



State of Wisconsin
2003 - 2004 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 3,
TO 2003 SENATE BILL 197**

June 24, 2003 - Offered by Senators ERPENBACH, MOORE and ROBSON.

1 **AN ACT** *to renumber and amend* 71.04 (4), 71.04 (8) (b), 71.25 (6), 71.25 (10)
2 (b) and 71.45 (3) (b); *to amend* 71.04 (5) (intro.), 71.04 (6) (intro.), 71.04 (7) (d),
3 71.04 (8) (c), 71.04 (10), 71.25 (7) (intro.), 71.25 (8) (intro.), 71.25 (9) (d), 71.25
4 (10) (c), 71.25 (11), 71.45 (3) (intro.), 71.45 (3) (a) and 71.45 (3m); and *to create*
5 71.04 (4) (a), 71.04 (4) (b), 71.04 (4) (c), 71.04 (4) (d), 71.04 (4) (e), 71.04 (4) (f),
6 71.04 (4m), 71.25 (6) (a), 71.25 (6) (b), 71.25 (6) (c), 71.25 (6) (d), 71.25 (6) (e),
7 71.25 (6) (f), 71.25 (6m), 71.45 (3d) and 71.45 (3e) of the statutes; **relating to:**
8 single sales factor apportionment and combined tax reporting for corporate
9 income tax and franchise tax purposes and granting rule-making authority.

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

10 **SECTION 1.** 71.04 (4) of the statutes is renumbered 71.04 (4) (intro.) and
11 amended to read:

1 71.04 (4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. (intro.)
2 Nonresident individuals and nonresident estates and trusts engaged in business
3 within and without the state shall be taxed only on such income as is derived from
4 business transacted and property located within the state. The amount of such
5 income attributable to Wisconsin may be determined by an allocation and separate
6 accounting thereof, when the business of such nonresident individual or nonresident
7 estate or trust within the state is not an integral part of a unitary business, but the
8 department of revenue may permit an allocation and separate accounting in any case
9 in which it is satisfied that the use of such method will properly reflect the income
10 taxable by this state. In all cases in which allocation and separate accounting is not
11 permissible, the determination shall be made in the following manner: for all
12 businesses except air carriers, financial organizations, pipeline companies, public
13 utilities, railroads, sleeping car companies and car line companies there shall first
14 be deducted from the total net income of the taxpayer the part thereof (less related
15 expenses, if any) that follows the situs of the property or the residence of the
16 recipient. The remaining net income shall be apportioned to Wisconsin this state by
17 use of an ~~apportionment fraction composed of a sales factor representing 50% of the~~
18 ~~fraction, a property factor representing 25% of the fraction and a payroll factor~~
19 ~~representing 25% of the fraction.~~ the following:

20 **SECTION 2.** 71.04 (4) (a) of the statutes is created to read:

21 71.04 (4) (a) Except as provided in par. (f), for taxable years beginning before
22 January 1, 2006, an apportionment fraction composed of a sales factor under sub. (7)
23 representing 50% of the fraction, a property factor under sub. (5) representing 25%
24 of the fraction, and a payroll factor under sub. (6) representing 25% of the fraction.

25 **SECTION 3.** 71.04 (4) (b) of the statutes is created to read:

1 71.04 (4) (b) Except as provided in par. (f), for taxable years beginning after
2 December 31, 2005, and before January 1, 2007, an apportionment fraction
3 composed of a sales factor under sub. (7) representing 60% of the fraction, a property
4 factor under sub. (5) representing 20% of the fraction, and a payroll factor under sub.
5 (6) representing 20% of the fraction.

6 **SECTION 4.** 71.04 (4) (c) of the statutes is created to read:

7 71.04 (4) (c) Except as provided in par. (f), for taxable years beginning after
8 December 31, 2006, and before January 1, 2008, an apportionment fraction
9 composed of a sales factor under sub. (7) representing 80% of the fraction, a property
10 factor under sub. (5) representing 10% of the fraction, and a payroll factor under sub.
11 (6) representing 10% of the fraction.

12 **SECTION 5.** 71.04 (4) (d) of the statutes is created to read:

13 71.04 (4) (d) Except as provided in par. (f), for taxable years beginning after
14 December 31, 2007, an apportionment fraction composed of the sales factor under
15 sub. (7).

16 **SECTION 6.** 71.04 (4) (e) of the statutes is created to read:

17 71.04 (4) (e) Except as provided in par. (f), for taxable years beginning after
18 December 31, 2005, and before January 1, 2008, the apportionment fraction for the
19 remaining net income of a financial organization shall include a sales factor that
20 represents more than 50% of the apportionment fraction, as determined by rule by
21 the department. For taxable years beginning after December 31, 2007, the
22 apportionment fraction for the remaining net income of a financial organization is
23 composed of a sales factor, as determined by rule by the department.

24 **SECTION 7.** 71.04 (4) (f) of the statutes is created to read:

1 71.04 (4) (f) If a taxpayer who is subject to apportionment under this subsection
2 has a net gain of 100 employees in this state in any taxable year beginning after the
3 effective date of this paragraph [revisor inserts date], and before January 1, 2008,
4 the taxpayer’s remaining net income may, at the taxpayer’s option, be apportioned
5 to this state by an apportionment fraction composed of the sales factor under sub. (7)
6 or, for a financial organization, under par. (e) beginning with the taxable year in
7 which the employees are hired, except that if the taxpayer does not retain such
8 employees in this state for at least 3 consecutive taxable years, the taxpayer shall
9 apportion the taxpayer’s remaining net income as provided under pars. (a) to (e), as
10 appropriate.

11 **SECTION 8.** 71.04 (4m) of the statutes is created to read:

12 71.04 (4m) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
13 beginning before January 1, 2008, if both the numerator and the denominator of the
14 sales factor under sub. (7) related to a taxpayer’s remaining net income are zero, the
15 sales factor under sub. (7) is eliminated from the apportionment formula to
16 determine the taxpayer’s remaining net income under sub. (4).

17 2. For taxable years beginning after December 31, 2007, if both the numerator
18 and the denominator of the sales factor under sub. (7) related to a taxpayer’s
19 remaining net income are zero, none of the taxpayer’s remaining net income is
20 apportioned to this state.

21 (b) 1. For taxable years beginning before January 1, 2008, if the numerator of
22 the sales factor under sub. (7) related to a taxpayer’s remaining net income is a
23 negative number and the denominator of the sales factor under sub. (7) related to a
24 taxpayer’s remaining net income is a positive number, a negative number, or zero,
25 the sales factor under sub. (7) is zero.

1 2. For taxable years beginning after December 31, 2007, if the numerator of the
2 sales factor under sub. (7) related to a taxpayer's remaining net income is a negative
3 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
4 remaining net income is a positive number, a negative number, or zero, none of the
5 taxpayer's remaining net income is apportioned to this state.

6 (c) 1. For taxable years beginning before January 1, 2008, if the numerator of
7 the sales factor under sub. (7) related to a taxpayer's remaining net income is a
8 positive number and the denominator of the sales factor under sub. (7) related to a
9 taxpayer's remaining net income is zero or a negative number, the sales factor under
10 sub. (7) is one.

11 2. For taxable years beginning after December 31, 2007, if the numerator of the
12 sales factor under sub. (7) related to a taxpayer's remaining net income is a positive
13 number and the denominator of the sales factor under sub. (7) related to a taxpayer's
14 remaining net income is zero or a negative number, all of the taxpayer's remaining
15 net income is apportioned to this state.

