



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4646

by Rep. Marcus C. Evans, Jr.

SYNOPSIS AS INTRODUCED:

35 ILCS 5/305	from Ch. 120, par. 3-305
35 ILCS 5/307	from Ch. 120, par. 3-307
35 ILCS 5/308	from Ch. 120, par. 3-308

Amends the Illinois Income Tax Act. Contains provisions concerning the apportionment to nonresidents of gains or losses on partnerships, trusts, or stock in Subchapter S corporations upon the sale, exchange, abandonment, liquidation, or other disposition of the interest in the partnership, trust, or stock.

LRB098 19229 HLH 54381 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Sections 305, 307, and 308 as follows:

6 (35 ILCS 5/305) (from Ch. 120, par. 3-305)

7 Sec. 305. Allocation of Partnership Income by partnerships
8 and partners other than residents.

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

17 (b) Allocation of partnership nonbusiness income by
18 partners other than residents. The respective shares of
19 partners other than residents in the items of partnership
20 income and deduction not taken into account in computing the
21 business income of a partnership shall be taken into account by
22 such partners pro rata in accordance with their respective
23 distributive shares of such partnership income for the

1 partnership's taxable year, and allocated as if such items had
2 been paid, incurred or accrued directly to such partners in
3 their separate capacities.

4 (c) Allocation or apportionment of base income by
5 partnership. Base income of a partnership shall be allocated or
6 apportioned to this State pursuant to Article 3, in the same
7 manner as it is allocated or apportioned for any other
8 nonresident.

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

21 (1) that is directly or integrally related to any other
22 business activity conducted in this State by the
23 nonresident partner (or any member of that partner's
24 unitary business group);

25 (2) that serves an operational function to any other
26 business activity of the nonresident partner (or any member

1 of that partner's unitary business group) in this State; or

2 (3) where assets of the investment partnership were
3 acquired with working capital from a trade or business
4 activity conducted in this State in which the nonresident
5 partner (or any member of that partner's unitary business
6 group) owns an interest.

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

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

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

20 (35 ILCS 5/307) (from Ch. 120, par. 3-307)

21 Sec. 307. Allocation of income by estate or trust
22 beneficiaries other than residents. (a) Allocation of business
23 income by beneficiaries other than residents. To the extent the
24 business income of an estate or trust allocated or apportioned
25 to this State in the possession of the estate or trust is

1 deemed to have been paid, credited or distributed by the estate
2 or trust under Section 306, the respective shares of
3 beneficiaries of the estate or trust, other than residents, in
4 such business income shall be taken into account by such
5 beneficiaries in proportion to their respective shares of the
6 distributable net income of the estate or trust for its taxable
7 year and allocated to this State.

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

20 (c) Accumulation and capital gain distributions. In the
21 event that, in any taxable year of a trust, the trust makes an
22 accumulation distribution or a capital gain distribution (both
23 as defined in Section 665 of the Internal Revenue Code), the
24 total of the amounts which are included in the income of each
25 beneficiary of such trust, other than a resident, under
26 Sections 668 and 669 of the Internal Revenue Code shall be

1 allocated to this State to the extent that the items of income
2 included in such distribution were allocated or apportioned to
3 this State in the hands of the trust.

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

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

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

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

18 (35 ILCS 5/308) (from Ch. 120, par. 3-308)

19 Sec. 308. Allocation of Subchapter S Corporation Income by
20 Subchapter S Corporations and Shareholders Other Than
21 Residents. (a) Allocation of Subchapter S corporation business
22 income by shareholders other than residents. The respective
23 shares of shareholders other than residents in so much of the
24 business income of the Subchapter S corporation as is allocated
25 or apportioned to this State in the hands of the Subchapter S

1 corporation shall be taken into account by such shareholder pro
2 rata in accordance with the requirements of Section 1366 of the
3 Internal Revenue Code for the Subchapter S corporation's
4 taxable year and allocated to this State.

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

16 (c) Allocation or apportionment of base income by the
17 Subchapter S corporation. Base income of a Subchapter S
18 corporation shall be allocated or apportioned to this State
19 pursuant to this Article 3 in the same manner as it is
20 allocated or apportioned for any other nonresident.

21 (c-5) Gain or loss on stock in a Subchapter S corporation.
22 The amount of gain or loss realized by a nonresident
23 shareholder upon the sale, exchange, abandonment, liquidation
24 or other disposition of stock in a Subchapter S corporation
25 included in net income of that shareholder shall be the total
26 gain or loss multiplied by the apportionment factor of the

1 Subchapter S corporation determined under Section 304 of this
2 Act for the taxable year of the Subchapter S corporation in
3 which the sale, exchange, abandonment, liquidation or other
4 disposition occurs.

5 (d) This Section shall not apply to any corporation for
6 which there is in effect a federal election to opt out of the
7 provisions of the Subchapter S Revision Act of 1982 and have
8 applied instead the prior federal Subchapter S rules as in
9 effect on July 1, 1982.

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