

SB3257



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3257

Introduced 2/9/2010, by Sen. Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

35 ILCS 5/304

from Ch. 120, par. 3-304

Amends the Illinois Income Tax Act. With respect to the apportionment of business income for persons other than residents, provides that, for tax years ending on or after December 31, 2010, the income shall be apportioned using the property factor, payroll factor, and sales factor. Effective immediately.

LRB096 20472 HLH 36127 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 304 as follows:

6 (35 ILCS 5/304) (from Ch. 120, par. 3-304)

7 Sec. 304. Business income of persons other than residents.

8 (a) In general. The business income of a person other than
9 a resident shall be allocated to this State if such person's
10 business income is derived solely from this State. If a person
11 other than a resident derives business income from this State
12 and one or more other states, then, for tax years ending on or
13 before December 30, 1998, for taxable years ending on or after
14 December 31, 2010, and except as otherwise provided by this
15 Section, such person's business income shall be apportioned to
16 this State by multiplying the income by a fraction, the
17 numerator of which is the sum of the property factor (if any),
18 the payroll factor (if any) and 200% of the sales factor (if
19 any), and the denominator of which is 4 reduced by the number
20 of factors other than the sales factor which have a denominator
21 of zero and by an additional 2 if the sales factor has a
22 denominator of zero. For tax years ending on or after December
23 31, 1998, and except as otherwise provided by this Section,

1 persons other than residents who derive business income from
2 this State and one or more other states shall compute their
3 apportionment factor by weighting their property, payroll, and
4 sales factors as provided in subsection (h) of this Section.

5 (1) Property factor.

6 (A) The property factor is a fraction, the numerator of
7 which is the average value of the person's real and
8 tangible personal property owned or rented and used in the
9 trade or business in this State during the taxable year and
10 the denominator of which is the average value of all the
11 person's real and tangible personal property owned or
12 rented and used in the trade or business during the taxable
13 year.

14 (B) Property owned by the person is valued at its
15 original cost. Property rented by the person is valued at 8
16 times the net annual rental rate. Net annual rental rate is
17 the annual rental rate paid by the person less any annual
18 rental rate received by the person from sub-rentals.

19 (C) The average value of property shall be determined
20 by averaging the values at the beginning and ending of the
21 taxable year but the Director may require the averaging of
22 monthly values during the taxable year if reasonably
23 required to reflect properly the average value of the
24 person's property.

25 (2) Payroll factor.

26 (A) The payroll factor is a fraction, the numerator of

1 which is the total amount paid in this State during the
2 taxable year by the person for compensation, and the
3 denominator of which is the total compensation paid
4 everywhere during the taxable year.

5 (B) Compensation is paid in this State if:

6 (i) The individual's service is performed entirely
7 within this State;

8 (ii) The individual's service is performed both
9 within and without this State, but the service
10 performed without this State is incidental to the
11 individual's service performed within this State; or

12 (iii) Some of the service is performed within this
13 State and either the base of operations, or if there is
14 no base of operations, the place from which the service
15 is directed or controlled is within this State, or the
16 base of operations or the place from which the service
17 is directed or controlled is not in any state in which
18 some part of the service is performed, but the
19 individual's residence is in this State.

20 (iv) Compensation paid to nonresident professional
21 athletes.

22 (a) General. The Illinois source income of a
23 nonresident individual who is a member of a
24 professional athletic team includes the portion of the
25 individual's total compensation for services performed
26 as a member of a professional athletic team during the

1 taxable year which the number of duty days spent within
2 this State performing services for the team in any
3 manner during the taxable year bears to the total
4 number of duty days spent both within and without this
5 State during the taxable year.

6 (b) Travel days. Travel days that do not involve
7 either a game, practice, team meeting, or other similar
8 team event are not considered duty days spent in this
9 State. However, such travel days are considered in the
10 total duty days spent both within and without this
11 State.

12 (c) Definitions. For purposes of this subpart
13 (iv):

14 (1) The term "professional athletic team"
15 includes, but is not limited to, any professional
16 baseball, basketball, football, soccer, or hockey
17 team.

18 (2) The term "member of a professional
19 athletic team" includes those employees who are
20 active players, players on the disabled list, and
21 any other persons required to travel and who travel
22 with and perform services on behalf of a
23 professional athletic team on a regular basis.
24 This includes, but is not limited to, coaches,
25 managers, and trainers.

26 (3) Except as provided in items (C) and (D) of

1 this subpart (3), the term "duty days" means all
2 days during the taxable year from the beginning of
3 the professional athletic team's official
4 pre-season training period through the last game
5 in which the team competes or is scheduled to
6 compete. Duty days shall be counted for the year in
7 which they occur, including where a team's
8 official pre-season training period through the
9 last game in which the team competes or is
10 scheduled to compete, occurs during more than one
11 tax year.

12 (A) Duty days shall also include days on
13 which a member of a professional athletic team
14 performs service for a team on a date that does
15 not fall within the foregoing period (e.g.,
16 participation in instructional leagues, the
17 "All Star Game", or promotional "caravans").
18 Performing a service for a professional
19 athletic team includes conducting training and
20 rehabilitation activities, when such
21 activities are conducted at team facilities.

22 (B) Also included in duty days are game
23 days, practice days, days spent at team
24 meetings, promotional caravans, preseason
25 training camps, and days served with the team
26 through all post-season games in which the team

1 competes or is scheduled to compete.

2 (C) Duty days for any person who joins a
3 team during the period from the beginning of
4 the professional athletic team's official
5 pre-season training period through the last
6 game in which the team competes, or is
7 scheduled to compete, shall begin on the day
8 that person joins the team. Conversely, duty
9 days for any person who leaves a team during
10 this period shall end on the day that person
11 leaves the team. Where a person switches teams
12 during a taxable year, a separate duty-day
13 calculation shall be made for the period the
14 person was with each team.

15 (D) Days for which a member of a
16 professional athletic team is not compensated
17 and is not performing services for the team in
18 any manner, including days when such member of
19 a professional athletic team has been
20 suspended without pay and prohibited from
21 performing any services for the team, shall not
22 be treated as duty days.

