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DOA:.....Lillethun, BB0285 - Combined reporting

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

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:

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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 expenses, losses, and costs for, related to, or directly or indirectly in connection with the acquisition of, use of, maintenance or management of, ownership

1 of, sale of, exchange of, or any other disposition of, intangible property to the extent
 2 that such amounts would otherwise be deductible under the Internal Revenue Code
 3 as modified under s. 71.05 (6); losses related to, or incurred in connection directly or
 4 indirectly with, factoring transactions or discounting transactions; royalty, patent,
 5 technical, and copyright fees; licensing fees; and other similar expenses, losses, and
 6 costs.

INSERT 2-6

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

8 71.01 (5p) "Intangible property" includes stocks, bonds, financial instruments,
 9 patents, patent applications, trade names, trademarks, service marks, copyrights,
 10 mask works, trade secrets, and similar types of intangible assets.

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

12 71.01 (7v) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "management fees"
 13 include expenses and costs paid for services pertaining to accounts receivable and
 14 payable, employee benefit plans, insurance, legal, payroll, data processing,
 15 purchasing, tax, financial and securities, accounting, reporting and compliance, or
 16 similar activities, only to the extent that the amounts are allowed as a deduction or
 17 cost in determining net income under the Internal Revenue Code as modified under
 18 s. 71.05 (6).

not including expenses interest expenses

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

20 71.05 (6) (a) 24. The amount deducted or excluded under the Internal Revenue
 21 Code for interest expenses and, rental expenses, intangible expenses, and
 22 management fees that are directly or indirectly paid, accrued, or incurred to, or in
 23 connection directly or indirectly with one or more direct or indirect transactions with,
 24 one or more related entities.

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

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

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

8 71.22 (3g) For purposes of s. 71.26 (2) (a) 7. and 9., "intangible expenses"
 9 include expenses, losses, and costs for, related to, or directly or indirectly in
 10 connection with the acquisition of, use of, maintenance or management of, ownership
 11 of, sale of, exchange of, or any other disposition of, intangible property to the extent
 12 that such amounts would otherwise be deductible under the Internal Revenue Code
 13 as modified under s. 71.26 (3); losses related to, or incurred in connection directly or
 14 indirectly with, factoring transactions or discounting transactions; royalty, patent,
 15 technical, and copyright fees; licensing fees; and other similar expenses, losses and
 16 costs.

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

18 71.22 (3h) "Intangible property" includes stocks, bonds, financial instruments,
 19 patents, patent applications, trade names, trademarks, service marks, copyrights,
 20 mask works, trade secrets, and similar types of intangible assets.

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

23 71.22 (6d) For purposes of s. 71.26 (2) (a) 7. and 9., "management fees" include
 24 expenses and costs paid for services pertaining to accounts receivable and payable,
 25 employee benefit plans, insurance, legal, payroll, data processing, purchasing, tax,
 financial and securities, accounting, reporting and compliance, or similar activities,

not including
interest expenses
interest expenses

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would then will be deductible

1 only to the extent that the amounts are allowed as a deduction or cost in determining
2 net income under the Internal Revenue Code as modified under s. 71.26 (3).

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

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

5 (a) "Combined group" means the group of all persons whose income and
6 apportionment factors are required to be taken into account under sub. (2) to
7 determine a taxpayer member's share of the net business income or loss
8 apportionable to this state that is attributable to a unitary business.

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

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

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

21 2. Any 2 or more corporations if a common owner, regardless of whether the
22 owner is a corporate entity, directly or indirectly owns stock representing more than
23 50 percent of the voting power of the corporations or connected corporations.

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

1 4. Any 2 or more corporations if stock representing more than 50 percent of the
2 voting power in each corporation is directly owned by, or for the benefit of, family
3 members. In this subdivision, "family member" means an individual related by
4 blood, marriage, or adoption within the 3rd degree of kinship, as computed under s.
5 990.001 (16), or the spouse of such individual.

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

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

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

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

14 (e) "Corporation" means any corporation, as defined in s. 71.22 (1k), wherever
15 located, which if it were doing business in this state would be subject to this chapter.
16 "Corporation" does not include a tax-option corporation.

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

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

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

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

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

24 (k) "Pass-through entity" means a general or limited partnership, an
25 organization of any kind treated as a partnership for tax purposes under this

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(h) File has the meaning given in s. 71.22(2m)

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) "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.

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. 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

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Not including a corporation of which all of its ^{income} is exempt from taxation under 501(c)(26)(1) ↗

1 is unitary with that portion of a business conducted by another corporation through
2 its direct or indirect interest in a pass-through entity if there is a synergy and
3 exchange and flow of value between the 2 parts of the business and the 2 corporations
4 are members of the same commonly controlled group.

5 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) A corporation
6 engaged in a unitary business with one or more other corporations shall report its
7 share of income from that unitary business in the amount determined by a combined
8 report filed by a designated agent of the unitary business, as determined under sub.

9 (7). The combined report shall include the income, determined under sub. (3), and
10 apportionment factor or factors determined under sub. (5), of every corporation
11 engaged in the unitary business, except as provided in ^(c) par. (c) and ^(d) except that if 80

12 percent or more of a corporation's worldwide income is active foreign business
13 income, as defined in section 861 (c) (1) (B) of the Internal Revenue Code, the income
14 and apportionment factor or factors of the corporation shall not be included in the
15 combined report, but the corporation shall compute and allocate or apportion its
16 income from the unitary business separately.

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

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

Except as provided in para (d) ↗

an income amount equal to

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1. 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.

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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.

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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.

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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.

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

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(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 par. (a) 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.

INSERT 9-6

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 par. (a) represents an avoidance or evasion of tax by the person or the combined group member, the department may require all or any part of the income and associated apportionment factor or factors of the person be included in the combined report for the unitary business.

a (b)

INSERT 9-12A

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9-12B

(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).

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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. (4) (a) 6.

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

i
b

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

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

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

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

10 (a) Calculate the total income of the combined group. The total income of the
11 combined group is the sum of the income of each member of the combined group
12 determined as follows:

13 1. The income to be included in the total income of the combined group shall
14 be the taxable income for the corporation as determined under the Internal Revenue
15 Code ~~and~~ ^{and} as modified under s. 71.26 or 71.45, ~~except that the modifications provided~~ ^{as}
16 in ss. 71.26 (2) (a) 7., 8., and 9. and 71.45 (2) (a) 16., 17., and 18. shall not apply with
17 respect to expenses paid, accrued, or incurred by a combined group member to or for
18 the benefit of a consolidated foreign operating corporation. ^{under par 50 (h) to (j)}

19 ^{NO} 2. If a unitary business includes income from a pass-through entity, the
20 pass-through entity income to be included in the total income of the combined group
21 shall be the member of the combined group's direct and indirect distributive share
22 of the pass-through entity's unitary business income.

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

7 INSERT 10-25

26 CFR Treasury Regulation

1 *(g)* 4. Except as otherwise provided by rule, business income or loss from an
 2 intercompany transaction between members of the same combined group shall be
 3 deferred as provided under 26 CFR 1.1502-13. Upon the occurrence of any of the
 4 following events, deferred business income or loss resulting from an intercompany
 5 transaction between members of a combined group shall be included in the income
 6 of the seller and shall be apportioned as business income or loss recognized
 7 immediately before the event:

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

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

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

16 *d* d. The buyer and seller are no longer members of the same combined group,
 17 regardless of whether the members are in the same unitary business.

