



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2194

Introduced 2/15/2013, by Sen. John M. Sullivan

SYNOPSIS AS INTRODUCED:

35 ILCS 5/304	from Ch. 120, par. 3-304
35 ILCS 5/305	from Ch. 120, par. 3-305
35 ILCS 5/307	from Ch. 120, par. 3-307
35 ILCS 5/308	from Ch. 120, par. 3-308
35 ILCS 5/502	from Ch. 120, par. 5-502
35 ILCS 5/1501	from Ch. 120, par. 15-1501

Amends the Illinois Income Tax Act. In a Section concerning apportionment of business income, provides that, if the apportionment provisions do not fairly represent the market for the person's goods, services, or other sources of business income (instead of "the extent of a person's business activity in this State"), a person may petition for, or the Director may permit or require, the following: (1) separate accounting; (2) the exclusion of any one or more factors; (3) the inclusion of one or more additional factors; or (4) the employment of any other method to effectuate an equitable allocation and apportionment of the person's business income. Makes changes concerning gains or losses included in the net income of a nonresident partners and shareholders. Makes changes concerning unitary business groups. Makes other changes.

LRB098 04083 HLH 40577 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 Sections 304, 305, 307, 308, 502, and 1501 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, and except as otherwise provided by
14 this Section, such person's business income shall be
15 apportioned to this State by multiplying the income by a
16 fraction, the numerator of which is the sum of the property
17 factor (if any), the payroll factor (if any) and 200% of the
18 sales factor (if any), and the denominator of which is 4
19 reduced by the number of factors other than the sales factor
20 which have a denominator of zero and by an additional 2 if the
21 sales factor has a denominator of zero. For tax years ending on
22 or after December 31, 1998, and except as otherwise provided by
23 this Section, persons other than residents who derive business

1 income from this State and one or more other states shall
2 compute their apportionment factor by weighting their
3 property, payroll, and sales factors as provided in subsection
4 (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 following 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 purposes of this paragraph, premiums
6 written for reinsurance accepted in respect of property or
7 risk in this State, whether or not otherwise determinable,
8 may, at the election of the company, be determined on the
9 basis of the proportion which premiums written for
10 reinsurance accepted from companies commercially domiciled
11 in Illinois bears to premiums written for reinsurance
12 accepted from all sources, or, alternatively, in the
13 proportion which the sum of the direct premiums written for
14 insurance upon property or risk in this State by each
15 ceding company from which reinsurance is accepted bears to
16 the sum of the total direct premiums written by each such
17 ceding company for the taxable year. The election made by a
18 company under this paragraph for its first taxable year
19 ending on or after December 31, 2011, shall be binding for
20 that company for that taxable year and for all subsequent
21 taxable years, and may be altered only with the written
22 permission of the Department, which shall not be
23 unreasonably withheld.

24 (c) Financial organizations.

25 (1) In general. For taxable years ending before
26 December 31, 2008, business income of a financial

1 organization shall be apportioned to this State by
2 multiplying such income by a fraction, the numerator of
3 which is its business income from sources within this
4 State, and the denominator of which is its business income
5 from all sources. For the purposes of this subsection, the
6 business income of a financial organization from sources
7 within this State is the sum of the amounts referred to in
8 subparagraphs (A) through (E) following, but excluding the
9 adjusted income of an international banking facility as
10 determined in paragraph (2):

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

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

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

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

21 (E) Any other gross income resulting from the
22 operation as a financial organization within this
23 State. In computing the amounts referred to in
24 paragraphs (A) through (E) of this subsection, any
25 amount received by a member of an affiliated group
26 (determined under Section 1504(a) of the Internal

1 Revenue Code but without reference to whether any such
2 corporation is an "includible corporation" under
3 Section 1504(b) of the Internal Revenue Code) from
4 another member of such group shall be included only to
5 the extent such amount exceeds expenses of the
6 recipient directly related thereto.

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

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

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

16 (i) The numerator shall be:

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

1 the Federal Deposit Insurance Corporation and
2 other regulatory authorities, for the year 1980,
3 minus

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

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

23 (C) Change to Consolidated Report of Condition and
24 in Qualification. In the event the Consolidated Report
25 of Condition which is filed with the Federal Deposit
26 Insurance Corporation and other regulatory authorities

1 is altered so that the information required for
2 determining the floor amount is not found on Schedule
3 A, lines 2.c., 5.b. and 7.a., the financial institution
4 shall notify the Department and the Department may, by
5 regulations or otherwise, prescribe or authorize the
6 use of an alternative source for such information. The
7 financial institution shall also notify the Department
8 should its international banking facility fail to
9 qualify as such, in whole or in part, or should there
10 be any amendment or change to the Consolidated Report
11 of Condition, as originally filed, to the extent such
12 amendment or change alters the information used in
13 determining the floor amount.

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

1 are illustrative:

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

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

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

21 (iv) Interest income, commissions, fees, gains on
22 disposition, and other receipts from commercial loans
23 and installment obligations that are not secured by
24 real or tangible personal property are from sources in
25 this State if the proceeds of the loan are to be
26 applied in this State. If it cannot be determined where

1 the funds are to be applied, the income and receipts
2 are from sources in this State if the office of the
3 borrower from which the loan was negotiated in the
4 regular course of business is located in this State. If
5 the location of this office cannot be determined, the
6 income and receipts shall be excluded from the
7 numerator and denominator of the sales factor.

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

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

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

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

25 (1) Interest, dividends, net gains (but not
26 less than zero) and other income from investment

1 assets and activities from trading assets and
2 activities shall be included in the receipts
3 factor. Investment assets and activities and
4 trading assets and activities include but are not
5 limited to: investment securities; trading account
6 assets; federal funds; securities purchased and
7 sold under agreements to resell or repurchase;
8 options; futures contracts; forward contracts;
9 notional principal contracts such as swaps;
10 equities; and foreign currency transactions. With
11 respect to the investment and trading assets and
12 activities described in subparagraphs (A) and (B)
13 of this paragraph, the receipts factor shall
14 include the amounts described in such
15 subparagraphs.

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

22 (B) The receipts factor shall include the
23 amount by which interest, dividends, gains and
24 other income from trading assets and
25 activities, including but not limited to
26 assets and activities in the matched book, in

1 the arbitrage book, and foreign currency
2 transactions, exceed amounts paid in lieu of
3 interest, amounts paid in lieu of dividends,
4 and losses from such assets and activities.

5 (2) The numerator of the receipts factor
6 includes interest, dividends, net gains (but not
7 less than zero), and other income from investment
8 assets and activities and from trading assets and
9 activities described in paragraph (1) of this
10 subsection that are attributable to this State.

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

24 (B) The amount of interest from federal
25 funds sold and purchased and from securities
26 purchased under resale agreements and

1 securities sold under repurchase agreements
2 attributable to this State and included in the
3 numerator is determined by multiplying the
4 amount described in subparagraph (A) of
5 paragraph (1) of this subsection from such
6 funds and such securities by a fraction, the
7 numerator of which is the gross income from
8 such funds and such securities which are
9 properly assigned to a fixed place of business
10 of the taxpayer within this State and the
11 denominator of which is the gross income from
12 all such funds and such securities.

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

1 of the taxpayer within this State and the
2 denominator of which is the gross income from
3 all such assets and activities.

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

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

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

22 (iii) the taxpayer uses such records
23 reflecting assignment of such assets or
24 activities for the filing of all state and
25 local tax returns for which an assignment
26 of such assets or activities to a fixed

1 place of business is required.

