

HB5067



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5067

Introduced 2/18/2020, by Rep. Jonathan Carroll

SYNOPSIS AS INTRODUCED:

35 ILCS 5/1501

from Ch. 120, par. 15-1501

Amends the Illinois Income Tax Act. Makes changes to the definition of investment partnership to provide that a dealer in qualifying investment securities may be considered an investment partnership. Allows a partnership interest to be considered a qualified security if the interest qualifies as a security within the meaning of Section 2(a)(1) of the federal Securities Act of 1933. Effective immediately.

LRB101 20472 HLH 70038 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 1501 as follows:

6 (35 ILCS 5/1501) (from Ch. 120, par. 15-1501)
7 Sec. 1501. Definitions.

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

11 (1) Business income. The term "business income" means
12 all income that may be treated as apportionable business
13 income under the Constitution of the United States.
14 Business income is net of the deductions allocable thereto.
15 Such term does not include compensation or the deductions
16 allocable thereto. For each taxable year beginning on or
17 after January 1, 2003, a taxpayer may elect to treat all
18 income other than compensation as business income. This
19 election shall be made in accordance with rules adopted by
20 the Department and, once made, shall be irrevocable.

21 (1.5) Captive real estate investment trust:

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

1 (i) that is considered a real estate
2 investment trust for the taxable year under
3 Section 856 of the Internal Revenue Code;

4 (ii) the certificates of beneficial interest
5 or shares of which are not regularly traded on an
6 established securities market; and

7 (iii) of which more than 50% of the voting
8 power or value of the beneficial interest or
9 shares, at any time during the last half of the
10 taxable year, is owned or controlled, directly,
11 indirectly, or constructively, by a single
12 corporation.

13 (B) The term "captive real estate investment
14 trust" does not include:

15 (i) a real estate investment trust of which
16 more than 50% of the voting power or value of the
17 beneficial interest or shares is owned or
18 controlled, directly, indirectly, or
19 constructively, by:

20 (a) a real estate investment trust, other
21 than a captive real estate investment trust;

22 (b) a person who is exempt from taxation
23 under Section 501 of the Internal Revenue Code,
24 and who is not required to treat income
25 received from the real estate investment trust
26 as unrelated business taxable income under

1 Section 512 of the Internal Revenue Code;

2 (c) a listed Australian property trust, if
3 no more than 50% of the voting power or value
4 of the beneficial interest or shares of that
5 trust, at any time during the last half of the
6 taxable year, is owned or controlled, directly
7 or indirectly, by a single person;

8 (d) an entity organized as a trust,
9 provided a listed Australian property trust
10 described in subparagraph (c) owns or
11 controls, directly or indirectly, or
12 constructively, 75% or more of the voting power
13 or value of the beneficial interests or shares
14 of such entity; or

15 (e) an entity that is organized outside of
16 the laws of the United States and that
17 satisfies all of the following criteria:

18 (1) at least 75% of the entity's total
19 asset value at the close of its taxable
20 year is represented by real estate assets
21 (as defined in Section 856(c)(5)(B) of the
22 Internal Revenue Code, thereby including
23 shares or certificates of beneficial
24 interest in any real estate investment
25 trust), cash and cash equivalents, and
26 U.S. Government securities;

1 (2) the entity is not subject to tax on
2 amounts that are distributed to its
3 beneficial owners or is exempt from
4 entity-level taxation;

5 (3) the entity distributes at least
6 85% of its taxable income (as computed in
7 the jurisdiction in which it is organized)
8 to the holders of its shares or
9 certificates of beneficial interest on an
10 annual basis;

11 (4) either (i) the shares or
12 beneficial interests of the entity are
13 regularly traded on an established
14 securities market or (ii) not more than 10%
15 of the voting power or value in the entity
16 is held, directly, indirectly, or
17 constructively, by a single entity or
18 individual; and

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

22 (ii) during its first taxable year for which it
23 elects to be treated as a real estate investment
24 trust under Section 856(c)(1) of the Internal
25 Revenue Code, a real estate investment trust the
26 certificates of beneficial interest or shares of

1 which are not regularly traded on an established
2 securities market, but only if the certificates of
3 beneficial interest or shares of the real estate
4 investment trust are regularly traded on an
5 established securities market prior to the earlier
6 of the due date (including extensions) for filing
7 its return under this Act for that first taxable
8 year or the date it actually files that return.

