



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

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

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

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

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

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

20           (8) Financial organization.

21           (A) The term "financial organization" means any  
22 bank, bank holding company, trust company, savings  
23 bank, industrial bank, land bank, ~~safe deposit~~  
24 ~~company,~~ private banker, savings and loan association,  
25 building and loan association, credit union, ~~currency~~  
26 ~~exchange,~~ cooperative bank, ~~small loan company,~~ ~~sales~~  
27 ~~finance company,~~ investment company, or any person  
28 which is owned by a bank or bank holding company. For  
29 the purpose of this Section a "person" will include  
30 only those persons which a bank holding company may  
31 acquire and hold an interest in, directly or  
32 indirectly, under the provisions of the Bank Holding  
33 Company Act of 1956 (12 U.S.C. 1841, et seq.), except  
34 where interests in any person must be disposed of

1 within certain required time limits under the Bank  
2 Holding Company Act of 1956.

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

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

13 (i) A person primarily engaged in one or more  
14 of the following businesses: the business of  
15 purchasing customer receivables, the business of  
16 making loans upon the security of customer  
17 receivables, the business of making loans for the  
18 express purpose of funding purchases of tangible  
19 personal property or services by the borrower, or  
20 the business of finance leasing. For purposes of  
21 this item (i), "customer receivable" means:

22 (a) a retail installment contract or  
23 retail charge agreement within the meaning of  
24 the Sales Finance Agency Act, the Retail  
25 Installment Sales Act, or the Motor Vehicle  
26 Retail Installment Sales Act;

27 (b) an installment, charge, credit, or  
28 similar contract or agreement arising from the  
29 sale of tangible personal property or services  
30 in a transaction involving a deferred payment  
31 price payable in one or more installments  
32 subsequent to the sale; or

33 (c) the outstanding balance of a contract  
34 or agreement described in provisions (a) or (b)

1           of this item (i).

2           A customer receivable need not provide for  
3 payment of interest on deferred payments. A sales  
4 finance company may purchase a customer receivable  
5 from, or make a loan secured by a customer  
6 receivable to, the seller in the original  
7 transaction or to a person who purchased the  
8 customer receivable directly or indirectly from  
9 that seller.

10           (ii) A corporation meeting each of the  
11 following criteria:

12           (a) the corporation must be a member of an  
13 "affiliated group" within the meaning of  
14 Section 1504(a) of the Internal Revenue Code,  
15 determined without regard to Section 1504(b)  
16 of the Internal Revenue Code;

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

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

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

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

27 This amendatory Act of the 91st General Assembly is  
28 declaratory of existing law.

29 (D) Subparagraphs (B) and (C) of this paragraph are  
30 declaratory of existing law and apply retroactively,  
31 for all tax years beginning on or before December 31,  
32 1996, to all original returns, to all amended returns  
33 filed no later than 30 days after the effective date of  
34 this amendatory Act of 1996, and to all notices issued

1 on or before the effective date of this amendatory Act  
2 of 1996 under subsection (a) of Section 903, subsection  
3 (a) of Section 904, subsection (e) of Section 909, or  
4 Section 912. A taxpayer that is a "financial  
5 organization" that engages in any transaction with an  
6 affiliate shall be a "financial organization" for all  
7 purposes of this Act.

8 (E) For all tax years beginning on or before  
9 December 31, 1996, a taxpayer that falls within the  
10 definition of a "financial organization" under  
11 subparagraphs (B) or (C) of this paragraph, but who  
12 does not fall within the definition of a "financial  
13 organization" under the Proposed Regulations issued by  
14 the Department of Revenue on July 19, 1996, may  
15 irrevocably elect to apply the Proposed Regulations  
16 for all of those years as though the Proposed  
17 Regulations had been lawfully promulgated, adopted,  
18 and in effect for all of those years. For purposes of  
19 applying subparagraphs (B) or (C) of this paragraph to  
20 all of those years, the election allowed by this  
21 subparagraph applies only to the taxpayer making the  
22 election and to those members of the taxpayer's unitary  
23 business group who are ordinarily required to  
24 apportion business income under the same subsection of  
25 Section 304 of this Act as the taxpayer making the  
26 election. No election allowed by this subparagraph  
27 shall be made under a claim filed under subsection (d)  
28 of Section 909 more than 30 days after the effective  
29 date of this amendatory Act of 1996.

