2009-11 LRB Draft Review

Date: January 12, 2009

LRB Number: 1215/P1 (Combined Reporting)

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Brief Description of LRB Draft: This bill requires corporations engaged in a unitary business to compute their unitary business income using a combined report and expands the scope of the related entity expense addback provisions to include intangible expenses and management fees.

Comments on Draft: After extensive review and analysis of the language in LRB 1215/P1, the department has made changes to provide improvements in administration and clarification of the provisions of the proposal.

Changes Needed & Why: Pages 2 through 24 of this document show the original text of LRB 1215/P1 with every change recommended by the Department highlighted. Text that should be deleted is stricken. Text that should be added is underlined. Note that several new bill sections are recommended. The new bill sections begin on page 21.

Revisions Necessary for LRB-1215/P1 (Combined Reporting)

Highlighted items = Changes needed to LRB-1215/P1

~~Stricken items~~ = Deletions needed from LRB-1215/P1

Underlined items = Text to be added to LRB-1215/P1

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

71.01 (5n) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "intangible expenses" include the following to the extent such amounts would otherwise be deductible in the computation of Wisconsin adjusted gross income: 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 under s. 71.05 (6)~~; 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.

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

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

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

71.01 (7v) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "management fees" include expenses and costs paid, other than interest expenses, ~~for services~~ pertaining to accounts receivable and payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, tax, financial matters and securities, accounting, reporting and compliance, or similar activities, 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 under s. 71.05 (6)~~ would otherwise be deductible in the computation of Wisconsin adjusted gross income.

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

71.05 (6) (a) 24. The amount deducted or excluded under the Internal Revenue Code for interest expenses, rental expenses, intangible expenses, and management fees that are directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related entities.

SECTION 5. 71.05 (6) (b) 46. of the statutes is amended to read:

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

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

71.22 (3g) For purposes of s. 71.26 (2) (a) 7. and 9. and s. 71.255(2)(c), "intangible expenses" include the following to the extent such amounts would otherwise be deductible in determining net income under the Internal Revenue Code as modified under s. 71.26(3): 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 under s. 71.26 (3)~~; 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.

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

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

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

71.22 (6d) For purposes of s. 71.26 (2) (a) 7. and 9., "management fees" include expenses and costs paid, other than interest expenses, ~~for services~~ pertaining to accounts receivable and payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, tax, financial matters and securities, accounting, reporting and compliance, or similar activities, only to the extent that the amounts ~~are allowed as a deduction or cost~~ would otherwise be

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deductible in determining net income under the Internal Revenue Code as modified under s. 71.26 (3).

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

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 under sub. (2) to determine a ~~taxpayer~~ member's share of the net business income or loss apportionable to this state that is 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 percent 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 percent of the voting power of each of the connected corporations.

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

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

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

1. It is a member of a unitary business.

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

3. It 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. "Corporation" does not include a tax-option corporation.

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

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

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

(i) "Intangible expenses" has the meaning given in s. 71.22 (3g) for corporations taxable under this subchapter and the meaning given in s. 71.42(1sg) for corporations taxable under subchapter VII.

(j) "Interest expenses" has the meaning given in s. 71.22 (3m) for corporations taxable under this subchapter and the meaning given in s. 71.42(1t) for corporations taxable under subchapter VII.

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

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

~~(m)~~(L) "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 including but not limited to administrative, employee benefits, human resources, legal, financial, and cash management services; intercorporate debts; intercorporate use of proprietary materials; interlocking directorates; or interlocking corporate officers. ~~The department may determine that 2 or more business entities are a unitary business based on other factors, to the extent allowed under federal law.~~ 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 there is a synergy and exchange and flow of value between the 2 parts of the business and the 2 corporations are members of the same commonly controlled group.

