

HB0569



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB0569

Introduced 2/8/2021, by Rep. Jonathan Carroll

SYNOPSIS AS INTRODUCED:

35 ILCS 5/1501

from Ch. 120, par. 15-1501

Amends the Illinois Income Tax Act. Makes changes to the definition of investment partnership to provide that a dealer in qualifying investment securities may be considered an investment partnership. Allows a partnership interest to be considered a qualified security if the interest qualifies as a security within the meaning of Section 2(a)(1) of the federal Securities Act of 1933. Effective immediately.

LRB102 04058 HLH 14074 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 1501 as follows:

6 (35 ILCS 5/1501) (from Ch. 120, par. 15-1501)
7 Sec. 1501. Definitions.

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

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

22 (1.5) Captive real estate investment trust:

23 (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
25 Code, 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
14 power or value of the beneficial interests or
15 shares 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
3 on 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
16 10% of the voting power or value in the
17 entity 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
24 it elects to be treated as a real estate
25 investment trust under Section 856(c)(1) of the
26 Internal Revenue Code, a real estate investment

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

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

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

1 entities or persons who are either immune from
2 taxation or exempt from taxation under subtitle A of
3 the Internal Revenue Code.

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

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

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

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

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

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

23 (8) Financial organization.

24 (A) The term "financial organization" means any
25 bank, bank holding company, trust company, savings
26 bank, industrial bank, land bank, safe deposit

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

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

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

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

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

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

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

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

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

1 customer receivable directly or indirectly from
2 that seller.

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

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

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

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

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

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

1 corporation.

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

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

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

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

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

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

1 (9.5) Fixed place of business. The term "fixed place
2 of business" has the same meaning as that term is given in
3 Section 864 of the Internal Revenue Code and the related
4 Treasury regulations.

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

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

13 (11.5) Investment partnership.

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

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

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

1 securities; and

2 (iii) (blank). ~~the partnership is not a dealer~~
3 ~~in qualifying investment securities.~~

4 (B) For purposes of this paragraph (11.5), the
5 term "qualifying investment securities" (other than
6 securities with respect to which the taxpayer is
7 required to apply the rules of Internal Revenue Code
8 Section 475(a)) includes all of the following:

9 (i) common stock, including preferred or debt
10 securities convertible into common stock, and
11 preferred stock;

12 (ii) bonds, debentures, and other debt
13 securities;

14 (iii) foreign and domestic currency deposits
15 secured by federal, state, or local governmental
16 agencies;

17 (iv) mortgage or asset-backed securities
18 secured by federal, state, or local governmental
19 agencies;

20 (v) repurchase agreements and loan
21 participations;

22 (vi) foreign currency exchange contracts and
23 forward and futures contracts on foreign
24 currencies;

25 (vii) stock and bond index securities and
26 futures contracts and other similar financial

1 securities and futures contracts on those
2 securities;

3 (viii) options for the purchase or sale of any
4 of the securities, currencies, contracts, or
5 financial instruments described in items (i) to
6 (vii), inclusive;

7 (ix) regulated futures contracts;

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

16 (xi) derivatives; ~~and~~

17 (xii) a partnership interest in another
18 partnership that is an investment partnership; and

19 -

20 (xiii) a partnership interest which, in the
21 hands of the partnership, qualifies as a security
22 within the meaning of Section 2(a)(1) of the
23 federal Securities Act of 1933.

24 (12) Mathematical error. The term "mathematical error"
25 includes the following types of errors, omissions, or
26 defects in a return filed by a taxpayer which prevents

1 acceptance of the return as filed for processing:

2 (A) arithmetic errors or incorrect computations on
3 the return or supporting schedules;

4 (B) entries on the wrong lines;

5 (C) omission of required supporting forms or
6 schedules or the omission of the information in whole
7 or in part called for thereon; and

8 (D) an attempt to claim, exclude, deduct, or
9 improperly report, in a manner directly contrary to
10 the provisions of the Act and regulations thereunder
11 any item of income, exemption, deduction, or credit.

12 (13) Nonbusiness income. The term "nonbusiness income"
13 means all income other than business income or
14 compensation.

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

17 (15) Paid, incurred and accrued. The terms "paid",
18 "incurred" and "accrued" shall be construed according to
19 the method of accounting upon the basis of which the
20 person's base income is computed under this Act.

