

**2009 DRAFTING REQUEST**

**Bill**

Received: **12/18/2008**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Business - crp inc, fran**

Extra Copies:

Submit via email: **NO**

**Pre Topic:**

DOA:.....Lillethun, BB0286 -

**Topic:**

Addbacks expansion

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 12/18/2008	kfollett 12/19/2008		_____			State
/1			rschluet 12/19/2008	_____	mbarman 12/19/2008		State
/2	jkreye 01/06/2009	csicilia 01/07/2009	mduchek 01/07/2009	_____	mbarman 01/07/2009		State
/3	jkreye 01/15/2009	csicilia 01/16/2009	jfrantze 01/16/2009	_____	cduerst 01/16/2009		

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FE Sent For:

3 gjs 1/16/09  
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FE Sent For:

<END>

1216

## 2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Expansion of Addbacks
- Tracking Code: BB0286
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
  - Phone: 266-7597
  - Email: Chad.Lillethun@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Low

Intent:

Expand the scope of the current "addback" provision to include management fees and intangible expenses.

**2009-2011 Legislative Proposal  
Wisconsin Department of Revenue  
IS&E Division**

**Date:** November 21, 2008

**TITLE:** Expansion of Addbacks for Related Entity Expenses

**DESCRIPTION OF CURRENT LAW AND PROBLEM**

Some transactions between related entities are designed for the sole purpose of avoiding Wisconsin taxes. Many of these transactions are designed to create large expense deductions for a taxpayer without materially changing the economic position of the taxpayer. The only reason for the transactions is to avoid taxation.

2007 Act 226 (the special session budget repair bill) created a provision requiring taxpayers to "add back" interest expenses and rental expenses paid, accrued, or incurred to related entities unless certain exceptions are met. The exceptions are facts which establish that the expense was paid, accrued, or incurred primarily for purposes other than tax avoidance. Additionally, under Act 226, taxpayers eligible to claim related entity interest and rental expenses must disclose those expenses on a separate form in order to claim the deductions.

Act 226 provisions do not address related entity expenses other than interest expenses and rental expenses. Taxpayers may continue to create tax avoidance transactions using deductions of other types.

**RECOMMENDATION FOR ACTION**

Expand the scope of the current "addback" provision to include management fees and intangible expenses (such as royalties, patent and copyright fees, etc.). See Attachment 1 for proposed definition of intangible expenses and management fees.

**ADMINISTRATIVE IMPACT**

DOR is working on procedures, forms, and guidance to implement the Act 226 Session provision relating to interest and rental expenses. The additional administrative impact of expanding the scope of affected expenses will be minimal.

**FAIRNESS /TAX EQUITY**

Expanding the addback statute promotes fairness and tax equity. Intangible expense transactions designed for the sole purpose of avoiding tax would no longer benefit taxpayers. While many large companies have the resources to hire lawyers and tax advisors to assist them in setting up tax avoidance transactions, smaller businesses are not so able. More importantly, many taxpayers simply choose not to engage in tax avoidance transactions. Expanding the addback statute will help ensure that the tax applies equally to taxpayers in equal positions.

**IMPACT ON ECONOMIC DEVELOPMENT**

Expanding the addback statute will increase the Wisconsin tax liability of taxpayers who have been using tax avoidance transactions that use deductions for intangible expenses (such as royalties) and management fees. Taxpayers who have not been using tax avoidance transactions will not see an increase in Wisconsin tax liability.

**FISCAL EFFECT**

The fiscal effect for requiring the addback of intangible expenses and management fees is estimated to be a GPR revenue increase of \$4.8 million in FY10 and \$10.5 million in FY11.

**DRAFTING INSTRUCTIONS**

See LRB 537/P1 and Attachment 1

**EFFECTIVE DATE AND/OR INITIAL APPLICABILITY**

Taxable years beginning on or after January 1, 2010

**INTERESTED/AFFECTED PARTIES**

Corporations, small businesses, attorneys, accountants

**DOR CONTACT PERSON**

Diane Hardt, Division Administrator  
(608) 266-6798

**PREPARED BY**

Wendy Miller

**Drafting Instructions:  
Expansion of Addbacks for Related Party Expenses**

- I. Create definitions in secs. 71.01, 71.22, 71.34, and 71.42, to read as follows:
- A. "Intangible expense" includes but is not limited to:
1. 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 to the extent that such amounts are allowed as deductions or costs to determine federal taxable income under the Internal Revenue Code;
  2. Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;
  3. Royalty, patent, technical, and copyright fees; and
  4. Licensing fees;
- B. "Intangible property" includes but is not limited to patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets.
- C. "Management fees" includes but is not limited to expenses and costs paid for services pertaining to accounts receivable and payable, employee benefit plans, insurance, legal, payroll, data processing, purchasing, tax, financial and securities, accounting, reporting and compliance services or similar services, only to the extent that the amounts are allowed as a deduction or cost in determining net income under the Internal Revenue Code.
- II. Amend addition and subtraction modifications to add "intangible expenses" and "management fees" to the existing language for "interest expenses" and "rental expenses" in the following sections:
- 71.05(6)(a)24.
  - 71.06(6)(b)46.
  - 71.26(2)(a)7.
  - 71.26(2)(a)9.
  - 71.34(1k)(j)
  - 71.34(1k)(L)
  - 71.45(2)(a)16.
  - 71.45(2)(a)18.