(2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) A corporation, except a corporation all of whose income is exempt from taxation under s. 71.26(1), 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, as determined under sub. (7). "File" shall have the same meaning as in s. 71.22(2m). The combined report shall include the income, determined under sub. (3), and apportionment factor or factors determined under sub. (5), of every corporation engaged in the unitary business. However, except as provided in par. (c), ~~and except that~~ if 80 percent or more of a corporation's worldwide income is active foreign business income, as defined in 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 that is a combined group member shall include in the combined report income that is derived only from sources within the United States as provided in sections 861 to 865 of the Internal Revenue Code. The foreign corporation shall include in the combined report its apportionment factor or factors related only to that income.

(c) The combined report of the unitary business of which ~~the~~ a 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 that they are attributable to the unitary business:

1. An amount of income equal to the interest and intangible expenses, losses, and costs ~~The losses, costs, interest expenses, and intangible expenses~~ that are 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 outside the United States under sections 861 to 865 of the Internal Revenue Code.

2. To the extent that the amounts were not ~~considered~~ included under subd. 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 outside the United States under sections 861 to 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, 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 to 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 described in subds 1. to 4.

(d) 1. The department may require that a combined report include the income and associated apportionment factor or factors of any person who is not included in a combined group under pars. (a) or (b), but who is a member of a unitary business, in order to reflect proper apportionment of income of the entire unitary business~~, and regardless of whether the person would be subject to this chapter if doing business in this state~~. Authority to require the inclusion of income and associated apportionment factor or factors in a combined report under this paragraph includes the authority to require the inclusion of income and associated apportionment factor or factors of persons that are not corporations.

2. 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 under pars. (a) or (b) represents an avoidance or evasion of tax by ~~the~~ the person or the combined group member, the department may require all or any part of the income or loss and associated apportionment factor or factors of the person be included in or excluded from the combined report for the unitary business, or may require the use of a different apportionment factor or factors. Authority to require the inclusion or exclusion of income or loss and associated apportionment factor or factors in a combined report under this paragraph includes the authority to require the inclusion or exclusion of income or loss and associated apportionment factor or factors of persons that are not corporations.

3. The authority granted under par. (d) is in addition to, and not a limitation of or dependent on, the provisions in this chapter enacted to prevent the avoidance or evasion of taxes or to clearly reflect the income of any of such person or member. For the purpose of the proper administration of this section, and to prevent the avoidance or evasion of taxes, or to clearly reflect income, the department's determinations under par. (d) shall be presumed to be correct and valid. The burden

of proving by clear and convincing evidence that the determination is incorrect shall be upon the person challenging the correctness and validity thereof.

(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, including:

(a) Its share of any business income apportionable to this state of each of the combined groups of which it is a member, as determined under subs. (4) and (5). For financial organizations as defined in ss. 71.04(8)(a) and 71.25(10)(a), "business income" under this section shall include interest, dividends, and receipts from investments of any kind, and expenses associated with such investments shall be treated as business expenses.

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(b) Its share of any business income apportionable to this state of a distinct business activity conducted within and outside the state wholly by the ~~taxpayer~~ member, as determined under s. 71.25 or 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.~~ par. (4) (h) ~~(a) 6.~~

(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 carry-forward.

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

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

~~(a) Calculate the total income of the combined group. The total income of the combined group is the sum of the income of each member of the combined group 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~~ the sum of the income of each member of the combined group as determined under the Internal Revenue Code and as modified under s. 71.26 or 71.45, except ~~that~~

~~the modifications provided in ss. 71.26 (2) (a) 7., 8., and 9. and 71.45 (2) (a) 16., 17., and 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.~~ as provided in pars. (a) through (i). 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.

(a) 1. Subtract any apportionable income of a distinct business activity conducted within and outside the state wholly by the member, income from a business conducted wholly by the member entirely within this state, the member's nonbusiness income, the member's income realized from the purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in this state, and its income allocated or apportioned in an earlier year required to be taken into account as state source income during the taxable year.

2. Add any apportionable expense or loss of a distinct business activity conducted within and outside the state wholly by the member, expense or loss from a business conducted wholly by the member entirely within this state, the member's nonbusiness expense or loss, its loss allocated or apportioned in an earlier year required to be taken into account as state source loss during the taxable year, and its net business loss carry-forward except as provided in par. (d).

