requirements.

#### **DRAFTING INSTRUCTIONS**

See attached instructions.

#### **EFFECTIVE DATE AND/OR INITIAL APPLICABILITY**

The effective date is for taxable years beginning on or after January 1, 2009. If the date of enactment falls on April 1, 2009, or later, the effective date would then be for taxable years beginning on or after January 1, 2010.

#### **INTERESTED/AFFECTED PARTIES**

Corporations, small businesses, attorneys, lobbyists, accountants

#### **DOR CONTACT PERSON**

Diane Hardt, Division Administrator  
(608) 266-6798

#### **PREPARED BY**

Wendy Miller  
Axel F. Candelaria

# Drafting Instructions for Combined Reporting

## I. Create definitions in secs. 71.01, 71.22, 71.34, and 71.42, as follows:

( ) "Intangible expense" includes, but is not limited to, expenses, losses, and costs for, related to, or directly or indirectly in connection with the acquisition of, use of, maintenance or management of, ownership of, sale of, exchange of, or any other disposition of, intangible property to the extent that such amounts would otherwise be deductible under the Internal Revenue Code as modified by [insert appropriate modification citation as follows: 71.05(6) for individuals (Subch. I); 71.26(3) for corporations (Subch. IV); 71.34(1k) for tax-option corporations (Subch. V); and 71.45(2) for insurance companies (Subch. VII)]; losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions; royalty, patent, technical, and copyright fees; licensing fees; and other similar expenses, losses and costs.

( ) "Intangible property" includes, but is not limited to, stocks, bonds, financial instruments, patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets.

( ) "Management fees" includes but is not limited to, expenses and costs paid for services pertaining to accounts receivable and payable, employee benefit plans, insurance, legal, payroll, data processing, purchasing, tax, financial and securities, accounting, reporting and compliance services or similar services, only to the extent that the amounts are allowed as a deduction or cost in determining net income under the Internal Revenue Code as modified by [insert appropriate modification citation as follows: 71.05(6) for individuals (Subch. I); 71.26(3) for corporations (Subch. IV); 71.34(1k) for tax-option corporations (Subch. V); and 71.45(2) for insurance companies (Subch. VII)]

## II. Create sec. 71.255, Wis. Stats., as follows:

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

(a) "Combined group" means the group of all persons whose income and apportionment factors are required to be taken into account pursuant to sub. (2) in determining a taxpayer member's share of the net business income or loss apportionable to this state attributable to a unitary business.

(b) "Combined report" means a report in the form and manner prescribed by the department that specifies a combined group's income from the unitary business, apportionment factors attributable to the unitary business, and any other tax return information prescribed by the Department.

(c) "Commonly controlled group" means any of the following:

1. A parent corporation and any one or more corporations or chains of corporations that are connected to the parent corporation by direct or indirect ownership by the parent corporation if the parent corporation owns stock representing more than 50% of the voting power of at least one of the connected corporations or if the parent corporation or any of the connected corporations owns stock that cumulatively represents more than 50% of the voting power of each of the connected corporations.

2. Any 2 or more corporations if a common owner, corporate or noncorporate, directly or indirectly owns stock representing more than 50% of the voting power of the corporations or



connected corporations.

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

4. Any 2 or more corporations if stock representing more than 50% of the voting power in each corporation is directly owned by, or for the benefit of, family members. In this subdivision, "family members" means an individual related by blood, marriage or adoption within the 3<sup>rd</sup> degree of kinship as computed under s. 990.010(16), Wis. Stats. (2005-06), and as subsequently amended or renumbered, or the spouse of such individual.

(d) "Consolidated foreign operating corporation" means a corporation that for the taxable year meets all of the following:

1. is a member of a unitary business,

2. is included in the same federal consolidated return as at least one other corporation in that unitary business, and

3. has active foreign business income as defined in section 861(c)(1)B of the Internal Revenue Code in an amount that is 80 percent or more of the corporation's worldwide income.

(e) "Corporation" means any corporation as defined in s. 71.22(1k), wherever located, which if it were doing business in this state would be subject to this chapter. The business conducted by a pass-through entity which is directly or indirectly owned by a corporation shall be considered the business of the corporation to the extent of the corporation's distributive share of the income of the pass-through entity. "Corporation" does not include a tax-option corporation.

(f) "Domestic," when applied to a corporation or partnership, means incorporated, organized, or created, as the case may be, in the United States or under the law of the United States or of any State.

(g) "Foreign," when applied to a corporation, shall have the same meaning as Internal Revenue Code section 7701(a)(5), except that the use of word "domestic" therein shall have the same meaning as s. 71.255(1)(f).

(h) "Effective date" means January 1, 2009. As such, the requirements under s. 71.255, *et seq.*, shall apply to taxable years beginning on or after January 1, 2009. If the date of enactment, not the date of publication, is April 1, 2009, or any day thereafter, "effective date" means January 1, 2010. As such, the requirements under s. 71.255, *et seq.*, shall apply to taxable years beginning on or after January 1, 2010.

(i) "Pass-through entity" means a general or limited partnership, organization of any kind treated as a partnership for tax purposes under the laws of this state, a tax-option corporation, a real estate investment trust, regulated investment company, real estate mortgage investment conduit, financial asset securitization investment trust, trust, or estate.

(j) "Taxpayer member" means a corporation that is subject to tax under s. 71.23(1) or (2), s. 71.39(1), or s. 71.43(1) or (2), that is a member of a combined group.

(k) "Unitary business" means a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. Two or more business entities are presumed to be

a unitary business if the businesses have unity of ownership, operation and use as indicated by a centralized management or a centralized executive force; centralized purchasing, advertising, or accounting; intercorporate sales or leases; intercorporate services; intercorporate debts; intercorporate use of proprietary materials; interlocking directorates; or interlocking corporate officers. In no event and under no circumstances shall the preceding sentence be construed as exclusive of any and all other factors indicative of a unitary business. The term "unitary business" shall be construed to the broadest extent permitted by the United States Constitution. The taxpayer members of a combined group that file or are included or whose income is included in a combined report shall be jointly and severally liable for costs, penalties, interests, and taxes associated with the combined report. Any business conducted by a pass-through entity that is owned directly or indirectly by a corporation shall be treated as conducted by the corporation, to the extent of the corporation's distributive share of the pass-through entity's income, regardless of the percentage of the corporation's ownership interest. A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a pass-through entity if the conditions of the first sentence of this subsection are satisfied, *to wit*: there is a synergy and exchange and flow of value between the two parts of the business, and the two corporations are members of the same commonly controlled group.

(L) "United States" has the meaning given in s. 990.04(44).