iii. Amend the section allowing exceptions to related entity addbacks to include “intangible expenses” and “management fees” to the existing language for “interest expenses” and “rental expenses” in the following sections:

- 71.80(23)(a)
- 71.80(23)(a)1.
- 71.80(23)(a)2.
- 71.80(23)(a)3.
- 71.80(23)(b)

Stays

DOA - BB 0286

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

m 12-18-08

Don't Gen

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

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

Under current law, a person must add to the person's taxable income the amount of any deduction the person claimed for interest expenses and rental expenses paid to a related entity, unless the expenses are paid primarily for business purposes and not in order to avoid taxes. Under this bill, a person must add to the person's taxable income the amount of any deduction the person claimed for interest expenses, rental expenses, intangible expenses, and management fees paid to a related entity, unless the expenses or fees are paid primarily for business purposes and not in order to avoid taxes.

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 (5p) of the statutes is created to read:

3 71.01 (5p) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "intangible expenses"

4 include:

(d) licensing fees

1 (a) Expenses, losses, and costs for, related to, or directly or indirectly in  
2 connection with, the acquisition, use, maintenance, management, ownership, sale,  
3 exchange, or other disposition of intangible property, to the extent that the expenses,  
4 losses, or costs are allowed as deductions or costs to determine federal taxable  
5 income.

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

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

9 SECTION 2. 71.01 (5q) of the statutes is created to read:

10 71.01 (5q) "Intangible property" includes patents, patent applications, trade  
11 names, trademarks, service marks, copyrights, mask works, trade secrets, and  
12 similar types of intangible assets.

13 SECTION 3. 71.01 (7w) of the statutes is created to read:

14 71.01 (7w) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "management fees"  
15 include expenses and costs paid for services that pertain to accounts receivable,  
16 accounts payable, employee benefit plans, insurance, legal matters, payroll, data  
17 processing, purchasing, taxation, financial matters, securities, accounting, or  
18 reporting and compliance matters or for similar services, to the extent that the  
19 expenses or costs are allowed as deductions or costs to determine net income under  
20 the Internal Revenue Code.

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

22 71.05 (6) (a) 24. The amount deducted or excluded under the Internal Revenue  
23 Code for interest expenses and, rental expenses, intangible expenses, and  
24 management fees that are directly or indirectly paid, accrued, or incurred to, or in

1 connection directly or indirectly with one or more direct or indirect transactions with,  
2 one or more related entities.

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

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

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

11 71.22 (3e) For purposes of s. 71.26 (2) (a) 7. and 9., "intangible expenses"  
12 include:

13 (a) Expenses, losses, and costs for, related to, or directly or indirectly in  
14 connection with, the acquisition, use, maintenance, management, ownership, sale,  
15 exchange, or other disposition of intangible property, to the extent that the expenses,  
16 losses, or costs are allowed as deductions or costs to determine federal taxable income  
17 under the Internal Revenue Code.

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

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

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

22 71.22 (3f) "Intangible property" includes patents, patent applications, trade  
23 names, trademarks, service marks, copyrights, mask works, trade secrets, and  
24 similar types of intangible assets.

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

(d) Licensing fees.

1           71.22 **(6f)** For purposes of s. 71.26 (2) (a) 7. and 9., “management fees” include  
2 expenses and costs paid for services that pertain to accounts receivable, accounts  
3 payable, employee benefit plans, insurance, legal matters, payroll, data processing,  
4 purchasing, taxation, financial matters, securities, accounting, or reporting and  
5 compliance matters or for similar services, to the extent that the expenses or costs  
6 are allowed as deductions or costs to determine net income under the Internal  
7 Revenue Code.

8           **SECTION 9.** 71.26 (2) (a) 7. of the statutes is amended to read:

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

14           **SECTION 10.** 71.26 (2) (a) 9. of the statutes is amended to read:

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

21           **SECTION 11.** 71.34 (1c) of the statutes is created to read:

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

(d) Licensing fees.

1 losses, or costs are allowed as deductions or costs to determine federal taxable income  
2 under the Internal Revenue Code.

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

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

6 **SECTION 12.** 71.34 (1d) of the statutes is created to read:

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

10 **SECTION 13.** 71.34 (1h) of the statutes is created to read:

11 71.34 (1h) For purposes of sub. (1k) (j) and (L), "management fees" include  
12 expenses and costs paid for services that pertain to accounts receivable, accounts  
13 payable, employee benefit plans, insurance, legal matters, payroll, data processing,  
14 purchasing, taxation, financial matters, securities, accounting, or reporting and  
15 compliance matters or for similar services, to the extent that the expenses or costs  
16 are allowed as deductions or costs to determine net income under the Internal  
17 Revenue Code. In this subsection, "net income" does not have the meaning given in  
18 sub. (1k).

19 **SECTION 14.** 71.34 (1k) (j) of the statutes is amended to read:

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

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

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

7           **SECTION 16.** 71.42 (1sm) of the statutes is created to read:

8           71.42 (1sm) For purposes of s. 71.45 (2) (a) 16. and 18., “intangible expenses”  
9 include:

10           (a) Expenses, losses, and costs for, related to, or directly or indirectly in  
11 connection with, the acquisition, use, maintenance, management, ownership, sale,  
12 exchange, or other disposition of intangible property, to the extent that the expenses,  
13 losses, or costs are allowed as deductions or costs to determine federal taxable income  
14 under the Internal Revenue Code.

