

TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 100  
INCOME TAX

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415 **AUTHORITY:** Implementing Section 505 of the Illinois Income Tax Act [35 ILCS 5] as

416 authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5] and Section 2505-795 of

417 the Department of Revenue Law [20 ILCS 2505].

418

419 **SOURCE:** Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49, p. 84,

420 effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at

421 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4624, effective April 14, 1981;

422 amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May

423 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843,

424 effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at

425 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December

426 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399,

427 effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8

428 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg.

429 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986;

430 amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941,

431 effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986;  
 432 amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410,  
 433 effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12  
 434 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25,  
 435 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307,  
 436 effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13  
 437 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990;  
 438 amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective  
 439 June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency  
 440 amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days;  
 441 amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective  
 442 August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective  
 443 November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18  
 444 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28,  
 445 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839,  
 446 effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency  
 447 amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended  
 448 at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29,  
 449 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg.  
 450 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997;  
 451 emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150  
 452 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998;  
 453 amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 22 Ill. Reg. 21623,  
 454 effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended  
 455 at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26,  
 456 2000; emergency amendment at 24 Ill. Reg. 17585, effective November 17, 2000, for a  
 457 maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at  
 458 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 23,  
 459 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687,  
 460 effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill.  
 461 Reg. 8333, effective June 22, 2001; amended at 26 Ill. Reg. 192, effective December 20, 2001;  
 462 amended at 26 Ill. Reg. 1274, effective January 15, 2002; amended at 26 Ill. Reg. 9854, effective  
 463 June 20, 2002; amended at 26 Ill. Reg. 13237, effective August 23, 2002; amended at 26 Ill. Reg.  
 464 15304, effective October 9, 2002; amended at 26 Ill. Reg. 17250, effective November 18, 2002;  
 465 amended at 27 Ill. Reg. 13536, effective July 28, 2003; amended at 27 Ill. Reg. 18225, effective  
 466 November 17, 2003; emergency amendment at 27 Ill. Reg. 18464, effective November 20, 2003,  
 467 for a maximum of 150 days; emergency expired April 17, 2004; amended at 28 Ill. Reg. 1378,  
 468 effective January 12, 2004; amended at 28 Ill. Reg. 5694, effective March 17, 2004; amended at  
 469 28 Ill. Reg. 7125, effective April 29, 2004; amended at 28 Ill. Reg. 8881, effective June 11,  
 470 2004; emergency amendment at 28 Ill. Reg. 14271, effective October 18, 2004, for a maximum  
 471 of 150 days; amended at 28 Ill. Reg. 14868, effective October 26, 2004; emergency amendment  
 472 at 28 Ill. Reg. 15858, effective November 29, 2004, for a maximum of 150 days; amended at 29  
 473 Ill. Reg. 2420, effective January 28, 2005; amended at 29 Ill. Reg. 6986, effective April 26,

474 2005; amended at 29 Ill. Reg. 13211, effective August 15, 2005; amended at 29 Ill. Reg. 20516,  
 475 effective December 2, 2005; amended at 30 Ill. Reg. 6389, effective March 30, 2006; amended at  
 476 30 Ill. Reg. 10473, effective May 23, 2006; amended by 30 Ill. Reg. 13890, effective August 1,  
 477 2006; amended at 30 Ill. Reg. 18739, effective November 20, 2006; amended at 31 Ill. Reg.  
 478 16240, effective November 26, 2007; amended at 32 Ill. Reg. 872, effective January 7, 2008;  
 479 amended at 32 Ill. Reg. 1407, effective January 17, 2008; amended at 32 Ill. Reg. 3400, effective  
 480 February 25, 2008; amended at 32 Ill. Reg. 6055, effective March 25, 2008; amended at 32 Ill.  
 481 Reg. 10170, effective June 30, 2008; amended at 32 Ill. Reg. 13223, effective July 24, 2008;  
 482 amended at 32 Ill. Reg. 17492, effective October 24, 2008; amended at 33 Ill. Reg. 1195,  
 483 effective December 31, 2008; amended at 33 Ill. Reg. 2306, effective January 23, 2009; amended  
 484 at 33 Ill. Reg. 14168, effective September 28, 2009; amended at 33 Ill. Reg. 15044, effective  
 485 October 26, 2009; amended at 34 Ill. Reg. 550, effective December 22, 2009; amended at 34 Ill.  
 486 Reg. 3886, effective March 12, 2010; amended at 34 Ill. Reg. 12891, effective August 19, 2010;  
 487 amended at 35 Ill. Reg. 4223, effective February 25, 2011; amended at 35 Ill. Reg. 15092,  
 488 effective August 24, 2011; amended at 36 Ill. Reg. 2363, effective January 25, 2012; amended at  
 489 36 Ill. Reg. 9247, effective June 5, 2012; amended at 37 Ill. Reg. 5823, effective April 19, 2013;  
 490 amended at 37 Ill. Reg. 20751, effective December 13, 2013; recodified at 38 Ill. Reg. 4527;  
 491 amended at 38 Ill. Reg. 9550, effective April 21, 2014; amended at 38 Ill. Reg. 13941, effective  
 492 June 19, 2014; amended at 38 Ill. Reg. 15994, effective July 9, 2014; amended at 38 Ill. Reg.  
 493 17043, effective July 23, 2014; amended at 38 Ill. Reg. 18568, effective August 20, 2014;  
 494 amended at 38 Ill. Reg. 23158, effective November 21, 2014; emergency amendment at 39 Ill.  
 495 Reg. 483, effective December 23, 2014, for a maximum of 150 days; amended at 39 Ill. Reg.  
 496 1768, effective January 7, 2015; amended at 39 Ill. Reg. 5057, effective March 17, 2015;  
 497 amended at 39 Ill. Reg. 6884, effective April 29, 2015; amended at 39 Ill. Reg. 15594, effective  
 498 November 18, 2015; amended at 40 Ill. Reg. 1848, effective January 5, 2016; amended at 40 Ill.  
 499 Reg. 10925, effective July 29, 2016; amended at 40 Ill. Reg. 13432, effective September 7, 2016;  
 500 amended at 40 Ill. Reg. 14762, effective October 12, 2016; amended at 40 Ill. Reg. 15575,  
 501 effective November 2, 2016; amended at 41 Ill. Reg. 4193, effective March 27, 2017; amended  
 502 at 41 Ill. Reg. 6379, effective May 22, 2017; amended at 41 Ill. Reg. 10662, effective August 3,  
 503 2017; amended at 41 Ill. Reg. 12608, effective September 21, 2017; amended at 41 Ill. Reg.  
 504 14217, effective November 7, 2017; emergency amendment at 41 Ill. Reg. 15097, effective  
 505 November 30, 2017, for a maximum of 150 days; amended at 42 Ill. Reg. 4953, effective  
 506 February 28, 2018; amended at 42 Ill. Reg. 6451, effective March 21, 2018; recodified Subpart H  
 507 to Subpart G at 42 Ill. Reg. 7980; amended at 42 Ill. Reg. 17852, effective September 24, 2018;  
 508 amended at 42 Ill. Reg. 19190, effective October 12, 2018; amended at 43 Ill. Reg. 727, effective  
 509 December 18, 2018; amended at 43 Ill. Reg. 10124, effective August 27, 2019; amended at 44  
 510 Ill. Reg. 2363, effective January 17, 2020; amended at 44 Ill. Reg. 2845, effective January 30,  
 511 2020; emergency amendment at 44 Ill. Reg. 4700, effective March 4, 2020, for a maximum of  
 512 150 days; emergency expired July 31, 2020; amended at 44 Ill. Reg. 10907, effective June 10,  
 513 2020; emergency amendment at 44 Ill. Reg. 11208, effective June 17, 2020, for a maximum of  
 514 150 days; emergency expired November 13, 2020; amended at 44 Ill. Reg. 17414, effective  
 515 October 13, 2020; amended at 45 Ill. Reg. 2006, effective January 29, 2021; amended at 45 Ill.  
 516 Reg. 5523, effective April 15, 2021; amended at 46 Ill. Reg. 13312, effective July 12, 2022;

517 amended at 46 Ill. Reg. 14550, effective August 2, 2022; amended at 46 Ill. Reg. 15317,  
 518 effective August 24, 2022; amended at 46 Ill. Reg. 18102, effective October 26, 2022; amended  
 519 at 47 Ill. Reg. 1402, effective January 10, 2023; amended at 47 Ill. Reg. 2093, effective January  
 520 24, 2023; amended at 47 Ill. Reg. 5726, effective April 4, 2023; amended at 47 Ill. Reg. 6030,  
 521 effective April 12, 2023; amended at 47 Ill. Reg. 13669, effective September 11, 2023;  
 522 emergency amendment at 47 Ill. Reg. 17214, effective November 6, 2023, for a maximum of 150  
 523 days; amended at 48 Ill. Reg. 1677, effective January 10, 2024; amended at 48 Ill. Reg. 2243,  
 524 effective January 29, 2024; amended at 48 Ill. Reg. 4433, effective March 11, 2024; amended at  
 525 48 Ill. Reg. 10281, effective June 25, 2024; amended at 48 Ill. Reg. 10846, effective July 11,  
 526 2024; emergency amendment at 48 Ill. Reg. 17848, effective November 26, 2024, for a  
 527 maximum of 150 days; amended at 49 Ill. Reg. 1861, effective January 31, 2025; amended at 49  
 528 Ill. Reg. 3115, effective February 26, 2025; amended at 49 Ill. Reg. 6621, effective April 22,  
 529 2025; amended at 49 Ill. Reg. 12066, effective September 12, 2025; amended at 50 Ill. Reg.  
 530 \_\_\_\_\_, effective \_\_\_\_\_.

531  
 532 SUBPART L: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS  
 533

534 **Section 100.3200 Taxability in Other State (IITA Section 303)**  
 535

536 a) General definition  
 537

538 1) For purposes of allocation of nonbusiness income and for purposes of the  
 539 sales factor used in apportioning business income, a taxpayer is taxable in  
 540 another state if:

541  
 542 A) *in that state he or she is subject to a net income tax, a franchise tax*  
 543 *measured by net income, a franchise tax for the privilege of doing*  
 544 *business, or a corporate stock tax [35 ILCS 5/303(f)(1)]; or*  
 545

546 B) *that state has jurisdiction to subject the taxpayer to a net income*  
 547 *tax regardless of whether, in fact, the state does or does not subject*  
 548 *the taxpayer to such a tax [35 ILCS 5/303(f)(2)].*  
 549

550 2) A taxpayer is subject to one of the specified taxes in subsection (a)(1)(A)  
 551 in a particular state only if the taxpayer is subject to the tax by reason of  
 552 income-producing activities in that state. For example, a corporation that  
 553 pays a minimum franchise tax in order to qualify for the privilege of doing  
 554 business in a state is not subject to tax by that state within the meaning of  
 555 subsection (a)(1)(A) if the amount of that minimum tax bears no relation  
 556 to the corporation's activities within that state. Further, a taxpayer  
 557 claiming to be taxable in another state under the test set forth in subsection  
 558 (a)(1)(A) must establish not only that under the laws of that state the  
 559 taxpayer is subject to one of the specified taxes, but that the taxpayer, in

560 fact, pays the tax. If a taxpayer is subject to one of the taxes specified in  
 561 subsection (a)(1)(A) but does not, in fact, pay the tax, the taxpayer may  
 562 not claim to be taxable in the state imposing the tax under the test set forth  
 563 in subsection (a)(1)(A) or (a)(1)(B). (See *Dover Corp. v. Dept. of*  
 564 *Revenue*, 271 Ill. App. 3d 700 (1995).) On the other hand, if a taxpayer is  
 565 not subject in a given state to any of the taxes specified in subsection  
 566 (a)(1)(A) but the taxpayer establishes that the taxpayer's activities in that  
 567 state are such as to give the state jurisdiction to subject the taxpayer to a  
 568 net income tax, then, under the test set forth in this subsection (a)(2), the  
 569 taxpayer is taxable in that state, notwithstanding the fact that that state has  
 570 not enacted legislation subjecting the taxpayer to the tax. For purposes of  
 571 this Section:

- 572
- 573 A) A net income tax is a tax for which an individual may claim a  
 574 deduction under 26 U.S.C. 164(a)(3) or for which a foreign tax  
 575 credit may be claimed under 26 U.S.C. 901.  
 576
- 577 B) In the case of any state other than a foreign country or political  
 578 subdivision of a foreign country, the determination of whether a  
 579 state has jurisdiction to subject the taxpayer to a net income tax  
 580 will be determined under the Constitution, statutes and treaties of  
 581 the United States. Such a state does not have jurisdiction to subject  
 582 the taxpayer to a net income tax if it is prohibited from imposing  
 583 that tax by reason of the provisions of Public Law 86-272 (15  
 584 U.S.C. Sections 381-385). See 100.9720 of this Part for guidance  
 585 on nexus standards under the Constitution and statutes of the  
 586 United States.  
 587
- 588 C) In the case of any foreign country or political subdivision of a  
 589 foreign country, the determination of whether a state has  
 590 jurisdiction to subject the taxpayer to a net income tax will be  
 591 determined as if the foreign country or political subdivision were a  
 592 state of the United States or a political subdivision of a U.S. state.  
 593 For taxable years ending before December 31, 2022, a person who  
 594 is not required to pay net income tax by a foreign country or  
 595 political subdivision as the result of a treaty provision exempting  
 596 certain persons, business activities or sources of income from tax is  
 597 not subject to net income tax in that jurisdiction. For taxable years  
 598 ending on or after December 31, 2022, if jurisdiction is otherwise  
 599 present, due to income-producing activities conducted by the  
 600 taxpayer, that foreign country or political subdivision is not  
 601 considered as being without jurisdiction by reason of the

602 provisions of a treaty between that foreign country or political  
603 subdivision and the United States.

604  
605 D) A person is not subject to tax in another state or in a foreign  
606 country under subsection (a)(1)(B) if that state or country imposes  
607 a tax on net income, unless the taxpayer can show a specific  
608 provision of that state's or country's constitution, statutes or  
609 regulations, or a holding of that state's or country's courts or taxing  
610 authorities, that exempts the person from taxation even though that  
611 person could be subject to a net income tax under the Constitution  
612 and statutes of the United States.

613  
614 3) For taxable years ending on or after December 31, 2025, a person is  
615 taxable in another state if any member of its unitary business group is  
616 taxable in that other state under the tests set forth in subsections (a)(1)(A)  
617 or (a)(1)(B).  
618

619 b) Examples. Section 100.3200 of this Part may be illustrated by the following  
620 examples:

621  
622 1) EXAMPLE 1. A corporation, although subject to the provisions of the net  
623 income tax statute imposed by X state, has never filed income tax returns  
624 in that jurisdiction and has never paid income tax to X. For purposes of  
625 allocation and apportionment of A's income, A is not taxable in X state  
626 because it does not meet the test specified in either subsection (a)(1)(A) or  
627 (1)(B).

