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

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Do NOT Gen in 1-30-09

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

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

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

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

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

3 71.01 (1b) For purposes of s. 71.04 (7) (df) and, (dh), (dj), and (dk), "commercial  
4 domicile" means the location from which a trade or business is principally managed  
5 and directed, based on any factors the department determines are appropriate,

1 including the location where the greatest number of employees of the trade or  
2 business work, have their office or base of operations, or from which the employees  
3 are directed or controlled.

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

5 71.01 (1n) For purposes of s. 71.04 (7) (df) and, (dh), (dj), and (dk), "domicile"  
6 means an individual's true, fixed, and permanent home where the individual intends  
7 to remain permanently and indefinitely and to which, whenever absent, the  
8 individual intends to return, except that no individual may have more than one  
9 domicile at any time.

10 **SECTION 3.** 71.01 (5n) of the statutes is created to read:

11 71.01 (5n) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "intangible expenses"  
12 include the following, to the extent that the amounts would otherwise be deductible  
13 in computing Wisconsin adjusted gross income:

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

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

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

20 (d) Licensing fees.

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

22 **SECTION 4.** 71.01 (5p) of the statutes is created to read:

23 71.01 (5p) "Intangible property" includes stocks, bonds, financial instruments,  
24 patents, patent applications, trade names, trademarks, service marks, copyrights,  
25 mask works, trade secrets, and similar types of intangible assets.

1           **SECTION 5.** 71.01 (7v) of the statutes is created to read:

2           **71.01 (7v)** For purposes of s. 71.05 (6) (a) 24. and (b) 46., “management fees”  
3 include expenses and costs, not including interest expenses, pertaining to accounts  
4 receivable and payable, employee benefit plans, insurance, legal matters, payroll,  
5 data processing, purchasing, tax, financial matters and securities, accounting,  
6 reporting and compliance, or similar activities, only to the extent that the amounts  
7 would otherwise be deductible in computing Wisconsin adjusted gross income.

8           **SECTION 6.** 71.01 (10g) of the statutes is amended to read:

9           **71.01 (10g)** For purposes of s. 71.04 (7) (df) ~~and~~, (dh), (dj), and (dk), “state”  
10 means a state of the United States, the District of Columbia, the commonwealth of  
11 Puerto Rico, or any territory or possession of the United States, unless the context  
12 requires that “state” means only the state of Wisconsin.

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

14           **SECTION 8.** 71.04 (7) (dj) of the statutes is created to read:

15           **71.04 (7) (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

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 9.** 71.04 (7) (dk) of the statutes is created to read:

13 71.04 (7) (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

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 10.** 71.04 (8) (a) of the statutes is renumbered 71.04 (8) (a) 1.

4 **SECTION 11.** 71.04 (8) (a) 2. of the statutes is created to read: \_

5 71.04 (8) (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 or if the subsidiary primarily functions to hold  
8 investments.

9 **SECTION 12.** 71.05 (6) (a) 24. of the statutes is amended to read:

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

15 **SECTION 13.** 71.05 (6) (b) 46. of the statutes is amended to read:

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

22 **SECTION 14.** 71.07 (2dr) (a) of the statutes is amended to read:

23 71.07 (2dr) (a) *Credit.* Any person may credit against taxes otherwise due  
24 under this chapter an amount equal to 5% of the amount obtained by subtracting  
25 from the person's qualified research expenses, as defined in section 41 of the internal

