



Sen. Jeffrey M. Schoenberg

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1 AMENDMENT TO SENATE BILL 1739

2 AMENDMENT NO. _____. Amend Senate Bill 1739, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

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

7 (35 ILCS 5/304) (from Ch. 120, par. 3-304)

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

9 (a) In general. The business income of a person other than
10 a resident shall be allocated to this State if such person's
11 business income is derived solely from this State. If a person
12 other than a resident derives business income from this State
13 and one or more other states, then, for tax years ending on or
14 before December 30, 1998, and except as otherwise provided by
15 this Section, such person's business income shall be
16 apportioned to this State by multiplying the income by a

1 fraction, the numerator of which is the sum of the property
2 factor (if any), the payroll factor (if any) and 200% of the
3 sales factor (if any), and the denominator of which is 4
4 reduced by the number of factors other than the sales factor
5 which have a denominator of zero and by an additional 2 if the
6 sales factor has a denominator of zero. For tax years ending on
7 or after December 31, 1998, and except as otherwise provided by
8 this Section, persons other than residents who derive business
9 income from this State and one or more other states shall
10 compute their apportionment factor by weighting their
11 property, payroll, and sales factors as provided in subsection
12 (h) of this Section.

13 (1) Property factor.

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

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

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

7 (2) Payroll factor.

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

13 (B) Compensation is paid in this State if:

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

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

20 (iii) Some of the service is performed within this
21 State and either the base of operations, or if there is
22 no base of operations, the place from which the service
23 is directed or controlled is within this State, or the
24 base of operations or the place from which the service
25 is directed or controlled is not in any state in which
26 some part of the service is performed, but the

1 individual's residence is in this State.

2 (iv) Compensation paid to nonresident professional
3 athletes.

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

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

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

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

26 (2) The term "member of a professional

1 athletic team" includes those employees who are
2 active players, players on the disabled list, and
3 any other persons required to travel and who travel
4 with and perform services on behalf of a
5 professional athletic team on a regular basis.
6 This includes, but is not limited to, coaches,
7 managers, and trainers.

8 (3) Except as provided in items (C) and (D) of
9 this subpart (3), the term "duty days" means all
10 days during the taxable year from the beginning of
11 the professional athletic team's official
12 pre-season training period through the last game
13 in which the team competes or is scheduled to
14 compete. Duty days shall be counted for the year in
15 which they occur, including where a team's
16 official pre-season training period through the
17 last game in which the team competes or is
18 scheduled to compete, occurs during more than one
19 tax year.

20 (A) Duty days shall also include days on
21 which a member of a professional athletic team
22 performs service for a team on a date that does
23 not fall within the foregoing period (e.g.,
24 participation in instructional leagues, the
25 "All Star Game", or promotional "caravans").
26 Performing a service for a professional

1 athletic team includes conducting training and
2 rehabilitation activities, when such
3 activities are conducted at team facilities.

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

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

23 (D) Days for which a member of a
24 professional athletic team is not compensated
25 and is not performing services for the team in
26 any manner, including days when such member of

1 a professional athletic team has been
2 suspended without pay and prohibited from
3 performing any services for the team, shall not
4 be treated as duty days.

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

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

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

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

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

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

1 salary and any other compensation, and the signing
2 bonus is nonrefundable.

3 (3) Sales factor.

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

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

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

14 (ii) The property is shipped from an office, store,
15 warehouse, factory or other place of storage in this
16 State and either the purchaser is the United States
17 government or the person is not taxable in the state of
18 the purchaser; provided, however, that premises owned
19 or leased by a person who has independently contracted
20 with the seller for the printing of newspapers,
21 periodicals or books shall not be deemed to be an
22 office, store, warehouse, factory or other place of
23 storage for purposes of this Section. Sales of tangible
24 personal property are not in this State if the seller
25 and purchaser would be members of the same unitary
26 business group but for the fact that either the seller

1 or purchaser is a person with 80% or more of total
2 business activity outside of the United States and the
3 property is purchased for resale.

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

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

13 (ii) Place of utilization.

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

1 patent is utilized.