628  
629 2) EXAMPLE 2. B corporation, an Illinois corporation, is actively engaged  
630 in manufacturing farm equipment in Y foreign country. Y does not impose  
631 a franchise tax measured by net income or a corporate stock tax. It does  
632 impose a franchise tax for the privilege of doing business, but B  
633 corporation is not subject to that tax because it applies only to corporations  
634 incorporated under Y's laws. Y also imposes a net income tax upon  
635 foreign corporations doing business within its boundaries, but B is not  
636 subject to that tax because the income tax statute grants tax exemption to  
637 corporations manufacturing farm equipment. For purposes of allocation  
638 and apportionment of B's income, B is taxable in Y country. B does not  
639 meet the test specified in subsection (a)(1)(A), but does meet the test  
640 specified in subsection (a)(1)(B), since Y has jurisdiction to impose a net  
641 income tax on B.

642  
643 3) EXAMPLE 3. C corporation sells large mining equipment to customers in  
644 foreign country W in April 2022. The equipment is disassembled before

645 shipping, and employees of C travel to W to re-assemble the equipment.  
 646 C's activities in W thus exceed the protections of Public Law 86-272.  
 647 However, due to a bilateral treaty between W and the United States, W  
 648 will impose a net income tax only upon taxpayers maintaining a  
 649 permanent establishment in W. C's activities in W do not constitute a  
 650 permanent establishment. C meets the test specified in subsection  
 651 (a)(1)(B) because W has jurisdiction to impose a net income tax on C,  
 652 irrespective of the treaty provision, for tax years ending on or after  
 653 December 31, 2022.

654  
 655 4) EXAMPLE 4. Corporations A and B are members of a unitary business  
 656 group. Corporation A, a corporation located in State X, ships products  
 657 from Illinois to customers in State Y. Corporation A is exempt from  
 658 taxation in State Y due to the provisions of Public Law 86-272. State Y  
 659 does not impose a corporate income tax or similar business tax.  
 660 Corporation A is not taxable in State Y because it does not meet the tests  
 661 specified in subsections (a)(1)(A) or (a)(1)(B). Corporation B has taxable  
 662 nexus in State Y, and under the test in subsection (a)(1)(B), Corporation B  
 663 is taxable in State Y. For the combined group's taxable year ending June  
 664 30, 2026, the out-of-state sales made by Corporation A to customers in  
 665 State Y will not be thrown back to Illinois because Corporation B is  
 666 taxable in the destination state.

667  
 668 5) EXAMPLE 5. Assume the same facts as in Example 4, except that  
 669 Corporation B does not have taxable nexus in State Y. For the combined  
 670 group's taxable year ending June 30, 2026, the out-of-state sales made by  
 671 Corporation A to State Y will be thrown back to Illinois because no  
 672 member of the unitary business group is subject to tax in the destination  
 673 state.

674  
 675 6) EXAMPLE 6. Corporation A and Subchapter S Corporation B are  
 676 members of a unitary business group. The group filed separate unitary  
 677 returns for taxable year ending December 31, 2025, as provided under  
 678 Section 100.5215 of this Part. Corporation A is located in Illinois and  
 679 ships products from Illinois to customers in State Y. Corporation A is  
 680 exempt from taxation in State Y due to the provisions of Public Law 86-  
 681 272. State Y does not impose a corporate income tax or similar business  
 682 tax. Corporation A is not taxable in State Y because it does not meet the  
 683 tests specified in subsections (a)(1)(A) or (a)(1)(B). Subchapter S  
 684 Corporation B has taxable nexus in State Y, and under the test in  
 685 subsection (a)(1)(B), is taxable in State Y. Both Corporation A and  
 686 Subchapter S Corporation B use the unitary business group's everywhere  
 687 factor or factors in calculating the apportionment fraction denominator. In

688 calculating its apportionment fraction numerator, Corporation A is not  
689 required to throw back its sales made to customers in State Y because  
690 Subchapter S Corporation B is taxable in the destination state and satisfies  
691 the conditions in subsection (a)(1) for the entire unitary business group.

692  
693 7) EXAMPLE 7. Corporations G and H are members of a unitary business  
694 group. Corporation G, an Illinois corporation, sells services to customers  
695 in State A. Corporation G is exempt from taxation in State A. State A does  
696 not impose a corporate income tax or similar business tax. Corporation G  
697 is not taxable in State A because it does not meet the tests specified in  
698 subsections (a)(1)(A) or (a)(1)(B). Corporation H has taxable nexus in  
699 State A, and under the test in subsection (a)(1)(B), Corporation H is  
700 taxable in State A. For the combined group's taxable year ending  
701 December 31, 2025, the sales of services made by Corporation G to  
702 customers in State A will not be excluded from the sales factor because  
703 Corporation H is taxable in the state where the services were received.

704  
705 8) EXAMPLE 8. Assume the same facts as in Example 7, but Corporation H  
706 is not taxable in State A. The sales of services made by Corporation G to  
707 customers in State A will be excluded from the sales factor because no  
708 member of the unitary business group is taxable in the state where the  
709 services were received.

710  
711 (Source: Amended at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

712  
713 **SUBPART M: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS**

714  
715 **Section 100.3370 Sales Factor (IITA Section 304)**

716  
717 a) **In General**

- 718  
719 1) IITA Section 1501(a)(21) defines the term "sales" to mean all gross  
720 receipts of the person not allocated under IITA Sections 301, 302 and 303.  
721 Thus, for the purposes of the sales factor of the apportionment formula for  
722 each trade or business of the person, the term "sales" means all gross  
723 receipts derived by the person from transactions and activity in the regular  
724 course of his or her trade or business. The following are rules for  
725 determining "sales" in various situations, except in instances in which an  
726 alternative method of determining the sales factor is prescribed in Section  
727 100.3380. If the determination prescribed by this Section does not clearly  
728 reflect the taxpayer's business activities in Illinois (for taxable years  
729 ending before December 31, 2008) or the market for the taxpayer's goods,  
730 services or other sources of income in Illinois (for taxable years ending on

731 or after December 31, 2008), the taxpayer may request the use of an  
732 alternative method of apportionment under Section 100.3390.  
733

734 A) In the case of a person engaged in manufacturing and selling or  
735 purchasing and reselling goods or products, "sales" includes all  
736 gross receipts from the sales of those goods or products (or other  
737 property of a kind that would properly be included in the inventory  
738 of the person if on hand at the close of the tax period) held by the  
739 person primarily for sale to customers in the ordinary course of its  
740 trade or business. Gross receipts for this purpose means gross  
741 sales less returns and allowances, and includes all interest income,  
742 service charges, carrying charges, or time-price differential charges  
743 attendant to those sales. Federal and State excise taxes (including  
744 sales taxes) shall be included as part of the receipts if the taxes are  
745 passed on to the buyer or included as part of the selling price of the  
746 product.  
747

748 B) In the case of cost plus fixed fee contracts, such as the operation of  
749 a government-owned plant for a fee, "sales" includes the entire  
750 reimbursed cost, plus the fee.  
751

752 C) In the case of a person engaged in providing services, such as the  
753 operation of an advertising agency, or the performance of  
754 equipment service contracts, or research and development  
755 contracts, "sales" includes the gross receipts from the performance  
756 of those services, including fees, commissions and similar items.  
757

758 D) In the case of a person engaged in renting real or tangible property,  
759 "sales" includes the gross receipts from the rental, lease or  
760 licensing of the use of the property.  
761

762 E) In the case of a person engaged in the sale, assignment or licensing  
763 of intangible personal property such as patents and copyrights,  
764 "sales" includes the gross receipts therefrom.  
765

766 F) If a person derives receipts from the sale of equipment used in its  
767 business, those receipts constitute "sales". For example, a truck  
768 express company owns a fleet of trucks and sells its trucks under a  
769 regular replacement program. The gross receipts from the sales of  
770 the trucks shall be included in the sales factor.  
771

772 2) The following gross receipts are not included in the sales factor:  
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- A) For taxable years ending on or after December 31, 1995, *dividends; amounts included under IRC section 78; and Subpart F income* are excluded from the sales factor under IITA Section 304(a)(3)(D).
  - B) Gross receipts that are excluded from or deducted in the computation of federal taxable income or federal adjusted gross income, and that are not added back in the computation of base income. For example, in years ending prior to December 31, 1995, dividends received from a domestic corporation are excluded from the sales factor to the extent the taxpayer is allowed a deduction under IRC section 243 with respect to those dividends.
  - C) Gross receipts that are subtracted from federal taxable income or federal adjusted gross income in the computation of base income or that are eliminated in the computation of taxable income in the case of a unitary business group under Section 100.5270(b)(1). Examples of gross receipts excluded from the sales factor under this provision include:
    - i) Interest on federal obligations subtracted under IITA Section 203(a)(2)(N), (b)(2)(J), (c)(2)(K) or (d)(2)(G).
    - ii) For taxable years ending prior to December 31, 1995, dividends included in federal taxable income or federal adjusted gross income are excluded from the sales factor if eliminated in combination or to the extent subtracted under IITA Section 203(a)(2)(J), (a)(2)(K), (b)(2)(K), (b)(2)(L), (b)(2)(O), (c)(2)(M), (c)(2)(O), (d)(2)(K) or (d)(2)(M).
  - D) Gross receipts that are excluded from or deducted in the computation of federal taxable income or federal adjusted gross income, but are added back in the computation of base income, are included in the sales factor unless subtracted or eliminated in combination. For example:
    - i) Interest on State obligations excluded from federal taxable income or adjusted gross income under IRC section 103 and added back in the computation of base income under IITA Section 203(a)(2)(A), (b)(2)(A), (c)(2)(A) or (d)(2)(A) shall be included in the sales factor except in the case of interest on certain Illinois obligations that is exempt from Illinois Income Tax. (See 86 Ill. Adm. Code

- 817 100.2470(f.)  
818  
819 ii) Gross receipts from intercompany transactions between two  
820 corporate members of a federal consolidated group, the  
821 taxable income on which is deferred under 26 CFR 1.1502-  
822 13, shall be included in the sales factor of the recipient  
823 unless subtracted under a provision of IITA Section 203 or  
824 eliminated in combination of the two corporations as  
825 members of a unitary business group.  
826  
827 E) In some cases, certain gross receipts should be disregarded in  
828 determining the sales factor in order that the apportionment  
829 formula will operate fairly to apportion to this State the income of  
830 the person's trade or business. (See 86 Ill. Adm. Code  
831 100.3380(c).)  
832  
833 F) For taxable years ending on or after December 31, 1999, *gross*  
834 *receipts from the licensing, sale, or other disposition of a patent,*  
835 *copyright, trademark, or similar item of intangible personal*  
836 *property may be included in the sales factor only if gross receipts*  
837 *from licenses, sales, or other dispositions of these items comprise*  
838 *more than 50% of the taxpayer's total gross receipts included in*  
839 *gross income during the tax year and during each of the 2*  
840 *immediately preceding tax years; provided that, when a taxpayer is*  
841 *a member of a unitary business group, the determination shall be*  
842 *made on the basis of the gross receipts of the entire unitary*  
843 *business group. (IITA Section 304(a)(3)(B-2)) For purposes of this*  
844 *Section:*  
845  
846 i) "Gross receipts from the licensing, sale, or other disposition  
847 of a patent, copyright, trademark, or similar item of  
848 intangible personal property" includes amounts received as  
849 damages or settlements from claims of infringement.  
850  
851 ii) "Gross receipts from the licensing, sale, or other disposition  
852 of a patent" includes only amounts received from a person  
853 using the patent in the production, fabrication,  
854 manufacturing, or other processing of a product or from a  
855 person producing, fabricating or manufacturing a product  
856 subject to the patent.  
857  
858 iii) "Gross receipts from the licensing, sale, or other disposition  
859 of a copyright" includes only amounts received by the

- 860 taxpayer from a person engaged in printing or other  
861 publication of the material protected by the copyright,  
862 which are governed by Section 100.3373. The term does  
863 not include gross receipts from broadcasting within the  
864 meaning of IITA Section 304(a)(3)(B-7) or from publishing  
865 or advertising within the meaning of IITA Section  
866 304(a)(3)(C-5)(iv).  
867
- 868 iv) If a taxpayer has been in existence less than three taxable  
869 years, its gross receipts from the licensing, sale, or other  
870 disposition of patents, copyrights, trademarks or similar  
871 items of intangible personal property shall be included in  
872 its sales factor if those gross receipts comprise more than  
873 50% of its total gross receipts during each taxable year of  
874 its existence.  
875
- 876 v) "Patent" means a patent issued under 35 U.S.C. 151.  
877
- 878 vi) "Copyright" means a copyright registered or eligible for  
879 registration under 17 U.S.C. 408.  
880
- 881 vii) "Trademark" means a trademark registered or eligible for  
882 registration under 15 U.S.C. 1051.  
883
- 884 viii) A "similar item" means an item of intellectual property that  
885 is registered or otherwise enforceable under a law  
886 equivalent to 35 U.S.C. 151, 17 U.S.C. 408 or 15 U.S.C.  
887 1051 or that is otherwise recognized in the country under  
888 whose law the sale or license agreement would be enforced,  
889 or under which an infringement claim would be brought.  
890
- 891 ix) In the case of a unitary business group, the "total gross  
892 receipts and gross receipts from the licensing, sale or other  
893 disposition of a patent, copyright, trademark or similar item  
894 of intangible personal property in the two years  
895 immediately preceding the tax year" includes the gross  
896 receipts and gross receipts from the licensing, sale or other  
897 disposition of a patent, copyright, trademark or similar item  
898 of intangible personal property of all persons who are  
899 members of the unitary business group at some time during  
900 the taxable year, whether or not those persons were also  
901 members of the unitary business group in a preceding tax  
902 year, and only of those persons.