## **(2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING.**

(a) A corporation engaged in a unitary business with one or more other corporations shall report its share of income from that unitary business in the amount determined by a combined report filed by a designated agent of the unitary business. "Designated agent" has the meaning given in sub. (7). The combined report shall include the income, determined under sub. (3), and apportionment factor or factors determined under sub. (5), of any and every such corporation engaged in the unitary business. However, except as provided in par. (c), if 80 percent or more of a corporation's worldwide income is active foreign business income as defined by section 861(c)(1)(B) of the Internal Revenue Code, the income and apportionment factor or factors of the corporation shall not be included in the combined report, but the corporation shall compute and allocate or apportion its income from the unitary business separately.

(b) A foreign corporation which is a combined group member shall include in the combined report income which is derived only from sources within the United States as provided by sections 861 through 865 of the Internal Revenue Code. The foreign corporation shall include in the combined report its apportionment factor or factors related only to such income.

(c) The combined report of the unitary business of which the consolidated foreign operating corporation is a member shall include, and the separate return filed by the consolidated foreign operating corporation shall exclude, the following amounts to the extent attributable to the unitary business:

1. An amount of income equal to the interest and intangible expenses, losses, and costs paid, accrued, or incurred by any combined group member to or for the benefit of the consolidated foreign operating corporation, except to the extent such amounts constitute income to the consolidated foreign operating corporation from sources without the United States under sections 861 through 865 of the Internal Revenue Code. For purposes of this subdivision, "interest expenses" means interest expenses as defined in s. 71.22(3m) and "intangible expenses" means intangible expenses as defined in s. 71.22(\_\_).

2. To the extent not included by application of par. (c)1., interest income and income generated from intangible property received or accrued by the consolidated foreign operating

corporation, except to the extent such amounts constitute income from sources without the United States under sections 861 through 865 of the Internal Revenue Code. For purposes of this subdivision, income generated from intangible property includes income related to the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property; income from factoring transactions or discounting transactions; royalty, patent, technical, and copyright fees; licensing fees; and other similar income.

3. Dividends paid or accrued by a real estate investment trust to the consolidated foreign operating corporation, if the real estate investment trust is not a qualified real estate investment trust as defined in s. 71.22 (9ad) and the dividend income is from sources within the United States under sections 861 through 865 of the Internal Revenue Code.

4. Income of the consolidated foreign operating corporation that is equal to gains derived from the sale of real or personal property located in the United States.

5. The apportionment factor or factors attributable to the income in subdivisions 1. through 4.

(d) The department may require the combined report include the income and associated apportionment factor or factors of any person that is not included in a combined group pursuant to par. (a), but that is a member of a unitary business in order to reflect proper apportionment of income of the entire unitary business. Authority to require combination under this paragraph includes authority to require combination of persons that are not, or would not be if doing business in this state, subject to this chapter. In addition, if the department determines that the reported income or loss of a member of a combined group engaged in a unitary business with any person not included in the combined group pursuant to par. (a), represents an avoidance or evasion of tax by such member of the combined group or such person, the department may, on a case by case basis, require all or any part of the income and associated apportionment factor or factors of such person be included in the combined report for the unitary business.

### **(3) COMPONENTS OF INCOME SUBJECT TO TAX.**

Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state, which shall include:

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

(b) Its share of any business income apportionable to this state of a distinct business activity conducted within and without the state wholly by the taxpayer member, determined under s. 71.25 or s. 71.45.

(c) Its income from a business conducted wholly by the taxpayer member entirely within the state.

(d) Its income sourced to this state from the sale or exchange of capital or assets, and from involuntary conversions, as determined under sub. (4)(b)7.

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

(f) Its income that is realized from the purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in this state.

(g) Its income or loss allocated or apportioned in an earlier year, required to be taken into account as state source income or loss during the taxable year, other than a net business loss carryforward.

(h) Its net business loss carryforward, as determined under sub. (6).

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

(a) From the total income of the combined group, determined under par. (b), subtract any income, and add any expense or loss, other than the business income, expense or loss of the combined group.

(b) Except as otherwise provided, the total income of the combined group is the sum of the income of each member of the combined group determined under the Internal Revenue Code and modified for state purposes per s. 71.26 and 71.45. The income of each member of the combined group shall be determined as follows:

1. The income to be included in the total income of the combined group shall be the taxable income for the corporation as determined under the Internal Revenue Code and modified for state purposes per s. 71.26 or 71.45, except that the modifications provided in ss. 71.26(2)(a)7, 71.26(2)(a)8., 71.26(2)(a)9., 71.45(2)(a)16., 71.45(2)(a)17., and 71.45(2)(a)18. shall not apply with respect to expenses paid, accrued, or incurred by a combined group member to or for the benefit of a consolidated foreign operating corporation.

2. If a unitary business includes income from a pass-through entity, the pass-through entity income to be included in the total income of the combined group shall be the member of the combined group's direct and indirect distributive share of the pass-through entity's unitary business income.

3. Except as provided in sub. (2)(c)3. dividends paid by one combined group member to another are not included in the recipient's income for any taxable year in which the dividend payor and recipient are included in the same combined report.

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

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

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

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

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

6. A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to section 170 of the Internal Revenue Code, be subtracted first from the business income of the combined group, subject to the income limitations of that section applied to the entire business income of the group, and any remaining amount shall then be treated as a nonbusiness expense allocable to the member that incurred the expense, subject to the income limitations of that section applied to the nonbusiness income of that specific member. Any charitable deduction disallowed under the foregoing rule, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member, and the rules of this section shall apply in the subsequent year in determining the allowable deduction in that year.

7. Gain or loss from the sale or exchange of capital assets, property described by section 1231(a)(3) of the Internal Revenue Code, and property subject to an involuntary conversion, shall be removed from the total separate net income of each member of a combined group and shall be apportioned and allocated as follows:

a. For short term capital gains or losses, long term capital gains or losses, Internal Revenue Code section 1231 gains or losses, and involuntary conversions, all combined group members' business gains and losses shall be combined within each class, and each class of net business gain or loss separately apportioned to each member using the member's apportionment factor or factors determined under sub. (5).

b. Each taxpayer member shall then net its apportioned business gain or loss for all classes, including any such apportioned business gain and loss from other combined groups, against the taxpayer member's nonbusiness gain and loss for all classes allocated to this state, using the rules of sections 1231 and 1222 of the Internal Revenue Code, without regard to any of the taxpayer member's gains or losses from the sale or exchange of capital assets, section 1231 property, and involuntary conversions which are nonbusiness items allocated to another state.

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

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

8. Any expense of one member of the combined unitary group which is directly or indirectly attributable to the nonbusiness or exempt income of another member of the unitary business shall be allocated to that other member of the unitary business as corresponding nonbusiness or exempt expense, as appropriate.