1 revenue code, except that “qualified research expenses” include only expenses  
2 incurred by the claimant in a development zone under subch. VI of ch. 560, except  
3 that a taxpayer may elect the alternative computation under section 41 (c) (4) of the  
4 Internal Revenue Code and that election applies until the department permits its  
5 revocation and except that “qualified research expenses” do not include  
6 compensation used in computing the credit under sub. (2dj) nor research expenses  
7 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the  
8 person’s base amount, as defined in section 41 (c) of the internal revenue code, in a  
9 development zone, except that gross receipts used in calculating the base amount  
10 means gross receipts from sales attributable to Wisconsin under s. 71.04 (7) (b) 1. and  
11 2., ~~(d)~~, (df) 1. and 2., and (dh) 1., 2., and 3., (dj) 1. and (dk) 1. and research expenses  
12 used in calculating the base amount include research expenses incurred before the  
13 claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if  
14 the claimant submits with the claimant’s return a copy of the claimant’s certification  
15 for tax benefits under s. 560.765 (3) and a statement from the department of  
16 commerce verifying the claimant’s qualified research expenses for research  
17 conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to  
18 the credit under this paragraph. The rules under sub. (2di) (f) and (g), as they apply  
19 to the credit under that subsection, apply to claims under this paragraph. Section  
20 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

21 **SECTION 15.** 71.10 (1) of the statutes is amended to read:

22 71.10 (1) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE  
23 BUSINESSES. In any case of 2 or more organizations, trades or businesses (whether or  
24 not incorporated, whether or not organized in the United States and, whether or not  
25 affiliated, and whether or not unitary) owned or controlled directly or indirectly by

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

9 **SECTION 16.** 71.10 (1m) of the statutes is created to read:

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

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

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

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

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

7 **SECTION 17.** 71.22 (1g) of the statutes is amended to read:

8 71.22 (1g) For purposes of s. 71.25 (9) (df) ~~and, (dh), (dj), and (dk)~~, “commercial  
9 domicile” means the location from which a trade or business is principally managed  
10 and directed, based on any factors the department determines are appropriate,  
11 including the location where the greatest number of employees of the trade or  
12 business work, have their office or base of operations, or from which the employees  
13 are directed or controlled.

14 **SECTION 18.** 71.22 (1r) of the statutes is amended to read:

15 71.22 (1r) “Doing business in this state” includes issuing credit, debit, or travel  
16 and entertainment cards to customers in this state; regularly selling products or  
17 services of any kind or nature to customers in this state that receive the product or  
18 service in this state; regularly soliciting business from potential customers in this  
19 state; regularly performing services outside this state for which the benefits are  
20 received in this state; regularly engaging in transactions with customers in this state  
21 that involve intangible property and result in receipts flowing to the taxpayer from  
22 within this state; holding loans secured by real or tangible personal property located  
23 in this state; owning, directly or indirectly, a general or limited partnership interest  
24 in a partnership that does business in this state, regardless of the percentage of  
25 ownership; and owning, directly or indirectly, an interest in a limited liability



1 company that does business in this state, regardless of the percentage of ownership,  
2 if the limited liability company is treated as a partnership for federal income tax  
3 purposes.

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

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

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

11 71.22 (3g) For purposes of ss. 71.26 (2) (a) 7. and 9. and 71.255 (2) (d) 1.,  
12 "intangible expenses" include the following, to the extent that the amounts would  
13 otherwise be deductible in determining net income under the Internal Revenue Code  
14 as modified under s. 71.26 (3):

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

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

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

21 (d) Licensing fees.

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

23 **SECTION 21.** 71.22 (3h) of the statutes is created to read:

1           71.22 (3h) "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 22.** 71.22 (3m) of the statutes is amended to read:

5           71.22 (3m) For purposes of ~~s. ss.~~ 71.26 (2) (a) 7. and 9. and 71.255 (2) (d) 1.,  
6 "interest expenses" means interest that would otherwise be deductible under section  
7 163 of the Internal Revenue Code, as modified under s. 71.26 (3).

8           **SECTION 23.** 71.22 (6d) of the statutes is created to read:

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

16           **SECTION 24.** 71.22 (9g) of the statutes is amended to read:

17           71.22 (9g) For purposes of s. 71.25 (9) (df) ~~and~~, (dh), (dj), and (dk), "state" means  
18 a state of the United States, the District of Columbia, the commonwealth of Puerto  
19 Rico, or any territory or possession of the United States, unless the context requires  
20 that "state" means only the state of Wisconsin.