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

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

18           **SECTION 17.** 71.42 (1sn) of the statutes is created to read:

19           71.42 (1sn) “Intangible property” includes patents, patent applications, trade  
20 names, trademarks, service marks, copyrights, mask works, trade secrets, and  
21 similar types of intangible assets.

22           **SECTION 18.** 71.42 (3c) of the statutes is created to read:

23           71.42 (3c) For purposes of s. 71.45 (2) (a) 16., and 18., “management fees”  
24 include expenses and costs paid for services that pertain to accounts receivable,  
25 accounts payable, employee benefit plans, insurance, legal matters, payroll, data

(d) Licensing fees.

1 processing, purchasing, taxation, financial matters, securities, accounting, or  
2 reporting and compliance matters or for similar services, to the extent that the  
3 expenses or costs are allowed as deductions or costs to determine net income under  
4 the Internal Revenue Code.

5 **SECTION 19.** 71.45 (2) (a) 16. of the statutes is amended to read:

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

11 **SECTION 20.** 71.45 (2) (a) 18. of the statutes is amended to read:

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

18 **SECTION 21.** 71.80 (23) (a) (intro.) of the statutes is amended to read:

19 71.80 (23) (a) (intro.) The deductions provided under ss. 71.05 (6) (b) 45., 71.26  
20 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall be allowed for any interest expenses  
21 or, rental expenses, intangible expenses, or management fees described in ss. 71.05  
22 (6) (a) 24., 71.26 (2) (a) 7., 71.34 (1k) (j), or 71.45 (2) (a) 16. if any of the following  
23 applies to the interest expenses or, rental expenses, intangible expenses, or  
24 management fees:

25 **SECTION 22.** 71.80 (23) (a) 1. of the statutes is amended to read:



1           71.80 (23) (a) 1. The related entity to which the taxpayer paid, accrued, or  
2 incurred the interest expenses ~~or~~, rental expenses, intangible expenses, or  
3 management fees during the taxable year directly or indirectly paid, accrued, or  
4 incurred such amounts in the same taxable year to a person who is not a related  
5 entity or the related entity to which the taxpayer paid, accrued, or incurred such  
6 expenses or fees is a holding company or a direct or indirect subsidiary of a holding  
7 company, as defined in 12 USC 1841 (a) or (l) or 12 USC 1467a (a) (1) (D), not  
8 including any entity that is organized under the laws of another jurisdiction and that  
9 primarily holds and manages investments of a bank, subsidiary, or affiliate. For  
10 purposes of this subdivision, “interest” does not include interest that is paid in  
11 connection with any debt that is incurred to acquire the taxpayer’s assets or stock  
12 under section 368 of the Internal Revenue Code. If a portion of such an interest  
13 expense ~~or~~, rental expense, intangible expense, or management fee is paid, accrued,  
14 or incurred in the same taxable year to a person who is not a related entity, that  
15 portion shall be allowed as a deduction to the taxpayer.

16           **SECTION 23.** 71.80 (23) (a) 2. of the statutes is amended to read:

17           71.80 (23) (a) 2. The related entity was subject to tax on, or measured by, its  
18 net income or receipts in this state or any state, U.S. possession, or foreign country;  
19 the related entity’s tax base in such state, U.S. possession, or foreign country  
20 included the income received from the taxpayer for the interest expenses ~~or~~, rental  
21 expenses, intangible expenses, or management fees; the related entity’s aggregate  
22 effective tax rate applied to such income or receipts was at least 80 percent of the  
23 taxpayer’s aggregate effective tax rate; and the related entity is not a real estate  
24 investment trust under section 856 of the Internal Revenue Code, other than a  
25 qualified real estate investment trust. For purposes of this subdivision, “any state,

1 U.S. possession, or foreign country” does not include any state, U.S. possession, or  
2 foreign country under the laws of which the taxpayer files with the related entity, or  
3 the related entity files with another entity, a combined income tax report or return,  
4 a consolidated income tax report or return, or any other report or return that is due  
5 because of the imposition of a tax that is measured on or by income or receipts, if the  
6 report or return results in eliminating the tax effects of transactions, directly or  
7 indirectly, between either the taxpayer and the related entity or between the related  
8 entity and another entity.

9 **SECTION 24.** 71.80 (23) (a) 3. of the statutes is amended to read:

10 71.80 (23) (a) 3. The taxpayer establishes that the transaction satisfies any  
11 other conditions that the department considers relevant, based on the facts and  
12 circumstances, to determine that the primary motivation for the transaction was one  
13 or more business purposes other than the avoidance or reduction of state income or  
14 franchise taxes; that the transaction changed the economic position of the taxpayer  
15 in a meaningful way apart from tax effects; and that the interest expenses or, rental  
16 expenses, intangible expenses, or management fees were paid, accrued, or incurred  
17 using terms that reflect an arm’s-length relationship.

18 **SECTION 25.** 71.80 (23) (b) of the statutes is amended to read:

19 71.80 (23) (b) Notwithstanding par. (a), the deductions provided under ss. 71.05  
20 (6) (b) 45., 71.26 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall not be allowed for  
21 any interest expenses or, rental expenses, intangible expenses, or management fees  
22 that are directly or indirectly paid, accrued, or incurred to, or in connection directly  
23 or indirectly with one or more direct or indirect transactions with, one or more  
24 related entities, if the aggregate amount paid, accrued, or incurred for those related

1 entity transactions is not disclosed on a separate form prescribed by the department  
2 in the manner prescribed by the department.