16 **SECTION 9.** 71.04 (5) (intro.) of the statutes is amended to read:

17 71.04 (5) PROPERTY FACTOR. (intro.) For purposes of sub. (4) and for taxable
18 years beginning before January 1, 2008:

19 **SECTION 10.** 71.04 (6) (intro.) of the statutes is amended to read:

20 71.04 (6) PAYROLL FACTOR. (intro.) For purposes of sub. (4) and for taxable years
21 beginning before January 1, 2008:

22 **SECTION 11.** 71.04 (7) (d) of the statutes is amended to read:

23 71.04 (7) (d) Sales, other than sales of tangible personal property, are in this
24 state if the income-producing activity is performed in this state. If the
25 income-producing activity is performed both in and outside this state the sales shall

1 be divided between those states having jurisdiction to tax such business in
2 proportion to the direct costs of performance incurred in each such state in rendering
3 this service. Services performed in states which do not have jurisdiction to tax the
4 business shall be deemed to have been performed in the state to which compensation
5 is allocated by ~~sub. s. 71.04 (6), 2001 stats.~~

6 **SECTION 12.** 71.04 (8) (b) of the statutes is renumbered 71.04 (8) (b) 1. and
7 amended to read:

8 71.04 (8) (b) 1. “Public For taxable years beginning before January 1, 2006,
9 “public utility”, as used in this section, means any business entity described under
10 subd. 2. and any business entity which owns or operates any plant, equipment,
11 property, franchise, or license for the transmission of communications or the
12 production, transmission, sale, delivery, or furnishing of electricity, water or steam,
13 the rates of charges for goods or services of which have been established or approved
14 by a federal, state or local government or governmental agency. “Public

15 2. In this section, for taxable years beginning after December 31, 2005, “public
16 utility” also means any business entity providing service to the public and engaged
17 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
18 regardless of whether or not the entity’s rates or charges for services have been
19 established or approved by a federal, state or local government or governmental
20 agency.

21 **SECTION 13.** 71.04 (8) (c) of the statutes is amended to read:

22 71.04 (8) (c) The net business income of railroads, sleeping car companies, car
23 line companies, pipeline companies, financial organizations, air carriers, and public
24 utilities requiring apportionment shall be apportioned pursuant to rules of the

1 department of revenue, but the income taxed is limited to the income derived from
2 business transacted and property located within the state.

3 **SECTION 14.** 71.04 (10) of the statutes is amended to read:

4 71.04 (10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident
5 individual or nonresident estate or trust engaged in business ~~within in~~ and without
6 ~~the outside this~~ state of Wisconsin and required to apportion its income as provided
7 in this section, it shall be shown to the satisfaction of the department of revenue that
8 the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or
9 inequitable final average ratio because of the fact that such nonresident individual
10 or nonresident estate or trust does not employ, to any appreciable extent in its trade
11 or business in producing the income taxed, the factors made use of in obtaining such
12 ratio, this factor may, with the approval of the department of revenue, be omitted in
13 obtaining the final average ratio which is to be applied to the remaining net income.
14 This subsection does not apply to taxable years beginning after December 31, 2007.

15 **SECTION 15.** 71.25 (6) of the statutes is renumbered 71.25 (6) (intro.) and
16 amended to read:

17 71.25 (6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA.
18 (intro.) Corporations engaged in business within and without the state shall be taxed
19 only on such income as is derived from business transacted and property located
20 within the state. The amount of such income attributable to Wisconsin may be
21 determined by an allocation and separate accounting thereof, when the business of
22 such corporation within the state is not an integral part of a unitary business, but
23 the department of revenue may permit an allocation and separate accounting in any
24 case in which it is satisfied that the use of such method will properly reflect the
25 income taxable by this state. In all cases in which allocation and separate accounting

1 is not permissible, the determination shall be made in the following manner: for all
2 businesses except air carriers, financial organizations, pipeline companies, public
3 utilities, railroads, sleeping car companies, car line companies and corporations or
4 associations that are subject to a tax on unrelated business income under s. 71.26 (1)
5 (a) there shall first be deducted from the total net income of the taxpayer the part
6 thereof (less related expenses, if any) that follows the situs of the property or the
7 residence of the recipient. The remaining net income shall be apportioned to
8 Wisconsin this state by use of an apportionment fraction composed of a sales factor
9 under sub. (9) representing 50% of the fraction, a property factor under sub. (7)
10 representing 25% of the fraction and a payroll factor under sub. (8) representing 25%
11 of the fraction. the following:

12 **SECTION 16.** 71.25 (6) (a) of the statutes is created to read:

13 71.25 (6) (a) Except as provided in par. (f), for taxable years beginning before
14 January 1, 2006, an apportionment fraction composed of a sales factor under sub. (9)
15 representing 50% of the fraction, a property factor under sub. (7) representing 25%
16 of the fraction, and a payroll factor under sub. (8) representing 25% of the fraction.

17 **SECTION 17.** 71.25 (6) (b) of the statutes is created to read:

18 71.25 (6) (b) Except as provided in par. (f), for taxable years beginning after
19 December 31, 2005, and before January 1, 2007, an apportionment fraction
20 composed of a sales factor under sub. (9) representing 60% of the fraction, a property
21 factor under sub. (7) representing 20% of the fraction, and a payroll factor under sub.
22 (8) representing 20% of the fraction.

23 **SECTION 18.** 71.25 (6) (c) of the statutes is created to read:

24 71.25 (6) (c) Except as provided in par. (f), for taxable years beginning after
25 December 31, 2006, and before January 1, 2008, an apportionment fraction

1 composed of a sales factor under sub. (9) representing 80% of the fraction, a property
2 factor under sub. (7) representing 10% of the fraction, and a payroll factor under sub.
3 (8) representing 10% of the fraction.

4 **SECTION 19.** 71.25 (6) (d) of the statutes is created to read:

5 71.25 (6) (d) Except as provided in par. (f), for taxable years beginning after
6 December 31, 2007, an apportionment fraction composed of the sales factor under
7 sub. (9).

8 **SECTION 20.** 71.25 (6) (e) of the statutes is created to read:

9 71.25 (6) (e) Except as provided in par. (f), for taxable years beginning after
10 December 31, 2005, and before January 1, 2008, the apportionment fraction for the
11 remaining net income of a financial organization shall include a sales factor that
12 represents more than 50% of the apportionment fraction, as determined by rule by
13 the department. For taxable years beginning after December 31, 2007, the
14 apportionment fraction for the remaining net income of a financial organization is
15 composed of a sales factor, as determined by rule by the department.

16 **SECTION 21.** 71.25 (6) (f) of the statutes is created to read:

17 71.25 (6) (f) If a taxpayer who is subject to apportionment under this subsection
18 has a net gain of 100 employees in this state in any taxable year beginning after the
19 effective date of this paragraph [revisor inserts date], and before January 1, 2008,
20 the taxpayer's remaining net income may, at the taxpayer's option, be apportioned
21 to this state by an apportionment fraction composed of the sales factor under sub. (9)
22 or, for a financial organization, under par. (e) beginning with the taxable year in
23 which the employees are hired, except that if the taxpayer does not retain such
24 employees in this state for at least 3 consecutive taxable years, the taxpayer shall

1 apportion the taxpayer's remaining net income as provided under pars. (a) to (e), as
2 appropriate.

3 **SECTION 22.** 71.25 (6m) of the statutes is created to read:

4 71.25 **(6m)** APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
5 beginning before January 1, 2008, if both the numerator and the denominator of the
6 sales factor under sub. (9) related to a taxpayer's remaining net income are zero, the
7 sales factor under sub. (9) is eliminated from the apportionment formula to
8 determine the taxpayer's remaining net income under sub. (6).

9 2. For taxable years beginning after December 31, 2007, if both the numerator
10 and the denominator of the sales factor under sub. (9) related to a taxpayer's
11 remaining net income are zero, none of the taxpayer's remaining net income is
12 apportioned to this state.

13 (b) 1. For taxable years beginning before January 1, 2008, if the numerator of
14 the sales factor under sub. (9) related to a taxpayer's remaining net income is a
15 negative number and the denominator of the sales factor under sub. (9) related to a
16 taxpayer's remaining net income is a positive number, a negative number, or zero,
17 the sales factor under sub. (9) is zero.

18 2. For taxable years beginning after December 31, 2007, if the numerator of the
19 sales factor under sub. (9) related to a taxpayer's remaining net income is a negative
20 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
21 remaining net income is a positive number, a negative number, or zero, none of the
22 taxpayer's remaining net income is apportioned to this state.

23 (c) 1. For taxable years beginning before January 1, 2008, if the numerator of
24 the sales factor under sub. (9) related to a taxpayer's remaining net income is a
25 positive number and the denominator of the sales factor under sub. (9) related to a

1 taxpayer's remaining net income is zero or a negative number, the sales factor under
2 sub. (9) is one.

3 2. For taxable years beginning after December 31, 2007, if the numerator of the
4 sales factor under sub. (9) related to a taxpayer's remaining net income is a positive
5 number and the denominator of the sales factor under sub. (9) related to a taxpayer's
6 remaining net income is zero or a negative number, all of the taxpayer's remaining
7 net income is apportioned to this state.