23 (E) Days for which a member of a
24 professional athletic team is on the disabled
25 list and does not conduct rehabilitation
26 activities at facilities of the team, and is

1 not otherwise performing services for the team
2 in Illinois, shall not be considered duty days
3 spent in this State. All days on the disabled
4 list, however, are considered to be included in
5 total duty days spent both within and without
6 this State.

7 (4) The term "total compensation for services
8 performed as a member of a professional athletic
9 team" means the total compensation received during
10 the taxable year for services performed:

11 (A) from the beginning of the official
12 pre-season training period through the last
13 game in which the team competes or is scheduled
14 to compete during that taxable year; and

15 (B) during the taxable year on a date which
16 does not fall within the foregoing period
17 (e.g., participation in instructional leagues,
18 the "All Star Game", or promotional caravans).

19 This compensation shall include, but is not
20 limited to, salaries, wages, bonuses as described
21 in this subpart, and any other type of compensation
22 paid during the taxable year to a member of a
23 professional athletic team for services performed
24 in that year. This compensation does not include
25 strike benefits, severance pay, termination pay,
26 contract or option year buy-out payments,

1 expansion or relocation payments, or any other
2 payments not related to services performed for the
3 team.

4 For purposes of this subparagraph, "bonuses"
5 included in "total compensation for services
6 performed as a member of a professional athletic
7 team" subject to the allocation described in
8 Section 302(c)(1) are: bonuses earned as a result
9 of play (i.e., performance bonuses) during the
10 season, including bonuses paid for championship,
11 playoff or "bowl" games played by a team, or for
12 selection to all-star league or other honorary
13 positions; and bonuses paid for signing a
14 contract, unless the payment of the signing bonus
15 is not conditional upon the signee playing any
16 games for the team or performing any subsequent
17 services for the team or even making the team, the
18 signing bonus is payable separately from the
19 salary and any other compensation, and the signing
20 bonus is nonrefundable.

21 (3) Sales factor.

22 (A) The sales factor is a fraction, the numerator of
23 which is the total sales of the person in this State during
24 the taxable year, and the denominator of which is the total
25 sales of the person everywhere during the taxable year.

26 (B) Sales of tangible personal property are in this

1 State if:

2 (i) The property is delivered or shipped to a
3 purchaser, other than the United States government,
4 within this State regardless of the f. o. b. point or
5 other conditions of the sale; or

6 (ii) The property is shipped from an office, store,
7 warehouse, factory or other place of storage in this
8 State and either the purchaser is the United States
9 government or the person is not taxable in the state of
10 the purchaser; provided, however, that premises owned
11 or leased by a person who has independently contracted
12 with the seller for the printing of newspapers,
13 periodicals or books shall not be deemed to be an
14 office, store, warehouse, factory or other place of
15 storage for purposes of this Section. Sales of tangible
16 personal property are not in this State if the seller
17 and purchaser would be members of the same unitary
18 business group but for the fact that either the seller
19 or purchaser is a person with 80% or more of total
20 business activity outside of the United States and the
21 property is purchased for resale.

22 (B-1) Patents, copyrights, trademarks, and similar
23 items of intangible personal property.

24 (i) Gross receipts from the licensing, sale, or
25 other disposition of a patent, copyright, trademark,
26 or similar item of intangible personal property, other

1 than gross receipts governed by paragraph (B-7) of this
2 item (3), are in this State to the extent the item is
3 utilized in this State during the year the gross
4 receipts are included in gross income.

5 (ii) Place of utilization.

6 (I) A patent is utilized in a state to the
7 extent that it is employed in production,
8 fabrication, manufacturing, or other processing in
9 the state or to the extent that a patented product
10 is produced in the state. If a patent is utilized
11 in more than one state, the extent to which it is
12 utilized in any one state shall be a fraction equal
13 to the gross receipts of the licensee or purchaser
14 from sales or leases of items produced,
15 fabricated, manufactured, or processed within that
16 state using the patent and of patented items
17 produced within that state, divided by the total of
18 such gross receipts for all states in which the
19 patent is utilized.

20 (II) A copyright is utilized in a state to the
21 extent that printing or other publication
22 originates in the state. If a copyright is utilized
23 in more than one state, the extent to which it is
24 utilized in any one state shall be a fraction equal
25 to the gross receipts from sales or licenses of
26 materials printed or published in that state

1 divided by the total of such gross receipts for all
2 states in which the copyright is utilized.

3 (III) Trademarks and other items of intangible
4 personal property governed by this paragraph (B-1)
5 are utilized in the state in which the commercial
6 domicile of the licensee or purchaser is located.

7 (iii) If the state of utilization of an item of
8 property governed by this paragraph (B-1) cannot be
9 determined from the taxpayer's books and records or
10 from the books and records of any person related to the
11 taxpayer within the meaning of Section 267(b) of the
12 Internal Revenue Code, 26 U.S.C. 267, the gross
13 receipts attributable to that item shall be excluded
14 from both the numerator and the denominator of the
15 sales factor.

16 (B-2) Gross receipts from the license, sale, or other
17 disposition of patents, copyrights, trademarks, and
18 similar items of intangible personal property, other than
19 gross receipts governed by paragraph (B-7) of this item
20 (3), may be included in the numerator or denominator of the
21 sales factor only if gross receipts from licenses, sales,
22 or other disposition of such items comprise more than 50%
23 of the taxpayer's total gross receipts included in gross
24 income during the tax year and during each of the 2
25 immediately preceding tax years; provided that, when a
26 taxpayer is a member of a unitary business group, such

1 determination shall be made on the basis of the gross
2 receipts of the entire unitary business group.

3 (B-5) For taxable years ending on or after December 31,
4 2008, except as provided in subsections (ii) through (vii),
5 receipts from the sale of telecommunications service or
6 mobile telecommunications service are in this State if the
7 customer's service address is in this State.

8 (i) For purposes of this subparagraph (B-5), the
9 follow terms have the following meanings:

10 "Ancillary services" means services that are
11 associated with or incidental to the provision of
12 "telecommunications services", including but not
13 limited to "detailed telecommunications billing",
14 "directory assistance", "vertical service", and "voice
15 mail services".

16 "Air-to-Ground Radiotelephone service" means a
17 radio service, as that term is defined in 47 CFR 22.99,
18 in which common carriers are authorized to offer and
19 provide radio telecommunications service for hire to
20 subscribers in aircraft.

21 "Call-by-call Basis" means any method of charging
22 for telecommunications services where the price is
23 measured by individual calls.