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

4 (1) INTANGIBLE EXPENSES AND MANAGEMENT FEES. The treatment of sections 71.01  
5 (5p), (5q), and (7w), 71.05 (6) (a) 24. and (b) 46., 71.22 (3e), (3f), and (6f), 71.26 (2) (a)  
6 7. and 9., 71.34 (1c), (1d), (1h), and (1k) (j) and (L), 71.42 (1sm), (1sn), and (3c), 71.45  
7 (2) (a) 16. and 18., and 71.80 (23) (a) (intro.), 1., 2., and 3. and (b) of the statutes first  
8 applies to taxable years beginning on January 1, 2010.

9 (END)

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## 2009-11 LRB Draft Review

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**Date:** January 6, 2009

**LRB Number:** 1216/1

**Reviewed by:** Wendy Miller

### **Brief Description of LRB Draft:**

Taxpayers are required to "add back" to their income certain expenses paid, accrued, or incurred to related parties. A subsequent deduction is allowed only if specific conditions are met. The expenses subject to the "addback" under current law are interest and rent expenses. This bill expands the scope of the "addback" law to include intangible expenses and management fees.

### **Comments on Draft:**

The draft indicates the bill is to be effective for taxable years beginning on or after January 1, 2010. However, this bill could be made effective for taxable years beginning on or after January 1, 2009 without creating a significant administrative burden for the Department.

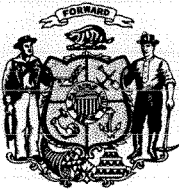
Since an "addback" law currently exists, the resources and processes needed to implement this bill are already in place. Also, note that the law to implement the "addback" for interest and rent expenses was enacted May 16, 2008 and made effective for taxable years beginning on or after January 1, 2008.

Also note the clarification recommended below.

### **Changes Needed & Why:**

The definition of "intangible expenses" in sec. 71.01(5p)(a) should be changed so it refers to "federal taxable income under the Internal Revenue Code." This way is more specific and also consistent with the definitions in secs. 71.22(3e), 71.34(1c), and 71.42(1sm). Details of the recommended change follow:

Citation	Page	Line	Change
71.01(5p)(a)	2	4	"...federal taxable income under the Internal Revenue Code."



12/16/2  
LRB-12/16/1  
JK:cjs:rs  
RMK  
Stamps

DOA:.....Lillethun, BB0286 - Addbacks expansion

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-6-09  
Gen

Do NOT

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

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

Under current law, a person must add to the person's taxable income the amount of any deduction the person claimed for interest expenses and rental expenses paid to a related entity, unless the expenses are paid primarily for business purposes and not in order to avoid taxes. Under this bill, a person must add to the person's taxable income the amount of any deduction the person claimed for interest expenses, rental expenses, intangible expenses, and management fees paid to a related entity, unless the expenses or fees are paid primarily for business purposes and not in order to avoid taxes.

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 (5p) of the statutes is created to read:

3 71.01 (5p) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "intangible expenses"

4 include:

1 (a) Expenses, losses, and costs for, related to, or directly or indirectly in  
2 connection with, the acquisition, use, maintenance, management, ownership, sale,  
3 exchange, or other disposition of intangible property, to the extent that the expenses,  
4 losses, or costs are allowed as deductions or costs to determine federal taxable  
5 income *under the Internal Revenue Code*

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

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

9 (d) Licensing fees.

10 **SECTION 2.** 71.01 (5q) of the statutes is created to read:

11 71.01 (5q) "Intangible property" includes patents, patent applications, trade  
12 names, trademarks, service marks, copyrights, mask works, trade secrets, and  
13 similar types of intangible assets.

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

15 71.01 (7w) For purposes of s. 71.05 (6) (a) 24. and (b) 46., "management fees"  
16 include expenses and costs paid for services that pertain to accounts receivable,  
17 accounts payable, employee benefit plans, insurance, legal matters, payroll, data  
18 processing, purchasing, taxation, financial matters, securities, accounting, or  
19 reporting and compliance matters or for similar services, to the extent that the  
20 expenses or costs are allowed as deductions or costs to determine net income under  
21 the Internal Revenue Code.

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

23 71.05 (6) (a) 24. The amount deducted or excluded under the Internal Revenue  
24 Code for interest expenses and, rental expenses, intangible expenses, and  
25 management fees that are directly or indirectly paid, accrued, or incurred to, or in

1 connection directly or indirectly with one or more direct or indirect transactions with,  
2 one or more related entities.

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

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

10 **SECTION 6.** 71.22 (3e) of the statutes is created to read:

11 71.22 (3e) For purposes of s. 71.26 (2) (a) 7. and 9., "intangible expenses"  
12 include:

13 (a) Expenses, losses, and costs for, related to, or directly or indirectly in  
14 connection with, the acquisition, use, maintenance, management, ownership, sale,  
15 exchange, or other disposition of intangible property, to the extent that the expenses,  
16 losses, or costs are allowed as deductions or costs to determine federal taxable income  
17 under the Internal Revenue Code.

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

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

21 (d) Licensing fees.