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- 3) In filing returns with this State, if the person departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the person shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the person with all states to which the person reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the person shall disclose in its return to this State the nature and extent of the variance.
- 4) For taxable years ending prior to December 31, 2008, sales of electricity are sales other than sales of tangible personal property sourced under IITA Section 304(a)(3)(C). For taxable years ending on or after December 31, 2008 and prior to July 16, 2009, sales of electricity are sales of service sourced under IITA Section 304(a)(3)(C-5)(iv). For taxable years ending after July 15, 2009, sales of electricity are sales of tangible personal property sourced under IITA Section 304(a)(3)(B). (See *Exelon Corp. v. Department of Revenue*, 234 Ill 2d 266 (2009)).
- b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the person from transactions and activity in the regular course of its trade or business, except receipts excluded under 86 Ill. Adm. Code 100.3380(c).
- c) Numerator. The numerator of the sales factor shall include the gross receipts attributable to this State and derived by the person from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to those gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.
  - 1) Sales of Tangible Personal Property in this State
    - A) Gross receipts from the sales of tangible personal property (except sales to the United States Government) (see subsection (c)(2)) are in this State:
      - i) if the property is delivered or shipped to a purchaser within this State regardless of the f.o.b. (free on board) point or other conditions of sale; or
      - ii) if the property is shipped from an office, store, warehouse,

946 factory or other place of storage in this State and the  
947 taxpayer is not taxable in the state of the purchaser.  
948 However, premises owned or leased by a person who has  
949 independently contracted with the taxpayer for the printing  
950 of newspapers, periodicals or books shall not be deemed to  
951 be an office, store, warehouse, factory or other place of  
952 storage. For taxable years ending on or after December 31,  
953 2025, if the taxpayer is a member of a unitary business  
954 group and is not taxable in the state of the purchaser, the  
955 gross receipts are in this State if no member of the unitary  
956 business group is taxable in the state of the purchaser.  
957

- 958 B) Property shall be deemed to be delivered or shipped to a purchaser  
959 within this State if the recipient is located in this State, even  
960 though the property is ordered from outside this State.  
961

962 EXAMPLE: A corporation, with inventory in State A, sold  
963 \$100,000 of its products to a purchaser having branch stores in  
964 several states including this State. The order for the purchase was  
965 placed by the purchaser's central purchasing department located in  
966 State B. \$25,000 of the purchase order was shipped directly to  
967 purchaser's branch store in this State. The branch store in this  
968 State is the "purchaser within this State" with respect to \$25,000 of  
969 the corporation's sales.  
970

- 971 C) Property is delivered or shipped to a purchaser within this State if  
972 the shipment terminates in this State, even though the property is  
973 subsequently transferred by the purchaser to another state.  
974

975 EXAMPLE: A corporation makes a sale to a purchaser who  
976 maintains a central warehouse in this State at which all  
977 merchandise purchases are received. The purchaser reships the  
978 goods to its branch stores in other states for sale. All of the  
979 corporation's products shipped to the purchaser's warehouse in this  
980 State is property "delivered or shipped to a purchaser within this  
981 State".  
982

- 983 D) The term "purchaser within this State" shall include the ultimate  
984 recipient of the property if the person in this State, at the  
985 designation of the purchaser, delivers to or has the property  
986 shipped to the ultimate recipient within this State.  
987

988 EXAMPLE: A corporation in this State sold merchandise to a

989 purchaser in State A. The corporation directed the manufacturer or  
990 supplier of the merchandise in State B to ship the merchandise to  
991 the purchaser's customer in this State pursuant to purchaser's  
992 instructions. The sale by the corporation is "in this State".  
993

- 994 E) When property being shipped by a seller from the state of origin to  
995 a consignee in another state is diverted while en route to a  
996 purchaser in this State, the sales are in this State.  
997

998 EXAMPLE: Corporation X, a produce grower in State A, begins  
999 shipment of perishable produce to the purchaser's place of business  
1000 in State B. While en route the produce is diverted to the  
1001 purchaser's place of business in this State in which state  
1002 Corporation X is subject to tax. The sale by the corporation is  
1003 attributed to this State.  
1004

- 1005 F) If the person is not taxable in the state of the purchaser, the sale is  
1006 attributed to this State if the property is shipped from an office,  
1007 store, warehouse, factory, or other place of storage in this State  
1008 (subject to the exception noted in (c)(1)(A)(ii)).  
1009

1010 EXAMPLE: A corporation has its head office and factory in State  
1011 A. It maintains a branch office and inventory in this State. The  
1012 corporation's only activity in State B is the solicitation of orders by  
1013 a resident salesman. All orders by the State B salesman are sent to  
1014 the branch office in this State for approval and are filled by  
1015 shipment from the inventory in this State. Since the corporation is  
1016 immune under Public Law 86-272 from tax in State B, all sales of  
1017 merchandise to purchasers in State B are attributed to this State,  
1018 the state from which the merchandise was shipped.  
1019

- 1020 G) For taxable years ending on or after December 31, 2025, if a  
1021 member of a unitary business group is not taxable in the state of  
1022 the purchaser, the sale is attributed to this State if the property is  
1023 shipped from an office, store, warehouse, factory, or other place of  
1024 storage in this State (subject to the exception noted in subsection  
1025 (c)(1)(A)(ii)) and no other member of the unitary business group is  
1026 taxable in the state of the purchaser.  
1027

1028 EXAMPLE: Corporations A and B are members of a unitary  
1029 business group. Corporation A has its factory in State X and  
1030 maintains inventory in Illinois. Corporation A ships products from  
1031 Illinois to customers in State Y. Corporation A is exempt from

taxation in State Y due to the provisions of Public Law 86-272. Corporation B has taxable nexus in State Y. For the combined group's taxable year ending April 30, 2026, the sales of products by Corporation A to purchasers in State Y are not attributed to this State because another member of the unitary business group is taxable in State Y.

- 2) Sales of tangible personal property to the United States Government in this State. Gross receipts from the sales of tangible personal property to the United States Government are in this State if the property is shipped from an office, store, warehouse, factory, or other place of storage in this State. For the purposes of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of the contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

EXAMPLE A: A corporation contracts with General Services Administration to deliver X number of trucks that were paid for by the United States Government. The sale is a sale to the United States Government.

EXAMPLE B: A corporation as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a component of a rocket for \$1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

- 3) For taxable years ending on or after December 31, 1999, *gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property* that are not excluded from the sales factor under subsection (a)(2)(F) are included in the numerator of the sales factor *to the extent the item is utilized in this State during the year the gross receipts are included in gross income.* (ITA Section 304(a)(3)(B-1)) For purposes of this subsection (c)(3):

A) *A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If a patent is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts of the licensee or purchaser from sales or leases of items produced, fabricated, manufactured, or processed within that*

- 1075 *state using the patent and of patented items produced within that*  
1076 *state, divided by the total of the gross receipts for all states in*  
1077 *which the patent is utilized. (IITA Section 304(a)(3)(B-1)(ii)(I))*  
1078
- 1079 B) *A copyright is utilized in a state to the extent that printing or other*  
1080 *publication originates in the state. Printing or other publication*  
1081 *originates at the place at which the licensee of the copyright*  
1082 *incorporates the copyrighted material into the physical medium by*  
1083 *which it will be delivered to the purchaser of the material or, if the*  
1084 *copyrighted material is delivered to the purchaser without use of a*  
1085 *physical medium, the place at which delivery of the copyrighted*  
1086 *material to the person purchasing the material from the licensee*  
1087 *originates. If a copyright is utilized in more than one state, the*  
1088 *extent to which it is utilized in any one state shall be a fraction*  
1089 *equal to the gross receipts from sales or licenses of materials*  
1090 *printed or published in that state divided by the total of the gross*  
1091 *receipts for all states in which the copyright is utilized. (IITA*  
1092 *Section 304(a)(3)(B-1)(ii)(II))*  
1093
- 1094 C) *Trademarks and other items of intangible personal property*  
1095 *governed by this subsection (c)(3) are utilized in the state in which*  
1096 *the commercial domicile of the licensee or purchaser is located.*  
1097 *(IITA Section 304(a)(3)(B-1)(ii)(III))*  
1098
- 1099 D) *If the place of utilization of an item of property under subsection*  
1100 *(c)(3)(A), (B) or (C) cannot be determined from the taxpayer's*  
1101 *books and records or from the books and records of any person*  
1102 *related to the taxpayer within the meaning of IRC section 267(b),*  
1103 *the gross receipts attributable to that item shall be excluded from*  
1104 *both the numerator and the denominator of the sales factor. (IITA*  
1105 *Section 304(a)(3)(B-1)(iii))*  
1106
- 1107 4) *For taxable years ending on or after December 31, 2013, gross receipts*  
1108 *from winnings under the Illinois Lottery Law [20 ILCS 1605] and from the*  
1109 *assignment of a prize under Section 13-1 of the Illinois Lottery Law are*  
1110 *received in this State. (IITA Section 304(a)(3)(B-8))*  
1111
- 1112 5) *For taxable years ending on or after December 31, 2019, gross receipts*  
1113 *from winnings from pari-mutuel wagering conducted at a wagering*  
1114 *facility licensed under the Illinois Horse Racing Act of 1975 [230 ILCS 5]*  
1115 *or from winnings from gambling games conducted on a riverboat or in a*  
1116 *casino or organization gaming facility licensed under the Illinois*  
1117 *Gambling Act [230 ILCS 10] are in this State. (IITA Section 304(a)(3)(B-*

- 1118 9))  
1119  
1120 6) *For taxable years ending on or after December 31, 2021, gross receipts*  
1121 *from winnings from sports wagering conducted in accordance with the*  
1122 *Sports Wagering Act [230 ILCS 45] are in this State. (IITA Section*  
1123 *304(a)(3)(B-10))*  
1124  
1125 7) For taxable years ending prior to December 31, 2008, gross receipts from  
1126 transactions not governed by the provisions of subsection (c)(1), (2), (3) or  
1127 (4) and, for taxable years ending on or after December 31, 2008, from  
1128 transactions involving intangible personal property when the taxpayer is  
1129 not a dealer with respect to the intangible personal property, are attributed  
1130 to this State if the income producing activity that gave rise to the receipts  
1131 is performed wholly within this State. Also, gross receipts are attributed  
1132 to this State if, with respect to a particular item of income, the income  
1133 producing activity is performed in this State, based on costs of  
1134 performance.  
1135  
1136 A) **Income Producing Activity Defined.** The term "income producing  
1137 activity" applies to each separate item of income and means the  
1138 transactions and activity directly engaged in by the person in the  
1139 regular course of its trade or business for the ultimate purpose of  
1140 obtaining gains or profit. Income producing activity does not  
1141 include transactions and activities performed on behalf of a person,  
1142 such as those conducted on its behalf by an independent contractor.  
1143 The mere holding of intangible personal property is not, of itself,  
1144 an income producing activity. Accordingly, the income producing  
1145 activity includes but is not limited to the following:  
1146  
1147 i) The rendering of personal services by employees or the  
1148 utilization of tangible and intangible property by the person  
1149 in performing a service.  
1150  
1151 ii) The sale, rental, leasing, licensing or other use of real  
1152 property.  
1153  
1154 iii) The rental, leasing, licensing or other use of tangible  
1155 personal property.  
1156  
1157 iv) The sale, licensing or other use of intangible personal  
1158 property.  
1159  
1160 B) **Costs of Performance Defined.** The term "costs of performance"

- 1161 means direct costs determined in a manner consistent with  
1162 generally accepted accounting principles and in accordance with  
1163 accepted conditions or practices in the trade or business of the  
1164 person.  
1165
- 1166 C) Application. Receipts sourced under this subsection (c)(7) in  
1167 respect to a particular income producing activity are in this State if:  
1168
- 1169 i) the income producing activity is performed wholly within  
1170 this State; or  
1171
  - 1172 ii) the income producing activity is performed both in and  
1173 outside this State and, based on costs of performance, a  
1174 greater proportion of the income producing activity is  
1175 performed in this State than without this State (for taxable  
1176 years ending prior to December 31, 2008) or a greater  
1177 proportion of the income-producing activity of the taxpayer  
1178 is performed within this State than in any other state (for  
1179 taxable years ending on or after December 31, 2008).  
1180
- 1181 D) Special Rules. The following are special rules for determining  
1182 when receipts from the income producing activities described in  
1183 this subsection (c)(7)(D) are in this State.  
1184
- 1185 i) Gross receipts from the sale, lease, rental or licensing of  
1186 real property are in this State if the real property is located  
1187 in this State.  
1188
  - 1189 ii) Gross receipts from the rental, lease, or licensing of  
1190 tangible personal property are in this State if the property  
1191 is located in this State. The principal cost of performance  
1192 in a rental, leasing or licensing transaction is the  
1193 depreciation or amortization of the tangible personal  
1194 property, and the depreciation or amortization expense is  
1195 incurred in the state in which the tangible personal property  
1196 is located. The rental, lease, licensing or other use of  
1197 tangible personal property in this State is a separate income  
1198 producing activity from the rental, lease, licensing or other  
1199 use of the same property while located in another state;  
1200 consequently, if property is within and without this State  
1201 during the rental, lease or licensing period, gross receipts  
1202 attributable to this State shall be measured by the ratio  
1203 which the time the property was physically present or was

used in this State bears to the total time or use of the property everywhere during that period.

EXAMPLE: Corporation X is the owner of 10 railroad cars. During the year, the total of the days each railroad car was present in this State was 50 days for a total of 500 days. The receipts attributable to the use of each of the railroad cars in this State are a separate item of income. Total receipts attributable to this State shall be determined as follows:

$$(10 \times 50) / 3650 \times \text{Total Receipts}$$

- iii) Gross receipts for the performance of personal services are attributable to this State to the extent those services are performed partly within and partly outside this State. The gross receipts for the performance of those services shall be attributable to this State only if a greater portion of the services were performed in this State, based on costs of performance. When services are performed partly within and partly outside this State and the services performed in each state constitute a separate income producing activity, the gross receipts for the performance of services attributable to this State shall be measured by the ratio that the time spent in performing the services in this State bears to the total time spent in performing the services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to the gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

EXAMPLE 1: Corporation X, a road show, gave theatrical performances at various locations in State X and in this State during the tax period. All gross receipts from performances given in this State are attributed to this State.