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

1 regularly connected with the management of the
2 investment or trading income or out of which
3 they are working, irrespective of where the
4 services of such employees are performed, as of
5 the last day of the taxable year.

6 (4) (Blank).

7 (5) (Blank).

8 (c-1) Federally regulated exchanges. For taxable years
9 ending on or after December 31, 2012, business income of a
10 federally regulated exchange shall, at the option of the
11 federally regulated exchange, be apportioned to this State by
12 multiplying such income by a fraction, the numerator of which
13 is its business income from sources within this State, and the
14 denominator of which is its business income from all sources.
15 For purposes of this subsection, the business income within
16 this State of a federally regulated exchange is the sum of the
17 following:

18 (1) Receipts attributable to transactions executed on
19 a physical trading floor if that physical trading floor is
20 located in this State.

21 (2) Receipts attributable to all other matching,
22 execution, or clearing transactions, including without
23 limitation receipts from the provision of matching,
24 execution, or clearing services to another entity,
25 multiplied by (i) for taxable years ending on or after
26 December 31, 2012 but before December 31, 2013, 63.77%; and

1 (ii) for taxable years ending on or after December 31,
2 2013, 27.54%.

3 (3) All other receipts not governed by subparagraphs
4 (1) or (2) of this subsection (c-1), to the extent the
5 receipts would be characterized as "sales in this State"
6 under item (3) of subsection (a) of this Section.

7 "Federally regulated exchange" means (i) a "registered
8 entity" within the meaning of 7 U.S.C. Section 1a(40) (A), (B),
9 or (C), (ii) an "exchange" or "clearing agency" within the
10 meaning of 15 U.S.C. Section 78c (a) (1) or (23), (iii) any such
11 entities regulated under any successor regulatory structure to
12 the foregoing, and (iv) all taxpayers who are members of the
13 same unitary business group as a federally regulated exchange,
14 determined without regard to the prohibition in Section
15 1501(a) (27) of this Act against including in a unitary business
16 group taxpayers who are ordinarily required to apportion
17 business income under different subsections of this Section;
18 provided that this subparagraph (iv) shall apply only if 50% or
19 more of the business receipts of the unitary business group
20 determined by application of this subparagraph (iv) for the
21 taxable year are attributable to the matching, execution, or
22 clearing of transactions conducted by an entity described in
23 subparagraph (i), (ii), or (iii) of this paragraph.

24 In no event shall the Illinois apportionment percentage
25 computed in accordance with this subsection (c-1) for any
26 taxpayer for any tax year be less than the Illinois

1 apportionment percentage computed under this subsection (c-1)
2 for that taxpayer for the first full tax year ending on or
3 after December 31, 2013 for which this subsection (c-1) applied
4 to the taxpayer.

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

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

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

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

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

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

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

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

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

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

1 person is engaged in the transportation of both passengers
2 and freight, the fraction above referred to shall be
3 determined by means of an average of the passenger revenue
4 mile fraction and the freight revenue mile fraction,
5 weighted to reflect the person's relative gross receipts
6 from passenger and freight airline transportation.

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

13 (f) Alternative allocation. If the allocation and
14 apportionment provisions of subsections (a) through (e) and of
15 subsection (h) do not, for taxable years ending before December
16 31, 2008, fairly represent the extent of a person's business
17 activity in this State, or, for taxable years ending on or
18 after December 31, 2008, fairly represent the market for the
19 person's goods, services, or other sources of business income,
20 the person may petition for, or the Director may, without a
21 petition, permit or require, in respect of all or any part of
22 the person's business activity, if reasonable:

23 (1) Separate accounting;

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

25 (3) The inclusion of one or more additional factors
26 which will fairly represent the person's business

1 activities or market in this State; or

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

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

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

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

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

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

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

1 (Source: P.A. 96-763, eff. 8-25-09; 97-507, eff. 8-23-11;
2 97-636, eff. 6-1-12.)

3 (35 ILCS 5/305) (from Ch. 120, par. 3-305)

4 Sec. 305. Allocation of Partnership Income by partnerships
5 and partners other than residents.

6 (a) Allocation of partnership business income by partners
7 other than residents. The respective shares of partners other
8 than residents in so much of the business income of the
9 partnership as is allocated or apportioned to this State in the
10 possession of the partnership shall be taken into account by
11 such partners pro rata in accordance with their respective
12 distributive shares of such partnership income for the
13 partnership's taxable year and allocated to this State.

14 (b) Allocation of partnership nonbusiness income by
15 partners other than residents. The respective shares of
16 partners other than residents in the items of partnership
17 income and deduction not taken into account in computing the
18 business income of a partnership shall be taken into account by
19 such partners pro rata in accordance with their respective
20 distributive shares of such partnership income for the
21 partnership's taxable year, and allocated as if such items had
22 been paid, incurred or accrued directly to such partners in
23 their separate capacities.

24 (c) Allocation or apportionment of base income by
25 partnership. Base income of a partnership shall be allocated or

1 apportioned to this State pursuant to Article 3, in the same
2 manner as it is allocated or apportioned for any other
3 nonresident.

4 (c-5) Taxable income of an investment partnership, as
5 defined in Section 1501(a)(11.5) of this Act, that is
6 distributable to a nonresident partner shall be treated as
7 nonbusiness income and shall be allocated to the partner's
8 state of residence (in the case of an individual) or commercial
9 domicile (in the case of any other person). However, any income
10 distributable to a nonresident partner shall be treated as
11 business income and apportioned as if such income had been
12 received directly by the partner if the partner has made an
13 election under Section 1501(a)(1) of this Act to treat all
14 income as business income or if such income is from investment
15 activity:

16 (1) that is directly or integrally related to any other
17 business activity conducted in this State by the
18 nonresident partner (or any member of that partner's
19 unitary business group);

20 (2) that serves an operational function to any other
21 business activity of the nonresident partner (or any member
22 of that partner's unitary business group) in this State; or

23 (3) where assets of the investment partnership were
24 acquired with working capital from a trade or business
25 activity conducted in this State in which the nonresident
26 partner (or any member of that partner's unitary business

1 group) owns an interest.

2 (c-10) Gain or loss on partnership interest. The amount of
3 gain or loss realized by a nonresident partner upon the sale,
4 exchange, abandonment, liquidation, or other disposition of an
5 interest in a partnership (other than an investment
6 partnership) included in net income of that partner shall be
7 the total gain or loss multiplied by the apportionment factor
8 of the partnership determined under Section 304 of this Act for
9 the taxable year of the partnership in which the sale,
10 exchange, abandonment, liquidation or other disposition
11 occurs.

12 (d) Cross reference. For allocation of partnership income
13 or deductions by residents, see Section 301(a).

14 (Source: P.A. 93-840, eff. 7-30-04.)

15 (35 ILCS 5/307) (from Ch. 120, par. 3-307)

16 Sec. 307. Allocation of income by estate or trust
17 beneficiaries other than residents. (a) Allocation of business
18 income by beneficiaries other than residents. To the extent the
19 business income of an estate or trust allocated or apportioned
20 to this State in the possession of the estate or trust is
21 deemed to have been paid, credited or distributed by the estate
22 or trust under Section 306, the respective shares of
23 beneficiaries of the estate or trust, other than residents, in
24 such business income shall be taken into account by such
25 beneficiaries in proportion to their respective shares of the

1 distributable net income of the estate or trust for its taxable
2 year and allocated to this State.

