

AN ACT concerning revenue.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Lottery Law is amended by changing Sections 3, 4, 5, 7.1, 7.6, 7.11, 9, 10, 10.1, 10.1a, 10.2, 10.6, 10.7, 12, 13, 14, 14.3, 19, 21, and 24 as follows:

(20 ILCS 1605/3) (from Ch. 120, par. 1153)

Sec. 3. For the purposes of this Act:

a. "Lottery" or "State Lottery" means the lottery or lotteries established and operated pursuant to this Act.

b. "Board" means the Lottery Control Board created by this Act.

c. "Department" means the Department of Revenue ~~the Lottery~~.

d. "Director" means the Director of Revenue ~~the Department of the Lottery~~.

e. "Chairman" means the Chairman of the Lottery Control Board.

f. "Multi-state game directors" means such persons, including the Superintendent ~~Director of the Department of the Lottery~~, as may be designated by an agreement between the Division ~~Department of the Lottery~~ and one or more additional lotteries operated under the laws of another state or states.

g. "Division" means the Division of the State Lottery of the Department of Revenue.

h. "Superintendent" means the Superintendent of the Division of the State Lottery of the Department of Revenue.

(Source: P.A. 85-183.)

(20 ILCS 1605/4) (from Ch. 120, par. 1154)

Sec. 4. The Department of the Lottery is established to implement and regulate the State Lottery in the manner provided

in this Act.

In accordance with Executive Order No. 9 (2003), the Division of the State Lottery is established within the Department of Revenue. Unless otherwise provided by law, the Division of the State Lottery shall be subject to and governed by all of the laws and rules applicable to the Department.

(Source: P.A. 84-1128.)

(20 ILCS 1605/5) (from Ch. 120, par. 1155)

Sec. 5. The Division ~~Department of the Lottery~~ shall be under the supervision and direction of a Superintendent ~~Director of the Lottery~~, who shall be a person qualified by training and experience to perform the duties required by this Act. The Superintendent ~~Director~~ shall be appointed by the Governor, by and with the advice and consent of the Senate. The term of office of the Superintendent ~~Director~~ shall expire on the third Monday of January in odd numbered years provided that he or she shall hold ~~his~~ office until a ~~his~~ successor is appointed and qualified.

Any vacancy occurring in the office of the Superintendent ~~Director~~ shall be filled in the same manner as the original appointment.

The Superintendent ~~Director~~ shall devote his or her entire time and attention to the duties of the ~~his~~ office and shall not be engaged in any other profession or occupation. The Superintendent ~~He~~ shall receive such salary as shall be provided by law.

(Source: P.A. 84-1128.)

(20 ILCS 1605/7.1) (from Ch. 120, par. 1157.1)

Sec. 7.1. The Department shall promulgate such rules and regulations governing the establishment and operation of a State lottery as it deems necessary to carry out the purposes of this Act. Such rules and regulations shall be subject to the provisions of The Illinois Administrative Procedure Act. The Division shall issue written game rules, play instructions,

directives, operations manuals, brochures, or any other publications necessary to conduct specific games, as authorized by rule by the Department. Any written game rules, play instructions, directives, operations manuals, brochures, or other game publications issued by the Division ~~Department~~ that relate to a specific lottery game shall be maintained as a public record in the Division's ~~Department's~~ principal office, and made available for public inspection and copying but shall be exempt from the rulemaking procedures of the Illinois Administrative Procedure Act. However, when such written materials contain any policy of general applicability, the Division ~~Department~~ shall formulate and adopt such policy as a rule in accordance with the provisions of the Illinois Administrative Procedure Act. In addition, the Division ~~Department~~ shall publish each January in the Illinois Register a list of all game-specific rules, play instructions, directives, operations manuals, brochures, or other game-specific publications issued by the Division ~~Department~~ during the previous year and instructions concerning how the public may obtain copies of these materials from the Division ~~Department~~.

(Source: P.A. 86-433.)

(20 ILCS 1605/7.6) (from Ch. 120, par. 1157.6)

Sec. 7.6. The Board shall advise and make recommendations to the Superintendent or the Director regarding the functions and operations of the State Lottery. A copy of all such recommendations shall also be forwarded to the Governor, the Attorney General, the Speaker of the House, the President of the Senate and the minority leaders of both houses.

(Source: P.A. 84-1128.)

(20 ILCS 1605/7.11) (from Ch. 120, par. 1157.11)

Sec. 7.11. The Division ~~Department~~ may establish and collect nominal charges for promotional products ("premiums") and other promotional materials produced or acquired by the

Division ~~Department~~ as part of its advertising and promotion activities. Such premiums or other promotional materials may be sold to individuals, government agencies and not-for-profit organizations, but not to for-profit enterprises for the purpose of resale. Other State agencies shall be charged no more than the cost to the Division ~~Department~~ of the premium or promotional material. All proceeds from the sale of premiums or promotional materials shall be deposited in the State Lottery Fund in the State Treasury.

(Source: P.A. 86-1220.)

(20 ILCS 1605/9) (from Ch. 120, par. 1159)

Sec. 9. The Superintendent ~~Director~~, as administrative head of the Division ~~Department of the Lottery~~, shall direct and supervise all its administrative and technical activities and shall report to the Director. In addition to the duties imposed upon him elsewhere in this Act, it shall be the Superintendent's ~~his~~ duty:

a. To supervise and administer the operation of the lottery in accordance with the provisions of this Act or such rules and regulations of the Department adopted thereunder.

b. To attend meetings of the Board ~~Department~~ or to appoint a designee to attend in his stead.

c. To employ and direct such personnel in accord with the Personnel Code, as may be necessary to carry out the purposes of this Act. The Superintendent may, subject to the approval of the Director, use the services, personnel, or facilities of the Department. In addition, the Superintendent ~~Director~~ may by agreement secure such services as he or she may deem necessary from any other department, agency, or unit of the State government, and may employ and compensate such consultants and technical assistants as may be required and is otherwise permitted by law.

d. To license, in accordance with the provisions of Sections 10 and 10.1 of this Act and the rules and regulations of the Department adopted thereunder, as agents to sell lottery

tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares. The Superintendent ~~Director~~ may require a bond from every licensed agent, in such amount as provided in the rules and regulations of the Department. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the rules and regulations of the Department.

e. To suspend or revoke any license issued pursuant to this Act or the rules and regulations promulgated by the Department thereunder.

f. To confer regularly as necessary or desirable and not less than once every month with the Lottery Control Board on the operation and administration of the Lottery; to make available for inspection by the Board or any member of the Board, upon request, all books, records, files, and other information and documents of his office; to advise the Board and recommend such rules and regulations and such other matters as he deems necessary and advisable to improve the operation and administration of the lottery.

g. To enter into contracts for the operation of the lottery, or any part thereof, and into contracts for the promotion of the lottery on behalf of the Department with any person, firm or corporation, to perform any of the functions provided for in this Act or the rules and regulations promulgated thereunder. The Department shall not expend State funds on a contractual basis for such functions unless those functions and expenditures are expressly authorized by the General Assembly.

h. To enter into an agreement or agreements with the management of state lotteries operated pursuant to the laws of other states for the purpose of creating and operating a multi-state lottery game wherein a separate and distinct prize pool would be combined to award larger prizes to the public than could be offered by the several state lotteries, individually. No tickets or shares offered in connection with a multi-state lottery game shall be sold within the State of

Illinois, except those offered by and through the Department. No such agreement shall purport to pledge the full faith and credit of the State of Illinois, nor shall the Department expend State funds on a contractual basis in connection with any such game unless such expenditures are expressly authorized by the General Assembly, provided, however, that in the event of error or omission by the Illinois State Lottery in the conduct of the game, as determined by the multi-state game directors, the Department shall be authorized to pay a prize winner or winners the lesser of a disputed prize or \$1,000,000, any such payment to be made solely from funds appropriated for game prize purposes. The Department shall be authorized to share in the ordinary operating expenses of any such multi-state lottery game, from funds appropriated by the General Assembly, and in the event the multi-state game control offices are physically located within the State of Illinois, the Department is authorized to advance start-up operating costs not to exceed \$150,000, subject to proportionate reimbursement of such costs by the other participating state lotteries. The Department shall be authorized to share proportionately in the costs of establishing a liability reserve fund from funds appropriated by the General Assembly. The Department is authorized to transfer prize award funds attributable to Illinois sales of multi-state lottery game tickets to the multi-state control office, or its designated depository, for deposit to such game pool account or accounts as may be established by the multi-state game directors, the records of which account or accounts shall be available at all times for inspection in an audit by the Auditor General of Illinois and any other auditors pursuant to the laws of the State of Illinois. No multi-state game prize awarded to a nonresident of Illinois, with respect to a ticket or share purchased in a state other than the State of Illinois, shall be deemed to be a prize awarded under this Act for the purpose of taxation under the Illinois Income Tax Act. All of the net revenues accruing from the sale of multi-state lottery tickets

or shares shall be transferred into the Common School Fund pursuant to Section 7.2. The Department shall promulgate such rules as may be appropriate to implement the provisions of this Section.

i. To make a continuous study and investigation of (1) the operation and the administration of similar laws which may be in effect in other states or countries, (2) any literature on the subject which from time to time may be published or available, (3) any Federal laws which may affect the operation of the lottery, and (4) the reaction of Illinois citizens to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this Act.

j. To report monthly to the State Treasurer and the Lottery Control Board a full and complete statement of lottery revenues, prize disbursements and other expenses for each month and the amounts to be transferred to the Common School Fund pursuant to Section 7.2 or such other funds as are otherwise authorized by Section 21.2 of this Act, and to make an annual report, which shall include a full and complete statement of lottery revenues, prize disbursements and other expenses, to the Governor and the Board. All reports required by this subsection shall be public and copies of all such reports shall be sent to the Speaker of the House, the President of the Senate, and the minority leaders of both houses.

(Source: P.A. 85-183.)

(20 ILCS 1605/10) (from Ch. 120, par. 1160)

Sec. 10. The Division ~~Department~~, upon application therefor on forms prescribed by the Division ~~Department~~, and upon a determination by the Division ~~Department~~ that the applicant meets all of the qualifications specified in this Act, shall issue a license as an agent to sell lottery tickets or shares. No license as an agent to sell lottery tickets or shares shall be issued to any person to engage in business exclusively as a lottery sales agent.

Before issuing such license the Superintendent ~~Director~~ shall consider (a) the financial responsibility and security of the person and his business or activity, (b) the accessibility of his place of business or activity to the public, (c) the sufficiency of existing licenses to serve the public convenience, (d) the volume of expected sales, and (e) such other factors as he or she may deem appropriate.

Until September 1, 1987, the provisions of Sections 2a, 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 6, 6a, 6b, 6c, 8, 9, 10, 12 and 13.5 of the Retailers' Occupation Tax Act which are not inconsistent with this Act shall apply to the subject matter of this Act to the same extent as if such provisions were included in this Act. For purposes of this Act, references in such incorporated Sections of the Retailers' Occupation Tax Act to retailers, sellers or persons engaged in the business of selling tangible personal property mean persons engaged in selling lottery tickets or shares; references in such incorporated Sections to sales of tangible personal property mean the selling of lottery tickets or shares; and references in such incorporated Sections to certificates of registration mean licenses issued under this Act. The provisions of the Retailers' Occupation Tax Act as heretofore applied to the subject matter of this Act shall not apply with respect to tickets sold by or delivered to lottery sales agents on and after September 1, 1987, but such provisions shall continue to apply with respect to transactions involving the sale and delivery of tickets prior to September 1, 1987.

All licenses issued by the Division ~~Department~~ under this Act shall be valid for a period not to exceed 2 years after issuance unless sooner revoked, canceled or suspended as in this Act provided. No license issued under this Act shall be transferable or assignable. Such license shall be conspicuously displayed in the place of business conducted by the licensee in Illinois where lottery tickets or shares are to be sold under such license.