21 (16) Partnership and partner. The term "partnership"
22 includes a syndicate, group, pool, joint venture or other
23 unincorporated organization, through or by means of which
24 any business, financial operation, or venture is carried
25 on, and which is not, within the meaning of this Act, a
26 trust or estate or a corporation; and the term "partner"

1 includes a member in such syndicate, group, pool, joint
2 venture or organization.

3 The term "partnership" includes any entity, including
4 a limited liability company formed under the Illinois
5 Limited Liability Company Act, classified as a partnership
6 for federal income tax purposes.

7 The term "partnership" does not include a syndicate,
8 group, pool, joint venture, or other unincorporated
9 organization established for the sole purpose of playing
10 the Illinois State Lottery.

11 (17) Part-year resident. The term "part-year resident"
12 means an individual who became a resident during the
13 taxable year or ceased to be a resident during the taxable
14 year. Under Section 1501(a)(20)(A)(i) residence commences
15 with presence in this State for other than a temporary or
16 transitory purpose and ceases with absence from this State
17 for other than a temporary or transitory purpose. Under
18 Section 1501(a)(20)(A)(ii) residence commences with the
19 establishment of domicile in this State and ceases with
20 the establishment of domicile in another State.

21 (18) Person. The term "person" shall be construed to
22 mean and include an individual, a trust, estate,
23 partnership, association, firm, company, corporation,
24 limited liability company, or fiduciary. For purposes of
25 Section 1301 and 1302 of this Act, a "person" means (i) an
26 individual, (ii) a corporation, (iii) an officer, agent,

1 or employee of a corporation, (iv) a member, agent or
2 employee of a partnership, or (v) a member, manager,
3 employee, officer, director, or agent of a limited
4 liability company who in such capacity commits an offense
5 specified in Section 1301 and 1302.

6 (18A) Records. The term "records" includes all data
7 maintained by the taxpayer, whether on paper, microfilm,
8 microfiche, or any type of machine-sensible data
9 compilation.

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

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

13 (A) an individual (i) who is in this State for
14 other than a temporary or transitory purpose during
15 the taxable year; or (ii) who is domiciled in this
16 State but is absent from the State for a temporary or
17 transitory purpose during the taxable year;

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

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

22 (D) An irrevocable trust, the grantor of which was
23 domiciled in this State at the time such trust became
24 irrevocable. For purpose of this subparagraph, a trust
25 shall be considered irrevocable to the extent that the
26 grantor is not treated as the owner thereof under

1 Sections 671 through 678 of the Internal Revenue Code.

2 (21) Sales. The term "sales" means all gross receipts
3 of the taxpayer not allocated under Sections 301, 302 and
4 303.

5 (22) State. The term "state" when applied to a
6 jurisdiction other than this State means any state of the
7 United States, the District of Columbia, the Commonwealth
8 of Puerto Rico, any Territory or Possession of the United
9 States, and any foreign country, or any political
10 subdivision of any of the foregoing. For purposes of the
11 foreign tax credit under Section 601, the term "state"
12 means any state of the United States, the District of
13 Columbia, the Commonwealth of Puerto Rico, and any
14 territory or possession of the United States, or any
15 political subdivision of any of the foregoing, effective
16 for tax years ending on or after December 31, 1989.

17 (23) Taxable year. The term "taxable year" means the
18 calendar year, or the fiscal year ending during such
19 calendar year, upon the basis of which the base income is
20 computed under this Act. "Taxable year" means, in the case
21 of a return made for a fractional part of a year under the
22 provisions of this Act, the period for which such return
23 is made.

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

26 (25) International banking facility. The term

1 international banking facility shall have the same meaning
2 as is set forth in the Illinois Banking Act or as is set
3 forth in the laws of the United States or regulations of
4 the Board of Governors of the Federal Reserve System.

5 (26) Income Tax Return Preparer.

6 (A) The term "income tax return preparer" means
7 any person who prepares for compensation, or who
8 employs one or more persons to prepare for
9 compensation, any return of tax imposed by this Act or
10 any claim for refund of tax imposed by this Act. The
11 preparation of a substantial portion of a return or
12 claim for refund shall be treated as the preparation
13 of that return or claim for refund.

