



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3419

by Rep. Jaime M. Andrade, Jr.

SYNOPSIS AS INTRODUCED:

30 ILCS 500/1-15.120 new
30 ILCS 500/45-10
30 ILCS 500/50-17 new
35 ILCS 5/1501
40 ILCS 5/1-110.16

from Ch. 120, par. 15-1501

Amends the Illinois Procurement Code. Provides that an expatriate corporation shall be considered a non-resident bidder for purposes of the Code. Provides that no business or member of a unitary business group shall submit a bid for or enter into a contract with a State agency under the Code if the business is an expatriate corporation. Defines "expatriate corporation". Amends the Illinois Income Tax Act. Provides that notwithstanding provisions of the Act, any person formed or incorporated in a foreign tax haven may be a member of a unitary business group without regard to where its business activities are conducted. Defines "foreign tax haven". Amends the General Provisions Article of the Illinois Pension Code. Requires the Illinois Investment Policy Board to make its best efforts to identify all expatriate companies and include those companies in the list of restricted companies distributed to each retirement system and the Illinois State Board of Investment.

LRB100 08561 MLM 18686 b

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Procurement Code is amended by
5 changing Section 45-10 and by adding Sections 1-15.120 and
6 50-17 as follows:

7 (30 ILCS 500/1-15.120 new)

8 Sec. 1-15.120. Expatriate corporation. "Expatriate
9 corporation" means a foreign incorporated entity to which all
10 the following apply:

11 (1) it is publicly traded in the United States;

12 (2) is incorporated in a foreign tax haven as defined in
13 the Illinois Income Tax Act;

14 (3) less than 10% of the gross income of the foreign entity
15 is derived from activities in the tax haven;

16 (4) less than 10% of the employees of the foreign entity
17 are permanently located in the tax haven;

18 (5) either of the following applies:

19 (A) The foreign entity was established in connection
20 with a transaction or series of related transactions
21 pursuant to which: (i) the foreign entity directly or
22 indirectly acquired substantially all of the properties
23 held by a domestic corporation or all of the properties

1 constituting a trade or business of a domestic partnership
2 or related foreign partnership; and (ii) immediately after
3 the acquisition, more than 50% of the publicly traded
4 stock, by vote or value, of the foreign entity is held by
5 former shareholders of the domestic corporation or by
6 former partners of the domestic partnership or related
7 foreign partnership. For purposes of item (ii), any stock
8 sold in a public offering related to the transaction or a
9 series of transactions is disregarded.

10 (B) The foreign entity was established in connection
11 with a transaction or series of related transactions
12 pursuant to which (i) the foreign entity directly or
13 indirectly acquired substantially all of the properties
14 held by a domestic corporation or all of the properties
15 constituting a trade or business of a domestic partnership
16 or related foreign partnership and (ii) the acquiring
17 foreign entity is more than 50% owned, by vote or value, by
18 domestic shareholders or partners.

19 (30 ILCS 500/45-10)

20 Sec. 45-10. Resident bidders and offerors.

21 (a) Amount of preference. When a contract is to be awarded
22 to the lowest responsible bidder or offeror, a resident bidder
23 or offeror shall be allowed a preference as against a
24 non-resident bidder or offeror from any state that gives or
25 requires a preference to bidders or offerors from that state.

1 The preference shall be equal to the preference given or
2 required by the state of the non-resident bidder or offeror.
3 Further, if only non-resident bidders or offerors are bidding,
4 the purchasing agency is within its right to specify that
5 Illinois labor and manufacturing locations be used as a part of
6 the manufacturing process, if applicable. This specification
7 may be negotiated as part of the solicitation process.

8 (b) Residency. A resident bidder or offeror is a person
9 authorized to transact business in this State and having a bona
10 fide establishment for transacting business within this State
11 where it was actually transacting business on the date when any
12 bid for a public contract is first advertised or announced. A
13 resident bidder or offeror includes a foreign corporation duly
14 authorized to transact business in this State that has a bona
15 fide establishment for transacting business within this State
16 where it was actually transacting business on the date when any
17 bid for a public contract is first advertised or announced;
18 however, an expatriate corporation shall be considered a
19 non-resident bidder.

20 (c) Federal funds. This Section does not apply to any
21 contract for any project as to which federal funds are
22 available for expenditure when its provisions may be in
23 conflict with federal law or federal regulation.

24 (Source: P.A. 98-1076, eff. 1-1-15.)

25 (30 ILCS 500/50-17 new)

1 Sec. 50-17. Expatriate corporations. No business or member
2 of a unitary business group, as defined in the Illinois Income
3 Tax Act, shall submit a bid for or enter into a contract with a
4 State agency under this Code if that business or any member of
5 the unitary business group is an expatriate corporation.

6 Section 10. The Illinois Income Tax Act is amended by
7 changing Section 1501 as follows:

8 (35 ILCS 5/1501) (from Ch. 120, par. 15-1501)

9 Sec. 1501. Definitions.

10 (a) In general. When used in this Act, where not otherwise
11 distinctly expressed or manifestly incompatible with the
12 intent thereof:

13 (1) Business income. The term "business income" means
14 all income that may be treated as apportionable business
15 income under the Constitution of the United States.
16 Business income is net of the deductions allocable thereto.
17 Such term does not include compensation or the deductions
18 allocable thereto. For each taxable year beginning on or
19 after January 1, 2003, a taxpayer may elect to treat all
20 income other than compensation as business income. This
21 election shall be made in accordance with rules adopted by
22 the Department and, once made, shall be irrevocable.