EXAMPLE 2: A public opinion survey corporation conducted a poll by its employees in State X and in this State for the sum of \$9,000. The project required 600 ~~labor~~ hours to obtain the basic data and prepare the

survey report. Two hundred of the 600 ~~labor~~ hours were expended in this State. The receipts attributable to this State are \$3,000, calculated as follows:

$$200/600 \times \$9,000$$

- 8) For taxable years ending on or after December 31, 2008, gross receipts from transactions not governed by the provisions of subsection (c)(1), (2), (3), (4), (5), (6) or (7) are in this State if any of the following criteria are met:
- A) *Sales from the sale or lease of real property are in this State if the property is located in this State. (IITA Section 304(a)(3)(C-5)(i))*
- B) *Sales from the lease or rental of tangible personal property are in this State if the property is located in this State during the rental period. Sales from the lease or rental of tangible personal property that is characteristically moving property, including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, are in this State to the extent that the property is used in this State. (IITA Section 304(a)(3)(C-5)(ii))*
- C) *In the case of interest, net gains (but not less than zero) and other items of income from intangible personal property, the sale is in this State if:*
- i) *in the case of a taxpayer who:*
- is a dealer in the item of intangible personal property within the meaning of IRC section 475, the income or gain is received from a customer in this State. A taxpayer is a dealer with respect to an item of intangible personal property if the taxpayer is a dealer with respect to the item under IRC section 475(c)(1), or would be a dealer with respect to the item under IRC section 475(c)(1) if the item were a security as defined under IRC section 475(c)(2). For purposes of this subsection (c)(8)(C)(i), a customer is in this State if the customer is an individual, trust or estate who is a resident of this State and, for all other customers, if the customer's commercial domicile is in this State. Unless the dealer has actual knowledge of the residence or*

1290 *commercial domicile of a customer during a taxable*  
 1291 *year, the customer shall be deemed to be a customer*  
 1292 *in this State if the billing address of the customer,*  
 1293 *as shown in the records of the dealer, is in this*  
 1294 *State. (IITA Section 304(a)(3)(C-5)(iii)(a)) A*  
 1295 *dealer shall treat the person with whom it engages*  
 1296 *in a transaction as the customer, even when that*  
 1297 *person is acting on behalf of a third party, unless the*  
 1298 *dealer has actual knowledge of the party on whose*  
 1299 *behalf the person is acting. If a taxpayer is a dealer*  
 1300 *with respect to an item of intangible personal*  
 1301 *property and recognizes gain or loss with respect to*  
 1302 *that item other than in connection with a transaction*  
 1303 *with a customer (for example, unrealized gain or*  
 1304 *loss from marking the item to market under IRC*  
 1305 *section 475), that gain or loss shall be excluded*  
 1306 *from the numerator and denominator of the sales*  
 1307 *factor; or*

1308  
 1309 • *is not a dealer with respect to the item of intangible*  
 1310 *personal property, if the income-producing activity*  
 1311 *of the taxpayer is performed in this State or, if the*  
 1312 *income-producing activity of the taxpayer is*  
 1313 *performed both within and without this State, if a*  
 1314 *greater proportion of the income-producing activity*  
 1315 *of the taxpayer is performed within this State than*  
 1316 *in any other state, based on performance costs.*  
 1317 *(IITA Section 304(a)(3)(C-5)(iii)(b)) (See*  
 1318 *subsection (c)(7) of this Section.)*

1319  
 1320 ii) For purposes of this subsection (c)(8)(C), an item of  
 1321 "intangible personal property" includes only an item that  
 1322 can ordinarily be resold or otherwise reconveyed by the  
 1323 person acquiring the item from the taxpayer, and does not  
 1324 include any obligation of the taxpayer to make any  
 1325 payment, perform any act, or otherwise provide anything of  
 1326 value to another person.

1327  
 1328 EXAMPLE 1: A ticket to attend a sporting event would  
 1329 not be an item of intangible personal property for the owner  
 1330 of the stadium who issues the ticket and is obliged to grant  
 1331 admission to the holder of the ticket. Rather, the sale of the  
 1332 ticket is a prepayment for a service to be provided.

1333 However, the ticket would be an item of intangible personal  
1334 property in the hands of the original purchaser or any  
1335 subsequent purchaser of the ticket, and a ticket broker  
1336 engaged in the business of buying and reselling tickets  
1337 would be a dealer with respect to the ticket.  
1338

1339 EXAMPLE 2: A taxpayer selling canned computer  
1340 software is selling intangible personal property. (First  
1341 National Bank of Springfield v. Dept. of Revenue, 85 Ill.2d  
1342 84 (1981)) If the taxpayer sells software to customers in the  
1343 ordinary course of its business, it is a dealer with respect to  
1344 those sales. In contrast, a taxpayer providing programming  
1345 or maintenance services to its customers is selling services  
1346 rather than intangible personal property.  
1347

1348 EXAMPLE 3: A taxpayer administers a "rewards  
1349 program" for a group of unrelated businesses. Under the  
1350 program, a customer of one business can earn discounts or  
1351 rebates on products and services provided by any of the  
1352 businesses. As each customer earns rewards, measured in  
1353 "units", from one of the businesses, that business pays a  
1354 specified amount per unit to the taxpayer. When a customer  
1355 uses units earned in the program to purchase products or  
1356 services at a discount from a participating business, the  
1357 taxpayer pays that business a specified amount per unit  
1358 used by the customer. Rebates may be paid to the customer  
1359 directly by the taxpayer or by one of the businesses, which  
1360 is then reimbursed by the taxpayer. To the extent payments  
1361 made to the taxpayer by businesses awarding units exceed  
1362 the payments the taxpayer must make for discounts and  
1363 rebates, the excess is payment for operating the program.  
1364 The units awarded are obligations of the taxpayer to make  
1365 payments to the business providing products or services at  
1366 a discount or to pay rebates. Accordingly, payments  
1367 received by the taxpayer from the participating businesses  
1368 for units awarded are not income from sales of intangible  
1369 personal property by the taxpayer.  
1370

1371 D) *Sales of services are in this State if the services are received in this*  
1372 *State. (IITA Section 304(a)(3)(C-5)(iv))*  
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- i) General Rule. Gross receipts from services are assigned to the numerator of the sales factor to the extent that the receipts may be attributed to services received in Illinois.
  
  - ii) A contract that involves the provision of a service by the taxpayer and the use of property of the taxpayer by the service recipient shall be treated as a sale of service unless the contract is properly treated as a lease of property under IRC section 7701(e)(1), taking into account all relevant factors, including whether:
    - the service recipient is in physical possession of the property;
    - the service recipient controls the property;
    - the service recipient has a significant economic or possessory interest in the property;
    - the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract;
    - the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient; and
    - the total contract price does not substantially exceed the rental value of the property for the contract period.
  
  - EXAMPLE: A taxpayer selling access to an online database or applications software, and who is required to perform regular update services to the database or software, retains control over the contents of the database or software, and provides access to the same database or software to multiple customers is not selling or licensing an item of intangible personal property to its customers, but rather is providing a service.
  
  - iii) Services received in this State include, but are not limited to:

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- When the subject matter of the service is an item of tangible personal property, the service is received in this State if possession of the property is restored to the recipient of the service under the principles in subsection (c)(1) for determining whether a sale of that property is in this State.

EXAMPLE 1: A customer returns a computer to the manufacturer for repair. The manufacturer performs the repairs in Indiana and ships the computer to the customer's Illinois address. The service is received in this State.

EXAMPLE 2: Individual purchases clothing from Merchant at a store in this State, using a credit card issued by Bank A pursuant to a licensing agreement with Credit Card Company. Credit Card Company is not a financial organization required to apportion its business income under Section 100.3405. Bank A remits the purchase price to Credit Card Company, which deposits the purchase price with Merchant's bank, minus a fee or discount. All fees and discounts earned by Credit Card Company in connection with this purchase are for services received in this State.

- When the subject matter of the service is an item of real property, the service is received in the state in which the real property is located.

EXAMPLE 3: Individual purchases a parcel of land in Illinois and constructs a house on the parcel. Services performed at an architect's office in Wisconsin regarding the design and construction of the house are received in this State.

- When the service is performed on or with respect to the person of an individual (for example, medical treatment services), the service is received in the state in which the individual is located at the time the service is performed.

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- Services performed by a taxpayer that are directly connected to or in support of services received in this State are also services received in this State.

EXAMPLE 4: Individual purchases automobile repair services from Automobile Dealership at its facility located in this State, using a credit card issued by Bank A pursuant to a licensing agreement with Credit Card Company. Bank A remits the purchase price to Credit Card Company, which deposits the purchase price with Automobile Dealership's bank, minus a fee or discount. All fees and discounts earned by Credit Card Company in connection with this purchase are for services received in this State.

EXAMPLE 5: Services performed by an investment fund on behalf of an investor are received in this State if the investor resides in this State (in the case of an individual) or has its ordering or billing address in this State (for other investors). In the case of services provided by Taxpayer to or on behalf of the investment fund that are directly connected with services provided separately to the investors, such as preparation of communications and statements to investors, and allocations of earnings and distributions to investors, the service is also received in this State to the extent the investors reside (or have their ordering or billing address) in this State. Accordingly, receipts of Taxpayer for these services are allocated to this State on the basis of the ratio of: the average of the outstanding shares in the fund owned by shareholders, partners or other investors residing (or having their ordering or billing address) within this State at the beginning and end of each taxable year of the taxpayer; and the average of the total number of outstanding shares in the fund at the beginning and end of each year. Residence or ordering or billing address of the shareholder, partner or other investor is determined by the mailing address in the records of the investment fund or the taxpayer. Services provided to an

1503 investment fund that are not directly connected to or  
1504 in support of services provided separately to  
1505 investors, such as brokerage services or investment  
1506 advising, are not received by the customer at the  
1507 location of its investors.  
1508

1509 iv) Special Rules  
1510

- 1511 • Under IITA Section 304(a)(3)(C-5)(iv), *if the state*  
1512 *where the services are received is not readily*  
1513 *determinable, the services shall be deemed to be*  
1514 *received at the location of the office of the customer*  
1515 *from which the services were ordered in the regular*  
1516 *course of the customer's trade or business, or, if the*  
1517 *ordering office cannot be determined, at the office*  
1518 *of the customer to which the services are billed. If*  
1519 *the service is provided to an individual who*  
1520 *provides a residential address as the place from*  
1521 *which the services are ordered or to which the*  
1522 *services are billed, rather than an office address, the*  
1523 *residential address shall be used. For purposes of*  
1524 *this provision, the state where services are received*  
1525 *is not readily determinable if the facts necessary to*  
1526 *make the determination are not contained in the*  
1527 *books and records of the taxpayer or any person*  
1528 *related to the taxpayer within the meaning of IRC*  
1529 *section 267(b) or if the available facts would allow*  
1530 *reasonable persons to reach different determinations*  
1531 *of the state in which the services were received.*  
1532
- 1533 • Under IITA Section 304(a)(3)(C-5)(iv), *if the*  
1534 *services are provided to a corporation, partnership,*  
1535 *or trust and the services are received in a state in*  
1536 *which the corporation, partnership, or trust does*  
1537 *not maintain a fixed place of business (as defined in*  
1538 *Section 100.3405(b)(1)), the services shall be*  
1539 *deemed to be received at the location of the office of*  
1540 *the customer from which the services were ordered*  
1541 *in the regular course of the customer's trade or*  
1542 *business, or, if the ordering office cannot be*  
1543 *determined, at the office of the customer to which*  
1544 *the services are billed. For purposes of this*  
1545 *provision, in the case of services performed by the*

1546 taxpayer as a subcontractor or as an agent acting on  
1547 behalf of a principal, if either the contractor or  
1548 principal has a fixed place of business in the state in  
1549 which the services are received or the customer of  
1550 the contractor or principal either is an individual or  
1551 has a fixed place of business in the state in which  
1552 the services are received, the service shall be treated  
1553 as received in a state in which the customer of the  
1554 taxpayer has a fixed place of business.

- 1555 • Under IITA Section 304(a)(3)(C-5)(iv), *if the*  
1556 *taxpayer is not taxable in the state in which the*  
1557 *services are received or deemed to be received, the*  
1558 *gross receipts attributed to those services must be*  
1559 *excluded from both the numerator and denominator*  
1560 *of the sales factor. (See Section 100.3200 for*  
1561 *guidance on determining when a taxpayer is taxable*  
1562 *in another state.) For taxable years ending on or*  
1563 *after December 31, 2025, gross receipts attributed*  
1564 *to sales of services made by a member of a unitary*  
1565 *business group that is not taxable in the state where*  
1566 *the services were received or deemed to be received*  
1567 *are excluded from the sales factor if no member of*  
1568 *the unitary business group is taxable in that state.*  
1569

1570  
1571 (Source: Amended at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
1572

1573 **Section 100.3375 Combined Apportionment (IITA Section 304(e))**  
1574

- 1575 a) Where 2 or more persons are engaged in a unitary business as described in IITA  
1576 Section 1501(a)(27), a part of which is conducted in this State by one or more  
1577 members of the group, the business income attributable to this State by any such  
1578 member or members shall be apportioned by means of the combined  
1579 apportionment method. (IITA Section 304(e))  
1580
- 1581 b) All members of a unitary business group must use the combined apportionment  
1582 method to determine business income attributable to Illinois, including the  
1583 provisions for determining taxability in another state as set forth in Section  
1584 100.3200 of this Part.  
1585
- 1586 c) The combined apportionment method is applied by first computing the business  
1587 income of each member of the unitary business group to derive the total business  
1588 income of the group. Next, the apportionment factor for each group member

1589 subject to Illinois income tax is computed using the individual group member's  
 1590 Illinois sales as the numerator and the entire unitary business group's sales as the  
 1591 denominator. This apportionment factor is applied to the group's total business  
 1592 income to derive the amount of business income on which the group member  
 1593 would pay Illinois income tax. (See *General Telephone Co. v. Johnson* 469  
 1594 N.E.2d 1067 (Ill. 1984).)

1595  
 1596 d) *For tax years ending on or after December 31, 2025, sales of each member of a*  
 1597 *unitary business group who is not a taxpayer, as defined in IITA Section*  
 1598 *1501(a)(24), shall be determined based upon the apportionment rules applicable*  
 1599 *to the member and shall be aggregated. Each taxpayer member of the unitary*  
 1600 *business group shall include in its sales factor numerator a portion of the*  
 1601 *aggregate Illinois sales of the non-taxpayer members based on a ratio, the*  
 1602 *numerator of which is that taxpayer member's Illinois sales taking into account its*  
 1603 *applicable sales factor provisions, and the denominator of which is the aggregate*  
 1604 *Illinois sales of all the taxpayer members of the group taking into account their*  
 1605 *respective sales factor provisions. In addition, if inclusion of sales in the sales*  
 1606 *factor or numerator of the sales factor depends on whether a taxpayer is*  
 1607 *considered taxable in another state within the meaning of IITA Section 303(f),*  
 1608 *that taxpayer shall be considered taxable in any state in which any member of its*  
 1609 *unitary business group is considered taxable under IITA Section 303(f). (IITA*  
 1610 *Section 304(e))*

1611  
 1612 e) *The following examples illustrate the provisions of this Section:*

1613  
 1614 EXAMPLE 1: Corporations A, B, and C constitute a unitary business group. All  
 1615 members have a taxable year ending June 30, 2024, and all members are taxable  
 1616 in Illinois. Corporation A has \$5,000,000 in business income, \$1,000,000 in  
 1617 Illinois sales, and \$5,000,000 in everywhere sales. Corporation B has \$2,000,000  
 1618 in business income, \$1,500,000 in Illinois sales, and \$2,000,000 in everywhere  
 1619 sales. Corporation C has \$3,000,000 in business income, \$2,000,000 in Illinois  
 1620 sales, and \$3,000,000 in everywhere sales. Total combined apportionable income  
 1621 is \$10,000,000. The combined income apportionable to Illinois for the common  
 1622 tax year is computed as follows: \$10,000,000 in combined business income x  
 1623 (\$4,500,000 of A, B, and C's Illinois sales/\$10,000,000 of combined total sales) =  
 1624 \$4,500,000.