22 **SECTION 7.** 71.22 (3f) of the statutes is created to read:

23 71.22 (3f) "Intangible property" includes patents, patent applications, trade  
24 names, trademarks, service marks, copyrights, mask works, trade secrets, and  
25 similar types of intangible assets.

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

2           71.22 (6f) For purposes of s. 71.26 (2) (a) 7. and 9., “management fees” include  
3 expenses and costs paid for services that pertain to accounts receivable, accounts  
4 payable, employee benefit plans, insurance, legal matters, payroll, data processing,  
5 purchasing, taxation, financial matters, securities, accounting, or reporting and  
6 compliance matters or for similar services, to the extent that the expenses or costs  
7 are allowed as deductions or costs to determine net income under the Internal  
8 Revenue Code.

9           **SECTION 9.** 71.26 (2) (a) 7. of the statutes is amended to read:

10          71.26 (2) (a) 7. Plus the amount deducted or excluded under the Internal  
11 Revenue 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 10.** 71.26 (2) (a) 9. of the statutes is amended to read:

16          71.26 (2) (a) 9. Minus the amount added, pursuant to subd. 7. or s. 71.05 (6) (a)  
17 24., 71.34 (1k) (j), or 71.45 (2) (a) 16., to the federal income of a related entity that  
18 paid interest expenses ~~or~~, rental expenses, intangible expenses, or management fees  
19 to the corporation, to the extent that the related entity could not offset such amount  
20 with the deduction allowable under subd. 8. or s. 71.05 (6) (b) 45., 71.34 (1k) (k), or  
21 71.45 (2) (a) 17.

22          **SECTION 11.** 71.34 (1c) of the statutes is created to read:

23          71.34 (1c) For purposes of sub. (1k) (j) and (L), “intangible expenses” include:

24          (a) Expenses, losses, and costs for, related to, or directly or indirectly in  
25 connection with, the acquisition, use, maintenance, management, ownership, sale,



1 exchange, or other disposition of intangible property, to the extent that the expenses,  
2 losses, or costs are allowed as deductions or costs to determine federal taxable income  
3 under the Internal Revenue Code.

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

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

7 (d) Licensing fees.

8 **SECTION 12.** 71.34 (1d) of the statutes is created to read:

9 71.34 (1d) "Intangible property" includes patents, patent applications, trade  
10 names, trademarks, service marks, copyrights, mask works, trade secrets, and  
11 similar types of intangible assets.

12 **SECTION 13.** 71.34 (1h) of the statutes is created to read:

13 71.34 (1h) For purposes of sub. (1k) (j) and (L), "management fees" include  
14 expenses and costs paid for services that pertain to accounts receivable, accounts  
15 payable, employee benefit plans, insurance, legal matters, payroll, data processing,  
16 purchasing, taxation, financial matters, securities, accounting, or reporting and  
17 compliance matters or for similar services, to the extent that the expenses or costs  
18 are allowed as deductions or costs to determine net income under the Internal  
19 Revenue Code. In this subsection, "net income" does not have the meaning given in  
20 sub. (1k).

21 **SECTION 14.** 71.34 (1k) (j) of the statutes is amended to read:

22 71.34 (1k) (j) An addition shall be made for any amount deducted or excluded  
23 under the Internal Revenue Code for interest expenses ~~and~~, rental expenses,  
24 intangible expenses, and management fees that are directly or indirectly paid,

1 accrued, or incurred to, or in connection directly or indirectly with one or more direct  
2 or indirect transactions with, one or more related entities.

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

4 71.34 (1k) (L) A deduction shall be allowed for the amount added, pursuant to  
5 par. (j) or s. 71.05 (6) (a) 24., 71.26 (2) (a) 7., or 71.45 (2) (a) 16., to the federal income  
6 of a related entity that paid interest expenses or, rental expenses, intangible  
7 expenses, or management fees to the corporation, to the extent that the related entity  
8 could not offset such amount with the deduction allowable under par. (k) or s. 71.05  
9 (6) (b) 45., 71.26 (2) (a) 8., or 71.45 (2) (a) 17.

10 **SECTION 16.** 71.42 (1sm) of the statutes is created to read:

11 71.42 (1sm) For purposes of s. 71.45 (2) (a) 16. and 18., “intangible expenses”  
12 include:

13 (a) Expenses, losses, and costs for, related to, or directly or indirectly in  
14 connection with, the acquisition, use, maintenance, management, ownership, sale,  
15 exchange, or other disposition of intangible property, to the extent that the expenses,  
16 losses, or costs are allowed as deductions or costs to determine federal taxable income  
17 under the Internal Revenue Code.

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

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

21 (d) Licensing fees.

22 **SECTION 17.** 71.42 (1sn) of the statutes is created to read:

23 71.42 (1sn) “Intangible property” includes patents, patent applications, trade  
24 names, trademarks, service marks, copyrights, mask works, trade secrets, and  
25 similar types of intangible assets.

1           **SECTION 18.** 71.42 (3c) of the statutes is created to read:

2           71.42 (3c) For purposes of s. 71.45 (2) (a) 16., and 18., “management fees”  
3 include expenses and costs paid for services that pertain to accounts receivable,  
4 accounts payable, employee benefit plans, insurance, legal matters, payroll, data  
5 processing, purchasing, taxation, financial matters, securities, accounting, or  
6 reporting and compliance matters or for similar services, to the extent that the  
7 expenses or costs are allowed as deductions or costs to determine net income under  
8 the Internal Revenue Code.