8 **SECTION 23.** 71.25 (7) (intro.) of the statutes is amended to read:

9 71.25 (7) PROPERTY FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
10 years beginning before January 1, 2008:

11 **SECTION 24.** 71.25 (8) (intro.) of the statutes is amended to read:

12 71.25 (8) PAYROLL FACTOR. (intro.) For purposes of sub. ~~(5)~~ (6) and for taxable
13 years beginning before January 1, 2008:

14 **SECTION 25.** 71.25 (9) (a) of the statutes is amended to read:

15 71.25 (9) (a) The sales factor is a fraction, the numerator of which is the total
16 sales of the taxpayer in this state during the tax period, and the denominator of
17 which is the total sales of the taxpayer everywhere during the tax period. For sales
18 of tangible personal property, the numerator of the sales factor is the sales of the
19 taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the
20 taxpayer during the tax period under pars. (b) 2m. and 3. and (c). For purposes of
21 determining the numerator of the sales factor for a member of a combined reporting
22 group under s. 71.255 (7), "taxpayer" means the member of a combined reporting
23 group, as defined in s. 71.255 (1) (c), that transferred title to tangible personal
24 property or, for sales other than sales of tangible personal property, that made the
25 sale.

1 **SECTION 26.** 71.25 (9) (d) of the statutes is amended to read:

2 71.25 (9) (d) Sales, other than sales of tangible personal property, are in this
3 state if the income-producing activity is performed in this state. If the
4 income-producing activity is performed both in and outside this state the sales shall
5 be divided between those states having jurisdiction to tax such business in
6 proportion to the direct costs of performance incurred in each such state in rendering
7 this service. Services performed in states which do not have jurisdiction to tax the
8 business shall be deemed to have been performed in the state to which compensation
9 is allocated by ~~sub. s. 71.25 (8), 2001 stats.~~

10 **SECTION 27.** 71.25 (10) (b) of the statutes is renumbered 71.25 (10) (b) 1. and
11 amended to read:

12 71.25 (10) (b) 1. In this section, for taxable years beginning before January 1,
13 2006, “public utility” means any business entity described under subd. 2. and any
14 business entity which owns or operates any plant, equipment, property, franchise,
15 or license for the transmission of communications or the production, transmission,
16 sale, delivery, or furnishing of electricity, water or steam the rates of charges for
17 goods or services of which have been established or approved by a federal, state or
18 local government or governmental agency. “Public

19 2. In this section, for taxable years beginning after December 31, 2005, “public
20 utility” also means any business entity providing service to the public and engaged
21 in the transportation of goods and persons for hire, as defined in s. 194.01 (4),
22 regardless of whether or not the entity’s rates or charges for services have been
23 established or approved by a federal, state or local government or governmental
24 agency.

25 **SECTION 28.** 71.25 (10) (c) of the statutes is amended to read:

1 71.25 (10) (c) The net business income of railroads, sleeping car companies, car
2 line companies, pipeline companies, financial organizations, air carriers, and public
3 utilities requiring apportionment shall be apportioned pursuant to rules of the
4 department of revenue, but the income taxed is limited to the income derived from
5 business transacted and property located within the state.

6 **SECTION 29.** 71.25 (11) of the statutes is amended to read:

7 71.25 (11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation
8 engaged in business ~~within in~~ and ~~without the~~ outside this state of Wisconsin and
9 required to apportion its income as provided in sub. (6), it shall be shown to the
10 satisfaction of the department of revenue that the use of any one of the 3 factors
11 provided in sub. (6) gives an unreasonable or inequitable final average ratio because
12 of the fact that such corporation does not employ, to any appreciable extent in its
13 trade or business in producing the income taxed, the factors made use of in obtaining
14 such ratio, this factor may, with the approval of the department of revenue, be
15 omitted in obtaining the final average ratio which is to be applied to the remaining
16 net income. This subsection does not apply to taxable years beginning after
17 December 31, 2007.

18 **SECTION 30.** 71.255 of the statutes is created to read:

19 **71.255 Combined reporting. (1) DEFINITIONS.** In this section:

20 (a) “Brother–sister parent corporation” means a parent corporation that is a
21 member of a commonly controlled group, if any members of the commonly controlled
22 group are not connected to the parent corporation by stock ownership or interest
23 ownership as described in par. (d).

1 (b) “Combined report” means a form prescribed by the department that
2 specifies the income of each taxpayer member of a commonly controlled group
3 operating as a unitary business.

4 (c) “Combined reporting group” means the members of a commonly controlled
5 group that are included in a combined report under sub. (2).

6 (d) “Commonly controlled group” means any of the following, but does not
7 include an insurer that is exempt from taxation under s. 71.45 (1):

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

14 2. Any 2 or more corporations if a common owner directly or indirectly owns
15 stock representing more than 50% of the voting power of the corporations or the
16 connected corporations.

17 3. A partnership or limited liability company if a parent corporation or any
18 corporation connected to the parent corporation by common ownership directly or
19 indirectly owns more than a 50% interest in the capital and profits of the partnership
20 or limited liability company.

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

23 5. Any 2 or more corporations if stock representing more than 50% of the voting
24 power in each corporation is directly owned by, or for the benefit of, family members.
25 In this subdivision, “family members” means an individual related by blood,

1 marriage, or adoption within the 2nd degree of kinship as computed under s. 852.03
2 (2), 1995 stats., or the spouse of such an individual.

3 6. A corporation, partnership, or limited liability company if a parent
4 corporation or any corporation connected to the parent corporation by common
5 ownership does not hold more than a 50% ownership interest in the corporation,
6 partnership, or limited liability company but effectively controls the corporation,
7 partnership, or limited liability company.

8 (e) "Corporation" has the meaning given in s. 71.22 (1) or 71.42 (1).

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

10 (g) "Designated agent" means the taxpayer member of a commonly controlled
11 group who files a group return on behalf of the taxpayer members of a combined
12 reporting group.

13 (h) "Group return" means a tax return filed on behalf of the taxpayer members
14 of a combined reporting group.

15 (i) "Intercompany transaction" means a transaction between corporations,
16 partnerships, or limited liability companies that become members of the same
17 combined reporting group immediately after the transaction.

18 (im) "Partnership" means any entity considered a partnership under section
19 7701 of the Internal Revenue Code.

20 (j) "Separate return" means a return filed by a corporation, regardless of
21 whether the corporation is a member of a combined reporting group or is required
22 to file a tax return under s. 71.24 or 71.44.

23 (k) "Taxpayer member" means a corporation that is subject to tax under s. 71.23
24 (1) or (2) or 71.43, that is a member of a combined reporting group, and that files a
25 combined report under this section.

1 (L) “Top tier corporation” means a member of a commonly controlled group that
2 is not connected with a parent corporation by stock ownership or interest ownership
3 as described in par. (d), is a parent corporation, or is a brother–sister parent
4 corporation, regardless of whether it is doing business in this state or deriving
5 income from sources in this state, and regardless of whether its income and
6 apportionment factors are excluded from a combined report filed under this section.

7 (m) “Unitary business” includes the business activities or operations of an
8 entity that are of mutual benefit to, integrated with, or dependent upon or that
9 contribute to activities of at least one other entity, including transactions that serve
10 an operational function, as determined by the department. Two or more businesses
11 are presumed to be a unitary business if the businesses have unity of ownership,
12 operation, and use as indicated by centralized management or a centralized
13 executive force; centralized purchasing, advertising, or accounting; intercorporate
14 sales or leases; intercorporate services; intercorporate debts; intercorporate use of
15 proprietary materials; interlocking directorates; or interlocking corporate officers.

16 **(2) CORPORATIONS REQUIRED TO USE COMBINED REPORTING.** (a) Except as provided
17 in par. (b), and subject to sub. (6), a corporation that is subject to the tax imposed
18 under s. 71.23 (1) or (2) or 71.43, that is a member of a commonly controlled group,
19 and that is engaged, in whole or in part, in a unitary business with one or more
20 members of the commonly controlled group shall compute the corporation’s income
21 attributable to this state by using the income computation under s. 71.26 or 71.45,
22 the apportionment formula under s. 71.25 (6) or 71.45, and the tax credits under s.
23 71.28 or 71.47 of all of the following that are members of the commonly controlled
24 group:

1 1. Any corporation organized or incorporated under the laws of the United
2 States, any state of the United States, the District of Columbia, the Commonwealth
3 of Puerto Rico, any possession of the United States, or any political subdivision of the
4 United States, including corporations under sections 931 to 936 of the Internal
5 Revenue Code.