1625  
 1626 EXAMPLE 2: Corporations X, Y, and Z constitute a unitary business group. All  
 1627 members have a taxable year ending June 30, 2024. Corporation Z is protected by  
 1628 Public Law 86-272 and not taxable in Illinois. Corporation X has \$800,000 in  
 1629 business income, \$600,000 in Illinois sales, and \$800,000 in everywhere sales.  
 1630 Corporation Y has \$1,000,000 in business income, \$500,000 in Illinois sales, and  
 1631 \$1,000,000 in everywhere sales. Corporation Z has \$4,000,000 in business

1632 income, \$200,000 in Illinois sales, and \$4,000,000 in everywhere sales. Total  
 1633 combined apportionable income is \$5,800,000. The combined income  
 1634 apportionable to Illinois for the common tax year is computed as follows:  
 1635 \$5,800,000 in combined business income x (\$1,100,000 of X and Y's Illinois  
 1636 sales/\$5,800,000 of combined total sales) = \$1,100,000.

1637  
 1638 EXAMPLE 3: Corporations D, E, and F constitute a unitary business group. All  
 1639 members have a taxable year ending December 31, 2025. Corporation F is  
 1640 protected by Public Law 86-272 and not taxable in Illinois. Corporation D has  
 1641 \$800,000 in business income, \$600,000 in Illinois sales, and \$800,000 in  
 1642 everywhere sales. Corporation E has \$1,000,000 in business income, \$500,000 in  
 1643 Illinois sales, and \$1,000,000 in everywhere sales. Corporation F has \$4,000,000  
 1644 in business income, \$200,000 in Illinois sales, and \$4,000,000 in everywhere  
 1645 sales. Total combined apportionable income is \$5,800,000. Corporation D must  
 1646 include in its sales factor numerator \$109,091 of Corporation F's Illinois sales  
 1647 computed as follows: \$200,000 of F's Illinois sales x (\$600,000 of D's Illinois  
 1648 sales/\$1,100,000 of D and E's combined Illinois sales). Corporation E must  
 1649 include in its sales factor numerator \$90,909 of Corporation F's Illinois sales  
 1650 computed as follows: \$200,000 of F's Illinois sales x (\$500,000 of E's Illinois  
 1651 sales/\$1,100,000 of D and E's combined Illinois sales). The combined income  
 1652 apportionable to Illinois for the common tax year is computed as follows:  
 1653 \$5,800,000 in combined business income x [(\$600,000 D's Illinois sales +  
 1654 \$109,091 F's apportioned Illinois sales)/\$5,800,000 of combined total sales +  
 1655 (\$500,000 E's Illinois sales + \$90,909 F's apportioned Illinois sales)/\$5,800,000 of  
 1656 combined total sales] = \$1,300,000.

1657  
 1658 EXAMPLE 4: Corporations R, S, and T constitute a unitary business group. All  
 1659 members have a taxable year ending December 31, 2025. Corporation T is  
 1660 protected by Public Law 86-272 and not taxable in Illinois. Corporation T has  
 1661 \$500,000 in sales from Illinois to customers in State M, where one or more  
 1662 members of the unitary business group has taxable nexus. As at least one member  
 1663 of the unitary business group has taxable nexus in State M, Illinois' throwback  
 1664 rule would not apply to the sales made by Corporation T to customers in State M.  
 1665 These sales are considered taxable in another state because the unitary business  
 1666 group has a connection to State M. The combined sales factor denominator  
 1667 remains the total combined sales of the group.

1668  
 1669 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

1670  
 1671 **SUBPART Q: COMBINED RETURNS**

1672  
 1673 **Section 100.5200 Filing of Combined Returns**

1674

1675 For a number of years, Illinois corporate taxpayers that were members of a unitary business  
 1676 group were able to elect to file combined returns. Section 100.5205 provides guidance for the  
 1677 tax years for which this election was available. Taxpayers are now required to file combined  
 1678 returns in certain situations. *For taxable years ending on or after December 31, 1993, taxpayers*  
 1679 *that are corporations (other than Subchapter S corporations) and that are members of the same*  
 1680 *unitary business group shall be treated as one taxpayer for purposes of any original return,*  
 1681 *amended return which includes the same taxpayers of the unitary group which joined in filing*  
 1682 *the original return, extension, claim for refund, assessment, collection and payment and*  
 1683 *determination of the group's tax liability under the Act (IITA Section 502(e)). The rules in this*  
 1684 *Subpart **QP** are promulgated under the express statutory direction that the Department shall*  
 1685 *make, promulgate and enforce such reasonable rules and regulations, and prescribe such forms*  
 1686 *as it may deem appropriate, to require all taxpayers that are corporations (other than*  
 1687 *Subchapter S corporations) and that are members of the same unitary business groups to be*  
 1688 *treated as one taxpayer. (IITA Section 1401(b)(2))*

1689 (Source: Amended at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

1692 **Section 100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns**

- 1693
- 1694 a) In general. These definitions and provisions apply to this Subpart **QP**.
- 1695
- 1696 **b)** Combined apportionment. The term "combined apportionment" shall have the  
 1697 same meaning as provided in IITA Section 304(e) and Section 100.3375 of this  
 1698 Part.
- 1699
- 1700 **~~c~~b)** Combined group. The term "combined group" means those eligible members of a  
 1701 unitary business group who have made an election to be treated as one taxpayer,  
 1702 or who are required to be treated as one taxpayer, under IITA Section 502(e).
- 1703
- 1704 **~~d~~e)** Combined return. The term "combined return" means a single tax return filed on  
 1705 behalf of a combined group. A combined return shall be filed using a single Form  
 1706 IL-1120 with Schedule UB (Unitary Business Schedule).
- 1707
- 1708 **~~e~~d)** Combined return year. The term "combined return year" means a taxable year for  
 1709 which a combined return is filed or is required to be filed.
- 1710
- 1711 **~~f~~e)** Common taxable year. The term "common taxable year" means the taxable year  
 1712 used by a combined group in reporting its combined net income, as determined  
 1713 under the provisions of Section 100.5265.
- 1714
- 1715 **~~g~~f)** Controlling corporation. The "controlling corporation" of a combined group is  
 1716 the corporation, if any, that directly or indirectly owns a controlling interest in all  
 1717 of the other eligible members of a combined group. A controlling interest means

- 1718 more than 50% of the outstanding voting stock of a member. Indirect ownership  
 1719 of an interest in a corporation includes constructive ownership (under Section 318  
 1720 of the Internal Revenue Code) of an interest in the corporation which is owned by  
 1721 a related party, whether or not the related party is itself a member of the combined  
 1722 group.
- 1723
- 1724 **hg)** Designated agent. The term "designated agent" means the member appointed  
 1725 under Section 100.5220.
- 1726
- 1727 **ih)** Election. The term "election" refers to the election provided in Section IITA  
 1728 502(e), as in effect for taxable years ending prior to December 31, 1993, to be  
 1729 treated as one taxpayer.
- 1730
- 1731 **ij)** Eligible member. The term "eligible member" means a corporation which is a  
 1732 member of a unitary business group and which has taxable presence in Illinois.  
 1733 Part-year members of a unitary business group are eligible members.  
 1734 Noncorporate taxpayers and Subchapter S corporations are not eligible members,  
 1735 either in combination with corporations which are eligible members or in  
 1736 combination with other noncorporate taxpayers or Subchapter S corporations.  
 1737 Members of a unitary business group are eligible members even though the  
 1738 unitary business group includes noncorporate members or Subchapter S  
 1739 corporations which are not eligible to join in the filing of a combined return.
- 1740
- 1741 **kj)** Separate company return. The term "separate company return" means an Illinois  
 1742 income tax return filed by a corporation which is not a member of a unitary  
 1743 business group.
- 1744
- 1745 **lk)** Separate company items. The term "separate company items" means the income,  
 1746 deductions, credits, tax liability and other facts of a corporation relevant to the  
 1747 computation of its Illinois Income Tax liabilities, determined as if such  
 1748 corporation was neither a member of an affiliated group filing consolidated  
 1749 federal income tax returns nor a member of a combined group.
- 1750
- 1751 **ml)** Separate unitary return. The term "separate unitary return" means an Illinois  
 1752 income tax return of a member of a unitary business group which has not elected  
 1753 to file a combined return for a taxable year ending prior to December 31, 1993 or  
 1754 by a member of a unitary business group which is not eligible to join in the filing  
 1755 of a combined return.
- 1756
- 1757 **nm)** Unitary business group. The term "unitary business group" shall have the same  
 1758 meaning as provided in IITA Section 1501(a)(27) and Section 100.9700 of this  
 1759 Part.
- 1760

(Source: Amended at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.5210 Procedures for Elective and Mandatory Filing of Combined Returns**

a) Conditions of the election and election procedures. This subsection (a) applies to taxable years ending on or after December 31, 1985 and prior to December 31, 1993.

1) Conditions

A) The election, if made, must include all eligible members of the unitary business group, not just some.

B) For taxable years ending on or after December 31, 1987, taxpayers are not required to have the same taxable year.

C) For taxable years ending on or after December 31, 1985 and before December 31, 1987, taxpayers were required to have the same taxable year to be eligible for the election. Corporate members with taxable years which were different from the common taxable year were required to file their own separate unitary returns or, in the case of two or more corporate members which have the same taxable year that is different from other corporate members making the election, they were allowed to elect to file their own combined return.

2) Consent. The election to file a combined return shall be upon the condition that all eligible members shall consent to this Subpart ~~QP~~, and shall consent to be represented by the designated agent appointed on the Schedule UB in all matters described in Section 100.5220 of this Part. The filing of a combined return that includes the income and factors of any eligible member shall be the consent as to that member. If an eligible member fails to have its income and factors included in the combined return, then the tax liability of that member shall be determined on the basis of a separate unitary return unless the failure of such member was due to a mistake of law or fact, or to inadvertence (as determined by the designated agent) in which case the failure must be corrected prior to the issuance of any Notice of Deficiency. Where such failure is corrected, such member shall be treated as if it had properly consented and been included in the election from the beginning.

3) Making the election. The election is to be made by properly completing and filing a combined return (using Form IL-1120 and Schedule UB) by

- 1804 its due date (including extensions). In the case of a first combined return  
 1805 year, a combined request for extension of time to file the first combined  
 1806 return can be made.  
 1807
- 1808 4) Revocation. An election to be treated as a single taxpayer for the purposes  
 1809 set forth in IITA Section 502(e) remains in effect until it is revoked. If a  
 1810 taxpayer ceases to be a member, or was never properly a member, of a  
 1811 unitary business group for which an election is in effect, the election will  
 1812 automatically be revoked as to that taxpayer. In the case of a taxpayer that  
 1813 was improperly included in a combined return and whose election has  
 1814 been revoked, the Department shall consider the combined return to be the  
 1815 return filed by the taxpayer only for the limited purposes of determining  
 1816 the limitations period within which certain actions must occur (e.g., the  
 1817 limitations period for issuing a notice of deficiency) and shall use the  
 1818 filing date of the combined return for purposes of determining any late  
 1819 filing penalty. Once an election is in effect for a taxable year, it cannot be  
 1820 revoked for that year unless the combined group is not a unitary business  
 1821 group, in which case the election will automatically be revoked. The  
 1822 Department shall revoke the election for abusive failure to comply with  
 1823 these regulations, such as blatant omission of members or a non-  
 1824 responsive designated agent, if the failure is not rectified after notification  
 1825 to the designated agent. The designated agent may revoke the election on  
 1826 behalf of all members for any taxable year by notifying the Department in  
 1827 writing of its intent prior to the due date for the filing of the return  
 1828 (excluding extensions) at the address stated in the instructions of Schedule  
 1829 UB.  
 1830
- 1831 b) Mandatory filing of combined returns  
 1832
- 1833 1) For taxable years ending on or after December 31, 1993, each group of  
 1834 eligible members is required to file combined returns and to be treated as  
 1835 one taxpayer for purposes of any original return, amended return which  
 1836 includes the same taxpayers of the unitary group which joined in filing the  
 1837 original return, extension, claim for refund, assessment, collection and  
 1838 payment and determination of the group's tax liability under the IITA.  
 1839
- 1840 2) Each combined group is required to properly complete and file a  
 1841 combined return (using Form IL-1120 and Schedule UB) by the due date  
 1842 of the return (including extensions). For the first year for which a  
 1843 combined return must be filed, a single combined request for extension of  
 1844 time to file the return can be made by one member acting as designated  
 1845 agent on behalf of the entire combined group, even though the designated  
 1846 agent will not actually be appointed until the combined return is filed.