9           **SECTION 19.** 71.45 (2) (a) 16. of the statutes is amended to read:

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

15           **SECTION 20.** 71.45 (2) (a) 18. of the statutes is amended to read:

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

22           **SECTION 21.** 71.80 (23) (a) (intro.) of the statutes is amended to read:

23           71.80 (23) (a) (intro.) The deductions provided under ss. 71.05 (6) (b) 45., 71.26  
24 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall be allowed for any interest expenses  
25 ~~or~~, rental expenses, intangible expenses, or management fees described in ss. 71.05

1 (6) (a) 24., 71.26 (2) (a) 7., 71.34 (1k) (j), or 71.45 (2) (a) 16. if any of the following  
2 applies to the interest expenses ~~or~~, rental expenses, intangible expenses, or  
3 management fees:

4 **SECTION 22.** 71.80 (23) (a) 1. of the statutes is amended to read:

5 71.80 (23) (a) 1. The related entity to which the taxpayer paid, accrued, or  
6 incurred the interest expenses ~~or~~, rental expenses, intangible expenses, or  
7 management fees during the taxable year directly or indirectly paid, accrued, or  
8 incurred such amounts in the same taxable year to a person who is not a related  
9 entity or the related entity to which the taxpayer paid, accrued, or incurred such  
10 expenses or fees is a holding company or a direct or indirect subsidiary of a holding  
11 company, as defined in 12 USC 1841 (a) or (l) or 12 USC 1467a (a) (1) (D), not  
12 including any entity that is organized under the laws of another jurisdiction and that  
13 primarily holds and manages investments of a bank, subsidiary, or affiliate. For  
14 purposes of this subdivision, "interest" does not include interest that is paid in  
15 connection with any debt that is incurred to acquire the taxpayer's assets or stock  
16 under section 368 of the Internal Revenue Code. If a portion of such an interest  
17 expense ~~or~~, rental expense, intangible expense, or management fee is paid, accrued,  
18 or incurred in the same taxable year to a person who is not a related entity, that  
19 portion shall be allowed as a deduction to the taxpayer.

20 **SECTION 23.** 71.80 (23) (a) 2. of the statutes is amended to read:

21 71.80 (23) (a) 2. The related entity was subject to tax on, or measured by, its  
22 net income or receipts in this state or any state, U.S. possession, or foreign country;  
23 the related entity's tax base in such state, U.S. possession, or foreign country  
24 included the income received from the taxpayer for the interest expenses ~~or~~, rental  
25 expenses, intangible expenses, or management fees; the related entity's aggregate

1 effective tax rate applied to such income or receipts was at least 80 percent of the  
2 taxpayer's aggregate effective tax rate; and the related entity is not a real estate  
3 investment trust under section 856 of the Internal Revenue Code, other than a  
4 qualified real estate investment trust. For purposes of this subdivision, "any state,  
5 U.S. possession, or foreign country" does not include any state, U.S. possession, or  
6 foreign country under the laws of which the taxpayer files with the related entity, or  
7 the related entity files with another entity, a combined income tax report or return,  
8 a consolidated income tax report or return, or any other report or return that is due  
9 because of the imposition of a tax that is measured on or by income or receipts, if the  
10 report or return results in eliminating the tax effects of transactions, directly or  
11 indirectly, between either the taxpayer and the related entity or between the related  
12 entity and another entity.

13 **SECTION 24.** 71.80 (23) (a) 3. of the statutes is amended to read:

14 71.80 (23) (a) 3. The taxpayer establishes that the transaction satisfies any  
15 other conditions that the department considers relevant, based on the facts and  
16 circumstances, to determine that the primary motivation for the transaction was one  
17 or more business purposes other than the avoidance or reduction of state income or  
18 franchise taxes; that the transaction changed the economic position of the taxpayer  
19 in a meaningful way apart from tax effects; and that the interest expenses or, rental  
20 expenses, intangible expenses, or management fees were paid, accrued, or incurred  
21 using terms that reflect an arm's-length relationship.

22 **SECTION 25.** 71.80 (23) (b) of the statutes is amended to read:

23 71.80 (23) (b) Notwithstanding par. (a), the deductions provided under ss. 71.05  
24 (6) (b) 45., 71.26 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall not be allowed for  
25 any interest expenses or, rental expenses, intangible expenses, or management fees

1 that are directly or indirectly paid, accrued, or incurred to, or in connection directly  
2 or indirectly with one or more direct or indirect transactions with, one or more  
3 related entities, if the aggregate amount paid, accrued, or incurred for those related  
4 entity transactions is not disclosed on a separate form prescribed by the department  
5 in the manner prescribed by the department.

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

7 (1) INTANGIBLE EXPENSES AND MANAGEMENT FEES. The treatment of sections 71.01  
8 (5p), (5q), and (7w), 71.05 (6) (a) 24. and (b) 46., 71.22 (3e), (3f), and (6f), 71.26 (2) (a)  
9 7. and 9., 71.34 (1c), (1d), (1h), and (1k) (j) and (L), 71.42 (1sm), (1sn), and (3c), 71.45  
10 (2) (a) 16. and 18., and 71.80 (23) (a) (intro.), 1., 2., and 3. and (b) of the statutes first  
11 applies to taxable years beginning on January 1, 2010.