6 2. Any domestic international sales corporation under sections 991 to 994 of the
7 Internal Revenue Code.

8 3. Any foreign sales corporation under sections 921 to 927 of the Internal
9 Revenue Code.

10 4. Any export trade corporation under sections 970 and 971 of the Internal
11 Revenue Code.

12 5. Any corporation regardless of its place of incorporation if the average of its
13 property factor under s. 71.25 (7) and its payroll factor under s. 71.25 (8), for property
14 and payroll within the United States and computed on an annual basis, is at least
15 20% during any part of the taxable year that a corporation is a member of the
16 commonly controlled group.

17 6. Any corporation not described in subds. 1. to 5. to the extent of the
18 corporation's income within the United States and the corporation's property factor
19 under s. 71.25 (7) and payroll factor under s. 71.25 (8) assignable to a location within
20 the United States.

21 (b) A corporation that is subject to the tax imposed under s. 71.23 (1) or (2) or
22 71.43, that is a member of a commonly controlled group, and that is engaged, in whole
23 or in part, in a unitary business with one or more members of the commonly
24 controlled group may, subject to sub. (6), compute the corporation's income
25 attributable to this state by using the income computation under s. 71.26 or 71.45,

1 the apportionment formula under s. 71.25 (6) or 71.45, and the tax credits under s.
2 71.28 or 71.47 of all the members of the commonly controlled group, regardless of the
3 country in which any member of the commonly controlled group is organized or
4 incorporated or conducts business, if all top tier corporations that are members of the
5 commonly controlled group elect under sub. (3) to compute the corporation's income
6 as provided under this paragraph.

7 **(3) COMPUTATION ELECTION.** (a) A top tier corporation that is a member of a
8 commonly controlled group may elect on the commonly controlled group's behalf, and
9 in the manner prescribed by the department, to compute the income of each
10 corporation that is a member of the commonly controlled group under sub. (2) (b).
11 If more than one member of the commonly controlled group is a top tier corporation,
12 an election under this subsection is not effective unless all top tier corporations elect
13 on the commonly controlled group's behalf, and in the manner prescribed by the
14 department, to compute income under sub. (2) (b).

15 (b) A top tier corporation shall file an election made under par. (a) with the
16 department before the last day of the taxable year. The top tier corporation shall
17 designate a taxable year that corresponds with the taxable year of any taxpayer
18 member that is subject to the tax imposed under s. 71.23 (1) or (2) or 71.43. If the
19 top tier corporation fails to file the election before the last day of the taxable year
20 designated under this paragraph, all members of the commonly controlled group to
21 which the top tier corporation belongs, including the top tier corporation, shall
22 compute income under sub. (2) (a).

23 (c) Except as provided under par. (d), the members of the commonly controlled
24 group subject to an election under this subsection shall compute their income under
25 sub. (2) (b) for 7 taxable years, beginning with the taxable year designated under par.

1 (b). Thereafter, the members of the commonly controlled group shall compute their
2 income under sub. (2) (b) for periods of 7 taxable years and until any top tier
3 corporation that is a member of the commonly controlled group notifies the
4 department, in a manner prescribed by the department, before the last day of the last
5 taxable year in any period of 7 taxable years that the top tier corporation is
6 terminating the election under this subsection. A termination under this paragraph
7 takes effect on the first day of the first taxable year beginning after the top tier
8 corporation notifies the department under this paragraph.

9 (d) The department may grant a request by a top tier corporation to terminate
10 an election under this subsection before the first period of 7 taxable years under par.
11 (c) expires, if the top tier corporation shows good cause for granting the request, as
12 determined by the department and consistent with section 1502 of the Internal
13 Revenue Code.

14 (e) Except as provided in par. (f), if an election by a top tier corporation on behalf
15 of the members of a commonly controlled group under this subsection is terminated,
16 no top tier corporation may make an election on behalf of the members of the same
17 commonly controlled group until 7 taxable years have elapsed from the day that the
18 termination of the original election took effect.

19 (f) The department may grant a request by a top tier corporation to make an
20 election under this subsection before the period of 7 taxable years under par. (e) have
21 elapsed, if the top tier corporation shows good cause for granting the request, as
22 determined by the department and consistent with section 1502 of the Internal
23 Revenue Code.

24 **(4) ACCOUNTING PERIOD.** For purposes of this section, the income under ss. 71.26
25 and 71.45, the apportionment factors under ss. 71.25 and 71.45 and the tax credits

1 under ss. 71.28 and 71.47 of all corporations that are members of a combined
2 reporting group shall be determined by using the same accounting period. If the
3 combined reporting group has a common parent corporation, the accounting period
4 of the common parent corporation shall be used to determine the income, the
5 apportionment factors, and the tax credits of all the corporations that are members
6 of the combined reporting group. If the combined reporting group has no common
7 parent corporation, the income, the apportionment factors, and the tax credits of the
8 combined reporting group shall be determined using the accounting period of the
9 member of the combined reporting group that has the most significant operations on
10 a recurring basis in this state, as determined by the department.

11 (5) FILING RETURNS. (a) *Corporations with the same accounting period.*
12 Corporations that must file a combined report under this section and that have the
13 same accounting period may file a group return, as prescribed by the department,
14 that reports the aggregate state franchise or state income tax liability of all of the
15 members of the combined reporting group. Corporations that are required to file a
16 combined report under this section may file separate returns reporting the
17 respective apportionment of the corporation's state franchise or state income tax
18 liability as determined under sub. (2), if each corporation filing a separate return
19 pays its own apportionment of its state franchise or state income tax liability.

20 (b) *Corporations with different accounting periods.* Corporations that are
21 required to file a combined report and that have different accounting periods shall
22 file separate returns and shall use the actual figures from the corporations' financial
23 records to determine the proper income and income-related computations to convert
24 to a common accounting period. Corporations that are required to file a combined
25 report may use a proportional method to convert income to a common accounting

1 period if the results of the proportional method do not materially misrepresent the
2 income apportioned to this state. The apportionment factors under ss. 71.25 and
3 71.45 and the tax credits under ss. 71.28 and 71.47 shall be computed according to
4 the same method used to determine the income under ss. 71.26 and 71.45 for the
5 common accounting period. If a corporation performs an interim closing of its
6 financial records to determine the income attributable to the common accounting
7 period, the actual figures from the interim closing shall be used to convert the
8 apportionment factors and tax credits to the common accounting period.

9 (c) *Designated agent.* 1. For corporations that are subject to this section and
10 that file a group return under par. (a), the parent corporation of the combined
11 reporting group is the sole designated agent for each member of the combined
12 reporting group including the parent corporation, if the parent corporation is a
13 taxpayer member of the combined reporting group and income of the parent
14 corporation is included on the group return. If the parent corporation is not a
15 taxpayer member or if the parent corporation's income is not included on the group
16 return, the taxpayer members may appoint a taxpayer member to be the designated
17 agent. If the parent corporation of the combined reporting group is not eligible to be
18 the designated agent and no taxpayer member is appointed to be the designated
19 agent, the designated agent is the taxpayer member that has the most significant
20 operations in this state on a recurring basis, as determined by the department. The
21 designated agent, as determined under this subdivision, remains the designated
22 agent until the designated agent is no longer a taxpayer member or until the
23 taxpayer members appoint a different designated agent. If the designated agent
24 changes, the combined reporting group shall notify the department of such a change,
25 in a manner prescribed by the department.

1 2. The designated agent shall file the group return under par. (a), shall file for
2 any extensions under s. 71.24 (7) or 71.44 (3), shall file amended reports and claims
3 for refund or credit, and shall send and receive all correspondence with the
4 department regarding a group return. Any notice the department sends to the
5 designated agent is considered a notice sent to all members of the combined reporting
6 group. Any refund with respect to a group return shall be paid to and in the name
7 of the designated agent and shall discharge any liability of the state to any member
8 of a combined reporting group regarding the refund. The combined reporting group
9 filing a group return under par. (a) shall pay all taxes, including estimated taxes, in
10 the designated agent's name. The designated agent shall participate on behalf of the
11 members of the combined reporting group in any investigation or hearing requested
12 by the department regarding a group return and shall produce all information
13 requested by the department regarding a group return. The designated agent may
14 execute a power of attorney on behalf of the members of the combined reporting
15 group. The designated agent shall execute waivers, closing agreements, and other
16 documents regarding a group return filed under par. (a) and any waiver, agreement,
17 or document executed by the designated agent shall be considered as executed by all
18 members of the combined reporting group. If the department acts in good faith with
19 a combined reporting group member that represents itself as the designated agent
20 for the combined reporting group but that combined reporting group member is not
21 the designated agent, any action taken by the department with that combined
22 reporting group member has the same effect as if that combined reporting group
23 member were the actual designated agent for the combined reporting group.