23 (1.5) Captive real estate investment trust:

24 (A) The term "captive real estate investment

1 trust" means a corporation, trust, or association:

2 (i) that is considered a real estate
3 investment trust for the taxable year under
4 Section 856 of the Internal Revenue Code;

5 (ii) the certificates of beneficial interest
6 or shares of which are not regularly traded on an
7 established securities market; and

8 (iii) of which more than 50% of the voting
9 power or value of the beneficial interest or
10 shares, at any time during the last half of the
11 taxable year, is owned or controlled, directly,
12 indirectly, or constructively, by a single
13 corporation.

14 (B) The term "captive real estate investment
15 trust" does not include:

16 (i) a real estate investment trust of which
17 more than 50% of the voting power or value of the
18 beneficial interest or shares is owned or
19 controlled, directly, indirectly, or
20 constructively, by:

21 (a) a real estate investment trust, other
22 than a captive real estate investment trust;

23 (b) a person who is exempt from taxation
24 under Section 501 of the Internal Revenue Code,
25 and who is not required to treat income
26 received from the real estate investment trust

1 as unrelated business taxable income under
2 Section 512 of the Internal Revenue Code;

3 (c) a listed Australian property trust, if
4 no more than 50% of the voting power or value
5 of the beneficial interest or shares of that
6 trust, at any time during the last half of the
7 taxable year, is owned or controlled, directly
8 or indirectly, by a single person;

9 (d) an entity organized as a trust,
10 provided a listed Australian property trust
11 described in subparagraph (c) owns or
12 controls, directly or indirectly, or
13 constructively, 75% or more of the voting power
14 or value of the beneficial interests or shares
15 of such entity; or

16 (e) an entity that is organized outside of
17 the laws of the United States and that
18 satisfies all of the following criteria:

19 (1) at least 75% of the entity's total
20 asset value at the close of its taxable
21 year is represented by real estate assets
22 (as defined in Section 856(c)(5)(B) of the
23 Internal Revenue Code, thereby including
24 shares or certificates of beneficial
25 interest in any real estate investment
26 trust), cash and cash equivalents, and

1 U.S. Government securities;

2 (2) the entity is not subject to tax on
3 amounts that are distributed to its
4 beneficial owners or is exempt from
5 entity-level taxation;

6 (3) the entity distributes at least
7 85% of its taxable income (as computed in
8 the jurisdiction in which it is organized)
9 to the holders of its shares or
10 certificates of beneficial interest on an
11 annual basis;

12 (4) either (i) the shares or
13 beneficial interests of the entity are
14 regularly traded on an established
15 securities market or (ii) not more than 10%
16 of the voting power or value in the entity
17 is held, directly, indirectly, or
18 constructively, by a single entity or
19 individual; and

20 (5) the entity is organized in a
21 country that has entered into a tax treaty
22 with the United States; or

23 (ii) during its first taxable year for which it
24 elects to be treated as a real estate investment
25 trust under Section 856(c)(1) of the Internal
26 Revenue Code, a real estate investment trust the

1 certificates of beneficial interest or shares of
2 which are not regularly traded on an established
3 securities market, but only if the certificates of
4 beneficial interest or shares of the real estate
5 investment trust are regularly traded on an
6 established securities market prior to the earlier
7 of the due date (including extensions) for filing
8 its return under this Act for that first taxable
9 year or the date it actually files that return.

10 (C) For the purposes of this subsection (1.5), the
11 constructive ownership rules prescribed under Section
12 318(a) of the Internal Revenue Code, as modified by
13 Section 856(d) (5) of the Internal Revenue Code, apply
14 in determining the ownership of stock, assets, or net
15 profits of any person.

16 (D) For the purposes of this item (1.5), for
17 taxable years ending on or after August 16, 2007, the
18 voting power or value of the beneficial interest or
19 shares of a real estate investment trust does not
20 include any voting power or value of beneficial
21 interest or shares in a real estate investment trust
22 held directly or indirectly in a segregated asset
23 account by a life insurance company (as described in
24 Section 817 of the Internal Revenue Code) to the extent
25 such voting power or value is for the benefit of
26 entities or persons who are either immune from taxation

1 or exempt from taxation under subtitle A of the
2 Internal Revenue Code.

3 (2) Commercial domicile. The term "commercial
4 domicile" means the principal place from which the trade or
5 business of the taxpayer is directed or managed.

6 (3) Compensation. The term "compensation" means wages,
7 salaries, commissions and any other form of remuneration
8 paid to employees for personal services.

9 (4) Corporation. The term "corporation" includes
10 associations, joint-stock companies, insurance companies
11 and cooperatives. Any entity, including a limited
12 liability company formed under the Illinois Limited
13 Liability Company Act, shall be treated as a corporation if
14 it is so classified for federal income tax purposes.

15 (5) Department. The term "Department" means the
16 Department of Revenue of this State.

17 (6) Director. The term "Director" means the Director of
18 Revenue of this State.

19 (7) Fiduciary. The term "fiduciary" means a guardian,
20 trustee, executor, administrator, receiver, or any person
21 acting in any fiduciary capacity for any person.

22 (8) Financial organization.

23 (A) The term "financial organization" means any
24 bank, bank holding company, trust company, savings
25 bank, industrial bank, land bank, safe deposit
26 company, private banker, savings and loan association,

1 building and loan association, credit union, currency
2 exchange, cooperative bank, small loan company, sales
3 finance company, investment company, or any person
4 which is owned by a bank or bank holding company. For
5 the purpose of this Section a "person" will include
6 only those persons which a bank holding company may
7 acquire and hold an interest in, directly or
8 indirectly, under the provisions of the Bank Holding
9 Company Act of 1956 (12 U.S.C. 1841, et seq.), except
10 where interests in any person must be disposed of
11 within certain required time limits under the Bank
12 Holding Company Act of 1956.