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

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

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

24 (B-2) Gross receipts from the license, sale, or other
25 disposition of patents, copyrights, trademarks, and
26 similar items of intangible personal property, other than

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

11 (B-5) For taxable years ending on or after December 31,
12 2008, except as provided in subsections (ii) through (vii),
13 receipts from the sale of telecommunications service or
14 mobile telecommunications service are in this State if the
15 customer's service address is in this State.

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

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

24 "Air-to-Ground Radiotelephone service" means a
25 radio service, as that term is defined in 47 CFR 22.99,
26 in which common carriers are authorized to offer and

1 provide radio telecommunications service for hire to
2 subscribers in aircraft.

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

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

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

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

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

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

26 "Home service provider" means the facilities based

1 carrier or reseller with which the customer contracts
2 for the provision of mobile telecommunications
3 services.

4 "Mobile telecommunications service" means
5 commercial mobile radio service, as defined in Section
6 20.3 of Title 47 of the Code of Federal Regulations as
7 in effect on June 1, 1999.

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

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

1 telecommunication service.

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

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

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

1 "Service address" means:

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

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

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

17 "Telecommunications service" means the electronic
18 transmission, conveyance, or routing of voice, data,
19 audio, video, or any other information or signals to a
20 point, or between or among points. The term
21 "telecommunications service" includes such
22 transmission, conveyance, or routing in which computer
23 processing applications are used to act on the form,
24 code or protocol of the content for purposes of
25 transmission, conveyance or routing without regard to
26 whether such service is referred to as voice over

1 Internet protocol services or is classified by the
2 Federal Communications Commission as enhanced or value
3 added. "Telecommunications service" does not include:

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

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

12 (c) Tangible personal property;

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

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

17 (f) Internet access service;

18 (g) Radio and television audio and video
19 programming services, regardless of the medium,
20 including the furnishing of transmission,
21 conveyance and routing of such services by the
22 programming service provider. Radio and television
23 audio and video programming services shall include
24 but not be limited to cable service as defined in
25 47 USC 522(6) and audio and video programming
26 services delivered by commercial mobile radio

1 service providers, as defined in 47 CFR 20.3;

2 (h) "Ancillary services"; or

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

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

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

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

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

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

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

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

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

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

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

26 (c) 50% of the total receipts from charges for

1 service segments when those segments are between 2
2 customer channel termination points, 1 of which is
3 located in this State and the other is located
4 outside of this State, which segments are
5 separately charged.

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

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

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

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

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

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

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

1 (B-7) For taxable years ending on or after December 31,
2 2008, receipts from the sale of broadcasting services are
3 in this State if the broadcasting services are received in
4 this State. For purposes of this paragraph (B-7), the
5 following terms have the following meanings:

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

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

24 "Broadcast" or "broadcasting" or "broadcasting
25 services" means the transmission or provision of film
26 or radio programming, whether through the public

1 airwaves, by cable, by direct or indirect satellite
2 transmission, or by any other means of communication,
3 either through a station, a network, or a cable system.

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

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

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

6 (ii) In the case where film or radio
7 programming is broadcast by a station, a network,
8 or a cable system for a fee or other remuneration
9 received from the recipient of the broadcast, the
10 portion of the service that is received in this
11 State is measured by the portion of the recipients
12 of the broadcast located in this State.
13 Accordingly, the fee or other remuneration for
14 such service that is included in the Illinois
15 numerator of the sales factor is the total of those
16 fees or other remuneration received from
17 recipients in Illinois. For purposes of this
18 paragraph, a taxpayer may determine the location
19 of the recipients of its broadcast using the
20 address of the recipient shown in its contracts
21 with the recipient or using the billing address of
22 the recipient in the taxpayer's records.

23 (iii) In the case where film or radio
24 programming is broadcast by a station, a network,
25 or a cable system for a fee or other remuneration
26 from the person providing the programming, the

1 portion of the broadcast service that is received
2 by such station, network, or cable system in this
3 State is measured by the portion of recipients of
4 the broadcast located in this State. Accordingly,
5 the amount of revenue related to such an
6 arrangement that is included in the Illinois
7 numerator of the sales factor is the total fee or
8 other total remuneration from the person providing
9 the programming related to that broadcast
10 multiplied by the Illinois audience factor for
11 that broadcast.

