

HB2387



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB2387

Introduced 02/16/05, by Rep. Patricia R. Bellock

SYNOPSIS AS INTRODUCED:

35 ILCS 5/203

from Ch. 120, par. 2-203

Amends the Illinois Income Tax Act. Provides income tax deductions for contributions to and interest on a health savings account, established under the Medicare Prescription Drug, Improvement and Modernization Act of 2003. Effective immediately.

LRB094 09990 BDD 40248 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 203 as follows:

6 (35 ILCS 5/203) (from Ch. 120, par. 2-203)

7 Sec. 203. Base income defined.

8 (a) Individuals.

9 (1) In general. In the case of an individual, base
10 income means an amount equal to the taxpayer's adjusted
11 gross income for the taxable year as modified by paragraph
12 (2).

13 (2) Modifications. The adjusted gross income referred
14 to in paragraph (1) shall be modified by adding thereto the
15 sum of the following amounts:

16 (A) An amount equal to all amounts paid or accrued
17 to the taxpayer as interest or dividends during the
18 taxable year to the extent excluded from gross income
19 in the computation of adjusted gross income, except
20 stock dividends of qualified public utilities
21 described in Section 305(e) of the Internal Revenue
22 Code;

23 (B) An amount equal to the amount of tax imposed by
24 this Act to the extent deducted from gross income in
25 the computation of adjusted gross income for the
26 taxable year;

27 (C) An amount equal to the amount received during
28 the taxable year as a recovery or refund of real
29 property taxes paid with respect to the taxpayer's
30 principal residence under the Revenue Act of 1939 and
31 for which a deduction was previously taken under
32 subparagraph (L) of this paragraph (2) prior to July 1,

1 1991, the retrospective application date of Article 4
2 of Public Act 87-17. In the case of multi-unit or
3 multi-use structures and farm dwellings, the taxes on
4 the taxpayer's principal residence shall be that
5 portion of the total taxes for the entire property
6 which is attributable to such principal residence;

7 (D) An amount equal to the amount of the capital
8 gain deduction allowable under the Internal Revenue
9 Code, to the extent deducted from gross income in the
10 computation of adjusted gross income;

11 (D-5) An amount, to the extent not included in
12 adjusted gross income, equal to the amount of money
13 withdrawn by the taxpayer in the taxable year from a
14 medical care savings account and the interest earned on
15 the account in the taxable year of a withdrawal
16 pursuant to subsection (b) of Section 20 of the Medical
17 Care Savings Account Act or subsection (b) of Section
18 20 of the Medical Care Savings Account Act of 2000;

19 (D-10) For taxable years ending after December 31,
20 1997, an amount equal to any eligible remediation costs
21 that the individual deducted in computing adjusted
22 gross income and for which the individual claims a
23 credit under subsection (l) of Section 201;

24 (D-15) For taxable years 2001 and thereafter, an
25 amount equal to the bonus depreciation deduction (30%
26 of the adjusted basis of the qualified property) taken
27 on the taxpayer's federal income tax return for the
28 taxable year under subsection (k) of Section 168 of the
29 Internal Revenue Code;

30 (D-16) If the taxpayer reports a capital gain or
31 loss on the taxpayer's federal income tax return for
32 the taxable year based on a sale or transfer of
33 property for which the taxpayer was required in any
34 taxable year to make an addition modification under
35 subparagraph (D-15), then an amount equal to the
36 aggregate amount of the deductions taken in all taxable

1 years under subparagraph (Z) with respect to that
2 property.

3 The taxpayer is required to make the addition
4 modification under this subparagraph only once with
5 respect to any one piece of property;

6 (D-17) For taxable years ending on or after
7 December 31, 2004, an amount equal to the amount
8 otherwise allowed as a deduction in computing base
9 income for interest paid, accrued, or incurred,
10 directly or indirectly, to a foreign person who would
11 be a member of the same unitary business group but for
12 the fact that foreign person's business activity
13 outside the United States is 80% or more of the foreign
14 person's total business activity. The addition
15 modification required by this subparagraph shall be
16 reduced to the extent that dividends were included in
17 base income of the unitary group for the same taxable
18 year and received by the taxpayer or by a member of the
19 taxpayer's unitary business group (including amounts
20 included in gross income under Sections 951 through 964
21 of the Internal Revenue Code and amounts included in
22 gross income under Section 78 of the Internal Revenue
23 Code) with respect to the stock of the same person to
24 whom the interest was paid, accrued, or incurred.

25 This paragraph shall not apply to the following:

26 (i) an item of interest paid, accrued, or
27 incurred, directly or indirectly, to a foreign
28 person who is subject in a foreign country or
29 state, other than a state which requires mandatory
30 unitary reporting, to a tax on or measured by net
31 income with respect to such interest; or

32 (ii) an item of interest paid, accrued, or
33 incurred, directly or indirectly, to a foreign
34 person if the taxpayer can establish, based on a
35 preponderance of the evidence, both of the
36 following:

1 (a) the foreign person, during the same
2 taxable year, paid, accrued, or incurred, the
3 interest to a person that is not a related
4 member, and

5 (b) the transaction giving rise to the
6 interest expense between the taxpayer and the
7 foreign person did not have as a principal
8 purpose the avoidance of Illinois income tax,
9 and is paid pursuant to a contract or agreement
10 that reflects an arm's-length interest rate
11 and terms; or

12 (iii) the taxpayer can establish, based on
13 clear and convincing evidence, that the interest
14 paid, accrued, or incurred relates to a contract or
15 agreement entered into at arm's-length rates and
16 terms and the principal purpose for the payment is
17 not federal or Illinois tax avoidance; or

18 (iv) an item of interest paid, accrued, or
19 incurred, directly or indirectly, to a foreign
20 person if the taxpayer establishes by clear and
21 convincing evidence that the adjustments are
22 unreasonable; or if the taxpayer and the Director
23 agree in writing to the application or use of an
24 alternative method of apportionment under Section
25 304(f).

26 Nothing in this subsection shall preclude the
27 Director from making any other adjustment
28 otherwise allowed under Section 404 of this Act for
29 any tax year beginning after the effective date of
30 this amendment provided such adjustment is made
31 pursuant to regulation adopted by the Department
32 and such regulations provide methods and standards
33 by which the Department will utilize its authority
34 under Section 404 of this Act;

35 (D-18) For taxable years ending on or after
36 December 31, 2004, an amount equal to the amount of

1 intangible expenses and costs otherwise allowed as a
2 deduction in computing base income, and that were paid,
3 accrued, or incurred, directly or indirectly, to a
4 foreign person who would be a member of the same
5 unitary business group but for the fact that the
6 foreign person's business activity outside the United
7 States is 80% or more of that person's total business
8 activity. The addition modification required by this
9 subparagraph shall be reduced to the extent that
10 dividends were included in base income of the unitary
11 group for the same taxable year and received by the
12 taxpayer or by a member of the taxpayer's unitary
13 business group (including amounts included in gross
14 income under Sections 951 through 964 of the Internal
15 Revenue Code and amounts included in gross income under
16 Section 78 of the Internal Revenue Code) with respect
17 to the stock of the same person to whom the intangible
18 expenses and costs were directly or indirectly paid,
19 incurred, or accrued. The preceding sentence does not
20 apply to the extent that the same dividends caused a
21 reduction to the addition modification required under
22 Section 203(a)(2)(D-17) of this Act. As used in this
23 subparagraph, the term "intangible expenses and costs"
24 includes (1) expenses, losses, and costs for, or
25 related to, the direct or indirect acquisition, use,
26 maintenance or management, ownership, sale, exchange,
27 or any other disposition of intangible property; (2)
28 losses incurred, directly or indirectly, from
29 factoring transactions or discounting transactions;
30 (3) royalty, patent, technical, and copyright fees;
31 (4) licensing fees; and (5) other similar expenses and
32 costs. For purposes of this subparagraph, "intangible
33 property" includes patents, patent applications, trade
34 names, trademarks, service marks, copyrights, mask
35 works, trade secrets, and similar types of intangible
36 assets.

1 This paragraph shall not apply to the following:

2 (i) any item of intangible expenses or costs
3 paid, accrued, or incurred, directly or
4 indirectly, from a transaction with a foreign
5 person who is subject in a foreign country or
6 state, other than a state which requires mandatory
7 unitary reporting, to a tax on or measured by net
8 income with respect to such item; or

9 (ii) any item of intangible expense or cost
10 paid, accrued, or incurred, directly or
11 indirectly, if the taxpayer can establish, based
12 on a preponderance of the evidence, both of the
13 following:

14 (a) the foreign person during the same
15 taxable year paid, accrued, or incurred, the
16 intangible expense or cost to a person that is
17 not a related member, and

18 (b) the transaction giving rise to the
19 intangible expense or cost between the
20 taxpayer and the foreign person did not have as
21 a principal purpose the avoidance of Illinois
22 income tax, and is paid pursuant to a contract
23 or agreement that reflects arm's-length terms;
24 or

25 (iii) any item of intangible expense or cost
26 paid, accrued, or incurred, directly or
27 indirectly, from a transaction with a foreign
28 person if the taxpayer establishes by clear and
29 convincing evidence, that the adjustments are
30 unreasonable; or if the taxpayer and the Director
31 agree in writing to the application or use of an
32 alternative method of apportionment under Section
33 304(f);

34 Nothing in this subsection shall preclude the
35 Director from making any other adjustment
36 otherwise allowed under Section 404 of this Act for

1 any tax year beginning after the effective date of
2 this amendment provided such adjustment is made
3 pursuant to regulation adopted by the Department
4 and such regulations provide methods and standards
5 by which the Department will utilize its authority
6 under Section 404 of this Act;

7 (D-20) For taxable years beginning on or after
8 January 1, 2002, in the case of a distribution from a
9 qualified tuition program under Section 529 of the
10 Internal Revenue Code, other than (i) a distribution
11 from a College Savings Pool created under Section 16.5
12 of the State Treasurer Act or (ii) a distribution from
13 the Illinois Prepaid Tuition Trust Fund, an amount
14 equal to the amount excluded from gross income under
15 Section 529(c)(3)(B);

16 and by deducting from the total so obtained the sum of the
17 following amounts:

18 (E) For taxable years ending before December 31,
19 2001, any amount included in such total in respect of
20 any compensation (including but not limited to any
21 compensation paid or accrued to a serviceman while a
22 prisoner of war or missing in action) paid to a
23 resident by reason of being on active duty in the Armed
24 Forces of the United States and in respect of any
25 compensation paid or accrued to a resident who as a
26 governmental employee was a prisoner of war or missing
27 in action, and in respect of any compensation paid to a
28 resident in 1971 or thereafter for annual training
29 performed pursuant to Sections 502 and 503, Title 32,
30 United States Code as a member of the Illinois National
31 Guard. For taxable years ending on or after December
32 31, 2001, any amount included in such total in respect
33 of any compensation (including but not limited to any
34 compensation paid or accrued to a serviceman while a
35 prisoner of war or missing in action) paid to a
36 resident by reason of being a member of any component

1 of the Armed Forces of the United States and in respect
2 of any compensation paid or accrued to a resident who
3 as a governmental employee was a prisoner of war or
4 missing in action, and in respect of any compensation
5 paid to a resident in 2001 or thereafter by reason of
6 being a member of the Illinois National Guard. The
7 provisions of this amendatory Act of the 92nd General
8 Assembly are exempt from the provisions of Section 250;

9 (F) An amount equal to all amounts included in such
10 total pursuant to the provisions of Sections 402(a),
11 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the
12 Internal Revenue Code, or included in such total as
13 distributions under the provisions of any retirement
14 or disability plan for employees of any governmental
15 agency or unit, or retirement payments to retired
16 partners, which payments are excluded in computing net
17 earnings from self employment by Section 1402 of the
18 Internal Revenue Code and regulations adopted pursuant
19 thereto;

20 (G) The valuation limitation amount;

21 (H) An amount equal to the amount of any tax
22 imposed by this Act which was refunded to the taxpayer
23 and included in such total for the taxable year;

24 (I) An amount equal to all amounts included in such
25 total pursuant to the provisions of Section 111 of the
26 Internal Revenue Code as a recovery of items previously
27 deducted from adjusted gross income in the computation
28 of taxable income;

29 (J) An amount equal to those dividends included in
30 such total which were paid by a corporation which
31 conducts business operations in an Enterprise Zone or
32 zones created under the Illinois Enterprise Zone Act,
33 and conducts substantially all of its operations in an
34 Enterprise Zone or zones;

35 (K) An amount equal to those dividends included in
36 such total that were paid by a corporation that

1 conducts business operations in a federally designated
2 Foreign Trade Zone or Sub-Zone and that is designated a
3 High Impact Business located in Illinois; provided
4 that dividends eligible for the deduction provided in
5 subparagraph (J) of paragraph (2) of this subsection
6 shall not be eligible for the deduction provided under
7 this subparagraph (K);

8 (L) For taxable years ending after December 31,
9 1983, an amount equal to all social security benefits
10 and railroad retirement benefits included in such
11 total pursuant to Sections 72(r) and 86 of the Internal
12 Revenue Code;

13 (M) With the exception of any amounts subtracted
14 under subparagraph (N), an amount equal to the sum of
15 all amounts disallowed as deductions by (i) Sections
16 171(a) (2), and 265(2) of the Internal Revenue Code of
17 1954, as now or hereafter amended, and all amounts of
18 expenses allocable to interest and disallowed as
19 deductions by Section 265(1) of the Internal Revenue
20 Code of 1954, as now or hereafter amended; and (ii) for
21 taxable years ending on or after August 13, 1999,
22 Sections 171(a) (2), 265, 280C, and 832(b) (5) (B) (i) of
23 the Internal Revenue Code; the provisions of this
24 subparagraph are exempt from the provisions of Section
25 250;

26 (N) An amount equal to all amounts included in such
27 total which are exempt from taxation by this State
28 either by reason of its statutes or Constitution or by
29 reason of the Constitution, treaties or statutes of the
30 United States; provided that, in the case of any
31 statute of this State that exempts income derived from
32 bonds or other obligations from the tax imposed under
33 this Act, the amount exempted shall be the interest net
34 of bond premium amortization;

35 (O) An amount equal to any contribution made to a
36 job training project established pursuant to the Tax

1 Increment Allocation Redevelopment Act;

2 (P) An amount equal to the amount of the deduction
3 used to compute the federal income tax credit for
4 restoration of substantial amounts held under claim of
5 right for the taxable year pursuant to Section 1341 of
6 the Internal Revenue Code of 1986;

7 (Q) An amount equal to any amounts included in such
8 total, received by the taxpayer as an acceleration in
9 the payment of life, endowment or annuity benefits in
10 advance of the time they would otherwise be payable as
11 an indemnity for a terminal illness;

12 (R) An amount equal to the amount of any federal or
13 State bonus paid to veterans of the Persian Gulf War;

14 (S) An amount, to the extent included in adjusted
15 gross income, equal to the amount of a contribution
16 made in the taxable year on behalf of the taxpayer to a
17 medical care savings account established under the
18 Medical Care Savings Account Act or the Medical Care
19 Savings Account Act of 2000 and, beginning in taxable
20 year 2005, to a health savings account, as defined in
21 the Medicare Prescription Drug, Improvement and
22 Modernization Act of 2003 to the extent the
23 contribution is accepted by the account administrator
24 as provided in that Act;

25 (T) An amount, to the extent included in adjusted
26 gross income, equal to the amount of interest earned in
27 the taxable year on a medical care savings account
28 established under the Medical Care Savings Account Act
29 or the Medical Care Savings Account Act of 2000 and,
30 beginning in taxable year 2005, on a health savings
31 account, established under the Medicare Prescription
32 Drug, Improvement and Modernization Act of 2003 on
33 behalf of the taxpayer, other than interest added
34 pursuant to item (D-5) of this paragraph (2);

35 (U) For one taxable year beginning on or after
36 January 1, 1994, an amount equal to the total amount of

1 tax imposed and paid under subsections (a) and (b) of
2 Section 201 of this Act on grant amounts received by
3 the taxpayer under the Nursing Home Grant Assistance
4 Act during the taxpayer's taxable years 1992 and 1993;

5 (V) Beginning with tax years ending on or after
6 December 31, 1995 and ending with tax years ending on
7 or before December 31, 2004, an amount equal to the
8 amount paid by a taxpayer who is a self-employed
9 taxpayer, a partner of a partnership, or a shareholder
10 in a Subchapter S corporation for health insurance or
11 long-term care insurance for that taxpayer or that
12 taxpayer's spouse or dependents, to the extent that the
13 amount paid for that health insurance or long-term care
14 insurance may be deducted under Section 213 of the
15 Internal Revenue Code of 1986, has not been deducted on
16 the federal income tax return of the taxpayer, and does
17 not exceed the taxable income attributable to that
18 taxpayer's income, self-employment income, or
19 Subchapter S corporation income; except that no
20 deduction shall be allowed under this item (V) if the
21 taxpayer is eligible to participate in any health
22 insurance or long-term care insurance plan of an
23 employer of the taxpayer or the taxpayer's spouse. The
24 amount of the health insurance and long-term care
25 insurance subtracted under this item (V) shall be
26 determined by multiplying total health insurance and
27 long-term care insurance premiums paid by the taxpayer
28 times a number that represents the fractional
29 percentage of eligible medical expenses under Section
30 213 of the Internal Revenue Code of 1986 not actually
31 deducted on the taxpayer's federal income tax return;

32 (W) For taxable years beginning on or after January
33 1, 1998, all amounts included in the taxpayer's federal
34 gross income in the taxable year from amounts converted
35 from a regular IRA to a Roth IRA. This paragraph is
36 exempt from the provisions of Section 250;

1 (X) For taxable year 1999 and thereafter, an amount
2 equal to the amount of any (i) distributions, to the
3 extent includible in gross income for federal income
4 tax purposes, made to the taxpayer because of his or
5 her status as a victim of persecution for racial or
6 religious reasons by Nazi Germany or any other Axis
7 regime or as an heir of the victim and (ii) items of
8 income, to the extent includible in gross income for
9 federal income tax purposes, attributable to, derived
10 from or in any way related to assets stolen from,
11 hidden from, or otherwise lost to a victim of
12 persecution for racial or religious reasons by Nazi
13 Germany or any other Axis regime immediately prior to,
14 during, and immediately after World War II, including,
15 but not limited to, interest on the proceeds receivable
16 as insurance under policies issued to a victim of
17 persecution for racial or religious reasons by Nazi
18 Germany or any other Axis regime by European insurance
19 companies immediately prior to and during World War II;
20 provided, however, this subtraction from federal
21 adjusted gross income does not apply to assets acquired
22 with such assets or with the proceeds from the sale of
23 such assets; provided, further, this paragraph shall
24 only apply to a taxpayer who was the first recipient of
25 such assets after their recovery and who is a victim of
26 persecution for racial or religious reasons by Nazi
27 Germany or any other Axis regime or as an heir of the
28 victim. The amount of and the eligibility for any
29 public assistance, benefit, or similar entitlement is
30 not affected by the inclusion of items (i) and (ii) of
31 this paragraph in gross income for federal income tax
32 purposes. This paragraph is exempt from the provisions
33 of Section 250;

34 (Y) For taxable years beginning on or after January
35 1, 2002 and ending on or before December 31, 2004,
36 moneys contributed in the taxable year to a College

1 Savings Pool account under Section 16.5 of the State
2 Treasurer Act, except that amounts excluded from gross
3 income under Section 529(c)(3)(C)(i) of the Internal
4 Revenue Code shall not be considered moneys
5 contributed under this subparagraph (Y). For taxable
6 years beginning on or after January 1, 2005, a maximum
7 of \$10,000 contributed in the taxable year to (i) a
8 College Savings Pool account under Section 16.5 of the
9 State Treasurer Act or (ii) the Illinois Prepaid
10 Tuition Trust Fund, except that amounts excluded from
11 gross income under Section 529(c)(3)(C)(i) of the
12 Internal Revenue Code shall not be considered moneys
13 contributed under this subparagraph (Y). This
14 subparagraph (Y) is exempt from the provisions of
15 Section 250;

16 (Z) For taxable years 2001 and thereafter, for the
17 taxable year in which the bonus depreciation deduction
18 (30% of the adjusted basis of the qualified property)
19 is taken on the taxpayer's federal income tax return
20 under subsection (k) of Section 168 of the Internal
21 Revenue Code and for each applicable taxable year
22 thereafter, an amount equal to "x", where:

23 (1) "y" equals the amount of the depreciation
24 deduction taken for the taxable year on the
25 taxpayer's federal income tax return on property
26 for which the bonus depreciation deduction (30% of
27 the adjusted basis of the qualified property) was
28 taken in any year under subsection (k) of Section
29 168 of the Internal Revenue Code, but not including
30 the bonus depreciation deduction; and

31 (2) "x" equals "y" multiplied by 30 and then
32 divided by 70 (or "y" multiplied by 0.429).