13 (B) For purposes of subparagraph (A) of this
14 paragraph, the term "bank" includes (i) any entity that
15 is regulated by the Comptroller of the Currency under
16 the National Bank Act, or by the Federal Reserve Board,
17 or by the Federal Deposit Insurance Corporation and
18 (ii) any federally or State chartered bank operating as
19 a credit card bank.

20 (C) For purposes of subparagraph (A) of this
21 paragraph, the term "sales finance company" has the
22 meaning provided in the following item (i) or (ii):

23 (i) A person primarily engaged in one or more
24 of the following businesses: the business of
25 purchasing customer receivables, the business of
26 making loans upon the security of customer

1 receivables, the business of making loans for the
2 express purpose of funding purchases of tangible
3 personal property or services by the borrower, or
4 the business of finance leasing. For purposes of
5 this item (i), "customer receivable" means:

6 (a) a retail installment contract or
7 retail charge agreement within the meaning of
8 the Sales Finance Agency Act, the Retail
9 Installment Sales Act, or the Motor Vehicle
10 Retail Installment Sales Act;

11 (b) an installment, charge, credit, or
12 similar contract or agreement arising from the
13 sale of tangible personal property or services
14 in a transaction involving a deferred payment
15 price payable in one or more installments
16 subsequent to the sale; or

17 (c) the outstanding balance of a contract
18 or agreement described in provisions (a) or (b)
19 of this item (i).

20 A customer receivable need not provide for
21 payment of interest on deferred payments. A sales
22 finance company may purchase a customer receivable
23 from, or make a loan secured by a customer
24 receivable to, the seller in the original
25 transaction or to a person who purchased the
26 customer receivable directly or indirectly from

1 that seller.

2 (ii) A corporation meeting each of the
3 following criteria:

4 (a) the corporation must be a member of an
5 "affiliated group" within the meaning of
6 Section 1504(a) of the Internal Revenue Code,
7 determined without regard to Section 1504(b)
8 of the Internal Revenue Code;

9 (b) more than 50% of the gross income of
10 the corporation for the taxable year must be
11 interest income derived from qualifying loans.
12 A "qualifying loan" is a loan made to a member
13 of the corporation's affiliated group that
14 originates customer receivables (within the
15 meaning of item (i)) or to whom customer
16 receivables originated by a member of the
17 affiliated group have been transferred, to the
18 extent the average outstanding balance of
19 loans from that corporation to members of its
20 affiliated group during the taxable year do not
21 exceed the limitation amount for that
22 corporation. The "limitation amount" for a
23 corporation is the average outstanding
24 balances during the taxable year of customer
25 receivables (within the meaning of item (i))
26 originated by all members of the affiliated

1 group. If the average outstanding balances of
2 the loans made by a corporation to members of
3 its affiliated group exceed the limitation
4 amount, the interest income of that
5 corporation from qualifying loans shall be
6 equal to its interest income from loans to
7 members of its affiliated groups times a
8 fraction equal to the limitation amount
9 divided by the average outstanding balances of
10 the loans made by that corporation to members
11 of its affiliated group;

12 (c) the total of all shareholder's equity
13 (including, without limitation, paid-in
14 capital on common and preferred stock and
15 retained earnings) of the corporation plus the
16 total of all of its loans, advances, and other
17 obligations payable or owed to members of its
18 affiliated group may not exceed 20% of the
19 total assets of the corporation at any time
20 during the tax year; and

21 (d) more than 50% of all interest-bearing
22 obligations of the affiliated group payable to
23 persons outside the group determined in
24 accordance with generally accepted accounting
25 principles must be obligations of the
26 corporation.

1 This amendatory Act of the 91st General Assembly is
2 declaratory of existing law.

3 (D) Subparagraphs (B) and (C) of this paragraph are
4 declaratory of existing law and apply retroactively,
5 for all tax years beginning on or before December 31,
6 1996, to all original returns, to all amended returns
7 filed no later than 30 days after the effective date of
8 this amendatory Act of 1996, and to all notices issued
9 on or before the effective date of this amendatory Act
10 of 1996 under subsection (a) of Section 903, subsection
11 (a) of Section 904, subsection (e) of Section 909, or
12 Section 912. A taxpayer that is a "financial
13 organization" that engages in any transaction with an
14 affiliate shall be a "financial organization" for all
15 purposes of this Act.

16 (E) For all tax years beginning on or before
17 December 31, 1996, a taxpayer that falls within the
18 definition of a "financial organization" under
19 subparagraphs (B) or (C) of this paragraph, but who
20 does not fall within the definition of a "financial
21 organization" under the Proposed Regulations issued by
22 the Department of Revenue on July 19, 1996, may
23 irrevocably elect to apply the Proposed Regulations
24 for all of those years as though the Proposed
25 Regulations had been lawfully promulgated, adopted,
26 and in effect for all of those years. For purposes of

1 applying subparagraphs (B) or (C) of this paragraph to
2 all of those years, the election allowed by this
3 subparagraph applies only to the taxpayer making the
4 election and to those members of the taxpayer's unitary
5 business group who are ordinarily required to
6 apportion business income under the same subsection of
7 Section 304 of this Act as the taxpayer making the
8 election. No election allowed by this subparagraph
9 shall be made under a claim filed under subsection (d)
10 of Section 909 more than 30 days after the effective
11 date of this amendatory Act of 1996.

12 (F) Finance Leases. For purposes of this
13 subsection, a finance lease shall be treated as a loan
14 or other extension of credit, rather than as a lease,
15 regardless of how the transaction is characterized for
16 any other purpose, including the purposes of any
17 regulatory agency to which the lessor is subject. A
18 finance lease is any transaction in the form of a lease
19 in which the lessee is treated as the owner of the
20 leased asset entitled to any deduction for
21 depreciation allowed under Section 167 of the Internal
22 Revenue Code.