18 *(h)* 5. A charitable expense incurred by a member of a combined group shall, to the
 19 extent allowable as a deduction under section 170 of the Internal Revenue Code, be
 20 subtracted first from the business income of the combined group, subject to the
 21 income limitations of that section as applied to the entire business income of the
 22 combined group, and any remaining amount shall then be treated as a nonbusiness
 23 expense allocable to the member that incurred the expense, subject to the income
 24 limitations of that section applied to the nonbusiness income of that specific member.

25 Any charitable deduction disallowed under this subdivision, but allowed as a

Paragraph

paragraph

(i)

1 carryover deduction in a subsequent year, shall be treated as originally incurred in
2 the subsequent year by the same member and this subdivision shall apply in the
3 subsequent year in determining the allowable deduction in that year.

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

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

14 *b* b. Each taxpayer member shall then net its apportioned business gain or loss
15 for all classes, including any such apportioned business gain and loss from other
16 combined groups, against the taxpayer member's nonbusiness gain and loss for all
17 classes allocated to this state, as provided under sections 1222 and 1231 of the
18 Internal Revenue Code, without regard to any of the taxpayer member's gains or
19 losses from the sale or exchange of capital assets, property described under section
20 1231 of the Internal Revenue Code, and involuntary conversions that are
21 nonbusiness items allocated to another state.

22 *c* c. Any state source income or loss, if the loss is not subject to the limitations
23 of section 1211 of the Internal Revenue Code, of a taxpayer member that results from
24 the application of *subds. e 10 e 20* subd. 6. a, and 6. b, shall then be applied to all other state source
25 income or loss of that member.

unitary unitary business *2

1 (d) Any state source loss of a member that is subject to the limitations of section
2 1211 of the Internal Revenue Code shall be carried forward or carried back by that
3 member and shall be treated as state source short-term capital loss incurred by that
4 member for the year for which the carry-forward or carry-back applies.

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

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

INSERT 13-12

12 (5) *MEMBERS CS* TAXPAYER'S SHARE OF BUSINESS INCOME OF THE COMBINED GROUP. (a) Except
13 as provided in *par* pars. (b) and (c), the taxpayer member's share of the business income
14 apportionable to this state of each combined group of which it is a member shall be
15 the product of the business income of the combined group as determined under sub.

16 (4) and the taxpayer member's modified sales factor, *Determined* computed as follows:

17 1. For a taxpayer member that is subject to apportionment under s. 71.25 (9),
18 the numerator of the modified sales factor includes the taxpayer member's sales
19 associated with the combined group's unitary business in this state. Sales under s.
20 71.25 (9) (b) 2m. and 3. and (c) shall be included in the numerator of the modified
21 sales factor if the taxpayer member is not doing business in the other state, as
22 described in s. 71.25 (9) (b) 2m. and 3. and (c), notwithstanding that another member
23 of the combined group is doing business in the other state. *INSERT 13-23*

24 2. For a taxpayer member that is a financial organization subject to
25 apportionment using a receipts factor under the department's rules pursuant to s.

receipts
receipts

1 71.25 (10), the numerator of the modified sales factor includes the taxpayer
2 member's Wisconsin income associated with the combined group's unitary business
3 in this state, as provided by such rules.

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

8 4. The denominator of the modified sales factor shall include the denominator
9 of the sales factor for each combined group member described in subd. 1., the
10 denominator of the receipts factor for each combined group member described in
11 subd. 2., and the denominator of the premiums factor for each combined group
12 member described in subd. 3. The denominator shall include the sales, receipts, or
13 premiums from all members of the combined group regardless of whether they are
14 taxpayer members.

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

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

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

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

13 (c) If the combined group includes interstate motor carriers, interstate
14 brokers-dealers, investment advisers, investment companies, underwriters, public
15 utilities, interstate railroads, sleeping car companies, car line companies, interstate
16 pipeline companies, interstate telecommunications companies, or interstate air
17 carriers, but less than 70 percent of the combined group's unitary business income
18 is subject to apportionment under the same apportionment method, the combined
19 group may petition the department to use an alternate apportionment computation
20 for the combined report. Unless the department provides otherwise by rule, the
21 petition shall be filed with the department before the filing of the combined report
22 for each taxable year that an alternate apportionment method is used. The
23 department shall deny the petition if the taxpayer cannot show, by clear and
24 convincing evidence, that the apportionment methods described in this subsection
25 do not clearly reflect the income of the unitary business attributable to this state.

Except as provided in pars (e)

NET BUSINESS LOSSES

INSERT 16-1

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

INSERT 16-6

10 (b) A net business loss computed on a combined report after the effective date
 11 of this paragraph [LRB inserts date], and not fully offset by the combined group's
 12 unitary business income shall be offset against the combined group's income, subject
 13 to the limitations under s. 71.26 (4). If a taxpayer member may no longer be included
 14 in the combined report, as determined under this section, the combined group is no
 15 longer entitled to that taxpayer member's portion of the loss carry-forward and the
 16 member may not claim its share of the loss against the income of any other combined
 17 group, but may claim the loss carry-forward against its own income, as provided
 18 under s. 71.26 (4) or 71.45 (4).

INSERT 16-17

19 (7) DESIGNATED AGENT. (a) Each combined group shall have one designated
 20 agent. The designated agent is the parent corporation of the combined group, if the
 21 parent corporation is a taxpayer member and the income of the parent corporation
 22 is included in the combined report. If there is no such parent corporation, the
 23 designated agent may be appointed by the taxpayer members. If there is no such
 24 parent corporation and no taxpayer member is appointed, the designated agent is the
 25 taxpayer member that has the most significant operations in this state on a recurring

a member of the combined group

1 basis, as determined by the department. The designated agent may change only
2 when the designated agent is no longer subject to tax under s. 71.23 (1) or (2), in
3 which case the combined group shall notify the department of the change in the
4 manner prescribed by the department. *succeeding designated agent*

5 *Only* (b) ^{*} The designated agent *is* responsible for acting on behalf of the taxpayer
6 members of the combined group. The designated agent's responsibilities include:

INSERT 17-7

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

8

2³ Filing any amended combined reports *or claims for refunds or credits*

INSERT 17-10

9 3⁴ Sending and receiving all correspondence with the department regarding the
10 combined report.

INSERT 17-16

11 4⁶ Participating on behalf of the combined group members in any investigation
12 or hearing requested by the department regarding a combined report, producing all
13 information requested by the department regarding the combined report, and filing
14 any appeal related to the combined report, investigation, or hearing. Any appeal
15 filed by the designated agent shall be considered to be filed by all members of the
16 combined group.

INSERT 17-17

17 5¹⁰ Other responsibilities as determined by rule by the department.

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

20 (a) If 2 or more members of a combined group file a federal consolidated return,
21 the combined group's taxable year is the taxable year of the federal consolidated
22 group. In all other cases, the taxable year is the taxable year of the designated agent
23 under sub. (7).

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

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

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

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

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

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

24 (11) PAYMENTS OF ESTIMATED TAXES. With regard to a combined report under this
25 section, the department may waive any interest under s. 71.84, in whole or in part,

INSERT
19-2

1 but only for the first installment and its due date, as provided under s. 71.29 (8), and
2 only with respect to income that is includable in the combined report.