21           **SECTION 25.** 71.25 (intro.) of the statutes is amended to read:

22           **71.25 Situs of income; allocation and apportionment.** (intro.) For  
23 purposes of determining the situs of income under this section and s. 71.255 (5) (a)  
24 1. and 2.:

25           **SECTION 26.** 71.25 (5) (b) 1. of the statutes is renumbered 71.25 (5) (b).

1           **SECTION 27.** 71.25 (5) (b) 2. of the statutes is repealed.

2           **SECTION 28.** 71.25 (9) (d) of the statutes is repealed.

3           **SECTION 29.** 71.25 (9) (dj) of the statutes is created to read:

4           71.25 (9) (dj) 1. Except as provided in par. (df), gross royalties and other gross  
5 receipts received for the use or license of intangible property, including patents,  
6 copyrights, trademarks, trade names, service names, franchises, licenses, plans,  
7 specifications, blueprints, processes, techniques, formulas, designs, layouts,  
8 patterns, drawings, manuals, technical know-how, contracts, and customer lists, are  
9 sales in this state if any of the following applies:

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

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

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

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

25           **SECTION 30.** 71.25 (9) (dk) of the statutes is created to read:

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

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

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

10           c. The purchaser of the intangible property has its commercial domicile in this  
11 state.

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

16           **SECTION 31.** 71.25 (10) (a) of the statutes is renumbered 71.25 (10) (a) 1.

17           **SECTION 32.** 71.25 (10) (a) 2. of the statutes is created to read:

18           71.25 (10) (a) 2. As used in this section, "financial organization" includes any  
19 subsidiary of an entity described in subd. 1., if a significant purpose for the  
20 subsidiary is to hold investments or if the subsidiary primarily functions to hold  
21 investments.

22           **SECTION 33.** 71.255 of the statutes is created to read:

23           **71.255 Combined Reporting. (1) DEFINITIONS.** In this section:

24           (a) "Combined group" means the group of all persons whose income and  
25 apportionment factors are required to be taken into account under sub. (2) to

1 determine a member's share of the net business income or loss apportionable to this  
2 state that is attributable to a unitary business.

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

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

8 1. A parent corporation and any one or more corporations or chains of  
9 corporations that are connected to the parent corporation by direct or indirect  
10 ownership by the parent corporation, if the parent corporation owns stock  
11 representing more than 50 percent of the voting power of at least one of the connected  
12 corporations or if the parent corporation or any of the connected corporations owns  
13 stock that cumulatively represents more than 50 percent of the voting power of each  
14 of the connected corporations.

15 2. Any 2 or more corporations if a common owner, regardless of whether the  
16 owner is a corporate entity, directly or indirectly owns stock representing more than  
17 50 percent of the voting power of the corporations or connected corporations.

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

20 4. Any 2 or more corporations if stock representing more than 50 percent of the  
21 voting power in each corporation is directly owned by, or for the benefit of, family  
22 members. In this subdivision, "family member" means an individual related by  
23 blood, marriage, or adoption within the 3rd degree of kinship, as computed under s.  
24 990.001 (16), or the spouse of such individual.

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

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

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

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

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

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

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

13 (g) "Doing business in this state" has the meaning given in s. 71.22 (1n).

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

16 (i) "File" has the meaning given in s. 71.22 (2m).

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

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

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

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

6           (n) "Unitary business" means a single economic enterprise that is made up  
7 either of separate parts of a single business entity, of multiple business entities that  
8 are related under sections 267 and 1563 of the Internal Revenue Code, or of a  
9 commonly controlled group of business entities that are sufficiently interdependent,  
10 integrated, and interrelated through their activities so as to provide a synergy and  
11 mutual benefit that produces a sharing or exchange of value among them and a  
12 significant flow of value to the separate parts. Two or more business entities are  
13 presumed to be a unitary business if the businesses have unity of ownership,  
14 operation, and use as indicated by a centralized management or a centralized  
15 executive force; centralized purchasing, advertising, or accounting; intercorporate  
16 sales or leases; intercorporate services, including administrative, employee benefits,  
17 human resources, legal, financial, and cash management services; intercorporate  
18 debts; intercorporate use of proprietary materials; interlocking directorates; or  
19 interlocking corporate officers. In no event and under no circumstances shall the  
20 preceding sentence be construed as exclusive of any and all other factors indicative  
21 of a unitary business. For purposes of this section, the term "unitary business" shall  
22 be broadly construed, to the extent permitted by the U.S. Constitution. The members  
23 of a combined group shall be jointly and severally liable for costs, penalties, interests,  
24 and taxes associated with the combined report. Any business conducted by a  
25 pass-through entity that is owned directly or indirectly by a corporation shall be