12 (END)

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## 2009-11 LRB Draft Review

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**Date:** January 14, 2009

**LRB Number:** 1216/2 (Addbacks Expansion)

**Reviewed by:** Wendy Miller

**Brief Description of LRB Draft:**

Taxpayers are required to "add back" to their income certain expenses paid, accrued, or incurred to related parties. A subsequent deduction is allowed only if specific conditions are met. The expenses subject to the "addback" under current law are interest and rent expenses. This bill expands the scope of the "addback" law to include intangible expenses and management fees.

**Comments on Draft:**

The draft indicates the bill is to be effective for taxable years beginning on or after January 1, 2010. However, this bill could be made effective for taxable years beginning on or after January 1, 2009 without creating a significant administrative burden for the Department or for taxpayers.

Subsequent to the Department's review of the prior version (LRB-1216/1), it was found that the definitions of "intangible expenses," "intangible property," and "management fees" should be clarified and expanded in order to accomplish the bill's intent to the fullest extent possible.

**Changes Needed & Why:**

As stated above, the Department recommends that this bill be effective for taxable years beginning on or after January 1, 2009.

Additionally, the following pages show the language that should be changed in the definitions of "intangible expenses," "intangible property," and "management fees."

## Revisions Necessary for LRB-1216/2 (Addbacks Expansion)

Highlighted items = Changes needed to LRB-1216/2

Stricken items = Deletions needed from LRB-1216/2

Underlined items = Text to be added to LRB-1216/2

### SECTION 1. 71.01 (5p) of the statutes is created to read:

71.01 (5p) For purposes of s. 71.05 (6) (a) 24. and (b) 46., “intangible expenses” include the following to the extent such amounts would otherwise be deductible in the computation of Wisconsin adjusted gross income:

(a) Expenses, losses, and costs for, related to, or directly or indirectly in connection with, the acquisition, use, maintenance, management, ownership, sale, exchange, or other disposition of intangible property, ~~to the extent that the expenses, losses, or costs are allowed as deductions or costs to determine federal taxable income under the Internal Revenue Code.~~

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

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

(d) ~~Licensing fees~~ Other similar expenses, losses, and costs.

### SECTION 2. 71.01 (5q) of the statutes is created to read:

71.01 (5q) “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 3. 71.01 (7w) of the statutes is created to read:

71.01 (7w) For purposes of s. 71.05 (6) (a) 24. and (b) 46., “management fees” include expenses and costs, other than interest expenses, ~~paid for services that pertaining to~~ accounts receivable, accounts payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, taxation, financial matters, securities, accounting, or reporting and compliance matters or ~~for similar services~~ activities, to the extent that the



expenses or costs are allowed as deductions or costs to determine net income under the Internal Revenue Code amounts would otherwise be deductible in the computation of Wisconsin adjusted gross income.

**SECTION 4. 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, 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 5. 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, 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 6. 71.22 (3e) of the statutes is created to read:**

71.22 (3e) For purposes of s. 71.26 (2) (a) 7. and 9., “intangible expenses” include the following to the extent such amounts would otherwise be deductible in determining net income under the Internal Revenue Code as modified by s. 71.26(3):

(a) Expenses, losses, and costs for, related to, or directly or indirectly in connection with, the acquisition, use, maintenance, management, ownership, sale, exchange, or other disposition of intangible property, ~~to the extent that the expenses, losses, or costs are allowed as deductions or costs to determine federal taxable income under the Internal Revenue Code.~~

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

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

(d) ~~Licensing fees~~ Other similar expenses, losses, and costs.

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

71.22 (3f) "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 8. 71.22 (6f) of the statutes is created to read:**

71.22 (6f) For purposes of s. 71.26 (2) (a) 7. and 9., "management fees" include expenses and costs, other than interest expenses, paid for services that pertaining to accounts receivable, accounts payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, taxation, financial matters, securities, accounting, or reporting and compliance matters or for similar services activities, to the extent that the expenses or costs are allowed as deductions or costs to determine net income under the Internal Revenue Code amounts would otherwise be deductible in determining net income under the Internal Revenue Code as modified by s. 71.26(3).

**SECTION 9. 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, 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 10. 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, 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 11. 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 such amounts would otherwise be deductible in the computation of Wisconsin adjusted gross income:

- (a) Expenses, losses, and costs for, related to, or directly or indirectly in connection with, the acquisition, use, maintenance, ownership, sale, exchange, or other disposition of intangible property, ~~to the extent that the expenses, losses, or costs are allowed as deductions or costs to determine federal taxable income under the Internal Revenue Code.~~
- (b) Losses related to, or incurred directly or indirectly in connection with, factoring or discounting transactions.
- (c) Royalty, patent, technical, copyright, and licensing fees.
- (d) ~~Licensing fees~~ Other similar expenses, losses, and costs.

**SECTION 12. 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 13. 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, other than interest expenses, paid for services that pertaining to accounts receivable, accounts payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, taxation, financial matters, securities, accounting, or reporting and compliance matters or for similar services activities, to the extent that the ~~expenses or costs are allowed as deductions or costs to determine net income under the Internal Revenue Code. In this subsection, “net income” does not have the meaning given in sub. (1k)~~ amounts would otherwise be deductible in the computation of Wisconsin adjusted gross income.