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

4 71.26 (2) (a) 7. Plus the amount deducted or excluded under the Internal
5 Revenue Code for interest expenses and, rental expenses, intangible expenses, and
6 management fees that are directly or indirectly paid, accrued, or incurred to, or in
7 connection directly or indirectly with one or more direct or indirect transactions with,
8 one or more related entities.

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

10 71.26 (2) (a) 9. Minus the amount added, pursuant to subd. 7. or s. 71.05 (6) (a)
11 24., 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that
12 paid interest expenses or, rental expenses, intangible expenses, or management fees
13 to the corporation, to the extent that the related entity could not offset such amount
14 with the deduction allowable under subd. 8. or s. 71.05 (6) (b) 45., 71.34 (1k) (k), or
15 71.45 (2) (a) 17.

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

17 71.26 (3) (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
18 consolidated returns) are excluded, except that U.S. Treasury Regulation 1.1502-13,
19 relating to deferred gain or loss from an intercompany transaction, applies to
20 transactions between combined group members under s. 71.255 (4) (a) 4.

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

22 71.34 (1c) For purposes of sub. (1k) (j) and (L), "intangible expenses" include
23 expenses, losses, and costs for, related to, or directly or indirectly in connection with
24 the acquisition of, use of, maintenance or management of, ownership of, sale of,
25 exchange of, or any other disposition of, intangible property to the extent that such

1 amounts would otherwise be deductible under the Internal Revenue Code as
 2 modified under s. 71.34 (1k); losses related to, or incurred in connection directly or
 3 indirectly with, factoring transactions or discounting transactions; royalty, patent,
 4 technical, and copyright fees; licensing fees; and other similar expenses, losses, and
 5 costs.

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

7 71.34 (1d) "Intangible property" includes stocks, bonds, financial instruments,
 8 patents, patent applications, trade names, trademarks, service marks, copyrights,
 9 mask works, trade secrets, and similar types of intangible assets.

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

11 71.34 (1h) For purposes of sub. (1k) (j) and (L), "management fees" include
 12 expenses and costs paid for services pertaining to accounts receivable and payable,
 13 employee benefit plans, insurance, legal, payroll, data processing, purchasing, tax,
 14 financial and securities, accounting, reporting and compliance, or similar activities,
 15 only to the extent that the amounts are allowed as a deduction or cost in determining

16 net income under the Internal Revenue Code as modified under s. 71.34 (1k).

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

18 71.34 (1k) (j) An addition shall be made for any amount deducted or excluded
 19 under the Internal Revenue Code for interest expenses and, rental expenses,
 20 intangible expenses, and management fees that are directly or indirectly paid,
 21 accrued, or incurred to, or in connection directly or indirectly with one or more direct
 22 or indirect transactions with, one or more related entities.

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

24 71.34 (1k) (L) A deduction shall be allowed for the amount added, pursuant to
 25 par. (j) or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.45 (2) (a) 16., to the federal income

INSERT
20-5

not including
interest, expenses,
interest expenses

INSERT
20-16

1 of a related entity that paid interest expenses ~~or~~, rental expenses, intangible
2 expenses, or management fees to the corporation, to the extent that the related entity
3 could not offset such amount with the deduction allowable under par. (k) or s. 71.05
4 (6) (b) 45., 71.26 (2) (a) 8., or 71.45 (2) (a) 17.

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

6 71.42 (1sg) For purposes of s. 71.45 (2) (a) 16. and 18., "intangible expenses"
7 include expenses, losses, and costs for, related to, or directly or indirectly in
8 connection with the acquisition of, use of, maintenance or management of, ownership
9 of, sale of, exchange of, or any other disposition of, intangible property to the extent
10 that such amounts would otherwise be deductible under the Internal Revenue Code
11 as modified under s. 71.45 (2); losses related to, or incurred in connection directly or
12 indirectly with, factoring transactions or discounting transactions; royalty, patent,
13 technical, and copyright fees; licensing fees; and other similar expenses, losses, and
14 costs.

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

16 71.42 (1sh) "Intangible property" includes stocks, bonds, financial
17 instruments, patents, patent applications, trade names, trademarks, service marks,
18 copyrights, mask works, trade secrets, and similar types of intangible assets.

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

20 71.42 (3c) For purposes of s. 71.45 (2) (a) 16. and 18., "management fees"
21 include expenses and costs paid for services pertaining to accounts receivable and
22 payable, employee benefit plans, insurance, legal ^{matters}, payroll, data processing,
23 purchasing, tax, financial ^{matters} and securities, accounting, reporting and compliance, or
24 similar activities, only to the extent that the amounts are allowed as a deduction or

not including interest expenses

INSERT 21-14

INSERT 21-18

2

would otherwise be deductible

1 cost in determining net income under the Internal Revenue Code as ~~modified~~ under
2 s. 71.45 (2). *adjusted*

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

4 71.43 (2) FRANCHISE TAX ON CORPORATIONS. For the privilege of exercising its
5 franchise, buying or selling lottery prizes if the winning tickets were originally
6 bought in this state or doing business in this state in a corporate capacity, except as
7 provided under s. 71.23 (3), every domestic or foreign corporation, except
8 corporations specified in ss. 71.26 (1) and 71.45 (1) (a), shall annually pay a franchise
9 tax according to or measured by its entire Wisconsin net income of the preceding
10 taxable year at the rates set forth in s. 71.46 (2). In addition, except as provided in
11 ss. 71.23 (3), 71.26 (1) and 71.45 (1) (a), a corporation that ceases doing business in
12 this state shall pay a special franchise tax according to or measured by its entire
13 Wisconsin net income for the taxable year during which the corporation ceases doing
14 business in this state at the rate under s. 71.46 (2). Every corporation organized
15 under the laws of this state shall be deemed to be residing within this state for the
16 purposes of this franchise tax. All provisions of this chapter and ch. 73 relating to
17 income taxation of corporations shall apply to franchise taxes imposed under this
18 subsection, unless the context requires otherwise. The tax imposed by this
19 subsection on insurance companies subject to taxation under this chapter shall be
20 based on Wisconsin net income computed under s. 71.45, and no other provision of
21 this chapter relating to computation of taxable income for other corporations shall
22 apply to such insurance companies, except for s. 71.255. All other provisions of this
23 chapter shall apply to insurance companies subject to taxation under this chapter
24 unless the context clearly requires otherwise.

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

1 71.45 (2) (a) 16. By adding to federal taxable income any amount deducted or
2 excluded under the Internal Revenue Code for interest expenses and, rental
3 expenses, intangible expenses, and management fees that are directly or indirectly
4 paid, accrued, or incurred to, or in connection directly or indirectly with one or more
5 direct or indirect transactions with, one or more related entities.

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

7 71.45 (2) (a) 18. A deduction shall be allowed for the amount added, pursuant
8 to subd. 16. or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.34 (1k) (j), to the federal income
9 of a related entity that paid interest expenses or, rental expenses, intangible
10 expenses, or management fees to the insurer, to the extent that the related entity
11 could not offset such amount with the deduction allowable under subd. 17. or s. 71.05
12 (6) (b) 45., 71.26 (2) (a) 8., or 71.34 (1k) (k). *71.07(2dr)(a), 71.10(1) and (1m)*

13 SECTION 9343. Initial applicability; Revenue.

14 (1) COMBINED REPORTING. The treatment of sections 71.01 (5n), (5p), and (7v),
15 71.05 (6) (a) 24. and (b) 46., 71.22 (3g), (3h), ^(3m) and (6d), 71.255, 71.26 (2) (a) 7. and 9.
16 and (3) (x), 71.34 (1c), (1d), (1h), and (1k) (j) and (L), 71.42 (1sg), (1sh), ^(1t) and (3c), 71.43
17 (2), and 71.45 (2) (a) 16. and 18. of the statutes first ^{apply} applies to taxable years beginning
18 on January 1 of the year in which this subsection takes effect, except that if this
19 subsection takes effect after April 1 this act first applies to taxable years beginning
20 on January 1 of the year following the year in which this subsection takes effect.