#### **(5) TAXPAYER'S SHARE OF BUSINESS INCOME OF COMBINED GROUP.**

(a) Except as provided in par. (b) and (c), the taxpayer member's share of the business income apportionable to this state of each combined group of which it is a member shall be the product of the business income of the combined group as determined under sub. (4) and the taxpayer member's modified sales factor, which is computed as follows:

1. For a taxpayer member that is subject to apportionment under s. 71.25(9), include in the

numerator of the modified sales factor the taxpayer member's sales associated with the combined group's unitary business in this state. Sales under s. 71.25(9)(b)2m. and 3. and (c) shall be included if the taxpayer member is not doing business in the other state, notwithstanding that another member of the combined group is doing business in the other state.

2. For a taxpayer member that is a financial organization subject to apportionment using a receipts factor under rules of the department pursuant to s. 71.25(10), include in the numerator of the modified sales factor the taxpayer member's Wisconsin-source income associated with the combined group's unitary business in this state, as provided by such rules.

3. For a taxpayer member that is an insurance company subject to apportionment under s. 71.45(3), include in the numerator of the modified sales factor the taxpayer member's premiums associated with the combined group's unitary business in this state.

4. The denominator of the modified sales factor shall include the denominator of the sales factor for each combined group member described in subd. 1., the denominator of the receipts factor for each combined group member described in subd. 2., and the denominator of the premiums factor for each combined group member described in subd. 3. The denominator shall include such sales, receipts, or premiums, as the case may be, from all members of the combined group regardless of whether they are taxpayer members.

5. In the numerator and denominator described in subd. 1. through 4., include the sales, receipts, or premiums, as the case may be, of pass-through entities owned directly or indirectly by a corporation in proportion to a ratio the numerator of which is the amount of the corporation's distributive share of the pass-through entity's unitary income included in the income of the combined group in accordance with sub. (4) and the denominator of which is the amount of the pass-through entity's total unitary income.

6. The modified sales factor shall exclude transactions between members of the same combined group.

7. If a member of a combined group is not a taxpayer member because it is not doing business in Wisconsin, the numerator of that member's modified sales factor is zero.

(b) If the combined group derives at least 70 percent of its gross income from the unitary business from interstate motor carriers; interstate brokers-dealers, investment advisers, investment companies, and underwriters; public utilities; interstate railroads, sleeping car companies, car line companies; interstate pipeline companies, interstate telecommunications companies; or interstate air carriers, the combined group shall apportion its income in a manner similar to par. (a) using, instead of the modified sales factor, the apportionment factors attributable to the business that generates the greatest amount of gross income, as provided by the rules of the department.

(c) If the combined group includes interstate motor carriers; interstate brokers-dealers, investment advisers, investment companies, and underwriters; public utilities; interstate railroads, sleeping car companies, car line companies; interstate pipeline companies, interstate telecommunications companies; or interstate air carriers, but less than 70 percent of the combined group's unitary business income is subject to apportionment under the same method, the combined group may petition the department for an alternate apportionment computation for the combined report. Unless the department provides otherwise by rule, such petition must be filed with the department before the filing of the combined report for each such taxable year an alternate apportionment method is used. The department shall deny such petition in instances where the taxpayer cannot show by clear and convincing evidence that the apportionment methods described in this section do not clearly reflect the income of the unitary business

attributable to this state.

#### **(6) CREDITS AND POST-APPORTIONMENT DEDUCTIONS.**

(a) Except where otherwise provided, no tax credit or post-apportionment deduction earned by one member of the combined group, but not fully used by or allowed to that member, may be used in whole or in part by another member of the combined group or applied in whole or in part against the total income of the combined group. This subsection does not preclude a member of a combined group from using a carryforward of a credit or post-apportionment deduction, including a net business loss carryforward otherwise allowable under s. 71.26(4) or 71.45(4) which was incurred in a taxable year beginning before the effective date of this section.

(b) A net business loss computed on a combined report after the effective date of this section and not fully offset by the combined group's unitary business income shall be offset against the combined group's income pursuant to the limitations provided in s. 71.26(4). In the event a taxpayer member becomes no longer includable in the combined report, the combined group is no longer entitled to that taxpayer member's portion of the loss carryforward and such member may not claim its share of the loss against the income of any other combined group. However, such taxpayer may claim the loss carryforward against its own income, as provided by s. 71.26(4) and s. 71.45(4).

#### **(7) DESIGNATED AGENT.**

(a) Each combined group shall have a sole designated agent. For purposes of this subsection, "designated agent" means a corporation in a combined group that is the parent corporation of the combined group, if such parent corporation is a taxpayer member of the combined group and the income of the parent corporation is included in the combined report. If there is no such parent, the designated agent may be appointed by the taxpayer members. If there is no such parent and no taxpayer member is appointed, the designated agent is the taxpayer member that has the most significant operations in this state on a recurring basis, as determined by the department. The designated agent shall change only when the designated agent is no longer subject to tax under s. 71.23(1) or (2), in which case the combined group shall notify the department of such a change in a manner prescribed by the department.

(b) The designated agent is responsible for acting on behalf of the taxpayer members of the combined group. These responsibilities include:

1. File with the department a combined report under sub. (1)(b).
2. File any amended combined reports.
3. Send and receive all correspondence with the department regarding the combined report.
4. Participate on behalf of the combined group members in any investigation or hearing requested by the department regarding a combined report, produce all information requested by the department regarding the combined report, and file any appeal related thereto. Any appeal filed by the designated agent shall be considered as filed by all members of the combined group.
5. Other responsibilities as determined by rule by the department.

(c) The department may relieve the designated agent from any of the duties described in par. (b). Unless the department provides for such relief by rule, a designated agent must obtain

written approval from the department to be relieved of any such duties.

**(8) TAXABLE YEAR OF COMBINED GROUP.** The combined group's taxable year is determined as follows:

(a) If two or more members of a combined group file a federal consolidated return, the combined group's taxable year is the taxable year of the federal consolidated group. In all other cases, the taxable year is the taxable year of the designated agent as defined in sub. (7).

(b) If a taxable year of a member of a combined group differs from the taxable year of the combined group, the designated agent shall elect to determine the portion of that member's income to be included in one of the following ways:

1. A separate income statement prepared from the books and records for the months included in the combined group's taxable year.

2. Including all of the income for the year that ends during the combined group's taxable year.

(c) For corporations subject to an election under par. (b), the same election must be made for each member of the combined group subject to such election, the same election must be made in each succeeding year, and this election is irrevocable except upon written approval by the department.

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

**(10) PRESUMPTIONS AND BURDEN OF PROOF.** A commonly controlled group shall be presumed to be engaged in a unitary business. All of the income of the unitary business shall be presumed to be apportionable business income under this section. A corporation has the burden of proving that it is not a member of a combined group that is subject to this section.