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

16 (i) furnish typing, reproducing, or other
17 mechanical assistance;

18 (ii) prepare returns or claims for refunds for
19 the employer by whom he or she is regularly and
20 continuously employed;

21 (iii) prepare as a fiduciary returns or claims
22 for refunds for any person; or

23 (iv) prepare claims for refunds for a taxpayer
24 in response to any notice of deficiency issued to
25 that taxpayer or in response to any waiver of
26 restriction after the commencement of an audit of

1 that taxpayer or of another taxpayer if a
2 determination in the audit of the other taxpayer
3 directly or indirectly affects the tax liability
4 of the taxpayer whose claims he or she is
5 preparing.

6 (27) Unitary business group.

7 (A) The term "unitary business group" means a
8 group of persons related through common ownership
9 whose business activities are integrated with,
10 dependent upon and contribute to each other. The group
11 will not include those members whose business activity
12 outside the United States is 80% or more of any such
13 member's total business activity; for purposes of this
14 paragraph and clause (a)(3)(B)(ii) of Section 304,
15 business activity within the United States shall be
16 measured by means of the factors ordinarily applicable
17 under subsections (a), (b), (c), (d), or (h) of
18 Section 304 except that, in the case of members
19 ordinarily required to apportion business income by
20 means of the 3 factor formula of property, payroll and
21 sales specified in subsection (a) of Section 304,
22 including the formula as weighted in subsection (h) of
23 Section 304, such members shall not use the sales
24 factor in the computation and the results of the
25 property and payroll factor computations of subsection
26 (a) of Section 304 shall be divided by 2 (by one if

1 either the property or payroll factor has a
2 denominator of zero). The computation required by the
3 preceding sentence shall, in each case, involve the
4 division of the member's property, payroll, or revenue
5 miles in the United States, insurance premiums on
6 property or risk in the United States, or financial
7 organization business income from sources within the
8 United States, as the case may be, by the respective
9 worldwide figures for such items. Common ownership in
10 the case of corporations is the direct or indirect
11 control or ownership of more than 50% of the
12 outstanding voting stock of the persons carrying on
13 unitary business activity. Unitary business activity
14 can ordinarily be illustrated where the activities of
15 the members are: (1) in the same general line (such as
16 manufacturing, wholesaling, retailing of tangible
17 personal property, insurance, transportation or
18 finance); or (2) are steps in a vertically structured
19 enterprise or process (such as the steps involved in
20 the production of natural resources, which might
21 include exploration, mining, refining, and marketing);
22 and, in either instance, the members are functionally
23 integrated through the exercise of strong centralized
24 management (where, for example, authority over such
25 matters as purchasing, financing, tax compliance,
26 product line, personnel, marketing and capital

1 investment is not left to each member).

2 (B) In no event, for taxable years ending prior to
3 December 31, 2017, shall any unitary business group
4 include members which are ordinarily required to
5 apportion business income under different subsections
6 of Section 304 except that for tax years ending on or
7 after December 31, 1987 this prohibition shall not
8 apply to a holding company that would otherwise be a
9 member of a unitary business group with taxpayers that
10 apportion business income under any of subsections
11 (b), (c), (c-1), or (d) of Section 304. If a unitary
12 business group would, but for the preceding sentence,
13 include members that are ordinarily required to
14 apportion business income under different subsections
15 of Section 304, then for each subsection of Section
16 304 for which there are two or more members, there
17 shall be a separate unitary business group composed of
18 such members. For purposes of the preceding two
19 sentences, a member is "ordinarily required to
20 apportion business income" under a particular
21 subsection of Section 304 if it would be required to
22 use the apportionment method prescribed by such
23 subsection except for the fact that it derives
24 business income solely from Illinois. As used in this
25 paragraph, for taxable years ending before December
26 31, 2017, the phrase "United States" means only the 50

1 states and the District of Columbia, but does not
2 include any territory or possession of the United
3 States or any area over which the United States has
4 asserted jurisdiction or claimed exclusive rights with
5 respect to the exploration for or exploitation of
6 natural resources. For taxable years ending on or
7 after December 31, 2017, the phrase "United States",
8 as used in this paragraph, means only the 50 states,
9 the District of Columbia, and any area over which the
10 United States has asserted jurisdiction or claimed
11 exclusive rights with respect to the exploration for
12 or exploitation of natural resources, but does not
13 include any territory or possession of the United
14 States.

15 (C) Holding companies.