1 treated as conducted by the corporation, to the extent of the corporation's distributive  
2 share of the pass-through entity's income, regardless of the percentage of the  
3 corporation's ownership interest. A business conducted directly or indirectly by one  
4 corporation is unitary with that portion of a business conducted by another  
5 corporation through its direct or indirect interest in a pass-through entity if there  
6 is a synergy and exchange and flow of value between the 2 parts of the business and  
7 the 2 corporations are members of the same commonly controlled group.

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

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

21 (c) Except as provided in par. (d), if 80 percent or more of a corporation's  
22 worldwide income is active foreign business income, as defined in section 861 (c) (1)  
23 (B) of the Internal Revenue Code, the income and apportionment factor or factors of  
24 the corporation shall not be included in the combined report, but the corporation



1 shall compute and allocate or apportion its income from the unitary business  
2 separately.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (4) BUSINESS INCOME OF THE COMBINED GROUP. (a) The business income of a  
6 combined group is the sum of the income of each member of the combined group as  
7 determined under the Internal Revenue Code, as modified under s. 71.26 or 71.45,  
8 and except as provided under pars. (b) to (j). If a unitary business includes income  
9 from a pass-through entity, the pass-through entity income to be included in the  
10 total income of the combined group shall be the member of the combined group's  
11 direct and indirect distributive share of the pass-through entity's unitary business  
12 income.

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

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

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

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

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

12 (f) Except as provided in sub. (2) (d) 3. and except if the modification under s.  
13 71.26 (3) (j) applies, dividends paid by one combined group member to another shall  
14 be, to the extent that the dividends are paid out of the earnings and profits of the  
15 unitary business included in the combined report, whether in the current taxable  
16 year or in a prior taxable year, subtracted from the income of the recipient. This  
17 paragraph does not apply to dividends received from members of the unitary  
18 business that were not part of the combined group during the calendar year  
19 preceding the receipt of the dividends.

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

1 included in the income of the seller and shall be apportioned as business income or  
2 loss recognized immediately before the event:

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

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

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

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

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

24 (i) Gain or loss from the sale or exchange of capital assets, property described  
25 by section 1231 (a) (3) of the Internal Revenue Code, and property subject to an

1 involuntary conversion, shall be removed from the total separate net income of each  
2 member of a combined group and shall be apportioned and allocated as follows:

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

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

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

20 4. Any state source loss of a member that is subject to the limitations of section  
21 1211 of the Internal Revenue Code shall be carried forward or carried back by that  
22 member and shall be treated as state source short-term capital loss incurred by that  
23 member for the year for which the carry-forward or carry-back applies.

24 (j) Any expense of one member of the combined group that is directly or  
25 indirectly attributable to the nonbusiness or exempt income of another member of

1 the unitary business shall be allocated to that other member of the unitary business  
2 as corresponding nonbusiness or exempt expense, as appropriate.

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

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

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

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

24 4. The denominator of the modified sales factor shall include the denominator  
25 of the sales factor for each combined group member described in subd. 1., the



1 denominator of the receipts factor for each combined group member described in  
2 subd. 2., and the denominator of the premiums factor for each combined group  
3 member described in subd. 3.