33 The aggregate amount deducted under this
34 subparagraph in all taxable years for any one piece of
35 property may not exceed the amount of the bonus
36 depreciation deduction (30% of the adjusted basis of

1 the qualified property) taken on that property on the
2 taxpayer's federal income tax return under subsection
3 (k) of Section 168 of the Internal Revenue Code;

4 (AA) If the taxpayer reports a capital gain or loss
5 on the taxpayer's federal income tax return for the
6 taxable year based on a sale or transfer of property
7 for which the taxpayer was required in any taxable year
8 to make an addition modification under subparagraph
9 (D-15), then an amount equal to that addition
10 modification.

11 The taxpayer is allowed to take the deduction under
12 this subparagraph only once with respect to any one
13 piece of property;

14 (BB) Any amount included in adjusted gross income,
15 other than salary, received by a driver in a
16 ridesharing arrangement using a motor vehicle;

17 (CC) The amount of (i) any interest income (net of
18 the deductions allocable thereto) taken into account
19 for the taxable year with respect to a transaction with
20 a taxpayer that is required to make an addition
21 modification with respect to such transaction under
22 Section 203(a)(2)(D-17), 203(b)(2)(E-13),
23 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
24 the amount of that addition modification, and (ii) any
25 income from intangible property (net of the deductions
26 allocable thereto) taken into account for the taxable
27 year with respect to a transaction with a taxpayer that
28 is required to make an addition modification with
29 respect to such transaction under Section
30 203(a)(2)(D-18), 203(b)(2)(E-14), 203(c)(2)(G-13), or
31 203(d)(2)(D-8), but not to exceed the amount of that
32 addition modification;

33 (DD) An amount equal to the interest income taken
34 into account for the taxable year (net of the
35 deductions allocable thereto) with respect to
36 transactions with a foreign person who would be a

1 member of the taxpayer's unitary business group but for
2 the fact that the foreign person's business activity
3 outside the United States is 80% or more of that
4 person's total business activity, but not to exceed the
5 addition modification required to be made for the same
6 taxable year under Section 203(a)(2)(D-17) for
7 interest paid, accrued, or incurred, directly or
8 indirectly, to the same foreign person; and

9 (EE) An amount equal to the income from intangible
10 property taken into account for the taxable year (net
11 of the deductions allocable thereto) with respect to
12 transactions with a foreign person who would be a
13 member of the taxpayer's unitary business group but for
14 the fact that the foreign person's business activity
15 outside the United States is 80% or more of that
16 person's total business activity, but not to exceed the
17 addition modification required to be made for the same
18 taxable year under Section 203(a)(2)(D-18) for
19 intangible expenses and costs paid, accrued, or
20 incurred, directly or indirectly, to the same foreign
21 person.

22 (b) Corporations.

23 (1) In general. In the case of a corporation, base
24 income means an amount equal to the taxpayer's taxable
25 income for the taxable year as modified by paragraph (2).

26 (2) Modifications. The taxable income referred to in
27 paragraph (1) shall be modified by adding thereto the sum
28 of the following amounts:

29 (A) An amount equal to all amounts paid or accrued
30 to the taxpayer as interest and all distributions
31 received from regulated investment companies during
32 the taxable year to the extent excluded from gross
33 income in the computation of taxable income;

34 (B) An amount equal to the amount of tax imposed by
35 this Act to the extent deducted from gross income in

1 the computation of taxable income for the taxable year;

2 (C) In the case of a regulated investment company,
3 an amount equal to the excess of (i) the net long-term
4 capital gain for the taxable year, over (ii) the amount
5 of the capital gain dividends designated as such in
6 accordance with Section 852(b)(3)(C) of the Internal
7 Revenue Code and any amount designated under Section
8 852(b)(3)(D) of the Internal Revenue Code,
9 attributable to the taxable year (this amendatory Act
10 of 1995 (Public Act 89-89) is declarative of existing
11 law and is not a new enactment);

12 (D) The amount of any net operating loss deduction
13 taken in arriving at taxable income, other than a net
14 operating loss carried forward from a taxable year
15 ending prior to December 31, 1986;

16 (E) For taxable years in which a net operating loss
17 carryback or carryforward from a taxable year ending
18 prior to December 31, 1986 is an element of taxable
19 income under paragraph (1) of subsection (e) or
20 subparagraph (E) of paragraph (2) of subsection (e),
21 the amount by which addition modifications other than
22 those provided by this subparagraph (E) exceeded
23 subtraction modifications in such earlier taxable
24 year, with the following limitations applied in the
25 order that they are listed:

26 (i) the addition modification relating to the
27 net operating loss carried back or forward to the
28 taxable year from any taxable year ending prior to
29 December 31, 1986 shall be reduced by the amount of
30 addition modification under this subparagraph (E)
31 which related to that net operating loss and which
32 was taken into account in calculating the base
33 income of an earlier taxable year, and

34 (ii) the addition modification relating to the
35 net operating loss carried back or forward to the
36 taxable year from any taxable year ending prior to

1 December 31, 1986 shall not exceed the amount of
2 such carryback or carryforward;

3 For taxable years in which there is a net operating
4 loss carryback or carryforward from more than one other
5 taxable year ending prior to December 31, 1986, the
6 addition modification provided in this subparagraph
7 (E) shall be the sum of the amounts computed
8 independently under the preceding provisions of this
9 subparagraph (E) for each such taxable year;

10 (E-5) For taxable years ending after December 31,
11 1997, an amount equal to any eligible remediation costs
12 that the corporation deducted in computing adjusted
13 gross income and for which the corporation claims a
14 credit under subsection (l) of Section 201;

15 (E-10) For taxable years 2001 and thereafter, an
16 amount equal to the bonus depreciation deduction (30%
17 of the adjusted basis of the qualified property) taken
18 on the taxpayer's federal income tax return for the
19 taxable year under subsection (k) of Section 168 of the
20 Internal Revenue Code; and

21 (E-11) If the taxpayer reports a capital gain or
22 loss on the taxpayer's federal income tax return for
23 the taxable year based on a sale or transfer of
24 property for which the taxpayer was required in any
25 taxable year to make an addition modification under
26 subparagraph (E-10), then an amount equal to the
27 aggregate amount of the deductions taken in all taxable
28 years under subparagraph (T) with respect to that
29 property.

30 The taxpayer is required to make the addition
31 modification under this subparagraph only once with
32 respect to any one piece of property;

33 (E-12) For taxable years ending on or after
34 December 31, 2004, an amount equal to the amount
35 otherwise allowed as a deduction in computing base
36 income for interest paid, accrued, or incurred,

1 directly or indirectly, to a foreign person who would
2 be a member of the same unitary business group but for
3 the fact the foreign person's business activity
4 outside the United States is 80% or more of the foreign
5 person's total business activity. The addition
6 modification required by this subparagraph shall be
7 reduced to the extent that dividends were included in
8 base income of the unitary group for the same taxable
9 year and received by the taxpayer or by a member of the
10 taxpayer's unitary business group (including amounts
11 included in gross income pursuant to Sections 951
12 through 964 of the Internal Revenue Code and amounts
13 included in gross income under Section 78 of the
14 Internal Revenue Code) with respect to the stock of the
15 same person to whom the interest was paid, accrued, or
16 incurred.

17 This paragraph shall not apply to the following:

18 (i) an item of interest paid, accrued, or
19 incurred, directly or indirectly, to a foreign
20 person who is subject in a foreign country or
21 state, other than a state which requires mandatory
22 unitary reporting, to a tax on or measured by net
23 income with respect to such interest; or

24 (ii) an item of interest paid, accrued, or
25 incurred, directly or indirectly, to a foreign
26 person if the taxpayer can establish, based on a
27 preponderance of the evidence, both of the
28 following:

29 (a) the foreign person, during the same
30 taxable year, paid, accrued, or incurred, the
31 interest to a person that is not a related
32 member, and

33 (b) the transaction giving rise to the
34 interest expense between the taxpayer and the
35 foreign person did not have as a principal
36 purpose the avoidance of Illinois income tax,

1 and is paid pursuant to a contract or agreement
2 that reflects an arm's-length interest rate
3 and terms; or

4 (iii) the taxpayer can establish, based on
5 clear and convincing evidence, that the interest
6 paid, accrued, or incurred relates to a contract or
7 agreement entered into at arm's-length rates and
8 terms and the principal purpose for the payment is
9 not federal or Illinois tax avoidance; or

10 (iv) an item of interest paid, accrued, or
11 incurred, directly or indirectly, to a foreign
12 person if the taxpayer establishes by clear and
13 convincing evidence that the adjustments are
14 unreasonable; or if the taxpayer and the Director
15 agree in writing to the application or use of an
16 alternative method of apportionment under Section
17 304(f).

18 Nothing in this subsection shall preclude the
19 Director from making any other adjustment
20 otherwise allowed under Section 404 of this Act for
21 any tax year beginning after the effective date of
22 this amendment provided such adjustment is made
23 pursuant to regulation adopted by the Department
24 and such regulations provide methods and standards
25 by which the Department will utilize its authority
26 under Section 404 of this Act;

27 (E-13) For taxable years ending on or after
28 December 31, 2004, an amount equal to the amount of
29 intangible expenses and costs otherwise allowed as a
30 deduction in computing base income, and that were paid,
31 accrued, or incurred, directly or indirectly, to a
32 foreign person who would be a member of the same
33 unitary business group but for the fact that the
34 foreign person's business activity outside the United
35 States is 80% or more of that person's total business
36 activity. The addition modification required by this

1 (ii) any item of intangible expense or cost
2 paid, accrued, or incurred, directly or
3 indirectly, if the taxpayer can establish, based
4 on a preponderance of the evidence, both of the
5 following:

6 (a) the foreign person during the same
7 taxable year paid, accrued, or incurred, the
8 intangible expense or cost to a person that is
9 not a related member, and

10 (b) the transaction giving rise to the
11 intangible expense or cost between the
12 taxpayer and the foreign person did not have as
13 a principal purpose the avoidance of Illinois
14 income tax, and is paid pursuant to a contract
15 or agreement that reflects arm's-length terms;
16 or

17 (iii) any item of intangible expense or cost
18 paid, accrued, or incurred, directly or
19 indirectly, from a transaction with a foreign
20 person if the taxpayer establishes by clear and
21 convincing evidence, that the adjustments are
22 unreasonable; or if the taxpayer and the Director
23 agree in writing to the application or use of an
24 alternative method of apportionment under Section
25 304(f);