16 (i) For purposes of this subparagraph, a
17 "holding company" is a corporation (other than a
18 corporation that is a financial organization under
19 paragraph (8) of this subsection (a) of Section
20 1501 because it is a bank holding company under
21 the provisions of the Bank Holding Company Act of
22 1956 (12 U.S.C. 1841, et seq.) or because it is
23 owned by a bank or a bank holding company) that
24 owns a controlling interest in one or more other
25 taxpayers ("controlled taxpayers"); that, during
26 the period that includes the taxable year and the

1 2 immediately preceding taxable years or, if the
2 corporation was formed during the current or
3 immediately preceding taxable year, the taxable
4 years in which the corporation has been in
5 existence, derived substantially all its gross
6 income from dividends, interest, rents, royalties,
7 fees or other charges received from controlled
8 taxpayers for the provision of services, and gains
9 on the sale or other disposition of interests in
10 controlled taxpayers or in property leased or
11 licensed to controlled taxpayers or used by the
12 taxpayer in providing services to controlled
13 taxpayers; and that incurs no substantial expenses
14 other than expenses (including interest and other
15 costs of borrowing) incurred in connection with
16 the acquisition and holding of interests in
17 controlled taxpayers and in the provision of
18 services to controlled taxpayers or in the leasing
19 or licensing of property to controlled taxpayers.

20 (ii) The income of a holding company which is
21 a member of more than one unitary business group
22 shall be included in each unitary business group
23 of which it is a member on a pro rata basis, by
24 including in each unitary business group that
25 portion of the base income of the holding company
26 that bears the same proportion to the total base

1 income of the holding company as the gross
2 receipts of the unitary business group bears to
3 the combined gross receipts of all unitary
4 business groups (in both cases without regard to
5 the holding company) or on any other reasonable
6 basis, consistently applied.

7 (iii) A holding company shall apportion its
8 business income under the subsection of Section
9 304 used by the other members of its unitary
10 business group. The apportionment factors of a
11 holding company which would be a member of more
12 than one unitary business group shall be included
13 with the apportionment factors of each unitary
14 business group of which it is a member on a pro
15 rata basis using the same method used in clause
16 (ii).

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

19 (D) If including the base income and factors of a
20 holding company in more than one unitary business
21 group under subparagraph (C) does not fairly reflect
22 the degree of integration between the holding company
23 and one or more of the unitary business groups, the
24 dependence of the holding company and one or more of
25 the unitary business groups upon each other, or the
26 contributions between the holding company and one or

1 more of the unitary business groups, the holding
2 company may petition the Director, under the
3 procedures provided under Section 304(f), for
4 permission to include all base income and factors of
5 the holding company only with members of a unitary
6 business group apportioning their business income
7 under one subsection of subsections (a), (b), (c), or
8 (d) of Section 304. If the petition is granted, the
9 holding company shall be included in a unitary
10 business group only with persons apportioning their
11 business income under the selected subsection of
12 Section 304 until the Director grants a petition of
13 the holding company either to be included in more than
14 one unitary business group under subparagraph (C) or
15 to include its base income and factors only with
16 members of a unitary business group apportioning their
17 business income under a different subsection of
18 Section 304.

19 (E) If the unitary business group members'
20 accounting periods differ, the common parent's
21 accounting period or, if there is no common parent,
22 the accounting period of the member that is expected
23 to have, on a recurring basis, the greatest Illinois
24 income tax liability must be used to determine whether
25 to use the apportionment method provided in subsection
26 (a) or subsection (h) of Section 304. The prohibition

1 against membership in a unitary business group for
2 taxpayers ordinarily required to apportion income
3 under different subsections of Section 304 does not
4 apply to taxpayers required to apportion income under
5 subsection (a) and subsection (h) of Section 304. The
6 provisions of this amendatory Act of 1998 apply to tax
7 years ending on or after December 31, 1998.

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

15 (30) Foreign person. The term "foreign person" means
16 any person who is a nonresident alien individual and any
17 nonindividual entity, regardless of where created or
18 organized, whose business activity outside the United
19 States is 80% or more of the entity's total business
20 activity.

21 (b) Other definitions.

22 (1) Words denoting number, gender, and so forth, when
23 used in this Act, where not otherwise distinctly expressed
24 or manifestly incompatible with the intent thereof:

25 (A) Words importing the singular include and apply

1 to several persons, parties or things;

2 (B) Words importing the plural include the
3 singular; and

4 (C) Words importing the masculine gender include
5 the feminine as well.

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

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

16 (Source: P.A. 99-213, eff. 7-31-15; 100-22, eff. 7-6-17.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.