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

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

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

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

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

17 **(6) CREDITS, NET BUSINESS LOSSES, AND POST-APPORTIONMENT DEDUCTIONS.** (a)  
18 Except as provided in par. (b), no tax credit, Wisconsin net business loss  
19 carry-forward, or other post-apportionment deduction earned by one member of the  
20 combined group, but not fully used by or allowed to that member, may be used in  
21 whole or in part by another member of the combined group or applied in whole or in  
22 part against the total income of the combined group. A member of a combined group  
23 may use a carry-forward of a credit, Wisconsin net business loss carry-forward, or  
24 other post-apportionment deduction otherwise allowable under s. 71.26 or 71.45,

1 that was incurred by that same member in a taxable year beginning before the  
2 effective date of this paragraph .... [LRB inserts date].

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

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

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

1 in ss. 71.26 (4) and 71.45 (4) shall apply in the same manner as if the loss was not  
2 converted to a pre-apportionment net business loss carry-forward before used.

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

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

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

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

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

6 (b) Only the designated agent may act on behalf of the members of the combined  
7 group for matters relating to the combined report. The designated agent's  
8 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, in addition to the  
5 payment due less than 45 days after the effective date of this subsection .... [LRB  
6 inserts date], shall be deemed timely paid if paid by the next subsequent installment  
7 due date.

8 **SECTION 34.** 71.26 (2) (a) 7. of the statutes is amended to read:

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

14 **SECTION 35.** 71.26 (2) (a) 9. of the statutes is amended to read:

15 71.26 (2) (a) 9. Minus the amount added, pursuant to subd. 7. or s. 71.05 (6) (a)  
16 24., 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that  
17 paid interest expenses ~~or~~, rental expenses, intangible expenses, or management fees  
18 to the corporation, to the extent that the related entity could not offset such amount  
19 with the deduction allowable under subd. 8. or s. 71.05 (6) (b) 45., 71.34 (1k) (k), or  
20 71.45 (2) (a) 17.

21 **SECTION 36.** 71.26 (3) (x) of the statutes is amended to read:

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



1           **SECTION 37.** 71.28 (4) (ad) 1. of the statutes is amended to read:

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

17          **SECTION 38.** 71.28 (4) (ad) 2. of the statutes is amended to read:

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

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

11 **SECTION 39.** 71.28 (4) (ad) 3. of the statutes is amended to read:

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

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

6 **SECTION 40.** 71.28 (4) (am) 1. of the statutes is amended to read:

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

1 claimant's qualified research expenses for research conducted exclusively in a  
2 development zone. The rules under s. 73.03 (35) apply to the credit under this  
3 subdivision. The rules under sub. (1di) (f) and (g) as they apply to the credit under  
4 that subsection apply to claims under this subdivision. Section 41 (h) of the Internal  
5 Revenue Code does not apply to the credit under this subdivision.

6 **SECTION 41.** 71.30 (2) of the statutes is amended to read:

7 **71.30 (2) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE**  
8 **BUSINESSES.** In any case of 2 or more organizations, trades or businesses (whether or  
9 not incorporated, whether or not organized in the United States and, whether or not  
10 affiliated, and whether or not unitary) owned or controlled directly or indirectly by  
11 the same interests, the secretary or his or her delegate may distribute, apportion or  
12 allocate gross income, deductions, credits or allowances between or among such  
13 organizations, trades or businesses, if he or she determines that such distribution,  
14 apportionment or allocation is necessary in order to prevent evasion of taxes or  
15 clearly to reflect the income of any of such organizations, trades or businesses. The  
16 authority granted under this subsection is in addition to, and not a limitation of or  
17 dependent on, the provisions of ss. 71.05 (6) (a) 24. and (b) 45., 71.26 (2) (a) 7. and 8.,  
18 71.34 (1k) (j) and (k), 71.45 (2) (a) 16. and 17., and 71.80 (23).

19 **SECTION 42.** 71.30 (2m) of the statutes is created to read:

20 **71.30 (2m) TRANSACTIONS WITHOUT ECONOMIC SUBSTANCE.** (a) If any person,  
21 directly or indirectly, engages in a transaction or series of transactions without  
22 economic substance to create a loss or to reduce taxable income or to increase credits  
23 allowed in determining Wisconsin tax, the department shall determine the amount  
24 of a taxpayer's taxable income or tax so as to reflect what would have been the

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

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

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

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

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

17 **SECTION 43.** 71.34 (1c) of the statutes is created to read:

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

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

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

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

2 (d) Licensing fees.