(b) For combined group members that are consolidated foreign operating corporations, include only the income described in s. 71.255(2)(c)1. through 4. A combined group may deduct expenses properly attributable to a consolidated foreign operating corporation's income described in s. 71.255(2)(c) 2. through 4., subject to the department's authority in ss. 71.30(2) and (2m) and 71.80(1)(b) and (1m).

(c) The modifications provided in ss. 71.26 (2) (a) 7., 8., and 9. and 71.45 (2) (a) 16., 17., and 18. shall not apply with respect to interest expenses or intangible expenses paid, accrued, or incurred by a combined group member to or for the benefit of a consolidated foreign operating corporation.

(d) Subtract any pre-apportionment net business loss carry-forward deduction, as provided in sub. (6)(b).

~~3.~~ (e) Except as provided in sub. (2) (c) 3. and except where the modification in s. 71.26(3)(j) applies, 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.~~ shall, to the extent those dividends are paid out of the earnings and profits of the unitary business included in the combined report, whether in the current taxable year or a prior taxable year, be eliminated from the income of the recipient. This provision shall not apply to dividends received from members of the unitary business which were not part of the combined group during the calendar year preceding the receipt of the dividends. The days in "calendar year preceding" are calculated consecutively.

~~4.~~ (f) Except as otherwise provided by rule, business income or loss from an intercompany transaction between members of the same combined group shall be deferred as provided under U.S. Treasury Regulation 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:

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

b. The object of the deferred intercompany transaction is resold 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 a~~ are in the same unitary business.

~~5.~~ (g) A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction under 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 as applied to the entire business income of the combined 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 this paragraph, 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 this paragraph shall apply in the subsequent year in determining the allowable deduction in that year.

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~~6.~~ (h) 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, gains or losses under section 1231 of the Internal Revenue Code, 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, as provided under sections 1222 and 1231 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, property described under section 1231 of the Internal Revenue Code, and involuntary conversions that are nonbusiness items allocated to another state.

c. Any 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 that results from the application of subds. 6. a. and 6. b. shall then be applied to all other state source income or loss of that member.

d. Any 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 carry-forward or carry-back applies.

~~7.~~ (i) Any expense of one member of the combined group that is directly or indirectly attributable to the nonbusiness or exempt income of another member of the ~~combined group~~ unitary business shall be allocated to that other member of the ~~combined group~~ unitary business as corresponding nonbusiness or exempt expense, as appropriate.

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

(5) ~~TAXPAYER~~ MEMBER'S SHARE OF BUSINESS INCOME OF THE COMBINED GROUP. (a) Each member of a combined group shall be deemed to be doing business in this state if any member of the combined group is doing business in this state. Except as provided in pars.(b) ~~and (c), the~~ a taxpayer's ~~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's ~~member's~~ modified sales factor, computed as ~~follows:~~ determined in subd. 1. through 8.

1. For a ~~taxpayer~~ member that is subject to apportionment under s. 71.25 (9), the numerator of the modified sales factor includes 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 in the numerator of the modified sales factor if no member of the combined group is within the jurisdiction of the destination state for income or franchise tax purposes. ~~if the taxpayer member is not doing business in the other state, as described in s. 71.25 (9) (b) 2m. and 3. and (c), 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 the department's rules pursuant to s. 71.25 (10), the numerator of the modified sales factor includes the ~~taxpayer~~ member's Wisconsin ~~income~~ receipts 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), the numerator of the modified sales factor includes the ~~taxpayer~~ member's premiums that are 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 the sales, receipts, or premiums from all members of the combined group regardless of whether they are taxpayer members.~~

5. For a member that is required under the department's rules to use an apportionment factor or factors other than sales factor, receipts factor, or premiums factor, the numerator of the modified sales factor for such member is its Wisconsin apportionment percentage on a separate entity basis based on the rules prescribed by the department, multiplied by the member's total sales as defined in s. 71.25(9)(e) and (f). The denominator of the modified sales factor for such member is the member's total sales as defined in s. 71.25(9)(e) and (f).