3 (b) Allocation of nonbusiness income by beneficiaries
4 other than residents. To the extent items of estate or trust
5 income and deduction not taken into account in computing the
6 business income of an estate or trust are deemed to have been
7 paid, credited or distributed by the estate or trust under
8 Section 306, the respective shares of beneficiaries of the
9 estate or trust, other than residents, in such items shall be
10 taken into account by such beneficiaries in proportion to their
11 respective shares of the distributable net income of the estate
12 or trust for its taxable year, and allocated as if such items
13 had been paid, incurred or accrued directly to such
14 beneficiaries in their separate capacities.

15 (c) Accumulation and capital gain distributions. In the
16 event that, in any taxable year of a trust, the trust makes an
17 accumulation distribution or a capital gain distribution (both
18 as defined in Section 665 of the Internal Revenue Code), the
19 total of the amounts which are included in the income of each
20 beneficiary of such trust, other than a resident, under
21 Sections 668 and 669 of the Internal Revenue Code shall be
22 allocated to this State to the extent that the items of income
23 included in such distribution were allocated or apportioned to
24 this State in the hands of the trust.

25 (c-5) Gain or loss on interest in trust. The amount of gain
26 or loss realized by a nonresident beneficiary upon the sale,

1 exchange, abandonment, liquidation or other disposition of an
2 interest in a trust included in net income of that beneficiary
3 shall be the total gain or loss multiplied by the apportionment
4 factor of the trust determined under Section 304 of this Act
5 for the taxable year of the trust in which the sale, exchange,
6 abandonment, liquidation or other disposition occurs.

7 (d) Cross references. (1) For allocation of amounts
8 received by nonresidents from certain employee trusts, see
9 Section 301 (b) (2).

10 (2) For allocation of estate or trust income or deductions
11 by residents, see Section 301 (a).

12 (Source: P.A. 84-550.)

13 (35 ILCS 5/308) (from Ch. 120, par. 3-308)

14 Sec. 308. Allocation of Subchapter S Corporation Income by
15 Subchapter S Corporations and Shareholders Other Than
16 Residents. (a) Allocation of Subchapter S corporation business
17 income by shareholders other than residents. The respective
18 shares of shareholders other than residents in so much of the
19 business income of the Subchapter S corporation as is allocated
20 or apportioned to this State in the hands of the Subchapter S
21 corporation shall be taken into account by such shareholder pro
22 rata in accordance with the requirements of Section 1366 of the
23 Internal Revenue Code for the Subchapter S corporation's
24 taxable year and allocated to this State.

25 (b) Allocation of Subchapter S corporation nonbusiness

1 income by shareholders other than residents. The respective
2 share of shareholders other than residents in the items of
3 Subchapter S corporation income and deduction not taken into
4 account in computing the business income of the Subchapter S
5 corporation shall be taken into account by such shareholders
6 pro rata in accordance with the requirements of Section 1366 of
7 the Internal Revenue Code for the corporation's taxable year,
8 and allocated as if such items had been paid, incurred or
9 accrued directly to such shareholders in their separate
10 capacities.

11 (c) Allocation or apportionment of base income by the
12 Subchapter S corporation. Base income of a Subchapter S
13 corporation shall be allocated or apportioned to this State
14 pursuant to this Article 3 in the same manner as it is
15 allocated or apportioned for any other nonresident.

16 (c-5) Gain or loss on stock in a Subchapter S corporation.
17 The amount of gain or loss realized by a nonresident
18 shareholder upon the sale, exchange, abandonment, liquidation
19 or other disposition of stock in a Subchapter S corporation
20 included in net income of that shareholder shall be the total
21 gain or loss multiplied by the apportionment factor of the
22 Subchapter S corporation determined under Section 304 of this
23 Act for the taxable year of the Subchapter S corporation in
24 which the sale, exchange, abandonment, liquidation or other
25 disposition occurs.

26 (d) This Section shall not apply to any corporation for

1 which there is in effect a federal election to opt out of the
2 provisions of the Subchapter S Revision Act of 1982 and have
3 applied instead the prior federal Subchapter S rules as in
4 effect on July 1, 1982.

5 (Source: P.A. 83-1352.)

6 (35 ILCS 5/502) (from Ch. 120, par. 5-502)

7 Sec. 502. Returns and notices.

8 (a) In general. A return with respect to the taxes imposed
9 by this Act shall be made by every person for any taxable year:

10 (1) for which such person is liable for a tax imposed
11 by this Act, or

12 (2) in the case of a resident or in the case of a
13 corporation which is qualified to do business in this
14 State, for which such person is required to make a federal
15 income tax return, regardless of whether such person is
16 liable for a tax imposed by this Act. However, this
17 paragraph shall not require a resident to make a return if
18 such person has an Illinois base income of the basic amount
19 in Section 204(b) or less and is either claimed as a
20 dependent on another person's tax return under the Internal
21 Revenue Code, or is claimed as a dependent on another
22 person's tax return under this Act.

23 Notwithstanding the provisions of paragraph (1), a
24 nonresident (other than, for taxable years ending on or after
25 December 31, 2011, a nonresident required to withhold tax under

1 Section 709.5) whose Illinois income tax liability under
2 subsections (a), (b), (c), and (d) of Section 201 of this Act
3 is paid in full after taking into account the credits allowed
4 under subsection (f) of this Section or allowed under Section
5 709.5 of this Act shall not be required to file a return under
6 this subsection (a).

7 (b) Fiduciaries and receivers.

8 (1) Decedents. If an individual is deceased, any return
9 or notice required of such individual under this Act shall
10 be made by his executor, administrator, or other person
11 charged with the property of such decedent.

12 (2) Individuals under a disability. If an individual is
13 unable to make a return or notice required under this Act,
14 the return or notice required of such individual shall be
15 made by his duly authorized agent, guardian, fiduciary or
16 other person charged with the care of the person or
17 property of such individual.

18 (3) Estates and trusts. Returns or notices required of
19 an estate or a trust shall be made by the fiduciary
20 thereof.

21 (4) Receivers, trustees and assignees for
22 corporations. In a case where a receiver, trustee in
23 bankruptcy, or assignee, by order of a court of competent
24 jurisdiction, by operation of law, or otherwise, has
25 possession of or holds title to all or substantially all
26 the property or business of a corporation, whether or not

1 such property or business is being operated, such receiver,
2 trustee, or assignee shall make the returns and notices
3 required of such corporation in the same manner and form as
4 corporations are required to make such returns and notices.

5 (c) Joint returns by husband and wife.

6 (1) Except as provided in paragraph (3):

7 (A) if a husband and wife file a joint federal
8 income tax return for a taxable year ending before
9 December 31, 2009, they shall file a joint return under
10 this Act for such taxable year and their liabilities
11 shall be joint and several;

12 (B) if a husband and wife file a joint federal
13 income tax return for a taxable year ending on or after
14 December 31, 2009, they may elect to file separate
15 returns under this Act for such taxable year. The
16 election under this paragraph must be made on or before
17 the due date (including extensions) of the return and,
18 once made, shall be irrevocable. If no election is
19 timely made under this paragraph for a taxable year:

20 (i) the couple must file a joint return under
21 this Act for such taxable year,

22 (ii) their liabilities shall be joint and
23 several, and

24 (iii) any overpayment for that taxable year
25 may be withheld under Section 909 of this Act or
26 under Section 2505-275 of the Civil Administrative

1 Code of Illinois and applied against a debt of
2 either spouse without regard to the amount of the
3 overpayment attributable to the other spouse; and

4 (C) if the federal income tax liability of either
5 spouse is determined on a separate federal income tax
6 return, they shall file separate returns under this
7 Act.