For purposes of this Section, the term "person" shall be

construed to mean and include an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, referee, any other person acting in a fiduciary or representative capacity who is appointed by a court, or any combination of individuals. "Person" includes any department, commission, agency or instrumentality of the State, including any county, city, village, or township and any agency or instrumentality thereof. (Source: P.A. 86-1475; 87-895.)

(20 ILCS 1605/10.1) (from Ch. 120, par. 1160.1)

Sec. 10.1. The following are ineligible for any license under this Act:

- (a) any person who has been convicted of a felony;
- (b) any person who is or has been a professional gambler or gambling promoter;
- (c) any person who has engaged in bookmaking or other forms of illegal gambling;
- (d) any person who is not of good character and reputation in the community in which he resides;
- (e) any person who has been found guilty of any fraud or misrepresentation in any connection;
- (f) any firm or corporation in which a person defined in (a), (b), (c), (d) or (e) has a proprietary, equitable or credit interest of 5% or more.
- (g) any organization in which a person defined in (a), (b), (c), (d) or (e) is an officer, director, or managing agent, whether compensated or not;
- (h) any organization in which a person defined in (a), (b), (c), (d), or (e) is to participate in the management or sales of lottery tickets or shares.

However, with respect to persons defined in (a), the Department may grant any such person a license under this Act when:

- 1) at least 10 years have elapsed since the date when the sentence for the most recent such conviction was satisfactorily

completed;

2) the applicant has no history of criminal activity subsequent to such conviction;

3) the applicant has complied with all conditions of probation, conditional discharge, supervision, parole or mandatory supervised release; and

4) the applicant presents at least 3 letters of recommendation from responsible citizens in his community who personally can attest that the character and attitude of the applicant indicate that he is unlikely to commit another crime.

The Division ~~Department~~ may revoke, without notice or a hearing, the license of any agent who violates this Act or any rule or regulation promulgated pursuant to this Act. However, if the Division ~~Department~~ does revoke a license without notice and an opportunity for a hearing, the Division ~~Department~~ shall, by appropriate notice, afford the person whose license has been revoked an opportunity for a hearing within 30 days after the revocation order has been issued. As a result of any such hearing, the Division ~~Department~~ may confirm its action in revoking the license, or it may order the restoration of such license.

(Source: P.A. 82-404.)

(20 ILCS 1605/10.1a) (from Ch. 120, par. 1160.1a)

Sec. 10.1a. In addition to other grounds specified in this Act, the Division ~~Department~~ shall refuse to issue and shall suspend the license of any lottery sales agency who fails to file a return, or to pay the tax, penalty or interest shown in a filed return, or to pay any final assessment of tax, penalty or interest, as required by any tax Act administered by the ~~Illinois~~ Department ~~of Revenue~~, until such time as the requirements of any such tax Act are satisfied, unless the agency is contesting, in accordance with the procedures established by the appropriate revenue Act, its liability for the tax or the amount of tax. The Division ~~Department~~ shall affirmatively verify the tax status of every sales agency

before issuing or renewing a license. For purposes of this Section, a sales agency shall not be considered delinquent in the payment of a tax if the agency (a) has entered into an agreement with the Department ~~of Revenue~~ for the payment of all such taxes that are due and (b) is in compliance with the agreement.

(Source: P.A. 87-341.)

(20 ILCS 1605/10.2) (from Ch. 120, par. 1160.2)

Sec. 10.2. Application and other fees. Each application for a new lottery license must be accompanied by a one-time application fee of \$50; the Division ~~Department~~, however, may waive the fee for licenses of limited duration as provided by Department rule. Each application for renewal of a lottery license must be accompanied by a renewal fee of \$25. Each lottery licensee granted on-line status pursuant to the Department's rules must pay a fee of \$10 per week as partial reimbursement for telecommunications charges incurred by the Department in providing access to the lottery's on-line gaming system. The Department, by rule, may increase or decrease the amount of these fees.

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

(20 ILCS 1605/10.6) (from Ch. 120, par. 1160.6)

Sec. 10.6. The Division ~~Department~~ shall make an effort to more directly inform players of the odds of winning prizes. This effort shall include, at a minimum, that the Division ~~Department~~ require all ticket agents to display a placard stating the odds of winning for each game offered by that agent.

(Source: P.A. 85-183.)

(20 ILCS 1605/10.7)

Sec. 10.7. Compulsive gambling.

(a) Each lottery sales agent shall post a statement regarding obtaining assistance with gambling problems and

including a toll-free "800" telephone number providing crisis counseling and referral services to families experiencing difficulty as a result of problem or compulsive gambling. The text of the statement shall be determined by rule by the Department of Human Services, shall be no more than one sentence in length, and shall be posted on the placard required under Section 10.6. The signs shall be provided by the Department of Human Services.

(b) The Division ~~Department~~ shall print a statement regarding obtaining assistance with gambling problems, the text of which shall be determined by rule by the Department of Human Services, on all paper stock it provides to the general public.

(c) The Division ~~Department~~ shall print a statement of no more than one sentence in length regarding obtaining assistance with gambling problems and including a toll-free "800" number providing crisis counseling and referral services to families experiencing difficulty as a result of problem or compulsive gambling on the back of all lottery tickets.

(Source: P.A. 89-374, eff. 1-1-96; 89-507, eff. 7-1-97.)

(20 ILCS 1605/12) (from Ch. 120, par. 1162)

Sec. 12. The public inspection and copying of the records and data of the Division ~~Department~~ and the Board shall be generally governed by the provisions of the Freedom of Information Act except that the following shall additionally be exempt from inspection and copying:

(i) information privileged against introduction in judicial proceedings;

(ii) internal communications of the several agencies;

(iii) information concerning secret manufacturing processes or confidential data submitted by any person under this Act;

(iv) any creative proposals, scripts, storyboards or other materials prepared by or for the Division ~~Department~~, prior to the placement of the materials in the media, if the prior

release of the materials would compromise the effectiveness of an advertising campaign.

(Source: P.A. 88-522.)

(20 ILCS 1605/13) (from Ch. 120, par. 1163)

Sec. 13. Except as otherwise provided in Section 13.1, no prize, nor any portion of a prize, nor any right of any person to a prize awarded shall be assignable. Any prize, or portion thereof remaining unpaid at the death of a prize winner, may be paid to the estate of such deceased prize winner, or to the trustee under a revocable living trust established by the deceased prize winner as settlor, provided that a copy of such a trust has been filed with the Department along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the Division ~~Department~~ prior to the settlor's death. Following such a settlor's death and prior to any payment to such a successor trustee, the Superintendent ~~Director~~ shall obtain from the trustee ~~and each trust beneficiary~~ a written agreement to indemnify and hold the Department and the Division harmless with respect to any claims that may be asserted against the Department or the Division arising from payment to or through the trust. Notwithstanding any other provision of this Section, any person pursuant to an appropriate judicial order may be paid the prize to which a winner is entitled, and all or part of any prize otherwise payable by State warrant under this Section shall be withheld upon certification to the State Comptroller from the Illinois Department of Public Aid as provided in Section 10-17.5 of The Illinois Public Aid Code. The Director and the Superintendent shall be discharged of all further liability upon payment of a prize pursuant to this Section.

(Source: P.A. 93-465, eff. 1-1-04.)

(20 ILCS 1605/14) (from Ch. 120, par. 1164)

Sec. 14. No person shall sell a ticket or share at a price

greater than that fixed by rule or regulation of the Department or the Division. No person other than a licensed lottery sales agent or distributor shall sell or resell lottery tickets or shares. No person shall charge a fee to redeem a winning ticket or share.

Any person convicted of violating this Section shall be guilty of a Class B misdemeanor; provided, that if any offense under this Section is a subsequent offense, the offender shall be guilty of a Class 4 felony.

(Source: P.A. 87-1271.)

(20 ILCS 1605/14.3)

Sec. 14.3. Misuse of proprietary material prohibited. Except as may be provided in Section 7.11, or by bona fide sale or by prior authorization from the Department or the Division, or otherwise by law, all premiums, promotional and other proprietary material produced or acquired by the Division ~~Department~~ as part of its advertising and promotional activities shall remain the property of the Department. Nothing herein shall be construed to affect the rights or obligations of the Department or any other person under federal or State trademark or copyright laws.

(Source: P.A. 88-522.)

(20 ILCS 1605/19) (from Ch. 120, par. 1169)

Sec. 19. The Division ~~Department~~ shall establish an appropriate period for the claiming of prizes for each lottery game offered. Each claim period shall be stated in game rules and written play instructions issued by the Superintendent ~~Director~~ in accordance with Section 7.1 of this Act. Written play instructions shall be made available to all players through sales agents licensed to sell game tickets or shares. Prizes for lottery games which involve the purchase of a physical lottery ticket may be claimed only by presentation of a valid winning lottery ticket that matches validation records on file with the Lottery; no claim may be honored which is

based on the assertion that the ticket was lost or stolen. No lottery ticket which has been altered, mutilated, or fails to pass validation tests shall be deemed to be a winning ticket.

If no claim is made for the money within the established claim period, the prize may be included in the prize pool of such special drawing or drawings as the Division ~~Department~~ may, from time to time, designate. Unclaimed multi-state game prize money may be included in the multi-state prize pool for such special drawing or drawings as the multi-state game directors may, from time to time, designate. Any bonuses offered by the Department to sales agents who sell winning tickets or shares shall be payable to such agents regardless of whether or not the prize money on the ticket or share is claimed, provided that the agent can be identified as the vendor of the winning ticket or share, and that the winning ticket or share was sold on or after January 1, 1984. All unclaimed prize money not included in the prize pool of a special drawing shall be transferred to the Common School Fund. (Source: P.A. 90-724, eff. 1-1-99.)

(20 ILCS 1605/21) (from Ch. 120, par. 1171)

Sec. 21. All lottery sales agents or distributors shall be liable to the Lottery for any and all tickets accepted or generated by any employee or representative of that agent or distributor, and such tickets shall be deemed to have been purchased by the agent or distributor unless returned to the Lottery within the time and in the manner prescribed by the Superintendent ~~Director~~. All moneys received by such agents or distributors from the sale of lottery tickets or shares, less the amount retained as compensation for the sale of the tickets or shares and the amount paid out as prizes, shall be paid over to a lottery representative or deposited in a bank or savings and loan association approved by the State Treasurer, as prescribed by the Superintendent ~~Director~~.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has

complied with the requirements established pursuant to Section 6 of the Public Funds Investment Act.

Each payment or deposit shall be accompanied by a report of the agent's receipts and transactions in the sale of lottery tickets in such form and containing such information as the Superintendent ~~Director~~ may require. Any discrepancies in such receipts and transactions may be resolved as provided by the rules and regulations of the Department.

If any money due the Lottery by a sales agent or distributor is not paid when due or demanded, it shall immediately become delinquent and be billed on a subsequent monthly statement. If on the closing date for any monthly statement a delinquent amount previously billed of more than \$50 remains unpaid, interest in such amount shall be accrued at the rate of 2% per month or fraction thereof from the date when such delinquent amount becomes past due until such delinquent amount, including interest, penalty and other costs and charges that the Department may incur in collecting such amounts, is paid. In case any agent or distributor fails to pay any moneys due the Lottery within 30 days after a second bill or statement is rendered to the agent or distributor, such amount shall be deemed seriously delinquent and may be referred by the Department to a collection agency or credit bureau for collection. Any contract entered into by the Department for the collection of seriously delinquent accounts with a collection agency or credit bureau may be satisfied by a commercially reasonable percentage of the delinquent account recouped, which shall be negotiated by the Department in accordance with commercially accepted standards. Any costs incurred by the Department or others authorized to act in its behalf in collecting such delinquencies may be assessed against the agent or distributor and included as a part of the delinquent account.