~~5.~~ 6. The numerator and denominator, described in subds. 1. to ~~4.~~ 5., shall include the sales, receipts, or premiums of pass-through entities that are 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 business income included in the income of the combined group under sub. (4) and the denominator of which is the amount of the pass-through entity's total unitary business income.

~~6.~~ 7. The modified sales factor shall exclude transactions between members of the same combined group.

~~7.~~ 8. ~~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.~~ For purposes of determining the numerator of the modified sales factor or any apportionment factor or factors determined under par. (b), a taxpayer is considered to be within the jurisdiction for income or franchise tax purposes of any state in which any member of its combined group is within the jurisdiction for income or franchise tax purposes.

~~(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, 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 that under 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 prescribed by the department by rule.~~

~~(c) If the combined group includes interstate motor carriers, interstate brokers-dealers, investment advisers, investment companies, 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 apportionment method, the combined group may petition the department to use an alternate apportionment computation for the combined report. Unless the department provides otherwise by rule, the petition shall be filed with the department before the filing of the combined report for each taxable year that an alternate apportionment method is used. The department shall deny the petition if the taxpayer cannot show, by clear and convincing evidence, that the apportionment methods described in this subsection do not clearly reflect the income of the unitary business attributable to this state.~~

(b) If a combined group includes at least one member which in the absence of this section would be required to use a single sales factor, a single receipts factor, or a single premiums factor and at least one other member which would in the absence of this section be required to use an apportionment factor or factors other than a single sales factor, a single receipts factor, or a single premiums factor, and if the business income of the combined group derived from business transacted in this state of that combined group cannot be ascertained with reasonable certainty by use of the modified sales factor as provided in par. (a), the combined group may petition the department to use an alternate apportionment computation for the combined report. This paragraph shall not apply if less than 30 percent of the business income of the combined group would in the absence of this section be required to be apportioned using a factor or factors other than a single sales factor, a single receipts factor, or a single premiums factor. The department shall deny the petition if the taxpayer cannot show, by clear and convincing evidence, that the apportionment methods described in this subsection do not clearly reflect the income of the unitary business attributable to this state.

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(6) CREDITS, NET BUSINESS LOSSES, AND POST-APPORTIONMENT DEDUCTIONS. (a) Except as provided in par. (b), no tax credit, Wisconsin net business loss carry-forward, or other 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., ~~except that~~ However, a member of a combined group may use a carry-forward of a credit, Wisconsin net business loss carry-forward, or post-apportionment deduction~~, including a net business loss carry-forward~~ otherwise allowable under ss. 71.26 ~~(4)~~ or 71.45 ~~(4)~~, subject to the limitations therein, that was incurred by that same member in a taxable year beginning before the effective date of this paragraph.... [LRB inserts date].

~~(b) A net business loss computed on a combined report after the effective date of this paragraph.... [LRB inserts date], and not fully offset by the combined group's unitary business income shall be offset against the combined group's income, subject to the limitations under s. 71.26 (4).~~

(b) A combined group member's share of a Wisconsin net business loss computed on a combined report for a taxable year beginning on or after the effective date of this paragraph....

[LRB inserts date] is subject to the carry-forward period and limitations provided in s. 71.26(4) if the member is subject to tax under this subchapter or s. 71.45(4) if the member is subject to tax under subchapter VII. However, such Wisconsin net business loss may be used by that member or shared among the members of the unitary business filing in the combined report as provided in subd. 1. through 5.

1. For the taxable year in which the Wisconsin net business loss from the unitary business is generated, such loss shall first be offset by that member against its Wisconsin income for that same taxable year from sources other than the unitary business. In subsequent years, the member shall offset such loss first against income from that same unitary business in the manner described in subd. 2., and then from sources other than the unitary business.

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2. If the member is included in the combined report of the same unitary business for the taxable year the member will offset such loss, the member shall convert its Wisconsin net business loss carry-forward attributable to the unitary business to a pre-apportionment net business loss carry-forward in the manner described in subd. 3. and offset it against the combined group's business income computed under sub. (4). Any amount of pre-apportionment net business loss carry-forward not offset by the combined group's business income shall be converted back to a Wisconsin net business loss carry-forward in the manner described in subd. 4. and offset against the member's income, if any, from sources other than the unitary business. The carry-forward period and limitations set forth in ss. 71.26(4) and 71.45(4) shall apply in the same manner as if the loss was not converted to a pre-apportionment net business loss carry-forward before used.