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

4 **SECTION 44.** 71.34 (1d) of the statutes is created to read:

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

8 **SECTION 45.** 71.34 (1h) of the statutes is created to read:

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

15 **SECTION 46.** 71.34 (1k) (j) of the statutes is amended to read:

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

21 **SECTION 47.** 71.34 (1k) (L) of the statutes is amended to read:

22 71.34 (1k) (L) A deduction shall be allowed for the amount added, pursuant to  
23 par. (j) or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.45 (2) (a) 16., to the federal income  
24 of a related entity that paid interest expenses ~~or~~, rental expenses, intangible  
25 expenses, or management fees to the corporation, to the extent that the related entity

1 could not offset such amount with the deduction allowable under par. (k) or s. 71.05  
2 (6) (b) 45., 71.26 (2) (a) 8., or 71.45 (2) (a) 17.

3 **SECTION 48.** 71.42 (1sg) of the statutes is created to read:

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

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 49.** 71.42 (1sh) of the statutes is created to read:

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

20 **SECTION 50.** 71.42 (1t) of the statutes is amended to read:

21 71.42 (1t) For purposes of s. ss. 71.45 (2) (a) 16. and 18. and 71.255 (2) (d) 1.,  
22 “interest expenses” means interest that would otherwise be deductible under section  
23 163 of the Internal Revenue Code, as adjusted under s. 71.45 (2).

24 **SECTION 51.** 71.42 (3c) of the statutes is created to read:

1           71.42 (3c) For purposes of s. 71.45 (2) (a) 16. and 18., “management fees”  
2 include expenses and costs, 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 adjusted under s. 71.45 (2).

8           **SECTION 52.** 71.43 (2) of the statutes is amended to read:

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



1 this chapter relating to computation of taxable income for other corporations shall  
2 apply to such insurance companies, except for s. 71.255. All other provisions of this  
3 chapter shall apply to insurance companies subject to taxation under this chapter  
4 unless the context clearly requires otherwise.

5 **SECTION 53.** 71.45 (2) (a) 16. of the statutes is amended to read:

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

11 **SECTION 54.** 71.45 (2) (a) 18. of the statutes is amended to read:

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

18 **SECTION 55.** 71.47 (4) (ad) 1. of the statutes is amended to read:

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

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

9 **SECTION 56.** 71.47 (4) (ad) 2. of the statutes is amended to read:

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

1 2., (dh) 1., 2., and 3., (dj) 1., and (dk) 1. Section 41 (h) of the Internal Revenue Code  
2 does not apply to the credit under this paragraph.

3 **SECTION 57.** 71.47 (4) (ad) 3. of the statutes is amended to read:

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

23 **SECTION 58.** 71.47 (4) (am) of the statutes is amended to read:

24 71.47 (4) (am) *Development zone additional research credit.* In addition to the  
25 credit under par. (ad), any corporation may credit against taxes otherwise due under

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

1 begin before January 1, 1998, may be carried forward to taxable years that begin on  
2 January 1, 1998, or thereafter.

3 **SECTION 59.** 71.80 (1) (b) of the statutes is amended to read:

4 71.80 (1) (b) In any case of 2 or more organizations, trades or businesses  
5 (whether or not incorporated, whether or not organized in the United States and,  
6 whether or not affiliated, and whether or not unitary) owned or controlled directly  
7 or indirectly by the same interests, the secretary or the secretary's delegate may  
8 distribute, apportion or allocate gross income, deductions, credits or allowances  
9 between or among such organizations, trades or businesses, if the secretary  
10 determines that such distribution, apportionment or allocation is necessary in order  
11 to prevent evasion of taxes or clearly to reflect the income of any of such  
12 organizations, trades or businesses. The authority granted under this subsection is  
13 in addition to, and not a limitation of or dependent on, the provisions of sub. (23) and  
14 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  
15 (2) (a) 16. and 17.