8 (2) If neither spouse is required to file a federal
9 income tax return and either or both are required to file a
10 return under this Act, they may elect to file separate or
11 joint returns and pursuant to such election their
12 liabilities shall be separate or joint and several.

13 (3) If either husband or wife is a resident and the
14 other is a nonresident, they shall file separate returns in
15 this State on such forms as may be required by the
16 Department in which event their tax liabilities shall be
17 separate; but if they file a joint federal income tax
18 return for a taxable year, they may elect to determine
19 their joint net income and file a joint return for that
20 taxable year under the provisions of paragraph (1) of this
21 subsection as if both were residents and in such case,
22 their liabilities shall be joint and several.

23 (4) Innocent spouses.

24 (A) However, for tax liabilities arising and paid
25 prior to August 13, 1999, an innocent spouse shall be
26 relieved of liability for tax (including interest and

1 penalties) for any taxable year for which a joint
2 return has been made, upon submission of proof that the
3 Internal Revenue Service has made a determination
4 under Section 6013(e) of the Internal Revenue Code, for
5 the same taxable year, which determination relieved
6 the spouse from liability for federal income taxes. If
7 there is no federal income tax liability at issue for
8 the same taxable year, the Department shall rely on the
9 provisions of Section 6013(e) to determine whether the
10 person requesting innocent spouse abatement of tax,
11 penalty, and interest is entitled to that relief.

12 (B) For tax liabilities arising on and after August
13 13, 1999 or which arose prior to that date, but remain
14 unpaid as of that date, if an individual who filed a
15 joint return for any taxable year has made an election
16 under this paragraph, the individual's liability for
17 any tax shown on the joint return shall not exceed the
18 individual's separate return amount and the
19 individual's liability for any deficiency assessed for
20 that taxable year shall not exceed the portion of the
21 deficiency properly allocable to the individual. For
22 purposes of this paragraph:

23 (i) An election properly made pursuant to
24 Section 6015 of the Internal Revenue Code shall
25 constitute an election under this paragraph,
26 provided that the election shall not be effective

1 until the individual has notified the Department
2 of the election in the form and manner prescribed
3 by the Department.

4 (ii) If no election has been made under Section
5 6015, the individual may make an election under
6 this paragraph in the form and manner prescribed by
7 the Department, provided that no election may be
8 made if the Department finds that assets were
9 transferred between individuals filing a joint
10 return as part of a scheme by such individuals to
11 avoid payment of Illinois income tax and the
12 election shall not eliminate the individual's
13 liability for any portion of a deficiency
14 attributable to an error on the return of which the
15 individual had actual knowledge as of the date of
16 filing.

17 (iii) In determining the separate return
18 amount or portion of any deficiency attributable
19 to an individual, the Department shall follow the
20 provisions in subsections (c) and (d) of Section
21 6015 of the Internal Revenue Code.

22 (iv) In determining the validity of an
23 individual's election under subparagraph (ii) and
24 in determining an electing individual's separate
25 return amount or portion of any deficiency under
26 subparagraph (iii), any determination made by the

1 Secretary of the Treasury, by the United States Tax
2 Court on petition for review of a determination by
3 the Secretary of the Treasury, or on appeal from
4 the United States Tax Court under Section 6015 of
5 the Internal Revenue Code regarding criteria for
6 eligibility or under subsection (d) of Section
7 6015 of the Internal Revenue Code regarding the
8 allocation of any item of income, deduction,
9 payment, or credit between an individual making
10 the federal election and that individual's spouse
11 shall be conclusively presumed to be correct. With
12 respect to any item that is not the subject of a
13 determination by the Secretary of the Treasury or
14 the federal courts, in any proceeding involving
15 this subsection, the individual making the
16 election shall have the burden of proof with
17 respect to any item except that the Department
18 shall have the burden of proof with respect to
19 items in subdivision (ii).

20 (v) Any election made by an individual under
21 this subsection shall apply to all years for which
22 that individual and the spouse named in the
23 election have filed a joint return.

24 (vi) After receiving a notice that the federal
25 election has been made or after receiving an
26 election under subdivision (ii), the Department

1 shall take no collection action against the
2 electing individual for any liability arising from
3 a joint return covered by the election until the
4 Department has notified the electing individual in
5 writing that the election is invalid or of the
6 portion of the liability the Department has
7 allocated to the electing individual. Within 60
8 days (150 days if the individual is outside the
9 United States) after the issuance of such
10 notification, the individual may file a written
11 protest of the denial of the election or of the
12 Department's determination of the liability
13 allocated to him or her and shall be granted a
14 hearing within the Department under the provisions
15 of Section 908. If a protest is filed, the
16 Department shall take no collection action against
17 the electing individual until the decision
18 regarding the protest has become final under
19 subsection (d) of Section 908 or, if
20 administrative review of the Department's decision
21 is requested under Section 1201, until the
22 decision of the court becomes final.

23 (d) Partnerships. Every partnership having any base income
24 allocable to this State in accordance with section 305(c) shall
25 retain information concerning all items of income, gain, loss
26 and deduction; the names and addresses of all of the partners,

1 or names and addresses of members of a limited liability
2 company, or other persons who would be entitled to share in the
3 base income of the partnership if distributed; the amount of
4 the distributive share of each; and such other pertinent
5 information as the Department may by forms or regulations
6 prescribe. The partnership shall make that information
7 available to the Department when requested by the Department.

8 (e) For taxable years ending on or after December 31, 1985,
9 and before December 31, 1993, taxpayers that are corporations
10 (other than Subchapter S corporations) having the same taxable
11 year and that are members of the same unitary business group
12 may elect to be treated as one taxpayer for purposes of any
13 original return, amended return which includes the same
14 taxpayers of the unitary group which joined in the election to
15 file the original return, extension, claim for refund,
16 assessment, collection and payment and determination of the
17 group's tax liability under this Act. This subsection (e) does
18 not permit the election to be made for some, but not all, of
19 the purposes enumerated above. For taxable years ending on or
20 after December 31, 1987, corporate members (other than
21 Subchapter S corporations) of the same unitary business group
22 making this subsection (e) election are not required to have
23 the same taxable year.

24 For taxable years ending on or after December 31, 1993,
25 taxpayers that are corporations (other than Subchapter S
26 corporations) and that are members of the same unitary business

1 group shall be treated as one taxpayer for purposes of any
2 original return, amended return which includes the same
3 taxpayers of the unitary group which joined in filing the
4 original return, extension, claim for refund, assessment,
5 collection and payment and determination of the group's tax
6 liability under this Act.

7 (f) For taxable years ending on or before December 31,
8 2013, the ~~The~~ Department may promulgate regulations to permit
9 nonresident individual partners of the same partnership,
10 nonresident Subchapter S corporation shareholders of the same
11 Subchapter S corporation, and nonresident individuals
12 transacting an insurance business in Illinois under a Lloyds
13 plan of operation, and nonresident individual members of the
14 same limited liability company that is treated as a partnership
15 under Section 1501 (a)(16) of this Act, to file composite
16 individual income tax returns reflecting the composite income
17 of such individuals allocable to Illinois and to make composite
18 individual income tax payments. ~~The Department may by~~
19 ~~regulation also permit such composite returns to include the~~
20 ~~income tax owed by Illinois residents attributable to their~~
21 ~~income from partnerships, Subchapter S corporations, insurance~~
22 ~~businesses organized under a Lloyds plan of operation, or~~
23 ~~limited liability companies that are treated as partnership~~
24 ~~under Section 1501(a)(16) of this Act, in which case such~~
25 ~~Illinois residents will be permitted to claim credits on their~~
26 ~~individual returns for their shares of the composite tax~~

1 ~~payments.~~ This paragraph of subsection (f) applies to taxable
2 years ending on or after December 31, 1987 and ending on or
3 before December 31, 2013.

