

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 404 as follows:

6 (35 ILCS 5/404) (from Ch. 120, par. 4-404)

7 Sec. 404. Reallocation of Items.

8 (a) If ~~it appears to~~ the Director determines that any  
9 agreement, understanding or arrangement exists between any  
10 persons which causes any person's base income allocable to this  
11 State to be improperly or inaccurately reflected, the Director  
12 may adjust ~~such~~ items of income and deduction, and any related  
13 apportionment factor taken into account in allocating that  
14 income to this State, to such extent as may reasonably be  
15 required to determine the base income of such person properly  
16 allocable to this State.

17 (b) Unless the principal purpose of the agreement,  
18 understanding, or arrangement is for the avoidance of a tax on  
19 or measured by net income imposed by any State, any adjustment  
20 under this Section must be made in accordance with Section 482  
21 of the Internal Revenue Code, as amended, and any applicable  
22 federal regulations. For any taxable year, unless established  
23 by a preponderance of the evidence to the contrary, an

1 agreement, understanding, or arrangement for the principal  
2 purpose of avoidance of a tax on or measured by net income  
3 imposed by any State is presumed to exist between one or more  
4 members of a unitary business group and a person who would be a  
5 member of that unitary business group if not for the  
6 prohibitions in item (27) of subsection (a) of Section 1501 of  
7 this Act against including in a unitary business group persons  
8 who apportion their business incomes under different  
9 subsections of Section 304 of this Act or against inclusion in  
10 any unitary business group of a person who conducts 80% or more  
11 of his or her business activity outside the United States, if  
12 that excluded person:

13 (1) has de minimis real or tangible personal property  
14 or payroll for the taxable year, as determined for purposes  
15 of subsection (a) of Section 304 of this Act;

16 (2) earns a return for the taxable year on all of its  
17 real and tangible personal property that is substantially  
18 more than the aggregate return earned by the members of the  
19 unitary business group on all of real and tangible personal  
20 property of the unitary business group; for purposes of  
21 this paragraph (2) the return on real and tangible personal  
22 property of a person for a taxable year is equal to the  
23 base income of that person for that taxable year, divided  
24 by that person's real and tangible personal property for  
25 that taxable year, as determined for purposes of subsection  
26 (a) of Section 304 of this Act; or

1           (3) conducts substantially all of its business  
2           activity, as shown by gross receipts for the taxable year,  
3           with one or more persons who are members of the unitary  
4           business group or who would be members of that unitary  
5           business group if not for the prohibitions in item (27) of  
6           subsection (a) of Section 1501 of this Act against  
7           including in a unitary business group persons who apportion  
8           their business incomes under different subsections of  
9           Section 304 of this Act or against inclusion in any unitary  
10           business group of a person that conducts 80% or more of its  
11           business activity outside the United States.

12           (c) The Director may not make an adjustment to base income  
13           under this Section that has the same effect as retroactively  
14           applying any amendments to this Act made by Public Act 93-0840,  
15           Public Act 95-0233, or Public Act 95-0707.

16           (d) Notwithstanding any other rulemaking authority that  
17           may exist, neither the Governor nor any agency or agency head  
18           under the jurisdiction of the Governor has any authority to  
19           make or promulgate rules to implement or enforce the provisions  
20           of this amendatory Act of the 95th General Assembly. If,  
21           however, the Governor believes that rules are necessary to  
22           implement or enforce the provisions of this amendatory Act of  
23           the 95th General Assembly, the Governor may suggest rules to  
24           the General Assembly by filing them with the Clerk of the House  
25           and the Secretary of the Senate and by requesting that the  
26           General Assembly authorize such rulemaking by law, enact those

1 suggested rules into law, or take any other appropriate action  
2 in the General Assembly's discretion. Nothing contained in this  
3 amendatory Act of the 95th General Assembly shall be  
4 interpreted to grant rulemaking authority under any other  
5 Illinois statute where such authority is not otherwise  
6 explicitly given. For the purposes of this paragraph, "rules"  
7 is given the meaning contained in Section 1-70 of the Illinois  
8 Administrative Procedure Act, and "agency" and "agency head"  
9 are given the meanings contained in Sections 1-20 and 1-25 of  
10 the Illinois Administrative Procedure Act to the extent that  
11 such definitions apply to agencies or agency heads under the  
12 jurisdiction of the Governor.

13 (Source: P.A. 76-261.)

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law.