**(11) PAYMENTS OF ESTIMATED TAXES.** The department has the discretion to waive the interest, in whole or in part, required to be added under s. 71.84. This discretion shall be exercised only with respect to the first installment and associated due date as provided under s. 71.29(8), and only with respect to income that is includable in a combined report.

**III. Amend sec. 71.26(3)(x), Wis. Stats., as follows:**

**71.26(3)(x)** Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to consolidated returns) are excluded, except that U.S. Treasury Regulation §1.1502-13 relating to deferred gain or loss from an intercompany transaction, apply to transactions between combined group members under s. 71.255(4)(b)5.



**IV. Amend sec. 71.43, Wis. Stats., as follows:**

**71. 43(2)** . . .The tax imposed by this subsection on insurance companies subject to taxation under this chapter shall be based on Wisconsin net income computed under s. 71.45, and no other provision of this chapter relating to computation of taxable income for other corporations shall apply to insurance companies except for the requirement to use combined reporting under s. 71.255. All other provisions of this chapter. . .

**V. Amend addition and subtraction modifications to include “intangible expenses” and “management fees” to the existing related entity addback language in the following sections:**

- 71.05(6)(a)24.
- 71.06(6)(b)46.
- 71.26(2)(a)7.
- 71.26(2)(a)9.
- 71.34(1k)(j)
- 71.34(1k)(L)
- 71.45(2)(a)16.
- 71.45(2)(a)18.

12/15/08  
L. Sings

DOA BUDGET

BB0285

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 12-18-08

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1 AN ACT *to amend* 71.05 (6) (a) 24., 71.05 (6) (b) 46., 71.26 (2) (a) 7., 71.26 (2) (a)  
 2 9., 71.26 (3) (x), 71.34 (1k) (j), 71.34 (1k) (L), 71.43 (2), 71.45 (2) (a) 16. and 71.45  
 3 (2) (a) 18.; and *to create* 71.01 (5n), 71.01 (5p), 71.01 (7v), 71.22 (3g), 71.22 (3h),  
 4 71.22 (6d), 71.255, 71.34 (1c), 71.34 (1d), 71.34 (1h), 71.42 (1sg), 71.42 (1sh) and  
 5 71.42 (3c) of the statutes; **relating to:** ~~the combined reporting of business~~  
 6 ~~income for income and franchise tax purposes and requiring the exercise of~~  
 7 ~~rule-making authority.~~ *the budget*

TAXATION  
INCOME TAXATION

25

**Analysis by the Legislative Reference Bureau**

This bill requires that all related corporations file a combined report for state income and franchise tax purposes and calculate their state tax liability based on the business activity of all the related corporations.

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:**

8 SECTION 1. 71.01 (5n) of the statutes is created to read:

1           71.01 **(5n)** For purposes of s. 71.05 (6) (a) 24. and (b) 46., “intangible expenses”  
2 include expenses, losses, and costs for, related to, or directly or indirectly in  
3 connection with the acquisition of, use of, maintenance or management of, ownership  
4 of, sale of, exchange of, or any other disposition of, intangible property to the extent  
5 that such amounts would otherwise be deductible under the Internal Revenue Code  
6 as modified under s. 71.05 (6); losses related to, or incurred in connection directly or  
7 indirectly with, factoring transactions or discounting transactions; royalty, patent,  
8 technical, and copyright fees; licensing fees; and other similar expenses, losses, and  
9 costs.

10           **SECTION 2.** 71.01 (5p) of the statutes is created to read:

11           71.01 **(5p)** “Intangible property” includes stocks, bonds, financial instruments,  
12 patents, patent applications, trade names, trademarks, service marks, copyrights,  
13 mask works, trade secrets, and similar types of intangible assets.

14           **SECTION 3.** 71.01 (7v) of the statutes is created to read:

15           71.01 **(7v)** For purposes of s. 71.05 (6) (a) 24. and (b) 46., “management fees”  
16 include expenses and costs paid for services pertaining to accounts receivable and  
17 payable, employee benefit plans, insurance, legal, payroll, data processing,  
18 purchasing, tax, financial and securities, accounting, reporting and compliance, or  
19 similar activities, only to the extent that the amounts are allowed as a deduction or  
20 cost in determining net income under the Internal Revenue Code as modified under  
21 s. 71.05 (6).

22           **SECTION 4.** 71.05 (6) (a) 24. of the statutes is amended to read:

23           71.05 **(6)** (a) 24. The amount deducted or excluded under the Internal Revenue  
24 Code for interest expenses ~~and~~, rental expenses, intangible expenses, and  
25 management fees that are directly or indirectly paid, accrued, or incurred to, or in

1 connection directly or indirectly with one or more direct or indirect transactions with,  
2 one or more related entities.

3 **SECTION 5.** 71.05 (b) 46. of the statutes is amended to read:

4 71.05 (b) 46. An amount added, pursuant to par. (a) 24. or s. 71.26 (2) (a) 7.,  
5 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that paid  
6 interest expenses ~~or~~, rental expenses, intangible expenses, or management fees to  
7 the individual or fiduciary, to the extent that the related entity could not offset such  
8 amount with the deduction allowable under subd. 45. or s. 71.26 (2) (a) 8., 71.34 (1k)  
9 (k), or 71.45 (2) (a) 17.

10 **SECTION 6.** 71.22 (3g) of the statutes is created to read:

11 71.22 (3g) For purposes of s. 71.26 (2) (a) 7. and 9., “intangible expenses”  
12 include expenses, losses, and costs for, related to, or directly or indirectly in  
13 connection with the acquisition of, use of, maintenance or management of, ownership  
14 of, sale of, exchange of, or any other disposition of, intangible property to the extent  
15 that such amounts would otherwise be deductible under the Internal Revenue Code  
16 as modified under s. 71.26 (3); losses related to, or incurred in connection directly or  
17 indirectly with, factoring transactions or discounting transactions; royalty, patent,  
18 technical, and copyright fees; licensing fees; and other similar expenses, losses and  
19 costs.

20 **SECTION 7.** 71.22 (3h) of the statutes is created to read:

21 71.22 (3h) “Intangible property” includes stocks, bonds, financial instruments,  
22 patents, patent applications, trade names, trademarks, service marks, copyrights,  
23 mask works, trade secrets, and similar types of intangible assets.

24 **SECTION 8.** 71.22 (6d) of the statutes is created to read:

1           71.22 (6d) For purposes of s. 71.26 (2) (a) 7. and 9., “management fees” include  
2 expenses and costs paid for services pertaining to accounts receivable and payable,  
3 employee benefit plans, insurance, legal, payroll, data processing, purchasing, tax,  
4 financial and securities, accounting, reporting and compliance, or similar activities,  
5 only to the extent that the amounts are allowed as a deduction or cost in determining  
6 net income under the Internal Revenue Code as modified under s. 71.26 (3).

