



## 2005 ASSEMBLY BILL 893

December 29, 2005 - Introduced by Representative BLACK. Referred to Joint Survey Committee on Tax Exemptions.

1     **AN ACT** *to renumber and amend* 71.26 (2) (a); and *to create* 71.01 (5p), 71.01  
2           (9b), 71.05 (6) (a) 21., 71.22 (3m), 71.22 (9b), 71.26 (2) (a) 6., 71.34 (1) (j), 71.42  
3           (1p), 71.42 (4m), 71.45 (2) (a) 16., 71.738 (3m) and 71.80 (23) of the statutes;  
4           **relating to:** adding payments to related entities to federal taxable income for  
5           state income tax and franchise tax purposes.

---

### ***Analysis by the Legislative Reference Bureau***

For purposes of calculating a taxpayer's state income tax or franchise tax liability, this bill requires a taxpayer to add the following amounts to the taxpayer's federal taxable income: any amount that the taxpayer deducted or excluded under the Internal Revenue Code for management and service fees, interest expenses and costs, intangible expenses and costs, and any other expenses and costs 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.

This bill also authorizes the Department of Revenue (DOR) to allow the tax consequences of a transaction, as asserted by a taxpayer, even if DOR initially disallows the consequences by asserting the sham transaction doctrine or a related doctrine, if a taxpayer meets certain conditions. The conditions include the taxpayer's ability to demonstrate that the transaction had a valid, good faith business purpose other than tax avoidance, that the business purpose is commensurate with the transaction's tax benefit, and that the transaction had economic substance apart from the taxpayer's asserted tax benefit.

**ASSEMBLY BILL 893**

Also under the bill, a taxpayer is not required to add to the taxpayer's federal taxable income certain expenses or costs as specified in the bill if a number of conditions apply. The conditions include the following:

1. The transaction to which the expenses and costs apply did not have as its principal purpose tax avoidance.

2. The related entity to whom the taxpayer paid the expenses or costs paid, accrued, or incurred such amounts to a person who is not a related entity.

3. The related entity was subject to tax on its net income, and a measure of the tax included the expenses or costs received from the taxpayer.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* 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:*

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

2           71.01 **(5p)** "Intangible expenses and costs" includes expenses, losses, and costs  
3 for, related to, or directly or indirectly in connection with the direct or indirect  
4 acquisition of, use of, maintenance or management of, ownership of, sale of, exchange  
5 of, or any other direct or indirect disposition of intangible property to the extent that  
6 such expenses, losses, and costs are allowed as deductions or costs to determine  
7 federal taxable income under the Internal Revenue Code. For purposes of this  
8 subsection, "expenses, losses, and costs" include losses related to or incurred directly  
9 or indirectly in connection with factoring transactions and discounting transactions;  
10 royalty, patent, technical, and copyright fees; licensing fees; and other similar  
11 expenses and costs.

12           **SECTION 2.** 71.01 (9b) of the statutes is created to read:

13           71.01 **(9b)** "Related entity" means any person related to a taxpayer as provided  
14 under section 267, 318, or 1563 of the Internal Revenue Code during all or a portion  
15 of the taxpayer's taxable year.

**ASSEMBLY BILL 893**

1           **SECTION 3.** 71.05 (6) (a) 21. of the statutes is created to read:

2           71.05 **(6)** (a) 21. Any amount deducted or excluded under the Internal Revenue  
3 Code for management and service fees, interest expenses and costs, intangible  
4 expenses and costs, and any other expenses and costs directly or indirectly paid,  
5 accrued, or incurred to, or in connection directly or indirectly with one or more direct  
6 or indirect transactions with, one or more related entities.

7           **SECTION 4.** 71.22 (3m) of the statutes is created to read:

8           71.22 **(3m)** “Intangible expenses and costs” includes expenses, losses, and costs  
9 for, related to, or directly or indirectly in connection with the direct or indirect  
10 acquisition of, use of, maintenance or management of, ownership of, sale of, exchange  
11 of, or any other direct or indirect disposition of intangible property to the extent that  
12 such expenses, losses, and costs are allowed as deductions or costs to determine  
13 federal taxable income under the Internal Revenue Code. For purposes of this  
14 subsection, “expenses, losses, and costs” include losses related to or incurred directly  
15 or indirectly in connection with factoring transactions and discounting transactions;  
16 royalty, patent, technical, and copyright fees; licensing fees; and other similar  
17 expenses and costs.

