



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1215/P2

JK:bjk:ph

stay RMR

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

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SAV
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Inserts

- do not join

1 AN ACT *to repeal* 71.04 (7) (d), 71.25 (5) (b) 2. and 71.25 (9) (d); *to renumber*
2 71.04 (8) (a), 71.25 (5) (b) 1. and 71.25 (10) (a); *to amend* 71.05 (6) (a) 24., 71.05
3 (6) (b) 46., 71.07 (2dr) (a), 71.10 (1), 71.22 (3m), 71.25 (intro.), 71.26 (2) (a) 7.,
4 71.26 (2) (a) 9., 71.26 (3) (x), 71.28 (4) (ad) 1., 71.28 (4) (ad) 2., 71.28 (4) (ad) 3.,
5 71.28 (4) (am) 1., 71.30 (2), 71.34 (1k) (j), 71.34 (1k) (L), 71.42 (1t), 71.43 (2),
6 71.45 (2) (a) 16., 71.45 (2) (a) 18., 71.47 (4) (ad) 1., 71.47 (4) (ad) 2., 71.47 (4) (ad)
7 3., 71.47 (4) (am) and 71.80 (1) (b); and *to create* 71.01 (5n), 71.01 (5p), 71.01
8 (7v), 71.04 (7) (dj), 71.04 (7) (dk), 71.04 (8) (a) 2., 71.10 (1m), 71.22 (3g), 71.22
9 (3h), 71.22 (6d), 71.25 (9) (dj), 71.25 (9) (dk), 71.25 (10) (a) 2., 71.255, 71.30 (2m),

1 71.34 (1c), 71.34 (1d), 71.34 (1h), 71.42 (1sg), 71.42 (1sh), 71.42 (3c) and 71.80
2 (1m) of the statutes; **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:

- INSECT
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- 3 **SECTION 1.** 71.01 (5n) of the statutes is created to read:
4 71.01 (5n) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "intangible expenses"
5 include the following, to the extent that the amounts would otherwise be deductible
6 in computing Wisconsin adjusted gross income:
7 (a) 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.
10 (b) Losses related to, or incurred in connection directly or indirectly with,
11 factoring transactions or discounting transactions.
12 (c) Royalty, patent, technical, and copyright fees.
13 (d) Licensing fees.
14 (e) Other similar expenses, losses, and costs.
15 **SECTION 2.** 71.01 (5p) of the statutes is created to read:

1 71.01 (5p) "Intangible property" includes stocks, bonds, financial instruments,
2 patents, patent applications, trade names, trademarks, service marks, copyrights,
3 mask works, trade secrets, and similar types of intangible assets.

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

5 71.01 (7v) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "management fees"
6 include expenses and costs paid, not including interest expenses, pertaining to
7 accounts receivable and payable, employee benefit plans, insurance, legal matters,
8 payroll, data processing, purchasing, tax, financial matters and securities,
9 accounting, reporting and compliance, or similar activities, only to the extent that
10 the amounts would otherwise be deductible in computing Wisconsin adjusted gross
11 income.

12 **SECTION 4.** 71.04 (7) (d) of the statutes is repealed.

13 **SECTION 5.** 71.04 (7) (dj) of the statutes is created to read:

14 71.04 (7) (dj) 1. Except as provided in par. (df), gross royalties and other gross
15 receipts received for the use or license of intangible property, including patents,
16 copyrights, trademarks, trade names, service names, franchises, licenses, plans,
17 specifications, blueprints, processes, techniques, formulas, designs, layouts,
18 patterns, drawings, manuals, technical know-how, contracts, and customer lists, are
19 sales in this state if any of the following applies:

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

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

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

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

10 **SECTION 6.** 71.04 (7) (dk) of the statutes is created to read:

11 71.04 (7) (dk) 1. Sales of intangible property, excluding securities, are sales in
12 this state if any of the following applies:

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

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

20 c. The purchaser of the intangible property has its commercial domicile in this
21 state.

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

or if the subsidiary primarily functions to hold investments
or if the subsidiary primarily functions to hold investments

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

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

3 71.04 (8) (a) 2. As used in this section, "financial organization" includes any
4 subsidiary of an entity described in subd. 1., if a significant purpose for the
5 subsidiary is to hold investments.

6 SECTION 9. 71.05 (6) (a) 24. of the statutes is amended to read:

7 71.05 (6) (a) 24. The amount deducted or excluded under the Internal Revenue
8 Code for interest expenses and, rental expenses, intangible expenses, and
9 management fees that are directly or indirectly paid, accrued, or incurred to, or in
10 connection directly or indirectly with one or more direct or indirect transactions with,
11 one or more related entities.

12 SECTION 10. 71.05 (6) (b) 46. of the statutes is amended to read:

13 71.05 (6) (b) 46. An amount added, pursuant to par. (a) 24. or s. 71.26 (2) (a) 7.,
14 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that paid
15 interest expenses ~~or~~, rental expenses, intangible expenses, or management fees to
16 the individual or fiduciary, to the extent that the related entity could not offset such
17 amount with the deduction allowable under subd. 45. or s. 71.26 (2) (a) 8., 71.34 (1k)
18 (k), or 71.45 (2) (a) 17.

19 SECTION 11. 71.07 (2dr) (a) of the statutes is amended to read:

20 71.07 (2dr) (a) *Credit*. Any person may credit against taxes otherwise due
21 under this chapter an amount equal to 5% of the amount obtained by subtracting
22 from the person's qualified research expenses, as defined in section 41 of the internal
23 revenue code, except that "qualified research expenses" include only expenses
24 incurred by the claimant in a development zone under subch. VI of ch. 560, except
25 that a taxpayer may elect the alternative computation under section 41 (c) (4) of the

10 and 20

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1 Internal Revenue Code and that election applies until the department permits its
 2 revocation and except that "qualified research expenses" do not include
 3 compensation used in computing the credit under sub. (2dj) nor research expenses
 4 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
 5 person's base amount, as defined in section 41 (c) of the internal revenue code, in a
 6 development zone, except that gross receipts used in calculating the base amount
 7 means gross receipts from sales attributable to Wisconsin under s. 71.04 (7) (b) 1. and

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

18 **SECTION 12.** 71.10 (1) of the statutes is amended to read:

19 71.10 (1) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE
 20 BUSINESSES. In any case of 2 or more organizations, trades or businesses (whether or
 21 not incorporated, whether or not organized in the United States and, whether or not
 22 affiliated, and whether or not unitary) owned or controlled directly or indirectly by
 23 the same interests, the secretary or the secretary's delegate may distribute,
 24 apportion or allocate gross income, deductions, credits or allowances between or
 25 among such organizations, trades or businesses, if the secretary determines that

1 such distribution, apportionment or allocation is necessary in order to prevent
2 evasion of taxes or clearly to reflect the income of any of such organizations, trades
3 or businesses. The authority granted under this subsection is in addition to, and not
4 a limitation of or dependent on, the provisions of ss. 71.05 (6) (a) 24. and (b) 45., 71.26
5 (2) (a) 7. and 8., 71.34 (1k) (j) and (k), 71.45 (2) (a) 16. and 17., and 71.80 (23).

6 **SECTION 13.** 71.10 (1m) of the statutes is created to read:

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

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

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

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

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

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

(d) 10

3 SECTION 14. 71.22 (3g) of the statutes is created to read:

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

16 SECTION 15. 71.22 (3h) of the statutes is created to read:

17 71.22 (3h) "Intangible property" includes stocks, bonds, financial instruments,
18 patents, patent applications, trade names, trademarks, service marks, copyrights,
19 mask works, trade secrets, and similar types of intangible assets.

(d) 10

20 SECTION 16. 71.22 (3m) of the statutes is amended to read:

21 71.22 (3m) For purposes of s. ss. 71.26 (2) (a) 7. and 9. and 71.255 (2) (c),
22 "interest expenses" means interest that would otherwise be deductible under section
23 163 of the Internal Revenue Code, as modified under s. 71.26 (3).

24 SECTION 17. 71.22 (6d) of the statutes is created to read:

1 71.22 **(6d)** For purposes of s. 71.26 (2) (a) 7. and 9., “management fees” include
 2 expenses and costs paid, not including interest expenses, pertaining to accounts
 3 receivable and payable, employee benefit plans, insurance, legal matters, payroll,
 4 data processing, purchasing, tax, financial matters and securities, accounting,
 5 reporting and compliance, or similar activities, only to the extent that the amounts
 6 would otherwise be deductible in determining net income under the Internal
 7 Revenue Code as modified under s. 71.26 (3).