In case of failure of an agent or distributor to pay a seriously delinquent amount, or any portion thereof, including interest, penalty and costs, the Division ~~Department~~ may issue

a Notice of Assessment. In determining amounts shown on the Notice of Assessment, the Division ~~Department~~ shall utilize the financial information available from its records. Such Notice of Assessment shall be prima facie correct and shall be prima facie evidence of delinquent sums due under this Section at any hearing before the Board, or its Hearing Officers, or at any other legal proceeding. Reproduced copies of the Division's ~~Department's~~ records relating to a delinquent account or a Notice of Assessment offered in the name of the Department, under the Certificate of the Director or any officer or employee of the Department designated in writing by the Director shall, without further proof, be admitted into evidence in any such hearing or any legal proceeding and shall be prima facie proof of the delinquency, including principal and any interest, penalties and costs, as shown thereon. The Attorney General may bring suit on behalf of the Department to collect all such delinquent amounts, or any portion thereof, including interest, penalty and costs, due the Lottery.

Any person who accepts money that is due to the Department from the sale of lottery tickets under this Act, but who wilfully fails to remit such payment to the Department when due or who purports to make such payment but wilfully fails to do so because his check or other remittance fails to clear the bank or savings and loan association against which it is drawn, in addition to the amount due and in addition to any other penalty provided by law, shall be assessed, and shall pay, a penalty equal to 5% of the deficiency plus any costs or charges incurred by the Department in collecting such amount.

The Director may make such arrangements for any person(s), banks, savings and loan associations or distributors, to perform such functions, activities or services in connection with the operation of the lottery as he deems advisable pursuant to this Act, the State Comptroller Act, or the rules and regulations of the Department, and such functions, activities or services shall constitute lawful functions, activities and services of such person(s), banks, savings and

loan associations or distributors.

All income arising out of any activity or purpose of the Division ~~Department~~ shall, pursuant to the State Finance Act, be paid into the State Treasury except as otherwise provided by the rules and regulations of the Department and shall be covered into a special fund to be known as the State Lottery Fund. Banks and savings and loan associations may be compensated for services rendered based upon the activity and amount of funds on deposit.

(Source: P.A. 91-357, eff. 7-29-99.)

(20 ILCS 1605/24) (from Ch. 120, par. 1174)

Sec. 24. The State Comptroller shall conduct a preaudit of all accounts and transactions of the Department in connection with the operation of the State Lottery under the State Comptroller Act, excluding payments issued by the Department for prizes of \$25,000 or less.

The Auditor General or a certified public accountant firm appointed by him shall conduct an annual post-audit of all accounts and transactions of the Department in connection with the operation of the State Lottery and other special post audits as the Auditor General, the Legislative Audit Commission, or the General Assembly deems necessary. The annual post-audits shall include payments made by lottery sales agents of prizes of less than \$600 authorized under Section 20, and payments made by the Department of prizes up to \$25,000 authorized under Section 20.1. The Auditor General or his agent conducting an audit under this Act shall have access and authority to examine any and all records of the Department or the Board, its distributing agents and its licensees.

(Source: P.A. 91-357, eff. 7-29-99.)

Section 10. The Illinois Income Tax Act is amended by changing Sections 203 and 902 as follows:

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

Sec. 203. Base income defined.

(a) Individuals.

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

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

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

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

(C) An amount equal to the amount received during the taxable year as a recovery or refund of real property taxes paid with respect to the taxpayer's principal residence under the Revenue Act of 1939 and for which a deduction was previously taken under subparagraph (L) of this paragraph (2) prior to July 1, 1991, the retrospective application date of Article 4 of Public Act 87-17. In the case of multi-unit or multi-use structures and farm dwellings, the taxes on the taxpayer's principal residence shall be that portion of the total taxes for the entire property which is attributable to such principal residence;

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

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

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

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

(D-16) If the taxpayer sells, transfers, abandons, or otherwise disposes of ~~reports a capital gain or loss on the taxpayer's federal income tax return for the taxable year based on a sale or transfer of~~ property for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (D-15), then an amount equal to the aggregate amount of the deductions taken in all taxable years under subparagraph (Z) with respect to that property.

If the taxpayer continues to own property through the last day of the last tax year for which the taxpayer may claim a depreciation deduction for federal income tax purposes and for which the taxpayer was allowed in any taxable year to make a subtraction modification under subparagraph (Z), then an amount equal to that subtraction modification.

The taxpayer is required to make the addition

modification under this subparagraph only once with respect to any one piece of property;

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

This paragraph shall not apply to the following:

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

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

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

member, and

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

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

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

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

(D-18) For taxable years ending on or after December 31, 2004, an amount equal to the amount of intangible expenses and costs otherwise allowed as a deduction in computing base income, and that were paid, accrued, or incurred, directly or indirectly, to a

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

This paragraph shall not apply to the following:

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

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

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

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

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

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

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

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

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

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

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

missing in action, and in respect of any compensation paid to a resident in 2001 or thereafter by reason of being a member of the Illinois National Guard. The provisions of this amendatory Act of the 92nd General Assembly are exempt from the provisions of Section 250;

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

(G) The valuation limitation amount;

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

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

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

(K) An amount equal to those dividends included in such total that were paid by a corporation that conducts business operations in a federally designated Foreign Trade Zone or Sub-Zone and that is designated a High Impact Business located in Illinois; provided

that dividends eligible for the deduction provided in subparagraph (J) of paragraph (2) of this subsection shall not be eligible for the deduction provided under this subparagraph (K);

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

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

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

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

(P) An amount equal to the amount of the deduction used to compute the federal income tax credit for

restoration of substantial amounts held under claim of right for the taxable year pursuant to Section 1341 of the Internal Revenue Code of 1986;

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

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

(S) An amount, to the extent included in adjusted gross income, equal to the amount of a contribution made in the taxable year on behalf of the taxpayer to a medical care savings account established under the Medical Care Savings Account Act or the Medical Care Savings Account Act of 2000 to the extent the contribution is accepted by the account administrator as provided in that Act;

(T) An amount, to the extent included in adjusted gross income, equal to the amount of interest earned in the taxable year on a medical care savings account established under the Medical Care Savings Account Act or the Medical Care Savings Account Act of 2000 on behalf of the taxpayer, other than interest added pursuant to item (D-5) of this paragraph (2);

(U) For one taxable year beginning on or after January 1, 1994, an amount equal to the total amount of tax imposed and paid under subsections (a) and (b) of Section 201 of this Act on grant amounts received by the taxpayer under the Nursing Home Grant Assistance Act during the taxpayer's taxable years 1992 and 1993;

(V) Beginning with tax years ending on or after December 31, 1995 and ending with tax years ending on or before December 31, 2004, an amount equal to the amount paid by a taxpayer who is a self-employed taxpayer, a partner of a partnership, or a shareholder

in a Subchapter S corporation for health insurance or long-term care insurance for that taxpayer or that taxpayer's spouse or dependents, to the extent that the amount paid for that health insurance or long-term care insurance may be deducted under Section 213 of the Internal Revenue Code of 1986, has not been deducted on the federal income tax return of the taxpayer, and does not exceed the taxable income attributable to that taxpayer's income, self-employment income, or Subchapter S corporation income; except that no deduction shall be allowed under this item (V) if the taxpayer is eligible to participate in any health insurance or long-term care insurance plan of an employer of the taxpayer or the taxpayer's spouse. The amount of the health insurance and long-term care insurance subtracted under this item (V) shall be determined by multiplying total health insurance and long-term care insurance premiums paid by the taxpayer times a number that represents the fractional percentage of eligible medical expenses under Section 213 of the Internal Revenue Code of 1986 not actually deducted on the taxpayer's federal income tax return;

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

(X) For taxable year 1999 and thereafter, an amount equal to the amount of any (i) distributions, to the extent includible in gross income for federal income tax purposes, made to the taxpayer because of his or her status as a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime or as an heir of the victim and (ii) items of income, to the extent includible in gross income for federal income tax purposes, attributable to, derived

from or in any way related to assets stolen from, hidden from, or otherwise lost to a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime immediately prior to, during, and immediately after World War II, including, but not limited to, interest on the proceeds receivable as insurance under policies issued to a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime by European insurance companies immediately prior to and during World War II; provided, however, this subtraction from federal adjusted gross income does not apply to assets acquired with such assets or with the proceeds from the sale of such assets; provided, further, this paragraph shall only apply to a taxpayer who was the first recipient of such assets after their recovery and who is a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime or as an heir of the victim. The amount of and the eligibility for any public assistance, benefit, or similar entitlement is not affected by the inclusion of items (i) and (ii) of this paragraph in gross income for federal income tax purposes. This paragraph is exempt from the provisions of Section 250;

(Y) For taxable years beginning on or after January 1, 2002 and ending on or before December 31, 2004, moneys contributed in the taxable year to a College Savings Pool account under Section 16.5 of the State Treasurer Act, except that amounts excluded from gross income under Section 529(c)(3)(C)(i) of the Internal Revenue Code shall not be considered moneys contributed under this subparagraph (Y). For taxable years beginning on or after January 1, 2005, a maximum of \$10,000 contributed in the taxable year to (i) a College Savings Pool account under Section 16.5 of the State Treasurer Act or (ii) the Illinois Prepaid

Tuition Trust Fund, except that amounts excluded from gross income under Section 529(c)(3)(C)(i) of the Internal Revenue Code shall not be considered moneys contributed under this subparagraph (Y). This subparagraph (Y) is exempt from the provisions of Section 250;

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

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

(2) for taxable years ending on or before December 31, 2005, "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by 0.429); and

(3) for taxable years ending after December 31, 2005:

(i) for property on which a bonus depreciation deduction of 30% of the adjusted basis was taken, "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by 0.429); and

(ii) for property on which a bonus depreciation deduction of 50% of the adjusted basis was taken, "x" equals "y" multiplied by 1.0.

The aggregate amount deducted under this subparagraph in all taxable years for any one piece of property may not exceed the amount of the bonus depreciation deduction ~~(30% of the adjusted basis of the qualified property)~~ taken on that property on the taxpayer's federal income tax return under subsection (k) of Section 168 of the Internal Revenue Code. This subparagraph (Z) is exempt from the provisions of Section 250;

(AA) If the taxpayer sells, transfers, abandons, or otherwise disposes of ~~reports a capital gain or loss on the taxpayer's federal income tax return for the taxable year based on a sale or transfer of~~ property for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (D-15), then an amount equal to that addition modification.

If the taxpayer continues to own property through the last day of the last tax year for which the taxpayer may claim a depreciation deduction for federal income tax purposes and for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (D-15), then an amount equal to that addition modification.

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

This subparagraph (AA) is exempt from the provisions of Section 250;

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

(CC) The amount of (i) any interest income (net of the deductions allocable thereto) taken into account for the taxable year with respect to a transaction with a taxpayer that is required to make an addition

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

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

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

person.

(b) Corporations.

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

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

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

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

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

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

(E) For taxable years in which a net operating loss carryback or carryforward from a taxable year ending prior to December 31, 1986 is an element of taxable income under paragraph (1) of subsection (e) or subparagraph (E) of paragraph (2) of subsection (e),

the amount by which addition modifications other than those provided by this subparagraph (E) exceeded subtraction modifications in such earlier taxable year, with the following limitations applied in the order that they are listed:

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

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

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

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

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

(E-11) If the taxpayer sells, transfers, abandons, or otherwise disposes of ~~reports a capital gain or loss on the taxpayer's federal income tax return for the taxable year based on a sale or transfer of~~ property for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (E-10), then an amount equal to the aggregate amount of the deductions taken in all taxable years under subparagraph (T) with respect to that property.