4 For taxable years ending on or after December 31, 1999, the
5 Department may, by regulation, ~~also~~ permit any persons
6 transacting an insurance business organized under a Lloyds plan
7 of operation to file composite returns reflecting the income of
8 such persons allocable to Illinois and the tax rates applicable
9 to such persons under Section 201 and to make composite tax
10 payments and shall, by regulation, also provide that the income
11 and apportionment factors attributable to the transaction of an
12 insurance business organized under a Lloyds plan of operation
13 by any person joining in the filing of a composite return
14 shall, for purposes of allocating and apportioning income under
15 Article 3 of this Act and computing net income under Section
16 202 of this Act, be excluded from any other income and
17 apportionment factors of that person or of any unitary business
18 group, as defined in subdivision (a)(27) of Section 1501, to
19 which that person may belong.

20 For taxable years ending on or after December 31, 2008,
21 every nonresident shall be allowed a credit against his or her
22 liability under subsections (a) and (b) of Section 201 for any
23 amount of tax reported on a composite return and paid on his or
24 her behalf under this subsection (f). Residents (other than
25 persons transacting an insurance business organized under a
26 Lloyds plan of operation) may claim a credit for taxes reported

1 on a composite return and paid on their behalf under this
2 subsection (f) only as permitted by the Department by rule.

3 (f-5) For taxable years ending on or after December 31,
4 2008, the Department may adopt rules to provide that, when a
5 partnership or Subchapter S corporation has made an error in
6 determining the amount of any item of income, deduction,
7 addition, subtraction, or credit required to be reported on its
8 return that affects the liability imposed under this Act on a
9 partner or shareholder, the partnership or Subchapter S
10 corporation may report the changes in liabilities of its
11 partners or shareholders and claim a refund of the resulting
12 overpayments, or pay the resulting underpayments, on behalf of
13 its partners and shareholders.

14 (g) The Department may adopt rules to authorize the
15 electronic filing of any return required to be filed under this
16 Section.

17 (Source: P.A. 96-520, eff. 8-14-09; 97-507, eff. 8-23-11.)

18 (35 ILCS 5/1501) (from Ch. 120, par. 15-1501)

19 Sec. 1501. Definitions.

20 (a) In general. When used in this Act, where not otherwise
21 distinctly expressed or manifestly incompatible with the
22 intent thereof:

23 (1) Business income. The term "business income" means
24 all income that may be treated as apportionable business
25 income under the Constitution of the United States.

1 Business income is net of the deductions allocable thereto.
2 Such term does not include compensation or the deductions
3 allocable thereto. For each taxable year beginning on or
4 after January 1, 2003, a taxpayer may elect to treat all
5 income other than compensation as business income. This
6 election shall be made in accordance with rules adopted by
7 the Department and, once made, shall be irrevocable.

8 (1.5) Captive real estate investment trust:

9 (A) The term "captive real estate investment
10 trust" means a corporation, trust, or association:

11 (i) that is considered a real estate
12 investment trust for the taxable year under
13 Section 856 of the Internal Revenue Code;

14 (ii) the certificates of beneficial interest
15 or shares of which are not regularly traded on an
16 established securities market; and

17 (iii) of which more than 50% of the voting
18 power or value of the beneficial interest or
19 shares, at any time during the last half of the
20 taxable year, is owned or controlled, directly,
21 indirectly, or constructively, by a single
22 corporation.

23 (B) The term "captive real estate investment
24 trust" does not include:

25 (i) a real estate investment trust of which
26 more than 50% of the voting power or value of the

1 beneficial interest or shares is owned or
2 controlled, directly, indirectly, or
3 constructively, by:

4 (a) a real estate investment trust, other
5 than a captive real estate investment trust;

6 (b) a person who is exempt from taxation
7 under Section 501 of the Internal Revenue Code,
8 and who is not required to treat income
9 received from the real estate investment trust
10 as unrelated business taxable income under
11 Section 512 of the Internal Revenue Code;

12 (c) a listed Australian property trust, if
13 no more than 50% of the voting power or value
14 of the beneficial interest or shares of that
15 trust, at any time during the last half of the
16 taxable year, is owned or controlled, directly
17 or indirectly, by a single person;

18 (d) an entity organized as a trust,
19 provided a listed Australian property trust
20 described in subparagraph (c) owns or
21 controls, directly or indirectly, or
22 constructively, 75% or more of the voting power
23 or value of the beneficial interests or shares
24 of such entity; or

25 (e) an entity that is organized outside of
26 the laws of the United States and that

1 satisfies all of the following criteria:

2 (1) at least 75% of the entity's total
3 asset value at the close of its taxable
4 year is represented by real estate assets
5 (as defined in Section 856(c)(5)(B) of the
6 Internal Revenue Code, thereby including
7 shares or certificates of beneficial
8 interest in any real estate investment
9 trust), cash and cash equivalents, and
10 U.S. Government securities;

11 (2) the entity is not subject to tax on
12 amounts that are distributed to its
13 beneficial owners or is exempt from
14 entity-level taxation;

15 (3) the entity distributes at least
16 85% of its taxable income (as computed in
17 the jurisdiction in which it is organized)
18 to the holders of its shares or
19 certificates of beneficial interest on an
20 annual basis;

21 (4) either (i) the shares or
22 beneficial interests of the entity are
23 regularly traded on an established
24 securities market or (ii) not more than 10%
25 of the voting power or value in the entity
26 is held, directly, indirectly, or

1 constructively, by a single entity or
2 individual; and

3 (5) the entity is organized in a
4 country that has entered into a tax treaty
5 with the United States; or

6 (ii) during its first taxable year for which it
7 elects to be treated as a real estate investment
8 trust under Section 856(c)(1) of the Internal
9 Revenue Code, a real estate investment trust the
10 certificates of beneficial interest or shares of
11 which are not regularly traded on an established
12 securities market, but only if the certificates of
13 beneficial interest or shares of the real estate
14 investment trust are regularly traded on an
15 established securities market prior to the earlier
16 of the due date (including extensions) for filing
17 its return under this Act for that first taxable
18 year or the date it actually files that return.

19 (C) For the purposes of this subsection (1.5), the
20 constructive ownership rules prescribed under Section
21 318(a) of the Internal Revenue Code, as modified by
22 Section 856(d)(5) of the Internal Revenue Code, apply
23 in determining the ownership of stock, assets, or net
24 profits of any person.

25 (2) Commercial domicile. The term "commercial
26 domicile" means the principal place from which the trade or

1 business of the taxpayer is directed or managed.

2 (3) Compensation. The term "compensation" means wages,
3 salaries, commissions and any other form of remuneration
4 paid to employees for personal services.

5 (4) Corporation. The term "corporation" includes
6 associations, joint-stock companies, insurance companies
7 and cooperatives. Any entity, including a limited
8 liability company formed under the Illinois Limited
9 Liability Company Act, shall be treated as a corporation if
10 it is so classified for federal income tax purposes.

11 (5) Department. The term "Department" means the
12 Department of Revenue of this State.

13 (6) Director. The term "Director" means the Director of
14 Revenue of this State.

15 (7) Fiduciary. The term "fiduciary" means a guardian,
16 trustee, executor, administrator, receiver, or any person
17 acting in any fiduciary capacity for any person.

18 (8) Financial organization.