9 (C) For the purposes of this subsection (1.5), the
10 constructive ownership rules prescribed under Section
11 318(a) of the Internal Revenue Code, as modified by
12 Section 856(d) (5) of the Internal Revenue Code, apply
13 in determining the ownership of stock, assets, or net
14 profits of any person.

15 (D) For the purposes of this item (1.5), for
16 taxable years ending on or after August 16, 2007, the
17 voting power or value of the beneficial interest or
18 shares of a real estate investment trust does not
19 include any voting power or value of beneficial
20 interest or shares in a real estate investment trust
21 held directly or indirectly in a segregated asset
22 account by a life insurance company (as described in
23 Section 817 of the Internal Revenue Code) to the extent
24 such voting power or value is for the benefit of
25 entities or persons who are either immune from taxation
26 or exempt from taxation under subtitle A of the

1 Internal Revenue Code.

2 (2) Commercial domicile. The term "commercial
3 domicile" means the principal place from which the trade or
4 business of the taxpayer is directed or managed.

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

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

14 (5) Department. The term "Department" means the
15 Department of Revenue of this State.

16 (6) Director. The term "Director" means the Director of
17 Revenue of this State.

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

21 (8) Financial organization.

22 (A) The term "financial organization" means any
23 bank, bank holding company, trust company, savings
24 bank, industrial bank, land bank, safe deposit
25 company, private banker, savings and loan association,
26 building and loan association, credit union, currency

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

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

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

22 (i) A person primarily engaged in one or more
23 of the following businesses: the business of
24 purchasing customer receivables, the business of
25 making loans upon the security of customer
26 receivables, the business of making loans for the

1 express purpose of funding purchases of tangible
2 personal property or services by the borrower, or
3 the business of finance leasing. For purposes of
4 this item (i), "customer receivable" means:

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

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

16 (c) the outstanding balance of a contract
17 or agreement described in provisions (a) or (b)
18 of this item (i).

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

1 (ii) A corporation meeting each of the
2 following criteria:

3 (a) the corporation must be a member of an
4 "affiliated group" within the meaning of
5 Section 1504(a) of the Internal Revenue Code,
6 determined without regard to Section 1504(b)
7 of the Internal Revenue Code;

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

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

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

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

26 This amendatory Act of the 91st General Assembly is

1 declaratory of existing law.

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

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

1 all of those years, the election allowed by this
2 subparagraph applies only to the taxpayer making the
3 election and to those members of the taxpayer's unitary
4 business group who are ordinarily required to
5 apportion business income under the same subsection of
6 Section 304 of this Act as the taxpayer making the
7 election. No election allowed by this subparagraph
8 shall be made under a claim filed under subsection (d)
9 of Section 909 more than 30 days after the effective
10 date of this amendatory Act of 1996.

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

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

25 (9.5) Fixed place of business. The term "fixed place of
26 business" has the same meaning as that term is given in

1 Section 864 of the Internal Revenue Code and the related
2 Treasury regulations.

3 (10) Includes and including. The terms "includes" and
4 "including" when used in a definition contained in this Act
5 shall not be deemed to exclude other things otherwise
6 within the meaning of the term defined.

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

11 (11.5) Investment partnership.