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(Source: Amended at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.5215 Filing of Separate Unitary Returns (IITA Section 304(e))**

- a) Not every member of a unitary business group is eligible to join in the filing of a combined return and, for taxable years ending prior to December 31, 1993, joining in the filing of a combined return was elective.
- b) Each member of a unitary business group who is subject to Illinois income tax and who properly does not join in the filing of a combined return must file a separate return, and compute its business income apportionable to Illinois by computing the base income of the unitary business group in accordance with Section 100.5270(a)(1) and by multiplying the business income included in the base income by an apportionment fraction computed by using the Illinois apportionment factor or factors applicable to the return filer under IITA Section 304 and the everywhere factor or factors of the entire unitary business group.
- c) Each member of a unitary business group who is subject to Illinois income tax and who properly does not join in the filing of a combined return shall separately determine the amount of its nonbusiness income allocable to Illinois, the amount of the exemption allowed to it under IITA Section 204, the amounts of net loss carryovers, and the amounts of any credits and credit carryforwards to which it is entitled, without regard to the income, deductions, credits and other tax items of other members of the unitary business group, except to the extent those items enter into the computation of business income of the member apportioned to Illinois under subsection (b).
- d) Examples. The following examples illustrate the provisions of this Section.
  - 1) **EXAMPLE 1:** Individual A is a nonresident and is the sole shareholder of Corporation S, a subchapter S corporation, and Corporation C, a subchapter C corporation. Corporation S and Corporation C are engaged in a unitary business within the meaning of IITA Section 1501(a)(27). Corporation S' taxable year is the calendar year. Corporation C's taxable year is the fiscal year ending June 30. For its taxable year ending 12/31/14, Corporation S has business income (as defined in Section 100.3010(a)(2)) of \$125,000, Illinois sales of \$750,000, and total sales of \$1,000,000. For its taxable year ending 6/30/14, Corporation C has business income of \$75,000, Illinois sales of \$40,000, and total sales of \$500,000. Under subsection (b), Corporation S must file a separate return using the combined apportionment method to determine its business income apportionable to Illinois. Combined apportionment must be

1890 computed on the basis of Corporation S' taxable year. Because  
 1891 Corporation C's taxable year differs, Corporation S may elect to apply any  
 1892 of the methods available under Section 100.5265 by treating S' taxable  
 1893 year as the common taxable year. Assume S elects to use method 3 to  
 1894 determine combined business income for the common taxable year ending  
 1895 12/31/14. S' business income apportionable to Illinois is computed as  
 1896 follows:  $\$200,000 \times (\$750,000/\$1,500,000) = \$100,000$ . Corporation C  
 1897 must also file a separate return computing its business income  
 1898 apportionable to Illinois by applying the combined apportionment method.  
 1899 Corporation C may elect to apply any of the methods available under  
 1900 Section 100.5265 to determine the amount of business income and  
 1901 apportionment factors of Corporation S to be used in computing  
 1902 Corporation C's business income apportioned to Illinois.  
 1903

1904 2) EXAMPLE 2: Assume that Corporation A owns a 91% interest,  
 1905 Corporation B a 4% interest and nonresident Individual Y a 5% interest, in  
 1906 P, a partnership. Corporation A and P are engaged in a unitary business  
 1907 within the meaning of IITA Section 1501(a)(27). Because Corporation A  
 1908 owns more than 90% of P, the alternative apportionment provisions for  
 1909 unitary partners and partnerships in Section 100.3380(d)(2) do not apply  
 1910 and P shall be treated as a member of Corporation A's unitary business  
 1911 group for all purposes. (See Section 100.3380(d)(4).) Corporation A,  
 1912 Corporation B, Individual Y, and P all use the calendar year as their  
 1913 taxable year. For taxable year 12/31/14, Corporation A has business  
 1914 income of \$300,000 (not including any business income from P), Illinois  
 1915 sales of \$450,000, and total sales of \$600,000. P has business income of  
 1916 \$100,000, Illinois sales of \$30,000, and total sales of \$400,000. There are  
 1917 no intercompany sales. Under Section 100.3380(d)(4), substantially all of  
 1918 the interests in P are owned or controlled by members of the same unitary  
 1919 business group, so that P is treated as a member of the unitary business  
 1920 group for all purposes. Because Corporation A's share of the business  
 1921 income of P will be eliminated in combination, combined business income  
 1922 is \$400,000. Under subsection (b), Corporation A and P are required to  
 1923 file separate returns in which business income apportionable to Illinois is  
 1924 computed by applying the combined apportionment method under IITA  
 1925 Section 304(e). Under the combined apportionment method, P's business  
 1926 income apportionable to Illinois is computed by combining its business  
 1927 income and total sales everywhere with the business income and total  
 1928 sales everywhere of A. P's business income apportioned to Illinois is thus  
 1929 \$12,000, computed as follows:  $\$400,000$  in combined business income  $\times$   
 1930  $(\$30,000$  of P's Illinois sales/ $\$1,000,000$  of combined total sales) =  
 1931 \$12,000. Under IITA Section 304(e), Corporation A's business income  
 1932 apportionable to Illinois is \$180,000, computed as follows: \$400,000 in

1933 combined business income  $\times$  ( $\$450,000$  of Corporation A's Illinois  
 1934 sales/ $\$1,000,000$  of combined total sales) =  $\$180,000$ . In addition, under  
 1935 IITA Section 305(a), Corporation A must include its  $\$10,920$  distributive  
 1936 share (i.e.,  $91\% \times \$12,000$ ) of the business income of P apportioned to  
 1937 Illinois in its Illinois net income. Also, Individual Y must include her  $\$600$   
 1938 distributable share of the business income of P apportioned to Illinois in  
 1939 her Illinois net income (i.e.,  $5\% \times \$12,000$ ), and Corporation B must  
 1940 include its  $\$480$  distributable share of the business income of P  
 1941 apportioned to Illinois in its Illinois net income (i.e.,  $4\%$  of  $\$12,000$ ).  
 1942 Finally, P computes Illinois personal property tax replacement income tax  
 1943 on net income of  $\$600$ , computed as follows:  $\$400,000 - \$380,000$  ( $95\%$   
 1944 of its base income distributable to partners subject to replacement tax) =  
 1945  $\$20,000$ , and  $\$20,000 \times (\$30,000/\$1,000,000) = \$600$ .

1946  
 1947 3) EXAMPLE 3: Assume the same facts as Example 2, except that P's  
 1948 business income is a loss of ( $\$100,000$ ). Under the combined  
 1949 apportionment method, P's business income apportionable to Illinois is  
 1950 computed by combining its business loss and total sales everywhere with  
 1951 the business income and total sales everywhere of A. P's business income  
 1952 apportioned to Illinois is thus  $\$6,000$ , computed as follows:  $\$200,000 \times$   
 1953  $(\$30,000/\$1,000,000) = \$6,000$ . Under IITA Section 304(e), Corporation  
 1954 A's business income apportionable to Illinois is  $\$90,000$ , computed as  
 1955 follows:  $\$200,000 \times (\$450,000/\$1,000,000) = \$90,000$ . In addition,  
 1956 Corporation A must include its  $\$5,460$  distributive share of the business  
 1957 income of P apportioned to Illinois in its Illinois net income. Individual Y  
 1958 must include her  $\$300$  distributable share of the business income of P  
 1959 apportioned to Illinois in her Illinois net income (i.e.,  $5\% \times \$6,000$ ), and  
 1960 Corporation B must include its  $\$240$  distributable share. P computes  
 1961 Illinois personal property tax replacement income tax on net income of  
 1962  $\$300$ , computed as follows:  $\$200,000 - \$190,000 = \$10,000$ , and  $\$10,000$   
 1963  $\times (\$30,000/\$1,000,000) = \$300$ .

1964  
 1965 (Source: Amended at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
 1966

1967 **Section 100.5250 Liability for Combined Tax, Penalty and Interest**  
 1968

- 1969 a) Joint and several liability of members of a combined group. The members of a  
 1970 combined group shall be jointly and severally liable for the combined tax, penalty  
 1971 and interest computed in accordance with this Subpart QP, as well as the Uniform  
 1972 Penalty and Interest Act and rules adopted pursuant to the UPIA at 86 Ill. Adm.  
 1973 Code 700.  
 1974  
 1975 b) Effect of intercompany agreements. No agreement entered into by one or more

1976 members of a combined group with any other member of such group or with any  
1977 other person shall in any case have the effect of reducing the liability prescribed  
1978 under this Section.  
1979

1980 c) Penalties. If a penalty is imposed under the IITA and the UPIA with respect to a  
1981 combined return year, the amount shall be based on the combined tax liability or  
1982 deficiency for the common taxable year.  
1983

1984 1) For purposes of applying the penalties for failure to file a return imposed  
1985 by Section 3-3(a), Section 3-3(a-5) and Section 3-3(a-10) of the Uniform  
1986 Penalty and Interest Act (UPIA) [35 ILCS 735/3-3]:  
1987

1988 A) A corporation which erroneously fails to join in the filing of a  
1989 combined return, but which timely files a separate Illinois income  
1990 tax return or joins in the timely filing of a combined return for  
1991 another combined group, shall not be subject to any penalty. In  
1992 determining whether such separate or combined return is timely  
1993 filed, the separate taxable year of such corporation or the common  
1994 taxable year of the combined group such corporation erroneously  
1995 joined shall be used, rather than the common taxable year of the  
1996 combined group with which such corporation should have filed.  
1997

1998 B) A corporation which erroneously fails to join in the filing of a  
1999 combined return, and which fails, without reasonable cause, to  
2000 timely file a separate Illinois income tax return or to join in the  
2001 timely filing of a combined return for another combined group,  
2002 shall be subject to penalty computed on the amount of tax shown  
2003 (or required to be shown) due on the combined return for its proper  
2004 combined group. Because it is the duty of the designated agent,  
2005 acting on behalf of the combined group, to include such  
2006 corporation in the combined return, the members of the combined  
2007 groups shall be jointly and severally liable for the penalty.  
2008

2009 C) A corporation which erroneously joins in the timely filing of a  
2010 combined return shall not be subject to penalty for failure to file a  
2011 return.  
2012

2013 2) For purposes of applying the penalty for failure to timely pay tax imposed  
2014 by UPIA Section 3-3(b), Section 3-3(b-5), ~~and~~ Section 3-3(b-10), Section  
2015 3-3(b-15), Section 3-3(b-20) and Section 3-3(b-25) [35 ILCS 735/3-3]:  
2016

2017 A) In a case where a corporation erroneously fails to join in the filing  
2018 of a combined return for a common taxable year, neither that

2019 corporation nor the combined group shall be subject to any failure-  
2020 to-pay penalty under UPIA Section 3-3(b)(1), Section 3-3(b-5)(1),  
2021 ~~or~~ Section 3-3(b-10)(1), Section 3-3(b-15), Section 3-3(b-20)(1), or  
2022 Section 3-3(b-25)(1) if timely payment is made of the tax shown  
2023 on a separate return filed by such corporation or on a combined  
2024 return in which it erroneously joins in filing for each taxable year  
2025 ending with or within such common taxable year. Unless there is  
2026 reasonable cause for the failure of such corporation to join in the  
2027 filing of the combined return, such corporation and the combined  
2028 group may be jointly and severally liable for a penalty under UPIA  
2029 Section 3-3(b)(2), Section 3-3(b-5)(2), ~~or~~ Section 3-3(b-10)(2),  
2030 Section 3-3(b-15), Section 3-3(b-20)(2), or Section 3-3(b-25)(2)  
2031 for failure to pay any additional amount which would have been  
2032 shown on the combined return had such corporation been included.  
2033

2034 B) A corporation which erroneously fails to join in the filing of a  
2035 combined return for a common taxable year and also fails to timely  
2036 pay the tax shown on a separate return it files or on a combined  
2037 return in which it joins in filing for each taxable year ending with  
2038 or within such common taxable year shall be subject to penalty  
2039 under UPIA Section 3-3(b)(1), Section 3-3(b-5)(1), ~~or~~ Section 3-  
2040 3(b-10)(1), Section 3-3(b-15), Section 3-3(b-20)(1), or Section 3-  
2041 3(b-25)(1) only for failure to pay the tax shown on the return it  
2042 actually files or joins in filing. Unless there is reasonable cause for  
2043 the failure of such corporation to join in the filing of the combined  
2044 return, such corporation and the combined group may be jointly  
2045 and severally liable for a penalty under UPIA Section 3-3(b)(2),  
2046 Section 3-3(b-5)(2), ~~or~~ Section 3-3(b-10)(2), Section 3-3(b-15),  
2047 Section 3-3(b-20)(2), or Section 3-3(b-25)(2) for failure to pay any  
2048 additional amount which would have been shown on the combined  
2049 return had such corporation been included.  
2050

2051 C) If a corporation erroneously joins in the filing of a combined  
2052 return, neither such corporation nor the combined group shall be  
2053 subject to penalty under UPIA Section 3-3(b)(2), Section 3-3(b-  
2054 5)(2), ~~or~~ Section 3-3(b-10)(2), Section 3-3(b-15), Section 3-3(b-  
2055 20)(2), or Section 3-3(b-25)(2) for failure to pay any tax required  
2056 to be shown on a separate company return and the combined group  
2057 shall not be subject to penalty under UPIA Section 3-3(b)(2),  
2058 Section 3-3(b-5)(2), ~~or~~ Section 3-3(b-10)(2), Section 3-3(b-15),  
2059 Section 3-3(b-20)(2), or Section 3-3(b-25)(2) for failure to pay any  
2060 increase in tax resulting from the exclusion of such corporation  
2061 from the combined group if the tax timely paid with the original

2062 combined return exceeds the total tax required to be shown on the  
2063 correct returns.

2064  
2065 3) For purposes of applying the negligence penalty imposed by UPIA Section  
2066 3-5 [35 ILCS 735/3-5] or the fraud penalty imposed by UPIA Section 3-6  
2067 [35 ILCS 735/3-6] in any case in which a corporation erroneously joins or  
2068 fails to join in the filing of a combined return, the penalty may be imposed  
2069 on any deficiency resulting from such error, without taking into account  
2070 any overpayment which may have resulted from the error.

2071  
2072 Example. Corporations A, B and C meet all the requirements of a unitary  
2073 business group, except that Corporations A and B are financial  
2074 organizations which cannot be included in the same unitary business group  
2075 as Corporation C, a manufacturer. On a separate-return basis, Corporation  
2076 A has an Illinois net loss of \$500, Corporation B has Illinois net income of  
2077 \$300 and Corporation C has Illinois net income of \$700. Corporations A  
2078 and C file a combined return reporting combined Illinois net income of  
2079 \$200, while Corporation B files a separate return reporting Illinois net  
2080 income of \$300. On audit, the Department corrects the liabilities by  
2081 combining Corporations A and B, which eliminates Corporation B's  
2082 separate return income and entitles them to a refund of the taxes paid by  
2083 Corporation B, and by determining a separate return deficiency for  
2084 Corporation C. If the combination of Corporations B and C on the  
2085 original return was due to negligence or an intent to defraud, Corporation  
2086 C will be subject to the applicable penalty on its entire deficiency without  
2087 regard to the overpayment made by Corporation B.

2088  
2089 4) For purposes of applying the penalty for failure to pay estimated taxes  
2090 under IITA Section 804, see Section 100.5230 of this Part.

2091  
2092 d) Interest. If interest is imposed under the IITA, at the rate determined under the  
2093 UPIA, with respect to a combined return year, the amount shall be based on the  
2094 combined tax liability or deficiency for the common taxable year. For purposes  
2095 of computing any combined overpayment or underpayment on which interest is  
2096 imposed:

2097  
2098 1) in a case in which one or more corporations erroneously failed to join in  
2099 the filing of the combined return, all payments, credits and other amounts  
2100 collected from such corporations which are properly attributable to the  
2101 common taxable year shall be treated as having been paid by the combined  
2102 group for such common taxable year; and

2103  
2104 2) in a case where one or more corporations are erroneously included in a

2105 combined return, the designated agent may allocate to each such  
2106 corporation some or all of the payments, credits and other amounts  
2107 collected from the combined group which are properly attributable to the  
2108 common taxable year, and all overpayments and underpayments for such  
2109 corporations and the combined group will be computed in accordance with  
2110 such allocation. The amount of estimated tax payments allocated to each  
2111 such corporation pursuant to this subsection (d)(2) must be consistent with  
2112 the amounts allocated to such corporation under Section 100.5230(a) and  
2113 (g) of this Part.

