



## 102ND GENERAL ASSEMBLY

### State of Illinois

### 2021 and 2022

### SB2430

Introduced 2/26/2021, by Sen. Bill Cunningham

#### 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. In provisions requiring that no less than 90% of the investment partnership's gross income shall consist of interest, dividends, and gains from the sale or exchange of qualifying investment securities, provides that that includes the distributive share of partnership income from lower-tier partnership interests and does not include income from partnerships that are operating at a federal taxable loss. Effective immediately.

LRB102 10351 HLH 15678 b

FISCAL NOTE ACT  
MAY APPLY

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 from qualifying  
26 investment securities, and gains from the sale or

1 exchange of qualifying investment securities,  
2 including the distributive share of partnership  
3 income (gross income) from lower-tier partnership  
4 interests meeting the definition of investment  
5 security under subparagraph (B)(viii); gross  
6 income does not include income from partnerships  
7 that are operating at a federal taxable loss; and

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

10 (B) For purposes of this paragraph (11.5), the  
11 term "qualifying investment securities" (other than  
12 securities with respect to which the taxpayer is  
13 required to apply the rules of Internal Revenue Code  
14 Section 475(a)) includes all of the following:

15 (i) common stock, including preferred or debt  
16 securities convertible into common stock, and  
17 preferred stock;

18 (ii) bonds, debentures, and other debt  
19 securities;

20 (iii) foreign and domestic currency deposits  
21 secured by federal, state, or local governmental  
22 agencies;

23 (iv) mortgage or asset-backed securities  
24 secured by federal, state, or local governmental  
25 agencies;

26 (v) repurchase agreements and loan

1 participations;

2 (vi) foreign currency exchange contracts and  
3 forward and futures contracts on foreign  
4 currencies;

5 (vii) stock and bond index securities and  
6 futures contracts and other similar financial  
7 securities and futures contracts on those  
8 securities;

9 (viii) options for the purchase or sale of any  
10 of the securities, currencies, contracts, or  
11 financial instruments described in items (i) to  
12 (vii), inclusive;

13 (ix) regulated futures contracts;

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

22 (xi) derivatives; ~~and~~

23 (xii) a partnership interest in another  
24 partnership that is an investment partnership; and

25 -

26 (xiii) a partnership interest which, in the



1           hands of the partnership, qualifies as a security  
2           within the meaning of Section 2(a)(1) of the  
3           federal Securities Act of 1933.

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

8           (A) arithmetic errors or incorrect computations on  
9 the return or supporting schedules;

10           (B) entries on the wrong lines;

11           (C) omission of required supporting forms or  
12 schedules or the omission of the information in whole  
13 or in part called for thereon; and

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

18           (13) Nonbusiness income. The term "nonbusiness income"  
19 means all income other than business income or  
20 compensation.

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

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

1           (16) Partnership and partner. The term "partnership"  
2 includes a syndicate, group, pool, joint venture or other  
3 unincorporated organization, through or by means of which  
4 any business, financial operation, or venture is carried  
5 on, and which is not, within the meaning of this Act, a  
6 trust or estate or a corporation; and the term "partner"  
7 includes a member in such syndicate, group, pool, joint  
8 venture or organization.

9           The term "partnership" includes any entity, including  
10 a limited liability company formed under the Illinois  
11 Limited Liability Company Act, classified as a partnership  
12 for federal income tax purposes.

13           The term "partnership" does not include a syndicate,  
14 group, pool, joint venture, or other unincorporated  
15 organization established for the sole purpose of playing  
16 the Illinois State Lottery.

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

1           (18) Person. The term "person" shall be construed to  
2 mean and include an individual, a trust, estate,  
3 partnership, association, firm, company, corporation,  
4 limited liability company, or fiduciary. For purposes of  
5 Section 1301 and 1302 of this Act, a "person" means (i) an  
6 individual, (ii) a corporation, (iii) an officer, agent,  
7 or employee of a corporation, (iv) a member, agent or  
8 employee of a partnership, or (v) a member, manager,  
9 employee, officer, director, or agent of a limited  
10 liability company who in such capacity commits an offense  
11 specified in Section 1301 and 1302.

12           (18A) Records. The term "records" includes all data  
13 maintained by the taxpayer, whether on paper, microfilm,  
14 microfiche, or any type of machine-sensible data  
15 compilation.

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

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

19           (A) an individual (i) who is in this State for  
20 other than a temporary or transitory purpose during  
21 the taxable year; or (ii) who is domiciled in this  
22 State but is absent from the State for a temporary or  
23 transitory purpose during the taxable year;

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

26           (C) A trust created by a will of a decedent who at

1 his death was domiciled in this State; and

2 (D) An irrevocable trust, the grantor of which was  
3 domiciled in this State at the time such trust became  
4 irrevocable. For purpose of this subparagraph, a trust  
5 shall be considered irrevocable to the extent that the  
6 grantor is not treated as the owner thereof under  
7 Sections 671 through 678 of the Internal Revenue Code.

8 (21) Sales. The term "sales" means all gross receipts  
9 of the taxpayer not allocated under Sections 301, 302 and  
10 303.

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

23 (23) Taxable year. The term "taxable year" means the  
24 calendar year, or the fiscal year ending during such  
25 calendar year, upon the basis of which the base income is  
26 computed under this Act. "Taxable year" means, in the case

1 of a return made for a fractional part of a year under the  
2 provisions of this Act, the period for which such return  
3 is made.

