Rep. Michael W. Tryon

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AMENDMENT TO HOUSE BILL 1049

AMENDMENT NO. ______. Amend House Bill 1049 by replacing everything after the enacting clause with the following:

"Section 5. The Illinois Income Tax Act is amended by changing Section 304 as follows:

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

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

(a) In general. The business income of a person other than a resident shall be allocated to this State if such person's business income is derived solely from this State. If a person other than a resident derives business income from this State and one or more other states, then, for tax years ending on or before December 30, 1998, and except as otherwise provided by this Section, such person's business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of the property factor (if any), the payroll factor (if any) and 200% of the sales factor (if any), and the denominator of which is 4 reduced by the number of factors other than the sales factor which have a denominator of zero and by an additional 2 if the sales factor has a denominator of zero. For tax years ending on or after December 31, 1998, and except as otherwise provided by this Section, persons other than residents who derive business income from this State and one or more other states shall compute their apportionment factor by weighting their property, payroll, and sales factors as provided in subsection (h) of this Section.

(1) Property factor.

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

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

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

(2) Payroll factor.

(A) The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the taxable year by the person for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year.

(B) Compensation is paid in this State if:

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

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

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

(iv) Compensation paid to nonresident professional athletes.

(a) General. The Illinois source income of a nonresident individual who is a member of a professional athletic team includes the portion of the individual's total compensation for services performed as a member of a professional athletic team during the taxable year which the number of duty days spent within this State performing services for the team in any manner during the taxable year bears to the total number of duty days spent both within and without this State during the taxable year.

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

(v) Compensation paid to nonresident State legislators. The Illinois source income of a nonresident individual who is a member of a State legislature, other than the Illinois General Assembly, includes the portion of the individual's total compensation for services performed as a legislator when the legislator is physically located in Illinois for the purpose of denying a quorum to the legislative body of which he or she is a member. The segment of a nonresident legislator's total compensation for services covering time periods when the legislator is in Illinois for legitimate legislative business, other than denial of a quorum, or for the purpose of receiving required health care or assisting a member of legislator's family to receive required health care shall not be included in Illinois source income.

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

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

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

(3) Except as provided in items (C) and (D) of this subpart (3), the term "duty days" means all days during the taxable year from the beginning of the professional athletic team's official

pre-season training period through the last game in which the team competes or is scheduled to compete. Duty days shall be counted for the year in which they occur, including where a team's official pre-season training period through the last game in which the team competes or is scheduled to compete, occurs during more than one tax year.

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

(B) Also included in duty days are game days, practice days, days spent at team meetings, promotional caravans, preseason training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete.

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

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

(E) Days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at facilities of the team, and is not otherwise performing services for the team in Illinois, shall not be considered duty days spent in this State. All days on the disabled list, however, are considered to be included in total duty days spent both within and without this State.

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

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

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

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

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

(3) Sales factor.

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

(B) Sales of tangible personal property are in this State if:

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

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

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

(i) Gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property, other than gross receipts governed by paragraph (B-7) of this item (3), are in this State to the extent the item is utilized in this State during the year the gross receipts are included in gross income.

(ii) Place of utilization.

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

(II) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If a copyright is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts from sales or licenses of materials printed or published in that state divided by the total of such gross receipts for all states in which the copyright is utilized.

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

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

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

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

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

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

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

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

"Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

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

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

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

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

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

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

"Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

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

"Prepaid telecommunication service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

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

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

"Service address" means:

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

(b) If the location in line (a) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider where the system used to transport such signals is not that of the seller; and

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

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

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

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

(c) Tangible personal property;

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

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

(f) Internet access service;

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

(h) "Ancillary services"; or

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

"Vertical service" means an "ancillary service" that is offered in connection with one or more "telecommunications services", which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including "conference bridging services".

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

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

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

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

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

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

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

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

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

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

(d) The receipts from charges for service segments with a channel termination point located in this State and in two or more other states, and which segments are not separately billed, are in this State based on a percentage determined by dividing the number of customer channel termination points in this State by the total number of customer channel termination points.

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

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

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

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

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

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

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

"Advertising revenue" means consideration received by the taxpayer in exchange for broadcasting services or allowing the broadcasting of commercials or announcements in connection with the broadcasting of film or radio programming, from sponsorships of the programming, or from product placements in the programming.

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

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

"Film" or "film programming" means the broadcast on television of any and all performances, events, or productions, including but not limited to news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works, either live or through the use of video tape, disc, or any other type of format or medium. Each episode of a series of films produced for television shall constitute separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

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

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

(ii) In the case where film or radio programming is broadcast by a station, a network, or a cable system for a fee or other remuneration received from the recipient of the broadcast, the portion of the service that is received in this State is measured by the portion of the recipients of the broadcast located in this State. Accordingly, the fee or other remuneration for such service that is included in the Illinois numerator of the sales factor is the total of those fees or other remuneration received from recipients in Illinois. For purposes of this paragraph, a taxpayer may determine the location of the recipients of its broadcast using the address of the recipient shown in its contracts with the recipient or using the billing address of the recipient in the taxpayer's records.