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

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

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

26 (iii) (blank). ~~the partnership is not a dealer~~

1 ~~in qualifying investment securities.~~

2 (B) For purposes of this paragraph (11.5), the term
3 "qualifying investment securities" (other than
4 securities with respect to which the taxpayer is
5 required to apply the rules of Internal Revenue Code
6 Section 475(a)) includes all of the following:

7 (i) common stock, including preferred or debt
8 securities convertible into common stock, and
9 preferred stock;

10 (ii) bonds, debentures, and other debt
11 securities;

12 (iii) foreign and domestic currency deposits
13 secured by federal, state, or local governmental
14 agencies;

15 (iv) mortgage or asset-backed securities
16 secured by federal, state, or local governmental
17 agencies;

18 (v) repurchase agreements and loan
19 participations;

20 (vi) foreign currency exchange contracts and
21 forward and futures contracts on foreign
22 currencies;

23 (vii) stock and bond index securities and
24 futures contracts and other similar financial
25 securities and futures contracts on those
26 securities;

1 (viii) options for the purchase or sale of any
2 of the securities, currencies, contracts, or
3 financial instruments described in items (i) to
4 (vii), inclusive;

5 (ix) regulated futures contracts;

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

14 (xi) derivatives; ~~and~~

15 (xii) a partnership interest in another
16 partnership that is an investment partnership; and

17 -

18 (xiii) a partnership interest which, in the
19 hands of the partnership, qualifies as a security
20 within the meaning of Section 2(a)(1) of the
21 federal Securities Act of 1933.

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

26 (A) arithmetic errors or incorrect computations on

1 the return or supporting schedules;

2 (B) entries on the wrong lines;

3 (C) omission of required supporting forms or
4 schedules or the omission of the information in whole
5 or in part called for thereon; and

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

10 (13) Nonbusiness income. The term "nonbusiness income"
11 means all income other than business income or
12 compensation.

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

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

19 (16) Partnership and partner. The term "partnership"
20 includes a syndicate, group, pool, joint venture or other
21 unincorporated organization, through or by means of which
22 any business, financial operation, or venture is carried
23 on, and which is not, within the meaning of this Act, a
24 trust or estate or a corporation; and the term "partner"
25 includes a member in such syndicate, group, pool, joint
26 venture or organization.

1 The term "partnership" includes any entity, including
2 a limited liability company formed under the Illinois
3 Limited Liability Company Act, classified as a partnership
4 for federal income tax purposes.

5 The term "partnership" does not include a syndicate,
6 group, pool, joint venture, or other unincorporated
7 organization established for the sole purpose of playing
8 the Illinois State Lottery.

9 (17) Part-year resident. The term "part-year resident"
10 means an individual who became a resident during the
11 taxable year or ceased to be a resident during the taxable
12 year. Under Section 1501(a)(20)(A)(i) residence commences
13 with presence in this State for other than a temporary or
14 transitory purpose and ceases with absence from this State
15 for other than a temporary or transitory purpose. Under
16 Section 1501(a)(20)(A)(ii) residence commences with the
17 establishment of domicile in this State and ceases with the
18 establishment of domicile in another State.

19 (18) Person. The term "person" shall be construed to
20 mean and include an individual, a trust, estate,
21 partnership, association, firm, company, corporation,
22 limited liability company, or fiduciary. For purposes of
23 Section 1301 and 1302 of this Act, a "person" means (i) an
24 individual, (ii) a corporation, (iii) an officer, agent, or
25 employee of a corporation, (iv) a member, agent or employee
26 of a partnership, or (v) a member, manager, employee,

1 officer, director, or agent of a limited liability company
2 who in such capacity commits an offense specified in
3 Section 1301 and 1302.

4 (18A) Records. The term "records" includes all data
5 maintained by the taxpayer, whether on paper, microfilm,
6 microfiche, or any type of machine-sensible data
7 compilation.

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

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

11 (A) an individual (i) who is in this State for
12 other than a temporary or transitory purpose during the
13 taxable year; or (ii) who is domiciled in this State
14 but is absent from the State for a temporary or
15 transitory purpose during the taxable year;

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

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

20 (D) An irrevocable trust, the grantor of which was
21 domiciled in this State at the time such trust became
22 irrevocable. For purpose of this subparagraph, a trust
23 shall be considered irrevocable to the extent that the
24 grantor is not treated as the owner thereof under
25 Sections 671 through 678 of the Internal Revenue Code.