24 "Communications Channel" means a physical or
25 virtual path of communications over which signals are
26 transmitted between or among customer channel

1 termination points.

2 "Conference bridging service" means an "ancillary
3 service" that links two or more participants of an
4 audio or video conference call and may include the
5 provision of a telephone number. "Conference bridging
6 service" does not include the "telecommunications
7 services" used to reach the conference bridge.

8 "Customer Channel Termination Point" means the
9 location where the customer either inputs or receives
10 the communications.

11 "Detailed telecommunications billing service"
12 means an "ancillary service" of separately stating
13 information pertaining to individual calls on a
14 customer's billing statement.

15 "Directory assistance" means an "ancillary
16 service" of providing telephone number information,
17 and/or address information.

18 "Home service provider" means the facilities based
19 carrier or reseller with which the customer contracts
20 for the provision of mobile telecommunications
21 services.

22 "Mobile telecommunications service" means
23 commercial mobile radio service, as defined in Section
24 20.3 of Title 47 of the Code of Federal Regulations as
25 in effect on June 1, 1999.

26 "Place of primary use" means the street address

1 representative of where the customer's use of the
2 telecommunications service primarily occurs, which
3 must be the residential street address or the primary
4 business street address of the customer. In the case of
5 mobile telecommunications services, "place of primary
6 use" must be within the licensed service area of the
7 home service provider.

8 "Post-paid telecommunication service" means the
9 telecommunications service obtained by making a
10 payment on a call-by-call basis either through the use
11 of a credit card or payment mechanism such as a bank
12 card, travel card, credit card, or debit card, or by
13 charge made to a telephone number which is not
14 associated with the origination or termination of the
15 telecommunications service. A post-paid calling
16 service includes telecommunications service, except a
17 prepaid wireless calling service, that would be a
18 prepaid calling service except it is not exclusively a
19 telecommunication service.

20 "Prepaid telecommunication service" means the
21 right to access exclusively telecommunications
22 services, which must be paid for in advance and which
23 enables the origination of calls using an access number
24 or authorization code, whether manually or
25 electronically dialed, and that is sold in
26 predetermined units or dollars of which the number

1 declines with use in a known amount.

2 "Prepaid Mobile telecommunication service" means a
3 telecommunications service that provides the right to
4 utilize mobile wireless service as well as other
5 non-telecommunication services, including but not
6 limited to ancillary services, which must be paid for
7 in advance that is sold in predetermined units or
8 dollars of which the number declines with use in a
9 known amount.

10 "Private communication service" means a
11 telecommunication service that entitles the customer
12 to exclusive or priority use of a communications
13 channel or group of channels between or among
14 termination points, regardless of the manner in which
15 such channel or channels are connected, and includes
16 switching capacity, extension lines, stations, and any
17 other associated services that are provided in
18 connection with the use of such channel or channels.

19 "Service address" means:

20 (a) The location of the telecommunications
21 equipment to which a customer's call is charged and
22 from which the call originates or terminates,
23 regardless of where the call is billed or paid;

24 (b) If the location in line (a) is not known,
25 service address means the origination point of the
26 signal of the telecommunications services first

1 identified by either the seller's
2 telecommunications system or in information
3 received by the seller from its service provider
4 where the system used to transport such signals is
5 not that of the seller; and

6 (c) If the locations in line (a) and line (b)
7 are not known, the service address means the
8 location of the customer's place of primary use.

9 "Telecommunications service" means the electronic
10 transmission, conveyance, or routing of voice, data,
11 audio, video, or any other information or signals to a
12 point, or between or among points. The term
13 "telecommunications service" includes such
14 transmission, conveyance, or routing in which computer
15 processing applications are used to act on the form,
16 code or protocol of the content for purposes of
17 transmission, conveyance or routing without regard to
18 whether such service is referred to as voice over
19 Internet protocol services or is classified by the
20 Federal Communications Commission as enhanced or value
21 added. "Telecommunications service" does not include:

22 (a) Data processing and information services
23 that allow data to be generated, acquired, stored,
24 processed, or retrieved and delivered by an
25 electronic transmission to a purchaser when such
26 purchaser's primary purpose for the underlying

1 transaction is the processed data or information;

2 (b) Installation or maintenance of wiring or
3 equipment on a customer's premises;

4 (c) Tangible personal property;

5 (d) Advertising, including but not limited to
6 directory advertising.

7 (e) Billing and collection services provided
8 to third parties;

9 (f) Internet access service;

10 (g) Radio and television audio and video
11 programming services, regardless of the medium,
12 including the furnishing of transmission,
13 conveyance and routing of such services by the
14 programming service provider. Radio and television
15 audio and video programming services shall include
16 but not be limited to cable service as defined in
17 47 USC 522(6) and audio and video programming
18 services delivered by commercial mobile radio
19 service providers, as defined in 47 CFR 20.3;

20 (h) "Ancillary services"; or

21 (i) Digital products "delivered
22 electronically", including but not limited to
23 software, music, video, reading materials or ring
24 tones.

25 "Vertical service" means an "ancillary service"
26 that is offered in connection with one or more

1 "telecommunications services", which offers advanced
2 calling features that allow customers to identify
3 callers and to manage multiple calls and call
4 connections, including "conference bridging services".

5 "Voice mail service" means an "ancillary service"
6 that enables the customer to store, send or receive
7 recorded messages. "Voice mail service" does not
8 include any "vertical services" that the customer may
9 be required to have in order to utilize the "voice mail
10 service".

11 (ii) Receipts from the sale of telecommunications
12 service sold on an individual call-by-call basis are in
13 this State if either of the following applies:

14 (a) The call both originates and terminates in
15 this State.

16 (b) The call either originates or terminates
17 in this State and the service address is located in
18 this State.

19 (iii) Receipts from the sale of postpaid
20 telecommunications service at retail are in this State
21 if the origination point of the telecommunication
22 signal, as first identified by the service provider's
23 telecommunication system or as identified by
24 information received by the seller from its service
25 provider if the system used to transport
26 telecommunication signals is not the seller's, is

1 located in this State.