24 (d) *Part-year members.* If a corporation becomes a member of a combined
25 reporting group or ceases to be a member of a combined reporting group after the

1 beginning of a common accounting period, the corporation's income shall be
2 apportioned to this state as follows:

3 1. If the corporation is required to file 2 or more short period federal returns
4 for the common accounting period, the income for the short period that the
5 corporation was a member of a combined reporting group shall be determined as
6 provided under sub. (2), the corporation shall join in filing a combined report for that
7 short period, and the corporation may join in filing a group return for that short
8 period. The income for the remaining short period shall be reported on a separate
9 return under s. 71.26 or 71.45. If the corporation becomes a member of another
10 combined reporting group in the remaining short period, the corporation's income
11 shall be determined for the remaining short period as provided under sub. (2).

12 2. If the corporation is not required to file federal short period returns, the
13 corporation shall file a separate return. Income shall be determined as follows:

14 a. As provided under sub. (2) for any period that the corporation was a member
15 of a combined reporting group.

16 b. As a separate entity under s. 71.26 or 71.45 for any period that the
17 corporation was not a member of a combined reporting group.

18 (e) *Amended group return.* The election to file a group return under this section
19 applies to an amended group return that includes the same corporations that joined
20 in the filing of the original group return. Under this section, an amended group
21 return shall be filed as follows:

22 1. If an election to file a group return that is in effect for a taxable year is
23 revoked for the taxable year because the combined reporting group that filed the
24 group return is not subject to sub. (2), as determined by the department, the
25 designated agent for the combined reporting group may not file an amended group

1 return. The designated agent and each corporation that joined in filing the group
2 return shall file a separate amended return. To compute the tax due on a separate
3 amended return, a corporation that files a separate amended return shall consider
4 all of the payments, credits, or other amounts, including refunds, that the designated
5 agent allocated to the corporation.

6 2. If a change in tax liability under this section is the result of the removal of
7 a corporation from a combined reporting group because the corporation was not
8 eligible to be a member of the combined reporting group for the taxable year, as
9 determined by the department, the designated agent shall file an amended group
10 return and the ineligible corporation shall file a separate amended return.

11 3. If a corporation erroneously fails to join in the filing of a group return, the
12 designated agent shall file an amended group return that includes the corporation.
13 If a corporation that erroneously fails to join in the filing of a group return has filed
14 a separate return, the corporation shall file an amended separate return that shows
15 no net income, overpayment, or underpayment, and shows that the corporation has
16 joined in the filing of a group return.

17 **(6) INCOME COMPUTATION UNDER COMBINED REPORTING.** For the purposes of sub.
18 (2), income attributable to this state shall be determined as follows:

19 (a) Determine the net income of each member of a combined reporting group
20 under s. 71.26 or 71.45, as appropriate, before deducting net business losses. A
21 member of a combined reporting group may determine its net loss or net income
22 under a method of accounting or an election authorized under s. 71.26 (3) (y), 71.30
23 (1), 71.45 (2) (a) 13., or 71.49 (2), as appropriate, regardless of the accounting method
24 used to determine the net loss or net income of other members of the combined
25 reporting group. After a member establishes an accounting method, or makes any

1 election under this section, the member's net loss or net income shall be consistently
2 determined in the combined report of all members of the combined reporting group
3 and in the group return filed by the taxpayer members or in the separate return filed
4 by the members. If a corporation is engaged in 2 or more trades or businesses that
5 are required to use different apportionment formulas under s. 71.25 or 71.45, the net
6 income for each trade or business shall be computed separately. A unitary business
7 with operations in a foreign country shall compute its net loss or net income as
8 provided by rule by the department.

9 (b) Adjust each member's income, as determined under par. (a), as provided
10 under s. 71.30.

11 (c) From the amount determined under par. (b), subtract intercompany
12 transactions, as provided by rule by the department, such that intercompany
13 accounts of assets, liabilities, equities, income, costs, or expenses are excluded from
14 the income determination to accurately reflect the income, the apportionment
15 factors, and the tax credits in a combined report that is filed under this section. An
16 intercompany transaction includes the following:

17 1. Income or gain from sales, exchanges, contributions, or other transfers of
18 tangible or intangible property from a member of the combined reporting group to
19 another member of the combined reporting group.

20 2. Annual rent paid by a member of the combined reporting group to another
21 member of the combined reporting group.

22 3. Annual license fees or royalties paid by a member of the combined reporting
23 group to another member of the combined reporting group.

1 4. Loans, advances, receivables, and similar items that one member of the
2 combined reporting group owes to another member of the combined reporting group,
3 including interest income and interest expense related to these items.

4 5. Stock or other equity of a member of the combined reporting group that is
5 owned or controlled by another member of the combined reporting group.

6 6. Except as provided by rule by the department, dividends paid out of earnings
7 or profits and paid by a member of the combined reporting group to another member
8 of the combined reporting group.

9 7. Management or service fees paid by a member of the combined reporting
10 group to another member of the combined reporting group.

11 8. Income or expenses allocated or charged by a member of the combined
12 reporting group to another member of the combined reporting group.

13 (d) From the amount determined under par. (c) for each member of a combined
14 reporting group, subtract nonapportionable income, net of related expenses, and add
15 nonapportionable losses, net of related expenses, to determine each member's
16 apportionable net income or apportionable net loss.

17 (e) Calculate the apportionment factors under sub. (7) and multiply each
18 member's apportionable net income or apportionable net loss, as determined under
19 par. (d), by the member's apportionment factor as determined under sub. (7).

20 (f) For each corporation, combine the amounts determined under par. (e) for
21 each trade or business.

22 (g) To the amounts determined under par. (f), add each member's
23 nonapportionable income attributable to this state and subtract each member's
24 nonapportionable losses attributable to this state.

1 (h) If the combined reporting group is not filing a group return, combine the
2 amounts determined under par. (g) for all members of the combined reporting group.

3 (i) If the combined reporting group is filing a group return, combine the
4 amounts determined under par. (g) for all members of the combined reporting group
5 that join in filing the group return.

6 (j) From the amount determined under par. (h) or (i), as appropriate, subtract
7 the combined reporting group's net operating loss as determined under sub. (8).

8 **(7) APPORTIONMENT FACTOR COMPUTATION UNDER COMBINED REPORTING.** For the
9 purposes of sub. (2), this state's apportionment factors are determined as follows:

10 (a) 1. Determine the numerator and the denominator of the apportionment
11 factors as determined under s. 71.25 or 71.45, as appropriate, for each member of the
12 combined reporting group, except as provided in subd. 2.

13 2. If a member of a combined reporting group is not subject to the tax imposed
14 under s. 71.23 or 71.43 because it does not have sufficient connection to this state as
15 a separate entity for income or franchise tax purposes, as determined by the
16 department, the numerator of the member's sales factor under s. 71.25 (9) or
17 apportionment factor under s. 71.45 (3) is zero. If a member of a combined reporting
18 group is a corporation engaged in business wholly within this state, as provided
19 under s. 71.25 (4), the numerator and denominator of the member's apportionment
20 factors is the same. If a member of a combined reporting group is not subject to an
21 income or franchise tax as a separate entity in the state to which a sale is attributed,
22 the sale is attributed to this state.

23 (b) Subtract intercompany transactions under sub. (6) (c) from both the
24 numerators and the denominators as determined under par. (a).

1 (c) Add the denominators of the apportionment factors for each member of the
2 combined reporting group, as determined under par. (b), to arrive at the combined
3 denominator.

4 (d) Compute each corporation's apportionment factors by dividing the
5 corporation's numerator as determined under par. (b) by the combined denominator
6 as determined under par. (c).