7           SECTION 9. 71.255 of the statutes is created to read:

8           **71.255 Combined Reporting. (1) DEFINITIONS.** In this section:

9           (a) “Combined group” means the group of all persons whose income and  
10 apportionment factors are required to be taken into account under sub. (2) to  
11 determine a taxpayer member’s share of the net business income or loss  
12 apportionable to this state that is attributable to a unitary business.

13           (b) “Combined report” means a report in the form and manner prescribed by  
14 the department that specifies a combined group’s income from the unitary business,  
15 apportionment factors attributable to the unitary business, and any other tax return  
16 information prescribed by the department.

17           (c) “Commonly controlled group” means any of the following:

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

1           2. Any 2 or more corporations if a common owner, regardless of whether the  
2 owner is a corporate entity, directly or indirectly owns stock representing more than  
3 50 percent of the voting power of the corporations or connected corporations.

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

6           4. Any 2 or more corporations if stock representing more than 50 percent of the  
7 voting power in each corporation is directly owned by, or for the benefit of, family  
8 members. In this subdivision, “family member” means an individual related by  
9 blood, marriage, or adoption within the 3rd degree of kinship, as computed under s.  
10 990.001 (16), or the spouse of such individual.

11           (d) “Consolidated foreign operating corporation” means a corporation that, for  
12 the taxable year, satisfies all of the following conditions:

13           1. It is a member of a unitary business.

14           2. It is included in the same federal consolidated return as at least one other  
15 corporation in that unitary business.

16           3. It has active foreign business income, as defined in section 861 (c) (1) B of  
17 the Internal Revenue Code, in an amount that is 80 percent or more of the  
18 corporation’s worldwide income.

19           (e) “Corporation” means any corporation, as defined in s. 71.22 (1k), wherever  
20 located, which if it were doing business in this state would be subject to this chapter.

21           “Corporation” does not include a tax-option corporation.

22           (f) “Department” means the department of revenue.

23           (g) “Domestic” means incorporated, organized, or created in the United States  
24 or under the laws of the United States or any state.

1 (h) "Foreign" means not incorporated, organized, or created in the United  
2 States or under the laws of the United States or any state.

3 (i) "Intangible expenses" has the meaning given in s. 71.22 (3g).

4 (j) "Interest expenses" has the meaning given in s. 71.22 (3m).

5 (k) "Pass-through entity" means a general or limited partnership, an  
6 organization of any kind treated as a partnership for tax purposes under this  
7 chapter, a tax-option corporation, a real estate investment trust, a regulated  
8 investment company, a real estate mortgage investment conduit, a financial asset  
9 securitization investment trust, a trust, or an estate.

10 (L) "Taxpayer member" means a corporation that is subject to tax under s. 71.23  
11 (1) or (2), 71.39 (1), or 71.43 (1) or (2) and that is a member of a combined group.

12 (m) "Unitary business" means a single economic enterprise that is made up  
13 either of separate parts of a single business entity or of a commonly controlled group  
14 of business entities that are sufficiently interdependent, integrated, and  
15 interrelated through their activities so as to provide a synergy and mutual benefit  
16 that produces a sharing or exchange of value among them and a significant flow of  
17 value to the separate parts. Two or more business entities are presumed to be a  
18 unitary business if the businesses have unity of ownership, operation, and use as  
19 indicated by a centralized management or a centralized executive force; centralized  
20 purchasing, advertising, or accounting; intercorporate sales or leases; intercorporate  
21 services; intercorporate debts; intercorporate use of proprietary materials;  
22 interlocking directorates; or interlocking corporate officers. The department may  
23 determine that 2 or more business entities are a unitary business based on other  
24 factors, to the extent allowed under federal law. The taxpayer members of a  
25 combined group that file or are included or whose income is included in a combined

1 report shall be jointly and severally liable for costs, penalties, interests, and taxes  
2 associated with the combined report. Any business conducted by a pass-through  
3 entity that is owned directly or indirectly by a corporation shall be treated as  
4 conducted by the corporation, to the extent of the corporation's distributive share of  
5 the pass-through entity's income, regardless of the percentage of the corporation's  
6 ownership interest. A business conducted directly or indirectly by one corporation  
7 is unitary with that portion of a business conducted by another corporation through  
8 its direct or indirect interest in a pass-through entity if there is a synergy and  
9 exchange and flow of value between the 2 parts of the business and the 2 corporations  
10 are members of the same commonly controlled group.

11 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) A corporation  
12 engaged in a unitary business with one or more other corporations shall report its  
13 share of income from that unitary business in the amount determined by a combined  
14 report filed by a designated agent of the unitary business, as determined under sub.  
15 (7). The combined report shall include the income, determined under sub. (3), and  
16 apportionment factor or factors determined under sub. (5), of every corporation  
17 engaged in the unitary business, except as provided in par. (c) and except that if 80  
18 percent or more of a corporation's worldwide income is active foreign business  
19 income, as defined in section 861 (c) (1) (B) of the Internal Revenue Code, the income  
20 and apportionment factor or factors of the corporation shall not be included in the  
21 combined report, but the corporation shall compute and allocate or apportion its  
22 income from the unitary business separately.

23 (b) A foreign corporation that is a combined group member shall include in the  
24 combined report income that is derived only from sources within the United States  
25 as provided in sections 861 to 865 of the Internal Revenue Code. The foreign



1 corporation shall include in the combined report its apportionment factor or factors  
2 related only to that income.

3 (c) The combined report of the unitary business of which the consolidated  
4 foreign operating corporation is a member shall include, and the separate return  
5 filed by the consolidated foreign operating corporation shall exclude, the following  
6 amounts, to the extent that they are attributable to the unitary business:

7 1. The losses, costs, interest expenses, and intangible expenses that are paid,  
8 accrued, or incurred by any combined group member to or for the benefit of the  
9 consolidated foreign operating corporation, except to the extent such amounts  
10 constitute income to the consolidated foreign operating corporation from sources  
11 outside the United States under sections 861 to 865 of the Internal Revenue Code.

12 2. To the extent that the amounts were not considered under subd. 1., interest  
13 income and income generated from intangible property received or accrued by the  
14 consolidated foreign operating corporation, except to the extent such amounts  
15 constitute income from sources outside the United States under sections 861 to 865  
16 of the Internal Revenue Code. For purposes of this subdivision, income generated  
17 from intangible property includes income related to the direct or indirect acquisition,  
18 use, maintenance, management, ownership, sale, exchange, or any other disposition  
19 of intangible property; income from factoring transactions or discounting  
20 transactions; royalty, patent, technical, and copyright fees; licensing fees; and other  
21 similar income.

22 3. Dividends paid or accrued by a real estate investment trust to the  
23 consolidated foreign operating corporation, if the real estate investment trust is not  
24 a qualified real estate investment trust as defined in s. 71.22 (9ad) and the dividend

1 income is from sources within the United States under sections 861 to 865 of the  
2 Internal Revenue Code.