2 (iv) Receipts from the sale of prepaid
3 telecommunications service or prepaid mobile
4 telecommunications service at retail are in this State
5 if the purchaser obtains the prepaid card or similar
6 means of conveyance at a location in this State.
7 Receipts from recharging a prepaid telecommunications
8 service or mobile telecommunications service is in
9 this State if the purchaser's billing information
10 indicates a location in this State.

11 (v) Receipts from the sale of private
12 communication services are in this State as follows:

13 (a) 100% of receipts from charges imposed at
14 each channel termination point in this State.

15 (b) 100% of receipts from charges for the total
16 channel mileage between each channel termination
17 point in this State.

18 (c) 50% of the total receipts from charges for
19 service segments when those segments are between 2
20 customer channel termination points, 1 of which is
21 located in this State and the other is located
22 outside of this State, which segments are
23 separately charged.

24 (d) The receipts from charges for service
25 segments with a channel termination point located
26 in this State and in two or more other states, and

1 which segments are not separately billed, are in
2 this State based on a percentage determined by
3 dividing the number of customer channel
4 termination points in this State by the total
5 number of customer channel termination points.

6 (vi) Receipts from charges for ancillary services
7 for telecommunications service sold to customers at
8 retail are in this State if the customer's primary
9 place of use of telecommunications services associated
10 with those ancillary services is in this State. If the
11 seller of those ancillary services cannot determine
12 where the associated telecommunications are located,
13 then the ancillary services shall be based on the
14 location of the purchaser.

15 (vii) Receipts to access a carrier's network or
16 from the sale of telecommunication services or
17 ancillary services for resale are in this State as
18 follows:

19 (a) 100% of the receipts from access fees
20 attributable to intrastate telecommunications
21 service that both originates and terminates in
22 this State.

23 (b) 50% of the receipts from access fees
24 attributable to interstate telecommunications
25 service if the interstate call either originates
26 or terminates in this State.

1 (c) 100% of the receipts from interstate end
2 user access line charges, if the customer's
3 service address is in this State. As used in this
4 subdivision, "interstate end user access line
5 charges" includes, but is not limited to, the
6 surcharge approved by the federal communications
7 commission and levied pursuant to 47 CFR 69.

8 (d) Gross receipts from sales of
9 telecommunication services or from ancillary
10 services for telecommunications services sold to
11 other telecommunication service providers for
12 resale shall be sourced to this State using the
13 apportionment concepts used for non-resale
14 receipts of telecommunications services if the
15 information is readily available to make that
16 determination. If the information is not readily
17 available, then the taxpayer may use any other
18 reasonable and consistent method.

19 (B-7) For taxable years ending on or after December 31,
20 2008, receipts from the sale of broadcasting services are
21 in this State if the broadcasting services are received in
22 this State. For purposes of this paragraph (B-7), the
23 following terms have the following meanings:

24 "Advertising revenue" means consideration received
25 by the taxpayer in exchange for broadcasting services
26 or allowing the broadcasting of commercials or

1 announcements in connection with the broadcasting of
2 film or radio programming, from sponsorships of the
3 programming, or from product placements in the
4 programming.

5 "Audience factor" means the ratio that the
6 audience or subscribers located in this State of a
7 station, a network, or a cable system bears to the
8 total audience or total subscribers for that station,
9 network, or cable system. The audience factor for film
10 or radio programming shall be determined by reference
11 to the books and records of the taxpayer or by
12 reference to published rating statistics provided the
13 method used by the taxpayer is consistently used from
14 year to year for this purpose and fairly represents the
15 taxpayer's activity in this State.

16 "Broadcast" or "broadcasting" or "broadcasting
17 services" means the transmission or provision of film
18 or radio programming, whether through the public
19 airwaves, by cable, by direct or indirect satellite
20 transmission, or by any other means of communication,
21 either through a station, a network, or a cable system.

22 "Film" or "film programming" means the broadcast
23 on television of any and all performances, events, or
24 productions, including but not limited to news,
25 sporting events, plays, stories, or other literary,
26 commercial, educational, or artistic works, either

1 live or through the use of video tape, disc, or any
2 other type of format or medium. Each episode of a
3 series of films produced for television shall
4 constitute separate "film" notwithstanding that the
5 series relates to the same principal subject and is
6 produced during one or more tax periods.

7 "Radio" or "radio programming" means the broadcast
8 on radio of any and all performances, events, or
9 productions, including but not limited to news,
10 sporting events, plays, stories, or other literary,
11 commercial, educational, or artistic works, either
12 live or through the use of an audio tape, disc, or any
13 other format or medium. Each episode in a series of
14 radio programming produced for radio broadcast shall
15 constitute a separate "radio programming"
16 notwithstanding that the series relates to the same
17 principal subject and is produced during one or more
18 tax periods.

19 (i) In the case of advertising revenue from
20 broadcasting, the customer is the advertiser and
21 the service is received in this State if the
22 commercial domicile of the advertiser is in this
23 State.

24 (ii) In the case where film or radio
25 programming is broadcast by a station, a network,
26 or a cable system for a fee or other remuneration

1 received from the recipient of the broadcast, the
2 portion of the service that is received in this
3 State is measured by the portion of the recipients
4 of the broadcast located in this State.
5 Accordingly, the fee or other remuneration for
6 such service that is included in the Illinois
7 numerator of the sales factor is the total of those
8 fees or other remuneration received from
9 recipients in Illinois. For purposes of this
10 paragraph, a taxpayer may determine the location
11 of the recipients of its broadcast using the
12 address of the recipient shown in its contracts
13 with the recipient or using the billing address of
14 the recipient in the taxpayer's records.

15 (iii) In the case where film or radio
16 programming is broadcast by a station, a network,
17 or a cable system for a fee or other remuneration
18 from the person providing the programming, the
19 portion of the broadcast service that is received
20 by such station, network, or cable system in this
21 State is measured by the portion of recipients of
22 the broadcast located in this State. Accordingly,
23 the amount of revenue related to such an
24 arrangement that is included in the Illinois
25 numerator of the sales factor is the total fee or
26 other total remuneration from the person providing

1 the programming related to that broadcast
2 multiplied by the Illinois audience factor for
3 that broadcast.