If the taxpayer continues to own property through the last day of the last tax year for which the taxpayer may claim a depreciation deduction for federal income tax purposes and for which the taxpayer was allowed in any taxable year to make a subtraction modification under subparagraph (T), then an amount equal to that subtraction modification.

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

(E-12) For taxable years ending on or after December 31, 2004, an amount equal to the amount otherwise allowed as a deduction in computing base income for interest paid, accrued, or incurred, directly or indirectly, to a foreign person who would be a member of the same unitary business group but for the fact the foreign person's business activity outside the United States is 80% or more of the foreign person's total business activity. The addition modification required by this subparagraph shall be reduced to the extent that dividends were included in base income of the unitary group for the same taxable year and received by the taxpayer or by a member of the taxpayer's unitary business group (including amounts included in gross income pursuant to Sections 951 through 964 of the Internal Revenue Code and amounts included in gross income under Section 78 of the

Internal Revenue Code) with respect to the stock of the same person to whom the interest was paid, accrued, or incurred.

This paragraph shall not apply to the following:

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

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

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

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

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

(iv) an item of interest paid, accrued, or incurred, directly or indirectly, to a foreign person if the taxpayer establishes by clear and convincing evidence that the adjustments are

unreasonable; or if the taxpayer and the Director agree in writing to the application or use of an alternative method of apportionment under Section 304(f).

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

(E-13) For taxable years ending on or after December 31, 2004, an amount equal to the amount of intangible expenses and costs otherwise allowed as a deduction in computing base income, and that were paid, accrued, or incurred, directly or indirectly, to a foreign person who would be a member of the same unitary business group but for the fact that the foreign person's business activity outside the United States is 80% or more of that person's total business activity. The addition modification required by this subparagraph shall be reduced to the extent that dividends were included in base income of the unitary group for the same taxable year and received by the taxpayer or by a member of the taxpayer's unitary business group (including amounts included in gross income pursuant to Sections 951 through 964 of the Internal Revenue Code and amounts included in gross income under Section 78 of the Internal Revenue Code) with respect to the stock of the same person to whom the intangible expenses and costs were directly or indirectly paid, incurred, or accrued. The preceding sentence shall not apply to the extent that the same dividends caused a reduction to the addition

modification required under Section 203(b)(2)(E-12) of this Act. As used in this subparagraph, the term "intangible expenses and costs" includes (1) expenses, losses, and costs for, or related to, the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property; (2) losses incurred, directly or indirectly, from factoring transactions or discounting transactions; (3) royalty, patent, technical, and copyright fees; (4) licensing fees; and (5) other similar expenses and costs. For purposes of this subparagraph, "intangible property" includes patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets.

This paragraph shall not apply to the following:

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

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

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

(b) the transaction giving rise to the intangible expense or cost between the taxpayer and the foreign person did not have as a principal purpose the avoidance of Illinois

income tax, and is paid pursuant to a contract or agreement that reflects arm's-length terms; or

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

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

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

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

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

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

(I) With the exception of any amounts subtracted under subparagraph (J), an amount equal to the sum of all amounts disallowed as deductions by (i) Sections

171(a) (2), and 265(a)(2) and amounts disallowed as interest expense by Section 291(a)(3) of the Internal Revenue Code, as now or hereafter amended, and all amounts of expenses allocable to interest and disallowed as deductions by Section 265(a)(1) of the Internal Revenue Code, as now or hereafter amended; and (ii) for taxable years ending on or after August 13, 1999, Sections 171(a)(2), 265, 280C, 291(a)(3), and 832(b)(5)(B)(i) of the Internal Revenue Code; the provisions of this subparagraph are exempt from the provisions of Section 250;

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

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

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

(M) For any taxpayer that is a financial

organization within the meaning of Section 304(c) of this Act, an amount included in such total as interest income from a loan or loans made by such taxpayer to a borrower, to the extent that such a loan is secured by property which is eligible for the Enterprise Zone Investment Credit. To determine the portion of a loan or loans that is secured by property eligible for a Section 201(f) investment credit to the borrower, the entire principal amount of the loan or loans between the taxpayer and the borrower should be divided into the basis of the Section 201(f) investment credit property which secures the loan or loans, using for this purpose the original basis of such property on the date that it was placed in service in the Enterprise Zone. The subtraction modification available to taxpayer in any year under this subsection shall be that portion of the total interest paid by the borrower with respect to such loan attributable to the eligible property as calculated under the previous sentence;

(M-1) For any taxpayer that is a financial organization within the meaning of Section 304(c) of this Act, an amount included in such total as interest income from a loan or loans made by such taxpayer to a borrower, to the extent that such a loan is secured by property which is eligible for the High Impact Business Investment Credit. To determine the portion of a loan or loans that is secured by property eligible for a Section 201(h) investment credit to the borrower, the entire principal amount of the loan or loans between the taxpayer and the borrower should be divided into the basis of the Section 201(h) investment credit property which secures the loan or loans, using for this purpose the original basis of such property on the date that it was placed in service in a federally designated Foreign Trade Zone or Sub-Zone located in Illinois. No taxpayer that is eligible for the

deduction provided in subparagraph (M) of paragraph (2) of this subsection shall be eligible for the deduction provided under this subparagraph (M-1). The subtraction modification available to taxpayers in any year under this subsection shall be that portion of the total interest paid by the borrower with respect to such loan attributable to the eligible property as calculated under the previous sentence;

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

(O) An amount equal to: (i) 85% for taxable years ending on or before December 31, 1992, or, a percentage equal to the percentage allowable under Section 243(a)(1) of the Internal Revenue Code of 1986 for taxable years ending after December 31, 1992, of the amount by which dividends included in taxable income and received from a corporation that is not created or organized under the laws of the United States or any state or political subdivision thereof, including, for taxable years ending on or after December 31, 1988, dividends received or deemed received or paid or deemed paid under Sections 951 through 964 of the Internal Revenue Code, exceed the amount of the modification provided under subparagraph (G) of paragraph (2) of this subsection (b) which is related to such dividends; plus (ii) 100% of the amount by which dividends, included in taxable income and received, including, for taxable years ending on or after December 31, 1988, dividends received or deemed received or paid or deemed paid under Sections 951 through 964 of the Internal

Revenue Code, from any such corporation specified in clause (i) that would but for the provisions of Section 1504 (b) (3) of the Internal Revenue Code be treated as a member of the affiliated group which includes the dividend recipient, exceed the amount of the modification provided under subparagraph (G) of paragraph (2) of this subsection (b) which is related to such dividends;

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

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

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

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

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

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

(2) for taxable years ending on or before December 31, 2005, "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by 0.429); and

(3) for taxable years ending after December 31, 2005:

(i) for property on which a bonus depreciation deduction of 30% of the adjusted basis was taken, "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by 0.429); and

(ii) for property on which a bonus depreciation deduction of 50% of the adjusted basis was taken, "x" equals "y" multiplied by 1.0.

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

(k) of Section 168 of the Internal Revenue Code. This subparagraph (T) is exempt from the provisions of Section 250;

(U) If the taxpayer sells, transfers, abandons, or otherwise disposes of ~~reports a capital gain or loss on the taxpayer's federal income tax return for the taxable year based on a sale or transfer of~~ property for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (E-10), then an amount equal to that addition modification.

If the taxpayer continues to own property through the last day of the last tax year for which the taxpayer may claim a depreciation deduction for federal income tax purposes and for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (E-10), then an amount equal to that addition modification.

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

This subparagraph (U) is exempt from the provisions of Section 250;

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

203(a)(2)(D-18), 203(b)(2)(E-13), 203(c)(2)(G-13), or 203(d)(2)(D-8), but not to exceed the amount of such addition modification;

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

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

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

(c) Trusts and estates.

(1) In general. In the case of a trust or estate, base income means an amount equal to the taxpayer's taxable

income for the taxable year as modified by paragraph (2).

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

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

(B) In the case of (i) an estate, \$600; (ii) a trust which, under its governing instrument, is required to distribute all of its income currently, \$300; and (iii) any other trust, \$100, but in each such case, only to the extent such amount was deducted in the computation of taxable income;

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

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

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

(i) the addition modification relating to the net operating loss carried back or forward to the taxable year from any taxable year ending prior to December 31, 1986 shall be reduced by the amount of

addition modification under this subparagraph (E) which related to that net operating loss and which was taken into account in calculating the base income of an earlier taxable year, and

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

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

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

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

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

(G-10) For taxable years 2001 and thereafter, an amount equal to the bonus depreciation deduction ~~(30% of the adjusted basis of the qualified property)~~ taken on the taxpayer's federal income tax return for the taxable year under subsection (k) of Section 168 of the

Internal Revenue Code; and

(G-11) If the taxpayer sells, transfers, abandons, or otherwise disposes of ~~reports a capital gain or loss on the taxpayer's federal income tax return for the taxable year based on a sale or transfer of~~ property for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (G-10), then an amount equal to the aggregate amount of the deductions taken in all taxable years under subparagraph (R) with respect to that property.

If the taxpayer continues to own property through the last day of the last tax year for which the taxpayer may claim a depreciation deduction for federal income tax purposes and for which the taxpayer was allowed in any taxable year to make a subtraction modification under subparagraph (R), then an amount equal to that subtraction modification.

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

(G-12) For taxable years ending on or after December 31, 2004, an amount equal to the amount otherwise allowed as a deduction in computing base income for interest paid, accrued, or incurred, directly or indirectly, to a foreign person who would be a member of the same unitary business group but for the fact that the foreign person's business activity outside the United States is 80% or more of the foreign person's total business activity. The addition modification required by this subparagraph shall be reduced to the extent that dividends were included in base income of the unitary group for the same taxable year and received by the taxpayer or by a member of the taxpayer's unitary business group (including amounts included in gross income pursuant to Sections 951 through 964 of the Internal Revenue Code and amounts

included in gross income under Section 78 of the Internal Revenue Code) with respect to the stock of the same person to whom the interest was paid, accrued, or incurred.

This paragraph shall not apply to the following:

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

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

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

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

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

(iv) an item of interest paid, accrued, or incurred, directly or indirectly, to a foreign person if the taxpayer establishes by clear and

convincing evidence that the adjustments are unreasonable; or if the taxpayer and the Director agree in writing to the application or use of an alternative method of apportionment under Section 304(f).

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

(G-13) For taxable years ending on or after December 31, 2004, an amount equal to the amount of intangible expenses and costs otherwise allowed as a deduction in computing base income, and that were paid, accrued, or incurred, directly or indirectly, to a foreign person who would be a member of the same unitary business group but for the fact that the foreign person's business activity outside the United States is 80% or more of that person's total business activity. The addition modification required by this subparagraph shall be reduced to the extent that dividends were included in base income of the unitary group for the same taxable year and received by the taxpayer or by a member of the taxpayer's unitary business group (including amounts included in gross income pursuant to Sections 951 through 964 of the Internal Revenue Code and amounts included in gross income under Section 78 of the Internal Revenue Code) with respect to the stock of the same person to whom the intangible expenses and costs were directly or indirectly paid, incurred, or accrued. The preceding sentence shall not apply to the extent that the same

dividends caused a reduction to the addition modification required under Section 203(c)(2)(G-12) of this Act. As used in this subparagraph, the term "intangible expenses and costs" includes: (1) expenses, losses, and costs for or related to the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property; (2) losses incurred, directly or indirectly, from factoring transactions or discounting transactions; (3) royalty, patent, technical, and copyright fees; (4) licensing fees; and (5) other similar expenses and costs. For purposes of this subparagraph, "intangible property" includes patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets.