2114

2115 (Source: Amended at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

2116

2117 **Section 100.5270 Computation of Combined Net Income and Tax (IITA Section 304(e))**

2118

2119 a) Determination of Base Income. The combined base income shall be determined  
2120 by first computing the combined group's combined taxable income and then  
2121 modifying this amount by the combined group's combined Illinois addition and  
2122 subtraction modification amounts.

2123

2124 1) Combined Net Income. Combined base income shall be determined by  
2125 treating all members of the unitary business group (including ineligible  
2126 members) as if they constituted a federal consolidated group and by  
2127 applying the federal regulations for determining consolidated taxable  
2128 income, except that the separate return limitation year provisions and the  
2129 limitations on consolidation of life and non-life companies in 26 CFR  
2130 1.1502-47 do not apply. (See 26 CFR 1.1502-11.) A consolidated net  
2131 operating loss deduction, as defined in 26 CFR 1.1502-21 shall be added  
2132 back to taxable income, in whole or in part, in accordance with  
2133 subsections (a)(2), (a)(4) and (a)(5). Pursuant to IITA Section  
2134 203(e)(2)(E), combined base income shall be determined as if the election  
2135 provided by IRC section 243(b)(2) had been in effect.

2136

2137 EXAMPLE 1: Corporations A and B properly make an election under  
2138 IITA Section 502(e), or are properly required to file a combined return  
2139 under IITA Section 502(e). On a separate return basis, A's federal taxable  
2140 income would be a loss of (\$500). This amount does not include an  
2141 excess capital loss of \$75 pursuant to IRC section 1211(a). B's federal  
2142 taxable income is \$1,000 of which \$100 is capital gain. As a result of  
2143 applying 26 CFR 1.1502-11 and 26 CFR 1.1502-22, the combined federal  
2144 taxable income for A and B is \$425.

2145

2146 2) Combined Illinois Net Loss. The combined group's current year combined  
2147 taxable income may be less than zero, in which case combined taxable

2148 income shall be determined by applying the provisions of 26 CFR  
 2149 1.1502-21(f) (consolidated net operating loss) to the unitary business  
 2150 group.

2151  
 2152 EXAMPLE 2: Same facts as Example 1 in subsection (a)(1) except that  
 2153 Corporation C has also properly joined in the election, or is properly  
 2154 required to join in the combined return filing, and its federal taxable  
 2155 income is a loss of (\$800). If there are no addition or subtraction  
 2156 modifications and all of the group's base income is apportioned to Illinois,  
 2157 the group's combined Illinois net loss for the taxable year is (\$375).  
 2158

- 2159 3) Carrybacks and Carryovers. Carrybacks and carryovers, if any, shall be  
 2160 determined for each member and not for the group. A pro rata share of the  
 2161 loss is attributable to each of the loss members. For Illinois net losses that  
 2162 occurred in taxable years ending on or after December 31, 1986, the  
 2163 amount of any carryback or carryover shall be determined by applying  
 2164 Sections 100.2340 and 100.2350(c)(3) and (c)(4). For federal net operating  
 2165 losses that occurred in taxable years ending prior to December 31, 1986,  
 2166 the amount of any carryback or carryforward shall be determined by  
 2167 applying Section 100.2230.  
 2168

2169 EXAMPLE 3: Same facts as Example 2 in subsection (a)(2). Assuming  
 2170 the taxable year ends prior to December 31, 1986, the group's combined  
 2171 net operating loss of (\$375) shall be divided between A and C as follows  
 2172 for purposes of carryback and carryover:

2173  
 2174 Corp. A:  $500/1,300 \times (375) = 144$

2175  
 2176 Corp. C:  $800/1,300 \times (375) = 231$   
 2177

- 2178 4) Addition Modification of Federal Net Operating Loss (NOL) Deductions  
 2179 from a Loss Incurred in a Taxable Year Ending on or after December 31,  
 2180 1986. IITA Section 203(b)(2)(D) requires that the amount of any federal  
 2181 net operating loss deduction taken in arriving at taxable income for federal  
 2182 tax purposes, other than from a loss in a taxable year ending prior to  
 2183 December 31, 1986, shall be added back to taxable income in the  
 2184 computation of base income. (See Section 100.2320(a).)  
 2185

- 2186 5) Addition Modification of Pre-December 31, 1986 Federal Losses. IITA  
 2187 Section 203(b)(2)(E) requires an addition modification subject to two  
 2188 limitations for taxable years in which a federal net operating loss  
 2189 carryforward from a taxable year ending prior to December 31, 1986 is an  
 2190 element of taxable income. Consequently, each member allowed to

2191 carryback or forward a portion of the group's combined net operating loss  
2192 from a year in which that combined loss was used to offset a portion of the  
2193 group's combined excess addition modifications shall take as an addition  
2194 modification in the carryback or carryover year its respective share of the  
2195 NOL addition modification required by IITA Section 203(b)(2)(E). In  
2196 accordance with Section 100.2240, the respective shares shall be  
2197 determined in the same manner as the determination of the amount of  
2198 NOL carryback or carryover.

2199  
2200 EXAMPLE 4: Same facts as Example 2 in subsection (a)(2) except that  
2201 the group had combined excess addition modifications of \$100. This  
2202 amount will be divided among the loss members as follows:

2203  
2204 Corp. A:  $500/1,300 \times 100 = 38$

2205  
2206 Corp. C:  $800/1,300 \times 100 = 62$

2207  
2208 b) Combined Base Income Allocable to Illinois. Combined base income allocable to  
2209 Illinois is the sum of the combined business income or loss apportioned to Illinois  
2210 plus the combined nonbusiness income or loss allocated to Illinois plus the  
2211 combined business income or loss apportioned to Illinois by partnerships in which  
2212 the members are partners (other than partnerships that apportion business income  
2213 under Section 100.3380(d)), less the combined net loss deduction.

2214  
2215 1) Combined Business Income Apportionable to Illinois. In the case of a  
2216 combined group composed solely of members that apportion their  
2217 business income under the same subsection of IITA Section 304 (that is,  
2218 insurance companies apportioning business income under IITA Section  
2219 304(b), financial organizations apportioning business income under IITA  
2220 Section 304(c), federally regulated exchanges apportioning business  
2221 income under IITA Section 304(c-1), transportation companies  
2222 apportioning business income under IITA Section 304(d), and all other  
2223 businesses apportioning business income under IITA Section 304(a)), the  
2224 combined group's combined business income shall be apportioned using  
2225 the total Illinois factors of the combined group and total everywhere  
2226 factors of the unitary business group. In the case of a combined group that  
2227 includes members that apportion their business income under different  
2228 subsections of IITA Section 304, the combined group's combined business  
2229 income is apportioned as provided in Section 100.3600. Items of income  
2230 and deduction arising from transactions between members of the unitary  
2231 business groups shall be eliminated whenever necessary to avoid  
2232 distortion of the denominators used by the unitary business group in  
2233 calculating apportionment factors, or of the numerators used by the

2234 combined group or by ineligible members of the group in calculating  
 2235 apportionment factors.

2236  
 2237 EXAMPLE 1: Corporations A, B and C constitute a unitary business  
 2238 group. Corporations A and B are eligible to make the election under IITA  
 2239 Section 502(e) for tax years ending before December 31, 1993. However,  
 2240 under Public Law 86-272, Corporation C is not taxable in Illinois. Based  
 2241 on these facts, if the election to be treated as one taxpayer is made, the  
 2242 combined Illinois sales factor shall be determined by dividing the  
 2243 combined group's total combined Illinois sales (that is, excluding any sales  
 2244 of Corporation C shipped to purchasers in Illinois) by the total combined  
 2245 sales of the unitary business group everywhere. If the same facts are  
 2246 applied to a tax year ending on or after December 31, 1993, and ending  
 2247 before December 31, 2025, the same result will occur in the mandatory  
 2248 combined return situation. If the same facts are applied to a tax year  
 2249 ending on or after December 31, 2025, both Corporation A and B shall  
 2250 include in their sales factor numerator a portion of the Illinois sales of  
 2251 Corporation C based on a ratio, the numerator of which is that taxpayer  
 2252 member's Illinois sales, and the denominator of which is the aggregate  
 2253 Illinois sales of all the taxpayer members of the group. The combined  
 2254 Illinois sales factor shall be determined by dividing the combined group's  
 2255 total combined Illinois sales (which includes the portion of Corporation  
 2256 C's Illinois sales included in each of the sales factor numerators of  
 2257 Corporation A and B) by the total combined sales of the unitary business  
 2258 group everywhere.

2259  
 2260 EXAMPLE 2: Same facts as in Example 1, except these additional facts  
 2261 also exist. Under Public Law 86-272, Corporations B and C are taxable in  
 2262 South Carolina, but ~~Corporation~~~~corporation~~ A is not. Based on these  
 2263 facts, if the election to be treated as one taxpayer is made, or the taxpayers  
 2264 are required to be treated as one taxpayer for tax years ending before  
 2265 December 31, 2025, the combined Illinois sales factor shall be determined  
 2266 by dividing the combined group's total Illinois sales (including any sales  
 2267 of Corporation A shipped to purchasers in South Carolina from any place  
 2268 of storage in Illinois, i.e., throwback sales) by the total sales of the unitary  
 2269 business group everywhere. If the taxpayers are required to be treated as  
 2270 one taxpayer for tax years ending on or after December 31, 2025, then  
 2271 Illinois' throwback rule would not apply as at least one member of the  
 2272 unitary business group is taxable in South Carolina. The combined Illinois  
 2273 sales factor shall be determined by dividing the combined group's total  
 2274 Illinois sales (excluding any sales of Corporation A shipped to purchasers  
 2275 in South Carolina from any place of storage in Illinois) by the total sales of  
 2276 the unitary business group everywhere.

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- 2) Combined Nonbusiness Income and Business Income Apportioned to Illinois by Partnerships in which the Members are Partners (other than partnerships that apportion business income under Section 100.3380(d)). The amount of combined nonbusiness income or loss allocable to Illinois shall be computed by first determining the amount for each member of the combined group and then combining these amounts. Similarly, the amount of combined business income or loss apportioned to Illinois by partnerships in which the members are partners (other than partnerships that apportion business income under Section 100.3380(d)) shall be computed by first determining the amount for each member and then combining these amounts.
  - 3) Combined Illinois Net Loss Deduction. The combined Illinois net loss deduction for losses originating in tax years ending on or after December 31, 1986 shall be computed by determining the amount of deduction available for each member of the combined group in accordance with Sections 100.2330, 100.2340 and 100.2350 and then by combining these amounts.
  - c) Combined Exemption. Under the election or requirement to be treated as one taxpayer, there is one exemption per combined return. The combined exemption shall be computed by multiplying the amount of the exemption allowed under IITA Section 204 and Section 100.2055 by a fraction, the numerator of which is combined base income allocable to Illinois and the denominator of which is the group's combined base income. The exemption amount for members of unitary groups not making the election, or not subject to the requirement, and for members of unitary groups ineligible to make the election, or not subject to the requirement, shall be computed by multiplying the amount of the exemption allowed under IITA Sections 204 and 100.2055 by a fraction, the numerator of which shall be that member's base income allocable to Illinois, and the denominator of which is the group's combined base income.
  - d) Combined Credits
    - 1) Applicability of Credits. Any credit allowed by the IITA is determined based on the combined activities of the members of the combined group and that credit shall be applied against the combined liability of the combined group.
    - 2) Credits Based on Members' Activities. The investment credits provided in IITA Sections 201(e), (f) and (h), [237](#), and ~~[239](#)~~[206\(b\)](#) are available when certain property is purchased and placed in service by a taxpayer. The

- 2320 combined group is entitled to a combined credit, assuming the other  
2321 statutory or regulatory requirements applicable to the given credit are  
2322 satisfied, even if one of the members purchases the qualified property and  
2323 another member uses the property in a qualified manner.  
2324
- 2325 3) Effective January 1, 1994, the investment credit provided in IITA Section  
2326 201(e) is allowed for a taxpayer who is *primarily engaged in*  
2327 *manufacturing, or in mining coal or fluorite, or in retailing*. In the case of  
2328 a combined group, the determination of eligibility shall be made for the  
2329 combined group as a whole, rather than for any individual member. The  
2330 determination of whether a combined group is primarily engaged in a  
2331 qualifying activity shall be made by applying the 50% of gross receipts  
2332 test in Section 100.2101(f) by taking into account the gross receipts of  
2333 only the eligible members of the combined group. Gross receipts of  
2334 corporations that would otherwise be members of the combined group, but  
2335 have no taxable presence in Illinois or that cannot be combined for any  
2336 other reason, shall not be considered in this determination. In determining  
2337 whether a combined group is primarily engaged in retailing, gross receipts  
2338 from transactions between eligible members of the combined group shall  
2339 be eliminated from both the numerator and the denominator of the  
2340 computation. In determining whether a combined group is primarily  
2341 engaged in manufacturing or in the mining of coal or fluorite, gross  
2342 receipts from manufacturing or the mining of coal or fluorite shall include:  
2343
- 2344 A) gross receipts from sales of products manufactured or coal or  
2345 fluorite mined by one eligible member of the combined group to  
2346 another eligible member of the combined group for use or  
2347 consumption, and not for resale. However, the amount of those  
2348 gross receipts shall be subject to adjustment by the Department  
2349 under IITA Section 404; and  
2350
- 2351 B) gross receipts from sales to persons outside the combined group by  
2352 one eligible member of the combined group of items  
2353 manufactured, or coal or fluorite mined, by another eligible  
2354 member of the combined group.  
2355
- 2356 4) The additional credit provided in IITA Section 201(e) and the credit  
2357 provided in IITA Section 201(g) are based on specified increases in  
2358 employment in Illinois. For purposes of determining entitlement to these  
2359 credits during a combined-return year, the increase in employment shall be  
2360 determined with respect to the employment of all members of the  
2361 combined group in Illinois and not an individual member's employment.  
2362 For purposes of determining the increase in employment in Illinois for a

2363 common taxable year, the Illinois employment of all taxpayers who are  
 2364 members of the combined group during that common taxable year shall be  
 2365 used; that is, both prior and current year Illinois employment of current  
 2366 members who were not members of the combined group in the prior year  
 2367 shall be included in the determination, while prior and current year Illinois  
 2368 employment of taxpayers who ceased to be members of the combined  
 2369 group during the current or prior year shall be excluded. The application  
 2370 of this subsection (d)(4) is illustrated by the following examples:  
 2371