4 (iv) In the case where film or radio
5 programming is provided by a taxpayer that is a
6 network or station to a customer for broadcast in
7 exchange for a fee or other remuneration from that
8 customer the broadcasting service is received at
9 the location of the office of the customer from
10 which the services were ordered in the regular
11 course of the customer's trade or business.
12 Accordingly, in such a case the revenue derived by
13 the taxpayer that is included in the taxpayer's
14 Illinois numerator of the sales factor is the
15 revenue from such customers who receive the
16 broadcasting service in Illinois.

17 (v) In the case where film or radio programming
18 is provided by a taxpayer that is not a network or
19 station to another person for broadcasting in
20 exchange for a fee or other remuneration from that
21 person, the broadcasting service is received at
22 the location of the office of the customer from
23 which the services were ordered in the regular
24 course of the customer's trade or business.
25 Accordingly, in such a case the revenue derived by
26 the taxpayer that is included in the taxpayer's

1 Illinois numerator of the sales factor is the
2 revenue from such customers who receive the
3 broadcasting service in Illinois.

4 (C) For taxable years ending before December 31, 2008,
5 sales, other than sales governed by paragraphs (B), (B-1),
6 and (B-2), are in this State if:

7 (i) The income-producing activity is performed in
8 this State; or

9 (ii) The income-producing activity is performed
10 both within and without this State and a greater
11 proportion of the income-producing activity is
12 performed within this State than without this State,
13 based on performance costs.

14 (C-5) For taxable years ending on or after December 31,
15 2008, sales, other than sales governed by paragraphs (B),
16 (B-1), (B-2), (B-5), and (B-7), are in this State if any of
17 the following criteria are met:

18 (i) Sales from the sale or lease of real property
19 are in this State if the property is located in this
20 State.

21 (ii) Sales from the lease or rental of tangible
22 personal property are in this State if the property is
23 located in this State during the rental period. Sales
24 from the lease or rental of tangible personal property
25 that is characteristically moving property, including,
26 but not limited to, motor vehicles, rolling stock,

1 aircraft, vessels, or mobile equipment are in this
2 State to the extent that the property is used in this
3 State.

4 (iii) In the case of interest, net gains (but not
5 less than zero) and other items of income from
6 intangible personal property, the sale is in this State
7 if:

8 (a) in the case of a taxpayer who is a dealer
9 in the item of intangible personal property within
10 the meaning of Section 475 of the Internal Revenue
11 Code, the income or gain is received from a
12 customer in this State. For purposes of this
13 subparagraph, a customer is in this State if the
14 customer is an individual, trust or estate who is a
15 resident of this State and, for all other
16 customers, if the customer's commercial domicile
17 is in this State. Unless the dealer has actual
18 knowledge of the residence or commercial domicile
19 of a customer during a taxable year, the customer
20 shall be deemed to be a customer in this State if
21 the billing address of the customer, as shown in
22 the records of the dealer, is in this State; or

23 (b) in all other cases, if the
24 income-producing activity of the taxpayer is
25 performed in this State or, if the
26 income-producing activity of the taxpayer is

1 performed both within and without this State, if a
2 greater proportion of the income-producing
3 activity of the taxpayer is performed within this
4 State than in any other state, based on performance
5 costs.

6 (iv) Sales of services are in this State if the
7 services are received in this State. For the purposes
8 of this section, gross receipts from the performance of
9 services provided to a corporation, partnership, or
10 trust may only be attributed to a state where that
11 corporation, partnership, or trust has a fixed place of
12 business. If the state where the services are received
13 is not readily determinable or is a state where the
14 corporation, partnership, or trust receiving the
15 service does not have a fixed place of business, the
16 services shall be deemed to be received at the location
17 of the office of the customer from which the services
18 were ordered in the regular course of the customer's
19 trade or business. If the ordering office cannot be
20 determined, the services shall be deemed to be received
21 at the office of the customer to which the services are
22 billed. If the taxpayer is not taxable in the state in
23 which the services are received, the sale must be
24 excluded from both the numerator and the denominator of
25 the sales factor. The Department shall adopt rules
26 prescribing where specific types of service are

1 received, including, but not limited to, publishing,
2 and utility service.

3 (D) For taxable years ending on or after December 31,
4 1995, the following items of income shall not be included
5 in the numerator or denominator of the sales factor:
6 dividends; amounts included under Section 78 of the
7 Internal Revenue Code; and Subpart F income as defined in
8 Section 952 of the Internal Revenue Code. No inference
9 shall be drawn from the enactment of this paragraph (D) in
10 construing this Section for taxable years ending before
11 December 31, 1995.

12 (E) Paragraphs (B-1) and (B-2) shall apply to tax years
13 ending on or after December 31, 1999, provided that a
14 taxpayer may elect to apply the provisions of these
15 paragraphs to prior tax years. Such election shall be made
16 in the form and manner prescribed by the Department, shall
17 be irrevocable, and shall apply to all tax years; provided
18 that, if a taxpayer's Illinois income tax liability for any
19 tax year, as assessed under Section 903 prior to January 1,
20 1999, was computed in a manner contrary to the provisions
21 of paragraphs (B-1) or (B-2), no refund shall be payable to
22 the taxpayer for that tax year to the extent such refund is
23 the result of applying the provisions of paragraph (B-1) or
24 (B-2) retroactively. In the case of a unitary business
25 group, such election shall apply to all members of such
26 group for every tax year such group is in existence, but

1 shall not apply to any taxpayer for any period during which
2 that taxpayer is not a member of such group.

3 (b) Insurance companies.

4 (1) In general. Except as otherwise provided by
5 paragraph (2), business income of an insurance company for
6 a taxable year shall be apportioned to this State by
7 multiplying such income by a fraction, the numerator of
8 which is the direct premiums written for insurance upon
9 property or risk in this State, and the denominator of
10 which is the direct premiums written for insurance upon
11 property or risk everywhere. For purposes of this
12 subsection, the term "direct premiums written" means the
13 total amount of direct premiums written, assessments and
14 annuity considerations as reported for the taxable year on
15 the annual statement filed by the company with the Illinois
16 Director of Insurance in the form approved by the National
17 Convention of Insurance Commissioners or such other form as
18 may be prescribed in lieu thereof.