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

6 (25) International banking facility. The term  
7 international banking facility shall have the same meaning  
8 as is set forth in the Illinois Banking Act or as is set  
9 forth in the laws of the United States or regulations of  
10 the Board of Governors of the Federal Reserve System.

11 (26) Income Tax Return Preparer.

12 (A) The term "income tax return preparer" means  
13 any person who prepares for compensation, or who  
14 employs one or more persons to prepare for  
15 compensation, any return of tax imposed by this Act or  
16 any claim for refund of tax imposed by this Act. The  
17 preparation of a substantial portion of a return or  
18 claim for refund shall be treated as the preparation  
19 of that return or claim for refund.

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

22 (i) furnish typing, reproducing, or other  
23 mechanical assistance;

24 (ii) prepare returns or claims for refunds for  
25 the employer by whom he or she is regularly and  
26 continuously employed;

1 (iii) prepare as a fiduciary returns or claims  
2 for refunds for any person; or

3 (iv) prepare claims for refunds for a taxpayer  
4 in response to any notice of deficiency issued to  
5 that taxpayer or in response to any waiver of  
6 restriction after the commencement of an audit of  
7 that taxpayer or of another taxpayer if a  
8 determination in the audit of the other taxpayer  
9 directly or indirectly affects the tax liability  
10 of the taxpayer whose claims he or she is  
11 preparing.

12 (27) Unitary business group.

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

1 sales specified in subsection (a) of Section 304,  
2 including the formula as weighted in subsection (h) of  
3 Section 304, such members shall not use the sales  
4 factor in the computation and the results of the  
5 property and payroll factor computations of subsection  
6 (a) of Section 304 shall be divided by 2 (by one if  
7 either the property or payroll factor has a  
8 denominator of zero). The computation required by the  
9 preceding sentence shall, in each case, involve the  
10 division of the member's property, payroll, or revenue  
11 miles in the United States, insurance premiums on  
12 property or risk in the United States, or financial  
13 organization business income from sources within the  
14 United States, as the case may be, by the respective  
15 worldwide figures for such items. Common ownership in  
16 the case of corporations is the direct or indirect  
17 control or ownership of more than 50% of the  
18 outstanding voting stock of the persons carrying on  
19 unitary business activity. Unitary business activity  
20 can ordinarily be illustrated where the activities of  
21 the members are: (1) in the same general line (such as  
22 manufacturing, wholesaling, retailing of tangible  
23 personal property, insurance, transportation or  
24 finance); or (2) are steps in a vertically structured  
25 enterprise or process (such as the steps involved in  
26 the production of natural resources, which might

1 include exploration, mining, refining, and marketing);  
2 and, in either instance, the members are functionally  
3 integrated through the exercise of strong centralized  
4 management (where, for example, authority over such  
5 matters as purchasing, financing, tax compliance,  
6 product line, personnel, marketing and capital  
7 investment is not left to each member).

8 (B) In no event, for taxable years ending prior to  
9 December 31, 2017, shall any unitary business group  
10 include members which are ordinarily required to  
11 apportion business income under different subsections  
12 of Section 304 except that for tax years ending on or  
13 after December 31, 1987 this prohibition shall not  
14 apply to a holding company that would otherwise be a  
15 member of a unitary business group with taxpayers that  
16 apportion business income under any of subsections  
17 (b), (c), (c-1), or (d) of Section 304. If a unitary  
18 business group would, but for the preceding sentence,  
19 include members that are ordinarily required to  
20 apportion business income under different subsections  
21 of Section 304, then for each subsection of Section  
22 304 for which there are two or more members, there  
23 shall be a separate unitary business group composed of  
24 such members. For purposes of the preceding two  
25 sentences, a member is "ordinarily required to  
26 apportion business income" under a particular



1 subsection of Section 304 if it would be required to  
2 use the apportionment method prescribed by such  
3 subsection except for the fact that it derives  
4 business income solely from Illinois. As used in this  
5 paragraph, for taxable years ending before December  
6 31, 2017, the phrase "United States" means only the 50  
7 states and the District of Columbia, but does not  
8 include any territory or possession of the United  
9 States or any area over which the United States has  
10 asserted jurisdiction or claimed exclusive rights with  
11 respect to the exploration for or exploitation of  
12 natural resources. For taxable years ending on or  
13 after December 31, 2017, the phrase "United States",  
14 as used in this paragraph, means only the 50 states,  
15 the District of Columbia, and any area over which the  
16 United States has asserted jurisdiction or claimed  
17 exclusive rights with respect to the exploration for  
18 or exploitation of natural resources, but does not  
19 include any territory or possession of the United  
20 States.

21 (C) Holding companies.

22 (i) For purposes of this subparagraph, a  
23 "holding company" is a corporation (other than a  
24 corporation that is a financial organization under  
25 paragraph (8) of this subsection (a) of Section  
26 1501 because it is a bank holding company under

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

26 (ii) The income of a holding company which is

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

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

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

25 (D) If including the base income and factors of a  
26 holding company in more than one unitary business

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

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

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

7 (B) Words importing the plural include the  
8 singular; and

9 (C) Words importing the masculine gender include  
10 the feminine as well.

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

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

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

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law.