23 (9) Fiscal year. The term "fiscal year" means an
24 accounting period of 12 months ending on the last day of
25 any month other than December.

26 (9.5) Fixed place of business. The term "fixed place of

1 business" has the same meaning as that term is given in
2 Section 864 of the Internal Revenue Code and the related
3 Treasury regulations.

4 (10) Includes and including. The terms "includes" and
5 "including" when used in a definition contained in this Act
6 shall not be deemed to exclude other things otherwise
7 within the meaning of the term defined.

8 (11) Internal Revenue Code. The term "Internal Revenue
9 Code" means the United States Internal Revenue Code of 1954
10 or any successor law or laws relating to federal income
11 taxes in effect for the taxable year.

12 (11.5) Investment partnership.

13 (A) The term "investment partnership" means any
14 entity that is treated as a partnership for federal
15 income tax purposes that meets the following
16 requirements:

17 (i) no less than 90% of the partnership's cost
18 of its total assets consists of qualifying
19 investment securities, deposits at banks or other
20 financial institutions, and office space and
21 equipment reasonably necessary to carry on its
22 activities as an investment partnership;

23 (ii) no less than 90% of its gross income
24 consists of interest, dividends, and gains from
25 the sale or exchange of qualifying investment
26 securities; and

1 (iii) the partnership is not a dealer in
2 qualifying investment securities.

3 (B) For purposes of this paragraph (11.5), the term
4 "qualifying investment securities" includes all of the
5 following:

6 (i) common stock, including preferred or debt
7 securities convertible into common stock, and
8 preferred stock;

9 (ii) bonds, debentures, and other debt
10 securities;

11 (iii) foreign and domestic currency deposits
12 secured by federal, state, or local governmental
13 agencies;

14 (iv) mortgage or asset-backed securities
15 secured by federal, state, or local governmental
16 agencies;

17 (v) repurchase agreements and loan
18 participations;

19 (vi) foreign currency exchange contracts and
20 forward and futures contracts on foreign
21 currencies;

22 (vii) stock and bond index securities and
23 futures contracts and other similar financial
24 securities and futures contracts on those
25 securities;

26 (viii) options for the purchase or sale of any

1 of the securities, currencies, contracts, or
2 financial instruments described in items (i) to
3 (vii), inclusive;

4 (ix) regulated futures contracts;

5 (x) commodities (not described in Section
6 1221(a)(1) of the Internal Revenue Code) or
7 futures, forwards, and options with respect to
8 such commodities, provided, however, that any item
9 of a physical commodity to which title is actually
10 acquired in the partnership's capacity as a dealer
11 in such commodity shall not be a qualifying
12 investment security;

13 (xi) derivatives; and

14 (xii) a partnership interest in another
15 partnership that is an investment partnership.

16 (12) Mathematical error. The term "mathematical error"
17 includes the following types of errors, omissions, or
18 defects in a return filed by a taxpayer which prevents
19 acceptance of the return as filed for processing:

20 (A) arithmetic errors or incorrect computations on
21 the return or supporting schedules;

22 (B) entries on the wrong lines;

23 (C) omission of required supporting forms or
24 schedules or the omission of the information in whole
25 or in part called for thereon; and

26 (D) an attempt to claim, exclude, deduct, or

1 improperly report, in a manner directly contrary to the
2 provisions of the Act and regulations thereunder any
3 item of income, exemption, deduction, or credit.

4 (13) Nonbusiness income. The term "nonbusiness income"
5 means all income other than business income or
6 compensation.

7 (14) Nonresident. The term "nonresident" means a
8 person who is not a resident.

9 (15) Paid, incurred and accrued. The terms "paid",
10 "incurring" and "accrued" shall be construed according to
11 the method of accounting upon the basis of which the
12 person's base income is computed under this Act.

13 (16) Partnership and partner. The term "partnership"
14 includes a syndicate, group, pool, joint venture or other
15 unincorporated organization, through or by means of which
16 any business, financial operation, or venture is carried
17 on, and which is not, within the meaning of this Act, a
18 trust or estate or a corporation; and the term "partner"
19 includes a member in such syndicate, group, pool, joint
20 venture or organization.

21 The term "partnership" includes any entity, including
22 a limited liability company formed under the Illinois
23 Limited Liability Company Act, classified as a partnership
24 for federal income tax purposes.

25 The term "partnership" does not include a syndicate,
26 group, pool, joint venture, or other unincorporated

1 organization established for the sole purpose of playing
2 the Illinois State Lottery.

3 (17) Part-year resident. The term "part-year resident"
4 means an individual who became a resident during the
5 taxable year or ceased to be a resident during the taxable
6 year. Under Section 1501(a)(20)(A)(i) residence commences
7 with presence in this State for other than a temporary or
8 transitory purpose and ceases with absence from this State
9 for other than a temporary or transitory purpose. Under
10 Section 1501(a)(20)(A)(ii) residence commences with the
11 establishment of domicile in this State and ceases with the
12 establishment of domicile in another State.

13 (18) Person. The term "person" shall be construed to
14 mean and include an individual, a trust, estate,
15 partnership, association, firm, company, corporation,
16 limited liability company, or fiduciary. For purposes of
17 Section 1301 and 1302 of this Act, a "person" means (i) an
18 individual, (ii) a corporation, (iii) an officer, agent, or
19 employee of a corporation, (iv) a member, agent or employee
20 of a partnership, or (v) a member, manager, employee,
21 officer, director, or agent of a limited liability company
22 who in such capacity commits an offense specified in
23 Section 1301 and 1302.