3. For purposes of subd. 2, the "pre-apportionment net business loss carry-forward" for each year for which a combined group member has available Wisconsin net business loss is the member's apportioned share of the Wisconsin net business loss computed on the combined report for the year in which the loss was generated, divided by the member's Wisconsin apportionment percentage computed on that same combined report.

4. A combined group member's pre-apportionment net business loss carry-forward that is computed under subd. 3 and not used shall be converted back to a Wisconsin net business loss carry-forward by multiplying the member's apportioned share of the remaining Wisconsin net business loss computed on the combined report for the year in which the loss was generated by the member's Wisconsin apportionment percentage computed on that same combined report.

5. Except as provided by the department by rule, if a ~~taxpayer member~~ corporation may no longer be included in the combined report, as determined under this section, that corporation's share of Wisconsin net business loss carry-forward from the combined group may not be shared among or transferred to any other members of the combined group or members of other combined groups,~~the combined group is no longer entitled to that taxpayer member's portion of the loss carry-forward and the member taxpayer may not claim its share of the loss against the income of any other combined group~~, but the corporation may claim the loss carry-forward against its own income attributable to other unitary businesses or other sources of income, ~~as provided under~~ subject to the limitations of ss. 71.26(4) or 71.45(4).

(7) DESIGNATED AGENT. (a) Each combined group shall have one designated agent. The designated agent is the parent corporation of the combined group, or ~~if the parent corporation is a taxpayer member and the income of the parent corporation is included in the combined report.~~ if there is no such parent corporation, the designated agent may be appointed by the ~~taxpayer~~ members. If there is no such parent corporation 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 ~~may~~ shall change only when the designated agent is no longer a member of the combined group ~~subject to tax under s. 71.23 (1) or (2)~~, in which case the ~~combined group~~ succeeding designated agent shall notify the department of the change in the manner prescribed by the department.

(b) Only ~~T~~the designated agent ~~is responsible for acting~~ has authority to act on behalf of the ~~taxpayer~~ members of the combined group. The designated agent's responsibilities include:

1. Filing a combined report under sub. (2) (a).

2. Filing any extensions under ss. 71.24 or 71.44.

~~2.~~ 3. Filing any amended combined reports or claims for refund or credit.

3. 4. Sending and receiving all correspondence with the department regarding the combined report.

5. Remitting all taxes, including estimated taxes, to the department. For purposes of computing interest on late payments, all payments remitted are deemed to be made on a pro rata basis by all members of the combined group, unless otherwise specified by the designated agent.

~~4.~~ 6. Participating on behalf of the combined group members in any investigation or hearing requested by the department regarding a combined report, producing all information requested by the department regarding the combined report, and filing any appeal related to the combined report, investigation, or hearing. Any appeal filed by the designated agent shall be considered to be filed by all members of the combined group.

7. Executing waivers, closing agreements, powers of attorney, and other documents as necessary or required regarding the combined report filed under sub. (2)(a). Any waiver, agreement, power, or document excecuted by the designated agent shall be considered as executed by all members of the combined group.

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

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

~~5.~~ 10. Other responsibilities as determined by rule by the department.

(c) Acts contrary to par. (b) are unauthorized acts and do not bind the department in any manner. The department, acting within its discretion, may choose to receive the benefits or assume the obligations of such unauthorized acts. Unauthorized acts shall be binding on the department only when the department takes affirmative steps to expressly manifest it will receive the benefits or assume the obligations of such unauthorized acts. Upon ratification, the unauthorized act relates back to the time of the unauthorized act.

(d) 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 2 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 under 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 that are subject to an election under par. (b), the same election shall be made for each member of the combined group subject to the election, the same election shall be made in each succeeding year, and the election is irrevocable except upon written approval by the department.