7 **(8) NET BUSINESS LOSS CARRY-OVER.** (a) For taxable years beginning after
8 December 31, 2003, any net business loss of a corporation that is a member of a
9 combined reporting group as determined under sub. (6) for the taxable year that is
10 not offset against the net income of the other members of the combined reporting
11 group in the same taxable year may be carried forward as provided under s. 71.26
12 (4), except that any net business loss carried forward to a subsequent taxable year
13 may be offset against either the net income of the corporation that incurred the net
14 business loss or the net income of the combined reporting group of which the
15 corporation is a member, in the manner prescribed by rule by the department.

16 (b) A corporation that is a member of a combined reporting group may not carry
17 forward a net business loss from a taxable year beginning before January 1, 2004,
18 if the corporation was not subject to the tax imposed under s. 71.23 or 71.43 for the
19 same taxable year.

20 (c) A corporation that is a member of a combined reporting group and that
21 incurred a Wisconsin net business loss in a taxable year beginning before January
22 1, 2004, that has not been offset against the corporation's net income in subsequent
23 taxable years, may offset the remaining net business loss against the corporation's
24 net income as determined under sub. (6). If the corporation joins in filing a group
25 return under sub. (5) and the corporation's remaining net business loss exceeds the

1 corporation's net income as determined under sub. (6) for the first taxable year
2 beginning after December 31, 2003, that the corporation is subject to this section, the
3 corporation may annually offset up to 20% of the remaining net business loss against
4 the net income of the other members of the combined reporting group that join in
5 filing a group return under sub. (5).

6 **(9) NET INCOME OR LOSS FOR CORPORATIONS WITH DIFFERENT ACCOUNTING PERIODS.**

7 If a taxpayer member has a different accounting period than the common accounting
8 period of the combined reporting group, the combined reporting group shall assign
9 the combined report income or loss for the combined reporting group, as determined
10 under sub. (6), proportionally to the number of months in the taxpayer member's
11 taxable year that are wholly or partly within the combined reporting group's common
12 accounting period. The total amount of income or loss assigned to a taxpayer member
13 under this subsection for the portions of the common accounting period that are
14 included in the taxpayer member's taxable period shall be aggregated or netted to
15 determine the taxpayer member's apportionable income.

16 **(10) NET TAX LIABILITY.** (a) A corporation that files a separate return under this
17 section shall determine its net tax liability as follows:

18 1. Multiply the amount determined under sub. (6) (i) for the corporation by the
19 tax rate under s. 71.27 or 71.46, as appropriate.

20 2. From the amount determined under subd. 1., subtract the corporation's tax
21 credits under s. 71.28 or 71.47 based on the corporation's expenses. The corporation
22 may not offset any of its tax credits, or tax credit carry forwards, against the tax
23 liability of any other member of the combined reporting group to which the
24 corporation belongs.

1 (b) A combined reporting group that files a group return under this section shall
2 determine its net tax liability as follows:

3 1. Multiply the amount determined under sub. (6) (i) for the combined reporting
4 group by the tax rate under s. 71.27 or 71.46, as appropriate.

5 2. From the amount determined under subd. 1., subtract the tax credits under
6 ss. 71.28 and 71.47 for all taxpayer members of the combined reporting group.

7 **(11) ESTIMATED TAX PAYMENTS.** (a) For the first 2 taxable years that a group
8 return is filed under this section, estimated taxes under ss. 71.29 and 71.48 may be
9 paid on a group basis or on a separate basis. The amount of any separate estimated
10 taxes paid in the first 2 taxable years that a group return is filed shall be credited
11 against the group's tax liability. The designated agent shall notify the department
12 of any estimated taxes paid on a separate basis in the first 2 taxable years that a
13 group return is filed.

14 (b) If a group return is filed for 2 consecutive taxable years, estimated taxes
15 under ss. 71.29 and 71.48 shall be paid on a group basis for each subsequent taxable
16 year until such time as separate returns are filed by the corporations that were
17 members of a combined reporting group that filed group returns under this section.
18 For each taxable year in which combined estimated taxes are paid under this
19 subsection, the department shall consider the combined reporting group filing a
20 group return to be one taxpayer for purposes of computing interest on the
21 underpayment of estimated taxes. If a corporation subject to this section files a
22 separate return in a taxable year following a year in which the corporation joined in
23 filing a group return, the amount of any estimated tax payments made on a group
24 basis for the previous year shall be credited against the tax liability of the corporation

1 that files a separate return, as allocated by the designated agent with the
2 department's approval.

3 (c) If a combined reporting group pays estimated taxes on a group basis for a
4 taxable year or for any part of a taxable year, and the members of the combined
5 reporting group file separate returns for the taxable year, the designated agent, with
6 the department's approval, shall allocate the estimated tax payments among the
7 members of the combined reporting group.

8 (d) If estimated taxes are paid on a group basis for a taxable year but the group
9 does not file a group return for the taxable year and did not file a group return for
10 the previous taxable year, the estimated tax shall be credited to the member of the
11 combined reporting group that made the estimated tax payment on the group's
12 behalf.

13 (e) If a combined reporting group that will file a group return applies for a
14 refund of estimated taxes under s. 71.29 (3m), the department shall determine the
15 combined reporting group's eligibility for a refund on a group basis.

16 **(12) INTEREST FOR UNDERPAYMENT OF ESTIMATED TAX.** (a) *General.* The amount
17 of interest that is due for an underpayment of estimated taxes under sub. (11) shall
18 be computed as follows:

19 1. For the first year in which a combined reporting group files a group return,
20 the amount of interest that is due for an underpayment of estimated taxes shall be
21 determined by using the aggregate of the tax and income shown on the returns filled
22 by the members of the combined reporting group for the previous year.

23 2. For any year in which a combined reporting group files a group return, the
24 department shall determine if the combined reporting group qualifies for the
25 exception to interest under s. 71.29 (7) (b) by using the aggregate of the amount of

1 the tax liability and the amount of the net income of all members of the combined
2 reporting group.

3 3. For any year in which a combined reporting group files a group return, the
4 department shall determine if the installment provisions under s. 71.29 (9) or (10)
5 apply to the combined reporting group by using the aggregate of the amount of the
6 tax liability and the amount of the net income of all members of the combined
7 reporting group.

8 4. For estimated taxes paid under sub. (11) (c), the amount of interest that is
9 due from a member of a combined reporting group for an underpayment of estimated
10 taxes paid by the member shall be determined by using the member's separate items
11 from the group return filed for the previous year and the member's allocated share
12 of the combined estimated tax payments for the current year. The designated agent
13 shall report the member's allocated share of the combined estimated tax payments
14 for the current year to the department, in the manner prescribed by the department.

15 (b) *Entering a group.* If a corporation becomes a member of a combined
16 reporting group during a common accounting period under sub. (4), the combined
17 reporting group shall make the following adjustments to determine the amount of
18 interest that is due for an underpayment of estimated taxes:

19 1. If a corporation becomes a member of a combined reporting group at the
20 beginning of a common accounting period, the combined reporting group shall
21 include with the corresponding items on the group return for the previous common
22 accounting period the separate items shown on the corporation's return for the
23 previous taxable year.

24 2. If a corporation is not a member of a combined reporting group for an entire
25 common accounting period, the combined reporting group shall include with the

1 corresponding items on the group return for the current taxable year the
2 corporation's separate items for that portion of the common accounting period that
3 the corporation was not a member of the combined reporting group.

4 3. To determine the separate items under subds. 1. and 2., if a corporation is
5 a member of a combined reporting group during a portion of a common accounting
6 period in which the corporation becomes a member of another combined reporting
7 group, the corporation's separate items shall include the separate items that are
8 attributed to the corporation by the designated agent of the first combined reporting
9 group.

10 (c) *Leaving a group.* If a corporation leaves a combined reporting group during
11 a common accounting period under sub. (4), the combined reporting group shall make
12 the following adjustments to determine the amount of interest that is due for an
13 underpayment of estimated taxes:

14 1. If a corporation leaves a combined reporting group before the first day of a
15 common accounting period, the combined reporting group shall exclude the separate
16 items that the designated agent of the combined reporting group attributed to the
17 corporation for the preceding common accounting period from the corresponding
18 items of the combined reporting group for the preceding common accounting period.