INSERT
23-12

71.28(4)(ad) to 20 and 30 and (am)
71.30(2) and (2m)

*71.47(4)(ad) to 20 and 30 and (am)
and 71.30(1)(b) and (1m)* (END)

the renumbering
of section 71.25 (10) (a) of the
statutes, and the creation of
section 71.25 (10) (a) 20
of the statutes

71.25 (intus) (5) (b)
and 20 (9) (d) (d) and
and (dk) and (10) (a)

71.28(4)(ad) to 20 and 30 and (am)
71.30(2) and (2m)

Insert 2 - 6

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

2 71.01 (5n) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "intangible expenses"
3 include the following, to the extent that the amounts would otherwise be deductible
4 in computing Wisconsin adjusted gross income:

5 (a) Expenses, losses, and costs for, related to, or directly or indirectly in
6 connection with the acquisition of, use of, maintenance or management of, ownership
7 of, sale of, exchange of, or any other disposition of, intangible property.

8 (b) Losses related to, or incurred in connection directly or indirectly with,
9 factoring transactions or discounting transactions.

10 (c) Royalty, patent, technical, and copyright fees.

11 (d) Licensing fees.

12 (e) Other similar expenses, losses, and costs.

Insert 2 - 18A

13 ^{NO}_A would otherwise be deductible in computing Wisconsin adjusted gross income

Insert 2 - 18B

14 **SECTION 2.** 71.04 (7) (d) of the statutes is repealed.

15 **SECTION 3.** 71.04 (7) (dj) of the statutes is created to read:

16 71.04 (7) (dj) 1. Except as provided in par. (df), gross royalties and other gross
17 receipts received for the use or license of intangible property, including patents,
18 copyrights, trademarks, trade names, service names, franchises, licenses, plans,
19 specifications, blueprints, processes, techniques, formulas, designs, layouts,
20 patterns, drawings, manuals, technical know-how, contracts, and customer lists, are
21 sales in this state if any of the following applies:

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

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

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

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

16 **SECTION 4.** ^X 71.04 (7) (dk) of the statutes is created to read:

17 71.04 (7) (dk) 1. Sales of intangible property, excluding securities, are sales in
18 this state if any of the following applies:

19 a. The purchaser uses the intangible property in the regular course of business
20 operations in this state or for personal use in this state. If the purchaser uses the
21 intangible property in more than one state, the sales shall be divided between those
22 states having jurisdiction to impose an income tax on the taxpayer in proportion to
23 the use of the intangible property in those states.

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

1 c. The purchaser of the intangible property has its commercial domicile in this
2 state.

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

7 **SECTION 5.** 71.04 (8) (a) of the statutes is renumbered 71.04 (8) (a) 1.

8 **SECTION 6.** 71.04 (8) (a) 2. of the statutes is created to read:

9 71.04 (8) (a) 2. As used in this section, "financial organization" includes any
10 subsidiary of an entity described in subd. 1., if a significant purpose for the
11 subsidiary is to hold investments.

Insert 3 - 6

12 **SECTION 7.** 71.07 (2dr) (a) of the statutes is amended to read:

13 71.07 (2dr) (a) *Credit.* Any person may credit against taxes otherwise due
14 under this chapter an amount equal to 5% of the amount obtained by subtracting
15 from the person's qualified research expenses, as defined in section 41 of the internal
16 revenue code, except that "qualified research expenses" include only expenses
17 incurred by the claimant in a development zone under subch. VI of ch. 560, except
18 that a taxpayer may elect the alternative computation under section 41 (c) (4) of the
19 Internal Revenue Code and that election applies until the department permits its
20 revocation and except that "qualified research expenses" do not include
21 compensation used in computing the credit under sub. (2dj) nor research expenses
22 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
23 person's base amount, as defined in section 41 (c) of the internal revenue code, in a

1 development zone, except that gross receipts used in calculating the base amount
 2 means gross receipts from sales attributable to Wisconsin under s. 71.04 (7) (b) 1. and
 3 2., (d), 2007 stats., (df), and (dh) and research expenses used in calculating the base
 4 amount include research expenses incurred before the claimant is certified for tax
 5 benefits under s. 560.765 (3), in a development zone, if the claimant submits with the
 6 claimant's return a copy of the claimant's certification for tax benefits under s.
 7 560.765 (3) and a statement from the department of commerce verifying the
 8 claimant's qualified research expenses for research conducted exclusively in a
 9 development zone. The rules under s. 73.03 (35) apply to the credit under this
 10 paragraph. The rules under sub. (2di) (f) and (g), as they apply to the credit under
 11 that subsection, apply to claims under this paragraph. Section 41 (h) of the internal
 12 revenue code does not apply to the credit under this paragraph.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27
 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135,
 183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11, 20, 96, 97, 100; s. 13.92 (2) (i).

13 **SECTION 8. 71.10 (1) of the statutes is amended to read:**

14 **71.10 (1) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE**
 15 **BUSINESSES.** In any case of 2 or more organizations, trades or businesses (whether or
 16 not incorporated, whether or not organized in the United States ~~and~~, whether or not
 17 affiliated, ^{and} whether or not unitary) owned or controlled directly or indirectly by the
 18 same interests, the secretary or the secretary's delegate may distribute, apportion
 19 or allocate gross income, deductions, credits or allowances between or among such
 20 organizations, trades or businesses, if the secretary determines that such
 21 distribution, apportionment or allocation is necessary in order to prevent evasion of
 22 taxes or clearly to reflect the income of any of such organizations, trades or
 23 businesses. The authority granted under this subsection is in addition to, and not

1 a limitation of or dependent on, the provisions of ss. 71.05 (6) (a) 24. and (b) 45., 71.26
2 (2) (a) 7. and 8., 71.34 (1k) (j) and (k), 71.45 (2) (a) 16. and 17., and 71.80^A(23).

History: 1987 a. 312; 1987 a. 411 ss. 94, 97, 176, to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9, 167; 2001 a. 16, 109; 2003 a. 33, 98, 135, 176, 255, 321; 2005 a. 25, 49, 71, 74, 177, 178, 323, 361, 460, 479, 483; 2007 a. 1, 20, 96, 97.

3 **SECTION 9. 71.10 (1m) of the statutes is created to read:**

4 **71.10 (1m) TRANSACTIONS WITHOUT ECONOMIC SUBSTANCE.** (a) If any person,
5 directly or indirectly, engages in a transaction or series of transactions without
6 economic substance to create a loss or to reduce taxable income or to increase credits
7 allowed in determining Wisconsin tax, the department shall determine the amount
8 of a taxpayer's taxable income or tax so as to reflect what would have been the
9 taxpayer's taxable income or tax if not for the transaction or transactions without
10 economic substance causing the reduction in taxable income or tax.

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

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

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

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

1 transactions between the taxpayer and one or more members of the controlled group
2 has economic substance.