24 (18A) Records. The term "records" includes all data
25 maintained by the taxpayer, whether on paper, microfilm,
26 microfiche, or any type of machine-sensible data

1 compilation.

2 (19) Regulations. The term "regulations" includes
3 rules promulgated and forms prescribed by the Department.

4 (20) Resident. The term "resident" means:

5 (A) an individual (i) who is in this State for
6 other than a temporary or transitory purpose during the
7 taxable year; or (ii) who is domiciled in this State
8 but is absent from the State for a temporary or
9 transitory purpose during the taxable year;

10 (B) The estate of a decedent who at his or her
11 death was domiciled in this State;

12 (C) A trust created by a will of a decedent who at
13 his death was domiciled in this State; and

14 (D) An irrevocable trust, the grantor of which was
15 domiciled in this State at the time such trust became
16 irrevocable. For purpose of this subparagraph, a trust
17 shall be considered irrevocable to the extent that the
18 grantor is not treated as the owner thereof under
19 Sections 671 through 678 of the Internal Revenue Code.

20 (21) Sales. The term "sales" means all gross receipts
21 of the taxpayer not allocated under Sections 301, 302 and
22 303.

23 (22) State. The term "state" when applied to a
24 jurisdiction other than this State means any state of the
25 United States, the District of Columbia, the Commonwealth
26 of Puerto Rico, any Territory or Possession of the United

1 States, and any foreign country, or any political
2 subdivision of any of the foregoing. For purposes of the
3 foreign tax credit under Section 601, the term "state"
4 means any state of the United States, the District of
5 Columbia, the Commonwealth of Puerto Rico, and any
6 territory or possession of the United States, or any
7 political subdivision of any of the foregoing, effective
8 for tax years ending on or after December 31, 1989.

9 (23) Taxable year. The term "taxable year" means the
10 calendar year, or the fiscal year ending during such
11 calendar year, upon the basis of which the base income is
12 computed under this Act. "Taxable year" means, in the case
13 of a return made for a fractional part of a year under the
14 provisions of this Act, the period for which such return is
15 made.

16 (24) Taxpayer. The term "taxpayer" means any person
17 subject to the tax imposed by this Act.

18 (25) International banking facility. The term
19 international banking facility shall have the same meaning
20 as is set forth in the Illinois Banking Act or as is set
21 forth in the laws of the United States or regulations of
22 the Board of Governors of the Federal Reserve System.

23 (26) Income Tax Return Preparer.

24 (A) The term "income tax return preparer" means any
25 person who prepares for compensation, or who employs
26 one or more persons to prepare for compensation, any

1 return of tax imposed by this Act or any claim for
2 refund of tax imposed by this Act. The preparation of a
3 substantial portion of a return or claim for refund
4 shall be treated as the preparation of that return or
5 claim for refund.

6 (B) A person is not an income tax return preparer
7 if all he or she does is

8 (i) furnish typing, reproducing, or other
9 mechanical assistance;

10 (ii) prepare returns or claims for refunds for
11 the employer by whom he or she is regularly and
12 continuously employed;

13 (iii) prepare as a fiduciary returns or claims
14 for refunds for any person; or

15 (iv) prepare claims for refunds for a taxpayer
16 in response to any notice of deficiency issued to
17 that taxpayer or in response to any waiver of
18 restriction after the commencement of an audit of
19 that taxpayer or of another taxpayer if a
20 determination in the audit of the other taxpayer
21 directly or indirectly affects the tax liability
22 of the taxpayer whose claims he or she is
23 preparing.

24 (27) Unitary business group.

25 (A) The term "unitary business group" means a group
26 of persons related through common ownership whose

1 business activities are integrated with, dependent
2 upon and contribute to each other. The group will not
3 include those members whose business activity outside
4 the United States is 80% or more of any such member's
5 total business activity; for purposes of this
6 paragraph and clause (a)(3)(B)(ii) of Section 304,
7 business activity within the United States shall be
8 measured by means of the factors ordinarily applicable
9 under subsections (a), (b), (c), (d), or (h) of Section
10 304 except that, in the case of members ordinarily
11 required to apportion business income by means of the 3
12 factor formula of property, payroll and sales
13 specified in subsection (a) of Section 304, including
14 the formula as weighted in subsection (h) of Section
15 304, such members shall not use the sales factor in the
16 computation and the results of the property and payroll
17 factor computations of subsection (a) of Section 304
18 shall be divided by 2 (by one if either the property or
19 payroll factor has a denominator of zero). The
20 computation required by the preceding sentence shall,
21 in each case, involve the division of the member's
22 property, payroll, or revenue miles in the United
23 States, insurance premiums on property or risk in the
24 United States, or financial organization business
25 income from sources within the United States, as the
26 case may be, by the respective worldwide figures for

1 such items. Common ownership in the case of
2 corporations is the direct or indirect control or
3 ownership of more than 50% of the outstanding voting
4 stock of the persons carrying on unitary business
5 activity. Unitary business activity can ordinarily be
6 illustrated where the activities of the members are:
7 (1) in the same general line (such as manufacturing,
8 wholesaling, retailing of tangible personal property,
9 insurance, transportation or finance); or (2) are
10 steps in a vertically structured enterprise or process
11 (such as the steps involved in the production of
12 natural resources, which might include exploration,
13 mining, refining, and marketing); and, in either
14 instance, the members are functionally integrated
15 through the exercise of strong centralized management
16 (where, for example, authority over such matters as
17 purchasing, financing, tax compliance, product line,
18 personnel, marketing and capital investment is not
19 left to each member).