(iii) In the case where film or radio programming is broadcast by a station, a network, or a cable system for a fee or other remuneration from the person providing the programming, the portion of the broadcast service that is received by such station, network, or cable system in this State is measured by the portion of recipients of the broadcast located in this State. Accordingly, the amount of revenue related to such an arrangement that is included in the Illinois numerator of the sales factor is the total fee or other total remuneration from the person providing the programming related to that broadcast multiplied by the Illinois audience factor for that broadcast.

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

(v) In the case where film or radio programming is provided by a taxpayer that is not a network or station to another person for broadcasting in exchange for a fee or other remuneration from that person, the broadcasting service is received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. Accordingly, in such a case the revenue derived by the taxpayer that is included in the taxpayer's Illinois numerator of the sales factor is the revenue from such customers who receive the broadcasting service in Illinois.

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

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

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

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

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

(ii) Sales from the lease or rental of tangible personal property are in this State if the property is located in this State during the rental period. Sales from the lease or rental of tangible personal property that is characteristically moving property, including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment are in this State to the extent that the property is used in this State.

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

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

(b) in all other cases, if the income-producing activity of the taxpayer is performed in this State or, if the income-producing activity of the taxpayer is performed both within and without this State, if a greater proportion of the income-producing activity of the taxpayer is performed within this

State than in any other state, based on performance costs.

(iv) Sales of services are in this State if the services are received in this State. For the purposes of this section, gross receipts from the performance of services provided to a corporation, partnership, or trust may only be attributed to a state where that corporation, partnership, or trust has a fixed place of business. If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the service does not have a fixed place of business, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed. If the taxpayer is not taxable in the state in which the services are received, the sale must be excluded from both the numerator and the denominator of the sales factor. The Department shall adopt rules prescribing where specific types of service are received, including, but not limited to, publishing, and utility service.

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

(E) Paragraphs (B-1) and (B-2) shall apply to tax years ending on or after December 31, 1999, provided that a taxpayer may elect to apply the provisions of these paragraphs to prior tax years. Such election shall be made in the form and manner prescribed by the Department, shall be irrevocable, and shall apply to all tax years; provided that, if a taxpayer's Illinois income tax liability for any tax year, as assessed under Section 903 prior to January 1, 1999, was computed in a manner contrary to the provisions of paragraphs (B-1) or (B-2), no refund shall be payable to the taxpayer for that tax year to the extent such refund is the result of applying the provisions of paragraph (B-1) or (B-2) retroactively. In the case of a unitary business group, such election shall apply to all members of such group for every tax year such group is in existence, but shall not apply to any taxpayer for any period during which that taxpayer is not a member of such group.

(b) Insurance companies.

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

(2) Reinsurance. If the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the business income of such company shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the sum of (i) direct premiums written for insurance upon property or risk in this State, plus (ii) premiums written for reinsurance accepted in respect of property or risk in this State, and the denominator of which is the sum of (iii) direct premiums written for insurance upon property or risk everywhere, plus (iv) premiums written for

reinsurance accepted in respect of property or risk everywhere. For taxable years ending before December 31, 2008, for purposes of this paragraph, premiums written for reinsurance accepted in respect of property or risk in this State, whether or not otherwise determinable, may, at the election of the company, be determined on the basis of the proportion which premiums written for reinsurance accepted from companies commercially domiciled in Illinois bears to premiums written for reinsurance accepted from all sources, or, alternatively, in the proportion which the sum of the direct premiums written for insurance upon property or risk in this State by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by each such ceding company for the taxable year.

(c) Financial organizations.

(1) In general. For taxable years ending before December 31, 2008, business income of a financial organization shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is its business income from sources within this State, and the denominator of which is its business income from all sources. For the purposes of this subsection, the business income of a financial organization from sources within this State is the sum of the amounts referred to in subparagraphs (A) through (E) following, but excluding the

adjusted income of an international banking facility as determined in paragraph (2):

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

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

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

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

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

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

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

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

(i) The numerator shall be:

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

The average aggregate, determined on a quarterly basis, of such loans (other than loans of an international banking facility), as reported by the financial institution for its branches, agencies and offices within the state, on the corresponding Schedule and lines of the Consolidated Report of Condition for the current taxable year, provided, however, that in no case shall the amount determined in this clause (the subtrahend) exceed the amount determined in the preceding clause (the minuend); and

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

(C) Change to Consolidated Report of Condition and in Qualification. In the event the Consolidated Report of Condition which is filed with the Federal Deposit Insurance Corporation and other regulatory authorities is altered so that the information required for determining the floor amount is not found on Schedule A, lines 2.c., 5.b. and 7.a., the financial institution shall notify the Department and the Department may, by regulations or otherwise, prescribe or authorize the use of an alternative source for such information. The financial institution shall also notify the Department should its international banking facility fail to qualify as such, in whole or in part, or should there be any amendment or change to the Consolidated Report of Condition, as originally filed, to the extent such amendment or change alters the information used in determining the floor amount.