16 **SECTION 60.** 71.80 (1m) of the statutes is created to read:

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

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

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

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

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

13           **SECTION 9343. Initial applicability; Revenue.**

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

*g*

1 taxable years beginning on January 1 of the year following the year in which this  
2 subsection takes effect.

3

(END)

*May 1, 2009*

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## 2009-11 LRB Draft Review

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**Date:** February 2, 2009

**LRB Number:** 1215/P4 (Combined Reporting)

**Reviewed by:** Wendy Miller  
Axel F. Candelaria

**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:** Changes are necessary to make the effective date administrable and to clarify the bill's provisions.

### Changes Needed & Why:

#### 1. Effective Date

This bill would not capture any additional revenue in FY2009 for calendar year taxpayers. As written, this bill first applies to taxable years beginning on May 1, 2009. However, the transitional provisions in s. 71.255(10) allow calendar year corporations to "catch up" on estimated payments if the bill is enacted after (or within 45 days of) the due date of an installment payment. For calendar year corporations, the first installment is due March 15, 2009 and the second is due June 15, 2009. Thus, it is administratively possible to make the bill retroactive to taxable years beginning on January 1, 2009.

Also, an enactment date of May 1, 2009 would be problematic to administer. There would be two sets of corporation tax forms and/or instructions for 2009 – one for corporations with a taxable year beginning on January 1 through April 30, and another for corporations with a taxable year beginning on or after May 1.

For these reasons, the effective date language on page 46 should be changed as follows:

✓ COMBINED REPORTING. The treatment of sections... ..of the statutes first apply to taxable years beginning on ~~May~~ January 1, 2009, except that if this subsection takes



effect after May 1, 2009, this Act first applies to taxable years beginning on January 1, 2010.

## **2. Alternative Apportionment Formulas**

In s. 71.255(5)(b), the bill provides that when two or more taxpayers in the same combined group use different apportionment methods, the group can petition the Department for an alternative apportionment method if certain conditions are met. This language encompasses the situation where one member uses a single-factor formula and one uses a multiple-factor formula, but fails to encompass situations where two or more taxpayers have different multiple-factor formulas. To encompass both types of situations, the language of this paragraph (beginning on page 26) should be changed as follows:

**71.255(5)(b)** ~~If a combined group includes at least one member which in the absence of this section would be required to use a single sales factor, a single receipts factor, or a single premiums factor and at least one other member which would in the absence of this section be required to use an apportionment factor or factors other than a single sales factor, a single receipts factor, or a single premiums factor, if two or more members of the combined group would in the absence of this section be required to use differing apportionment formulas from one another, and if the business income of the combined group...~~

## **3. Definition of "Unitary Business" (s. 71.255(1)(n))**

**Page 15, Line 8:** Delete "and" within the phrase "sections 267 and 1563 . . . ." Replace it with "or" so that it reads "sections 267 or 1563 . . . ." The revision as requested is consistent with other statutory provisions that refer to those sections of the IRC.

## **4. Duties of "Designated Agent" (s. 71.255(7))**

**Page 30, Lines 4 and 7:** Replace the verb "Receive" at the beginning of each line with the verb's inflected form of "Receiving."

**Page 30, Lines 4-6:** Revise as follows:

"Any such notice the department sends to received by the designated agent is considered sent to received by all members of the combined group."

**Page 30, Lines 11-17:**

Proposed § 71.255(7)(c) relies on ratification within agency law and on the well established meanings of certain phrases and words. *As written* on **LRB-1215/P4**, the

statutory language blurs the line between the rules of ratification and adoption, which among others, have specific rules about relating back (or not) to the time of the unauthorized act(s). Also, and briefly, the word "act" denotes external manifestation of the actor's will, whereas "action," in its usual legal sense, refers to a person's legal and formal demand of that person's rights to or from other persons. The use of the words "affirmative steps" has a well established meaning in case law, contrary to the words "affirmative actions."

As such, lines 11-17 should read,

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