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

25 (v) In the case where film or radio programming
26 is provided by a taxpayer that is not a network or

1 station to another person for broadcasting in
2 exchange for a fee or other remuneration from that
3 person, the broadcasting service is received at
4 the location of the office of the customer from
5 which the services were ordered in the regular
6 course of the customer's trade or business.
7 Accordingly, in such a case the revenue derived by
8 the taxpayer that is included in the taxpayer's
9 Illinois numerator of the sales factor is the
10 revenue from such customers who receive the
11 broadcasting service in Illinois.

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

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

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

22 (C-5) For taxable years ending on or after December 31,
23 2008, sales, other than sales governed by paragraphs (B),
24 (B-1), (B-2), ~~and~~ (B-5), and (B-7), are in this State if
25 any of the following criteria are met:

26 (i) Sales from the sale or lease of real property

1 are in this State if the property is located in this
2 State.

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

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

16 (a) in the case of a taxpayer who is a dealer
17 in the item of intangible personal property within
18 the meaning of Section 475 of the Internal Revenue
19 Code, the income or gain is received from a
20 customer in this State. For purposes of this
21 subparagraph, a customer is in this State if the
22 customer is an individual, trust or estate who is a
23 resident of this State and, for all other
24 customers, if the customer's commercial domicile
25 is in this State. Unless the dealer has actual
26 knowledge of the residence or commercial domicile

1 of a customer during a taxable year, the customer
2 shall be deemed to be a customer in this State if
3 the billing address of the customer, as shown in
4 the records of the dealer, is in this State; or

5 (b) in all other cases, if the
6 income-producing activity of the taxpayer is
7 performed in this State or, if the
8 income-producing activity of the taxpayer is
9 performed both within and without this State, if a
10 greater proportion of the income-producing
11 activity of the taxpayer is performed within this
12 State than in any other state, based on performance
13 costs.

14 (iv) Sales of services are in this State if the
15 services are received in this State. For the purposes
16 of this section, gross receipts from the performance of
17 services provided to a corporation, partnership, or
18 trust may only be attributed to a state where that
19 corporation, partnership, or trust has a fixed place of
20 business. If the state where the services are received
21 is not readily determinable or is a state where the
22 corporation, partnership, or trust receiving the
23 service does not have a fixed place of business, the
24 services shall be deemed to be received at the location
25 of the office of the customer from which the services
26 were ordered in the regular course of the customer's

1 trade or business. If the ordering office cannot be
2 determined, the services shall be deemed to be received
3 at the office of the customer to which the services are
4 billed. If the taxpayer is not taxable in the state in
5 which the services are received, the sale must be
6 excluded from both the numerator and the denominator of
7 the sales factor. The Department shall adopt rules
8 prescribing where specific types of service are
9 received, including, but not limited to, ~~broadcast,~~
10 ~~cable, advertising,~~ publishing, and utility service.

11 (D) For taxable years ending on or after December 31,
12 1995, the following items of income shall not be included
13 in the numerator or denominator of the sales factor:
14 dividends; amounts included under Section 78 of the
15 Internal Revenue Code; and Subpart F income as defined in
16 Section 952 of the Internal Revenue Code. No inference
17 shall be drawn from the enactment of this paragraph (D) in
18 construing this Section for taxable years ending before
19 December 31, 1995.

20 (E) Paragraphs (B-1) and (B-2) shall apply to tax years
21 ending on or after December 31, 1999, provided that a
22 taxpayer may elect to apply the provisions of these
23 paragraphs to prior tax years. Such election shall be made
24 in the form and manner prescribed by the Department, shall
25 be irrevocable, and shall apply to all tax years; provided
26 that, if a taxpayer's Illinois income tax liability for any

1 tax year, as assessed under Section 903 prior to January 1,
2 1999, was computed in a manner contrary to the provisions
3 of paragraphs (B-1) or (B-2), no refund shall be payable to
4 the taxpayer for that tax year to the extent such refund is
5 the result of applying the provisions of paragraph (B-1) or
6 (B-2) retroactively. In the case of a unitary business
7 group, such election shall apply to all members of such
8 group for every tax year such group is in existence, but
9 shall not apply to any taxpayer for any period during which
10 that taxpayer is not a member of such group.