8 **SECTION 18.** 71.25 (intro.) of the statutes is amended to read:

9 **71.25 Situs of income; allocation and apportionment.** (intro.) For
 10 purposes of determining the situs of income under this section and s. 71.255 (2) (c).

11 **SECTION 19.** 71.25 (5) (b) 1. of the statutes is renumbered 71.25 (5) (b).

12 **SECTION 20.** 71.25 (5) (b) 2. of the statutes is repealed.

13 **SECTION 21.** 71.25 (9) (d) of the statutes is repealed.

14 **SECTION 22.** 71.25 (9) (dj) of the statutes is created to read:

15 71.25 **(9)** (dj) 1. Except as provided in par. (df), gross royalties and other gross
 16 receipts received for the use or license of intangible property, including patents,
 17 copyrights, trademarks, trade names, service names, franchises, licenses, plans,
 18 specifications, blueprints, processes, techniques, formulas, designs, layouts,
 19 patterns, drawings, manuals, technical know-how, contracts, and customer lists, are
 20 sales in this state if any of the following applies:

21 a. The purchaser or licensee uses the intangible property in the operation of a
 22 trade or business at a location in this state. If the purchaser or licensee uses the
 23 intangible property in the operation of a trade or business in more than one state,
 24 the gross royalties and other gross receipts from the use of the intangible property

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1 shall be divided between those states having jurisdiction to impose an income tax on
2 the taxpayer in proportion to the use of the intangible property in those states.

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

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

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

12 **SECTION 23.** 71.25 (9) (dk) of the statutes is created to read:

13 71.25 (9) (dk) 1. Sales of intangible property, excluding securities, are sales in
14 this state if any of the following applies:

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

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

22 c. The purchaser of the intangible property has its commercial domicile in this
23 state.

24 2. If the taxpayer is not within the jurisdiction, for income or franchise tax
25 purposes, in the state in which the sales of intangible property are apportioned under

or if the subsidiary primarily functions to hold investments
or if the subsidiary primarily functions to hold investments

1 this paragraph, but the taxpayer's commercial domicile is in this state, 50 percent
2 of those gross receipts shall be included in the numerator of the sales factor.

3 SECTION 24. 71.25 (10) (a) of the statutes is renumbered 71.25 (10) (a) 1.

4 SECTION 25. 71.25 (10) (a) 2. of the statutes is created to read:

5 71.25 (10) (a) 2. As used in this section, "financial organization" includes any
6 subsidiary of an entity described in subd. 1., if a significant purpose for the
7 subsidiary is to hold investments.

8 SECTION 26. 71.255 of the statutes is created to read:

9 **71.255 Combined Reporting.** (1) DEFINITIONS. In this section:

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

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

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

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

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

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

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

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

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

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

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

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

21 "Corporation" does not include a tax-option corporation.

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

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

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

(g) Doing business in this state has the meaning given in s. 71.022 (1n)

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

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

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

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

14 (m) "Unitary business" means a single economic enterprise that is made up
15 either of separate parts of a single business entity or of a commonly controlled group
16 of business entities that are sufficiently interdependent, integrated, and
17 interrelated through their activities so as to provide a synergy and mutual benefit
18 that produces a sharing or exchange of value among them and a significant flow of
19 value to the separate parts. Two or more business entities are presumed to be a
20 unitary business if the businesses have unity of ownership, operation, and use as
21 indicated by a centralized management or a centralized executive force; centralized
22 purchasing, advertising, or accounting; intercorporate sales or leases; intercorporate
23 services, including administrative, employee benefits, human resources, legal,
24 financial, and cash management services; intercorporate debts; intercorporate use
25 of proprietary materials; interlocking directorates; or interlocking corporate officers.

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1 In no event and under no circumstances shall the preceding sentence be construed
 2 as exclusive of any and all other factors indicative of a unitary business. For
 3 purposes of this section, the term "unitary business" shall be broadly construed, to
 4 the extent permitted by the U.S. Constitution. The members of a combined group
 5 shall be jointly and severally liable for costs, penalties, interests, and taxes
 6 associated with the combined report. Any business conducted by a pass-through
 7 entity that is owned directly or indirectly by a corporation shall be treated as
 8 conducted by the corporation, to the extent of the corporation's distributive share of
 9 the pass-through entity's income, regardless of the percentage of the corporation's
 10 ownership interest. A business conducted directly or indirectly by one corporation
 11 is unitary with that portion of a business conducted by another corporation through
 12 its direct or indirect interest in a pass-through entity if there is a synergy and
 13 exchange and flow of value between the 2 parts of the business and the 2 corporations
 14 are members of the same commonly controlled group.

15 (2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) A corporation, not
 16 including a corporation of which all its income is exempt from taxation under s. 71.26
 17 (1), engaged in a unitary business with one or more other corporations shall report
 18 its share of income from that unitary business in the amount determined by a
 19 combined report filed by a designated agent of the unitary business, as determined
 20 under sub. (7). The combined report shall include the income, determined under sub.
 21 (3), and apportionment factor or factors determined under sub. (5), of every
 22 corporation engaged in the unitary business, except as provided in pars. (c) and (d).

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

(b) to (f)

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

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

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

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

24 3. Dividends paid or accrued by a real estate investment trust to the
25 consolidated foreign operating corporation, if the real estate investment trust is not

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1 a qualified real estate investment trust as defined in s. 71.22 (9ad) and the dividend
2 income is from sources within the United States under sections 861 to 865 of the
3 Internal Revenue Code.

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

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

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

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13 (e) 1. The department may require that a combined report include the income
14 and associated apportionment factor or factors of any person who is not included in
15 a combined group under par. (a) or (b) *this subsection* but who is a member of a unitary business, *otherwise*
16 in order to reflect proper apportionment of income of the entire unitary business. The
17 department may require that a combined report include the income and associated
18 apportionment factor or factors of persons that are not corporations.

19 2. If the department determines that the reported income or loss of a member
20 of a combined group engaged in a unitary business with any person not included in
21 the combined group under par. (a) or (b) represents an avoidance or evasion of tax
22 by the the person or the combined group member, the department may require all or
23 any part of the income *or loss* and associated apportionment factor or factors of the person
24 be included in the combined report for the unitary business or may require the use
25 of a different apportionment factor or factors. The department may require that a

(e) Except for the amounts in par (d), a consolidated foreign operating corporation shall compute and allocate or apportion its income from the unitary business separately.

1 combined report include or exclude the income or loss and associated apportionment
2 factor or factors of persons that are not corporations.

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

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

11 (a) Its share of any business income apportionable to this state of each of the
12 combined groups of which it is a member, as determined under subs. (4) and (5). For
13 financial organizations, as defined in ss. 71.04 (8) (a) and 71.25 (10) (a), business
14 income includes interest, dividends, and receipts from investments of any kind. For
15 purposes of this section, a financial organization shall treat the expenses associated
16 with an investment as business expenses.

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

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

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

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

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 the sum of the income of each member of the combined group as
10 determined under the Internal Revenue Code, as modified under s. 71.26 or 71.45,
11 and except as provided under pars. (b) to (j). If a unitary business includes income
12 from a pass-through entity, the pass-through entity income to be included in the
13 total income of the combined group shall be the member of the combined group's
14 direct and indirect distributive share of the pass-through entity's unitary business
15 income.

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

23 2. Add any apportionable expense or loss of a distinct business activity
24 conducted within and outside the state wholly by the member, expense or loss from
25 a business conducted wholly by the member entirely within this state, the member's

1 nonbusiness expense or loss, its loss allocated or apportioned in an earlier year
2 required to be taken into account as state source loss during the taxable year, and
3 its net business loss carry-forward, except as provided in par. (e).

4 (c) For combined group members that are consolidated foreign operating
5 corporations, include only the income described in sub. (2) (c) 1, to 4. A combined
6 group may deduct expenses properly attributable to a consolidated foreign operating
7 corporation's income described in sub. (2) (c) 1 to 4., subject to ss. 71.30 (2) and (2m)
8 and 71.80 (1) (b) and (1m). (d) 20

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

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

15 (f) Except as provided in sub. (2) (c) 3. and except if the modification under s.
16 71.26 (3) (j) applies, dividends paid by one combined group member to another shall
17 be, to the extent that the dividends are paid out of the earnings and profits of the
18 unitary business included in the combined report, whether in the current taxable
19 year or in a prior taxable year, subtracted from the income of the recipient. This
20 paragraph does not apply to dividends received from members of the unitary
21 business that were not part of the combined group during the calendar year
22 preceding the receipt of the dividends.