This paragraph shall not apply to the following:

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

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

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

(b) the transaction giving rise to the intangible expense or cost between the taxpayer and the foreign person did not have as

a principal purpose the avoidance of Illinois income tax, and is paid pursuant to a contract or agreement that reflects arm's-length terms;
or

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

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

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

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

(I) The valuation limitation amount;

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

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

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

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

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

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

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

(Q) For taxable year 1999 and thereafter, an amount equal to the amount of any (i) distributions, to the extent includible in gross income for federal income tax purposes, made to the taxpayer because of his or her status as a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime or as an heir of the victim and (ii) items of income, to the extent includible in gross income for federal income tax purposes, attributable to, derived from or in any way related to assets stolen from, hidden from, or otherwise lost to a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime immediately prior to, during, and immediately after World War II, including, but not limited to, interest on the proceeds receivable as insurance under policies issued to a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime by European insurance companies immediately prior to and during World War II; provided, however, this subtraction from federal adjusted gross income does not apply to assets acquired with such assets or with the proceeds from the sale of

such assets; provided, further, this paragraph shall only apply to a taxpayer who was the first recipient of such assets after their recovery and who is a victim of persecution for racial or religious reasons by Nazi Germany or any other Axis regime or as an heir of the victim. The amount of and the eligibility for any public assistance, benefit, or similar entitlement is not affected by the inclusion of items (i) and (ii) of this paragraph in gross income for federal income tax purposes. This paragraph is exempt from the provisions of Section 250;

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

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

(2) for taxable years ending on or before December 31, 2005, "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by 0.429); and

(3) for taxable years ending after December 31, 2005:

(i) for property on which a bonus depreciation deduction of 30% of the adjusted basis was taken, "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by

0.429); and

(ii) for property on which a bonus depreciation deduction of 50% of the adjusted basis was taken, "x" equals "y" multiplied by 1.0.

The aggregate amount deducted under this subparagraph in all taxable years for any one piece of property may not exceed the amount of the bonus depreciation deduction ~~(30% of the adjusted basis of the qualified property)~~ taken on that property on the taxpayer's federal income tax return under subsection (k) of Section 168 of the Internal Revenue Code. This subparagraph (R) is exempt from the provisions of Section 250;

(S) If the taxpayer sells, transfers, abandons, or otherwise disposes of ~~reports a capital gain or loss on the taxpayer's federal income tax return for the taxable year based on a sale or transfer of property~~ for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (G-10), then an amount equal to that addition modification.

If the taxpayer continues to own property through the last day of the last tax year for which the taxpayer may claim a depreciation deduction for federal income tax purposes and for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (G-10), then an amount equal to that addition modification.

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

This subparagraph (S) is exempt from the provisions of Section 250;

(T) The amount of (i) any interest income (net of the deductions allocable thereto) taken into account

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

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

(V) An amount equal to the income from intangible property taken into account for the taxable year (net of the deductions allocable thereto) with respect to transactions with a foreign person who would be a member of the taxpayer's unitary business group but for the fact that the foreign person's business activity outside the United States is 80% or more of that person's total business activity, but not to exceed the addition modification required to be made for the same taxable year under Section 203(c)(2)(G-13) for

intangible expenses and costs paid, accrued, or incurred, directly or indirectly, to the same foreign person.

(3) Limitation. The amount of any modification otherwise required under this subsection shall, under regulations prescribed by the Department, be adjusted by any amounts included therein which were properly paid, credited, or required to be distributed, or permanently set aside for charitable purposes pursuant to Internal Revenue Code Section 642(c) during the taxable year.

(d) Partnerships.

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

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

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

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

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

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

(D-5) For taxable years 2001 and thereafter, an amount equal to the bonus depreciation deduction ~~(30% of the adjusted basis of the qualified property)~~ taken on the taxpayer's federal income tax return for the

taxable year under subsection (k) of Section 168 of the Internal Revenue Code;

(D-6) If the taxpayer sells, transfers, abandons, or otherwise disposes of ~~reports a capital gain or loss on the taxpayer's federal income tax return for the taxable year based on a sale or transfer of~~ property for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (D-5), then an amount equal to the aggregate amount of the deductions taken in all taxable years under subparagraph (O) with respect to that property.

If the taxpayer continues to own property through the last day of the last tax year for which the taxpayer may claim a depreciation deduction for federal income tax purposes and for which the taxpayer was allowed in any taxable year to make a subtraction modification under subparagraph (O), then an amount equal to that subtraction modification.

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

(D-7) For taxable years ending on or after December 31, 2004, an amount equal to the amount otherwise allowed as a deduction in computing base income for interest paid, accrued, or incurred, directly or indirectly, to a foreign person who would be a member of the same unitary business group but for the fact the foreign person's business activity outside the United States is 80% or more of the foreign person's total business activity. The addition modification required by this subparagraph shall be reduced to the extent that dividends were included in base income of the unitary group for the same taxable year and received by the taxpayer or by a member of the taxpayer's unitary business group (including amounts included in gross income pursuant to Sections 951 through 964 of the

Internal Revenue Code and amounts included in gross income under Section 78 of the Internal Revenue Code) with respect to the stock of the same person to whom the interest was paid, accrued, or incurred.

This paragraph shall not apply to the following:

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

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

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

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

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

(iv) an item of interest paid, accrued, or incurred, directly or indirectly, to a foreign person if the taxpayer establishes by clear and

convincing evidence that the adjustments are unreasonable; or if the taxpayer and the Director agree in writing to the application or use of an alternative method of apportionment under Section 304(f).

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

(D-8) For taxable years ending on or after December 31, 2004, an amount equal to the amount of intangible expenses and costs otherwise allowed as a deduction in computing base income, and that were paid, accrued, or incurred, directly or indirectly, to a foreign person who would be a member of the same unitary business group but for the fact that the foreign person's business activity outside the United States is 80% or more of that person's total business activity. The addition modification required by this subparagraph shall be reduced to the extent that dividends were included in base income of the unitary group for the same taxable year and received by the taxpayer or by a member of the taxpayer's unitary business group (including amounts included in gross income pursuant to Sections 951 through 964 of the Internal Revenue Code and amounts included in gross income under Section 78 of the Internal Revenue Code) with respect to the stock of the same person to whom the intangible expenses and costs were directly or indirectly paid, incurred or accrued. The preceding sentence shall not apply to the extent that the same dividends caused a

reduction to the addition modification required under Section 203(d)(2)(D-7) of this Act. As used in this subparagraph, the term "intangible expenses and costs" includes (1) expenses, losses, and costs for, or related to, the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property; (2) losses incurred, directly or indirectly, from factoring transactions or discounting transactions; (3) royalty, patent, technical, and copyright fees; (4) licensing fees; and (5) other similar expenses and costs. For purposes of this subparagraph, "intangible property" includes patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets;

This paragraph shall not apply to the following:

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

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

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

(b) the transaction giving rise to the intangible expense or cost between the taxpayer and the foreign person did not have as

a principal purpose the avoidance of Illinois income tax, and is paid pursuant to a contract or agreement that reflects arm's-length terms;
or

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

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

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

(E) The valuation limitation amount;

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

(G) An amount equal to all amounts included in taxable income as modified by subparagraphs (A), (B), (C) and (D) which are exempt from taxation by this State either by reason of its statutes or Constitution or by reason of the Constitution, treaties or statutes of the United States; provided that, in the case of any statute of this State that exempts income derived from bonds or other obligations from the tax imposed under

this Act, the amount exempted shall be the interest net of bond premium amortization;

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

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

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

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

(L) An amount equal to any contribution made to a

job training project established pursuant to the Real Property Tax Increment Allocation Redevelopment Act;

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

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

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

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

(2) for taxable years ending on or before December 31, 2005, "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by 0.429); and

(3) for taxable years ending after December

31, 2005:

(i) for property on which a bonus depreciation deduction of 30% of the adjusted basis was taken, "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by 0.429); and

(ii) for property on which a bonus depreciation deduction of 50% of the adjusted basis was taken, "x" equals "y" multiplied by 1.0.

The aggregate amount deducted under this subparagraph in all taxable years for any one piece of property may not exceed the amount of the bonus depreciation deduction ~~(30% of the adjusted basis of the qualified property)~~ taken on that property on the taxpayer's federal income tax return under subsection (k) of Section 168 of the Internal Revenue Code. This subparagraph (O) is exempt from the provisions of Section 250;

(P) If the taxpayer sells, transfers, abandons, or otherwise disposes of ~~reports a capital gain or loss on the taxpayer's federal income tax return for the taxable year based on a sale or transfer of~~ property for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (D-5), then an amount equal to that addition modification.

If the taxpayer continues to own property through the last day of the last tax year for which the taxpayer may claim a depreciation deduction for federal income tax purposes and for which the taxpayer was required in any taxable year to make an addition modification under subparagraph (D-5), then an amount equal to that addition modification.

The taxpayer is allowed to take the deduction under this subparagraph only once with respect to any one

piece of property.

This subparagraph (P) is exempt from the provisions of Section 250;

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

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

(S) An amount equal to the income from intangible property taken into account for the taxable year (net of the deductions allocable thereto) with respect to transactions with a foreign person who would be a member of the taxpayer's unitary business group but for

the fact that the foreign person's business activity outside the United States is 80% or more of that person's total business activity, but not to exceed the addition modification required to be made for the same taxable year under Section 203(d)(2)(D-8) for intangible expenses and costs paid, accrued, or incurred, directly or indirectly, to the same foreign person.

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

(1) In general. Subject to the provisions of paragraph (2) and subsection (b) (3), for purposes of this Section and Section 803(e), a taxpayer's gross income, adjusted gross income, or taxable income for the taxable year shall mean the amount of gross income, adjusted gross income or taxable income properly reportable for federal income tax purposes for the taxable year under the provisions of the Internal Revenue Code. Taxable income may be less than zero. However, for taxable years ending on or after December 31, 1986, net operating loss carryforwards from taxable years ending prior to December 31, 1986, may not exceed the sum of federal taxable income for the taxable year before net operating loss deduction, plus the excess of addition modifications over subtraction modifications for the taxable year. For taxable years ending prior to December 31, 1986, taxable income may never be an amount in excess of the net operating loss for the taxable year as defined in subsections (c) and (d) of Section 172 of the Internal Revenue Code, provided that when taxable income of a corporation (other than a Subchapter S corporation), trust, or estate is less than zero and addition modifications, other than those provided by subparagraph (E) of paragraph (2) of subsection (b) for corporations or subparagraph (E) of paragraph (2) of subsection (c) for trusts and estates, exceed subtraction modifications, an addition modification must be made under those

subparagraphs for any other taxable year to which the taxable income less than zero (net operating loss) is applied under Section 172 of the Internal Revenue Code or under subparagraph (E) of paragraph (2) of this subsection (e) applied in conjunction with Section 172 of the Internal Revenue Code.

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

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

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

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

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

(E) Consolidated corporations. In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, taxable income determined as if such corporation had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For

purposes of this subparagraph, the taxpayer's separate taxable income shall be determined as if the election provided by Section 243(b) (2) of the Internal Revenue Code had been in effect for all such years;

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

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

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

(3) Recapture of business expenses on disposition of asset or business. Notwithstanding any other law to the contrary, if in prior years income from an asset or business has been classified as business income and in a

later year is demonstrated to be non-business income, then all expenses, without limitation, deducted in such later year and in the 2 immediately preceding taxable years related to that asset or business that generated the non-business income shall be added back and recaptured as business income in the year of the disposition of the asset or business. Such amount shall be apportioned to Illinois using the greater of the apportionment fraction computed for the business under Section 304 of this Act for the taxable year or the average of the apportionment fractions computed for the business under Section 304 of this Act for the taxable year and for the 2 immediately preceding taxable years.

(f) Valuation limitation amount.

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

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

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

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

(A) If the fair market value of property referred to in paragraph (1) was readily ascertainable on August 1, 1969, the pre-August 1, 1969 appreciation amount for such property is the lesser of (i) the excess of such fair market value over the taxpayer's basis (for

determining gain) for such property on that date (determined under the Internal Revenue Code as in effect on that date), or (ii) the total gain realized and reportable for federal income tax purposes in respect of the sale, exchange or other disposition of such property.