26 Nothing in this subsection shall preclude the
27 Director from making any other adjustment
28 otherwise allowed under Section 404 of this Act for
29 any tax year beginning after the effective date of
30 this amendment provided such adjustment is made
31 pursuant to regulation adopted by the Department
32 and such regulations provide methods and standards
33 by which the Department will utilize its authority
34 under Section 404 of this Act;

35 and by deducting from the total so obtained the sum of the
36 following amounts:

1 (F) An amount equal to the amount of any tax
2 imposed by this Act which was refunded to the taxpayer
3 and included in such total for the taxable year;

4 (G) An amount equal to any amount included in such
5 total under Section 78 of the Internal Revenue Code;

6 (H) In the case of a regulated investment company,
7 an amount equal to the amount of exempt interest
8 dividends as defined in subsection (b) (5) of Section
9 852 of the Internal Revenue Code, paid to shareholders
10 for the taxable year;

11 (I) With the exception of any amounts subtracted
12 under subparagraph (J), an amount equal to the sum of
13 all amounts disallowed as deductions by (i) Sections
14 171(a) (2), and 265(a) (2) and amounts disallowed as
15 interest expense by Section 291(a) (3) of the Internal
16 Revenue Code, as now or hereafter amended, and all
17 amounts of expenses allocable to interest and
18 disallowed as deductions by Section 265(a) (1) of the
19 Internal Revenue Code, as now or hereafter amended; and
20 (ii) for taxable years ending on or after August 13,
21 1999, Sections 171(a) (2), 265, 280C, 291(a) (3), and
22 832(b) (5) (B) (i) of the Internal Revenue Code; the
23 provisions of this subparagraph are exempt from the
24 provisions of Section 250;

25 (J) An amount equal to all amounts included in such
26 total which are exempt from taxation by this State
27 either by reason of its statutes or Constitution or by
28 reason of the Constitution, treaties or statutes of the
29 United States; provided that, in the case of any
30 statute of this State that exempts income derived from
31 bonds or other obligations from the tax imposed under
32 this Act, the amount exempted shall be the interest net
33 of bond premium amortization;

34 (K) An amount equal to those dividends included in
35 such total which were paid by a corporation which
36 conducts business operations in an Enterprise Zone or

1 zones created under the Illinois Enterprise Zone Act
2 and conducts substantially all of its operations in an
3 Enterprise Zone or zones;

4 (L) An amount equal to those dividends included in
5 such total that were paid by a corporation that
6 conducts business operations in a federally designated
7 Foreign Trade Zone or Sub-Zone and that is designated a
8 High Impact Business located in Illinois; provided
9 that dividends eligible for the deduction provided in
10 subparagraph (K) of paragraph 2 of this subsection
11 shall not be eligible for the deduction provided under
12 this subparagraph (L);

13 (M) For any taxpayer that is a financial
14 organization within the meaning of Section 304(c) of
15 this Act, an amount included in such total as interest
16 income from a loan or loans made by such taxpayer to a
17 borrower, to the extent that such a loan is secured by
18 property which is eligible for the Enterprise Zone
19 Investment Credit. To determine the portion of a loan
20 or loans that is secured by property eligible for a
21 Section 201(f) investment credit to the borrower, the
22 entire principal amount of the loan or loans between
23 the taxpayer and the borrower should be divided into
24 the basis of the Section 201(f) investment credit
25 property which secures the loan or loans, using for
26 this purpose the original basis of such property on the
27 date that it was placed in service in the Enterprise
28 Zone. The subtraction modification available to
29 taxpayer in any year under this subsection shall be
30 that portion of the total interest paid by the borrower
31 with respect to such loan attributable to the eligible
32 property as calculated under the previous sentence;

33 (M-1) For any taxpayer that is a financial
34 organization within the meaning of Section 304(c) of
35 this Act, an amount included in such total as interest
36 income from a loan or loans made by such taxpayer to a

1 borrower, to the extent that such a loan is secured by
2 property which is eligible for the High Impact Business
3 Investment Credit. To determine the portion of a loan
4 or loans that is secured by property eligible for a
5 Section 201(h) investment credit to the borrower, the
6 entire principal amount of the loan or loans between
7 the taxpayer and the borrower should be divided into
8 the basis of the Section 201(h) investment credit
9 property which secures the loan or loans, using for
10 this purpose the original basis of such property on the
11 date that it was placed in service in a federally
12 designated Foreign Trade Zone or Sub-Zone located in
13 Illinois. No taxpayer that is eligible for the
14 deduction provided in subparagraph (M) of paragraph
15 (2) of this subsection shall be eligible for the
16 deduction provided under this subparagraph (M-1). The
17 subtraction modification available to taxpayers in any
18 year under this subsection shall be that portion of the
19 total interest paid by the borrower with respect to
20 such loan attributable to the eligible property as
21 calculated under the previous sentence;

22 (N) Two times any contribution made during the
23 taxable year to a designated zone organization to the
24 extent that the contribution (i) qualifies as a
25 charitable contribution under subsection (c) of
26 Section 170 of the Internal Revenue Code and (ii) must,
27 by its terms, be used for a project approved by the
28 Department of Commerce and Economic Opportunity under
29 Section 11 of the Illinois Enterprise Zone Act;

30 (O) An amount equal to: (i) 85% for taxable years
31 ending on or before December 31, 1992, or, a percentage
32 equal to the percentage allowable under Section
33 243(a)(1) of the Internal Revenue Code of 1986 for
34 taxable years ending after December 31, 1992, of the
35 amount by which dividends included in taxable income
36 and received from a corporation that is not created or

1 organized under the laws of the United States or any
2 state or political subdivision thereof, including, for
3 taxable years ending on or after December 31, 1988,
4 dividends received or deemed received or paid or deemed
5 paid under Sections 951 through 964 of the Internal
6 Revenue Code, exceed the amount of the modification
7 provided under subparagraph (G) of paragraph (2) of
8 this subsection (b) which is related to such dividends;
9 plus (ii) 100% of the amount by which dividends,
10 included in taxable income and received, including,
11 for taxable years ending on or after December 31, 1988,
12 dividends received or deemed received or paid or deemed
13 paid under Sections 951 through 964 of the Internal
14 Revenue Code, from any such corporation specified in
15 clause (i) that would but for the provisions of Section
16 1504 (b) (3) of the Internal Revenue Code be treated as
17 a member of the affiliated group which includes the
18 dividend recipient, exceed the amount of the
19 modification provided under subparagraph (G) of
20 paragraph (2) of this subsection (b) which is related
21 to such dividends;

22 (P) An amount equal to any contribution made to a
23 job training project established pursuant to the Tax
24 Increment Allocation Redevelopment Act;

25 (Q) An amount equal to the amount of the deduction
26 used to compute the federal income tax credit for
27 restoration of substantial amounts held under claim of
28 right for the taxable year pursuant to Section 1341 of
29 the Internal Revenue Code of 1986;

30 (R) In the case of an attorney-in-fact with respect
31 to whom an interinsurer or a reciprocal insurer has
32 made the election under Section 835 of the Internal
33 Revenue Code, 26 U.S.C. 835, an amount equal to the
34 excess, if any, of the amounts paid or incurred by that
35 interinsurer or reciprocal insurer in the taxable year
36 to the attorney-in-fact over the deduction allowed to

1 that interinsurer or reciprocal insurer with respect
2 to the attorney-in-fact under Section 835(b) of the
3 Internal Revenue Code for the taxable year;

4 (S) For taxable years ending on or after December
5 31, 1997, in the case of a Subchapter S corporation, an
6 amount equal to all amounts of income allocable to a
7 shareholder subject to the Personal Property Tax
8 Replacement Income Tax imposed by subsections (c) and
9 (d) of Section 201 of this Act, including amounts
10 allocable to organizations exempt from federal income
11 tax by reason of Section 501(a) of the Internal Revenue
12 Code. This subparagraph (S) is exempt from the
13 provisions of Section 250;

14 (T) For taxable years 2001 and thereafter, for the
15 taxable year in which the bonus depreciation deduction
16 (30% of the adjusted basis of the qualified property)
17 is taken on the taxpayer's federal income tax return
18 under subsection (k) of Section 168 of the Internal
19 Revenue Code and for each applicable taxable year
20 thereafter, an amount equal to "x", where:

21 (1) "y" equals the amount of the depreciation
22 deduction taken for the taxable year on the
23 taxpayer's federal income tax return on property
24 for which the bonus depreciation deduction (30% of
25 the adjusted basis of the qualified property) was
26 taken in any year under subsection (k) of Section
27 168 of the Internal Revenue Code, but not including
28 the bonus depreciation deduction; and

29 (2) "x" equals "y" multiplied by 30 and then
30 divided by 70 (or "y" multiplied by 0.429).

31 The aggregate amount deducted under this
32 subparagraph in all taxable years for any one piece of
33 property may not exceed the amount of the bonus
34 depreciation deduction (30% of the adjusted basis of
35 the qualified property) taken on that property on the
36 taxpayer's federal income tax return under subsection

1 (k) of Section 168 of the Internal Revenue Code;

2 (U) If the taxpayer reports a capital gain or loss
3 on the taxpayer's federal income tax return for the
4 taxable year based on a sale or transfer of property
5 for which the taxpayer was required in any taxable year
6 to make an addition modification under subparagraph
7 (E-10), then an amount equal to that addition
8 modification.

9 The taxpayer is allowed to take the deduction under
10 this subparagraph only once with respect to any one
11 piece of property;

12 (V) The amount of: (i) any interest income (net of
13 the deductions allocable thereto) taken into account
14 for the taxable year with respect to a transaction with
15 a taxpayer that is required to make an addition
16 modification with respect to such transaction under
17 Section 203(a)(2)(D-17), 203(b)(2)(E-12),
18 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
19 the amount of such addition modification and (ii) any
20 income from intangible property (net of the deductions
21 allocable thereto) taken into account for the taxable
22 year with respect to a transaction with a taxpayer that
23 is required to make an addition modification with
24 respect to such transaction under Section
25 203(a)(2)(D-18), 203(b)(2)(E-13), 203(c)(2)(G-13), or
26 203(d)(2)(D-8), but not to exceed the amount of such
27 addition modification;

28 (W) An amount equal to the interest income taken
29 into account for the taxable year (net of the
30 deductions allocable thereto) with respect to
31 transactions with a foreign person who would be a
32 member of the taxpayer's unitary business group but for
33 the fact that the foreign person's business activity
34 outside the United States is 80% or more of that
35 person's total business activity, but not to exceed the
36 addition modification required to be made for the same

1 taxable year under Section 203(b)(2)(E-12) for
2 interest paid, accrued, or incurred, directly or
3 indirectly, to the same foreign person; and

4 (X) An amount equal to the income from intangible
5 property taken into account for the taxable year (net
6 of the deductions allocable thereto) with respect to
7 transactions with a foreign person who would be a
8 member of the taxpayer's unitary business group but for
9 the fact that the foreign person's business activity
10 outside the United States is 80% or more of that
11 person's total business activity, but not to exceed the
12 addition modification required to be made for the same
13 taxable year under Section 203(b)(2)(E-13) for
14 intangible expenses and costs paid, accrued, or
15 incurred, directly or indirectly, to the same foreign
16 person.