Insert 3 - 16

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

4 **71.22 (3g)** For purposes of ^{2 ss.} s. 71.26 (2) (a) 7. and 9. and 71.255 (2) (c), "intangible
5 expenses" include the following, to the extent that the amounts would otherwise be
6 deductible in determining net income under the Internal Revenue Code as modified
7 under s. ³ 71.26 (3):

8 (a) Expenses, losses, and costs for, related to, or directly or indirectly in
9 connection with the acquisition of, use of, maintenance or management of, ownership
10 of, sale of, exchange of, or any other disposition of, intangible property.

11 (b) Losses related to, or incurred in connection directly or indirectly with,
12 factoring transactions or discounting transactions.

13 (c) Royalty, patent, technical, and copyright fees.

14 (d) Licensing fees.

15 (e) Other similar expenses, losses, and costs.

Insert 3 - 20

16 **SECTION 11.** ^X 71.22 (3m) of the statutes is amended to read:

17 **71.22 (3m)** For purposes of s. ^{5 ss.} 71.26 (2) (a) 7. and 9. and 71.255 (2) (c), "interest
18 expenses" means interest that would otherwise be deductible under section 163 of
19 the Internal Revenue Code, as modified under s. 71.26 (3).

History: 1987 a. 312; 1987 a. 411 ss. 14, 19, 109, 112; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237, 252, 299; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33; 2005 a. 25, 49; 2007 a. 20, 226.

Insert 4 - 2

20 **SECTION 12.** ^X 71.25 (intro.) of the statutes is amended to read:

1 **71.25 Situs of income; allocation and apportionment.** (intro.) For
2 purposes of determining the situs of income under this section and s. 71.255 (2) (c):

History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299; 1999 a. 9; 2001 a. 16; 2003 a. 37; 2005 a. 25.

3 ~~SECTION 13.~~ 71.25 (5) (b) 1. of the statutes is renumbered 71.25 (5) (b).

4 ~~SECTION 14.~~ 71.25 (5) (b) 2. of the statutes is repealed.

5 ~~SECTION 15.~~ 71.25 (9) (d) of the statutes is repealed.

6 ~~SECTION 16.~~ 71.25 (9) (dj) of the statutes is created to read:

7 71.25 (9) (dj) 1. Except as provided in par. (df), gross royalties and other gross
8 receipts received for the use or license of intangible property, including patents,
9 copyrights, trademarks, trade names, service names, franchises, licenses, plans,
10 specifications, blueprints, processes, techniques, formulas, designs, layouts,
11 patterns, drawings, manuals, technical know-how, contracts, and customer lists, are
12 sales in this state if any of the following applies:

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

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

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

23 2. If the taxpayer is not within the jurisdiction, for income or franchise tax
24 purposes, in the state in which the gross royalties or other gross receipts are

1 NO 4 for corporations taxable under this subchapter and the meaning given in s.
2 71.42 (1sg) for corporations taxable under subch. VII

Insert 5 - 23

3 4 for corporations taxable under this subchapter and the meaning given in s.
4 71.42 (1t) for corporations taxable under subch. VII

Insert 6 - 15

5 NO 4 , including administrative, employee benefits, human resources, legal,
6 financial, and cash management services

Insert 6 - 18

7 NO 4 In no event and under no circumstances shall the preceding sentence be
8 construed as exclusive of any and all other factors indicative of a unitary business.

9 For purposes of this subsection, the term "unitary business" shall be broadly
10 construed, to the extent permitted by the United States Constitution.

Insert 9 - 1

11 4 (d) If 80 percent or more of a corporation's worldwide income is active foreign
12 business income, as defined in section 861 (c) (1) (B) of the Internal Revenue Code,
13 the income and apportionment factor or factors of the corporation shall not be
14 included in the combined report, but the corporation shall compute and allocate or
15 apportion its income from the unitary business separately.

Insert 9 - 6

16 NO 4 The department may require that a combined report include the income and
17 associated apportionment factor or factors of persons that are not corporations.

Insert 9 - 12A

1 ^{NO}~~FF~~ or may require the use of a different apportionment factor or factors. The
2 department may require that a combined report include or exclude the income or loss
3 and associated apportionment factor or factors of persons that are not corporations

Insert 9 -12B

4 3. The authority granted under this paragraph is in addition to, and not a
5 limitation of or dependent on, the provisions in this chapter enacted to prevent tax
6 avoidance or evasion or to clearly reflect the income of any person. Any
7 determination by the department under this paragraph is presumed correct and the
8 person challenging the determination has the burden of proving by clear and
9 convincing evidence that the determination is incorrect.

Insert 9 -17

10 ^{NO}~~FF~~ For financial organizations, as defined in ss. 71.04 (8) (a) and 71.25 (10) (a),
11 business income includes interest, dividends, and receipts from investments of any
12 kind. For purposes of this section, a financial organization shall treat the expenses
13 associated with an investment as business expenses.

Insert 10 -25

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

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

7 (c) For combined group members that are consolidated foreign operating
8 corporations, include only the income described in sub. (2) (c) 1. to 4. A combined
9 group may deduct expenses properly attributable to a consolidated foreign operating
10 corporation's income described in sub. (2) (c) 1. to 4., subject to ss. 71.30²(2) and (2m)
11 and 71.80 (1) (b) and (1m).

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

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

18 (f) Except as provided in sub. (2) (c) 3. and except if the modification under s.
19 71.26 (3) (j) applies, dividends paid by one combined group member to another shall
20 be, to the extent that the dividends are paid out of the earnings and profits of the
21 unitary business included in the combined report, whether in the current taxable
22 year or in a prior taxable year, subtracted from the income of the recipient. This
23 paragraph does not apply to dividends received from members of the unitary

1 business that were not part of the combined group during the calendar year
2 preceding the receipt of the dividends.

Insert 13 -12

3 ~~No~~ For purposes of this subsection, each member of a combined group is doing
4 business in this state if any member of the combined group is doing business in this
5 state.

Insert 13 -23

6 ~~No~~ no member of the combined group is within the jurisdiction of the destination
7 state for income or franchise tax purposes

Insert 14 -14

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

Insert 15 -25

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

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

Insert 16 -1

17 ^{NO}_{CH}, Wisconsin net business loss carry-forward,

Insert 16 -6

18 ^{NO}_{CH}, Wisconsin net business loss carry-forward,

Insert 16 -18

19 (b) A combined group member's share of a Wisconsin net business loss
 20 computed on a combined report for a taxable year beginning on or after the effective
 21 date of this paragraph... [LRB inserts date] is subject to the carry-forward period

1 and limitations provided in s. 71.26 (4), if the member is subject to tax under this
2 subchapter, or s. 71.45^Δ(4), if the member is subject to tax under subchapter VII. A
3 member may use such Wisconsin net business loss, or share it among the members
4 of the unitary business filing the combined report, as follows:

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

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

23 3. For purposes of subd. 2, the pre-apportionment net business loss
24 carry-forward for each year for which a combined group member has available
25 Wisconsin net business loss is the member's apportioned share of the Wisconsin net

1 business loss computed on the combined report for the year in which the loss was
2 generated, divided by the member's Wisconsin apportionment percentage computed
3 on that same combined report.

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

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

Insert 17 - 7

71.24

17

4 2. Filing any extension under s. 71.21 or 71.44.

Insert 17 - 10

18

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

Insert 17 - 16

of attorney

1 7. Executing waivers, closing agreements, powers of attorney, and other
2 documents as necessary or required regarding the combined report filed under sub.