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

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

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

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

(Source: P.A. 92-16, eff. 6-28-01; 92-244, eff. 8-3-01; 92-439, eff. 8-17-01; 92-603, eff. 6-28-02; 92-626, eff. 7-11-02;

92-651, eff. 7-11-02; 92-846, eff. 8-23-02; 93-812, eff. 7-26-04; 93-840, eff. 7-30-04; revised 10-12-04.)

(35 ILCS 5/902) (from Ch. 120, par. 9-902)

Sec. 902. Notice and Demand.

(a) In general. Except as provided in subsection (b) the Director shall, as soon as practicable after an amount payable under this Act is deemed assessed (as provided in Section 903), give notice to each person liable for any unpaid portion of such assessment, stating the amount unpaid and demanding payment thereof. In the case of tax deemed assessed with the filing of a return, the Director shall give notice no later than 3 years after the date the return was filed. Upon receipt of any notice and demand there shall be paid at the place and time stated in such notice the amount stated in such notice. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to the person's last known address.

(b) Judicial review. In the case of a deficiency deemed assessed under Section 903 (a) (2) after the filing of a protest, notice and demand shall not be made with respect to such assessment until all proceedings in court for the review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

(c) Action for recovery of taxes. At any time that the Department might commence proceedings for a levy under Section 1109, regardless of whether a notice of lien was filed under the provisions of Section 1103, it may bring an action in any court of competent jurisdiction within or without this State in the name of the people of this State to recover the amount of any taxes, penalties and interest due and unpaid under this Act. In such action, the certificate of the Department showing the amount of the delinquency shall be prima facie evidence of the correctness of such amount, its assessment and of the compliance by the Department with all the provisions of this Act.

(d) Sales or transfers outside the usual course of business-Report-Payment of Tax - Rights and duties of purchaser or transferee - penalty. If any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of (A) the stock of goods which he is engaged in the business of selling, or (B) the furniture or fixtures, or (C) the machinery and equipment, or (D) the real property, of any business that is subject to the provisions of this Act, the purchaser or transferee of such assets shall, no later than 10 business days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department disclosing the name and address of the seller or transferor, the name and address of the purchaser or transferee, the date of the sale or transfer, a copy of the sales contract and financing agreements which shall include a description of the property sold or transferred, the amount of the purchase price or a statement of other consideration for the sale or transfer, and the terms for payment of the purchase price, and such other information as the Department may reasonably require. If the purchaser or transferee fails to file the above described notice of sale with the Department within the prescribed time, the purchaser or transferee shall be personally liable to the Department for the amount owed hereunder by the seller or transferor but unpaid, up to the amount of the reasonable value of the property acquired by the purchaser or transferee. The purchaser or transferee shall pay the Department the amount of tax, penalties, and interest owed by the seller or transferor under this Act, to the extent they have not been paid by the seller or transferor. The seller or transferor, or the purchaser or transferee, at least 10 business days before the date of the sale or transfer, may notify the Department of the intended sale or transfer and request the Department to make a determination as to whether the seller or transferor owes any tax, penalty or interest due under this Act. The Department shall take such steps as may be appropriate to comply with such request.

Any order issued by the Department pursuant to this Section to withhold from the purchase price shall be issued within 10 business days after the Department receives notification of a sale as provided in this Section. The purchaser or transferee shall withhold such portion of the purchase price as may be directed by the Department, but not to exceed a minimum amount varying by type of business, as determined by the Department pursuant to regulations, plus twice the outstanding unpaid liabilities and twice the average liability of preceding filings times the number of unfiled returns which were not filed when due, to cover the amount of all tax, penalty, and interest due and unpaid by the seller or transferor under this Act or, if the payment of money or property is not involved, shall withhold the performance of the condition that constitutes the consideration for the sale or transfer. Within 60 business days after issuance of the initial order to withhold, the Department shall provide written notice to the purchaser or transferee of the actual amount of all taxes, penalties and interest then due and whether or not additional amounts may become due as a result of unpaid taxes required to be withheld by an employer, returns which were not filed when due, pending assessments and audits not completed. The purchaser or transferee shall continue to withhold the amount directed to be withheld by the initial order or such lesser amount as is specified by the final withholding order or to withhold the performance of the condition which constitutes the consideration for the sale or transfer until the purchaser or transferee receives from the Department a certificate showing that no unpaid tax, penalty or interest is due from the seller or transferor under this Act.

The purchaser or transferee is relieved of any duty to continue to withhold from the purchase price and of any liability for tax, penalty, or interest due hereunder from the seller or transferor if the Department fails to notify the purchaser or transferee in the manner provided herein of the amount to be withheld within 10 business days after the sale or

transfer has been reported to the Department or within 60 business days after issuance of the initial order to withhold, as the case may be. The Department shall have the right to determine amounts claimed on an estimated basis to allow for periods for which returns were not filed when due, pending assessments and audits not completed, however the purchaser or transferee shall be personally liable only for the actual amount due when determined.

If the seller or transferor has failed to pay the tax, penalty, and interest due from him hereunder and the Department makes timely claim therefor against the purchaser or transferee as hereinabove provided, then the purchaser or transferee shall pay to the Department the amount so withheld from the purchase price. If the purchaser or transferee fails to comply with the requirements of this Section, the purchaser or transferee shall be personally liable to the Department for the amount owed hereunder by the seller or transferor up to the amount of the reasonable value of the property acquired by the purchaser or transferee.

Any person who shall acquire any property or rights thereto which, at the time of such acquisition, is subject to a valid lien in favor of the Department, shall be personally liable to the Department for a sum equal to the amount of taxes, penalties and interests, secured by such lien, but not to exceed the reasonable value of such property acquired by him.

(Source: P.A. 86-923; 86-953.)

Section 15. The Retailers' Occupation Tax Act is amended by changing Section 5j as follows:

(35 ILCS 120/5j) (from Ch. 120, par. 444j)

Sec. 5j. If any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of (A) the stock of goods which he is engaged in the business of selling, or (B) the furniture or fixtures, (C) the machinery and equipment, or (D) the real property, of any business that

is subject to the provisions of this Act, the purchaser or transferee of such asset shall, no later than 10 business days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department disclosing the name and address of the seller or transferor, the name and address of the purchaser or transferee, the date of the sale or transfer, a copy of the sales contract and financing agreements which shall include a description of the property sold, the amount of the purchase price or a statement of other consideration for the sale or transfer, the terms for payment of the purchase price, and such other information as the Department may reasonably require. If the purchaser or transferee fails to file the above described notice of sale with the Department within the prescribed time, the purchaser or transferee shall be personally liable for the amount owed hereunder by the seller or transferor to the Department up to the amount of the reasonable value of the property acquired by the purchaser or transferee. The seller or transferor shall pay the Department the amount of tax, penalty and interest (if any) due from him under this Act up to the date of the payment of tax. The seller or transferor, or the purchaser or transferee, at least 10 business days before the date of the sale or transfer, may notify the Department of the intended sale or transfer and request the Department to audit the books and records of the seller or transferor, or to do whatever else may be necessary to determine how much the seller or transferor owes to the Department hereunder up to the date of the sale or transfer. The Department shall take such steps as may be appropriate to comply with such request.

Any order issued by the Department pursuant to this Section to withhold from the purchase price shall be issued within 10 business days after the Department receives notification of a sale as provided in this Section. The purchaser or transferee shall withhold such portion of the purchase price as may be directed by the Department, but not to exceed a minimum amount varying by type of business, as determined by the Department

pursuant to regulations, plus twice the outstanding unpaid liabilities and twice the average liability of preceding filings times the number of unfiled returns, to cover the amount of all tax, penalty and interest due and unpaid by the seller or transferor under this Act or, if the payment of money or property is not involved, shall withhold the performance of the condition that constitutes the consideration for the sale or transfer. Within 60 business days after issuance of the initial order to withhold, the Department shall provide written notice to the purchaser or transferee of the actual amount of all taxes, penalties and interest then due and whether or not additional amounts may become due as a result of unfiled returns, pending assessments and audits not completed. The purchaser or transferee shall continue to withhold the amount directed to be withheld by the initial order or such lesser amount as is specified by the final withholding order or to withhold the performance of the condition which constitutes the consideration for the sale or transfer until the purchaser or transferee receives from the Department a certificate showing that such tax, penalty and interest have been paid or a certificate from the Department showing that no tax, penalty or interest is due from the seller or transferor under this Act.

The purchaser or transferee is relieved of any duty to continue to withhold from the purchase price and of any liability for tax, penalty or interest due hereunder from the seller or transferor if the Department fails to notify the purchaser or transferee in the manner provided herein of the amount to be withheld within 10 business days after the sale or transfer has been reported to the Department or within 60 business days after issuance of the initial order to withhold, as the case may be. The Department shall have the right to determine amounts claimed on an estimated basis to allow for non-filed periods, pending assessments and audits not completed, however the purchaser or transferee shall be personally liable only for the actual amount due when determined.

If the seller or transferor fails to pay the tax, penalty and interest (if any) due from him hereunder and the Department makes timely claim therefor against the purchaser or transferee as hereinabove provided, then the purchaser or transferee shall pay the amount so withheld from the purchase price to the Department. If the purchaser or transferee fails to comply with the requirements of this Section, the purchaser or transferee shall be personally liable to the Department for the amount owed hereunder by the seller or transferor to the Department up to the amount of the reasonable value of the property acquired by the purchaser or transferee.

Any person who shall acquire any property or rights thereto which, at the time of such acquisition, is subject to a valid lien in favor of the Department shall be personally liable to the Department for a sum equal to the amount of taxes secured by such lien but not to exceed the reasonable value of such property acquired by him.

(Source: P.A. 86-923; 86-953.)

Section 20. The Cigarette Tax Act is amended by changing Section 21 as follows:

(35 ILCS 130/21) (from Ch. 120, par. 453.21)

Sec. 21. (a) When any original packages of cigarettes or any cigarette vending device shall have been declared forfeited to the State by the Department, as provided in Section 18a of this Act, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent that its decision is sustained on review, destroy, maintain and use in an undercover capacity, or sell such property for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer. If the value of such property to be sold at any one time is \$500 or more, however, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner

and for such terms as the Department, by rule, may prescribe.

(b) If no complaint for review, as provided in Section 8 of this Act, has been filed within the time required by the Administrative Review Law, and if no stay order has been entered thereunder, the Department shall proceed to sell the property for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer. If the value of such property to be sold at any one time is \$500 or more, however, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe.

(c) Upon making a sale of unstamped original packages of cigarettes as provided in this Section, the Department shall affix a distinctive stamp to each of the original packages so sold indicating that the same are sold under this Section.

(d) Notwithstanding the foregoing, any cigarettes seized under this Act or under the Cigarette Use Tax Act may, at the discretion of the Director of Revenue, be distributed to any eleemosynary institution within the State of Illinois.

(Source: P.A. 82-783.)