17 (3) Special rule. For purposes of paragraph (2) (A),
18 "gross income" in the case of a life insurance company, for
19 tax years ending on and after December 31, 1994, shall mean
20 the gross investment income for the taxable year.

21 (c) Trusts and estates.

22 (1) In general. In the case of a trust or estate, base
23 income means an amount equal to the taxpayer's taxable
24 income for the taxable year as modified by paragraph (2).

25 (2) Modifications. Subject to the provisions of
26 paragraph (3), the taxable income referred to in paragraph
27 (1) shall be modified by adding thereto the sum of the
28 following amounts:

29 (A) An amount equal to all amounts paid or accrued
30 to the taxpayer as interest or dividends during the
31 taxable year to the extent excluded from gross income
32 in the computation of taxable income;

33 (B) In the case of (i) an estate, \$600; (ii) a
34 trust which, under its governing instrument, is
35 required to distribute all of its income currently,

1 \$300; and (iii) any other trust, \$100, but in each such
2 case, only to the extent such amount was deducted in
3 the computation of taxable income;

4 (C) An amount equal to the amount of tax imposed by
5 this Act to the extent deducted from gross income in
6 the computation of taxable income for the taxable year;

7 (D) The amount of any net operating loss deduction
8 taken in arriving at taxable income, other than a net
9 operating loss carried forward from a taxable year
10 ending prior to December 31, 1986;

11 (E) For taxable years in which a net operating loss
12 carryback or carryforward from a taxable year ending
13 prior to December 31, 1986 is an element of taxable
14 income under paragraph (1) of subsection (e) or
15 subparagraph (E) of paragraph (2) of subsection (e),
16 the amount by which addition modifications other than
17 those provided by this subparagraph (E) exceeded
18 subtraction modifications in such taxable year, with
19 the following limitations applied in the order that
20 they are listed:

21 (i) the addition modification relating to the
22 net operating loss carried back or forward to the
23 taxable year from any taxable year ending prior to
24 December 31, 1986 shall be reduced by the amount of
25 addition modification under this subparagraph (E)
26 which related to that net operating loss and which
27 was taken into account in calculating the base
28 income of an earlier taxable year, and

29 (ii) the addition modification relating to the
30 net operating loss carried back or forward to the
31 taxable year from any taxable year ending prior to
32 December 31, 1986 shall not exceed the amount of
33 such carryback or carryforward;

34 For taxable years in which there is a net operating
35 loss carryback or carryforward from more than one other
36 taxable year ending prior to December 31, 1986, the

1 addition modification provided in this subparagraph
2 (E) shall be the sum of the amounts computed
3 independently under the preceding provisions of this
4 subparagraph (E) for each such taxable year;

5 (F) For taxable years ending on or after January 1,
6 1989, an amount equal to the tax deducted pursuant to
7 Section 164 of the Internal Revenue Code if the trust
8 or estate is claiming the same tax for purposes of the
9 Illinois foreign tax credit under Section 601 of this
10 Act;

11 (G) An amount equal to the amount of the capital
12 gain deduction allowable under the Internal Revenue
13 Code, to the extent deducted from gross income in the
14 computation of taxable income;

15 (G-5) For taxable years ending after December 31,
16 1997, an amount equal to any eligible remediation costs
17 that the trust or estate deducted in computing adjusted
18 gross income and for which the trust or estate claims a
19 credit under subsection (l) of Section 201;

20 (G-10) For taxable years 2001 and thereafter, an
21 amount equal to the bonus depreciation deduction (30%
22 of the adjusted basis of the qualified property) taken
23 on the taxpayer's federal income tax return for the
24 taxable year under subsection (k) of Section 168 of the
25 Internal Revenue Code; and

26 (G-11) If the taxpayer reports a capital gain or
27 loss on the taxpayer's federal income tax return for
28 the taxable year based on a sale or transfer of
29 property for which the taxpayer was required in any
30 taxable year to make an addition modification under
31 subparagraph (G-10), then an amount equal to the
32 aggregate amount of the deductions taken in all taxable
33 years under subparagraph (R) with respect to that
34 property.

35 The taxpayer is required to make the addition
36 modification under this subparagraph only once with

1 respect to any one piece of property;

2 (G-12) For taxable years ending on or after
3 December 31, 2004, an amount equal to the amount
4 otherwise allowed as a deduction in computing base
5 income for interest paid, accrued, or incurred,
6 directly or indirectly, to a foreign person who would
7 be a member of the same unitary business group but for
8 the fact that the foreign person's business activity
9 outside the United States is 80% or more of the foreign
10 person's total business activity. The addition
11 modification required by this subparagraph shall be
12 reduced to the extent that dividends were included in
13 base income of the unitary group for the same taxable
14 year and received by the taxpayer or by a member of the
15 taxpayer's unitary business group (including amounts
16 included in gross income pursuant to Sections 951
17 through 964 of the Internal Revenue Code and amounts
18 included in gross income under Section 78 of the
19 Internal Revenue Code) with respect to the stock of the
20 same person to whom the interest was paid, accrued, or
21 incurred.

22 This paragraph shall not apply to the following:

23 (i) an item of interest paid, accrued, or
24 incurred, directly or indirectly, to a foreign
25 person who is subject in a foreign country or
26 state, other than a state which requires mandatory
27 unitary reporting, to a tax on or measured by net
28 income with respect to such interest; or

29 (ii) an item of interest paid, accrued, or
30 incurred, directly or indirectly, to a foreign
31 person if the taxpayer can establish, based on a
32 preponderance of the evidence, both of the
33 following:

34 (a) the foreign person, during the same
35 taxable year, paid, accrued, or incurred, the
36 interest to a person that is not a related

1 member, and

2 (b) the transaction giving rise to the
3 interest expense between the taxpayer and the
4 foreign person did not have as a principal
5 purpose the avoidance of Illinois income tax,
6 and is paid pursuant to a contract or agreement
7 that reflects an arm's-length interest rate
8 and terms; or

9 (iii) the taxpayer can establish, based on
10 clear and convincing evidence, that the interest
11 paid, accrued, or incurred relates to a contract or
12 agreement entered into at arm's-length rates and
13 terms and the principal purpose for the payment is
14 not federal or Illinois tax avoidance; or

15 (iv) an item of interest paid, accrued, or
16 incurred, directly or indirectly, to a foreign
17 person if the taxpayer establishes by clear and
18 convincing evidence that the adjustments are
19 unreasonable; or if the taxpayer and the Director
20 agree in writing to the application or use of an
21 alternative method of apportionment under Section
22 304(f).

23 Nothing in this subsection shall preclude the
24 Director from making any other adjustment
25 otherwise allowed under Section 404 of this Act for
26 any tax year beginning after the effective date of
27 this amendment provided such adjustment is made
28 pursuant to regulation adopted by the Department
29 and such regulations provide methods and standards
30 by which the Department will utilize its authority
31 under Section 404 of this Act;

32 (G-13) For taxable years ending on or after
33 December 31, 2004, an amount equal to the amount of
34 intangible expenses and costs otherwise allowed as a
35 deduction in computing base income, and that were paid,
36 accrued, or incurred, directly or indirectly, to a

1 foreign person who would be a member of the same
2 unitary business group but for the fact that the
3 foreign person's business activity outside the United
4 States is 80% or more of that person's total business
5 activity. The addition modification required by this
6 subparagraph shall be reduced to the extent that
7 dividends were included in base income of the unitary
8 group for the same taxable year and received by the
9 taxpayer or by a member of the taxpayer's unitary
10 business group (including amounts included in gross
11 income pursuant to Sections 951 through 964 of the
12 Internal Revenue Code and amounts included in gross
13 income under Section 78 of the Internal Revenue Code)
14 with respect to the stock of the same person to whom
15 the intangible expenses and costs were directly or
16 indirectly paid, incurred, or accrued. The preceding
17 sentence shall not apply to the extent that the same
18 dividends caused a reduction to the addition
19 modification required under Section 203(c)(2)(G-12) of
20 this Act. As used in this subparagraph, the term
21 "intangible expenses and costs" includes: (1)
22 expenses, losses, and costs for or related to the
23 direct or indirect acquisition, use, maintenance or
24 management, ownership, sale, exchange, or any other
25 disposition of intangible property; (2) losses
26 incurred, directly or indirectly, from factoring
27 transactions or discounting transactions; (3) royalty,
28 patent, technical, and copyright fees; (4) licensing
29 fees; and (5) other similar expenses and costs. For
30 purposes of this subparagraph, "intangible property"
31 includes patents, patent applications, trade names,
32 trademarks, service marks, copyrights, mask works,
33 trade secrets, and similar types of intangible assets.