19 (2) Reinsurance. If the principal source of premiums
20 written by an insurance company consists of premiums for
21 reinsurance accepted by it, the business income of such
22 company shall be apportioned to this State by multiplying
23 such income by a fraction, the numerator of which is the
24 sum of (i) direct premiums written for insurance upon
25 property or risk in this State, plus (ii) premiums written
26 for reinsurance accepted in respect of property or risk in

1 this State, and the denominator of which is the sum of
2 (iii) direct premiums written for insurance upon property
3 or risk everywhere, plus (iv) premiums written for
4 reinsurance accepted in respect of property or risk
5 everywhere. For taxable years ending before December 31,
6 2008, for purposes of this paragraph, premiums written for
7 reinsurance accepted in respect of property or risk in this
8 State, whether or not otherwise determinable, may, at the
9 election of the company, be determined on the basis of the
10 proportion which premiums written for reinsurance accepted
11 from companies commercially domiciled in Illinois bears to
12 premiums written for reinsurance accepted from all
13 sources, or, alternatively, in the proportion which the sum
14 of the direct premiums written for insurance upon property
15 or risk in this State by each ceding company from which
16 reinsurance is accepted bears to the sum of the total
17 direct premiums written by each such ceding company for the
18 taxable year.

19 (c) Financial organizations.

20 (1) In general. For taxable years ending before
21 December 31, 2008, business income of a financial
22 organization shall be apportioned to this State by
23 multiplying such income by a fraction, the numerator of
24 which is its business income from sources within this
25 State, and the denominator of which is its business income
26 from all sources. For the purposes of this subsection, the

1 business income of a financial organization from sources
2 within this State is the sum of the amounts referred to in
3 subparagraphs (A) through (E) following, but excluding the
4 adjusted income of an international banking facility as
5 determined in paragraph (2):

6 (A) Fees, commissions or other compensation for
7 financial services rendered within this State;

8 (B) Gross profits from trading in stocks, bonds or
9 other securities managed within this State;

10 (C) Dividends, and interest from Illinois
11 customers, which are received within this State;

12 (D) Interest charged to customers at places of
13 business maintained within this State for carrying
14 debit balances of margin accounts, without deduction
15 of any costs incurred in carrying such accounts; and

16 (E) Any other gross income resulting from the
17 operation as a financial organization within this
18 State. In computing the amounts referred to in
19 paragraphs (A) through (E) of this subsection, any
20 amount received by a member of an affiliated group
21 (determined under Section 1504(a) of the Internal
22 Revenue Code but without reference to whether any such
23 corporation is an "includible corporation" under
24 Section 1504(b) of the Internal Revenue Code) from
25 another member of such group shall be included only to
26 the extent such amount exceeds expenses of the

1 recipient directly related thereto.

2 (2) International Banking Facility. For taxable years
3 ending before December 31, 2008:

4 (A) Adjusted Income. The adjusted income of an
5 international banking facility is its income reduced
6 by the amount of the floor amount.

7 (B) Floor Amount. The floor amount shall be the
8 amount, if any, determined by multiplying the income of
9 the international banking facility by a fraction, not
10 greater than one, which is determined as follows:

11 (i) The numerator shall be:

12 The average aggregate, determined on a
13 quarterly basis, of the financial organization's
14 loans to banks in foreign countries, to foreign
15 domiciled borrowers (except where secured
16 primarily by real estate) and to foreign
17 governments and other foreign official
18 institutions, as reported for its branches,
19 agencies and offices within the state on its
20 "Consolidated Report of Condition", Schedule A,
21 Lines 2.c., 5.b., and 7.a., which was filed with
22 the Federal Deposit Insurance Corporation and
23 other regulatory authorities, for the year 1980,
24 minus

25 The average aggregate, determined on a
26 quarterly basis, of such loans (other than loans of

1 an international banking facility), as reported by
2 the financial institution for its branches,
3 agencies and offices within the state, on the
4 corresponding Schedule and lines of the
5 Consolidated Report of Condition for the current
6 taxable year, provided, however, that in no case
7 shall the amount determined in this clause (the
8 subtrahend) exceed the amount determined in the
9 preceding clause (the minuend); and

10 (ii) the denominator shall be the average
11 aggregate, determined on a quarterly basis, of the
12 international banking facility's loans to banks in
13 foreign countries, to foreign domiciled borrowers
14 (except where secured primarily by real estate)
15 and to foreign governments and other foreign
16 official institutions, which were recorded in its
17 financial accounts for the current taxable year.

18 (C) Change to Consolidated Report of Condition and
19 in Qualification. In the event the Consolidated Report
20 of Condition which is filed with the Federal Deposit
21 Insurance Corporation and other regulatory authorities
22 is altered so that the information required for
23 determining the floor amount is not found on Schedule
24 A, lines 2.c., 5.b. and 7.a., the financial institution
25 shall notify the Department and the Department may, by
26 regulations or otherwise, prescribe or authorize the

1 use of an alternative source for such information. The
2 financial institution shall also notify the Department
3 should its international banking facility fail to
4 qualify as such, in whole or in part, or should there
5 be any amendment or change to the Consolidated Report
6 of Condition, as originally filed, to the extent such
7 amendment or change alters the information used in
8 determining the floor amount.

9 (3) For taxable years ending on or after December 31,
10 2008, the business income of a financial organization shall
11 be apportioned to this State by multiplying such income by
12 a fraction, the numerator of which is its gross receipts
13 from sources in this State or otherwise attributable to
14 this State's marketplace and the denominator of which is
15 its gross receipts everywhere during the taxable year.
16 "Gross receipts" for purposes of this subparagraph (3)
17 means gross income, including net taxable gain on
18 disposition of assets, including securities and money
19 market instruments, when derived from transactions and
20 activities in the regular course of the financial
21 organization's trade or business. The following examples
22 are illustrative:

23 (i) Receipts from the lease or rental of real or
24 tangible personal property are in this State if the
25 property is located in this State during the rental
26 period. Receipts from the lease or rental of tangible

1 personal property that is characteristically moving
2 property, including, but not limited to, motor
3 vehicles, rolling stock, aircraft, vessels, or mobile
4 equipment are from sources in this State to the extent
5 that the property is used in this State.

6 (ii) Interest income, commissions, fees, gains on
7 disposition, and other receipts from assets in the
8 nature of loans that are secured primarily by real
9 estate or tangible personal property are from sources
10 in this State if the security is located in this State.

11 (iii) Interest income, commissions, fees, gains on
12 disposition, and other receipts from consumer loans
13 that are not secured by real or tangible personal
14 property are from sources in this State if the debtor
15 is a resident of this State.