23 (g) Except as otherwise provided by rule, business income or loss from an
24 intercompany transaction between members of the same combined group shall be
25 deferred as provided under U.S. Treasury Regulation 1.1502-13. Upon the

1 occurrence of any of the following events, deferred business income or loss resulting
2 from an intercompany transaction between members of a combined group shall be
3 included in the income of the seller and shall be apportioned as business income or
4 loss recognized immediately before the event:

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

7 2. The object of the deferred intercompany transaction is resold by the buyer
8 to an entity that is a member of the combined group for use outside the unitary
9 business in which the buyer and seller are engaged.

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

13 4. The buyer and seller are no longer members of the same combined group,
14 regardless of whether the members are in the same unitary business.

15 (h) A charitable expense incurred by a member of a combined group shall, to
16 the extent allowable as a deduction under section 170 of the Internal Revenue Code,
17 be subtracted first from the business income of the combined group, subject to the
18 income limitations of that section as applied to the entire business income of the
19 combined group, and any remaining amount shall then be treated as a nonbusiness
20 expense allocable to the member that incurred the expense, subject to the income
21 limitations of that section applied to the nonbusiness income of that specific member.
22 Any charitable deduction disallowed under this paragraph, but allowed as a
23 carryover deduction in a subsequent year, shall be treated as originally incurred in
24 the subsequent year by the same member and this paragraph shall apply in the
25 subsequent year in determining the allowable deduction in that year.

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

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

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

18 3. Any state source income or loss, if the loss is not subject to the limitations
19 of section 1211 of the Internal Revenue Code, of a member that results from the
20 application of subds. 1. and 2. shall then be applied to all other state source income
21 or loss of that member.

22 4. Any state source loss of a member that is subject to the limitations of section
23 1211 of the Internal Revenue Code shall be carried forward or carried back by that
24 member and shall be treated as state source short-term capital loss incurred by that
25 member for the year for which the carry-forward or carry-back applies.

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

5 (5) MEMBER'S SHARE OF BUSINESS INCOME OF THE COMBINED GROUP. (a) For
6 purposes of this subsection, each member of a combined group is doing business in
7 this state if any member of the combined group is doing business in this state. Except
8 as provided in par. (b), the member's share of the business income apportionable to
9 this state of each combined group of which it is a member shall be the product of the
10 business income of the combined group as determined under sub. (4) and the

11 member's modified sales factor, determined as follows:

12 1. For a member that is subject to apportionment under s. 71.25 (9), the
13 numerator of the modified sales factor includes the member's sales associated with
14 the combined group's unitary business in this state. Sales under s. 71.25 (9) (b) 2m.
15 and 3. and (c) shall be included in the numerator of the modified sales factor if no
16 member of the combined group is within the jurisdiction of the destination state for
17 income or franchise tax purposes.

18 2. For a member that is subject to apportionment using a receipts factor under
19 the department's rules pursuant to s. 71.25 (10), the numerator of the modified sales
20 factor includes the member's Wisconsin receipts associated with the combined
21 group's unitary business in this state, as provided by such rules.

22 3. For a member that is subject to apportionment under s. 71.45 (3), the
23 numerator of the modified sales factor includes the member's premiums that are
24 associated with the combined group's unitary business in this state.

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1 4. The denominator of the modified sales factor shall include the denominator
2 of the sales factor for each combined group member described in subd. 1., the
3 denominator of the receipts factor for each combined group member described in
4 subd. 2., and the denominator of the premiums factor for each combined group
5 member described in subd. 3.

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

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

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

22 8. For purposes of determining the numerator of the modified sales factor or
23 any apportionment factor or factors determined under par. (b), a taxpayer is
24 considered to be within the jurisdiction for income or franchise tax purposes of any

1 state in which any member of its combined group is within the jurisdiction for income
2 or franchise tax purposes.

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

19 **(6) CREDITS, NET BUSINESS LOSSES, AND POST-APPORTIONMENT DEDUCTIONS.** (a)
20 Except as provided in par. (b), no tax credit, Wisconsin net business loss
21 carry-forward, or other post-apportionment deduction earned by one member of the
22 combined group, but not fully used by or allowed to that member, may be used in
23 whole or in part by another member of the combined group or applied in whole or in
24 part against the total income of the combined group. A member of a combined group
25 may use a carry-forward of a credit, Wisconsin net business loss carry-forward, or

1 other post-apportionment deduction otherwise allowable under s. 71.26 or 71.45,
2 that was incurred by that same member in a taxable year beginning before the
3 effective date of this paragraph [LRB inserts date].

4 (b) A combined group member's share of a Wisconsin net business loss
5 computed on a combined report for a taxable year beginning on or after the effective
6 date of this paragraph [LRB inserts date], is subject to the carry-forward period
7 and limitations provided in s. 71.26 (4), if the member is subject to tax under this
8 subchapter, or s. 71.45 (4), if the member is subject to tax under subchapter VII. A
9 member may use such Wisconsin net business loss, or share it among the members
10 of the unitary business filing the combined report, as follows:

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

17 2. If the member is included in the combined report of the same unitary
18 business for the taxable year for which the member will offset the loss, the member
19 shall convert its Wisconsin net business loss carry-forward attributable to the
20 unitary business to a pre-apportionment net business loss carry-forward in the
21 manner described in subd. 3. and offset it against the combined group's business
22 income computed under sub. (4). Any amount of pre-apportionment net business
23 loss carry-forward not offset by the combined group's business income shall be
24 converted back to a Wisconsin net business loss carry-forward in the manner
25 described in subd. 4. and offset against the member's income, if any, from sources

1 other than the unitary business. The carry-forward period and limitations set forth
2 in ss. 71.26 (4) and 71.45 (4) shall apply in the same manner as if the loss was not
3 converted to a pre-apportionment net business loss carry-forward before used.

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

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

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

23 (7) DESIGNATED AGENT. (a) Each combined group shall have one designated
24 agent. The designated agent is the parent corporation of the combined group. If
25 there is no such parent corporation, the designated agent may be appointed by the

matters relating to the combined report
for matters relating to the combined report

1 members. If there is no such parent corporation and no member is appointed, the
2 designated agent is the member that has the most significant operations in this state
3 on a recurring basis, as determined by the department. The designated agent may
4 change only when the designated agent is no longer a member of the combined group,
5 in which case the succeeding designated agent shall notify the department of the
6 change in the manner prescribed by the department.

7 (b) Only the designated agent may act on behalf of the members of the combined
8 group. The designated agent's responsibilities include:

- 9 1. Filing a combined report under sub. (2) (a).
- 10 2. Filing any extension under s. 71.24 or 71.44.
- 11 3. Filing any amended combined reports or claims for refunds or credits.
- 12 4. Sending and receiving all correspondence with the department regarding the
13 combined report.
- 14 5. Remitting all taxes, including estimated taxes, to the department. For
15 purposes of computing interest on late payments, all payments remitted are deemed
16 to be made on a pro rata basis by all members of the combined group, unless
17 otherwise specified by the designated agent.
- 18 6. Participating on behalf of the combined group members in any investigation
19 or hearing requested by the department regarding a combined report, producing all
20 information requested by the department regarding the combined report, and filing
21 any appeal related to the combined report, investigation, or hearing. Any appeal
22 filed by the designated agent shall be considered to be filed by all members of the
23 combined group.
- 24 7. Executing waivers, closing agreements, powers of attorney, and other
25 documents as necessary or required regarding the combined report filed under sub.

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

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

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

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

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).

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

24 (a) If 2 or more members of a combined group file a federal consolidated return,
25 the combined group's taxable year is the taxable year of the federal consolidated

1 group. In all other cases, the taxable year is the taxable year of the designated agent
2 under sub. (7).