26 (21) Sales. The term "sales" means all gross receipts

1 of the taxpayer not allocated under Sections 301, 302 and
2 303.

3 (22) State. The term "state" when applied to a
4 jurisdiction other than this State means any state of the
5 United States, the District of Columbia, the Commonwealth
6 of Puerto Rico, any Territory or Possession of the United
7 States, and any foreign country, or any political
8 subdivision of any of the foregoing. For purposes of the
9 foreign tax credit under Section 601, the term "state"
10 means any state of the United States, the District of
11 Columbia, the Commonwealth of Puerto Rico, and any
12 territory or possession of the United States, or any
13 political subdivision of any of the foregoing, effective
14 for tax years ending on or after December 31, 1989.

15 (23) Taxable year. The term "taxable year" means the
16 calendar year, or the fiscal year ending during such
17 calendar year, upon the basis of which the base income is
18 computed under this Act. "Taxable year" means, in the case
19 of a return made for a fractional part of a year under the
20 provisions of this Act, the period for which such return is
21 made.

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

24 (25) International banking facility. The term
25 international banking facility shall have the same meaning
26 as is set forth in the Illinois Banking Act or as is set

1 forth in the laws of the United States or regulations of
2 the Board of Governors of the Federal Reserve System.

3 (26) Income Tax Return Preparer.

4 (A) The term "income tax return preparer" means any
5 person who prepares for compensation, or who employs
6 one or more persons to prepare for compensation, any
7 return of tax imposed by this Act or any claim for
8 refund of tax imposed by this Act. The preparation of a
9 substantial portion of a return or claim for refund
10 shall be treated as the preparation of that return or
11 claim for refund.

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

14 (i) furnish typing, reproducing, or other
15 mechanical assistance;

16 (ii) prepare returns or claims for refunds for
17 the employer by whom he or she is regularly and
18 continuously employed;

19 (iii) prepare as a fiduciary returns or claims
20 for refunds for any person; or

21 (iv) prepare claims for refunds for a taxpayer
22 in response to any notice of deficiency issued to
23 that taxpayer or in response to any waiver of
24 restriction after the commencement of an audit of
25 that taxpayer or of another taxpayer if a
26 determination in the audit of the other taxpayer

1 directly or indirectly affects the tax liability
2 of the taxpayer whose claims he or she is
3 preparing.

4 (27) Unitary business group.

5 (A) The term "unitary business group" means a group
6 of persons related through common ownership whose
7 business activities are integrated with, dependent
8 upon and contribute to each other. The group will not
9 include those members whose business activity outside
10 the United States is 80% or more of any such member's
11 total business activity; for purposes of this
12 paragraph and clause (a)(3)(B)(ii) of Section 304,
13 business activity within the United States shall be
14 measured by means of the factors ordinarily applicable
15 under subsections (a), (b), (c), (d), or (h) of Section
16 304 except that, in the case of members ordinarily
17 required to apportion business income by means of the 3
18 factor formula of property, payroll and sales
19 specified in subsection (a) of Section 304, including
20 the formula as weighted in subsection (h) of Section
21 304, such members shall not use the sales factor in the
22 computation and the results of the property and payroll
23 factor computations of subsection (a) of Section 304
24 shall be divided by 2 (by one if either the property or
25 payroll factor has a denominator of zero). The
26 computation required by the preceding sentence shall,

1 in each case, involve the division of the member's
2 property, payroll, or revenue miles in the United
3 States, insurance premiums on property or risk in the
4 United States, or financial organization business
5 income from sources within the United States, as the
6 case may be, by the respective worldwide figures for
7 such items. Common ownership in the case of
8 corporations is the direct or indirect control or
9 ownership of more than 50% of the outstanding voting
10 stock of the persons carrying on unitary business
11 activity. Unitary business activity can ordinarily be
12 illustrated where the activities of the members are:
13 (1) in the same general line (such as manufacturing,
14 wholesaling, retailing of tangible personal property,
15 insurance, transportation or finance); or (2) are
16 steps in a vertically structured enterprise or process
17 (such as the steps involved in the production of
18 natural resources, which might include exploration,
19 mining, refining, and marketing); and, in either
20 instance, the members are functionally integrated
21 through the exercise of strong centralized management
22 (where, for example, authority over such matters as
23 purchasing, financing, tax compliance, product line,
24 personnel, marketing and capital investment is not
25 left to each member).