20 (B) In no event, shall any unitary business group
21 include members which are ordinarily required to
22 apportion business income under different subsections
23 of Section 304 except that for tax years ending on or
24 after December 31, 1987 this prohibition shall not
25 apply to a holding company that would otherwise be a
26 member of a unitary business group with taxpayers that

1 apportion business income under any of subsections
2 (b), (c), (c-1), or (d) of Section 304. If a unitary
3 business group would, but for the preceding sentence,
4 include members that are ordinarily required to
5 apportion business income under different subsections
6 of Section 304, then for each subsection of Section 304
7 for which there are two or more members, there shall be
8 a separate unitary business group composed of such
9 members. For purposes of the preceding two sentences, a
10 member is "ordinarily required to apportion business
11 income" under a particular subsection of Section 304 if
12 it would be required to use the apportionment method
13 prescribed by such subsection except for the fact that
14 it derives business income solely from Illinois. As
15 used in this paragraph, the phrase "United States"
16 means only the 50 states and the District of Columbia,
17 but does not include any territory or possession of the
18 United States or any area over which the United States
19 has asserted jurisdiction or claimed exclusive rights
20 with respect to the exploration for or exploitation of
21 natural resources.

22 (C) Holding companies.

23 (i) For purposes of this subparagraph, a
24 "holding company" is a corporation (other than a
25 corporation that is a financial organization under
26 paragraph (8) of this subsection (a) of Section

1 1501 because it is a bank holding company under the
2 provisions of the Bank Holding Company Act of 1956
3 (12 U.S.C. 1841, et seq.) or because it is owned by
4 a bank or a bank holding company) that owns a
5 controlling interest in one or more other
6 taxpayers ("controlled taxpayers"); that, during
7 the period that includes the taxable year and the 2
8 immediately preceding taxable years or, if the
9 corporation was formed during the current or
10 immediately preceding taxable year, the taxable
11 years in which the corporation has been in
12 existence, derived substantially all its gross
13 income from dividends, interest, rents, royalties,
14 fees or other charges received from controlled
15 taxpayers for the provision of services, and gains
16 on the sale or other disposition of interests in
17 controlled taxpayers or in property leased or
18 licensed to controlled taxpayers or used by the
19 taxpayer in providing services to controlled
20 taxpayers; and that incurs no substantial expenses
21 other than expenses (including interest and other
22 costs of borrowing) incurred in connection with
23 the acquisition and holding of interests in
24 controlled taxpayers and in the provision of
25 services to controlled taxpayers or in the leasing
26 or licensing of property to controlled taxpayers.

1 (ii) The income of a holding company which is a
2 member of more than one unitary business group
3 shall be included in each unitary business group of
4 which it is a member on a pro rata basis, by
5 including in each unitary business group that
6 portion of the base income of the holding company
7 that bears the same proportion to the total base
8 income of the holding company as the gross receipts
9 of the unitary business group bears to the combined
10 gross receipts of all unitary business groups (in
11 both cases without regard to the holding company)
12 or on any other reasonable basis, consistently
13 applied.

14 (iii) A holding company shall apportion its
15 business income under the subsection of Section
16 304 used by the other members of its unitary
17 business group. The apportionment factors of a
18 holding company which would be a member of more
19 than one unitary business group shall be included
20 with the apportionment factors of each unitary
21 business group of which it is a member on a pro
22 rata basis using the same method used in clause
23 (ii).

24 (iv) The provisions of this subparagraph (C)
25 are intended to clarify existing law.

26 (D) If including the base income and factors of a

1 holding company in more than one unitary business group
2 under subparagraph (C) does not fairly reflect the
3 degree of integration between the holding company and
4 one or more of the unitary business groups, the
5 dependence of the holding company and one or more of
6 the unitary business groups upon each other, or the
7 contributions between the holding company and one or
8 more of the unitary business groups, the holding
9 company may petition the Director, under the
10 procedures provided under Section 304(f), for
11 permission to include all base income and factors of
12 the holding company only with members of a unitary
13 business group apportioning their business income
14 under one subsection of subsections (a), (b), (c), or
15 (d) of Section 304. If the petition is granted, the
16 holding company shall be included in a unitary business
17 group only with persons apportioning their business
18 income under the selected subsection of Section 304
19 until the Director grants a petition of the holding
20 company either to be included in more than one unitary
21 business group under subparagraph (C) or to include its
22 base income and factors only with members of a unitary
23 business group apportioning their business income
24 under a different subsection of Section 304.

25 (E) If the unitary business group members'
26 accounting periods differ, the common parent's

1 accounting period or, if there is no common parent, the
2 accounting period of the member that is expected to
3 have, on a recurring basis, the greatest Illinois
4 income tax liability must be used to determine whether
5 to use the apportionment method provided in subsection
6 (a) or subsection (h) of Section 304. The prohibition
7 against membership in a unitary business group for
8 taxpayers ordinarily required to apportion income
9 under different subsections of Section 304 does not
10 apply to taxpayers required to apportion income under
11 subsection (a) and subsection (h) of Section 304. The
12 provisions of this amendatory Act of 1998 apply to tax
13 years ending on or after December 31, 1998.

14 (28) Subchapter S corporation. The term "Subchapter S
15 corporation" means a corporation for which there is in
16 effect an election under Section 1362 of the Internal
17 Revenue Code, or for which there is a federal election to
18 opt out of the provisions of the Subchapter S Revision Act
19 of 1982 and have applied instead the prior federal
20 Subchapter S rules as in effect on July 1, 1982.

21 (30) Foreign person. The term "foreign person" means
22 any person who is a nonresident alien individual and any
23 nonindividual entity, regardless of where created or
24 organized, whose business activity outside the United
25 States is 80% or more of the entity's total business
26 activity.