19 2. If a corporation leaves a combined reporting group after the first day of a
20 common accounting period, the combined reporting group shall exclude the separate
21 items that the designated agent of the combined reporting group attributed to the
22 corporation for the common accounting period from the corresponding items of the
23 combined reporting group for the current common accounting period.

24 3. A corporation that leaves a combined reporting group shall use the separate
25 items that the designated agent of the combined reporting group attributed to the

1 corporation to determine the amount of interest that is owed for any underpayment
2 of estimated taxes under sub. (11) for the first taxable year beginning after the day
3 that the corporation leaves the combined reporting group or, for a corporation that
4 has a different accounting period than the combined reporting group, for the portion
5 of the corporation's separate taxable year that remains after the day that the
6 corporation leaves the combined reporting group.

7 **(13) ASSESSMENT NOTICE.** If the department sends a notice of taxes that are
8 owed by a combined reporting group to the designated agent of a combined reporting
9 group, the notice shall name each corporation that joined in filing the group return
10 related to the notice during any part of the period covered by the notice. The
11 department's failure to name a corporation on a notice under this subsection shall
12 not invalidate the notice as to the unnamed corporation. Any levy, lien, or other
13 proceeding to collect the amount of a tax assessment under this section shall name
14 the corporation from which the department shall collect the assessment. If a
15 corporation that joined in the filing of a group return leaves the combined reporting
16 group, the department shall send the corporation a copy of any notice sent to the
17 combined reporting group under this subsection if the corporation notifies the
18 department that the corporation is no longer a member of the combined reporting
19 group and if the corporation requests in writing that the department send notices
20 under this subsection to the corporation. The department's failure to comply with
21 a corporation's request to receive a notice does not affect the tax liability of the
22 corporation.

23 **(14) LIABILITY FOR TAX, INTEREST, AND PENALTY.** If members of a combined
24 reporting group file a group return, the members of the combined reporting group
25 shall be jointly and severally liable for any combined tax, interest, or penalty. The

1 liability of a member of a combined reporting group for any combined tax, interest,
2 or penalty shall not be reduced by an agreement with another member of the
3 combined reporting group or by an agreement with another person.

4 **(15) PRESUMPTIONS AND BURDEN OF PROOF.** A commonly controlled group shall
5 be presumed to be engaged in a unitary business and all of the income of the unitary
6 business shall be presumed to be apportionable business income under this section.
7 A corporation, partnership, or limited liability company has the burden of proving
8 that it is not a member of a commonly controlled group that is subject to this section.
9 The department shall promulgate rules to implement this subsection.

10 **(16) INFORMATION.** (a) A member of a commonly controlled group shall retain
11 any information, and provide such information to the department at the
12 department's request, that the department considers necessary to administer this
13 section, including all documents submitted to or obtained from the Internal Revenue
14 Service or other states regarding income and taxing jurisdiction.

15 (b) A member of a commonly controlled group shall identify, at the department's
16 request, the name, job title, and address of the member's principal officers or
17 employees who have substantial knowledge of, and access to, documents that specify
18 the pricing policies, profit centers, cost centers, and methods of allocating income and
19 expenses among cost centers related to the operations of the member.

20 (c) A member of a commonly controlled group shall retain all information
21 provided under par. (a) during any period for which the member's tax liability to this
22 state is subject to adjustment, including any period in which the state may assess
23 additional income or franchise taxes, an appeal of the member's tax assessment is
24 pending, or a suit related to the member's tax liability is pending.

1 **(17) CORPORATIONS NOT FILING.** If a corporation that is required to report under
2 this section directly or indirectly owns or controls any other corporation, or is directly
3 or indirectly owned or controlled by another corporation, the department may
4 require that such other corporations join in filing a combined report under this
5 section.

6 **SECTION 31.** 71.26 (3) (x) of the statutes is amended to read:

7 71.26 **(3)** (x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to
8 consolidated returns) are excluded, except to the extent that they pertain to
9 intercompany transactions and the carry forward of net business loss under s. 71.255
10 and except that they are modified so that more than 50% ownership is substituted
11 for at least 80% ownership.

12 **SECTION 32.** 71.26 (4) of the statutes is amended to read:

13 71.26 **(4)** NET BUSINESS LOSS CARRY-FORWARD. A corporation, except a tax-option
14 corporation or an insurer to which s. 71.45 (4) applies, may offset against its
15 Wisconsin net business income any Wisconsin net business loss sustained in any of
16 the next 15 preceding taxable years, if the corporation was subject to taxation under
17 this chapter in the taxable year in which the loss was sustained, to the extent not
18 offset by other items of Wisconsin income in the loss year and by Wisconsin net
19 business income of any year between the loss year and the taxable year for which an
20 offset is claimed. For purposes of this subsection Wisconsin net business income or
21 loss shall consist of all the income attributable to the operation of a trade or business
22 in this state, less the business expenses allowed as deductions in computing net
23 income. The Wisconsin net business income or loss of corporations engaged in
24 business within and without the state shall be determined under s. 71.255 or 71.25
25 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25

1 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income
2 having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be
3 included in other items of Wisconsin income and Wisconsin net business income for
4 purposes of this subsection.

5 **SECTION 33.** 71.29 (2) of the statutes is amended to read:

6 71.29 (2) WHO SHALL PAY. ~~Every~~ Except as provided in s. 71.255 (11), every
7 corporation subject to tax under s. 71.23 (1) or (2) and every virtually exempt entity
8 subject to tax under s. 71.125 or 71.23 (1) or (2) shall pay an estimated tax.

9 **SECTION 34.** 71.44 (1) (a) of the statutes is amended to read:

10 71.44 (1) (a) ~~Every~~ Except as provided in par. (e), every corporation, except
11 corporations all of whose income is exempt from taxation and except as provided in
12 sub. (1m), shall furnish to the department a true and accurate statement, on or before
13 March 15 of each year, except that returns for fiscal years ending on some other date
14 than December 31 shall be furnished on or before the 15th day of the 3rd month
15 following the close of such fiscal year and except that returns for less than a full
16 taxable year shall be furnished on or before the date applicable for federal income
17 taxes under the internal revenue code, in such manner and form and setting forth
18 such facts as the department deems necessary to enforce this chapter. Every
19 corporation that is required to furnish a statement under this paragraph and that
20 has income that is not taxable under this subchapter shall include with its statement
21 a report that identifies each item of its nontaxable income. The statement shall be
22 subscribed by the president, vice president, treasurer, assistant treasurer, chief
23 accounting officer or any other officer duly authorized so to act. In the case of a return
24 made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The
25 fact that an individual's name is subscribed on the return shall be prima facie

1 evidence that the individual is authorized to subscribe the return on behalf of the
2 corporation.

3 **SECTION 35.** 71.44 (1) (e) of the statutes is created to read:

4 71.44 (1) (e) A corporation that is a member of a commonly controlled group,
5 as defined in s. 71.255 (1) (d), and engaged in a unitary business, as defined in s.
6 71.255 (1) (m), shall file a tax return under s. 71.255.

7 **SECTION 36.** 71.45 (3) (intro.) of the statutes is amended to read:

8 71.45 (3) APPORTIONMENT. (intro.) ~~With respect~~ Except as provided in sub. (3d),
9 to determine Wisconsin income for purposes of the franchise tax, domestic insurers
10 ~~not engaged in the sale of life insurance but which that,~~ in the taxable year, have
11 ~~collected~~ received premiums, other than life insurance premiums, written on
12 ~~subjects of~~ for insurance on property or risks resident, located or to be performed
13 outside this state, ~~there shall be subtracted from~~ multiply the net income figure
14 derived by application of sub. (2) (a) ~~to arrive at Wisconsin income constituting the~~
15 ~~measure of the franchise tax an amount calculated by multiplying such adjusted~~
16 ~~federal taxable income~~ by the arithmetic average of the following 2 percentages:

17 **SECTION 37.** 71.45 (3) (a) of the statutes is amended to read:

18 71.45 (3) (a) The Subject to sub. (3d), the percentage of total determined by
19 dividing the sum of direct premiums written ~~on all property and risks for insurance~~
20 other than life insurance, with respect to all property and risks resident, located, or
21 to be performed in this state, and assumed premiums written for reinsurance, other
22 than life insurance, with respect to all property and risks resident, located, or to be
23 performed in this state, by the sum of direct premiums written for insurance on all
24 property and risks, other than life insurance, wherever located during the taxable
25 year, ~~as reflects,~~ and assumed premiums written ~~on insurance~~ for reinsurance on all