34 This paragraph shall not apply to the following:

35 (i) any item of intangible expenses or costs
36 paid, accrued, or incurred, directly or

1 indirectly, from a transaction with a foreign
2 person who is subject in a foreign country or
3 state, other than a state which requires mandatory
4 unitary reporting, to a tax on or measured by net
5 income with respect to such item; or

6 (ii) any item of intangible expense or cost
7 paid, accrued, or incurred, directly or
8 indirectly, if the taxpayer can establish, based
9 on a preponderance of the evidence, both of the
10 following:

11 (a) the foreign person during the same
12 taxable year paid, accrued, or incurred, the
13 intangible expense or cost to a person that is
14 not a related member, and

15 (b) the transaction giving rise to the
16 intangible expense or cost between the
17 taxpayer and the foreign person did not have as
18 a principal purpose the avoidance of Illinois
19 income tax, and is paid pursuant to a contract
20 or agreement that reflects arm's-length terms;
21 or

22 (iii) any item of intangible expense or cost
23 paid, accrued, or incurred, directly or
24 indirectly, from a transaction with a foreign
25 person if the taxpayer establishes by clear and
26 convincing evidence, that the adjustments are
27 unreasonable; or if the taxpayer and the Director
28 agree in writing to the application or use of an
29 alternative method of apportionment under Section
30 304(f);

31 Nothing in this subsection shall preclude the
32 Director from making any other adjustment
33 otherwise allowed under Section 404 of this Act for
34 any tax year beginning after the effective date of
35 this amendment provided such adjustment is made
36 pursuant to regulation adopted by the Department

1 and such regulations provide methods and standards
2 by which the Department will utilize its authority
3 under Section 404 of this Act;

4 and by deducting from the total so obtained the sum of the
5 following amounts:

6 (H) An amount equal to all amounts included in such
7 total pursuant to the provisions of Sections 402(a),
8 402(c), 403(a), 403(b), 406(a), 407(a) and 408 of the
9 Internal Revenue Code or included in such total as
10 distributions under the provisions of any retirement
11 or disability plan for employees of any governmental
12 agency or unit, or retirement payments to retired
13 partners, which payments are excluded in computing net
14 earnings from self employment by Section 1402 of the
15 Internal Revenue Code and regulations adopted pursuant
16 thereto;

17 (I) The valuation limitation amount;

18 (J) An amount equal to the amount of any tax
19 imposed by this Act which was refunded to the taxpayer
20 and included in such total for the taxable year;

21 (K) An amount equal to all amounts included in
22 taxable income as modified by subparagraphs (A), (B),
23 (C), (D), (E), (F) and (G) which are exempt from
24 taxation by this State either by reason of its statutes
25 or Constitution or by reason of the Constitution,
26 treaties or statutes of the United States; provided
27 that, in the case of any statute of this State that
28 exempts income derived from bonds or other obligations
29 from the tax imposed under this Act, the amount
30 exempted shall be the interest net of bond premium
31 amortization;

32 (L) With the exception of any amounts subtracted
33 under subparagraph (K), an amount equal to the sum of
34 all amounts disallowed as deductions by (i) Sections
35 171(a) (2) and 265(a) (2) of the Internal Revenue Code,
36 as now or hereafter amended, and all amounts of

1 expenses allocable to interest and disallowed as
2 deductions by Section 265(1) of the Internal Revenue
3 Code of 1954, as now or hereafter amended; and (ii) for
4 taxable years ending on or after August 13, 1999,
5 Sections 171(a)(2), 265, 280C, and 832(b)(5)(B)(i) of
6 the Internal Revenue Code; the provisions of this
7 subparagraph are exempt from the provisions of Section
8 250;

9 (M) An amount equal to those dividends included in
10 such total which were paid by a corporation which
11 conducts business operations in an Enterprise Zone or
12 zones created under the Illinois Enterprise Zone Act
13 and conducts substantially all of its operations in an
14 Enterprise Zone or Zones;

15 (N) An amount equal to any contribution made to a
16 job training project established pursuant to the Tax
17 Increment Allocation Redevelopment Act;

18 (O) An amount equal to those dividends included in
19 such total that were paid by a corporation that
20 conducts business operations in a federally designated
21 Foreign Trade Zone or Sub-Zone and that is designated a
22 High Impact Business located in Illinois; provided
23 that dividends eligible for the deduction provided in
24 subparagraph (M) of paragraph (2) of this subsection
25 shall not be eligible for the deduction provided under
26 this subparagraph (O);

27 (P) An amount equal to the amount of the deduction
28 used to compute the federal income tax credit for
29 restoration of substantial amounts held under claim of
30 right for the taxable year pursuant to Section 1341 of
31 the Internal Revenue Code of 1986;

32 (Q) For taxable year 1999 and thereafter, an amount
33 equal to the amount of any (i) distributions, to the
34 extent includible in gross income for federal income
35 tax purposes, made to the taxpayer because of his or
36 her status as a victim of persecution for racial or

1 religious reasons by Nazi Germany or any other Axis
2 regime or as an heir of the victim and (ii) items of
3 income, to the extent includible in gross income for
4 federal income tax purposes, attributable to, derived
5 from or in any way related to assets stolen from,
6 hidden from, or otherwise lost to a victim of
7 persecution for racial or religious reasons by Nazi
8 Germany or any other Axis regime immediately prior to,
9 during, and immediately after World War II, including,
10 but not limited to, interest on the proceeds receivable
11 as insurance under policies issued to a victim of
12 persecution for racial or religious reasons by Nazi
13 Germany or any other Axis regime by European insurance
14 companies immediately prior to and during World War II;
15 provided, however, this subtraction from federal
16 adjusted gross income does not apply to assets acquired
17 with such assets or with the proceeds from the sale of
18 such assets; provided, further, this paragraph shall
19 only apply to a taxpayer who was the first recipient of
20 such assets after their recovery and who is a victim of
21 persecution for racial or religious reasons by Nazi
22 Germany or any other Axis regime or as an heir of the
23 victim. The amount of and the eligibility for any
24 public assistance, benefit, or similar entitlement is
25 not affected by the inclusion of items (i) and (ii) of
26 this paragraph in gross income for federal income tax
27 purposes. This paragraph is exempt from the provisions
28 of Section 250;

29 (R) For taxable years 2001 and thereafter, for the
30 taxable year in which the bonus depreciation deduction
31 (30% of the adjusted basis of the qualified property)
32 is taken on the taxpayer's federal income tax return
33 under subsection (k) of Section 168 of the Internal
34 Revenue Code and for each applicable taxable year
35 thereafter, an amount equal to "x", where:

36 (1) "y" equals the amount of the depreciation

1 deduction taken for the taxable year on the
2 taxpayer's federal income tax return on property
3 for which the bonus depreciation deduction (30% of
4 the adjusted basis of the qualified property) was
5 taken in any year under subsection (k) of Section
6 168 of the Internal Revenue Code, but not including
7 the bonus depreciation deduction; and

8 (2) "x" equals "y" multiplied by 30 and then
9 divided by 70 (or "y" multiplied by 0.429).

10 The aggregate amount deducted under this
11 subparagraph in all taxable years for any one piece of
12 property may not exceed the amount of the bonus
13 depreciation deduction (30% of the adjusted basis of
14 the qualified property) taken on that property on the
15 taxpayer's federal income tax return under subsection
16 (k) of Section 168 of the Internal Revenue Code;

17 (S) If the taxpayer reports a capital gain or loss
18 on the taxpayer's federal income tax return for the
19 taxable year based on a sale or transfer of property
20 for which the taxpayer was required in any taxable year
21 to make an addition modification under subparagraph
22 (G-10), then an amount equal to that addition
23 modification.

24 The taxpayer is allowed to take the deduction under
25 this subparagraph only once with respect to any one
26 piece of property;

27 (T) The amount of (i) any interest income (net of
28 the deductions allocable thereto) taken into account
29 for the taxable year with respect to a transaction with
30 a taxpayer that is required to make an addition
31 modification with respect to such transaction under
32 Section 203(a)(2)(D-17), 203(b)(2)(E-12),
33 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
34 the amount of such addition modification and (ii) any
35 income from intangible property (net of the deductions
36 allocable thereto) taken into account for the taxable

1 year with respect to a transaction with a taxpayer that
2 is required to make an addition modification with
3 respect to such transaction under Section
4 203(a)(2)(D-18), 203(b)(2)(E-13), 203(c)(2)(G-13), or
5 203(d)(2)(D-8), but not to exceed the amount of such
6 addition modification;

7 (U) An amount equal to the interest income taken
8 into account for the taxable year (net of the
9 deductions allocable thereto) with respect to
10 transactions with a foreign person who would be a
11 member of the taxpayer's unitary business group but for
12 the fact the foreign person's business activity
13 outside the United States is 80% or more of that
14 person's total business activity, but not to exceed the
15 addition modification required to be made for the same
16 taxable year under Section 203(c)(2)(G-12) for
17 interest paid, accrued, or incurred, directly or
18 indirectly, to the same foreign person; and

19 (V) An amount equal to the income from intangible
20 property taken into account for the taxable year (net
21 of the deductions allocable thereto) with respect to
22 transactions with a foreign person who would be a
23 member of the taxpayer's unitary business group but for
24 the fact that the foreign person's business activity
25 outside the United States is 80% or more of that
26 person's total business activity, but not to exceed the
27 addition modification required to be made for the same
28 taxable year under Section 203(c)(2)(G-13) for
29 intangible expenses and costs paid, accrued, or
30 incurred, directly or indirectly, to the same foreign
31 person.

32 (3) Limitation. The amount of any modification
33 otherwise required under this subsection shall, under
34 regulations prescribed by the Department, be adjusted by
35 any amounts included therein which were properly paid,
36 credited, or required to be distributed, or permanently set

1 aside for charitable purposes pursuant to Internal Revenue
2 Code Section 642(c) during the taxable year.

3 (d) Partnerships.

4 (1) In general. In the case of a partnership, base
5 income means an amount equal to the taxpayer's taxable
6 income for the taxable year as modified by paragraph (2).

7 (2) Modifications. The taxable income referred to in
8 paragraph (1) shall be modified by adding thereto the sum
9 of the following amounts:

10 (A) An amount equal to all amounts paid or accrued
11 to the taxpayer as interest or dividends during the
12 taxable year to the extent excluded from gross income
13 in the computation of taxable income;

14 (B) An amount equal to the amount of tax imposed by
15 this Act to the extent deducted from gross income for
16 the taxable year;

17 (C) The amount of deductions allowed to the
18 partnership pursuant to Section 707 (c) of the Internal
19 Revenue Code in calculating its taxable income;

20 (D) An amount equal to the amount of the capital
21 gain deduction allowable under the Internal Revenue
22 Code, to the extent deducted from gross income in the
23 computation of taxable income;

24 (D-5) For taxable years 2001 and thereafter, an
25 amount equal to the bonus depreciation deduction (30%
26 of the adjusted basis of the qualified property) taken
27 on the taxpayer's federal income tax return for the
28 taxable year under subsection (k) of Section 168 of the
29 Internal Revenue Code;

30 (D-6) If the taxpayer reports a capital gain or
31 loss on the taxpayer's federal income tax return for
32 the taxable year based on a sale or transfer of
33 property for which the taxpayer was required in any
34 taxable year to make an addition modification under
35 subparagraph (D-5), then an amount equal to the

1 aggregate amount of the deductions taken in all taxable
2 years under subparagraph (O) with respect to that
3 property.