11 (b) Insurance companies.

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

1 (2) Reinsurance. If the principal source of premiums
2 written by an insurance company consists of premiums for
3 reinsurance accepted by it, the business income of such
4 company shall be apportioned to this State by multiplying
5 such income by a fraction, the numerator of which is the
6 sum of (i) direct premiums written for insurance upon
7 property or risk in this State, plus (ii) premiums written
8 for reinsurance accepted in respect of property or risk in
9 this State, and the denominator of which is the sum of
10 (iii) direct premiums written for insurance upon property
11 or risk everywhere, plus (iv) premiums written for
12 reinsurance accepted in respect of property or risk
13 everywhere. For taxable years ending before December 31,
14 2008, for purposes of this paragraph, premiums written for
15 reinsurance accepted in respect of property or risk in this
16 State, whether or not otherwise determinable, may, at the
17 election of the company, be determined on the basis of the
18 proportion which premiums written for reinsurance accepted
19 from companies commercially domiciled in Illinois bears to
20 premiums written for reinsurance accepted from all
21 sources, or, alternatively, in the proportion which the sum
22 of the direct premiums written for insurance upon property
23 or risk in this State by each ceding company from which
24 reinsurance is accepted bears to the sum of the total
25 direct premiums written by each such ceding company for the
26 taxable year.

1 (c) Financial organizations.

2 (1) In general. For taxable years ending before
3 December 31, 2008, business income of a financial
4 organization shall be apportioned to this State by
5 multiplying such income by a fraction, the numerator of
6 which is its business income from sources within this
7 State, and the denominator of which is its business income
8 from all sources. For the purposes of this subsection, the
9 business income of a financial organization from sources
10 within this State is the sum of the amounts referred to in
11 subparagraphs (A) through (E) following, but excluding the
12 adjusted income of an international banking facility as
13 determined in paragraph (2):

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

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

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

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

24 (E) Any other gross income resulting from the
25 operation as a financial organization within this
26 State. In computing the amounts referred to in

1 paragraphs (A) through (E) of this subsection, any
2 amount received by a member of an affiliated group
3 (determined under Section 1504(a) of the Internal
4 Revenue Code but without reference to whether any such
5 corporation is an "includible corporation" under
6 Section 1504(b) of the Internal Revenue Code) from
7 another member of such group shall be included only to
8 the extent such amount exceeds expenses of the
9 recipient directly related thereto.

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

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

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

19 (i) The numerator shall be:

20 The average aggregate, determined on a
21 quarterly basis, of the financial organization's
22 loans to banks in foreign countries, to foreign
23 domiciled borrowers (except where secured
24 primarily by real estate) and to foreign
25 governments and other foreign official
26 institutions, as reported for its branches,

1 agencies and offices within the state on its
2 "Consolidated Report of Condition", Schedule A,
3 Lines 2.c., 5.b., and 7.a., which was filed with
4 the Federal Deposit Insurance Corporation and
5 other regulatory authorities, for the year 1980,
6 minus

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

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

26 (C) Change to Consolidated Report of Condition and

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

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

1 market instruments, when derived from transactions and
2 activities in the regular course of the financial
3 organization's trade or business. The following examples
4 are illustrative:

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

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

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

24 (iv) Interest income, commissions, fees, gains on
25 disposition, and other receipts from commercial loans
26 and installment obligations that are not secured by

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

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

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

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

25 (viii) Receipts from investment assets and
26 activities and trading assets and activities are

1 included in the receipts factor as follows:

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

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

25 (B) The receipts factor shall include the
26 amount by which interest, dividends, gains and

1 other income from trading assets and
2 activities, including but not limited to
3 assets and activities in the matched book, in
4 the arbitrage book, and foreign currency
5 transactions, exceed amounts paid in lieu of
6 interest, amounts paid in lieu of dividends,
7 and losses from such assets and activities.

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

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

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

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

1 the numerator of which is the gross income from
2 such trading assets and activities which are
3 properly assigned to a fixed place of business
4 of the taxpayer within this State and the
5 denominator of which is the gross income from
6 all such assets and activities.