16 (iv) Interest income, commissions, fees, gains on
17 disposition, and other receipts from commercial loans
18 and installment obligations that are not secured by
19 real or tangible personal property are from sources in
20 this State if the proceeds of the loan are to be
21 applied in this State. If it cannot be determined where
22 the funds are to be applied, the income and receipts
23 are from sources in this State if the office of the
24 borrower from which the loan was negotiated in the
25 regular course of business is located in this State. If
26 the location of this office cannot be determined, the

1 income and receipts shall be excluded from the
2 numerator and denominator of the sales factor.

3 (v) Interest income, fees, gains on disposition,
4 service charges, merchant discount income, and other
5 receipts from credit card receivables are from sources
6 in this State if the card charges are regularly billed
7 to a customer in this State.

8 (vi) Receipts from the performance of services,
9 including, but not limited to, fiduciary, advisory,
10 and brokerage services, are in this State if the
11 services are received in this State within the meaning
12 of subparagraph (a) (3) (C-5) (iv) of this Section.

13 (vii) Receipts from the issuance of travelers
14 checks and money orders are from sources in this State
15 if the checks and money orders are issued from a
16 location within this State.

17 (viii) Receipts from investment assets and
18 activities and trading assets and activities are
19 included in the receipts factor as follows:

20 (1) Interest, dividends, net gains (but not
21 less than zero) and other income from investment
22 assets and activities from trading assets and
23 activities shall be included in the receipts
24 factor. Investment assets and activities and
25 trading assets and activities include but are not
26 limited to: investment securities; trading account

1 assets; federal funds; securities purchased and
2 sold under agreements to resell or repurchase;
3 options; futures contracts; forward contracts;
4 notional principal contracts such as swaps;
5 equities; and foreign currency transactions. With
6 respect to the investment and trading assets and
7 activities described in subparagraphs (A) and (B)
8 of this paragraph, the receipts factor shall
9 include the amounts described in such
10 subparagraphs.

11 (A) The receipts factor shall include the
12 amount by which interest from federal funds
13 sold and securities purchased under resale
14 agreements exceeds interest expense on federal
15 funds purchased and securities sold under
16 repurchase agreements.

17 (B) The receipts factor shall include the
18 amount by which interest, dividends, gains and
19 other income from trading assets and
20 activities, including but not limited to
21 assets and activities in the matched book, in
22 the arbitrage book, and foreign currency
23 transactions, exceed amounts paid in lieu of
24 interest, amounts paid in lieu of dividends,
25 and losses from such assets and activities.

26 (2) The numerator of the receipts factor

1 includes interest, dividends, net gains (but not
2 less than zero), and other income from investment
3 assets and activities and from trading assets and
4 activities described in paragraph (1) of this
5 subsection that are attributable to this State.

6 (A) The amount of interest, dividends, net
7 gains (but not less than zero), and other
8 income from investment assets and activities
9 in the investment account to be attributed to
10 this State and included in the numerator is
11 determined by multiplying all such income from
12 such assets and activities by a fraction, the
13 numerator of which is the gross income from
14 such assets and activities which are properly
15 assigned to a fixed place of business of the
16 taxpayer within this State and the denominator
17 of which is the gross income from all such
18 assets and activities.

19 (B) The amount of interest from federal
20 funds sold and purchased and from securities
21 purchased under resale agreements and
22 securities sold under repurchase agreements
23 attributable to this State and included in the
24 numerator is determined by multiplying the
25 amount described in subparagraph (A) of
26 paragraph (1) of this subsection from such

1 funds and such securities by a fraction, the
2 numerator of which is the gross income from
3 such funds and such securities which are
4 properly assigned to a fixed place of business
5 of the taxpayer within this State and the
6 denominator of which is the gross income from
7 all such funds and such securities.

8 (C) The amount of interest, dividends,
9 gains, and other income from trading assets and
10 activities, including but not limited to
11 assets and activities in the matched book, in
12 the arbitrage book and foreign currency
13 transactions (but excluding amounts described
14 in subparagraphs (A) or (B) of this paragraph),
15 attributable to this State and included in the
16 numerator is determined by multiplying the
17 amount described in subparagraph (B) of
18 paragraph (1) of this subsection by a fraction,
19 the numerator of which is the gross income from
20 such trading assets and activities which are
21 properly assigned to a fixed place of business
22 of the taxpayer within this State and the
23 denominator of which is the gross income from
24 all such assets and activities.

25 (D) Properly assigned, for purposes of
26 this paragraph (2) of this subsection, means

1 the investment or trading asset or activity is
2 assigned to the fixed place of business with
3 which it has a preponderance of substantive
4 contacts. An investment or trading asset or
5 activity assigned by the taxpayer to a fixed
6 place of business without the State shall be
7 presumed to have been properly assigned if:

8 (i) the taxpayer has assigned, in the
9 regular course of its business, such asset
10 or activity on its records to a fixed place
11 of business consistent with federal or
12 state regulatory requirements;

13 (ii) such assignment on its records is
14 based upon substantive contacts of the
15 asset or activity to such fixed place of
16 business; and

17 (iii) the taxpayer uses such records
18 reflecting assignment of such assets or
19 activities for the filing of all state and
20 local tax returns for which an assignment
21 of such assets or activities to a fixed
22 place of business is required.

23 (E) The presumption of proper assignment
24 of an investment or trading asset or activity
25 provided in subparagraph (D) of paragraph (2)
26 of this subsection may be rebutted upon a

1 showing by the Department, supported by a
2 preponderance of the evidence, that the
3 preponderance of substantive contacts
4 regarding such asset or activity did not occur
5 at the fixed place of business to which it was
6 assigned on the taxpayer's records. If the
7 fixed place of business that has a
8 preponderance of substantive contacts cannot
9 be determined for an investment or trading
10 asset or activity to which the presumption in
11 subparagraph (D) of paragraph (2) of this
12 subsection does not apply or with respect to
13 which that presumption has been rebutted, that
14 asset or activity is properly assigned to the
15 state in which the taxpayer's commercial
16 domicile is located. For purposes of this
17 subparagraph (E), it shall be presumed,
18 subject to rebuttal, that taxpayer's
19 commercial domicile is in the state of the
20 United States or the District of Columbia to
21 which the greatest number of employees are
22 regularly connected with the management of the
23 investment or trading income or out of which
24 they are working, irrespective of where the
25 services of such employees are performed, as of
26 the last day of the taxable year.