18           **SECTION 5.** 71.22 (9b) of the statutes is created to read:

19           71.22 **(9b)** “Related entity” means any person related to a taxpayer as provided  
20 under section 267, 318, or 1563 of the Internal Revenue Code during all or a portion  
21 of the taxpayer’s taxable year.

22           **SECTION 6.** 71.26 (2) (a) of the statutes is renumbered 71.26 (2) (a) (intro.) and  
23 amended to read:

**ASSEMBLY BILL 893****SECTION 6**

1           71.26 (2) (a) (intro.) *Corporations in general.* The “net income” of a corporation  
2 means the gross income as computed under the Internal Revenue Code as modified  
3 under sub. (3) ~~minus~~ and modified as follows:

4           1. Minus the amount of recapture under s. 71.28 (1di) ~~plus.~~

5           2. Plus the amount of credit computed under s. 71.28 (1), (3), (4), and (5) ~~minus.~~

6           3. Minus as provided under s. 71.28 (3) (c) 7., the amount of the credit under  
7 s. 71.28 (3) that the taxpayer added to income under this paragraph at the time that  
8 the taxpayer first claimed the credit ~~plus.~~

9           4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di),  
10 (1dj), (1dL), (1dm), (1ds), (1dx), (3g), (3n), (3t), and (5b) and not passed through by  
11 a partnership, limited liability company, or tax-option corporation that has added  
12 that amount to the partnership’s, limited liability company’s, or tax-option  
13 corporation’s income under s. 71.21 (4) or 71.34 (1) (g) ~~plus.~~

14           5. Plus the amount of losses from the sale or other disposition of assets the gain  
15 from which would be wholly exempt income, as defined in sub. (3) (L), if the assets  
16 were sold or otherwise disposed of at a gain and minus deductions, as computed  
17 under the Internal Revenue Code as modified under sub. (3), ~~plus.~~

18           6. Plus or minus, as appropriate, an amount equal to the difference between  
19 the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or  
20 otherwise disposed of in a taxable transaction during the taxable year, except as  
21 provided in par. (b) and s. 71.45 (2) and (5).

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

23           71.26 (2) (a) 6. Plus any amount deducted or excluded under the Internal  
24 Revenue Code for management and service fees, interest expenses and costs,  
25 intangible expenses and costs, and any other expenses and costs directly or indirectly

**ASSEMBLY BILL 893**

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

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

4 71.34 (1) (j) An addition shall be made for any amount deducted or excluded  
5 under the Internal Revenue Code for management and service fees, interest  
6 expenses and costs, intangible expenses and costs, and any other expenses and costs  
7 directly or indirectly paid, accrued, or incurred to, or in connection directly or  
8 indirectly with one or more direct or indirect transactions with, one or more related  
9 entities.

10 **SECTION 9.** 71.42 (1p) of the statutes is created to read:

11 71.42 (1p) "Intangible expenses and costs" includes expenses, losses, and costs  
12 for, related to, or directly or indirectly in connection with the direct or indirect  
13 acquisition of, use of, maintenance or management of, ownership of, sale of, exchange  
14 of, or any other direct or indirect disposition of intangible property to the extent that  
15 such expenses, losses, and costs are allowed as deductions or costs to determine  
16 federal taxable income under the Internal Revenue Code. For purposes of this  
17 subsection, "expenses, losses, and costs" include losses related to or incurred directly  
18 or indirectly in connection with factoring transactions and discounting transactions;  
19 royalty, patent, technical, and copyright fees; licensing fees; and other similar  
20 expenses and costs.

21 **SECTION 10.** 71.42 (4m) of the statutes is created to read:

22 71.42 (4m) "Related entity" means any person related to a taxpayer as provided  
23 under section 267, 318, or 1563 of the Internal Revenue Code during all or a portion  
24 of the taxpayer's taxable year.