3 4. Income of the consolidated foreign operating corporation that is equal to  
4 gains derived from the sale of real or personal property located in the United States.

5 5. The apportionment factor or factors attributable to the income described in  
6 subs 1. to 4.

7 (d) 1. The department may require that a combined report include the income  
8 and associated apportionment factor or factors of any person who is not included in  
9 a combined group under par. (a), but who is a member of a unitary business, in order  
10 to reflect proper apportionment of income of the entire unitary business, and  
11 regardless of whether the person would be subject to this chapter if doing business  
12 in this state.

13 2. If the department determines that the reported income or loss of a member  
14 of a combined group engaged in a unitary business with any person not included in  
15 the combined group under par. (a) represents an avoidance or evasion of tax by the  
16 the person or the combined group member, the department may require all or any  
17 part of the income and associated apportionment factor or factors of the person be  
18 included in the combined report for the unitary business.

19 **(3) COMPONENTS OF INCOME SUBJECT TO TAX.** Each taxpayer member is  
20 responsible for tax based on its taxable income or loss apportioned or allocated to this  
21 state, including:

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

1 (b) Its share of any business income apportionable to this state of a distinct  
2 business activity conducted within and outside the state wholly by the taxpayer  
3 member, as determined under s. 71.25 or 71.45.

4 (c) Its income from a business conducted wholly by the taxpayer member  
5 entirely within the state.

6 (d) Its income sourced to this state from the sale or exchange of capital or assets,  
7 and from involuntary conversions, as determined under sub. (4) (a) 6.

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

9 (f) Its income that is realized from the purchase and subsequent sale or  
10 redemption of lottery prizes, if the winning tickets were originally bought in this  
11 state.

12 (g) Its income or loss allocated or apportioned in an earlier year, required to be  
13 taken into account as state source income or loss during the taxable year, other than  
14 a net business loss carry-forward.

15 (h) Its net business loss carry-forward, as determined under sub. (6).

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

18 (a) Calculate the total income of the combined group. The total income of the  
19 combined group is the sum of the income of each member of the combined group  
20 determined as follows:

21 1. The income to be included in the total income of the combined group shall  
22 be the taxable income for the corporation as determined under the Internal Revenue  
23 Code and as modified under s. 71.26 or 71.45, except that the modifications provided  
24 in ss. 71.26 (2) (a) 7., 8., and 9. and 71.45 (2) (a) 16., 17., and 18. shall not apply with

1 respect to expenses paid, accrued, or incurred by a combined group member to or for  
2 the benefit of a consolidated foreign operating corporation.

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

7 3. Except as provided in sub. (2) (c) 3., dividends paid by one combined group  
8 member to another are not included in the recipient's income for any taxable year in  
9 which the dividend payor and recipient are included in the same combined report.

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

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

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

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

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

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

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

24           b. Each taxpayer member shall then net its apportioned business gain or loss  
25 for all classes, including any such apportioned business gain and loss from other

1 combined groups, against the taxpayer member's nonbusiness gain and loss for all  
2 classes allocated to this state, as provided under sections 1222 and 1231 of the  
3 Internal Revenue Code, without regard to any of the taxpayer member's gains or  
4 losses from the sale or exchange of capital assets, property described under section  
5 1231 of the Internal Revenue Code, and involuntary conversions that are  
6 nonbusiness items allocated to another state.

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

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

15 7. Any expense of one member of the combined group that is directly or  
16 indirectly attributable to the nonbusiness or exempt income of another member of  
17 the combined group shall be allocated to that other member of the combined group  
18 as corresponding nonbusiness or exempt expense, as appropriate.

19 (b) From the total income of the combined group, as determined under par (a),  
20 subtract any nonbusiness income of the combined group and add any nonbusiness  
21 expense or loss of the combined group.

22 **(5) TAXPAYER'S SHARE OF BUSINESS INCOME OF THE COMBINED GROUP.** (a) Except  
23 as provided in pars. (b) and (c), the taxpayer member's share of the business income  
24 apportionable to this state of each combined group of which it is a member shall be

1 the product of the business income of the combined group as determined under sub.  
2 (4) and the taxpayer member's modified sales factor, computed as follows:

3 1. For a taxpayer member that is subject to apportionment under s. 71.25 (9),  
4 the numerator of the modified sales factor includes the taxpayer member's sales  
5 associated with the combined group's unitary business in this state. Sales under s.  
6 71.25 (9) (b) 2m. and 3. and (c) shall be included in the numerator of the modified  
7 sales factor if the taxpayer member is not doing business in the other state, as  
8 described in s. 71.25 (9) (b) 2m. and 3. and (c), notwithstanding that another member  
9 of the combined group is doing business in the other state.

10 2. For a taxpayer member that is a financial organization subject to  
11 apportionment using a receipts factor under the department's rules pursuant to s.  
12 71.25 (10), the numerator of the modified sales factor includes the taxpayer  
13 member's Wisconsin income associated with the combined group's unitary business  
14 in this state, as provided by such rules.

15 3. For a taxpayer member that is an insurance company subject to  
16 apportionment under s. 71.45 (3), the numerator of the modified sales factor includes  
17 the taxpayer member's premiums that are associated with the combined group's  
18 unitary business in this state.

19 4. The denominator of the modified sales factor shall include the denominator  
20 of the sales factor for each combined group member described in subd. 1., the  
21 denominator of the receipts factor for each combined group member described in  
22 subd. 2., and the denominator of the premiums factor for each combined group  
23 member described in subd. 3. The denominator shall include the sales, receipts, or  
24 premiums from all members of the combined group regardless of whether they are  
25 taxpayer members.

1           5. The numerator and denominator, described in subds. 1. to 4., shall include  
2 the sales, receipts, or premiums of pass-through entities that are owned directly or  
3 indirectly by a corporation in proportion to a ratio the numerator of which is the  
4 amount of the corporation's distributive share of the pass-through entity's unitary  
5 business income included in the income of the combined group under sub. (4) and the  
6 denominator of which is the amount of the pass-through entity's total unitary  
7 business income.

8           6. The modified sales factor shall exclude transactions between members of the  
9 same combined group.

10          7. If a member of a combined group is not a taxpayer member because it is not  
11 doing business in Wisconsin, the numerator of that member's modified sales factor  
12 is zero.

13           (b) If the combined group derives at least 70 percent of its gross income from  
14 the unitary business from interstate motor carriers, interstate brokers-dealers,  
15 investment advisers, investment companies, underwriters, public utilities,  
16 interstate railroads, sleeping car companies, car line companies, interstate pipeline  
17 companies, interstate telecommunications companies, or interstate air carriers, the  
18 combined group shall apportion its income in a manner similar to that under par. (a)  
19 using, instead of the modified sales factor, the apportionment factors attributable to  
20 the business that generates the greatest amount of gross income, as prescribed by  
21 the department by rule.