3 (2) (a). Any waiver, agreement, power, or document executed by the designated agent
4 shall be considered as executed by all members of the combined group.

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

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

Insert 17 - 17

11 (c) 1. Actions contrary to those described in par. (b) are unauthorized actions
12 that do not bind the department in any manner, except as provided in subd. 2.

13 2. The department may choose to receive the benefits or assume the obligations
14 of any such unauthorized actions. The department is bound by actions contrary to
15 those described in par. (b) only if the department takes affirmative actions to
16 expressly manifest its intent to receive the benefits or assume the obligations of any
17 such actions.

18 (d) The department may relieve the designated agent from any of the duties
19 described in par. (b). Unless the department provides for such relief by rule, a
20 designated agent shall obtain written approval from the department to be relieved
21 of the duties described in par. (b).

Insert 19 - 2

1 **(10) TRANSITION.** The department shall deem timely paid the estimated tax
2 payments attributable to income includable in the combined report for installments
3 that become due during the period beginning on January 1, 2009, and ending on the
4 effective date of this subsection [LRB inserts date], provided that such estimated
5 tax payments are paid by the next installment due date that follows in sequence
6 following the effective date of this subsection ... [LRB inserts date]. However, if the
7 next installment due date that follows in sequence following the effective date of this
8 subsection ... [LRB inserts date] is less than 45 days after the effective date of this
9 subsection ... [LRB inserts date], such estimated tax payments shall be deemed
10 timely paid if paid by the next subsequent installment due date.

Insert 20 - 5

11 **SECTION 20.** 71.28 (4) (ad) 1. of the statutes is amended to read:

12 71.28 (4) (ad) 1. Except as provided in subds. 2. and 3., any corporation may
13 credit against taxes otherwise due under this chapter an amount equal to 5 percent
14 of the amount obtained by subtracting from the corporation's qualified research
15 expenses, as defined in section 41 of the Internal Revenue Code, except that
16 "qualified research expenses" includes only expenses incurred by the claimant,
17 incurred for research conducted in this state for the taxable year, except that a
18 taxpayer may elect the alternative computation under section 41 (c) (4) of the
19 Internal Revenue Code and that election applies until the department permits its
20 revocation, except as provided in par. (af), and except that "qualified research
21 expenses" does not include compensation used in computing the credit under subs.
22 (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the
23 Internal Revenue Code, except that gross receipts used in calculating the base

1 amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)
 2 (b) 1. and 2., ~~(d)~~, (df), and (dh), (dj), and (dk). Section 41 (h) of the Internal Revenue
 3 Code does not apply to the credit under this paragraph.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; s. 13.92 (2) (i).

4 **SECTION 21.** 71.28 (4) (ad) 2. of the statutes is amended to read:

5 71.28 (4) (ad) 2. For taxable years beginning after June 30, 2007, any
 6 corporation may credit against taxes otherwise due under this chapter an amount
 7 equal to 10 percent of the amount obtained by subtracting from the corporation's
 8 qualified research expenses, as defined in section 41 of the Internal Revenue Code,
 9 except that "qualified research expenses" includes only expenses incurred by the
 10 claimant for research related to designing internal combustion engines for vehicles,
 11 including expenses related to designing vehicles that are powered by such engines
 12 and improving production processes for such engines and vehicles, incurred for
 13 research conducted in this state for the taxable year, except that a taxpayer may elect
 14 the alternative computation under section 41 (c) (4) of the Internal Revenue Code
 15 and that election applies until the department permits its revocation, except as
 16 provided in par. (af), and except that "qualified research expenses" does not include
 17 compensation used in computing the credit under subs. (1dj) and (1dx), the
 18 corporation's base amount, as defined in section 41 (c) of the Internal Revenue Code,
 19 except that gross receipts used in calculating the base amount means gross receipts
 20 from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d), (dj), and~~
 21 (dk). Section 41 (h) of the Internal Revenue Code does not apply to the credit under
 22 this paragraph.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; s. 13.92 (2) (i).

23 **SECTION 22.** 71.28 (4) (ad) 3. of the statutes is amended to read:

1 71.28 (4) (ad) 3. For taxable years beginning after June 30, 2007, any
2 corporation may credit against taxes otherwise due under this chapter an amount
3 equal to 10 percent of the amount obtained by subtracting from the corporation's
4 qualified research expenses, as defined in section 41 of the Internal Revenue Code,
5 except that "qualified research expenses" includes only expenses incurred by the
6 claimant for research related to the design and manufacturing of energy efficient
7 lighting systems, building automation and control systems, or automotive batteries
8 for use in hybrid-electric vehicles, that reduce the demand for natural gas or
9 electricity or improve the efficiency of its use, incurred for research conducted in this
10 state for the taxable year, except that a taxpayer may elect the alternative
11 computation under section 41 (c) (4) of the Internal Revenue Code and that election
12 applies until the department permits its revocation, except as provided in par. (af),
13 and except that "qualified research expenses" does not include compensation used
14 in computing the credit under subs. (1dj) and (1dx), the corporation's base amount,
15 as defined in section 41 (c) of the Internal Revenue Code, except that gross receipts
16 used in calculating the base amount means gross receipts from sales attributable to
17 Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d), (dj), and (dk)~~. Section 41 (h) of the
18 Internal Revenue Code does not apply to the credit under this paragraph.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; s. 13.92 (2) (i).

19 **SECTION 23.** 71.28 (4) (am) 1. of the statutes is amended to read:

20 71.28 (4) (am) 1. In addition to the credit under par. (ad), any corporation may
21 credit against taxes otherwise due under this chapter an amount equal to 5 percent
22 of the amount obtained by subtracting from the corporation's qualified research
23 expenses, as defined in section 41 of the Internal Revenue Code, except that
24 "qualified research expenses" include only expenses incurred by the claimant in a

1 development zone under subch. VI of ch. 560, except that a taxpayer may elect the
 2 alternative computation under section 41 (c) (4) of the Internal Revenue Code and
 3 that election applies until the department permits its revocation and except that
 4 “qualified research expenses” do not include compensation used in computing the
 5 credit under sub. (1dj) nor research expenses incurred before the claimant is certified
 6 for tax benefits under s. 560.765 (3), the corporation’s base amount, as defined in
 7 section 41 (c) of the Internal Revenue Code, in a development zone, except that gross
 8 receipts used in calculating the base amount means gross receipts from sales
 9 attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2., ~~(d)~~, (df), and (dh), (dj), and
 10 (dk) and research expenses used in calculating the base amount include research
 11 expenses incurred before the claimant is certified for tax benefits under s. 560.765
 12 (3), in a development zone, if the claimant submits with the claimant’s return a copy
 13 of the claimant’s certification for tax benefits under s. 560.765 (3) and a statement
 14 from the department of commerce verifying the claimant’s qualified research
 15 expenses for research conducted exclusively in a development zone. The rules under
 16 s. 73.03 (35) apply to the credit under this subdivision. The rules under sub. (1di)
 17 (f) and (g) as they apply to the credit under that subsection apply to claims under this
 18 subdivision. Section 41 (h) of the Internal Revenue Code does not apply to the credit
 19 under this subdivision.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; s. 13.92 (2) (i).

