State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1215/P6
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DOA:.....Lillethun, BB0285 - Combined reporting

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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:

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

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

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

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

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

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

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

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

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

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

(d) Licensing fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Licensing fees.

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

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

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

SECTION 22. 71.22 (3m) of the statutes is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. It is a member of a unitary business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If 2 or more members of a 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 derived from business transacted in this state of that combined group cannot be ascertained with reasonable certainty by use of the modified sales factor as provided in par. (a), the combined group may petition the department to use a different apportionment computation for the combined report. This paragraph does not apply if less than 30 percent of the business income of the combined group would in the absence of this section be required to be apportioned using a factor or factors other than a single sales factor, a single receipts factor, or a single premiums factor. The department shall deny the petition if the taxpayer cannot show, by clear and convincing evidence, that the apportionment methods described in this subsection do not clearly reflect the income of the unitary business attributable to this state.

(6) CREDITS, NET BUSINESS LOSSES, AND POST-APPORTIONMENT DEDUCTIONS. (a) Except as provided in par. (b), no tax credit, Wisconsin net business loss carry-forward, or other post-apportionment deduction earned by one member of the combined group, but not fully used by or allowed to that member, may be used in whole or in part by another member of the combined group or applied in whole or in part against the total income of the combined group. A member of a combined group may use a carry-forward of a credit, Wisconsin net business loss carry-forward, or other post-apportionment deduction otherwise allowable under s. 71.26 or 71.45, that was incurred by that same member in a taxable year beginning before the effective date of this paragraph .... [LRB inserts date].

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

date of this paragraph .... [LRB inserts date], is subject to the carry-forward period and limitations provided in s. 71.26 (4), if the member is subject to tax under this subchapter, or s. 71.45 (4), if the member is subject to tax under subchapter VII. A member may use such Wisconsin net business loss, or share it among the members of the unitary business filing the combined report, as follows:

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

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

3. For purposes of subd. 2, the pre-apportionment net business loss carry-forward for each year for which a combined group member has available

Wisconsin net business loss is the member's apportioned share of the Wisconsin net business loss computed on the combined report for the year in which the loss was generated, divided by the member's Wisconsin apportionment percentage computed on that same combined report.

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

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

(7) DESIGNATED AGENT. (a) Each combined group shall have one designated agent. The designated agent is the parent corporation of the combined group. If there is no such parent corporation, the designated agent may be appointed by the members. If there is no such parent corporation and no member is appointed, the designated agent is the member that has the most significant operations in this state on a recurring basis, as determined by the department. The designated agent may change only when the designated agent is no longer a member of the combined group,

in which case the succeeding designated agent shall notify the department of the change in the manner prescribed by the department.

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

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

2. Filing any extension under s. 71.24 or 71.44.

3. Filing any amended combined reports or claims for refunds or credits.

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

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

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

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

8. Receiving notices regarding the combined report. Any such notice the designated agent receives is considered received by all members of the combined group.

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

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

(c) Acts contrary to those described in par. (b) are unauthorized acts that do not bind the department in any manner. The department may choose to receive the benefits or assume the obligations of any such unauthorized acts. The department is bound by acts contrary to those described in par. (b) only if the department takes affirmative steps to expressly manifest its intent to receive the benefits or assume the obligations of any such acts. If the department takes such affirmative steps to ratify an unauthorized act, the unauthorized act relates back to the time of the unauthorized act.

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

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

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

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

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

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

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

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

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

subsection .... [LRB inserts date], is less than 45 days after the effective date of this subsection .... [LRB inserts date], such estimated tax payments, in addition to the payment due less than 45 days after the effective date of this subsection .... [LRB inserts date], shall be deemed timely paid if paid by the next subsequent installment due date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

development zone. The rules under s. 73.03 (35) apply to the credit under this subdivision. The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to claims under this subdivision. Section 41 (h) of the Internal Revenue Code does not apply to the credit under this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Licensing fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Licensing fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71.47 **(4)** (ad) 2. For taxable years beginning after June 30, 2007, any corporation may credit against taxes otherwise due under this chapter an amount equal to 10 percent of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the Internal Revenue Code, except that "qualified research expenses" includes only expenses incurred by the claimant for research related to designing internal combustion engines for vehicles, including expenses related to designing vehicles that are powered by such engines and improving production processes for such engines and vehicles, incurred for research conducted in this state for the taxable year, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation, except as provided in par. (af), and except that "qualified research expenses" does not include compensation used in computing the credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the Internal Revenue Code, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d),~~ (df) 1. and 2., (dh) 1., 2., and 3., (dj) 1., and (dk) 1. Section 41 (h) of the Internal Revenue Code does not apply to the credit under this paragraph.

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

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

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

71.47 **(4)** (am) *Development zone additional research credit.* In addition to the credit under par. (ad), any corporation may credit against taxes otherwise due under this chapter an amount equal to 5 percent of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the

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

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

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

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

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

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

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

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

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

SECTION 9343. Initial applicability; Revenue.

(1) COMBINED REPORTING. The treatment of sections 71.01 (1b), (1n), (5n), (5p), (7v), and (10g), 71.04 (7) (d), (dj), and (dk), 71.05 (6) (a) 24. and (b) 46., 71.07 (2dr) (a), 71.10 (1) and (1m), 71.22 (1g), (1r), (1t), (3g), (3h), (3m), (6d), and (9g), 71.25 (intro.), (5) (b) 1. and 2., and (9) (d), (dj), and (dk), 71.255, 71.26 (2) (a) 7. and 9. and (3) (x), 71.28 (4) (ad) 1., 2., and 3. and (am) 1., 71.30 (2) and (2m), 71.34 (1c), (1d), (1h), and (1k) (j) and (L), 71.42 (1sg), (1sh), (1t), and (3c), 71.43 (2), 71.45 (2) (a) 16. and 18., 71.47 (4) (ad) 1., 2., and 3. and (am), and 71.80 (1) (b) and (1m) of the statutes, the renumbering of sections 71.04 (8) (a) and 71.25 (10) (a) of the statutes, and the creation of sections 71.04 (8) (a) 2. and 71.25 (10) (a) 2. of the statutes first apply to taxable years beginning on January 1, 2009, except that if this subsection takes effect after May 1, 2009, the treatment of sections 71.01 (1b), (1n), (5n), (5p), (7v), and (10g), 71.04 (7) (d), (dj), and (dk), 71.05 (6) (a) 24. and (b) 46., 71.07 (2dr) (a), 71.10 (1) and (1m), 71.22 (1g), (1r), (1t), (3g), (3h), (3m), (6d), and (9g), 71.25 (intro.), (5) (b) 1. and 2., and (9) (d), (dj), and (dk), 71.255, 71.26 (2) (a) 7. and 9. and (3) (x), 71.28

(4) (ad) 1., 2., and 3. and (am) 1., 71.30 (2) and (2m), 71.34 (1c), (1d), (1h), and (1k) (j) and (L), 71.42 (1sg), (1sh), (1t), and (3c), 71.43 (2), 71.45 (2) (a) 16. and 18., 71.47 (4) (ad) 1., 2., and 3. and (am), and 71.80 (1) (b) and (1m) of the statutes, the renumbering of sections 71.04 (8) (a) and 71.25 (10) (a) of the statutes, and the creation of sections 71.04 (8) (a) 2. and 71.25 (10) (a) 2. of the statutes first apply to taxable years beginning on January 1, 2010.

(END)