4 The taxpayer is required to make the addition
5 modification under this subparagraph only once with
6 respect to any one piece of property;

7 (D-7) For taxable years ending on or after December
8 31, 2004, an amount equal to the amount otherwise
9 allowed as a deduction in computing base income for
10 interest paid, accrued, or incurred, directly or
11 indirectly, to a foreign person who would be a member
12 of the same unitary business group but for the fact the
13 foreign person's business activity outside the United
14 States is 80% or more of the foreign person's total
15 business activity. The addition modification required
16 by this subparagraph shall be reduced to the extent
17 that dividends were included in base income of the
18 unitary group for the same taxable year and received by
19 the taxpayer or by a member of the taxpayer's unitary
20 business group (including amounts included in gross
21 income pursuant to Sections 951 through 964 of the
22 Internal Revenue Code and amounts included in gross
23 income under Section 78 of the Internal Revenue Code)
24 with respect to the stock of the same person to whom
25 the interest was paid, accrued, or incurred.

26 This paragraph shall not apply to the following:

27 (i) an item of interest paid, accrued, or
28 incurred, directly or indirectly, to a foreign
29 person who is subject in a foreign country or
30 state, other than a state which requires mandatory
31 unitary reporting, to a tax on or measured by net
32 income with respect to such interest; or

33 (ii) an item of interest paid, accrued, or
34 incurred, directly or indirectly, to a foreign
35 person if the taxpayer can establish, based on a
36 preponderance of the evidence, both of the

1 following:

2 (a) the foreign person, during the same
3 taxable year, paid, accrued, or incurred, the
4 interest to a person that is not a related
5 member, and

6 (b) the transaction giving rise to the
7 interest expense between the taxpayer and the
8 foreign person did not have as a principal
9 purpose the avoidance of Illinois income tax,
10 and is paid pursuant to a contract or agreement
11 that reflects an arm's-length interest rate
12 and terms; or

13 (iii) the taxpayer can establish, based on
14 clear and convincing evidence, that the interest
15 paid, accrued, or incurred relates to a contract or
16 agreement entered into at arm's-length rates and
17 terms and the principal purpose for the payment is
18 not federal or Illinois tax avoidance; or

19 (iv) an item of interest paid, accrued, or
20 incurred, directly or indirectly, to a foreign
21 person if the taxpayer establishes by clear and
22 convincing evidence that the adjustments are
23 unreasonable; or if the taxpayer and the Director
24 agree in writing to the application or use of an
25 alternative method of apportionment under Section
26 304(f).

27 Nothing in this subsection shall preclude the
28 Director from making any other adjustment
29 otherwise allowed under Section 404 of this Act for
30 any tax year beginning after the effective date of
31 this amendment provided such adjustment is made
32 pursuant to regulation adopted by the Department
33 and such regulations provide methods and standards
34 by which the Department will utilize its authority
35 under Section 404 of this Act; and

36 (D-8) For taxable years ending on or after December

1 31, 2004, an amount equal to the amount of intangible
2 expenses and costs otherwise allowed as a deduction in
3 computing base income, and that were paid, accrued, or
4 incurred, directly or indirectly, to a foreign person
5 who would be a member of the same unitary business
6 group but for the fact that the foreign person's
7 business activity outside the United States is 80% or
8 more of that person's total business activity. The
9 addition modification required by this subparagraph
10 shall be reduced to the extent that dividends were
11 included in base income of the unitary group for the
12 same taxable year and received by the taxpayer or by a
13 member of the taxpayer's unitary business group
14 (including amounts included in gross income pursuant
15 to Sections 951 through 964 of the Internal Revenue
16 Code and amounts included in gross income under Section
17 78 of the Internal Revenue Code) with respect to the
18 stock of the same person to whom the intangible
19 expenses and costs were directly or indirectly paid,
20 incurred or accrued. The preceding sentence shall not
21 apply to the extent that the same dividends caused a
22 reduction to the addition modification required under
23 Section 203(d)(2)(D-7) of this Act. As used in this
24 subparagraph, the term "intangible expenses and costs"
25 includes (1) expenses, losses, and costs for, or
26 related to, the direct or indirect acquisition, use,
27 maintenance or management, ownership, sale, exchange,
28 or any other disposition of intangible property; (2)
29 losses incurred, directly or indirectly, from
30 factoring transactions or discounting transactions;
31 (3) royalty, patent, technical, and copyright fees;
32 (4) licensing fees; and (5) other similar expenses and
33 costs. For purposes of this subparagraph, "intangible
34 property" includes patents, patent applications, trade
35 names, trademarks, service marks, copyrights, mask
36 works, trade secrets, and similar types of intangible

1 assets;

2 This paragraph shall not apply to the following:

3 (i) any item of intangible expenses or costs
4 paid, accrued, or incurred, directly or
5 indirectly, from a transaction with a foreign
6 person who is subject in a foreign country or
7 state, other than a state which requires mandatory
8 unitary reporting, to a tax on or measured by net
9 income with respect to such item; or

10 (ii) any item of intangible expense or cost
11 paid, accrued, or incurred, directly or
12 indirectly, if the taxpayer can establish, based
13 on a preponderance of the evidence, both of the
14 following:

15 (a) the foreign person during the same
16 taxable year paid, accrued, or incurred, the
17 intangible expense or cost to a person that is
18 not a related member, and

19 (b) the transaction giving rise to the
20 intangible expense or cost between the
21 taxpayer and the foreign person did not have as
22 a principal purpose the avoidance of Illinois
23 income tax, and is paid pursuant to a contract
24 or agreement that reflects arm's-length terms;
25 or

26 (iii) any item of intangible expense or cost
27 paid, accrued, or incurred, directly or
28 indirectly, from a transaction with a foreign
29 person if the taxpayer establishes by clear and
30 convincing evidence, that the adjustments are
31 unreasonable; or if the taxpayer and the Director
32 agree in writing to the application or use of an
33 alternative method of apportionment under Section
34 304(f);

35 Nothing in this subsection shall preclude the
36 Director from making any other adjustment

1 otherwise allowed under Section 404 of this Act for
2 any tax year beginning after the effective date of
3 this amendment provided such adjustment is made
4 pursuant to regulation adopted by the Department
5 and such regulations provide methods and standards
6 by which the Department will utilize its authority
7 under Section 404 of this Act;

8 and by deducting from the total so obtained the following
9 amounts:

10 (E) The valuation limitation amount;

11 (F) An amount equal to the amount of any tax
12 imposed by this Act which was refunded to the taxpayer
13 and included in such total for the taxable year;

14 (G) An amount equal to all amounts included in
15 taxable income as modified by subparagraphs (A), (B),
16 (C) and (D) which are exempt from taxation by this
17 State either by reason of its statutes or Constitution
18 or by reason of the Constitution, treaties or statutes
19 of the United States; provided that, in the case of any
20 statute of this State that exempts income derived from
21 bonds or other obligations from the tax imposed under
22 this Act, the amount exempted shall be the interest net
23 of bond premium amortization;

24 (H) Any income of the partnership which
25 constitutes personal service income as defined in
26 Section 1348 (b) (1) of the Internal Revenue Code (as
27 in effect December 31, 1981) or a reasonable allowance
28 for compensation paid or accrued for services rendered
29 by partners to the partnership, whichever is greater;

30 (I) An amount equal to all amounts of income
31 distributable to an entity subject to the Personal
32 Property Tax Replacement Income Tax imposed by
33 subsections (c) and (d) of Section 201 of this Act
34 including amounts distributable to organizations
35 exempt from federal income tax by reason of Section
36 501(a) of the Internal Revenue Code;

1 (J) With the exception of any amounts subtracted
2 under subparagraph (G), an amount equal to the sum of
3 all amounts disallowed as deductions by (i) Sections
4 171(a) (2), and 265(2) of the Internal Revenue Code of
5 1954, as now or hereafter amended, and all amounts of
6 expenses allocable to interest and disallowed as
7 deductions by Section 265(1) of the Internal Revenue
8 Code, as now or hereafter amended; and (ii) for taxable
9 years ending on or after August 13, 1999, Sections
10 171(a) (2), 265, 280C, and 832(b) (5) (B) (i) of the
11 Internal Revenue Code; the provisions of this
12 subparagraph are exempt from the provisions of Section
13 250;

14 (K) An amount equal to those dividends included in
15 such total which were paid by a corporation which
16 conducts business operations in an Enterprise Zone or
17 zones created under the Illinois Enterprise Zone Act,
18 enacted by the 82nd General Assembly, and conducts
19 substantially all of its operations in an Enterprise
20 Zone or Zones;

21 (L) An amount equal to any contribution made to a
22 job training project established pursuant to the Real
23 Property Tax Increment Allocation Redevelopment Act;

24 (M) An amount equal to those dividends included in
25 such total that were paid by a corporation that
26 conducts business operations in a federally designated
27 Foreign Trade Zone or Sub-Zone and that is designated a
28 High Impact Business located in Illinois; provided
29 that dividends eligible for the deduction provided in
30 subparagraph (K) of paragraph (2) of this subsection
31 shall not be eligible for the deduction provided under
32 this subparagraph (M);

33 (N) An amount equal to the amount of the deduction
34 used to compute the federal income tax credit for
35 restoration of substantial amounts held under claim of
36 right for the taxable year pursuant to Section 1341 of

1 the Internal Revenue Code of 1986;

2 (O) For taxable years 2001 and thereafter, for the
3 taxable year in which the bonus depreciation deduction
4 (30% of the adjusted basis of the qualified property)
5 is taken on the taxpayer's federal income tax return
6 under subsection (k) of Section 168 of the Internal
7 Revenue Code and for each applicable taxable year
8 thereafter, an amount equal to "x", where:

9 (1) "y" equals the amount of the depreciation
10 deduction taken for the taxable year on the
11 taxpayer's federal income tax return on property
12 for which the bonus depreciation deduction (30% of
13 the adjusted basis of the qualified property) was
14 taken in any year under subsection (k) of Section
15 168 of the Internal Revenue Code, but not including
16 the bonus depreciation deduction; and

17 (2) "x" equals "y" multiplied by 30 and then
18 divided by 70 (or "y" multiplied by 0.429).

19 The aggregate amount deducted under this
20 subparagraph in all taxable years for any one piece of
21 property may not exceed the amount of the bonus
22 depreciation deduction (30% of the adjusted basis of
23 the qualified property) taken on that property on the
24 taxpayer's federal income tax return under subsection
25 (k) of Section 168 of the Internal Revenue Code;

26 (P) If the taxpayer reports a capital gain or loss
27 on the taxpayer's federal income tax return for the
28 taxable year based on a sale or transfer of property
29 for which the taxpayer was required in any taxable year
30 to make an addition modification under subparagraph
31 (D-5), then an amount equal to that addition
32 modification.