Section 25. The Cigarette Use Tax Act is amended by changing Sections 26 and 27 as follows:

(35 ILCS 135/26) (from Ch. 120, par. 453.56)

Sec. 26. Whenever any peace officer of the State or any duly authorized officer or employee of the Department shall have reason to believe that any violation of this Act has occurred and that the person so violating the Act has in his, her or its possession any original package of cigarettes, not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages, as required by this Act, or any vending device containing such original packages to which stamps have not been affixed, or on which an authorized substitute for stamps has not been imprinted underneath the

sealed transparent wrapper of such original packages, as required by this Act, he may file or cause to be filed his complaint in writing, verified by affidavit, with any circuit court within whose jurisdiction the premises to be searched are situated, stating the facts upon which such belief is founded, the premises to be searched, and the property to be seized, and procure a search warrant and execute the same. Upon the execution of such search warrant, the peace officer, or officer or employee of the Department, executing such search warrant shall make due return thereof to the court issuing the same, together with an inventory of the property taken thereunder. The court shall thereupon issue process against the owner of such property if he is known; otherwise, such process shall be issued against the person in whose possession the property so taken is found, if such person is known. In case of inability to serve such process upon the owner or the person in possession of the property at the time of its seizure, as hereinbefore provided, notice of the proceedings before the court shall be given as required by the statutes of the State governing cases of Attachment. Upon the return of the process duly served or upon the posting or publishing of notice made, as hereinabove provided, the court or jury, if a jury shall be demanded, shall proceed to determine whether or not such property so seized was held or possessed in violation of this Act, or whether, if a vending device has been so seized, it contained at the time of its seizure original packages not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages as required by this Act. In case of a finding that the original packages seized were not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages in accordance with the provisions of this Act, or that any vending device so seized contained at the time of its seizure original packages not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages in accordance with the provisions of this Act, judgment shall be entered confiscating

and forfeiting the property to the State and ordering its delivery to the Department, and in addition thereto, the court shall have power to tax and assess the costs of the proceedings.

When any original packages or any cigarette vending device shall have been declared forfeited to the State by any court, as hereinbefore provided, and when such confiscated and forfeited property shall have been delivered to the Department, as provided in this Act, the said Department shall destroy, maintain and use in an undercover capacity, or sell such property for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer; provided, however, that if the value of such property to be sold at any one time shall be \$500 or more, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe.

Upon making such a sale of original packages of cigarettes which were not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages as required by this Act, the Department shall affix a distinctive stamp to each of the original packages so sold indicating that the same are sold pursuant to the provisions of this Section.

(Source: Laws 1965, p. 3710.)

(35 ILCS 135/27) (from Ch. 120, par. 453.57)

Sec. 27. When any original packages of cigarettes or any cigarette vending device shall have been declared forfeited to the State by the Department, as provided in Section 25 of this Act, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent that its decision is sustained on review, destroy, maintain and use in an undercover capacity, or sell such property for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer;

provided, however, that if the value of such property to be sold at any one time shall be Five Hundred Dollars (\$500) or more, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe.

If no complaint for review, as provided in Section 21 of this Act, has been filed within the time required by the "Administrative Review Law," and if no stay order has been entered thereunder, the Department shall proceed to sell said property for the best price obtainable and shall forthwith pay over the proceeds of such sale to the State Treasurer; provided, however, that if the value of such property to be sold at any one time shall be \$500 or more, such property shall be sold only to the highest and best bidder on such terms and conditions and on open competitive bidding after public advertisement, in such manner and for such terms as the Department, by rule, may prescribe.

Upon making a sale of unstamped original packages of cigarettes as provided in this Section, the Department shall affix a distinctive stamp to each of the original packages so sold indicating that the same are sold pursuant to the provisions of this Section.

(Source: P.A. 83-1539.)

Section 30. The Tobacco Products Tax Act of 1995 is amended by changing Section 10-58 as follows:

(35 ILCS 143/10-58)

Sec. 10-58. Sale of forfeited tobacco products or vending devices.

(a) When any tobacco products or any vending devices are declared forfeited to the State by the Department, as provided in Section 10-55, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent that its decision is sustained

on review, sell the property for the best price obtainable and shall forthwith pay over the proceeds of the sale to the State Treasurer. If the value of the property to be sold at any one time is \$500 or more, however, the property shall be sold only to the highest and best bidder on terms and conditions, and on open competitive bidding after public advertisement, in a manner and for terms as the Department, by rule, may prescribe.

(b) If no complaint for review, as provided in Section 12 of the Retailers' Occupation Tax Act, has been filed within the time required by the Administrative Review Law, and if no stay order has been entered under that Law, the Department shall proceed to destroy, maintain and use in an undercover capacity, or sell the property for the best price obtainable and shall forthwith pay over the proceeds of the sale to the State Treasurer. If the value of the property to be sold at any one time is \$500 or more, however, the property shall be sold only to the highest and best bidder on terms and conditions, and on open competitive bidding after public advertisement, in a manner and for terms as the Department, by rule, may prescribe.

(c) Upon making a sale of tobacco products as provided in this Section, the Department shall affix a distinctive stamp to each of the tobacco products so sold indicating that they are sold under this Section.

(d) Notwithstanding the foregoing, any tobacco products seized under this Act may, at the discretion of the Director of Revenue, be distributed to any eleemosynary institution within the State of Illinois.

(Source: P.A. 92-743, eff. 7-25-02.)

Section 35. The Local Mass Transit District Act is amended by changing Section 5.01 as follows:

(70 ILCS 3610/5.01) (from Ch. 111 2/3, par. 355.01)

Sec. 5.01. Metro East Mass Transit District; use and occupation taxes.

(a) The Board of Trustees of any Metro East Mass Transit

District may, by ordinance adopted with the concurrence of two-thirds of the then trustees, impose throughout the District any or all of the taxes and fees provided in this Section. All taxes and fees imposed under this Section shall be used only for public mass transportation systems, and the amount used to provide mass transit service to unserved areas of the District shall be in the same proportion to the total proceeds as the number of persons residing in the unserved areas is to the total population of the District. Except as otherwise provided in this Act, taxes imposed under this Section and civil penalties imposed incident thereto shall be collected and enforced by the State Department of Revenue. The Department shall have the power to administer and enforce the taxes and to determine all rights for refunds for erroneous payments of the taxes.

(b) The Board may impose a Metro East Mass Transit District Retailers' Occupation Tax upon all persons engaged in the business of selling tangible personal property at retail in the district at a rate of 1/4 of 1%, or as authorized under subsection (d-5) of this Section, of the gross receipts from the sales made in the course of such business within the district. The tax imposed under this Section and all civil penalties that may be assessed as an incident thereof shall be collected and enforced by the State Department of Revenue. The Department shall have full power to administer and enforce this Section; to collect all taxes and penalties so collected in the manner hereinafter provided; and to determine all rights to credit memoranda arising on account of the erroneous payment of tax or penalty hereunder. In the administration of, and compliance with, this Section, the Department and persons who are subject to this Section shall have the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties, exclusions, exemptions and definitions of terms and employ the same modes of procedure, as are prescribed in Sections 1, 1a, 1a-1, 1c, 1d, 1e, 1f, 1i, 1j, 2 through 2-65

(in respect to all provisions therein other than the State rate of tax), 2c, 3 (except as to the disposition of taxes and penalties collected), 4, 5, 5a, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, 12, 13, and 14 of the Retailers' Occupation Tax Act and Section 3-7 of the Uniform Penalty and Interest Act, as fully as if those provisions were set forth herein.

Persons subject to any tax imposed under the Section may reimburse themselves for their seller's tax liability hereunder by separately stating the tax as an additional charge, which charge may be stated in combination, in a single amount, with State taxes that sellers are required to collect under the Use Tax Act, in accordance with such bracket schedules as the Department may prescribe.

Whenever the Department determines that a refund should be made under this Section to a claimant instead of issuing a credit memorandum, the Department shall notify the State Comptroller, who shall cause the warrant to be drawn for the amount specified, and to the person named, in the notification from the Department. The refund shall be paid by the State Treasurer out of the Metro East Mass Transit District tax fund established under paragraph (g) of this Section.

If a tax is imposed under this subsection (b), a tax shall also be imposed under subsections (c) and (d) of this Section.

For the purpose of determining whether a tax authorized under this Section is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. This paragraph does not apply to coal or other mineral when it is delivered or shipped by the seller to the purchaser at a point outside Illinois so that the sale is exempt under the Federal Constitution as a sale in interstate or foreign commerce.

Nothing in this Section shall be construed to authorize the Metro East Mass Transit District to impose a tax upon the privilege of engaging in any business which under the

Constitution of the United States may not be made the subject of taxation by this State.

(c) If a tax has been imposed under subsection (b), a Metro East Mass Transit District Service Occupation Tax shall also be imposed upon all persons engaged, in the district, in the business of making sales of service, who, as an incident to making those sales of service, transfer tangible personal property within the District, either in the form of tangible personal property or in the form of real estate as an incident to a sale of service. The tax rate shall be 1/4%, or as authorized under subsection (d-5) of this Section, of the selling price of tangible personal property so transferred within the district. The tax imposed under this paragraph and all civil penalties that may be assessed as an incident thereof shall be collected and enforced by the State Department of Revenue. The Department shall have full power to administer and enforce this paragraph; to collect all taxes and penalties due hereunder; to dispose of taxes and penalties so collected in the manner hereinafter provided; and to determine all rights to credit memoranda arising on account of the erroneous payment of tax or penalty hereunder. In the administration of, and compliance with this paragraph, the Department and persons who are subject to this paragraph shall have the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties, exclusions, exemptions and definitions of terms and employ the same modes of procedure as are prescribed in Sections 1a-1, 2 (except that the reference to State in the definition of supplier maintaining a place of business in this State shall mean the Authority), 2a, 3 through 3-50 (in respect to all provisions therein other than the State rate of tax), 4 (except that the reference to the State shall be to the Authority), 5, 7, 8 (except that the jurisdiction to which the tax shall be a debt to the extent indicated in that Section 8 shall be the District), 9 (except as to the disposition of taxes and penalties collected, and except that the returned

merchandise credit for this tax may not be taken against any State tax), 10, 11, 12 (except the reference therein to Section 2b of the Retailers' Occupation Tax Act), 13 (except that any reference to the State shall mean the District), the first paragraph of Section 15, 16, 17, 18, 19 and 20 of the Service Occupation Tax Act and Section 3-7 of the Uniform Penalty and Interest Act, as fully as if those provisions were set forth herein.

Persons subject to any tax imposed under the authority granted in this paragraph may reimburse themselves for their serviceman's tax liability hereunder by separately stating the tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax that servicemen are authorized to collect under the Service Use Tax Act, in accordance with such bracket schedules as the Department may prescribe.

Whenever the Department determines that a refund should be made under this paragraph to a claimant instead of issuing a credit memorandum, the Department shall notify the State Comptroller, who shall cause the warrant to be drawn for the amount specified, and to the person named, in the notification from the Department. The refund shall be paid by the State Treasurer out of the Metro East Mass Transit District tax fund established under paragraph (g) of this Section.

Nothing in this paragraph shall be construed to authorize the District to impose a tax upon the privilege of engaging in any business which under the Constitution of the United States may not be made the subject of taxation by the State.

(d) If a tax has been imposed under subsection (b), a Metro East Mass Transit District Use Tax shall also be imposed upon the privilege of using, in the district, any item of tangible personal property that is purchased outside the district at retail from a retailer, and that is titled or registered with an agency of this State's government, at a rate of 1/4%, or as authorized under subsection (d-5) of this Section, of the selling price of the tangible personal property within the

District, as "selling price" is defined in the Use Tax Act. The tax shall be collected from persons whose Illinois address for titling or registration purposes is given as being in the District. The tax shall be collected by the Department of Revenue for the Metro East Mass Transit District. The tax must be paid to the State, or an exemption determination must be obtained from the Department of Revenue, before the title or certificate of registration for the property may be issued. The tax or proof of exemption may be transmitted to the Department by way of the State agency with which, or the State officer with whom, the tangible personal property must be titled or registered if the Department and the State agency or State officer determine that this procedure will expedite the processing of applications for title or registration.