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

(i) Receipts from the lease or rental of real or tangible personal property are in this State if the property is located in this State during the rental period. Receipts from the lease or rental of tangible personal property that is characteristically moving property, including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment are from sources in this State to the extent that the property is used in this State.

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

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

(iv) Interest income, commissions, fees, gains on disposition, and other receipts from commercial loans and installment obligations that are not secured by real or tangible personal property are from sources in this State if the proceeds of the loan are to be applied in this State. If it cannot be determined where the funds are to be applied, the income and receipts are from sources in this State if the office of the borrower from which the loan was negotiated in the regular course of business is located in this State. If the location of this office cannot be determined, the income and receipts shall be excluded from the numerator and denominator of the sales factor.

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

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

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

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

(1) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities from trading assets and activities shall be included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts;

notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in subparagraphs (A) and (B) of this paragraph, the receipts factor shall include the amounts described in such subparagraphs.

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

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

(2) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero), and other income from investment assets and activities and from trading assets and

activities described in paragraph (1) of this subsection that are attributable to this State.

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

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this State and included in the numerator is determined by multiplying the amount described in subparagraph (A) of paragraph (1) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a fixed place of business of the taxpayer within this State and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in subparagraphs (A) or (B) of this paragraph), attributable to this State and included in the numerator is determined by multiplying the amount described in subparagraph (B) of paragraph (1) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a fixed place of business of the taxpayer within this State and the denominator of which is the gross income from all such assets and activities.

(D) Properly assigned, for purposes of this paragraph (2) of this subsection, means the investment or trading asset or activity is assigned to the fixed place of business with which it has a preponderance of substantive contacts. An investment or trading asset or activity assigned by the taxpayer to a fixed place of business without the State shall be presumed to have been properly assigned if:

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

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

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

(E) The presumption of proper assignment of an investment or trading asset or activity provided in subparagraph (D) of paragraph (2) of this subsection may be rebutted upon a showing by the Department, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such asset or activity did not occur at the fixed place of business to which it was assigned on the taxpayer's records. If the fixed place of business that has a preponderance of substantive contacts cannot be determined for an investment or trading asset or activity to which the presumption in subparagraph (D) of paragraph (2) of this subsection does not apply or with respect to which that presumption has been rebutted, that asset or activity is properly assigned to the state in which the taxpayer's commercial domicile is located. For purposes of this subparagraph (E), it shall be presumed, subject to rebuttal, that taxpayer's commercial domicile is in the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected with the management of the investment or trading income or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.

(4) (Blank).

(5) (Blank).

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

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

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

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

(2) Such business income derived from transportation by pipeline shall be apportioned to this State by

multiplying such income by a fraction, the numerator of which is the revenue miles of the person in this State, and the denominator of which is the revenue miles of the person everywhere. For the purposes of this paragraph, a revenue mile is the transportation by pipeline of 1 barrel of oil, 1,000 cubic feet of gas, or of any specified quantity of any other substance, the distance of 1 mile for a consideration.

(3) For taxable years ending on or after December 31, 2008, business income derived from providing transportation services other than airline services shall be apportioned to this State by using a fraction, (a) the numerator of which shall be (i) all receipts from any movement or shipment of people, goods, mail, oil, gas, or any other substance (other than by airline) that both originates and terminates in this State, plus (ii) that portion of the person's gross receipts from movements or shipments of people, goods, mail, oil, gas, or any other substance (other than by airline) that originates in one state or jurisdiction and terminates in another state or jurisdiction, that is determined by the ratio that the miles traveled in this State bears to total miles everywhere and (b) the denominator of which shall be all revenue derived from the movement or shipment of people, goods, mail, oil, gas, or any other substance (other than by airline). Where a taxpayer is engaged in the

transportation of both passengers and freight, the fraction above referred to shall first be determined separately for passenger miles and freight miles. Then an average of the passenger miles fraction and the freight miles fraction shall be weighted to reflect the taxpayer's:

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

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

(4) For taxable years ending on or after December 31, 2008, business income derived from furnishing airline transportation services shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the revenue miles of the person in this State, and the denominator of which is the revenue miles of the person everywhere. For purposes of this paragraph, a revenue mile is the transportation of one passenger or one net ton of freight the distance of one mile for a consideration. If a person is engaged in the transportation of both passengers and freight, the fraction above referred to shall be determined by means of an average of the passenger revenue mile fraction and the freight revenue mile fraction, weighted to reflect the person's relative gross receipts

from passenger and freight airline transportation.

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

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

(1) Separate accounting;

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

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

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

(g) Cross reference. For allocation of business income by residents, see Section 301(a).

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

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

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

(3) for tax years ending on or after December 31, 2000, the sales factor.

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

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

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