1 ~~property and risks, other than life insurance, where the subject of insurance was~~
2 ~~resident, located or to be performed outside this state wherever located. In this~~
3 ~~paragraph, “direct premiums” means direct premiums as reported for the taxable~~
4 ~~year on an annual statement that is filed by the insurer with the commissioner of~~
5 ~~insurance under s. 601.42 (1g) (a). In this paragraph, “assumed premiums” means~~
6 ~~assumed reinsurance premiums from domestic insurance companies as reported for~~
7 ~~the taxable year on an annual statement that is filed with the commissioner of~~
8 ~~insurance under s. 601.42 (1g) (a).~~

9 **SECTION 38.** 71.45 (3) (b) of the statutes is renumbered 71.45 (3) (b) 1. and
10 amended to read:

11 71.45 (3) (b) 1. ~~The Subject to sub. (3d), the percentage of determined by~~
12 ~~dividing the payroll, exclusive of life insurance payroll, paid in this state in the~~
13 ~~taxable year by total payroll, exclusive of life insurance payroll, paid everywhere in~~
14 ~~the taxable year as reflects such compensation paid outside this state.~~
15 ~~Compensation.~~

16 2. Under subd. 1., payroll is paid outside in this state if the individual’s service
17 is performed entirely outside in this state; or the individual’s service is performed
18 both within and without in and outside this state, but the service performed within
19 outside this state is incidental to the individual’s service without in this state; or
20 some service is performed without in this state and the base of operations, or if there
21 is no base of operations, the place from which the service is directed or controlled is
22 without in this state, or the base of operations or the place from which the service is
23 directed or controlled is not in any state in which some part of the service is
24 performed, but the individual’s residence is outside in this state.

25 **SECTION 39.** 71.45 (3d) of the statutes is created to read:

1 71.45 **(3d)** PHASE IN; DOMESTIC INSURERS. (a) Except as provided in par. (d), for
2 taxable years beginning after December 31, 2005, and before January 1, 2007, a
3 domestic insurer that is subject to apportionment under sub. (3) and this subsection
4 shall multiply the net income figure derived by the application of sub. (2) by an
5 apportionment fraction composed of the percentage under sub. (3) (a) representing
6 60% of the fraction and the percentage under sub. (3) (b) 1. representing 40% of the
7 fraction.

8 (b) Except as provided in par. (d), for taxable years beginning after December
9 31, 2006, and before January 1, 2008, a domestic insurer that is subject to
10 apportionment under sub. (3) and this subsection shall multiply the net income
11 figure derived by the application of sub. (2) by an apportionment fraction composed
12 of the percentage under sub. (3) (a) representing 80% of the fraction and the
13 percentage under sub. (3) (b) 1. representing 20% of the fraction.

14 (c) Except as provided in par. (d), for taxable years beginning after December
15 31, 2007, a domestic insurer that is subject to apportionment under sub. (3) and this
16 subsection shall multiply the net income figure derived by the application of sub. (2)
17 by the percentage under sub. (3) (a).

18 (d) If a taxpayer who is subject to apportionment under sub. (3) has a net gain
19 of 100 employees in this state in any taxable year beginning after the effective date
20 of this paragraph [revisor inserts date], and before January 1, 2008, the
21 taxpayer's remaining net income may, at the taxpayer's option, be apportioned to this
22 state by an apportionment fraction composed of the percentage under sub. (3) (a)
23 beginning with the taxable year in which the employees are hired, except that if the
24 taxpayer does not retain such employees in this state for at least 3 consecutive

1 taxable years, the taxpayer shall apportion the taxpayer's remaining net income as
2 provided under pars. (a) to (c), as appropriate.

3 **SECTION 40.** 71.45 (3e) of the statutes is created to read:

4 71.45 (3e) APPORTIONMENT FORMULA COMPUTATION. (a) 1. For taxable years
5 beginning before January 1, 2008, if both the numerator and the denominator used
6 to determine the percentage under sub. (3) (a) related to a taxpayer's net income are
7 zero, the percentage under sub. (3) (a) is eliminated from the apportionment formula
8 to determine the taxpayer's income under sub. (3).

9 2. For taxable years beginning after December 31, 2007, if both the numerator
10 and the denominator used to determine the percentage under sub. (3) (a) related to
11 a taxpayer's net income are zero, none of the taxpayer's net income is apportioned
12 to this state.

13 (b) 1. For taxable years beginning before January 1, 2008, if the numerator
14 used to determine the percentage under sub. (3) (a) related to a taxpayer's net income
15 is a negative number and the denominator used to determine the percentage under
16 sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number,
17 or zero, the percentage under sub. (3) (a) is zero.

18 2. For taxable years beginning after December 31, 2007, if the numerator used
19 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
20 a negative number and the denominator used to determine the percentage under
21 sub. (3) (a) related to a taxpayer's net income is a positive number, a negative number,
22 or zero, none of the taxpayer's net income is apportioned to this state.

23 (c) 1. For taxable years beginning before January 1, 2008, if the numerator used
24 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
25 a positive number and the denominator used to determine the percentage under sub.

1 (3) (a) related to a taxpayer's net income is zero or a negative number, the percentage
2 under sub. (3) (a) is one.

3 2. For taxable years beginning after December 31, 2007, if the numerator used
4 to determine the percentage under sub. (3) (a) related to a taxpayer's net income is
5 a positive number and the denominator used to determine the percentage under sub.
6 (3) (a) related to a taxpayer's net income is zero or a negative number, all of the
7 taxpayer's net income is apportioned to this state.

8 **SECTION 41.** 71.45 (3m) of the statutes is amended to read:

9 71.45 (3m) ARITHMETIC AVERAGE. The Except as provided in sub. (3d), the
10 arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the
11 net income figure arrived at by the successive application of sub. (2) (a) and (b) with
12 respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have
13 ~~collected~~ received premiums, other than life insurance premiums, written upon for
14 ~~insurance, other than life insurance, where the subject of such insurance was on~~
15 property or risks resident, located or to be performed outside this state, to arrive at
16 Wisconsin income constituting the measure of the franchise tax.

17 **SECTION 42.** 71.46 (3) of the statutes is repealed.

18 **SECTION 43.** 71.48 of the statutes is amended to read:

19 **71.48 Payments of estimated taxes.** Sections Except as provided in s.
20 71.255 (11), ss. 71.29 and 71.84 (2) shall apply to insurers subject to taxation under
21 this chapter.

22 **SECTION 44.** 71.84 (2) (a) of the statutes is amended to read:

23 71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment
24 of estimated tax under s. 71.255, 71.29 or 71.48 there shall be added to the aggregate
25 tax for the taxable year interest at the rate of 12% per year on the amount of the

1 underpayment for the period of the underpayment. For corporations, except as
2 provided in par. (b), "period of the underpayment" means the time period from the
3 due date of the installment until either the 15th day of the 3rd month beginning after
4 the end of the taxable year or the date of payment, whichever is earlier. If 90% of the
5 tax shown on the return is not paid by the 15th day of the 3rd month following the
6 close of the taxable year, the difference between that amount and the estimated taxes
7 paid, along with any interest due, shall accrue delinquent interest under s. 71.91 (1)
8 (a).

9 **SECTION 45. Nonstatutory provisions; revenue.**

10 (1) INCOME APPORTIONMENT FOR FINANCIAL ORGANIZATIONS; RULES. The
11 department of revenue shall submit in proposed form rules related to the
12 apportionment of the income of financial organizations under sections 71.04 (4) (e)
13 and 71.25 (6) (e) of the statutes, as created by this act, to the legislative council staff
14 under section 227.15 (1) of the statutes no later than the first day of the 4th month
15 beginning after the effective date of this subsection.

16 **SECTION 46. Initial applicability.**

17 (1) SINGLE SALES FACTOR APPORTIONMENT. The treatment of section 71.45 (3)
18 (intro.), (a), and (b) and (3m) of the statutes first applies to taxable years beginning
19 after December 31, 2005.

20 (2) COMBINED REPORTING. The treatment of sections 71.25 (9) (a), 71.255, 71.26
21 (3) (x) and (4), 71.29 (2), 71.44 (1) (e), 71.46 (3), 71.48, and 71.84 (2) (a) of the statutes
22 first applies to taxable years beginning on January 1, 2005.

23 (END)