The Department shall have full power to administer and enforce this paragraph; to collect all taxes, penalties and interest due hereunder; to dispose of taxes, penalties and interest so collected in the manner hereinafter provided; and to determine all rights to credit memoranda or refunds arising on account of the erroneous payment of tax, penalty or interest hereunder. In the administration of, and compliance with, this paragraph, the Department and persons who are subject to this paragraph shall have the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties, exclusions, exemptions and definitions of terms and employ the same modes of procedure, as are prescribed in Sections 2 (except the definition of "retailer maintaining a place of business in this State"), 3 through 3-80 (except provisions pertaining to the State rate of tax, and except provisions concerning collection or refunding of the tax by retailers), 4, 11, 12, 12a, 14, 15, 19 (except the portions pertaining to claims by retailers and except the last paragraph concerning refunds), 20, 21 and 22 of the Use Tax Act and Section 3-7 of the Uniform Penalty and Interest Act, that are not inconsistent with this paragraph, as fully as if those provisions were set forth herein.

Whenever the Department determines that a refund should be made under this paragraph to a claimant instead of issuing a credit memorandum, the Department shall notify the State Comptroller, who shall cause the order to be drawn for the amount specified, and to the person named, in the notification from the Department. The refund shall be paid by the State Treasurer out of the Metro East Mass Transit District tax fund established under paragraph (g) of this Section.

(d-5) (A) The county board of any county participating in the Metro East Mass Transit District may authorize, by ordinance, a referendum on the question of whether the tax rates for the Metro East Mass Transit District Retailers' Occupation Tax, the Metro East Mass Transit District Service Occupation Tax, and the Metro East Mass Transit District Use Tax for the District should be increased from 0.25% to 0.75%. Upon adopting the ordinance, the county board shall certify the proposition to the proper election officials who shall submit the proposition to the voters of the District at the next election, in accordance with the general election law.

The proposition shall be in substantially the following form:

Shall the tax rates for the Metro East Mass Transit District Retailers' Occupation Tax, the Metro East Mass Transit District Service Occupation Tax, and the Metro East Mass Transit District Use Tax be increased from 0.25% to 0.75%?

(B) Two thousand five hundred electors of any Metro East Mass Transit District may petition the Chief Judge of the Circuit Court, or any judge of that Circuit designated by the Chief Judge, in which that District is located to cause to be submitted to a vote of the electors the question whether the tax rates for the Metro East Mass Transit District Retailers' Occupation Tax, the Metro East Mass Transit District Service Occupation Tax, and the Metro East Mass Transit District Use Tax for the District should be increased from 0.25% to 0.75%.

Upon submission of such petition the court shall set a date

not less than 10 nor more than 30 days thereafter for a hearing on the sufficiency thereof. Notice of the filing of such petition and of such date shall be given in writing to the District and the County Clerk at least 7 days before the date of such hearing.

If such petition is found sufficient, the court shall enter an order to submit that proposition at the next election, in accordance with general election law.

The form of the petition shall be in substantially the following form: To the Circuit Court of the County of (name of county):

We, the undersigned electors of the (name of transit district), respectfully petition your honor to submit to a vote of the electors of (name of transit district) the following proposition:

Shall the tax rates for the Metro East Mass Transit District Retailers' Occupation Tax, the Metro East Mass Transit District Service Occupation Tax, and the Metro East Mass Transit District Use Tax be increased from 0.25% to 0.75%?

Name Address, with Street and Number.

.....

.....

(C) The votes shall be recorded as "YES" or "NO". If a majority of all votes cast on the proposition are for the increase in the tax rates, the Metro East Mass Transit District shall begin imposing the increased rates in the District, and the Department of Revenue shall begin collecting the increased amounts, as provided under this Section. An ordinance imposing or discontinuing a tax hereunder or effecting a change in the rate thereof shall be adopted and a certified copy thereof filed with the Department on or before the first day of October, whereupon the Department shall proceed to administer and enforce this Section as of the first day of January next

following the adoption and filing, or on or before the first day of April, whereupon the Department shall proceed to administer and enforce this Section as of the first day of July next following the adoption and filing.

(D) If the voters have approved a referendum under this subsection, before November 1, 1994, to increase the tax rate under this subsection, the Metro East Mass Transit District Board of Trustees may adopt by a majority vote an ordinance at any time before January 1, 1995 that excludes from the rate increase tangible personal property that is titled or registered with an agency of this State's government. The ordinance excluding titled or registered tangible personal property from the rate increase must be filed with the Department at least 15 days before its effective date. At any time after adopting an ordinance excluding from the rate increase tangible personal property that is titled or registered with an agency of this State's government, the Metro East Mass Transit District Board of Trustees may adopt an ordinance applying the rate increase to that tangible personal property. The ordinance shall be adopted, and a certified copy of that ordinance shall be filed with the Department, on or before October 1, whereupon the Department shall proceed to administer and enforce the rate increase against tangible personal property titled or registered with an agency of this State's government as of the following January 1. After December 31, 1995, any reimposed rate increase in effect under this subsection shall no longer apply to tangible personal property titled or registered with an agency of this State's government. Beginning January 1, 1996, the Board of Trustees of any Metro East Mass Transit District may never reimpose a previously excluded tax rate increase on tangible personal property titled or registered with an agency of this State's government. After July 1, 2004, if the voters have approved a referendum under this subsection to increase the tax rate under this subsection, the Metro East Mass Transit District Board of Trustees may adopt by a majority vote an ordinance that

excludes from the rate increase tangible personal property that is titled or registered with an agency of this State's government. The ordinance excluding titled or registered tangible personal property from the rate increase shall be adopted, and a certified copy of that ordinance shall be filed with the Department on or before October 1, whereupon the Department shall administer and enforce this exclusion from the rate increase as of the following January 1, or on or before April 1, whereupon the Department shall administer and enforce this exclusion from the rate increase as of the following July 1. The Board of Trustees of any Metro East Mass Transit District may never reimpose a previously excluded tax rate increase on tangible personal property titled or registered with an agency of this State's government.

(d-6) If the Board of Trustees of any Metro East Mass Transit District has imposed a rate increase under subsection (d-5) and filed an ordinance with the Department of Revenue excluding titled property from the higher rate, then that Board may, by ordinance adopted with the concurrence of two-thirds of the then trustees, impose throughout the District a fee. The fee on the excluded property shall not exceed \$20 per retail transaction or an amount equal to the amount of tax excluded, whichever is less, on tangible personal property that is titled or registered with an agency of this State's government. Beginning July 1, 2004, the fee shall apply only to titled property that is subject to either the Metro East Mass Transit District Retailers' Occupation Tax or the Metro East Mass Transit District Service Occupation Tax.

(d-7) Until June 30, 2004, if a fee has been imposed under subsection (d-6), a fee shall also be imposed upon the privilege of using, in the district, any item of tangible personal property that is titled or registered with any agency of this State's government, in an amount equal to the amount of the fee imposed under subsection (d-6).

(d-7.1) Beginning July 1, 2004, any fee imposed by the Board of Trustees of any Metro East Mass Transit District under

subsection (d-6) and all civil penalties that may be assessed as an incident of the fees shall be collected and enforced by the State Department of Revenue. Reference to "taxes" in this Section shall be construed to apply to the administration, payment, and remittance of all fees under this Section. For purposes of any fee imposed under subsection (d-6), 4% of the fee, penalty, and interest received by the Department in the first 12 months that the fee is collected and enforced by the Department and 2% of the fee, penalty, and interest following the first 12 months shall be deposited into the Tax Compliance and Administration Fund and shall be used by the Department, subject to appropriation, to cover the costs of the Department. No retailers' discount shall apply to any fee imposed under subsection (d-6).

(d-8) No item of titled property shall be subject to both the higher rate approved by referendum, as authorized under subsection (d-5), and any fee imposed under subsection (d-6) or (d-7).

(d-9) (Blank). ~~If fees have been imposed under subsections (d-6) and (d-7), the Board shall forward a copy of the ordinance adopting such fees, which shall include all zip codes in whole or in part within the boundaries of the district, to the Secretary of State within thirty days. By the 25th of each month, the Secretary of State shall subsequently provide the Illinois Department of Revenue with a list of identifiable retail transactions subject to the .25% rate occurring within the zip codes which are in whole or in part within the boundaries of the district and a list of title applications for addresses within the boundaries of the district for the previous month.~~

(d-10) (Blank). ~~In the event that a retailer fails to pay applicable fees within 30 days of the date of the transaction, a penalty shall be assessed at the rate of 25% of the amount of fees. Interest on both late fees and penalties shall be assessed at the rate of 1% per month. All fees, penalties, and attorney fees shall constitute a lien on the personal and real~~

~~property of the retailer.~~

(e) A certificate of registration issued by the State Department of Revenue to a retailer under the Retailers' Occupation Tax Act or under the Service Occupation Tax Act shall permit the registrant to engage in a business that is taxed under the tax imposed under paragraphs (b), (c) or (d) of this Section and no additional registration shall be required under the tax. A certificate issued under the Use Tax Act or the Service Use Tax Act shall be applicable with regard to any tax imposed under paragraph (c) of this Section.

(f) (Blank). ~~The Board may impose a replacement vehicle tax of \$50 on any passenger car, as defined in Section 1-157 of the Illinois Vehicle Code, purchased within the district area by or on behalf of an insurance company to replace a passenger car of an insured person in settlement of a total loss claim. The tax imposed may not become effective before the first day of the month following the passage of the ordinance imposing the tax and receipt of a certified copy of the ordinance by the Department of Revenue. The Department of Revenue shall collect the tax for the district in accordance with Sections 3-2002 and 3-2003 of the Illinois Vehicle Code.~~

~~The Department shall immediately pay over to the State Treasurer, ex officio, as trustee, all taxes collected hereunder. On or before the 25th day of each calendar month, the Department shall prepare and certify to the Comptroller the disbursement of stated sums of money to named districts, the districts to be those from which retailers have paid taxes or penalties hereunder to the Department during the second preceding calendar month. The amount to be paid to each district shall be the amount collected hereunder during the second preceding calendar month by the Department, less any amount determined by the Department to be necessary for the payment of refunds. Within 10 days after receipt by the Comptroller of the disbursement certification to the districts, provided for in this Section to be given to the Comptroller by the Department, the Comptroller shall cause the~~

~~orders to be drawn for the respective amounts in accordance with the directions contained in the certification.~~

(g) Any ordinance imposing or discontinuing any tax under this Section shall be adopted and a certified copy thereof filed with the Department on or before June 1, whereupon the Department of Revenue shall proceed to administer and enforce this Section on behalf of the Metro East Mass Transit District as of September 1 next following such adoption and filing. Beginning January 1, 1992, an ordinance or resolution imposing or discontinuing the tax hereunder shall be adopted and a certified copy thereof filed with the Department on or before the first day of July, whereupon the Department shall proceed to administer and enforce this Section as of the first day of October next following such adoption and filing. Beginning January 1, 1993, except as provided in subsection (d-5) of this Section, an ordinance or resolution imposing or discontinuing the tax hereunder shall be adopted and a certified copy thereof filed with the Department on or before the first day of October, whereupon the Department shall proceed to administer and enforce this Section as of the first day of January next following such adoption and filing, or, beginning January 1, 2004, on or before the first day of April, whereupon the Department shall proceed to administer and enforce this Section as of the first day of July next following the adoption and filing.

(h) Except as provided in subsection (d-7.1), the State Department of Revenue shall, upon collecting any taxes as provided in this Section, pay the taxes over to the State Treasurer as trustee for the District. The taxes shall be held in a trust fund outside the State Treasury. On or before the 25th day of each calendar month, the State Department of Revenue shall prepare and certify to the Comptroller of the State of Illinois the amount to be paid to the District, which shall be the then balance in the fund, less any amount determined by the Department to be necessary for the payment of refunds. Within 10 days after receipt by the Comptroller of the

certification of the amount to be paid to the District, the Comptroller shall cause an order to be drawn for payment for the amount in accordance with the direction in the certification.

(Source: P.A. 93-590; eff. 1-1-04.)

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