(9) PART-YEAR MEMBERS OF A 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 that 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 is presumed to be engaged in a unitary business. All of the income of the unitary business is 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)**~~ **(10)** ~~**PAYMENTS OF ESTIMATED TAXES**~~ **TRANSITIONAL RULES.** ~~With regard to a combined report under this section, the department may waive any interest under s. 71.84, in whole or in part, but only for the first installment and its due date, as provided under s. 71.29 (8), and only with respect to income that is includable in the combined report.~~ The department shall deem timely paid the estimated tax payments attributable to income includable in the combined report for installments that become due during the period of January 1, 2009, through the enactment date of this section provided that such estimated tax payments are paid by the next installment due date that follows in sequence following the enactment date of this section. However, if the next installment due date that follows in sequence following the enactment date of this section is less than 45 days after the enactment date, such estimated tax payments shall be deemed timely paid if paid by the next subsequent installment due date.

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

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

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

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

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

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, related ing to deferred

gain or loss from an intercompany transaction, applies to transactions between combined group members under s. 71.255 (4) ~~(a) 4~~ (f).

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

71.34 (1c) For purposes of sub. (1k) (j) and (L),"intangible expenses" include the following to the extent such amounts would otherwise be deductible in the computation of Wisconsin adjusted gross income: 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 under s. 71.34 (1k);~~ 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.

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

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

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

71.34 (1h) For purposes of sub. (1k) (j) and (L), "management fees" include expenses and costs paid, other than interest expenses, ~~for services~~ pertaining to accounts receivable and payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, tax, financial matters and securities, accounting, reporting and compliance, or similar activities, 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 under s. 71.34 (1k)~~ would otherwise be deductible in the computation of Wisconsin adjusted gross income.

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

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

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

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

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

71.42 (1sg) For purposes of s. 71.45 (2) (a) 16. and 18. and s. 71.255(2)(c), "intangible expenses" include the following to the extent such amounts would otherwise be deductible in determining net income under the Internal Revenue Code, as adjusted under s. 71.45(2): 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 under s. 71.45 (2)~~; 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.

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

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

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

71.42 (3c) For purposes of s. 71.45 (2) (a) 16. and 18., "management fees" include expenses and costs paid, other than interest expenses, ~~for services~~ pertaining to accounts receivable and payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, tax, financial matters and securities, accounting, reporting and compliance, or similar activities, only to the extent that the amounts ~~are allowed as a deduction or cost~~ would otherwise be deductible in determining net income under the Internal Revenue Code as ~~modified~~ adjusted under s. 71.45 (2).

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

71.43 (2) FRANCHISE TAX ON CORPORATIONS. For the privilege of exercising its franchise, buying or selling lottery prizes if the winning tickets were originally bought in this state or doing business in this state in a corporate capacity, except as provided under s. 71.23 (3), every domestic or foreign corporation, except corporations specified in ss. 71.26 (1) and 71.45 (1) (a), shall annually pay a franchise tax according to or measured by its entire Wisconsin net income of the preceding taxable year at the rates set forth in s. 71.46 (2). In addition, except as provided in ss. 71.23 (3), 71.26 (1) and 71.45 (1) (a), a corporation that ceases doing business in this state shall pay a special franchise tax according to or measured by its entire Wisconsin net income for the taxable year during which the corporation ceases doing business in this state at the rate under s. 71.46 (2). Every corporation organized under the laws of this state shall be deemed to be residing within this state for the purposes of this franchise tax. All provisions of this chapter and ch. 73 relating to income taxation of corporations shall apply to franchise taxes imposed under this subsection, unless the context requires otherwise. 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 such insurance companies, except for s. 71.255. All other provisions of this chapter shall apply to insurance companies subject to taxation under this chapter unless the context clearly requires otherwise.