19 (A) The term "financial organization" means any
20 bank, bank holding company, trust company, savings
21 bank, industrial bank, land bank, safe deposit
22 company, private banker, savings and loan association,
23 building and loan association, credit union, currency
24 exchange, cooperative bank, small loan company, sales
25 finance company, investment company, or any person
26 which is owned by a bank or bank holding company. For

1 the purpose of this Section a "person" will include
2 only those persons which a bank holding company may
3 acquire and hold an interest in, directly or
4 indirectly, under the provisions of the Bank Holding
5 Company Act of 1956 (12 U.S.C. 1841, et seq.), except
6 where interests in any person must be disposed of
7 within certain required time limits under the Bank
8 Holding Company Act of 1956.

9 (B) For purposes of subparagraph (A) of this
10 paragraph, the term "bank" includes (i) any entity that
11 is regulated by the Comptroller of the Currency under
12 the National Bank Act, or by the Federal Reserve Board,
13 or by the Federal Deposit Insurance Corporation and
14 (ii) any federally or State chartered bank operating as
15 a credit card bank.

16 (C) For purposes of subparagraph (A) of this
17 paragraph, the term "sales finance company" has the
18 meaning provided in the following item (i) or (ii):

19 (i) A person primarily engaged in one or more
20 of the following businesses: the business of
21 purchasing customer receivables, the business of
22 making loans upon the security of customer
23 receivables, the business of making loans for the
24 express purpose of funding purchases of tangible
25 personal property or services by the borrower, or
26 the business of finance leasing. For purposes of

1 this item (i), "customer receivable" means:

2 (a) a retail installment contract or
3 retail charge agreement within the meaning of
4 the Sales Finance Agency Act, the Retail
5 Installment Sales Act, or the Motor Vehicle
6 Retail Installment Sales Act;

7 (b) an installment, charge, credit, or
8 similar contract or agreement arising from the
9 sale of tangible personal property or services
10 in a transaction involving a deferred payment
11 price payable in one or more installments
12 subsequent to the sale; or

13 (c) the outstanding balance of a contract
14 or agreement described in provisions (a) or (b)
15 of this item (i).

16 A customer receivable need not provide for
17 payment of interest on deferred payments. A sales
18 finance company may purchase a customer receivable
19 from, or make a loan secured by a customer
20 receivable to, the seller in the original
21 transaction or to a person who purchased the
22 customer receivable directly or indirectly from
23 that seller.

24 (ii) A corporation meeting each of the
25 following criteria:

26 (a) the corporation must be a member of an

1 "affiliated group" within the meaning of
2 Section 1504(a) of the Internal Revenue Code,
3 determined without regard to Section 1504(b)
4 of the Internal Revenue Code;

5 (b) more than 50% of the gross income of
6 the corporation for the taxable year must be
7 interest income derived from qualifying loans.
8 A "qualifying loan" is a loan made to a member
9 of the corporation's affiliated group that
10 originates customer receivables (within the
11 meaning of item (i)) or to whom customer
12 receivables originated by a member of the
13 affiliated group have been transferred, to the
14 extent the average outstanding balance of
15 loans from that corporation to members of its
16 affiliated group during the taxable year do not
17 exceed the limitation amount for that
18 corporation. The "limitation amount" for a
19 corporation is the average outstanding
20 balances during the taxable year of customer
21 receivables (within the meaning of item (i))
22 originated by all members of the affiliated
23 group. If the average outstanding balances of
24 the loans made by a corporation to members of
25 its affiliated group exceed the limitation
26 amount, the interest income of that

1 corporation from qualifying loans shall be
2 equal to its interest income from loans to
3 members of its affiliated groups times a
4 fraction equal to the limitation amount
5 divided by the average outstanding balances of
6 the loans made by that corporation to members
7 of its affiliated group;

8 (c) the total of all shareholder's equity
9 (including, without limitation, paid-in
10 capital on common and preferred stock and
11 retained earnings) of the corporation plus the
12 total of all of its loans, advances, and other
13 obligations payable or owed to members of its
14 affiliated group may not exceed 20% of the
15 total assets of the corporation at any time
16 during the tax year; and

17 (d) more than 50% of all interest-bearing
18 obligations of the affiliated group payable to
19 persons outside the group determined in
20 accordance with generally accepted accounting
21 principles must be obligations of the
22 corporation.

23 This amendatory Act of the 91st General Assembly is
24 declaratory of existing law.

25 (D) Subparagraphs (B) and (C) of this paragraph are
26 declaratory of existing law and apply retroactively,

1 for all tax years beginning on or before December 31,
2 1996, to all original returns, to all amended returns
3 filed no later than 30 days after the effective date of
4 this amendatory Act of 1996, and to all notices issued
5 on or before the effective date of this amendatory Act
6 of 1996 under subsection (a) of Section 903, subsection
7 (a) of Section 904, subsection (e) of Section 909, or
8 Section 912. A taxpayer that is a "financial
9 organization" that engages in any transaction with an
10 affiliate shall be a "financial organization" for all
11 purposes of this Act.

12 (E) For all tax years beginning on or before
13 December 31, 1996, a taxpayer that falls within the
14 definition of a "financial organization" under
15 subparagraphs (B) or (C) of this paragraph, but who
16 does not fall within the definition of a "financial
17 organization" under the Proposed Regulations issued by
18 the Department of Revenue on July 19, 1996, may
19 irrevocably elect to apply the Proposed Regulations
20 for all of those years as though the Proposed
21 Regulations had been lawfully promulgated, adopted,
22 and in effect for all of those years. For purposes of
23 applying subparagraphs (B) or (C) of this paragraph to
24 all of those years, the election allowed by this
25 subparagraph applies only to the taxpayer making the
26 election and to those members of the taxpayer's unitary

1 business group who are ordinarily required to
2 apportion business income under the same subsection of
3 Section 304 of this Act as the taxpayer making the
4 election. No election allowed by this subparagraph
5 shall be made under a claim filed under subsection (d)
6 of Section 909 more than 30 days after the effective
7 date of this amendatory Act of 1996.

8 (F) Finance Leases. For purposes of this
9 subsection, a finance lease shall be treated as a loan
10 or other extension of credit, rather than as a lease,
11 regardless of how the transaction is characterized for
12 any other purpose, including the purposes of any
13 regulatory agency to which the lessor is subject. A
14 finance lease is any transaction in the form of a lease
15 in which the lessee is treated as the owner of the
16 leased asset entitled to any deduction for
17 depreciation allowed under Section 167 of the Internal
18 Revenue Code.

19 (9) Fiscal year. The term "fiscal year" means an
20 accounting period of 12 months ending on the last day of
21 any month other than December.

22 (9.5) Fixed place of business. The term "fixed place of
23 business" has the same meaning as that term is given in
24 Section 864 of the Internal Revenue Code and the related
25 Treasury regulations.

26 (10) Includes and including. The terms "includes" and

1 "including" when used in a definition contained in this Act
2 shall not be deemed to exclude other things otherwise
3 within the meaning of the term defined.

4 (11) Internal Revenue Code. The term "Internal Revenue
5 Code" means the United States Internal Revenue Code of 1954
6 or any successor law or laws relating to federal income
7 taxes in effect for the taxable year.

8 (11.5) Investment partnership.

9 (A) The term "investment partnership" means any
10 entity that is treated as a partnership for federal
11 income tax purposes that meets the following
12 requirements:

13 (i) no less than 90% of the partnership's cost
14 of its total assets consists of qualifying
15 investment securities, deposits at banks or other
16 financial institutions, and office space and
17 equipment reasonably necessary to carry on its
18 activities as an investment partnership;

19 (ii) no less than 90% of its gross income
20 consists of interest, dividends, and gains from
21 the sale or exchange of qualifying investment
22 securities; and

23 (iii) the partnership is not a dealer in
24 qualifying investment securities.

