



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

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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 (1r).

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 section 267 or 1563 of the Internal Revenue Code, or of a commonly
9 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 otherwise
18 included in the combined group under this subsection represents an avoidance or
19 evasion of tax by the person or the combined group member, the department may
20 require all or any part of the income or loss and associated apportionment factor or
21 factors of the person be included in or excluded from the combined report for the
22 unitary business or may require the use of a different apportionment factor or
23 factors. The department may require that a combined report include or exclude the
24 income or loss and associated apportionment factor or factors of persons that are not
25 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), a 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 2 or more members of a combined group would in the absence of this
2 section be required to use differing apportionment formulas from one another, and
3 if the business income of the combined group derived from business transacted in
4 this state of that combined group cannot be ascertained with reasonable certainty
5 by use of the modified sales factor as provided in par. (a), the combined group may
6 petition the department to use a different apportionment computation for the
7 combined report. This paragraph does not apply if less than 30 percent of the
8 business income of the combined group would in the absence of this section be
9 required to be apportioned using a factor or factors other than a single sales factor,
10 a single receipts factor, or a single premiums factor. The department shall deny the
11 petition if the taxpayer cannot show, by clear and convincing evidence, that the
12 apportionment methods described in this subsection do not clearly reflect the income
13 of the unitary business attributable to this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **71.30 (2m) TRANSACTIONS WITHOUT ECONOMIC SUBSTANCE.** (a) If any person,
20 directly or indirectly, engages in a transaction or series of transactions without
21 economic substance to create a loss or to reduce taxable income or to increase credits
22 allowed in determining Wisconsin tax, the department shall determine the amount
23 of a taxpayer's taxable income or tax so as to reflect what would have been the
24 taxpayer's taxable income or tax if not for the transaction or transactions without
25 economic substance causing the reduction in taxable income or tax.

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

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

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

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

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

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

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

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

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

25 (d) Licensing fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (d) Licensing fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 71.47 (4) (ad) 2. For taxable years beginning after June 30, 2007, any
9 corporation may credit against taxes otherwise due under this chapter an amount
10 equal to 10 percent of the amount obtained by subtracting from the corporation’s
11 qualified research expenses, as defined in section 41 of the Internal Revenue Code,
12 except that “qualified research expenses” includes only expenses incurred by the
13 claimant for research related to designing internal combustion engines for vehicles,
14 including expenses related to designing vehicles that are powered by such engines
15 and improving production processes for such engines and vehicles, incurred for
16 research conducted in this state for the taxable year, except that a taxpayer may elect
17 the alternative computation under section 41 (c) (4) of the Internal Revenue Code
18 and that election applies until the department permits its revocation, except as
19 provided in par. (af), and except that “qualified research expenses” does not include
20 compensation used in computing the credit under subs. (1dj) and (1dx), the
21 corporation’s base amount, as defined in section 41 (c) of the Internal Revenue Code,
22 except that gross receipts used in calculating the base amount means gross receipts
23 from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. ~~and (d), (df) 1. and~~
24 2., (dh) 1., 2., and 3., (dj) 1., and (dk) 1. Section 41 (h) of the Internal Revenue Code
25 does not apply to the credit under this paragraph.

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

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

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

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

1 Internal Revenue Code, except that “qualified research expenses” include only
2 expenses incurred by the claimant in a development zone under subch. VI of ch. 560,
3 except that a taxpayer may elect the alternative computation under section 41 (c) (4)
4 of the Internal Revenue Code and that election applies until the department permits
5 its revocation and except that “qualified research expenses” do not include
6 compensation used in computing the credit under sub. (1dj) nor research expenses
7 incurred before the claimant is certified for tax benefits under s. 560.765 (3), the
8 corporation’s base amount, as defined in section 41 (c) of the Internal Revenue Code,
9 in a development zone, except that gross receipts used in calculating the base amount
10 means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and
11 2., ~~(d), (df), and 1. and 2.,~~ (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. (1di) (f) and (g) as they apply
19 to the credit under that subsection apply to claims under this paragraph. Section 41
20 (h) of the Internal Revenue Code does not apply to the credit under this paragraph.
21 No credit may be claimed under this paragraph for taxable years that begin on
22 January 1, 1998, or thereafter. Credits under this paragraph for taxable years that
23 begin before January 1, 1998, may be carried forward to taxable years that begin on
24 January 1, 1998, or thereafter.

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

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

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

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

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

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