22           (c) If the combined group includes interstate motor carriers, interstate  
23 brokers-dealers, investment advisers, investment companies, underwriters, public  
24 utilities, interstate railroads, sleeping car companies, car line companies, interstate  
25 pipeline companies, interstate telecommunications companies, or interstate air



1 carriers, but less than 70 percent of the combined group's unitary business income  
2 is subject to apportionment under the same apportionment method, the combined  
3 group may petition the department to use an alternate apportionment computation  
4 for the combined report. Unless the department provides otherwise by rule, the  
5 petition shall be filed with the department before the filing of the combined report  
6 for each taxable year that an alternate apportionment method is used. The  
7 department shall deny the petition if the taxpayer cannot show, by clear and  
8 convincing evidence, that the apportionment methods described in this subsection  
9 do not clearly reflect the income of the unitary business attributable to this state.

10 **(6) CREDITS AND POST-APPORTIONMENT DEDUCTIONS.** (a) No tax credit or  
11 post-apportionment deduction earned by one member of the combined group, but not  
12 fully used by or allowed to that member, may be used in whole or in part by another  
13 member of the combined group or applied in whole or in part against the total income  
14 of the combined group, except that a member of a combined group may use a  
15 carry-forward of a credit or post-apportionment deduction, including a net business  
16 loss carry-forward otherwise allowable under s. 71.26 (4) or 71.45 (4), that was  
17 incurred in a taxable year beginning before the effective date of this paragraph ....  
18 [LRB inserts date].

19 (b) A net business loss computed on a combined report after the effective date  
20 of this paragraph .... [LRB inserts date], and not fully offset by the combined group's  
21 unitary business income shall be offset against the combined group's income, subject  
22 to the limitations under s. 71.26 (4). If a taxpayer member may no longer be included  
23 in the combined report, as determined under this section, the combined group is no  
24 longer entitled to that taxpayer member's portion of the loss carry-forward and the  
25 member may not claim its share of the loss against the income of any other combined

1 group, but may claim the loss carry-forward against its own income, as provided  
2 under s. 71.26 (4) or 71.45 (4).

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

14 (b) The designated agent is responsible for acting on behalf of the taxpayer  
15 members of the combined group. The designated agent's responsibilities include:

- 16 1. Filing a combined report under sub. (2) (a).
- 17 2. Filing any amended combined reports.
- 18 3. Sending and receiving all correspondence with the department regarding the  
19 combined report.
- 20 4. Participating on behalf of the combined group members in any investigation  
21 or hearing requested by the department regarding a combined report, producing all  
22 information requested by the department regarding the combined report, and filing  
23 any appeal related to the combined report, investigation, or hearing. Any appeal  
24 filed by the designated agent shall be considered to be filed by all members of the  
25 combined group.

1           5. Other responsibilities as determined by rule by the department.

2           **(8) TAXABLE YEAR OF COMBINED GROUP.** The combined group's taxable year is  
3 determined as follows:

4           (a) 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 of the federal consolidated  
6 group. In all other cases, the taxable year is the taxable year of the designated agent  
7 under sub. (7).

8           (b) If a taxable year of a member of a combined group differs from the taxable  
9 year of the combined group, the designated agent shall elect to determine the portion  
10 of that member's income to be included in one of the following ways:

11           1. A separate income statement prepared from the books and records for the  
12 months included in the combined group's taxable year.

13           2. Including all of the income for the year that ends during the combined group's  
14 taxable year.

15           (c) For corporations that are subject to an election under par. (b), the same  
16 election shall be made for each member of the combined group subject to the election,  
17 the same election shall be made in each succeeding year, and the election is  
18 irrevocable except upon written approval by the department.

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

1           **(10) PRESUMPTIONS AND BURDEN OF PROOF.** A commonly controlled group is  
2 presumed to be engaged in a unitary business. All of the income of the unitary  
3 business is presumed to be apportionable business income under this section. A  
4 corporation has the burden of proving that it is not a member of a combined group  
5 that is subject to this section.

6           **(11) PAYMENTS OF ESTIMATED TAXES.** With regard to a combined report under this  
7 section, the department may waive any interest under s. 71.84, in whole or in part,  
8 but only for the first installment and its due date, as provided under s. 71.29 (8), and  
9 only with respect to income that is includable in the combined report.

10           **SECTION 10.** 71.26 (2) (a) 7. of the statutes is amended to read:

11           71.26 **(2)** (a) 7. Plus the amount deducted or excluded under the Internal  
12 Revenue Code for interest expenses and, rental expenses, intangible expenses, and  
13 management fees that are directly or indirectly paid, accrued, or incurred to, or in  
14 connection directly or indirectly with one or more direct or indirect transactions with,  
15 one or more related entities.

16           **SECTION 11.** 71.26 (2) (a) 9. of the statutes is amended to read:

17           71.26 **(2)** (a) 9. Minus the amount added, pursuant to subd. 7. or s. 71.05 (6) (a)  
18 24., 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that  
19 paid interest expenses or, rental expenses, intangible expenses, or management fees  
20 to the corporation, to the extent that the related entity could not offset such amount  
21 with the deduction allowable under subd. 8. or s. 71.05 (6) (b) 45., 71.34 (1k) (k), or  
22 71.45 (2) (a) 17.

23           **SECTION 12.** 71.26 (3) (x) of the statutes is amended to read:

24           71.26 **(3)** (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to  
25 consolidated returns) are excluded, except that U.S. Treasury Regulation 1.1502-13.

1 related to deferred gain or loss from an intercompany transaction, applies to  
2 transactions between combined group members under s. 71.255 (4) (a) 4.

3 **SECTION 13.** 71.34 (1c) of the statutes is created to read:

4 71.34 (1c) For purposes of sub. (1k) (j) and (L), “intangible expenses” include  
5 expenses, losses, and costs for, related to, or directly or indirectly in connection with  
6 the acquisition of, use of, maintenance or management of, ownership of, sale of,  
7 exchange of, or any other disposition of, intangible property to the extent that such  
8 amounts would otherwise be deductible under the Internal Revenue Code as  
9 modified under s. 71.34 (1k); losses related to, or incurred in connection directly or  
10 indirectly with, factoring transactions or discounting transactions; royalty, patent,  
11 technical, and copyright fees; licensing fees; and other similar expenses, losses, and  
12 costs.

13 **SECTION 14.** 71.34 (1d) of the statutes is created to read:

14 71.34 (1d) “Intangible property” includes stocks, bonds, financial instruments,  
15 patents, patent applications, trade names, trademarks, service marks, copyrights,  
16 mask works, trade secrets, and similar types of intangible assets.