25 (B) For purposes of this paragraph (11.5), the term
26 "qualifying investment securities" includes all of the

1 following:

2 (i) common stock, including preferred or debt
3 securities convertible into common stock, and
4 preferred stock;

5 (ii) bonds, debentures, and other debt
6 securities;

7 (iii) foreign and domestic currency deposits
8 secured by federal, state, or local governmental
9 agencies;

10 (iv) mortgage or asset-backed securities
11 secured by federal, state, or local governmental
12 agencies;

13 (v) repurchase agreements and loan
14 participations;

15 (vi) foreign currency exchange contracts and
16 forward and futures contracts on foreign
17 currencies;

18 (vii) stock and bond index securities and
19 futures contracts and other similar financial
20 securities and futures contracts on those
21 securities;

22 (viii) options for the purchase or sale of any
23 of the securities, currencies, contracts, or
24 financial instruments described in items (i) to
25 (vii), inclusive;

26 (ix) regulated futures contracts;

1 (x) commodities (not described in Section
2 1221(a)(1) of the Internal Revenue Code) or
3 futures, forwards, and options with respect to
4 such commodities, provided, however, that any item
5 of a physical commodity to which title is actually
6 acquired in the partnership's capacity as a dealer
7 in such commodity shall not be a qualifying
8 investment security;

9 (xi) derivatives; and

10 (xii) a partnership interest in another
11 partnership that is an investment partnership.

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

16 (A) arithmetic errors or incorrect computations on
17 the return or supporting schedules;

18 (B) entries on the wrong lines;

19 (C) omission of required supporting forms or
20 schedules or the omission of the information in whole
21 or in part called for thereon; and

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

26 (13) Nonbusiness income. The term "nonbusiness income"

1 means all income other than business income or
2 compensation.

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

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

9 (16) Partnership and partner. The term "partnership"
10 includes a syndicate, group, pool, joint venture or other
11 unincorporated organization, through or by means of which
12 any business, financial operation, or venture is carried
13 on, and which is not, within the meaning of this Act, a
14 trust or estate or a corporation; and the term "partner"
15 includes a member in such syndicate, group, pool, joint
16 venture or organization.

17 The term "partnership" includes any entity, including
18 a limited liability company formed under the Illinois
19 Limited Liability Company Act, classified as a partnership
20 for federal income tax purposes.

21 The term "partnership" does not include a syndicate,
22 group, pool, joint venture, or other unincorporated
23 organization established for the sole purpose of playing
24 the Illinois State Lottery.

25 (17) Part-year resident. The term "part-year resident"
26 means an individual who became a resident during the

1 taxable year or ceased to be a resident during the taxable
2 year. Under Section 1501(a)(20)(A)(i) residence commences
3 with presence in this State for other than a temporary or
4 transitory purpose and ceases with absence from this State
5 for other than a temporary or transitory purpose. Under
6 Section 1501(a)(20)(A)(ii) residence commences with the
7 establishment of domicile in this State and ceases with the
8 establishment of domicile in another State.

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

20 (18A) Records. The term "records" includes all data
21 maintained by the taxpayer, whether on paper, microfilm,
22 microfiche, or any type of machine-sensible data
23 compilation.

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

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

1 (A) an individual (i) who is in this State for
2 other than a temporary or transitory purpose during the
3 taxable year; or (ii) who is domiciled in this State
4 but is absent from the State for a temporary or
5 transitory purpose during the taxable year;

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

8 (C) A trust created by a will of a decedent who at
9 his death was domiciled in this State; and

10 (D) An irrevocable trust, the grantor of which was
11 domiciled in this State at the time such trust became
12 irrevocable. For purpose of this subparagraph, a trust
13 shall be considered irrevocable to the extent that the
14 grantor is not treated as the owner thereof under
15 Sections 671 through 678 of the Internal Revenue Code.

16 (21) Sales. The term "sales" means all gross receipts
17 of the taxpayer not allocated under Sections 301, 302 and
18 303.

19 (22) State. The term "state" when applied to a
20 jurisdiction other than this State means any state of the
21 United States, the District of Columbia, the Commonwealth
22 of Puerto Rico, any Territory or Possession of the United
23 States, and any foreign country, or any political
24 subdivision of any of the foregoing. For purposes of the
25 foreign tax credit under Section 601, the term "state"
26 means any state of the United States, the District of

1 Columbia, the Commonwealth of Puerto Rico, and any
2 territory or possession of the United States, or any
3 political subdivision of any of the foregoing, effective
4 for tax years ending on or after December 31, 1989.

5 (23) Taxable year. The term "taxable year" means the
6 calendar year, or the fiscal year ending during such
7 calendar year, upon the basis of which the base income is
8 computed under this Act. "Taxable year" means, in the case
9 of a return made for a fractional part of a year under the
10 provisions of this Act, the period for which such return is
11 made.

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

14 (25) International banking facility. The term
15 international banking facility shall have the same meaning
16 as is set forth in the Illinois Banking Act or as is set
17 forth in the laws of the United States or regulations of
18 the Board of Governors of the Federal Reserve System.

19 (26) Income Tax Return Preparer.

20 (A) The term "income tax return preparer" means any
21 person who prepares for compensation, or who employs
22 one or more persons to prepare for compensation, any
23 return of tax imposed by this Act or any claim for
24 refund of tax imposed by this Act. The preparation of a
25 substantial portion of a return or claim for refund
26 shall be treated as the preparation of that return or

1 claim for refund.

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

4 (i) furnish typing, reproducing, or other
5 mechanical assistance;

6 (ii) prepare returns or claims for refunds for
7 the employer by whom he or she is regularly and
8 continuously employed;

9 (iii) prepare as a fiduciary returns or claims
10 for refunds for any person; or

11 (iv) prepare claims for refunds for a taxpayer
12 in response to any notice of deficiency issued to
13 that taxpayer or in response to any waiver of
14 restriction after the commencement of an audit of
15 that taxpayer or of another taxpayer if a
16 determination in the audit of the other taxpayer
17 directly or indirectly affects the tax liability
18 of the taxpayer whose claims he or she is
19 preparing.

20 (27) Unitary business group.

21 (A) The term "unitary business group" means a group
22 of persons related through common ownership whose
23 business activities are integrated with, dependent
24 upon and contribute to each other. The group will not
25 include those members whose business activity outside
26 the United States is 80% or more of any such member's

1 total business activity; for purposes of this
2 paragraph and clause (a)(3)(B)(ii) of Section 304,
3 business activity within the United States shall be
4 measured by means of the factors ordinarily applicable
5 under subsections (a), (b), (c), (d), or (h) of Section
6 304 except that, in the case of members ordinarily
7 required to apportion business income by means of the 3
8 factor formula of property, payroll and sales
9 specified in subsection (a) of Section 304, including
10 the formula as weighted in subsection (h) of Section
11 304, such members shall not use the sales factor in the
12 computation and the results of the property and payroll
13 factor computations of subsection (a) of Section 304
14 shall be divided by 2 (by one if either the property or
15 payroll factor has a denominator of zero). The
16 computation required by the preceding sentence shall,
17 in each case, involve the division of the member's
18 property, payroll, or revenue miles in the United
19 States, insurance premiums on property or risk in the
20 United States, or financial organization business
21 income from sources within the United States, as the
22 case may be, by the respective worldwide figures for
23 such items. For taxable years ending prior to December
24 31, 2013, common ~~Common~~ ownership in the case of
25 corporations is the direct or indirect control or
26 ownership of more than 50% of the outstanding voting