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

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

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

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

NEW SECTIONS. Sections 71.04(7)(d) and 71.25(9)(d) of the statutes are repealed:

~~[71.04(7)(d) and 71.25(9)(d)] Except as provided in pars. (df) and (dh) sales, other than sales of tangible personal property, are in this state if the income-producing activity is performed in this state. If the income-producing activity is performed both in and outside this state the sales shall be divided between those states having jurisdiction to tax such business in proportion to the direct costs of performance in curred in each such state in rendering this service.~~

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NEW SECTIONS. 71.04(7)(dj) and 71.25(9)(dj) of the statutes are created to read:

[71.04(7)(dj) and 71.25(9)(dj)] Except as provided in par. (df), gross royalties and other gross receipts received for the use or license of intangible property, including but not limited to patents, copyrights, trademarks, trade names, service names, franchises, licenses, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, technical know-how, contracts, and customer lists, are sales in this state if any of the following applies:

1. The purchaser or licensee uses the intangible property in the operation of a trade or business at a location in this state. If the purchaser or licensee uses the intangible property in the operation of a trade or business in more than one state, the gross royalties and other gross receipts from the use of the intangible property shall be divided between those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states.

2. The purchaser or licensee is billed for the purchase or license of the use of the intangible property at a location in this state.

3. The purchaser or licensee of the use of intangible property has its commercial domicile in this state.

4. If the taxpayer is not within the jurisdiction, for income or franchise tax purposes, in the state in which the gross royalties or other gross receipts are apportioned under this paragraph but the taxpayer's commercial domicile is in this state, 50 percent of those gross royalties or other gross receipts shall be included in the numerator of the sales factor.

NEW SECTIONS. 71.04(7)(dL) and 71.25(9)(dL) of the statutes are created to read:

[71.04(7)(dL) and 71.25(9)(dL)] Sales of intangible property, excluding securities, are sales in this state if any of the following applies:

1. The purchaser uses the intangible property in the regular course of business operations in this state or for personal use at this state. If the purchaser uses the intangible property in more than

one state, the sales shall be divided between those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the intangible property in those states.

2. The purchaser is billed for the purchase of the intangible property at a location in this state.

3. The purchaser of the intangible property has its commercial domicile in this state.

4. If the taxpayer is not within the jurisdiction, for income or franchise tax purposes, in the state in which the sales of intangible property are apportioned under this paragraph but the taxpayer's commercial domicile is in this state, 50 percent of those gross receipts shall be included in the numerator of the sales factor.

NEW SECTIONS. 71.04(8)(a) and 71.25(10)(a) of the statutes are amended to read:

[71.04(8)(a) and 71.25(10)(a)] RAILROADS, FINANCIAL ORGANIZATIONS, AND PUBLIC UTILITIES. (a) In this section, "financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, brokerage house, underwriter, ~~or~~ any type of insurance company, and any subsidiary thereof a significant purpose of which is to hold investments, primarily functions to hold investments, or is devoted to the holding of investments.

NEW SECTIONS. 71.10(1m), 71.30(2m) and 71.80(1m) of the statutes are created to read:

[71.10(1m), 71.30(2m), and 71.80(1m)] TRANSACTIONS WITHOUT ECONOMIC SUBSTANCE. (a) When any person, directly or indirectly, engages in a transaction or series of transactions without economic substance to create a loss or to reduce taxable income or to increase credits allowed in determining Wisconsin tax, the department shall determine the amount of a taxpayer's taxable income or tax so as to reflect what would have been the taxpayer's taxable income or tax but for the transaction or transactions without economic substance causing the reduction in taxable income or tax.

(b) A transaction has economic substance only if the taxpayer shows both of the following:

1. The transaction changes in a meaningful way (apart from federal, state, local, and foreign tax effects) the taxpayer's economic position; and

2. The taxpayer has a substantial nontax purpose for entering into the transaction and the transaction is a reasonable means of accomplishing the substantial nontax purpose. A transaction has a substantial nontax purpose if it has substantial potential for profit, disregarding any tax effects.

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(c) With respect to transactions between members of a controlled group as defined in section 267(f)(1) of the Internal Revenue Code, such transactions shall be presumed to lack economic substance, and the taxpayer shall bear the burden of establishing by clear and convincing evidence that a transaction or a series of transactions between the taxpayer and one or more members of the controlled group has economic substance.