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

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

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

25 (iii) the taxpayer uses such records
26 reflecting assignment of such assets or

1 activities for the filing of all state and
2 local tax returns for which an assignment
3 of such assets or activities to a fixed
4 place of business is required.

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

1 commercial domicile is in the state of the
2 United States or the District of Columbia to
3 which the greatest number of employees are
4 regularly connected with the management of the
5 investment or trading income or out of which
6 they are working, irrespective of where the
7 services of such employees are performed, as of
8 the last day of the taxable year.

9 (4) (Blank).

10 (5) (Blank).

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

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

1 freight revenue mile fraction, weighted to reflect the
2 person's

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

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

10 (2) Such business income derived from transportation
11 by pipeline shall be apportioned to this State by
12 multiplying such income by a fraction, the numerator of
13 which is the revenue miles of the person in this State, and
14 the denominator of which is the revenue miles of the person
15 everywhere. For the purposes of this paragraph, a revenue
16 mile is the transportation by pipeline of 1 barrel of oil,
17 1,000 cubic feet of gas, or of any specified quantity of
18 any other substance, the distance of 1 mile for a
19 consideration.

20 (3) For taxable years ending on or after December 31,
21 2008, business income derived from providing
22 transportation services other than airline services shall
23 be apportioned to this State by using a fraction, (a) the
24 numerator of which shall be (i) all receipts from any
25 movement or shipment of people, goods, mail, oil, gas, or
26 any other substance (other than by airline) that both

1 originates and terminates in this State, plus (ii) that
2 portion of the person's gross receipts from movements or
3 shipments of people, goods, mail, oil, gas, or any other
4 substance (other than by airline) that originates in one
5 state or jurisdiction and terminates in another state or
6 jurisdiction, that is determined by the ratio that the
7 miles traveled in this State bears to total miles
8 everywhere and (b) the denominator of which shall be all
9 revenue derived from the movement or shipment of people,
10 goods, mail, oil, gas, or any other substance (other than
11 by airline). Where a taxpayer is engaged in the
12 transportation of both passengers and freight, the
13 fraction above referred to shall first be determined
14 separately for passenger miles and freight miles. Then an
15 average of the passenger miles fraction and the freight
16 miles fraction shall be weighted to reflect the taxpayer's:

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

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

24 (4) For taxable years ending on or after December 31,
25 2008, business income derived from furnishing airline
26 transportation services shall be apportioned to this State

1 by multiplying such income by a fraction, the numerator of
2 which is the revenue miles of the person in this State, and
3 the denominator of which is the revenue miles of the person
4 everywhere. For purposes of this paragraph, a revenue mile
5 is the transportation of one passenger or one net ton of
6 freight the distance of one mile for a consideration. If a
7 person is engaged in the transportation of both passengers
8 and freight, the fraction above referred to shall be
9 determined by means of an average of the passenger revenue
10 mile fraction and the freight revenue mile fraction,
11 weighted to reflect the person's relative gross receipts
12 from passenger and freight airline transportation.

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

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

26 (1) Separate accounting;

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

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

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

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

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

13 (1) for tax years ending on or after December 31, 1998
14 and before December 31, 1999, $16 \frac{2}{3}\%$ of the property
15 factor plus $16 \frac{2}{3}\%$ of the payroll factor plus $66 \frac{2}{3}\%$ of
16 the sales factor;

17 (2) for tax years ending on or after December 31, 1999
18 and before December 31, 2000, $8 \frac{1}{3}\%$ of the property factor
19 plus $8 \frac{1}{3}\%$ of the payroll factor plus $83 \frac{1}{3}\%$ of the sales
20 factor;

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

23 If, in any tax year ending on or after December 31, 1998 and
24 before December 31, 2000, the denominator of the payroll,
25 property, or sales factor is zero, the apportionment factor
26 computed in paragraph (1) or (2) of this subsection for that

1 year shall be divided by an amount equal to 100% minus the
2 percentage weight given to each factor whose denominator is
3 equal to zero.

4 (Source: P.A. 94-247, eff. 1-1-06; 95-233, eff. 8-16-07;
5 95-707, eff. 1-11-08.)

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