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

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

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

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

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

21 **(10) TRANSITION.** The department shall deem timely paid the estimated tax
22 payments attributable to income includable in the combined report for installments
23 that become due during the period beginning on January 1, 2009, and ending on the
24 effective date of this subsection [LRB inserts date], provided that such estimated
25 tax payments are paid by the next installment due date that follows in sequence

1 following the effective date of this subsection [LRB inserts date]. However, if the
2 next installment due date that follows in sequence following the effective date of this
3 subsection [LRB inserts date], is less than 45 days after the effective date of this
4 subsection [LRB inserts date], such estimated tax payments shall be deemed
5 timely paid if paid by the next subsequent installment due date. INSECT 30-4

6 **SECTION 27.** 71.26 (2) (a) 7. of the statutes is amended to read:

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

12 **SECTION 28.** 71.26 (2) (a) 9. of the statutes is amended to read:

13 71.26 (2) (a) 9. Minus the amount added, pursuant to subd. 7. or s. 71.05 (6) (a)
14 24., 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that
15 paid interest expenses or, rental expenses, intangible expenses, or management fees
16 to the corporation, to the extent that the related entity could not offset such amount
17 with the deduction allowable under subd. 8. or s. 71.05 (6) (b) 45., 71.34 (1k) (k), or
18 71.45 (2) (a) 17.

19 **SECTION 29.** 71.26 (3) (x) of the statutes is amended to read:

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

24 **SECTION 30.** 71.28 (4) (ad) 1. of the statutes is amended to read:

1 71.28 (4) (ad) 1. Except as provided in subds. 2. and 3., any corporation may
2 credit against taxes otherwise due under this chapter an amount equal to 5 percent
3 of the amount obtained by subtracting from the corporation's qualified research
4 expenses, as defined in section 41 of the Internal Revenue Code, except that
5 "qualified research expenses" includes only expenses incurred by the claimant,
6 incurred for research conducted in this state for the taxable year, except that a
7 taxpayer may elect the alternative computation under section 41 (c) (4) of the
8 Internal Revenue Code and that election applies until the department permits its
9 revocation, except as provided in par. (af), and except that "qualified research
10 expenses" does not include compensation used in computing the credit under subs.
11 (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the
12 Internal Revenue Code, except that gross receipts used in calculating the base
13 amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)
14 (b) 1. and 2., ~~(d), (df), and (dh)~~ ^{by 20 and 30} ~~(dj) and (dk)~~ ⁽¹⁾ Section 41 (h) of the Internal Revenue
15 Code does not apply to the credit under this paragraph. ⁽⁶⁾

16 **SECTION 31.** 71.28 (4) (ad) 2. of the statutes is amended to read:

17 71.28 (4) (ad) 2. For taxable years beginning after June 30, 2007, any
18 corporation may credit against taxes otherwise due under this chapter an amount
19 equal to 10 percent of the amount obtained by subtracting from the corporation's
20 qualified research expenses, as defined in section 41 of the Internal Revenue Code,
21 except that "qualified research expenses" includes only expenses incurred by the
22 claimant for research related to designing internal combustion engines for vehicles,
23 including expenses related to designing vehicles that are powered by such engines
24 and improving production processes for such engines and vehicles, incurred for
25 research conducted in this state for the taxable year, except that a taxpayer may elect

10 and 20

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

10 **SECTION 32.** 71.28 (4) (ad) 3. of the statutes is amended to read:

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

(df), b and 2op (dh) for 2op and 3op

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

4 SECTION 33. 71.28 (4) (am) 1. of the statutes is amended to read:

5 71.28 (4) (am) 1. In addition to the credit under par. (ad), any corporation may
 6 credit against taxes otherwise due under this chapter an amount equal to 5 percent
 7 of the amount obtained by subtracting from the corporation's qualified research
 8 expenses, as defined in section 41 of the Internal Revenue Code, except that
 9 "qualified research expenses" include only expenses incurred by the claimant in a
 10 development zone under subch. VI of ch. 560, except that a taxpayer may elect the
 11 alternative computation under section 41 (c) (4) of the Internal Revenue Code and
 12 that election applies until the department permits its revocation and except that
 13 "qualified research expenses" do not include compensation used in computing the
 14 credit under sub. (1dj) nor research expenses incurred before the claimant is certified
 15 for tax benefits under s. 560.765 (3), the corporation's base amount, as defined in
 16 section 41 (c) of the Internal Revenue Code, in a development zone, except that gross
 17 receipts used in calculating the base amount means gross receipts from sales
 18 attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2., (d), (df), and (dh), (dj), and
 19 (dk) and research expenses used in calculating the base amount include research
 20 expenses incurred before the claimant is certified for tax benefits under s. 560.765
 21 (3), in a development zone, if the claimant submits with the claimant's return a copy
 22 of the claimant's certification for tax benefits under s. 560.765 (3) and a statement
 23 from the department of commerce verifying the claimant's qualified research
 24 expenses for research conducted exclusively in a development zone. The rules under
 25 s. 73.03 (35) apply to the credit under this subdivision. The rules under sub. (1di)

1 (f) and (g) as they apply to the credit under that subsection apply to claims under this
2 subdivision. Section 41 (h) of the Internal Revenue Code does not apply to the credit
3 under this subdivision.

4 **SECTION 34.** 71.30 (2) of the statutes is amended to read:

5 **71.30 (2) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE**
6 **BUSINESSES.** In any case of 2 or more organizations, trades or businesses (whether or
7 not incorporated, whether or not organized in the United States ~~and~~, whether or not
8 affiliated, and whether or not unitary) owned or controlled directly or indirectly by
9 the same interests, the secretary or his or her delegate may distribute, apportion or
10 allocate gross income, deductions, credits or allowances between or among such
11 organizations, trades or businesses, if he or she determines that such distribution,
12 apportionment or allocation is necessary in order to prevent evasion of taxes or
13 clearly to reflect the income of any of such organizations, trades or businesses. The
14 authority granted under this subsection is in addition to, and not a limitation of or
15 dependent on, the provisions of ss. 71.05 (6) (a) 24. and (b) 45., 71.26 (2) (a) 7. and 8.,
16 71.34 (1k) (j) and (k), 71.45 (2) (a) 16. and 17., and 71.80 (23).

17 **SECTION 35.** 71.30 (2m) of the statutes is created to read:

18 **71.30 (2m) 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
23 taxpayer's taxable income or tax if not for the transaction or transactions without
24 economic substance causing the reduction in taxable income or tax.

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

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

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

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

15 **SECTION 36.** 71.34 (1c) of the statutes is created to read:

16 71.34 (1c) For purposes of sub. (1k) (j) and (L), "intangible expenses" include
17 the following, to the extent that the amounts would otherwise be deductible in
18 computing Wisconsin adjusted gross income:

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

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

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

25 (d) Licensing fees.

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

2 **SECTION 37.** 71.34 (1d) of the statutes is created to read:

3 71.34 (1d) "Intangible property" includes stocks, bonds, financial instruments,
4 patents, patent applications, trade names, trademarks, service marks, copyrights,
5 mask works, trade secrets, and similar types of intangible assets.

6 **SECTION 38.** 71.34 (1h) of the statutes is created to read:

7 71.34 (1h) For purposes of sub. (1k) (j) and (L), "management fees" include
8 expenses and costs paid, not including interest expenses, pertaining to accounts
9 receivable and payable, employee benefit plans, insurance, legal matters, payroll,
10 data processing, purchasing, tax, financial matters and securities, accounting,
11 reporting and compliance, or similar activities, only to the extent that the amounts
12 would otherwise be deductible in computing Wisconsin adjusted gross income.

13 **SECTION 39.** 71.34 (1k) (j) of the statutes is amended to read:

14 71.34 (1k) (j) An addition shall be made for any amount deducted or excluded
15 under the Internal Revenue Code for interest expenses and, rental expenses,
16 intangible expenses, and management fees that are directly or indirectly paid,
17 accrued, or incurred to, or in connection directly or indirectly with one or more direct
18 or indirect transactions with, one or more related entities.

19 **SECTION 40.** 71.34 (1k) (L) of the statutes is amended to read:

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

(d) b
(c)

1 SECTION 41. 71.42 (1sg) of the statutes is created to read:

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

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

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

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

12 (d) Licensing fees.

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

14 SECTION 42. 71.42 (1sh) of the statutes is created to read:

15 71.42 (1sh) "Intangible property" includes stocks, bonds, financial
16 instruments, patents, patent applications, trade names, trademarks, service marks,
17 copyrights, mask works, trade secrets, and similar types of intangible assets.