NEW SECTION. 71.10(1) of the statutes is amended to read:

71.10(1) In any case of 2 or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, ~~and~~ whether or not affiliated, and whether or not unitary) owned or controlled directly or indirectly by the same interests, the secretary or the secretary's delegate may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if the secretary determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organizations, trades or businesses. The authority granted under this subsection is in addition to, and not a limitation of or dependent on, the provisons of s. 71.80(23) and ss. 71.05(6)(a)24. and (b)45., 71.26(2)(a)7. and 8., 71.34(1k)(j), and (k), and 71.45(2)(a)16. and 17.

NEW SECTION. 71.22(3m) of the statutes is amended to read:

71.22(3m) For purposes of s. 71.26(2)(a)7. and 9. and s. 71.255(2)(c), "interest expenses" means interest that would otherwise be deductible under section 163 of the Internal Revenue Code, as modified under s. 71.26(3).

NEW SECTION. 71.25 (Intro.) of the statutes is amended to read:

71.25 For purposes of determining the situs of income under this section and s. 71.255:

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NEW SECTION. 71.25(5)(b)2. of the statutes is repealed:

~~71.25(5)(b)2. All income, gain, or loss from intangible property that is earned by a personal holding company, as defined in section 542 of the internal revenue code, as amended to December 31, 1974, shall be allocated to the residence of the taxpayer, except that all income that is realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in this state shall be allocated to this state.~~

NEW SECTION. 71.30(2) of the statutes is amended to read:

71.30(2) In any case of 2 or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States ~~and~~, whether or not affiliated, and whether or not unitary) owned or controlled directly or indirectly by the same interests, the secretary or his or her delegate may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if he or she determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organizations, trades or businesses. The authority granted under this subsection is in addition to, and not a limitation of or dependent on, the provisons of ss. 71.05(6)(a)24. and (b)45., 71.26(2)(a)7. and 8., 71.34(1k)(j), and (k), 71.45(2)(a)16. and 17., and 71.80(23).

NEW SECTION. 71.42(1t) of the statutes is amended to read:

71.42(1t) For purposes of s. 71.45(2)(a)16. and 18. and s. 71.255(2)(c), "interest expenses" means interest that would otherwise be deductible under section 163 of the Internal Revenue Code, as adjusted under s. 71.45(2).

NEW SECTION. 71.80(1)(b) of the statutes is amended to read:

71.80(1)(b) In any case of 2 or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, ~~and~~ whether or not affiliated, and whether or not unitary) owned or controlled directly or indirectly by the same interests, the secretary or the secretary's delegate may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if the secretary determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organizations, trades or businesses. The authority granted under this subsection is in addition to, and not a limitation of or dependent on, the provisons of sub. (23) and ss. 71.05(6)(a)24. and (b)45., 71.26(2)(a)7. and 8., 71.34(1k)(j), and (k), and 71.45(2)(a)16. and 17.

SECTION 9343. Initial applicability; Revenue.

(1) COMBINED REPORTING. The treatment of sections 71.01 (5n), (5p), and (7v), 71.05 (6) (a) 24. and (b) 46., 71.10(1), 71.10(1m), 71.22 (3g), (3h), (3m) and (6d), 71.25(5)(b)2., 71.25(9)(d), 71.25(9)(dj), 71.25(9)(dL), 71.25(10)(a), 71.255, 71.26 (2) (a) 7. and 9. and (3) (x), 71.30(2), 71.30(2m), 71.34 (1c), (1d), (1h), and (1k) (j) and (L), 71.42 (1sg), (1sh), (1t) and (3c), 71.43 (2), ~~and~~ 71.45 (2) (a) 16. and 18., 71.80(1)(b), and 71.80(1m) of the statutes first applies to

taxable years beginning on January 1 of the year in which this ~~subsection~~ act takes effect, except that if this ~~subsection~~ act takes effect after April 1 this act first applies to taxable years beginning on January 1 of the year following the year in which this ~~subsection~~ act takes effect.

(END)