26 (B) In no event, for taxable years ending prior to

1 December 31, 2017, shall any unitary business group
2 include members which are ordinarily required to
3 apportion business income under different subsections
4 of Section 304 except that for tax years ending on or
5 after December 31, 1987 this prohibition shall not
6 apply to a holding company that would otherwise be a
7 member of a unitary business group with taxpayers that
8 apportion business income under any of subsections
9 (b), (c), (c-1), or (d) of Section 304. If a unitary
10 business group would, but for the preceding sentence,
11 include members that are ordinarily required to
12 apportion business income under different subsections
13 of Section 304, then for each subsection of Section 304
14 for which there are two or more members, there shall be
15 a separate unitary business group composed of such
16 members. For purposes of the preceding two sentences, a
17 member is "ordinarily required to apportion business
18 income" under a particular subsection of Section 304 if
19 it would be required to use the apportionment method
20 prescribed by such subsection except for the fact that
21 it derives business income solely from Illinois. As
22 used in this paragraph, for taxable years ending before
23 December 31, 2017, the phrase "United States" means
24 only the 50 states and the District of Columbia, but
25 does not include any territory or possession of the
26 United States or any area over which the United States

1 has asserted jurisdiction or claimed exclusive rights
2 with respect to the exploration for or exploitation of
3 natural resources. For taxable years ending on or after
4 December 31, 2017, the phrase "United States", as used
5 in this paragraph, means only the 50 states, the
6 District of Columbia, and any area over which the
7 United States has asserted jurisdiction or claimed
8 exclusive rights with respect to the exploration for or
9 exploitation of natural resources, but does not
10 include any territory or possession of the United
11 States.

12 (C) Holding companies.

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

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

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

1 both cases without regard to the holding company)
2 or on any other reasonable basis, consistently
3 applied.

4 (iii) A holding company shall apportion its
5 business income under the subsection of Section
6 304 used by the other members of its unitary
7 business group. The apportionment factors of a
8 holding company which would be a member of more
9 than one unitary business group shall be included
10 with the apportionment factors of each unitary
11 business group of which it is a member on a pro
12 rata basis using the same method used in clause
13 (ii).

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

16 (D) If including the base income and factors of a
17 holding company in more than one unitary business group
18 under subparagraph (C) does not fairly reflect the
19 degree of integration between the holding company and
20 one or more of the unitary business groups, the
21 dependence of the holding company and one or more of
22 the unitary business groups upon each other, or the
23 contributions between the holding company and one or
24 more of the unitary business groups, the holding
25 company may petition the Director, under the
26 procedures provided under Section 304(f), for

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

15 (E) If the unitary business group members'
16 accounting periods differ, the common parent's
17 accounting period or, if there is no common parent, the
18 accounting period of the member that is expected to
19 have, on a recurring basis, the greatest Illinois
20 income tax liability must be used to determine whether
21 to use the apportionment method provided in subsection
22 (a) or subsection (h) of Section 304. The prohibition
23 against membership in a unitary business group for
24 taxpayers ordinarily required to apportion income
25 under different subsections of Section 304 does not
26 apply to taxpayers required to apportion income under

1 subsection (a) and subsection (h) of Section 304. The
2 provisions of this amendatory Act of 1998 apply to tax
3 years ending on or after December 31, 1998.

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

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

17 (b) Other definitions.

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

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

23 (B) Words importing the plural include the
24 singular; and

25 (C) Words importing the masculine gender include

1 the feminine as well.

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

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

12 (Source: P.A. 99-213, eff. 7-31-15; 100-22, eff. 7-6-17.)

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