(d) b

18 SECTION 43. 71.42 (1t) of the statutes is amended to read:

19 71.42 (1t) For purposes of s. ss. 71.45 (2) (a) 16. and 18. and 71.255 (2) (c),
20 "interest expenses" means interest that would otherwise be deductible under section
21 163 of the Internal Revenue Code, as adjusted under s. 71.45 (2).

(c)

22 SECTION 44. 71.42 (3c) of the statutes is created to read:

23 71.42 (3c) For purposes of s. 71.45 (2) (a) 16. and 18., "management fees"
24 include expenses and costs paid, not including interest expenses, pertaining to
25 accounts receivable and payable, employee benefit plans, insurance, legal matters,

24

1 payroll, data processing, purchasing, tax, financial matters and securities,
2 accounting, reporting and compliance, or similar activities, only to the extent that
3 the amounts would otherwise be deductible in determining net income under the
4 Internal Revenue Code as adjusted under s. 71.45 (2).

5 **SECTION 45.** 71.43 (2) of the statutes is amended to read:

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

1 chapter shall apply to insurance companies subject to taxation under this chapter
2 unless the context clearly requires otherwise.

3 **SECTION 46.** 71.45 (2) (a) 16. of the statutes is amended to read:

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

9 **SECTION 47.** 71.45 (2) (a) 18. of the statutes is amended to read:

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

16 **SECTION 48.** 71.47 (4) (ad) 1. of the statutes is amended to read:

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

band 20

1 expenses" does not include compensation used in computing the credit under subs.
 2 (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the
 3 Internal Revenue Code, except that gross receipts used in calculating the base
 4 amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)
 5 (b) 1. and 2., ~~(d), (df), and (dh), (dj), and (dk)~~, Section 41 (h) of the Internal Revenue
 6 Code does not apply to the credit under this paragraph.

7 SECTION 49. 71.47 (4) (ad) 2. of the statutes is amended to read:

8 71.47 (4) (ad) 2. For taxable years beginning after June 30, 2007, any
 9 corporation may credit against taxes otherwise due under this chapter an amount
 10 equal to 10 percent of the amount obtained by subtracting from the corporation's
 11 qualified research expenses, as defined in section 41 of the Internal Revenue Code,
 12 except that "qualified research expenses" includes only expenses incurred by the
 13 claimant for research related to designing internal combustion engines for vehicles,
 14 including expenses related to designing vehicles that are powered by such engines
 15 and improving production processes for such engines and vehicles, incurred for
 16 research conducted in this state for the taxable year, except that a taxpayer may elect
 17 the alternative computation under section 41 (c) (4) of the Internal Revenue Code
 18 and that election applies until the department permits its revocation, except as
 19 provided in par. (af), and except that "qualified research expenses" does not include
 20 compensation used in computing the credit under subs. (1dj) and (1dx), the
 21 corporation's base amount, as defined in section 41 (c) of the Internal Revenue Code,
 22 except that gross receipts used in calculating the base amount means gross receipts
 23 from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. and ~~(d), (dj), and~~
 24 ~~(dk)~~. Section 41 (h) of the Internal Revenue Code does not apply to the credit under
 25 this paragraph.

(df) band 20 (dh) by 20 and 30

1 **SECTION 50.** 71.47 (4) (ad) 3. of the statutes is amended to read:

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

20 **SECTION 51.** 71.47 (4) (am) of the statutes is amended to read:

21 71.47 (4) (am) *Development zone additional research credit.* In addition to the
22 credit under par. (ad), any corporation may credit against taxes otherwise due under
23 this chapter an amount equal to 5 percent of the amount obtained by subtracting
24 from the corporation's qualified research expenses, as defined in section 41 of the
25 Internal Revenue Code, except that "qualified research expenses" include only

(df) 16 and 20, (dh) 16, 20 and 21

(df) 1. and 2.

1 expenses incurred by the claimant in a development zone under subch. VI of ch. 560,
 2 except that a taxpayer may elect the alternative computation under section 41 (c) (4)
 3 of the Internal Revenue Code and that election applies until the department permits
 4 its revocation and except that "qualified research expenses" do not include
 5 compensation used in computing the credit under sub. (1dj) nor research expenses
 6 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
 7 corporation's base amount, as defined in section 41 (c) of the Internal Revenue Code,
 8 in a development zone, except that gross receipts used in calculating the base amount
 9 means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and
 10 2., (d), (df), and (dh), ^{by 20 and 30} (dj), and (dk) and research expenses used in calculating the base
 11 amount include ^{6 and 20} research expenses ¹⁰ incurred before the claimant is certified for tax
 12 benefits under s. 560.765 (3), in a development zone, if the claimant submits with the
 13 claimant's return a copy of the claimant's certification for tax benefits under s.
 14 560.765 (3) and a statement from the department of commerce verifying the
 15 claimant's qualified research expenses for research conducted exclusively in a
 16 development zone. The rules under s. 73.03 (35) apply to the credit under this
 17 paragraph. The rules under sub. (1di) (f) and (g) as they apply to the credit under
 18 that subsection apply to claims under this paragraph. Section 41 (h) of the Internal
 19 Revenue Code does not apply to the credit under this paragraph. No credit may be
 20 claimed under this paragraph for taxable years that begin on January 1, 1998, or
 21 thereafter. Credits under this paragraph for taxable years that begin before January
 22 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or
 23 thereafter.

SECTION 52. 71.80 (1) (b) of the statutes is amended to read:

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

13 **SECTION 53.** 71.80 (1m) of the statutes is created to read:

14 71.80 (1m) TRANSACTIONS WITHOUT ECONOMIC SUBSTANCE. (a) If any person,
15 directly or indirectly, engages in a transaction or series of transactions without
16 economic substance to create a loss or to reduce taxable income or to increase credits
17 allowed in determining Wisconsin tax, the department shall determine the amount
18 of a taxpayer's taxable income or tax so as to reflect what would have been the
19 taxpayer's taxable income or tax if not for the transaction or transactions without
20 economic substance causing the reduction in taxable income or tax.

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

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

(1g), (1n), (1t)

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

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

11 SECTION 9343. Initial applicability; Revenue.

(1b), (1n)

12 (1) COMBINED REPORTING. The treatment of sections 71.01 (5n), (5p), and (7v),
13 71.04 (7) (d), (dj), and (dk), 71.05 (6) (a) 24. and (b) 46., 71.07 (2dr) (a), 71.10 (1) and
14 (1m), 71.22 (3g), (3h), (3m), and (6d), 71.25 (intro.), (5) (b) 1. and 2., and (9) (d), (dj),
15 and (dk), 71.255, 71.26 (2) (a) 7. and 9. and (3) (x), 71.28 (4) (ad) 1., 2., and 3. and (am)
16 1., 71.30 (2) and (2m), 71.34 (1c), (1d), (1h), and (1k) (j) and (L), 71.42 (1sg), (1sh), (1t),
17 and (3c), 71.43 (2), 71.45 (2) (a) 16. and 18., 71.47 (4) (ad) 1., 2., and 3. and (am), and
18 71.80 (1) (b) and (1m) of the statutes, the renumbering of sections 71.04 (8) (a) and
19 71.25 (10) (a) of the statutes, and the creation of sections 71.04 (8) (a) 2. and 71.25
20 (10) (a) 2. of the statutes first apply to taxable years beginning on January 1 of the
21 year in which this subsection takes effect, except that if this subsection takes effect
22 after April 1 this act first applies to taxable years beginning on January 1 of the year
23 following the year in which this subsection takes effect.

24 (END)

Insert 2 - 3

X
1 SECTION 1. 71.01 (1b) of the statutes is amended to read:

2 71.01 (1b) For purposes of s. 71.04 (7) (df) and, (dh), (dj), and (dk), "commercial
3 domicile" means the location from which a trade or business is principally managed
4 and directed, based on any factors the department determines are appropriate,
5 including the location where the greatest number of employees of the trade or
6 business work, have their office or base of operations, or from which the employees
7 are directed or controlled.

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2003 a. 33; 2005 a. 25, 49, 362; 2007 a. 20, 226.

8 SECTION 2. 71.01 (1n) of the statutes is amended to read:

9 71.01 (1n) For purposes of s. 71.04 (7) (df) and, (dh), (dj), and (dk), "domicile"
10 means an individual's true, fixed, and permanent home where the individual intends
11 to remain permanently and indefinitely and to which, whenever absent, the
12 individual intends to return, except that no individual may have more than one
13 domicile at any time.