1 stock of the persons carrying on unitary business
2 activity. For taxable years ending on or after December
3 31, 2013, common ownership is a direct or indirect
4 ownership of an interest in the taxpayer by any person
5 which, by itself or together with any agreement or
6 arrangement with any other person with a direct or
7 indirect ownership interest in the taxpayer, allows
8 that person, or any related party of that person, to
9 control the business activities of the taxpayer;
10 provided that, for purposes of this provision, a
11 "related party" of a person means: (i) any other person
12 who is a member of the same unitary business group as
13 that person, determined without regard to the
14 prohibitions against including in a unitary business
15 group persons conducting 80% or more of their business
16 activities outside of the United States or persons
17 apportioning business income under different
18 subsections of Section 304 of this Act, (ii) any other
19 person who would be disallowed a deduction for losses
20 in transactions with that person by paragraphs (b),
21 (c), and (f) (1) of Section 267 of the Internal Revenue
22 Code by virtue of being a related taxpayer, and (iii)
23 if that person is a partnership, any of its partners.
24 Unitary business activity can ordinarily be
25 illustrated where the activities of the members are:
26 (1) in the same general line (such as manufacturing,

1 wholesaling, retailing of tangible personal property,
2 insurance, transportation or finance); or (2) are
3 steps in a vertically structured enterprise or process
4 (such as the steps involved in the production of
5 natural resources, which might include exploration,
6 mining, refining, and marketing); and, in either
7 instance, the members are functionally integrated
8 through the exercise of strong centralized management
9 (where, for example, authority over such matters as
10 purchasing, financing, tax compliance, product line,
11 personnel, marketing and capital investment is not
12 left to each member).

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

1 a separate unitary business group composed of such
2 members. For purposes of the preceding two sentences, a
3 member is "ordinarily required to apportion business
4 income" under a particular subsection of Section 304 if
5 it would be required to use the apportionment method
6 prescribed by such subsection except for the fact that
7 it derives business income solely from Illinois. As
8 used in this paragraph, the phrase "United States"
9 means only the 50 states and the District of Columbia,
10 but does not include any territory or possession of the
11 United States or any area over which the United States
12 has asserted jurisdiction or claimed exclusive rights
13 with respect to the exploration for or exploitation of
14 natural resources.

15 (C) Holding companies.

16 (i) For purposes of this subparagraph, a
17 "holding company" is a corporation (other than a
18 corporation that is a financial organization under
19 paragraph (8) of this subsection (a) of Section
20 1501 because it is a bank holding company under the
21 provisions of the Bank Holding Company Act of 1956
22 (12 U.S.C. 1841, et seq.) or because it is owned by
23 a bank or a bank holding company) that owns a
24 controlling interest in one or more other
25 taxpayers ("controlled taxpayers"); that, during
26 the period that includes the taxable year and the 2

1 immediately preceding taxable years or, if the
2 corporation was formed during the current or
3 immediately preceding taxable year, the taxable
4 years in which the corporation has been in
5 existence, derived substantially all its gross
6 income from dividends, interest, rents, royalties,
7 fees or other charges received from controlled
8 taxpayers for the provision of services, and gains
9 on the sale or other disposition of interests in
10 controlled taxpayers or in property leased or
11 licensed to controlled taxpayers or used by the
12 taxpayer in providing services to controlled
13 taxpayers; and that incurs no substantial expenses
14 other than expenses (including interest and other
15 costs of borrowing) incurred in connection with
16 the acquisition and holding of interests in
17 controlled taxpayers and in the provision of
18 services to controlled taxpayers or in the leasing
19 or licensing of property to controlled taxpayers.

20 (ii) The income of a holding company which is a
21 member of more than one unitary business group
22 shall be included in each unitary business group of
23 which it is a member on a pro rata basis, by
24 including in each unitary business group that
25 portion of the base income of the holding company
26 that bears the same proportion to the total base

1 income of the holding company as the gross receipts
2 of the unitary business group bears to the combined
3 gross receipts of all unitary business groups (in
4 both cases without regard to the holding company)
5 or on any other reasonable basis, consistently
6 applied.

7 (iii) A holding company shall apportion its
8 business income under the subsection of Section
9 304 used by the other members of its unitary
10 business group. The apportionment factors of a
11 holding company which would be a member of more
12 than one unitary business group shall be included
13 with the apportionment factors of each unitary
14 business group of which it is a member on a pro
15 rata basis using the same method used in clause
16 (ii).

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

19 (D) If including the base income and factors of a
20 holding company in more than one unitary business group
21 under subparagraph (C) does not fairly reflect the
22 degree of integration between the holding company and
23 one or more of the unitary business groups, the
24 dependence of the holding company and one or more of
25 the unitary business groups upon each other, or the
26 contributions between the holding company and one or

1 more of the unitary business groups, the holding
2 company may petition the Director, under the
3 procedures provided under Section 304(f), for
4 permission to include all base income and factors of
5 the holding company only with members of a unitary
6 business group apportioning their business income
7 under one subsection of subsections (a), (b), (c), or
8 (d) of Section 304. If the petition is granted, the
9 holding company shall be included in a unitary business
10 group only with persons apportioning their business
11 income under the selected subsection of Section 304
12 until the Director grants a petition of the holding
13 company either to be included in more than one unitary
14 business group under subparagraph (C) or to include its
15 base income and factors only with members of a unitary
16 business group apportioning their business income
17 under a different subsection of Section 304.

18 (E) If the unitary business group members'
19 accounting periods differ, the common parent's
20 accounting period or, if there is no common parent, the
21 accounting period of the member that is expected to
22 have, on a recurring basis, the greatest Illinois
23 income tax liability must be used to determine whether
24 to use the apportionment method provided in subsection
25 (a) or subsection (h) of Section 304. The prohibition
26 against membership in a unitary business group for

1 taxpayers ordinarily required to apportion income
2 under different subsections of Section 304 does not
3 apply to taxpayers required to apportion income under
4 subsection (a) and subsection (h) of Section 304. The
5 provisions of this amendatory Act of 1998 apply to tax
6 years ending on or after December 31, 1998.

7 (28) Subchapter S corporation. The term "Subchapter S
8 corporation" means a corporation for which there is in
9 effect an election under Section 1362 of the Internal
10 Revenue Code, or for which there is a federal election to
11 opt out of the provisions of the Subchapter S Revision Act
12 of 1982 and have applied instead the prior federal
13 Subchapter S rules as in effect on July 1, 1982.

14 (30) Foreign person. The term "foreign person" means
15 any person who is a nonresident alien individual and any
16 nonindividual entity, regardless of where created or
17 organized, whose business activity outside the United
18 States is 80% or more of the entity's total business
19 activity.

20 (b) Other definitions.

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

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

1 (B) Words importing the plural include the
2 singular; and

3 (C) Words importing the masculine gender include
4 the feminine as well.

5 (2) "Company" or "association" as including successors
6 and assigns. The word "company" or "association", when used
7 in reference to a corporation, shall be deemed to embrace
8 the words "successors and assigns of such company or
9 association", and in like manner as if these last-named
10 words, or words of similar import, were expressed.

11 (3) Other terms. Any term used in any Section of this
12 Act with respect to the application of, or in connection
13 with, the provisions of any other Section of this Act shall
14 have the same meaning as in such other Section.

15 (Source: P.A. 96-641, eff. 8-24-09; 97-507, eff. 8-23-11;
16 97-636, eff. 6-1-12.)