25 **SECTION 11.** 71.45 (2) (a) 16. of the statutes is created to read:

**ASSEMBLY BILL 893****SECTION 11**

1           71.45 (2) (a) 16. By adding to federal taxable income any amount deducted or  
2 excluded under the Internal Revenue Code for management and service fees,  
3 interest expenses and costs, intangible expenses and costs, and any other expenses  
4 and costs directly or indirectly paid, accrued, or incurred to, or in connection directly  
5 or indirectly with one or more direct or indirect transactions with, one or more  
6 related entities.

7           **SECTION 12.** 71.738 (3m) of the statutes is created to read:

8           71.738 (3m) “Related entity” means any person related to a taxpayer as  
9 provided under section 267, 318, or 1563 of the Internal Revenue Code during all or  
10 a portion of the taxpayer’s taxable year.

11           **SECTION 13.** 71.80 (23) of the statutes is created to read:

12           71.80 (23) TRANSACTIONS. (a) Subject to par. (b), if the department asserts the  
13 sham transaction doctrine, or any other related tax doctrine, to disallow the tax  
14 consequences, as asserted by the taxpayer, of a transaction, the department may  
15 allow the tax consequences, as asserted by the taxpayer, of the transaction, if the  
16 taxpayer demonstrates by clear and convincing evidence that the transaction had a  
17 valid, good faith, business purpose other than tax avoidance and had economic  
18 substance apart from any tax benefit asserted by the taxpayer.

19           (b) For all instances in which the department disallows the tax consequences,  
20 as asserted by the taxpayer, of a transaction, the department may allow the tax  
21 consequences, as asserted by the taxpayer, of the transaction, if the taxpayer  
22 demonstrates by clear and convincing evidence that the transaction’s nontaxable  
23 business purpose, as asserted by the taxpayer, is commensurate with the  
24 transaction’s tax benefit, as asserted by the taxpayer.

**ASSEMBLY BILL 893**

1 (c) The adjustments under ss. 71.05 (6) (a) 21., 71.26 (2) (a) 6., 71.34 (1) (j), and  
2 71.45 (2) (a) 16. shall not apply to any expenses or costs if all of the following apply  
3 to the expenses or costs:

4 1. The transaction to which the expenses or costs are related did not have tax  
5 avoidance as its principal purpose.

6 2. The related entity to whom the taxpayer paid interest expenses or costs,  
7 intangible expenses, or management or service fees during the taxable year directly  
8 or indirectly paid, accrued, or incurred such amounts to a person who is not a related  
9 entity. For purposes of this subdivision, "interest" means interest on a debt for which  
10 the taxpayer is the guarantor, if the interest rate is the market rate in effect at the  
11 time of the debt's origination, but excludes interest that is paid in connection with  
12 any debt that is incurred to acquire the taxpayer's assets or stock under section 368  
13 of the Internal Revenue Code.

14 3. The related entity was subject to tax on its net income in this state, or any  
15 state, U.S. possession, or foreign country; a measure of the tax paid included the  
16 interest income, intangible income, or management or service fees received from the  
17 taxpayer; and the tax rate applied to the interest income, intangible income, or  
18 management or service fees was not less than 3 percentage points below the tax rate  
19 that would have applied under s. 71.27. For purposes of this subdivision, "any state,  
20 U.S. possession, or foreign country" does not include any state, U.S. possession, or  
21 foreign country under the laws of which the taxpayer files or could have elected to  
22 file with the related entity, or the related entity files or could have elected to file with  
23 another entity, a combined income tax report or return, a consolidated income tax  
24 report or return, or any other report or return that is due because of the imposition  
25 of a tax that is measured on or by income, if the report of return results in eliminating

**ASSEMBLY BILL 893**

**SECTION 13**

1 the tax effects of transactions directly or indirectly between either the taxpayer and  
2 the related entity or between the related entity and another entity.

3 **SECTION 14. Initial applicability.**

4 (1) This act first applies to taxable years beginning on January 1, 2006.

5 (END)