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2003 a. 33; 2005 a. 25, 49, 362; 2007 a. 20, 226.

Insert 3 - 11

X
14 SECTION 3. 71.01 (10g) of the statutes is amended to read:

15 71.01 (10g) For purposes of s. 71.04 (7) (df) and, (dh), (dj), and (dk), "state"
16 means a state of the United States, the District of Columbia, the commonwealth of
17 Puerto Rico, or any territory or possession of the United States, unless the context
18 requires that "state" means only the state of Wisconsin.

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 109; 2003 a. 33; 2005 a. 25, 49, 362; 2007 a. 20, 226.

Insert 8 - 2

X
19 SECTION 4. 71.22 (1g) of the statutes is amended to read:

plain

1 71.22 (1g) For purposes of s. 71.25 (9) (df) and, (dh), (dj), and (dk), "commercial
 2 domicile" means the location from which a trade or business is principally managed
 3 and directed, based on any factors the department determines are appropriate,
 4 including the location where the greatest number of employees of the trade or
 5 business work, have their office or base of operations, or from which the employees
 6 are directed or controlled.

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.

7 **SECTION 5.** 71.22 (1r) of the statutes is amended to read:

8 71.22 (1r) "Doing business in this state" includes issuing credit, debit, or travel
 9 and entertainment cards to customers in this state; regularly selling products or
 10 services of any kind or nature to customers in this state that receive the product or
 11 service in this state; regularly soliciting business from potential customers in this
 12 state; regularly performing services outside this state for which the benefits are
 13 received in this state; regularly engaging in transactions with customers in this state
 14 that involve intangible property and result in receipts flowing to the taxpayer from
 15 within this state; holding loans secured by real or tangible personal property located
 16 in this state; owning, directly or indirectly, a general or limited partnership interest
 17 in a partnership that does business in this state, regardless of the percentage of
 18 ownership; and owning, directly or indirectly, an interest in a limited liability
 19 company that does business in this state, regardless of the percentage of ownership,
 20 if the limited liability company is treated as a partnership for federal income tax
 21 purposes.

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.

22 **SECTION 6.** 71.22 (1t) of the statutes is amended to read:

plain

1 71.22 (1t) For purposes of s. 71.25 (9) (df) ~~and~~, (dh), (dj), and (dk), "domicile"
 2 means an individual's true, fixed, and permanent home where the individual intends
 3 to remain permanently and indefinitely and to which, whenever absent, the
 4 individual intends to return, except that no individual may have more than one
 5 domicile at any time.

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 9 - 7

6 ~~X~~ SECTION 7. 71.22 (9g) of the statutes is amended to read:

plain

7 71.22 (9g) For purposes of s. 71.25 (9) (df) ~~and~~, (dh), (dj), and (dk), "state" means
 8 a state of the United States, the District of Columbia, the commonwealth of Puerto
 9 Rico, or any territory or possession of the United States, unless the context requires
 10 that "state" means only the state of Wisconsin.

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 13 - 15

11 ~~NO~~ , of multiple business entities that are related under sections 267 and 1563 of
 12 the Internal Revenue Code,

Insert 22 - 7

13 ~~NO~~ and that business relates to the combined group's unitary business

Insert 30 - 4

14 ~~NO~~ , in addition to the payment due less than 45 days after the effective date of this
 15 subsection [LRB inserts date],

2009-11 LRB Draft Review

Date: January 28, 2009

LRB Number: 1215/P2 (Combined Reporting)

Reviewed by: Wendy Miller

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

Comments on Draft: Additional changes are necessary to make the bill administerable.

Changes Needed & Why: The items 1. through 14. below describe the changes needed and why. For each item, recommended changes to the bill's text are highlighted.

1. Corporations Required to Use Combined Reporting

As written, the bill states that s.71.255(2)(d) is an exception to s. 71.255(2)(c). Actually it is the other way around: While in general, corporations are excluded from the combined group if 80% or more of their worldwide income is active foreign business income (par. d), these corporations may have some of their income included in the combined report if they qualify as "consolidated foreign operating corporations" (par. c).

Further, s. 71.255(2)(c)1. provides that the "losses, costs, interest expenses, and intangible expenses" incurred to or on behalf of a consolidated foreign operating corporation (CFOC) must be included in the combined report. In this model of combined reporting, these "losses and costs" to or on behalf of a CFOC are only those that relate to intangible property. Since the definition of "intangible expenses" (see s. 71.22(3g)) already includes losses and costs relating to intangible property, "losses and costs" in s. 71.255(2)(c)1. should be stricken.

Also, the language which gives the Department authority to include or exclude members from a combined group in cases where there is avoidance or evasion of tax (s. 71.255(2)(e)) is inconsistent and incomplete. This language should specifically refer to both income and losses and to both including and excluding items from the combined report.

Other changes are also necessary to clarify the language of s. 71.255(2). Below is the recommended language of the entire subsection.

(2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING. (a) A corporation, not including a corporation of which all its income is exempt from taxation under s. 71.26 (1), engaged in a unitary business with one or more other corporations shall report its share of income from that unitary business in the amount determined by a combined report filed by a designated agent of the unitary business, as determined under sub. (7). The combined report shall include the income, determined under sub. (3), and apportionment factor or factors determined under sub. (5), of every corporation engaged in the unitary business, except as provided in pars. ~~(e) and (d)~~. (b) through (e).

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

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

~~(e)~~ (d) Except as provided in par. (d), The combined report of the unitary business of which the a consolidated foreign operating corporation is a member shall include, and the separate return filed by the consolidated foreign operating corporation shall exclude, the following amounts in subd. 1 through 5., to the extent that they are attributable to the unitary business: Except for the amounts in subd. 1. through 5., the consolidated foreign operating corporation shall compute and allocate or apportion its income from the unitary business separately.

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

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

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

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

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

(e) 1. The department may require that a combined report include the income and associated apportionment factor or factors of any person who is not otherwise included in a combined group under ~~par. (a) or (b) this subsection~~, but who is a member of a unitary business, in order to reflect proper apportionment of income of the entire unitary business. The department may require that a combined report include the income and associated apportionment factor or factors of persons that are not corporations.

2. If the department determines that the reported income or loss of a member of a combined group engaged in a unitary business with any person not included in the combined group under par. (a) or (b) represents an avoidance or evasion of tax by the the person or the combined group member, the department may require all or any part of the income or loss and associated apportionment factor or factors of the person be included in or excluded from the combined report for the unitary business or may require the use of a different apportionment factor or factors. The department may require that a combined report include or exclude the income or loss and associated apportionment factor or factors of persons that are not corporations.

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

2. Definition of "Doing Business in This State"

To be consistent with the apportionment methodology and intangible income sourcing provisions in this bill, the definition of "doing business in this state" in s. 71.22(1r) is recommended to be expanded. The recommended changes are shown below:

71.22(1r) "Doing business in this state" includes issuing credit, debit, or travel and entertainment cards to customers in this state; regularly selling products or services of any kind or nature to customers in this state that receive the product or service in this state; regularly soliciting business from potential customers in this state; regularly performing services outside this state for which the benefits are received in this state; regularly engaging in transactions with customers in this state that involve intangible property and result in receipts flowing to the taxpayer from within this state; holding loans secured by real or tangible personal property located in this state; owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership; and owning, directly or indirectly, an interest in a limited liability company that does business in this state, regardless of the percentage of ownership, if the limited liability company is treated as a partnership for federal income tax purposes.

3. Definition of "Management Fees"

The definition of "management fees" requires the expense or cost to be "paid" in order to fit the definition. However, a taxpayer using accrual accounting may deduct the expense without paying it. Since the addback provisions to which the definition of "management fees" applies are based on expenses that are deducted (regardless of whether paid), the definition of "management fees" should not be limited to expenses "paid." The following change is necessary:

Citations	Change
71.01(7v), 71.22(6d), 71.34(1h), 71.42(3c)	..."management fees" include expenses and costs paid, not including interest expenses.