30 (F) Finance Leases. For purposes of this  
31 subsection, a finance lease shall be treated as a loan  
32 or other extension of credit, rather than as a lease,  
33 regardless of how the transaction is characterized for  
34 any other purpose, including the purposes of any

1 regulatory agency to which the lessor is subject. A  
2 finance lease is any transaction in the form of a lease  
3 in which the lessee is treated as the owner of the  
4 leased asset entitled to any deduction for  
5 depreciation allowed under Section 167 of the Internal  
6 Revenue Code.

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

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

14 (11) Internal Revenue Code. The term "Internal Revenue  
15 Code" means the United States Internal Revenue Code of 1954  
16 or any successor law or laws relating to federal income  
17 taxes in effect for the taxable year.

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

22 (A) arithmetic errors or incorrect computations on  
23 the return or supporting schedules;

24 (B) entries on the wrong lines;

25 (C) omission of required supporting forms or  
26 schedules or the omission of the information in whole  
27 or in part called for thereon; and

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

32 (13) Nonbusiness income. The term "nonbusiness income"  
33 means all income other than business income or  
34 compensation.

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

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

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

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

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

23           (17) Part-year resident. The term "part-year resident"  
24 means an individual who became a resident during the  
25 taxable year or ceased to be a resident during the taxable  
26 year. Under Section 1501(a)(20)(A)(i) residence commences  
27 with presence in this State for other than a temporary or  
28 transitory purpose and ceases with absence from this State  
29 for other than a temporary or transitory purpose. Under  
30 Section 1501(a)(20)(A)(ii) residence commences with the  
31 establishment of domicile in this State and ceases with the  
32 establishment of domicile in another State.

33           (18) Person. The term "person" shall be construed to  
34 mean and include an individual, a trust, estate,

1 partnership, association, firm, company, corporation,  
2 limited liability company, or fiduciary. For purposes of  
3 Section 1301 and 1302 of this Act, a "person" means (i) an  
4 individual, (ii) a corporation, (iii) an officer, agent, or  
5 employee of a corporation, (iv) a member, agent or employee  
6 of a partnership, or (v) a member, manager, employee,  
7 officer, director, or agent of a limited liability company  
8 who in such capacity commits an offense specified in  
9 Section 1301 and 1302.

10 (18A) Records. The term "records" includes all data  
11 maintained by the taxpayer, whether on paper, microfilm,  
12 microfiche, or any type of machine-sensible data  
13 compilation.

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

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

17 (A) an individual (i) who is in this State for  
18 other than a temporary or transitory purpose during the  
19 taxable year; or (ii) who is domiciled in this State  
20 but is absent from the State for a temporary or  
21 transitory purpose during the taxable year;

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

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

26 (D) An irrevocable trust, the grantor of which was  
27 domiciled in this State at the time such trust became  
28 irrevocable. For purpose of this subparagraph, a trust  
29 shall be considered irrevocable to the extent that the  
30 grantor is not treated as the owner thereof under  
31 Sections 671 through 678 of the Internal Revenue Code.

32 (21) Sales. The term "sales" means all gross receipts  
33 of the taxpayer not allocated under Sections 301, 302 and  
34 303.

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

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

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

22           (25) International banking facility. The term  
23 international banking facility shall have the same meaning  
24 as is set forth in the Illinois Banking Act or as is set  
25 forth in the laws of the United States or regulations of  
26 the Board of Governors of the Federal Reserve System.

27           (26) Income Tax Return Preparer.

28           (A) The term "income tax return preparer" means any  
29 person who prepares for compensation, or who employs  
30 one or more persons to prepare for compensation, any  
31 return of tax imposed by this Act or any claim for  
32 refund of tax imposed by this Act. The preparation of a  
33 substantial portion of a return or claim for refund  
34 shall be treated as the preparation of that return or

1 claim for refund.