17 **SECTION 15.** 71.34 (1h) of the statutes is created to read:

18 71.34 (1h) For purposes of sub. (1k) (j) and (L), “management fees” include  
19 expenses and costs paid for services pertaining to accounts receivable and payable,  
20 employee benefit plans, insurance, legal, payroll, data processing, purchasing, tax,  
21 financial and securities, accounting, reporting and compliance, or similar activities,  
22 only to the extent that the amounts are allowed as a deduction or cost in determining  
23 net income under the Internal Revenue Code as modified under s. 71.34 (1k).

24 **SECTION 16.** 71.34 (1k) (j) of the statutes is amended to read:

1           71.34 (1k) (j) An addition shall be made for any amount deducted or excluded  
2 under the Internal Revenue Code for interest expenses ~~and~~, rental expenses,  
3 intangible expenses, and management fees that are directly or indirectly paid,  
4 accrued, or incurred to, or in connection directly or indirectly with one or more direct  
5 or indirect transactions with, one or more related entities.

6           SECTION 17. 71.34 (1k) (L) of the statutes is amended to read:

7           71.34 (1k) (L) A deduction shall be allowed for the amount added, pursuant to  
8 par. (j) or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.45 (2) (a) 16., to the federal income  
9 of a related entity that paid interest expenses ~~or~~, rental expenses, intangible  
10 expenses, or management fees to the corporation, to the extent that the related entity  
11 could not offset such amount with the deduction allowable under par. (k) or s. 71.05  
12 (6) (b) 45., 71.26 (2) (a) 8., or 71.45 (2) (a) 17.

13           SECTION 18. 71.42 (1sg) of the statutes is created to read:

14           71.42 (1sg) For purposes of s. 71.45 (2) (a) 16. and 18., “intangible expenses”  
15 include expenses, losses, and costs for, related to, or directly or indirectly in  
16 connection with the acquisition of, use of, maintenance or management of, ownership  
17 of, sale of, exchange of, or any other disposition of, intangible property to the extent  
18 that such amounts would otherwise be deductible under the Internal Revenue Code  
19 as modified under s. 71.45 (2); losses related to, or incurred in connection directly or  
20 indirectly with, factoring transactions or discounting transactions; royalty, patent,  
21 technical, and copyright fees; licensing fees; and other similar expenses, losses, and  
22 costs.

23           SECTION 19. 71.42 (1sh) of the statutes is created to read:

1           71.42 **(1sh)** “Intangible property” includes stocks, bonds, financial  
2 instruments, patents, patent applications, trade names, trademarks, service marks,  
3 copyrights, mask works, trade secrets, and similar types of intangible assets.

4           **SECTION 20.** 71.42 (3c) of the statutes is created to read:

5           71.42 **(3c)** For purposes of s. 71.45 (2) (a) 16. and 18., “management fees”  
6 include expenses and costs paid for services pertaining to accounts receivable and  
7 payable, employee benefit plans, insurance, legal, payroll, data processing,  
8 purchasing, tax, financial and securities, accounting, reporting and compliance, or  
9 similar activities, only to the extent that the amounts are allowed as a deduction or  
10 cost in determining net income under the Internal Revenue Code as modified under  
11 s. 71.45 (2).

12           **SECTION 21.** 71.43 (2) of the statutes is amended to read:

13           71.43 **(2)** FRANCHISE TAX ON CORPORATIONS. For the privilege of exercising its  
14 franchise, buying or selling lottery prizes if the winning tickets were originally  
15 bought in this state or doing business in this state in a corporate capacity, except as  
16 provided under s. 71.23 (3), every domestic or foreign corporation, except  
17 corporations specified in ss. 71.26 (1) and 71.45 (1) (a), shall annually pay a franchise  
18 tax according to or measured by its entire Wisconsin net income of the preceding  
19 taxable year at the rates set forth in s. 71.46 (2). In addition, except as provided in  
20 ss. 71.23 (3), 71.26 (1) and 71.45 (1) (a), a corporation that ceases doing business in  
21 this state shall pay a special franchise tax according to or measured by its entire  
22 Wisconsin net income for the taxable year during which the corporation ceases doing  
23 business in this state at the rate under s. 71.46 (2). Every corporation organized  
24 under the laws of this state shall be deemed to be residing within this state for the  
25 purposes of this franchise tax. All provisions of this chapter and ch. 73 relating to

1 income taxation of corporations shall apply to franchise taxes imposed under this  
2 subsection, unless the context requires otherwise. The tax imposed by this  
3 subsection on insurance companies subject to taxation under this chapter shall be  
4 based on Wisconsin net income computed under s. 71.45, and no other provision of  
5 this chapter relating to computation of taxable income for other corporations shall  
6 apply to such insurance companies, except for s. 71.255. All other provisions of this  
7 chapter shall apply to insurance companies subject to taxation under this chapter  
8 unless the context clearly requires otherwise.

9 SECTION 22. 71.45 (2) (a) 16. of the statutes is amended to read:

10 71.45 (2) (a) 16. By adding to federal taxable income any amount deducted or  
11 excluded under the Internal Revenue Code for interest expenses ~~and~~, rental  
12 expenses, intangible expenses, and management fees that are directly or indirectly  
13 paid, accrued, or incurred to, or in connection directly or indirectly with one or more  
14 direct or indirect transactions with, one or more related entities.

15 SECTION 23. 71.45 (2) (a) 18. of the statutes is amended to read:

16 71.45 (2) (a) 18. A deduction shall be allowed for the amount added, pursuant  
17 to subd. 16. or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.34 (1k) (j), to the federal income  
18 of a related entity that paid interest expenses ~~or~~, rental expenses, intangible  
19 expenses, or management fees to the insurer, to the extent that the related entity  
20 could not offset such amount with the deduction allowable under subd. 17. or s. 71.05  
21 (6) (b) 45., 71.26 (2) (a) 8., or 71.34 (1k) (k).

22 SECTION 24. Initial applicability.

Revenue

23 (1) ~~This act~~ first applies to taxable years beginning on January 1 of the year  
24 in which this subsection takes effect, except that if this subsection takes effect after

INSERT 23-23



1 April 1 this act first applies to taxable years beginning on January 1 of the year  
2 following the year in which this subsection takes effect.

3 (END)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

12/5/11

Insert 23-23

<sup>NO</sup> COMBINED REPORTING <sup>CS</sup>

Use treatment of <sup>sections</sup> 71.01(5n), (5p),

and (7v), 71.05(6)(a) 24 and (b) 46, 71.22(3g), (3h),

and (6d), 71.255, 71.26(2)(a) 7 and 9 and (3)(x), 71.34(1c),

(1d), (1h), and (1k)(j) and (L), 71.42(1sg), (1sh), and (3c),

71.43(2), and 71.45(2)(a) 16 and 18 of the statutes