4. Definition of "Financial Organization"

This bill amends the definition of "financial organization" to include any subsidiary of a financial organization "if a significant purpose for the subsidiary is to hold investments." This definition may be too subjective because the "purpose" for the subsidiary depends on the taxpayer's intent. It is possible for a subsidiary to be used for a purpose other than it was intended. It would be clearer to amend the definition as recommended below:

Citations	Change
71.04(8)(a)2., 71.25(10)(a)2.	..."financial organization" includes any subsidiary of an entity described in subd. 1., if a significant purpose for the subsidiary is to hold investments, <u>or if the subsidiary primarily functions to hold investments.</u>

5. Definition of "Unitary Business"

As written, the definition of "unitary business" in s. 71.255(1)(m) (page 13, line 15) expressly states that a "unitary business" includes a single economic enterprise that is made up either of:

- Separate parts of a single business entity, or
- A "commonly controlled group" of business entities, where a "commonly controlled group" (as defined in s. 71.255(1)(c)) is limited to groups of entities that are corporations.

However, in s. 71.255(2)(e), the statute gives the Department authority in certain cases to require combined reporting for business entities in a unitary business that are not corporations.

To make the definition of "unitary business" consistent with the Department's authority to require combined reporting for business entities in a unitary business that are not corporations, the definition of "unitary business" s. 71.255(1)(m) is recommended to be changed as follows:

71.255(1m) "Unitary business" means a single economic enterprise that is made of either of separate parts of a single business entity, of multiple business entities that are related under

sections 267 and 1563 of the Internal Revenue Code, or of a commonly controlled group of business entities...”

6. Member's Share of Business Income of the Combined Group

In s. 71.255(5)(a) it states that “each member of a combined group is doing business in this state if any member of the combined group is doing business in this state.” It should be clarified that “doing business in this state” has a specific meaning defined in s. 71.22(1r). There is also a technical problem in the last sentence of s. 71.255(5)(a). The recommended language to resolve these items is as follows:

(5) MEMBER'S SHARE OF BUSINESS INCOME OF THE COMBINED GROUP. (a) For purposes of this subsection, each member of a combined group is doing business in this state as defined in s. 71.22(1r) if any member of the combined group is doing business in this state as defined in s. 71.22(1r) and that business relates to the combined group's unitary business. Except as provided in par. (b), ~~the member's a taxpayer's~~ share of the business income apportionable to this state of each combined group of which it is a member shall be the product of the business income of the combined group as determined under sub. (4) and the ~~member's taxpayer's~~ modified sales factor from the combined group, determined as follows:

7. Incorrect Reference to s. 71.255(2)(c)

In s. 71.25(intro) (page 9, line (9)) the bill states that s. 71.25 is “For purposes of determining the situs of income under this section and s. 71.255(2)(c).” The reference to s. 71.255(2)(c) is inappropriate since that paragraph does not use any of the provisions in s. 71.25. A more appropriate introductory phrase would be:

71.25 (intro) “For purposes of determining the situs of income under this section and s. 71.255(2)(c)(5)(a)1. and 2....”

8. Income from Sales or Exchanges of Capital Assets

There appears to be a drafting error in s. 71.255(3)(d) (page 17, line 22). Paragraph (4)(i), which is referenced in par. (3)(d), addresses the treatment of capital asset dispositions. However, in par. (3)(d), the word “or” is between “capital” and “assets.” The recommended correction is as follows:

71.255(3)(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)(i).

9. Expenses Deductible from Income Included in Combined Report

In s. 71.255(4)(c), it states that a combined group may deduct expenses properly attributable to a consolidated foreign operating corporation's income. The subdivisions referenced in this paragraph are incorrect.

While the income of a consolidated foreign operating corporation under s. 71.255(2)(c)2. through 4. may be offset by the expenses incurred to generate that income, the income attributable to intercompany interest and intangible expenses paid to a consolidated foreign operating corporation (s. 71.255(2)(c)1.) cannot be offset against expenses incurred to create that income because the income itself is a reversal of an expense. The recommended correction is as follows:

71.255(4)(c) [beginning on page 19, line 5]...A combined group may deduct expenses properly attributable to a consolidated foreign operating corporation's income described in sub. (2)(c)1-2 to 4., subject to ss. 71.30(2) and (2m) and 71.80 (1)(b) and (1m).

10. Duties of the Designated Agent

It should be clarified that only designated agent may act on behalf of the members of the combined group for matters relating to the combined report. For other tax matters and for nontax matters, the designated agent has no responsibilities under s. 71.255 to act on behalf of the other members of the combined group. The recommended change is as follows:

71.255(7)(b) Only the designated agent may act on behalf of the members of the combined group for matters relating to the combined report. The designated agent's responsibilities...

11. Transitional Rule Language for Estimated Payments

The transitional rule provided in s. 71.255(10) states that estimated payments due before the effective date of the bill shall be deemed timely paid if paid by the next installment due date following the effective date, but if the effective date is less than 45 days before the next installment due date, the grace period is extended out to the next following due date. The current language does not apply the grace period to the installment due less than 45 days after the bill's effective date. The recommended change is as follows:

71.255(10) [beginning on page 30, line 1] However, if the next installment due date that follows in sequence following the effective date of this subsection is less than 45 days after the effective date of this subsection, such estimated tax payments, in an addition to the payment due less than 45 days after the effective date of this subsection, shall be deemed timely paid if paid by the next subsequent installment due date.

12. Cross References in Research Credit Computation

Since this bill creates new sourcing rules for the sale, use, or license of intangible property for purposes of the sales factor, the computation of the Wisconsin research credits (the “base amount”) should be amended to include references to the new sourcing provisions. Additionally, in the computation of the research credits under current law, the “base amount” excludes throwback sales for sales of tangible personal property but not for sales of software or services, and some research credits do not specify whether the base amount includes sales of software or services.

It would be easier to administer the research credits if the “base amount” always excluded throwback sales, regardless of whether from tangible personal property, software, services, or from the sale, use, or license of intangible property. It would also be easier to administer these credits if each credit specified how each type of sale should be treated in the computation of the base amount.

The following changes are recommended:

Citation	Change
71.07(2dr)(a)	(beginning on page 6, line 6) ... except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.04 (7)(b)1. and 2., 2007 stats. (df)1. and 2., and (dh)1., 2., and 3., (dj)1., and (dk)1., and research expenses used in...
71.28(4ad)1.	(beginning on page 31, line 12) ... except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)(b)1. and 2., (df)1. and 2., and (dh)1., 2., and 3., (dj)1., and (dk)1.
71.28(4ad)2.	(beginning on page 32, line 6) ... except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)(b)1. and 2., (df)1. and 2., and (dh)1., 2., and 3., (dj)1., and (dk)1.
71.28(4ad)3.	(beginning on page 32, line 25) ... except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)(b)1. and 2., (df)1. and 2., and (dh)1., 2., and 3., (dj)1., and (dk)1.
71.28(4)(am)1.	(beginning on page 33, line 16) ... except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)(b)1. and 2., (df)1. and 2., and (dh)1., 2., and 3., (dj)1., and (dk)1. and research expenses used in...

Citation	Change
71.47(4)(ad)1.	(beginning on page 40, line 3) ... except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)(b)1. and 2., (df)1. and 2., and (dh)1., 2., and 3., (dj)1., and (dk)1.
71.47(4)(ad)2.	(beginning on page 40, line 22) ... except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)(b)1. and 2., (df)1. and 2., and (dh)1., 2., and 3., (dj)1., and (dk)1.
71.47(4)(ad)3.	(beginning on page 41, line 16) ... except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)(b)1. and 2., (df)1. and 2., and (dh)1., 2., and 3., (dj)1., and (dk)1.
71.47(4)(am)	(beginning on page 42, line 8) ... except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9)(b)1. and 2., (df)1. and 2., and (dh)1., 2., and 3., (dj)1., and (dk)1. and research expenses used in...