1 (4) (Blank).

2 (5) (Blank).

3 (d) Transportation services. For taxable years ending
4 before December 31, 2008, business income derived from
5 furnishing transportation services shall be apportioned to
6 this State in accordance with paragraphs (1) and (2):

7 (1) Such business income (other than that derived from
8 transportation by pipeline) shall be apportioned to this
9 State by multiplying such income by a fraction, the
10 numerator of which is the revenue miles of the person in
11 this State, and the denominator of which is the revenue
12 miles of the person everywhere. For purposes of this
13 paragraph, a revenue mile is the transportation of 1
14 passenger or 1 net ton of freight the distance of 1 mile
15 for a consideration. Where a person is engaged in the
16 transportation of both passengers and freight, the
17 fraction above referred to shall be determined by means of
18 an average of the passenger revenue mile fraction and the
19 freight revenue mile fraction, weighted to reflect the
20 person's

21 (A) relative railway operating income from total
22 passenger and total freight service, as reported to the
23 Interstate Commerce Commission, in the case of
24 transportation by railroad, and

25 (B) relative gross receipts from passenger and
26 freight transportation, in case of transportation

1 other than by railroad.

2 (2) Such business income derived from transportation
3 by pipeline shall be apportioned to this State by
4 multiplying such income by a fraction, the numerator of
5 which is the revenue miles of the person in this State, and
6 the denominator of which is the revenue miles of the person
7 everywhere. For the purposes of this paragraph, a revenue
8 mile is the transportation by pipeline of 1 barrel of oil,
9 1,000 cubic feet of gas, or of any specified quantity of
10 any other substance, the distance of 1 mile for a
11 consideration.

12 (3) For taxable years ending on or after December 31,
13 2008, business income derived from providing
14 transportation services other than airline services shall
15 be apportioned to this State by using a fraction, (a) the
16 numerator of which shall be (i) all receipts from any
17 movement or shipment of people, goods, mail, oil, gas, or
18 any other substance (other than by airline) that both
19 originates and terminates in this State, plus (ii) that
20 portion of the person's gross receipts from movements or
21 shipments of people, goods, mail, oil, gas, or any other
22 substance (other than by airline) that originates in one
23 state or jurisdiction and terminates in another state or
24 jurisdiction, that is determined by the ratio that the
25 miles traveled in this State bears to total miles
26 everywhere and (b) the denominator of which shall be all

1 revenue derived from the movement or shipment of people,
2 goods, mail, oil, gas, or any other substance (other than
3 by airline). Where a taxpayer is engaged in the
4 transportation of both passengers and freight, the
5 fraction above referred to shall first be determined
6 separately for passenger miles and freight miles. Then an
7 average of the passenger miles fraction and the freight
8 miles fraction shall be weighted to reflect the taxpayer's:

9 (A) relative railway operating income from total
10 passenger and total freight service, as reported to the
11 Surface Transportation Board, in the case of
12 transportation by railroad; and

13 (B) relative gross receipts from passenger and
14 freight transportation, in case of transportation
15 other than by railroad.

16 (4) For taxable years ending on or after December 31,
17 2008, business income derived from furnishing airline
18 transportation services shall be apportioned to this State
19 by multiplying such income by a fraction, the numerator of
20 which is the revenue miles of the person in this State, and
21 the denominator of which is the revenue miles of the person
22 everywhere. For purposes of this paragraph, a revenue mile
23 is the transportation of one passenger or one net ton of
24 freight the distance of one mile for a consideration. If a
25 person is engaged in the transportation of both passengers
26 and freight, the fraction above referred to shall be

1 determined by means of an average of the passenger revenue
2 mile fraction and the freight revenue mile fraction,
3 weighted to reflect the person's relative gross receipts
4 from passenger and freight airline transportation.

5 (e) Combined apportionment. Where 2 or more persons are
6 engaged in a unitary business as described in subsection
7 (a) (27) of Section 1501, a part of which is conducted in this
8 State by one or more members of the group, the business income
9 attributable to this State by any such member or members shall
10 be apportioned by means of the combined apportionment method.

11 (f) Alternative allocation. If the allocation and
12 apportionment provisions of subsections (a) through (e) and of
13 subsection (h) do not fairly represent the extent of a person's
14 business activity in this State, the person may petition for,
15 or the Director may, without a petition, permit or require, in
16 respect of all or any part of the person's business activity,
17 if reasonable:

18 (1) Separate accounting;

19 (2) The exclusion of any one or more factors;

20 (3) The inclusion of one or more additional factors
21 which will fairly represent the person's business
22 activities in this State; or

23 (4) The employment of any other method to effectuate an
24 equitable allocation and apportionment of the person's
25 business income.

26 (g) Cross reference. For allocation of business income by

1 residents, see Section 301(a).

2 (h) Apportionment of income. For tax years ending on or
3 after December 31, 1998, the apportionment factor of persons
4 who apportion their business income to this State under
5 subsection (a) shall be equal to:

6 (1) for tax years ending on or after December 31, 1998
7 and before December 31, 1999, 16 2/3% of the property
8 factor plus 16 2/3% of the payroll factor plus 66 2/3% of
9 the sales factor;

10 (2) for tax years ending on or after December 31, 1999
11 and before December 31, 2000, 8 1/3% of the property factor
12 plus 8 1/3% of the payroll factor plus 83 1/3% of the sales
13 factor;

14 (3) for tax years ending on or after December 31, 2000
15 and before December 31, 2010, the sales factor; ~~and~~

16 (4) for tax years ending on or after December 31, 2010,
17 as provided in subsection (a).

18 If, in any tax year ending on or after December 31, 1998 and
19 before December 31, 2000, the denominator of the payroll,
20 property, or sales factor is zero, the apportionment factor
21 computed in paragraph (1) or (2) of this subsection for that
22 year shall be divided by an amount equal to 100% minus the
23 percentage weight given to each factor whose denominator is
24 equal to zero.

25 (Source: P.A. 95-233, eff. 8-16-07; 95-707, eff. 1-11-08;
26 96-763, eff. 8-25-09.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.