1 (31) Foreign tax haven.

2 (A) Notwithstanding any provision of item (27),
3 any person formed or incorporated in a foreign tax
4 haven may be a member of a unitary business group
5 without regard to where its business activities are
6 conducted.

7 (B) The term "foreign tax haven" includes Andorra,
8 Anquilla, Antigua and Barbuda, Aruba, the Bahamas,
9 Bahrain, Barbados, Belize, Bermuda, British Virgin
10 Islands, Cayman Islands, Cook Islands, Turks and
11 Caicos Islands, Dominica, Gibraltar, Grenada,
12 Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia,
13 Liechtenstein, Luxemburg, Maldives, Marshall Islands,
14 Monaco, Montserrat, Nauru, Netherlands Antilles, Niue,
15 Panama, Samoa, Seychelles, St. Kitts and Nevis, St.
16 Lucia, St. Vincent and the Grenadines, Tonga, U.S.
17 Virgin Islands, and Vanuatu.

18 (C) The term "foreign tax haven" also includes any
19 foreign country that does not impose a substantial
20 business income tax or other substantial business
21 activity tax, as determined by the Department by rule.

22 (D) The provisions of this item (31) apply to tax
23 years ending on or after December 31, 2018.

24 (b) Other definitions.

25 (1) Words denoting number, gender, and so forth, when

1 used in this Act, where not otherwise distinctly expressed
2 or manifestly incompatible with the intent thereof:

3 (A) Words importing the singular include and apply
4 to several persons, parties or things;

5 (B) Words importing the plural include the
6 singular; and

7 (C) Words importing the masculine gender include
8 the feminine as well.

9 (2) "Company" or "association" as including successors
10 and assigns. The word "company" or "association", when used
11 in reference to a corporation, shall be deemed to embrace
12 the words "successors and assigns of such company or
13 association", and in like manner as if these last-named
14 words, or words of similar import, were expressed.

15 (3) Other terms. Any term used in any Section of this
16 Act with respect to the application of, or in connection
17 with, the provisions of any other Section of this Act shall
18 have the same meaning as in such other Section.

19 (Source: P.A. 99-213, eff. 7-31-15.)

20 Section 15. The Illinois Pension Code is amended by
21 changing Section 1-110.16 as follows:

22 (40 ILCS 5/1-110.16)

23 Sec. 1-110.16. Transactions prohibited by retirement
24 systems; companies that boycott Israel, Iran-restricted

1 companies, ~~and~~ Sudan-restricted companies, and expatriate
2 corporations.

3 (a) As used in this Section:

4 "Boycott Israel" means engaging in actions that are
5 politically motivated and are intended to penalize,
6 inflict economic harm on, or otherwise limit commercial
7 relations with the State of Israel or companies based in
8 the State of Israel or in territories controlled by the
9 State of Israel.

10 "Company" means any sole proprietorship, organization,
11 association, corporation, partnership, joint venture,
12 limited partnership, limited liability partnership,
13 limited liability company, or other entity or business
14 association, including all wholly owned subsidiaries,
15 majority-owned subsidiaries, parent companies, or
16 affiliates of those entities or business associations,
17 that exist for the purpose of making profit.

18 "Illinois Investment Policy Board" means the board
19 established under subsection (b) of this Section.

20 "Direct holdings" in a company means all publicly
21 traded securities of that company that are held directly by
22 the retirement system in an actively managed account or
23 fund in which the retirement system owns all shares or
24 interests.

25 "Expatriate corporation" has the meaning ascribed to
26 it in Section 1-15.120 of the Illinois Procurement Code.

1 "Indirect holdings" in a company means all securities
2 of that company that are held in an account or fund, such
3 as a mutual fund, managed by one or more persons not
4 employed by the retirement system, in which the retirement
5 system owns shares or interests together with other
6 investors not subject to the provisions of this Section or
7 that are held in an index fund.

8 "Iran-restricted company" means a company that meets
9 the qualifications under Section 1-110.15 of this Code.

10 "Private market fund" means any private equity fund,
11 private equity funds of funds, venture capital fund, hedge
12 fund, hedge fund of funds, real estate fund, or other
13 investment vehicle that is not publicly traded.

14 "Restricted companies" means companies that boycott
15 Israel, Iran-restricted companies, and Sudan-restricted
16 companies.

17 "Retirement system" means a retirement system
18 established under Article 2, 14, 15, 16, or 18 of this Code
19 or the Illinois State Board of Investment.

20 "Sudan-restricted company" means a company that meets
21 the qualifications under Section 1-110.6 of this Code.

22 (b) There shall be established an Illinois Investment
23 Policy Board. The Illinois Investment Policy Board shall
24 consist of 7 members. Each board of a pension fund or
25 investment board created under Article 15, 16, or 22A of this
26 Code shall appoint one member, and the Governor shall appoint 4

1 members.

2 (c) Notwithstanding any provision of law to the contrary,
3 beginning January 1, 2016, Sections 110.15 and 1-110.6 of this
4 Code shall be administered in accordance with this Section.

5 (d) By April 1, 2016, the Illinois Investment Policy Board
6 shall make its best efforts to identify all Iran-restricted
7 companies, Sudan-restricted companies, and companies that
8 boycott Israel and assemble those identified companies into a
9 list of restricted companies, to be distributed to each
10 retirement system.