**SECTION 14. 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, 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 15. 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, 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 16. 71.42 (1sm) of the statutes is created to read:**

71.42 (1sm) For purposes of s. 71.45 (2) (a) 16. and 18., “intangible expenses” include the following amounts to the extent such amounts would otherwise be deductible in determining 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, use, maintenance, management, ownership, sale, exchange, or other disposition of intangible property, ~~to the extent that the expenses, losses, or costs are allowed as deductions or costs to determine federal taxable income under the Internal Revenue Code.~~

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

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

(d) Licensing fees ~~Other similar expenses, losses, and costs.~~

**SECTION 17. 71.42 (1sn) of the statutes is created to read:**

71.42 (1sn) "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 18. 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, other than interest expenses, paid for services that pertaining to accounts receivable, accounts payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, taxation, financial matters, securities, accounting, or reporting and compliance matters or for similar services activities, to the extent that the expenses or costs are allowed as deductions or costs to determine net income under the Internal Revenue Code amounts would otherwise be deductible in determining net income under the Internal Revenue Code as adjusted under s. 71.45(2).

**SECTION 19. 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, 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 20. 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, 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 21. 71.80 (23) (a) (intro.) of the statutes is amended to read:**

71.80 (23) (a) (intro.) The deductions provided under ss. 71.05 (6) (b) 45., 71.26 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall be allowed for any interest expenses, rental

expenses, intangible expenses, or management fees described in ss. 71.05 (6) (a) 24., 71.26 (2) (a) 7., 71.34 (1k) (j), or 71.45 (2) (a) 16. if any of the following applies to the interest expenses, rental expenses, intangible expenses, or management fees:

**SECTION 22. 71.80 (23) (a) 1. of the statutes is amended to read:**

71.80 (23) (a) 1. The related entity to which the taxpayer paid, accrued, or incurred the interest expenses, rental expenses, intangible expenses, or management fees during the taxable year directly or indirectly paid, accrued, or incurred such amounts in the same taxable year to a person who is not a related entity or the related entity to which the taxpayer paid, accrued, or incurred such expenses or fees is a holding company or a direct or indirect subsidiary of a holding company, as defined in 12 USC 1841 (a) or (l) or 12 USC 1467a (a) (1) (D), not including any entity that is organized under the laws of another jurisdiction and that primarily holds and manages investments of a bank, subsidiary, or affiliate. For purposes of this subdivision, "interest" does not include interest that is paid in connection with any debt that is incurred to acquire the taxpayer's assets or stock under section 368 of the Internal Revenue Code. If a portion of such an interest expense, rental expense, intangible expense, or management fee is paid, accrued, or incurred in the same taxable year to a person who is not a related entity, that portion shall be allowed as a deduction to the taxpayer.

**SECTION 23. 71.80 (23) (a) 2. of the statutes is amended to read:**

71.80 (23) (a) 2. The related entity was subject to tax on, or measured by, its net income or receipts in this state or any state, U.S. possession, or foreign country; the related entity's tax base in such state, U.S. possession, or foreign country included the income received from the taxpayer for the interest expenses, rental expenses, intangible expenses, or management fees; the related entity's effective tax rate applied to such income or receipts was at least 80 percent of the taxpayer's aggregate effective tax rate; and the related entity is not a real estate investment trust under section 856 of the Internal Revenue Code, other than a qualified real estate investment trust. For purposes of this subdivision, "any state, U.S. possession, or foreign country" does not include any state, U.S. possession, or foreign country under the laws of which the taxpayer files with the related entity, or the related entity files with another entity, a combined income tax report or return, a consolidated income tax report or return, or any other report or return that is due because of the imposition of a tax that is measured on or by income or receipts, if the report or return results in eliminating the tax effects of transactions, directly or indirectly, between either the taxpayer and the related entity or between the related entity and another entity.

**SECTION 24. 71.80 (23) (a) 3. of the statutes is amended to read:**

71.80 (23) (a) 3. The taxpayer establishes that the transaction satisfies any other conditions that the department considers relevant, based on the facts and circumstances, to determine that the primary motivation for the transaction was one or more business purposes other than the avoidance or reduction of state income or franchise taxes; that the transaction changed the economic position of the taxpayer in a meaningful way apart from tax effects; and that the interest expenses, rental expenses, intangible expenses, or management fees were paid, accrued, or incurred using terms that reflect an arm's-length relationship.

**SECTION 25. 71.80 (23) (b) of the statutes is amended to read:**

71.80 (23) (b) Notwithstanding par. (a), the deductions provided under ss. 71.05 (6) (b) 45., 71.26 (2) (a) 8., 71.34 (1k) (k), and 71.45 (2) (a) 17. shall not be allowed for any interest expenses, rental expenses, intangible expenses, or 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, if the aggregate amount paid, accrued, or incurred for those related entity transactions is not disclosed on a separate form prescribed by the department in the manner prescribed by the department.

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

(1) INTANGIBLE EXPENSES AND MANAGEMENT FEES. The treatment of sections 71.01 (5p), (5q), and (7w), 71.05 (6) (a) 24. and (b) 46., 71.22 (3e), (3f), and (6f), 71.26 (2) (a) 7. and 9., 71.34 (1c), (1d), (1h), and (1k) (j) and (L), 71.42 (1sm), (1sn), and (3c), 71.45 (2) (a) 16. and 18., and 71.80 (23) (a) (intro.), 1., 2., and 3. and (b) of the statutes first applies to taxable years beginning on January 1, ~~2010~~ 2009.

(END)