20 **SECTION 24.** 71.30 (2) of the statutes is amended to read:

21 **71.30 (2) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE**
 22 **BUSINESSES.** In any case of 2 or more organizations, trades or businesses (whether or
 23 not incorporated, whether or not organized in the United States and, whether or not
 24 affiliated, and whether or not unitary) owned or controlled directly or indirectly by

1 the same interests, the secretary or his or her delegate may distribute, apportion or
2 allocate gross income, deductions, credits or allowances between or among such
3 organizations, trades or businesses, if he or she determines that such distribution,
4 apportionment or allocation is necessary in order to prevent evasion of taxes or
5 clearly to reflect the income of any of such organizations, trades or businesses. The
6 authority granted under this subsection is in addition to, and not a limitation of or
7 dependent on, the provisions of ss. 71.05 (6) (a) 24. and (b) 45., 71.26 (2) (a) 7. and 8.,
8 71.34 (1k) (j) and (k), 71.45 (2) (a) 16. and 17., and 71.80 (23).

History: 1987 a. 312; 1987 a. 411 ss. 144, 145, 182 to 185; 1989 a. 31, 56; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33, 99, 135, 255; 2005 a. 25, 74, 361, 479, 483; 2007 a. 20, 226.

9 **SECTION 25.** 71.30 (2m) of the statutes is created to read:

10 **71.30 (2m) TRANSACTIONS WITHOUT ECONOMIC SUBSTANCE.** (a) If any person,
11 directly or indirectly, engages in a transaction or series of transactions without
12 economic substance to create a loss or to reduce taxable income or to increase credits
13 allowed in determining Wisconsin tax, the department shall determine the amount
14 of a taxpayer's taxable income or tax so as to reflect what would have been the
15 taxpayer's taxable income or tax if not for the transaction or transactions without
16 economic substance causing the reduction in taxable income or tax.

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

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

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

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

7 **SECTION 26.** 71.34 (1c) of the statutes is created to read:

8 71.34 (1c) For purposes of sub. (1k) (j) and (L), "intangible expenses" include
 9 the following, to the extent that the amounts would otherwise be deductible in
 10 computing Wisconsin adjusted gross income:

11 (a) Expenses, losses, and costs for, related to, or directly or indirectly in
 12 connection with the acquisition of, use of, maintenance or management of, ownership
 13 of, sale of, exchange of, or any other disposition of, intangible property.

14 (b) Losses related to, or incurred in connection directly or indirectly with,
 15 factoring transactions or discounting transactions.

16 (c) Royalty, patent, technical, and copyright fees.

17 (d) Licensing fees.

18 (e) Other similar expenses, losses, and costs.

Insert 20 - 16

19 ^{NO} would otherwise be deductible in computing Wisconsin adjusted gross income

Insert 21 - 14

20 **SECTION 27.** 71.42 (1sg) of the statutes is created to read:

21 71.42 (1sg) For purposes of ^{e 550} § 71.45 (2) (a) 16. and 18. and ^J § 71.255 (2) (c),
 22 "intangible expenses" include the following, to the extent that the amounts would

1 otherwise be deductible in computing net income under the Internal Revenue Code,
2 as adjusted under s. 71.45 (2):

3 (a) Expenses, losses, and costs for, related to, or directly or indirectly in
4 connection with the acquisition of, use of, maintenance or management of, ownership
5 of, sale of, exchange of, or any other disposition of, intangible property.

6 (b) Losses related to, or incurred in connection directly or indirectly with,
7 factoring transactions or discounting transactions.

8 (c) Royalty, patent, technical, and copyright fees.

9 (d) Licensing fees.

10 (e) Other similar expenses, losses, and costs.

Insert 21 - 18

11 **SECTION 28.** ~~71.42~~ (1t) of the statutes is amended to read:

12 **71.42 (1t)** For purposes of s. ~~71.45~~^{SSO} (2) (a) 16. and 18. and 71.255 (2) (c), "interest
13 expenses" means interest that would otherwise be deductible under section 163 of
14 the Internal Revenue Code, as adjusted under s. 71.45 (2).

History: 1987 a. 312; 1987 a. 411 ss. 5, 148, 149; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33; 2005 a. 25, 49; 2007 a. 20, 226.

Insert 23 - 12

15 **SECTION 29.** ~~71.47~~ (4) (ad) 1. of the statutes is amended to read:

16 **71.47 (4) (ad) 1.** Except as provided in subds. 2. and 3., any corporation may
17 credit against taxes otherwise due under this chapter an amount equal to 5 percent
18 of the amount obtained by subtracting from the corporation's qualified research
19 expenses, as defined in section 41 of the Internal Revenue Code, except that
20 "qualified research expenses" includes only expenses incurred by the claimant,
21 incurred for research conducted in this state for the taxable year, except that a
22 taxpayer may elect the alternative computation under section 41 (c) (4) of the

1 Internal Revenue Code and that election applies until the department permits its
 2 revocation, except as provided in par. (af), and except that “qualified research
 3 expenses” does not include compensation used in computing the credit under subs.
 4 (1dj) and (1dx), the corporation’s base amount, as defined in section 41 (c) of the
 5 Internal Revenue Code, except that gross receipts used in calculating the base
 6 amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)
 7 (b) 1. and 2., ~~(d)~~, (df), and (dh), (dj), and (dk). Section 41 (h) of the Internal Revenue
 8 Code does not apply to the credit under this paragraph.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; s. 13.92 (2) (i).

9 **SECTION 30.** 71.47 (4) (ad) 2. of the statutes is amended to read:

10 71.47 (4) (ad) 2. For taxable years beginning after June 30, 2007, any
 11 corporation may credit against taxes otherwise due under this chapter an amount
 12 equal to 10 percent of the amount obtained by subtracting from the corporation’s
 13 qualified research expenses, as defined in section 41 of the Internal Revenue Code,
 14 except that “qualified research expenses” includes only expenses incurred by the
 15 claimant for research related to designing internal combustion engines for vehicles,
 16 including expenses related to designing vehicles that are powered by such engines
 17 and improving production processes for such engines and vehicles, incurred for
 18 research conducted in this state for the taxable year, except that a taxpayer may elect
 19 the alternative computation under section 41 (c) (4) of the Internal Revenue Code
 20 and that election applies until the department permits its revocation, except as
 21 provided in par. (af), and except that “qualified research expenses” does not include
 22 compensation used in computing the credit under subs. (1dj) and (1dx), the
 23 corporation’s base amount, as defined in section 41 (c) of the Internal Revenue Code,
 24 except that gross receipts used in calculating the base amount means gross receipts

1 from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d), (dj), and~~
2 (dk). Section 41 (h) of the Internal Revenue Code does not apply to the credit under
3 this paragraph.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; s. 13.92 (2) (i).

4 **SECTION 31. 71.47 (4) (ad) 3.** of the statutes is amended to read:

5 71.47 (4) (ad) 3. For taxable years beginning after June 30, 2007, any
6 corporation may credit against taxes otherwise due under this chapter an amount
7 equal to 10 percent of the amount obtained by subtracting from the corporation's
8 qualified research expenses, as defined in section 41 of the Internal Revenue Code,
9 except that "qualified research expenses" includes only expenses incurred by the
10 claimant for research related to the design and manufacturing of energy efficient
11 lighting systems, building automation and control systems, or automotive batteries
12 for use in hybrid-electric vehicles, that reduce the demand for natural gas or
13 electricity or improve the efficiency of its use, incurred for research conducted in this
14 state for the taxable year, except that a taxpayer may elect the alternative
15 computation under section 41 (c) (4) of the Internal Revenue Code and that election
16 applies until the department permits its revocation, except as provided in par. (af),
17 and except that "qualified research expenses" does not include compensation used
18 in computing the credit under subs. (1dj) and (1dx), the corporation's base amount,
19 as defined in section 41 (c) of the Internal Revenue Code, except that gross receipts
20 used in calculating the base amount means gross receipts from sales attributable to
21 Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d), (dj), and (dk)~~. Section 41 (h) of the
22 Internal Revenue Code does not apply to the credit under this paragraph.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; s. 13.92 (2) (i).