11 These efforts shall include the following, as appropriate
12 in the Illinois Investment Policy Board's judgment:

13 (1) reviewing and relying on publicly available
14 information regarding Iran-restricted companies,
15 Sudan-restricted companies, and companies that boycott
16 Israel, including information provided by nonprofit
17 organizations, research firms, and government entities;

18 (2) contacting asset managers contracted by the
19 retirement systems that invest in Iran-restricted
20 companies, Sudan-restricted companies, and companies that
21 boycott Israel;

22 (3) contacting other institutional investors that have
23 divested from or engaged with Iran-restricted companies,
24 Sudan-restricted companies, and companies that boycott
25 Israel; and

26 (4) retaining an independent research firm to identify

1 Iran-restricted companies, Sudan-restricted companies, and
2 companies that boycott Israel.

3 The Illinois Investment Policy Board shall review the list
4 of restricted companies on a quarterly basis based on evolving
5 information from, among other sources, those listed in this
6 subsection (d) and distribute any updates to the list of
7 restricted companies to the retirement systems.

8 By April 1, 2018, the Illinois Investment Policy Board
9 shall make its best efforts to identify all expatriate
10 corporations and include those companies in the list of
11 restricted companies distributed to each retirement system.
12 These efforts shall include the following, as appropriate in
13 the Illinois Investment Policy Board's judgment:

14 (1) reviewing and relying on publicly available
15 information regarding expatriate corporations, including
16 information provided by nonprofit organizations, research
17 firms, and government entities;

18 (2) contacting asset managers contracted by the
19 retirement systems that invest in expatriate corporations;

20 (3) contacting other institutional investors that have
21 divested from or engaged with expatriate corporations; and

22 (4) retaining an independent research firm to identify
23 expatriate corporations.

24 (e) The Illinois Investment Policy Board shall adhere to
25 the following procedures for companies on the list of
26 restricted companies:

1 (1) For each company newly identified in subsection
2 (d), the Illinois Investment Policy Board shall send a
3 written notice informing the company of its status and that
4 it may become subject to divestment by the retirement
5 systems.

6 (2) If, following the Illinois Investment Policy
7 Board's engagement pursuant to this subsection (e) with a
8 restricted company, that company ceases activity that
9 designates the company to be an Iran-restricted company, a
10 Sudan-restricted company, ~~or~~ a company that boycotts
11 Israel, or an expatriate corporation, the company shall be
12 removed from the list of restricted companies and the
13 provisions of this Section shall cease to apply to it
14 unless it resumes such activities.

15 (f) The retirement system shall adhere to the following
16 procedures for companies on the list of restricted companies:

17 (1) The retirement system shall identify those
18 companies on the list of restricted companies in which the
19 retirement system owns direct holdings and indirect
20 holdings.

21 (2) The retirement system shall instruct its
22 investment advisors to sell, redeem, divest, or withdraw
23 all direct holdings of restricted companies from the
24 retirement system's assets under management in an orderly
25 and fiduciarily responsible manner within 12 months after
26 the company's most recent appearance on the list of

1 restricted companies.

2 (3) The retirement system may not acquire securities of
3 restricted companies.

4 (4) The provisions of this subsection (f) do not apply
5 to the retirement system's indirect holdings or private
6 market funds. The Illinois Investment Policy Board shall
7 submit letters to the managers of those investment funds
8 containing restricted companies requesting that they
9 consider removing the companies from the fund or create a
10 similar actively managed fund having indirect holdings
11 devoid of the companies. If the manager creates a similar
12 fund, the retirement system shall replace all applicable
13 investments with investments in the similar fund in an
14 expedited timeframe consistent with prudent investing
15 standards.

16 (g) Upon request, and at least annually, each retirement
17 system shall provide the Illinois Investment Policy Board with
18 information regarding investments sold, redeemed, divested, or
19 withdrawn in compliance with this Section.

20 (h) Notwithstanding any provision of this Section to the
21 contrary, a retirement system may cease divesting from
22 companies pursuant to subsection (f) if clear and convincing
23 evidence shows that the value of investments in such companies
24 becomes equal to or less than 0.5% of the market value of all
25 assets under management by the retirement system. For any
26 cessation of divestment authorized by this subsection (h), the

1 retirement system shall provide a written notice to the
2 Illinois Investment Policy Board in advance of the cessation of
3 divestment, setting forth the reasons and justification,
4 supported by clear and convincing evidence, for its decision to
5 cease divestment under subsection (f).

6 (i) The cost associated with the activities of the Illinois
7 Investment Policy Board shall be borne by the boards of each
8 pension fund or investment board created under Article 15, 16,
9 or 22A of this Code.

10 (j) With respect to actions taken in compliance with this
11 Section, including all good-faith determinations regarding
12 companies as required by this Section, the retirement system
13 and Illinois Investment Policy Board are exempt from any
14 conflicting statutory or common law obligations, including any
15 fiduciary duties under this Article and any obligations with
16 respect to choice of asset managers, investment funds, or
17 investments for the retirement system's securities portfolios.

18 (k) It is not the intent of the General Assembly in
19 enacting this amendatory Act of the 99th General Assembly to
20 cause divestiture from any company based in the United States
21 of America. The Illinois Investment Policy Board shall consider
22 this intent when developing or reviewing the list of restricted
23 companies.

24 (l) If any provision of this amendatory Act of the 99th
25 General Assembly or its application to any person or
26 circumstance is held invalid, the invalidity of that provision

1 or application does not affect other provisions or applications
2 of this amendatory Act of the 99th General Assembly that can be
3 given effect without the invalid provision or application.

4 (m) If any provision of this amendatory Act of the 100th
5 General Assembly or its application to any person or
6 circumstance is held invalid, the invalidity of that provision
7 or application does not affect other provisions or applications
8 of this amendatory Act of the 100th General Assembly that can
9 be given effect without the invalid provision or application.

10 (Source: P.A. 99-128, eff. 7-23-15.)