13. Cross References in Existing Definitions

The definitions of “commercial domicile,” “domicile,” and “state” in under current law (s. 71.01(1b), 71.01(1n), 71.01(10g), 71.22(1g), 71.22(1t), and 71.22(9g)) refer to the rules for sourcing sales of services and software to Wisconsin for purposes of the sales factor. This bill creates additional sourcing rules for the sale, use, or license of intangible property and the words “commercial domicile,” “domicile,” and “state” are used in those definitions. Thus, these definitions must be amended as follows:

71.01(1b) “Commercial Domicile” – include reference to s. 71.04(7)(dj) and (dk)

71.01(1n) “Domicile” - include reference to s. 71.04(7)(dj) and (dk)

71.01(10g) “State” - include reference to s. 71.04(7)(dj) and (dk)

71.22(1g) “Commercial Domicile” – include reference to s. 71.25(9)(dj) and (dk)

71.22(1t) “Domicile” - include reference to s. 71.25(9)(dj) and (dk)

71.22(9g) “State” - include reference to s. 71.25(9)(dj) and (dk)

14. Effective Date Language

The effective date language of the bill does not correctly describe all the changes made to the Statutes. Below is a list of all the statutory sections repealed, amended, created, and renumbered by this bill. This list includes the additional amendments recommended in item 13 above.

Repealed:

71.04(7)(d), 71.25(5)(b)2., 71.25(9)(d)

Amended:

71.01(1b), 71.01(1n), 71.01(10g), 71.05(6)(a)24., 71.05(6)(b)46., 71.07(2dr)(a), 71.10(1), 71.22(1g), 71.22(1r), 71.22(1t), 71.22(3m), 71.22(9g), 71.25 (intro), 71.26(2)(a)7., 71.26(2)(a)9., 71.26(3)(x), 71.28(4)(ad)1., 71.28(4)(ad)2., 71.28(4)(ad)3., 71.28(4)(am)1., 71.30(2), 71.34(1k)(j), 71.34(1k)(L), 71.42(1t), 71.43(2), 71.45(2)(a)16., 71.45(2)(a)18., 71.47(4)(ad)1., 71.47(4)(ad)2., 71.47(4)(ad)3., 71.47(4)(am), 71.80(1)(b)

Created: 71.01(5n), 71.01(5p), 71.01(7v), 71.04(7)(dj), 71.04(7)(dk), 71.04(8)(a)2., 71.10(1m), 71.22(3g), 71.22(3h), 71.22(6d), 71.25(9)(dj), 71.25(9)(dk), 71.25(10)(a)2., 71.255, 71.30(2m), 71.34(1c), 71.34(1d), 71.34(1h), 71.42(1sg), 71.42(1sh), 71.42(3c), 71.80(1m)

Renumbered:

71.04(8)(a), 71.25(5)(b)1., 71.25(10)(a)

Kreye, Joseph

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Wednesday, January 28, 2009 12:17 PM
To: Kreye, Joseph
Subject: FW: Combined reporting
Attachments: 1215-P2 Combined Reporting review.doc

Joe - Here's the combined reporting review.

-Chad

From: Templeton, Carrie E - DOR
Sent: Wednesday, January 28, 2009 12:06 PM
To: Lillethun, Chad W - DOA; Grinde, Kirsten - DOA
Cc: Wink, Wendy L - DOR; Raes, Julie M - DOR
Subject: FW: Combined reporting

fyi

Carrie Templeton
Wisconsin Department of Revenue
(608) 266-6466
carrie.templeton@revenue.wi.gov

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From: Raes, Julie M - DOR
Sent: Wednesday, January 28, 2009 12:04 PM
To: Templeton, Carrie E - DOR; Wink, Wendy L - DOR
Cc: Gates-Hendrix, Sherrie L - DOR
Subject: Combined reporting

IS&E's comments attached for your review.

Kreye, Joseph

From: Grinde, Kirsten - DOA [kirsten.grinde@wisconsin.gov]
Sent: Friday, January 30, 2009 9:08 AM
To: Kreye, Joseph
Cc: Lillethun, Chad W - DOA
Subject: RE: C.1 Combined reporting - third draft - Review and Respond

Yes, please. We are counting revenues in FY09 for tax year 2009.

From: Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]
Sent: Friday, January 30, 2009 9:02 AM
To: Grinde, Kirsten - DOA
Cc: Lillethun, Chad W - DOA
Subject: RE: C.1 Combined reporting - third draft - Review and Respond

May 1, 2009?

Joseph T. Kreye
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

From: Grinde, Kirsten - DOA [mailto:kirsten.grinde@wisconsin.gov]
Sent: Friday, January 30, 2009 8:58 AM
To: Kreye, Joseph
Cc: Lillethun, Chad W - DOA
Subject: FW: C.1 Combined reporting - third draft - Review and Respond
Importance: High

Joe,
DOR has a few remaining technical clean up items in the attached comments. Could you make those?
Also, could we push the initial applicability date back to May 1?

Thanks,
Kirsten

From: Templeton, Carrie E - DOR
Sent: Friday, January 30, 2009 8:28 AM
To: Grinde, Kirsten - DOA; Lillethun, Chad W - DOA
Cc: Wink, Wendy L - DOR; Raes, Julie M - DOR; Gates-Hendrix, Sherrie L - DOR
Subject: FW: C.1 Combined reporting - third draft - Review and Respond
Importance: High

Kirsten
Below are additional minor changes needed to the combined reporting draft.

01/30/2009

1654

Kreye, Joseph

From: Grinde, Kirsten - DOA [kirsten.grinde@wisconsin.gov]
Sent: Friday, January 30, 2009 8:58 AM
To: Kreye, Joseph
Cc: Lillethun, Chad W - DOA
Subject: FW: C.1 Combined reporting - third draft - Review and Respond
Importance: High
Attachments: 1215-P3 Combined Reporting.doc

Joe,

DOR has a few remaining technical clean up items in the attached comments. Could you make those?

Also, could we push the initial applicability date back to May 1?

Thanks,

Kirsten

From: Templeton, Carrie E - DOR
Sent: Friday, January 30, 2009 8:28 AM
To: Grinde, Kirsten - DOA; Lillethun, Chad W - DOA
Cc: Wink, Wendy L - DOR; Raes, Julie M - DOR; Gates-Hendrix, Sherrie L - DOR
Subject: FW: C.1 Combined reporting - third draft - Review and Respond
Importance: High

Kirsten,

Below are additional minor changes needed to the combined reporting draft.

As far as the effective date goes, it could be specified as May 1 or left unspecified and allow the 45 days to begin to run. Here are Wendy Miller's full comments:

If the concern is about the timing of the revenues, the April 1st cutoff date doesn't make sense because the bill could pass anytime before May 1 (45 days before the 6/15 installment) and we would still have combined reporting revenues due on 6/15/09.

If I remember right, the reason for the April 1st date was because when this process first started we wanted to be sure we had enough time to implement (with Forms, WINPAS, etc.) and we picked April 1st. Of course, our lead time for implementation can be shortened depending on how we approach it, so we could say May 1 instead of April 1 or simply not say anything in the transitional language.

Please let me know if you need anything else. Thanks
 Carrie

Carrie Templeton
 Wisconsin Department of Revenue
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carrie.templeton@revenue.wi.gov

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01/30/2009

2009-11 LRB Draft Review

Date: January 29, 2009

LRB Number: 1215/P3 (Combined Reporting)

Reviewed by: Wendy Miller

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

Comments on Draft: Three minor changes are necessary to clarify the bill's provisions.

Changes Needed & Why:

1. In s. 71.255(1)(g) [page 14, line 13] the bill provides that "Doing business in this state' has the meaning given in s. 71.22(1n)." The reference is incorrect. It should read as follows: "Doing business in this state" has the meaning given in s. 71.22 ~~(1n)~~-(1r)."
2. In s. 71.255(2)(f)2. [page 18, line 16] the bill provides that "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) or (b) represents an avoidance or evasion of tax..." The reference to par. (a) or (b) does not fully encompass all of the persons who could otherwise be included in a combined group. It would be clearer to say "any person not otherwise included in the combined group under par. (a) or (b) this subsection..."
3. In s. 71.255(5)(a) [page 24, line 6] the bill provides that "Except as provided in par. (b), the taxpayer's share of the business income apportionable to this state of each combined group of which it is a member..." The term "taxpayer" is not used before this sentence, although for this sentence it is the most appropriate term to use. It would be more appropriate to say: "Except as provided in par. (b), the a taxpayer's share of the..."

As far as the effective date goes, it could be specified as May 1 or left unspecified and allow the 45 days to begin to run. Here are Wendy Miller's full comments:
If the concern is about the timing of the revenues, the April 1st cutoff date doesn't make sense because the bill could pass anytime before May 1 (45 days before the 6/15 installment) and we would still have combined reporting revenues due on 6/15/09.

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Please let me know if you need anything else. Thanks
Carrie

Carrie Templeton
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