23 **SECTION 32. 71.47 (4) (am)** of the statutes is amended to read:

1 71.47 (4) (am) *Development zone additional research credit.* In addition to the
2 credit under par. (ad), any corporation may credit against taxes otherwise due under
3 this chapter an amount equal to 5 percent of the amount obtained by subtracting
4 from the corporation's qualified research expenses, as defined in section 41 of the
5 Internal Revenue Code, except that "qualified research expenses" include only
6 expenses incurred by the claimant in a development zone under subch. VI of ch. 560,
7 except that a taxpayer may elect the alternative computation under section 41 (c) (4)
8 of the Internal Revenue Code and that election applies until the department permits
9 its revocation and except that "qualified research expenses" do not include
10 compensation used in computing the credit under sub. (1dj) nor research expenses
11 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
12 corporation's base amount, as defined in section 41 (c) of the Internal Revenue Code,
13 in a development zone, except that gross receipts used in calculating the base amount
14 means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and
15 2., ~~(d)~~, ~~(df)~~, ~~and (dh)~~, (dj), and (dk) and research expenses used in calculating the base
16 amount include research expenses incurred before the claimant is certified for tax
17 benefits under s. 560.765 (3), in a development zone, if the claimant submits with the
18 claimant's return a copy of the claimant's certification for tax benefits under s.
19 560.765 (3) and a statement from the department of commerce verifying the
20 claimant's qualified research expenses for research conducted exclusively in a
21 development zone. The rules under s. 73.03 (35) apply to the credit under this
22 paragraph. The rules under sub. (1di) (f) and (g) as they apply to the credit under
23 that subsection apply to claims under this paragraph. Section 41 (h) of the Internal
24 Revenue Code does not apply to the credit under this paragraph. No credit may be
25 claimed under this paragraph for taxable years that begin on January 1, 1998, or

1 thereafter. Credits under this paragraph for taxable years that begin before January
 2 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or
 3 thereafter.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56/100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; s. 13.92 (2) (i).

4 **SECTION 33.** 71.80 (1) (b) of the statutes is amended to read:

5 71.80 (1) (b) In any case of 2 or more organizations, trades or businesses
 6 (whether or not incorporated, whether or not organized in the United States and,
 7 whether or not affiliated, and whether or not unitary) owned or controlled directly
 8 or indirectly by the same interests, the secretary or the secretary's delegate may
 9 distribute, apportion or allocate gross income, deductions, credits or allowances
 10 between or among such organizations, trades or businesses, if the secretary
 11 determines that such distribution, apportionment or allocation is necessary in order
 12 to prevent evasion of taxes or clearly to reflect the income of any of such
 13 organizations, trades or businesses. The authority granted under this subsection is
 14 in addition to, and not a limitation of or dependent on, the provisions of sub. (23) and
 15 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
 16 (2) (a) 16. and 17.

History: 1987 a. 312; 1987 a. 411 ss. 70, 189 to 192; 1989 a. 31; 1991 a. 39, 301; 1993 a. 205; 1995 a. 27, 404, 418; 1997 a. 27, 39, 291; 2001 a. 44, 102; 2003 a. 33; 2005 a. 49; 2007 a. 20, 226.

17 **SECTION 34.** 71.80 (1m) of the statutes is created to read:

18 71.80 (1m) TRANSACTIONS WITHOUT ECONOMIC SUBSTANCE. (a) If any person,
 19 directly or indirectly, engages in a transaction or series of transactions without
 20 economic substance to create a loss or to reduce taxable income or to increase credits
 21 allowed in determining Wisconsin tax, the department shall determine the amount
 22 of a taxpayer's taxable income or tax so as to reflect what would have been the

1 taxpayer's taxable income or tax if not for the transaction or transactions without
2 economic substance causing the reduction in taxable income or tax.

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

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

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

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1215/P2dn

JK:bjk:rs

L stays

Date

Chad (and DOR):

1. Please note that I did not, generally, include any of the suggested language meant to explain the purpose and intent of the statute because the inclusion of such language is inconsistent with LRB policy and practice. If DOR believes that the intent of the statute is not clear then it should provide better language to implement the statutory provisions.

2. I did not include the language that indicated that the days in "the calendar year preceding" are calculated consecutively because the problem that the language is trying to address is not clearly specified.

3. The suggested language related to defining "financial organizations" under ss. 71.04 (8) (a) and 71.25 (10) (a) includes "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". I did not draft the language as suggested because it seems that "devoted" to holding investments, having as a "significant purpose" to hold investments, or "primarily functions" to hold investments is just 3 ways of saying the same thing. I think holding investments as a subsidiary's "significant purpose" is a broad enough concept to also capture subsidiaries that are devoted to, or function primarily for, holding investments. *3 three*

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1 71.80 (1m) TRANSACTIONS WITHOUT ECONOMIC SUBSTANCE. (a) If any person,
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14 substantial nontax purpose. A transaction has a substantial nontax purpose if it has
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16 (c) With respect to transactions between members of a controlled group as
17 defined in section 267 (f) (1) of the Internal Revenue Code, such transactions shall
18 be presumed to lack economic substance and the taxpayer shall bear the burden of
19 establishing by clear and convincing evidence that a transaction or a series of
20 transactions between the taxpayer and one or more members of the controlled group
21 has economic substance.

22 **SECTION 9343. Initial applicability; Revenue.** 71.04 (7) (d), (dj), and (dk),

23 (1) COMBINED REPORTING. The treatment of sections 71.01 (5n), (5p), and (7v),
24 71.05 (6) (a) 24. and (b) 46., 71.07 (2dr) (a), 71.10 (1) and (1m), 71.22 (3g), (3h), (3m),
25 and (6d), 71.255, 71.25 (intro.), (5) (b) 1. and 2., (9) (d), (dj), and (dk), 71.26 (2) (a) 7.

SECTION 9343

l.

1 and 9. and (3) (x), 71.28 (4) (ad) 1., 2., and 3. and (am) 71.30 (2) and (2m), 71.34 (1c),
 2 (1d), (1h), and (1k) (j) and (L), 71.42 (1sg), (1sh), (1t), and (3c), 71.43 (2), 71.45 (2) (a)
 3 16. and 18., 71.47 (4) (ad) 1., 2., and 3. and (am), and 71.80 (1) (b) and (1m) of the
 4 statutes, the renumbering of ^{sections 71.04 (8) (a) and} ~~section~~ 71.25 (10) (a) of the statutes, and the creation
 5 of ^{sections 71.04 (8) (a) 2. and} ~~section~~ 71.25 (10) (a) 2. of the statutes first apply to taxable years beginning on
 6 January 1 of the year in which this subsection takes effect, except that if this
 7 subsection takes effect after April 1 this act first applies to taxable years beginning
 8 on January 1 of the year following the year in which this subsection takes effect.

(END)