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

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

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

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

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

20 (27) Unitary business group. The term "unitary  
21 business group" means a group of persons related through  
22 common ownership whose business activities are integrated  
23 with, dependent upon and contribute to each other. The  
24 group will not include those members whose business  
25 activity outside the United States is 80% or more of any  
26 such member's total business activity; for purposes of this  
27 paragraph and clause (a)(3)(B)(ii) of Section 304,  
28 business activity within the United States shall be  
29 measured by means of the factors ordinarily applicable  
30 under subsections (a), (b), (c), (d), or (h) of Section 304  
31 except that, in the case of members ordinarily required to  
32 apportion business income by means of the 3 factor formula  
33 of property, payroll and sales specified in subsection (a)  
34 of Section 304, including the formula as weighted in

1 subsection (h) of Section 304, such members shall not use  
2 the sales factor in the computation and the results of the  
3 property and payroll factor computations of subsection (a)  
4 of Section 304 shall be divided by 2 (by one if either the  
5 property or payroll factor has a denominator of zero). The  
6 computation required by the preceding sentence shall, in  
7 each case, involve the division of the member's property,  
8 payroll, or revenue miles in the United States, insurance  
9 premiums on property or risk in the United States, or  
10 financial organization business income from sources within  
11 the United States, as the case may be, by the respective  
12 worldwide figures for such items. Common ownership in the  
13 case of corporations is the direct or indirect control or  
14 ownership of more than 50% of the outstanding voting stock  
15 of the persons carrying on unitary business activity.  
16 Unitary business activity can ordinarily be illustrated  
17 where the activities of the members are: (1) in the same  
18 general line (such as manufacturing, wholesaling,  
19 retailing of tangible personal property, insurance,  
20 transportation or finance); or (2) are steps in a  
21 vertically structured enterprise or process (such as the  
22 steps involved in the production of natural resources,  
23 which might include exploration, mining, refining, and  
24 marketing); and, in either instance, the members are  
25 functionally integrated through the exercise of strong  
26 centralized management (where, for example, authority over  
27 such matters as purchasing, financing, tax compliance,  
28 product line, personnel, marketing and capital investment  
29 is not left to each member). For tax years ending before  
30 December 31, 2004, no ~~In no event, however, will any~~  
31 unitary business group may include members which are  
32 ordinarily required to apportion business income under  
33 different subsections of Section 304 except that for tax  
34 years ending on or after December 31, 1987 and before

1        December 31, 2004, this prohibition shall not apply to a  
2        unitary business group composed of one or more taxpayers  
3        all of which apportion business income pursuant to  
4        subsection (b) of Section 304, or all of which apportion  
5        business income pursuant to subsection (d) of Section 304,  
6        and a holding company of such single-factor taxpayers (see  
7        definition of "financial organization" for rule regarding  
8        holding companies of financial organizations). If a  
9        unitary business group would, but for the preceding  
10       sentence, include members that are ordinarily required to  
11       apportion business income under different subsections of  
12       Section 304, then for each subsection of Section 304 for  
13       which there are two or more members, there shall be a  
14       separate unitary business group composed of such members.  
15       For purposes of the preceding two sentences, a member is  
16       "ordinarily required to apportion business income" under a  
17       particular subsection of Section 304 if it would be  
18       required to use the apportionment method prescribed by such  
19       subsection except for the fact that it derives business  
20       income solely from Illinois. If the unitary business group  
21       members' accounting periods differ, the common parent's  
22       accounting period or, if there is no common parent, the  
23       accounting period of the member that is expected to have,  
24       on a recurring basis, the greatest Illinois income tax  
25       liability must be used to determine whether to use the  
26       apportionment method provided in subsection (a) or  
27       subsection (h) of Section 304. The prohibition against  
28       membership in a unitary business group for taxpayers  
29       ordinarily required to apportion income under different  
30       subsections of Section 304 does not apply to taxpayers  
31       required to apportion income under subsection (a) and  
32       subsection (h) of Section 304. The provisions of this  
33       amendatory Act of 1998 apply to tax years ending on or  
34       after December 31, 1998.

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

8           (b) Other definitions.

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

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

14                   (B) Words importing the plural include the  
15 singular; and

16                   (C) Words importing the masculine gender include  
17 the feminine as well.

18           (2) "Company" or "association" as including successors  
19 and assigns. The word "company" or "association", when used  
20 in reference to a corporation, shall be deemed to embrace  
21 the words "successors and assigns of such company or  
22 association", and in like manner as if these last-named  
23 words, or words of similar import, were expressed.

24           (3) Other terms. Any term used in any Section of this  
25 Act with respect to the application of, or in connection  
26 with, the provisions of any other Section of this Act shall  
27 have the same meaning as in such other Section.

28           (Source: P.A. 91-535, eff. 1-1-00; 91-913, eff. 1-1-01; 92-846,  
29 eff. 8-23-02.)".