33 The taxpayer is allowed to take the deduction under
34 this subparagraph only once with respect to any one
35 piece of property;

36 (Q) The amount of (i) any interest income (net of

1 the deductions allocable thereto) taken into account
2 for the taxable year with respect to a transaction with
3 a taxpayer that is required to make an addition
4 modification with respect to such transaction under
5 Section 203(a)(2)(D-17), 203(b)(2)(E-12),
6 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
7 the amount of such addition modification and (ii) any
8 income from intangible property (net of the deductions
9 allocable thereto) taken into account for the taxable
10 year with respect to a transaction with a taxpayer that
11 is required to make an addition modification with
12 respect to such transaction under Section
13 203(a)(2)(D-18), 203(b)(2)(E-13), 203(c)(2)(G-13), or
14 203(d)(2)(D-8), but not to exceed the amount of such
15 addition modification;

16 (R) An amount equal to the interest income taken
17 into account for the taxable year (net of the
18 deductions allocable thereto) with respect to
19 transactions with a foreign person who would be a
20 member of the taxpayer's unitary business group but for
21 the fact that the foreign person's business activity
22 outside the United States is 80% or more of that
23 person's total business activity, but not to exceed the
24 addition modification required to be made for the same
25 taxable year under Section 203(d)(2)(D-7) for interest
26 paid, accrued, or incurred, directly or indirectly, to
27 the same foreign person; and

28 (S) An amount equal to the income from intangible
29 property taken into account for the taxable year (net
30 of the deductions allocable thereto) with respect to
31 transactions with a foreign person who would be a
32 member of the taxpayer's unitary business group but for
33 the fact that the foreign person's business activity
34 outside the United States is 80% or more of that
35 person's total business activity, but not to exceed the
36 addition modification required to be made for the same

1 taxable year under Section 203(d)(2)(D-8) for
2 intangible expenses and costs paid, accrued, or
3 incurred, directly or indirectly, to the same foreign
4 person.

5 (e) Gross income; adjusted gross income; taxable income.

6 (1) In general. Subject to the provisions of paragraph
7 (2) and subsection (b) (3), for purposes of this Section
8 and Section 803(e), a taxpayer's gross income, adjusted
9 gross income, or taxable income for the taxable year shall
10 mean the amount of gross income, adjusted gross income or
11 taxable income properly reportable for federal income tax
12 purposes for the taxable year under the provisions of the
13 Internal Revenue Code. Taxable income may be less than
14 zero. However, for taxable years ending on or after
15 December 31, 1986, net operating loss carryforwards from
16 taxable years ending prior to December 31, 1986, may not
17 exceed the sum of federal taxable income for the taxable
18 year before net operating loss deduction, plus the excess
19 of addition modifications over subtraction modifications
20 for the taxable year. For taxable years ending prior to
21 December 31, 1986, taxable income may never be an amount in
22 excess of the net operating loss for the taxable year as
23 defined in subsections (c) and (d) of Section 172 of the
24 Internal Revenue Code, provided that when taxable income of
25 a corporation (other than a Subchapter S corporation),
26 trust, or estate is less than zero and addition
27 modifications, other than those provided by subparagraph
28 (E) of paragraph (2) of subsection (b) for corporations or
29 subparagraph (E) of paragraph (2) of subsection (c) for
30 trusts and estates, exceed subtraction modifications, an
31 addition modification must be made under those
32 subparagraphs for any other taxable year to which the
33 taxable income less than zero (net operating loss) is
34 applied under Section 172 of the Internal Revenue Code or
35 under subparagraph (E) of paragraph (2) of this subsection

1 (e) applied in conjunction with Section 172 of the Internal
2 Revenue Code.

3 (2) Special rule. For purposes of paragraph (1) of this
4 subsection, the taxable income properly reportable for
5 federal income tax purposes shall mean:

6 (A) Certain life insurance companies. In the case
7 of a life insurance company subject to the tax imposed
8 by Section 801 of the Internal Revenue Code, life
9 insurance company taxable income, plus the amount of
10 distribution from pre-1984 policyholder surplus
11 accounts as calculated under Section 815a of the
12 Internal Revenue Code;

13 (B) Certain other insurance companies. In the case
14 of mutual insurance companies subject to the tax
15 imposed by Section 831 of the Internal Revenue Code,
16 insurance company taxable income;

17 (C) Regulated investment companies. In the case of
18 a regulated investment company subject to the tax
19 imposed by Section 852 of the Internal Revenue Code,
20 investment company taxable income;

21 (D) Real estate investment trusts. In the case of a
22 real estate investment trust subject to the tax imposed
23 by Section 857 of the Internal Revenue Code, real
24 estate investment trust taxable income;

25 (E) Consolidated corporations. In the case of a
26 corporation which is a member of an affiliated group of
27 corporations filing a consolidated income tax return
28 for the taxable year for federal income tax purposes,
29 taxable income determined as if such corporation had
30 filed a separate return for federal income tax purposes
31 for the taxable year and each preceding taxable year
32 for which it was a member of an affiliated group. For
33 purposes of this subparagraph, the taxpayer's separate
34 taxable income shall be determined as if the election
35 provided by Section 243(b) (2) of the Internal Revenue
36 Code had been in effect for all such years;

1 (F) Cooperatives. In the case of a cooperative
2 corporation or association, the taxable income of such
3 organization determined in accordance with the
4 provisions of Section 1381 through 1388 of the Internal
5 Revenue Code;

6 (G) Subchapter S corporations. In the case of: (i)
7 a Subchapter S corporation for which there is in effect
8 an election for the taxable year under Section 1362 of
9 the Internal Revenue Code, the taxable income of such
10 corporation determined in accordance with Section
11 1363(b) of the Internal Revenue Code, except that
12 taxable income shall take into account those items
13 which are required by Section 1363(b)(1) of the
14 Internal Revenue Code to be separately stated; and (ii)
15 a Subchapter S corporation for which there is in effect
16 a federal election to opt out of the provisions of the
17 Subchapter S Revision Act of 1982 and have applied
18 instead the prior federal Subchapter S rules as in
19 effect on July 1, 1982, the taxable income of such
20 corporation determined in accordance with the federal
21 Subchapter S rules as in effect on July 1, 1982; and

22 (H) Partnerships. In the case of a partnership,
23 taxable income determined in accordance with Section
24 703 of the Internal Revenue Code, except that taxable
25 income shall take into account those items which are
26 required by Section 703(a)(1) to be separately stated
27 but which would be taken into account by an individual
28 in calculating his taxable income.

29 (3) Recapture of business expenses on disposition of
30 asset or business. Notwithstanding any other law to the
31 contrary, if in prior years income from an asset or
32 business has been classified as business income and in a
33 later year is demonstrated to be non-business income, then
34 all expenses, without limitation, deducted in such later
35 year and in the 2 immediately preceding taxable years
36 related to that asset or business that generated the

1 non-business income shall be added back and recaptured as
2 business income in the year of the disposition of the asset
3 or business. Such amount shall be apportioned to Illinois
4 using the greater of the apportionment fraction computed
5 for the business under Section 304 of this Act for the
6 taxable year or the average of the apportionment fractions
7 computed for the business under Section 304 of this Act for
8 the taxable year and for the 2 immediately preceding
9 taxable years.

10 (f) Valuation limitation amount.

11 (1) In general. The valuation limitation amount
12 referred to in subsections (a) (2) (G), (c) (2) (I) and
13 (d) (2) (E) is an amount equal to:

14 (A) The sum of the pre-August 1, 1969 appreciation
15 amounts (to the extent consisting of gain reportable
16 under the provisions of Section 1245 or 1250 of the
17 Internal Revenue Code) for all property in respect of
18 which such gain was reported for the taxable year; plus

19 (B) The lesser of (i) the sum of the pre-August 1,
20 1969 appreciation amounts (to the extent consisting of
21 capital gain) for all property in respect of which such
22 gain was reported for federal income tax purposes for
23 the taxable year, or (ii) the net capital gain for the
24 taxable year, reduced in either case by any amount of
25 such gain included in the amount determined under
26 subsection (a) (2) (F) or (c) (2) (H).

27 (2) Pre-August 1, 1969 appreciation amount.

28 (A) If the fair market value of property referred
29 to in paragraph (1) was readily ascertainable on August
30 1, 1969, the pre-August 1, 1969 appreciation amount for
31 such property is the lesser of (i) the excess of such
32 fair market value over the taxpayer's basis (for
33 determining gain) for such property on that date
34 (determined under the Internal Revenue Code as in
35 effect on that date), or (ii) the total gain realized
36 and reportable for federal income tax purposes in

1 respect of the sale, exchange or other disposition of
2 such property.

3 (B) If the fair market value of property referred
4 to in paragraph (1) was not readily ascertainable on
5 August 1, 1969, the pre-August 1, 1969 appreciation
6 amount for such property is that amount which bears the
7 same ratio to the total gain reported in respect of the
8 property for federal income tax purposes for the
9 taxable year, as the number of full calendar months in
10 that part of the taxpayer's holding period for the
11 property ending July 31, 1969 bears to the number of
12 full calendar months in the taxpayer's entire holding
13 period for the property.

14 (C) The Department shall prescribe such
15 regulations as may be necessary to carry out the
16 purposes of this paragraph.

17 (g) Double deductions. Unless specifically provided
18 otherwise, nothing in this Section shall permit the same item
19 to be deducted more than once.

20 (h) Legislative intention. Except as expressly provided by
21 this Section there shall be no modifications or limitations on
22 the amounts of income, gain, loss or deduction taken into
23 account in determining gross income, adjusted gross income or
24 taxable income for federal income tax purposes for the taxable
25 year, or in the amount of such items entering into the
26 computation of base income and net income under this Act for
27 such taxable year, whether in respect of property values as of
28 August 1, 1969 or otherwise.

29 (Source: P.A. 92-16, eff. 6-28-01; 92-244, eff. 8-3-01; 92-439,
30 eff. 8-17-01; 92-603, eff. 6-28-02; 92-626, eff. 7-11-02;
31 92-651, eff. 7-11-02; 92-846, eff. 8-23-02; 93-812, eff.
32 7-26-04; 93-840, eff. 7-30-04; revised 10-12-04.)

33 Section 99. Effective date. This Act takes effect upon

1 becoming law.