2372 **EXAMPLE 1:** Corporations A, B and C were members of a unitary  
 2373 business group that elected to file a combined return for 1989. Corporation  
 2374 D was not a member of the ABC combined group in 1989, but becomes a  
 2375 member of combined group ABCD filing a combined return for 1990.  
 2376 During 1989, Corporations A, B and C employed a total of 150 persons in  
 2377 Illinois and Corporation D employed 50 people in Illinois, for a total of  
 2378 200. During 1990, Corporations A, B and C employed 100 persons in  
 2379 Illinois and Corporation D employed 100 persons in Illinois, again for a  
 2380 total of 200. IITA Section 201(e), which provides for a Replacement Tax  
 2381 Investment Credit for qualified property placed in service by the taxpayer  
 2382 during the year, allows an additional 0.5% credit for that property to a  
 2383 taxpayer whose Illinois employment has increased by at least 1% over its  
 2384 Illinois employment in the immediately preceding year. Combined group  
 2385 ABCD cannot qualify for the additional 0.5% credit during 1990 because  
 2386 the combined Illinois employment of Corporations A, B, C and D  
 2387 remained unchanged between 1989 and 1990. Because eligibility is  
 2388 determined at the combined group level, no additional credit is allowed for  
 2389 qualified property placed in service by Corporation D in 1990, even  
 2390 though Corporation D's Illinois employment doubled between 1989 and  
 2391 1990.  
 2392

2393 **EXAMPLE 2:** Corporations P, Q, R and S filed a combined Illinois return  
 2394 for calendar year 1990. On January 1, 1991, Corporation S was sold to an  
 2395 unrelated purchaser. Corporations P, Q and R filed a combined Illinois  
 2396 return for calendar year 1991. Combined group PQRS employed 400  
 2397 people in Illinois during 1990, 100 of whom were actually employees of  
 2398 Corporation P and 100 of whom were actually employees of Corporation  
 2399 S. Combined group PQR employed 350 people in Illinois during 1991, 50  
 2400 of whom were actually employees of Corporation P. Combined group  
 2401 PQR can qualify for the additional 0.5% Replacement Tax Investment  
 2402 Credit allowed under IITA Section 201(e) for qualified property placed in  
 2403 service during 1990 because the Illinois employment of the three members  
 2404 of the combined group increased from 300 in 1989 to 400 in 1990.  
 2405 Because the eligibility is determined at the combined group level, property

2406 placed in service by Corporation P during 1990 may qualify for the  
 2407 additional 0.5% credit even though Corporation P's Illinois employment  
 2408 actually decreased.  
 2409

2410 EXAMPLE 3: Prior to its 2013 repeal by Public Act 98-109, IITA Section  
 2411 201(g) allowed a Jobs Tax Credit equal to \$500 per eligible employee  
 2412 hired to work in an enterprise zone during a taxable year. The taxpayer  
 2413 must hire 5 or more eligible employees during the taxable year in order to  
 2414 qualify for the credit. The credit is taken in the taxable year following the  
 2415 year the employee is hired. Corporations W, X, Y and Z filed a combined  
 2416 Illinois return for calendar year 1990. Corporation Z was sold to an  
 2417 unrelated purchaser on December 31, 1990. Corporations W, X and Y  
 2418 filed a combined return for 1991. During 1990, WXYZ hired 5 eligible  
 2419 employees to work in an enterprise zone, 3 of whom were actually hired  
 2420 by Corporation Z. Combined group WXY may claim a Jobs Tax Credit of  
 2421 \$2,500 for 1991 because it hired 5 eligible employees during 1990. The  
 2422 fact that Corporation Z, which hired 3 of the employees, left the combined  
 2423 group at the beginning of 1991 does not alter the fact that the combined  
 2424 group earned the Jobs Tax Credit nor entitle Corporation Z to any portion  
 2425 of the credit for its separate company return for 1991.  
 2426

- 2427 5) The research and development credit provided in IITA Section  
 2428 ~~203(k)~~203(j) is based on increasing research activities in this State (see  
 2429 Section 100.2160). For purposes of determining entitlement to the credit  
 2430 during a combined-return year, the increase in research activities shall be  
 2431 determined with respect to research activities conducted by all members of  
 2432 the combined group in Illinois and not an individual member's research  
 2433 activities. The following series of examples illustrate the application of  
 2434 the research and development credit in combined return situations  
 2435 involving Corporations A, B and C that incurred the following expenses  
 2436 for qualified research activities in Illinois:  
 2437

	1990	1991	1992	1993
Corp. A	50,000	50,000	50,000	0
Corp. B	25,000	25,000	100,000	200,000
Corp. C	75,000	125,000	100,000	100,000
	150,000	200,000	250,000	300,000

2438 EXAMPLE 1: A, B, and C filed combined returns for the years ending  
 2439 December 31, 1990, December 31, 1991, December 31, 1992 and  
 2440 December 31, 1993. The proper amount of the Research and  
 2441 Development Credit for the year ending December 31, 1993 is determined  
 2442

2443 based upon the combined activities on the combined return and is  
 2444 calculated as follows:

2445

2446	Total qualified expenditures for 1993.....	300,000
2447		
2448	Average qualified expenditures for 1990-92 .....	200,000
2449		
2450	Excess of 1993 expenditures over base period .....	100,000
2451		
2452	Research and development credit for 1993.....	6,500
2453		

2454 EXAMPLE 2: A and B filed a combined return for the year ending  
 2455 December 31, 1990. C filed a separate return for the year ending  
 2456 December 31, 1990. A purchased the common stock of C on January 1,  
 2457 1991. A, B and C filed combined returns for the years ending December  
 2458 31, 1991, December 31, 1992 and December 31, 1993. The \$75,000 of  
 2459 expenses for qualified research activities in Illinois incurred by C for the  
 2460 year ending December 31, 1990 should be included in the calculation of  
 2461 the average qualified expenditures for the base period. The credit for the  
 2462 combined return is calculated as follows:

2463

2464	Total qualified expenditures for 1993.....	300,000
2465		
2466	Average qualified expenditures for 1990-92 .....	200,000
2467		
2468	Excess of 1993 expenditures over base period .....	100,000
2469		
2470	Research & Development Credit for 1993.....	6,500
2471		

2472 EXAMPLE 3: A, B and C filed combined returns for the years ending  
 2473 December 31, 1990, December 31, 1991 and December 31, 1992. On  
 2474 January 1, 1993, A sold the common stock of C to P (an unrelated  
 2475 corporation). For the year ending December 31, 1993, C was included in  
 2476 the combined return filed by P. In determining the proper amount of the  
 2477 Research and Development Credit for the combined return filed by A and  
 2478 B for the year ending December 31, 1993, the expenses for qualified  
 2479 research activities in Illinois incurred by C of \$75,000, \$125,000 and  
 2480 \$100,000 for the years ending December 31, 1990, December 31, 1991  
 2481 and December 31, 1992, respectively, shall not be included in the  
 2482 calculation of the average qualified expenditures for the base period for A  
 2483 and B for the year ending December 31, 1993. The credit for the  
 2484 combined return for A and B for the year ending December 31, 1993 is  
 2485 calculated as follows:

2486	
2487	Total qualified expenditures for 1993..... 200,000
2488	
2489	Average qualified expenditures for 1990-92 ..... 100,000
2490	
2491	Excess of 1993 expenditures over base period ..... 100,000
2492	
2493	Research & Development Credit for 1993..... 6,500
2494	

6) Credit Carryforward. Any combined credit carryforward shall be available to the combined group for the next combined-return year. For purposes of the credits allowed with respect to certain qualifying property under IITA Sections 201(e), (f), and (h), 237, and 239 ~~and 206(b)~~, when a member becomes ineligible to join in the election, or is no longer required to be part of the combined return, the credit carryforward shall be available to the remaining members if those members continue to both own and use the property for which the credit was claimed in a qualifying manner for 48 months after the placed-in-service date. The credit carryforward shall be available to the former member that has become ineligible if that former member both owns and uses the property for which the credit was claimed in a qualifying manner for the remainder of the 48-month period after the placed-in-service date. If a credit carryforward is available to the former member that has become ineligible, the amount of the carryforward is equal to the combined unused credit multiplied by a fraction, the numerator of which shall be the credit attributable to the qualified property of that former member for the combined unused credit year, and the denominator of which shall be the qualified property of the combined group for the unused credit year.

EXAMPLE: In 1985, Corporation A purchased \$300,000 of eligible property, \$200,000 of which was used by A and \$100,000 of which was transferred to and used by Corporation B. A and B filed a combined return for the year that showed an income tax liability of \$1,000 and an investment credit of \$1,500. The group's unused credit was \$500. In 1987, B left the group, and during that year it owned and continued to use the \$100,000 of eligible property. Its credit carryforward would be computed as follows:

$$\$500 \times \$100,000 / \$300,000 = \$166.67$$

7) Recapture. For purposes of credits that are recaptured when property ceases to be qualified property or is moved out of Illinois or when property is moved outside of an enterprise zone within 48 months after the

2529 placed-in-service date, the members of the combined group are  
 2530 responsible for the recapture of any personal property replacement tax or  
 2531 income tax.

2532  
 2533 EXAMPLE: Same facts as in the Example in subsection (d)(6) except in  
 2534 1987 Corporation A transferred its eligible property (originally purchased  
 2535 for \$200,000 in 1985) to Corporation B. Corporation B was acquired by  
 2536 Corporation C in 1987 and, immediately afterward, B sold all the eligible  
 2537 property (originally purchased for a total of \$300,000) to an unrelated  
 2538 third party. B and C file a combined return for that year and their tax  
 2539 liability is increased by \$1,000 due to the credit that was allowed on the  
 2540 combined return filed by A and B in 1985 and recaptured in 1987.

2541  
 2542 e) Ineligible Members. If a unitary business group contains one or more ineligible  
 2543 members (e.g., a partnership that is not required to apply the apportionment  
 2544 method prescribed in Section 100.3380(d), a subchapter S corporation or, for  
 2545 years ending prior to December 31, 1987, a corporation with a different taxable  
 2546 year), the ineligible members shall file separate unitary returns [\(see Section](#)  
 2547 [100.5215\)](#). ~~In the separate unitary return, the apportionment percentage of that~~  
 2548 ~~ineligible member shall be determined by dividing the Illinois factor or factors of~~  
 2549 ~~that member by the combined everywhere factor or factors of all members of the~~  
 2550 ~~unitary business group. The apportionment percentage shall then be multiplied by~~  
 2551 ~~the combined business income of the unitary business group to determine the~~  
 2552 ~~business income of that ineligible member apportionable to Illinois. The taxable~~  
 2553 ~~income of the members shall be their combined taxable income as determined~~  
 2554 ~~under subsection (a)(1). If a corporation is ineligible because it has a different~~  
 2555 ~~taxable year, either method of accounting available to part year members and set~~  
 2556 ~~forth in subsection (f)(2) may be used to determine the combined taxable income.~~  
 2557 ~~If two or more corporations are ineligible because they have an accounting period~~  
 2558 ~~that is different from other members making the election, they may elect to file~~  
 2559 ~~their own combined return if they have the same taxable year. The foregoing rule~~  
 2560 ~~also applies in the case of erroneous inclusion of a member in a group otherwise~~  
 2561 ~~required to file a combined return.~~

2562  
 2563 f) Part-year Members

2564  
 2565 1) General Rule. If a corporation becomes a member of a unitary business  
 2566 group after the beginning of the combined return year or ceases to be a  
 2567 member of the unitary business group during the combined return year,  
 2568 two tax returns will be affected for that taxable year. The combined return  
 2569 shall include the separate company items of that corporation for the part of  
 2570 the year it was a member of the unitary business group. Separate company  
 2571 items of a part-year member for any portion of its taxable year prior to the

2572 date it joins or after the date it leaves the unitary business group shall  
2573 either be reported in a short-year separate return filed by that part-year  
2574 member (if it is subject to Illinois income tax during that period) or  
2575 included in any combined return filed on behalf of a unitary business  
2576 group to which that part-year member belongs during that portion of the  
2577 year.

2578  
2579 2) Accounting. The part-year member shall use either Method 1 or Method 2  
2580 (described in Section 100.5265(b)) to determine its separate company  
2581 items for the portion of the year before it becomes a member and the  
2582 portion of the year after it becomes a member of the combined group.  
2583

2584 (Source: Amended at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
2585

## 2586 SUBPART EE: DEFINITIONS

### 2587 **Section 100.9720 Nexus**

2588  
2589  
2590 a) IITA Section 201(a) imposes the Illinois Income Tax, a tax measured by net  
2591 income, on *individuals, corporations, trusts and estates for the privilege of*  
2592 *earning or receiving income in or as a resident of this State.* IITA Section 201(c)  
2593 imposes a second tax measured by net income, the Personal Property Tax  
2594 Replacement Income Tax, on *corporations, partnerships and trusts for the*  
2595 *privilege of earning or receiving income in or as a resident of this State.* In  
2596 general, a resident of this State will always be subject to these taxes. Activity  
2597 conducted in interstate commerce may establish sufficient nexus with Illinois to  
2598 permit imposition of these taxes on a non-resident taxpayer, as well, when the  
2599 non-resident earns or receives income in this State within the meaning of the  
2600 IITA. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076 (1977);  
2601 *Quill v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904 (1992). However, the fact  
2602 that Article 3 of the IITA requires a non-resident taxpayer to allocate or apportion  
2603 income to this State does not create a presumption that the taxpayer has nexus.  
2604

2605 b) Standards for determining sufficient tax nexus are found in federal statutes  
2606 regulating interstate commerce, in United States Constitutional jurisprudence, and  
2607 in Illinois tax statutes.  
2608

2609 c) The scope of federal statutes limiting nexus for imposition of Illinois income and  
2610 replacement taxes are described in this subsection (c):  
2611

2612 1) Public Law 86-272. In 1959, Congress enacted PL 86-272 (15 U.S.C.~~USC~~  
2613 381-384), which prohibits states and their political subdivisions from  
2614 imposing a net income tax on nonresident taxpayers who operate primarily

2615 in interstate commerce and whose activity within a state is limited. PL 86-  
2616 272 provides in pertinent part:

2617  
2618 A) No state or political subdivision thereof shall have the power to  
2619 impose . . . a net income tax on the income derived within such  
2620 state by any person from interstate commerce if the only business  
2621 activities within such state by or on behalf of such person during  
2622 such taxable year are either, or both of the following:

2623  
2624 i) the solicitation of orders by such person, or his  
2625 representative, in such state for sales of tangible personal  
2626 property, which orders are sent outside the state for  
2627 approval or rejection, and, if approved, are filled by  
2628 shipment or delivery from a point outside the state; and

2629  
2630 ii) the solicitation of orders by such person, or his  
2631 representative, in such state in the name of or for the  
2632 benefit of a prospective customer of such person, if orders  
2633 by such customer to such person to enable such customer to  
2634 fill orders resulting from such solicitation are orders  
2635 described in subsection (c)(1)(A)(i).

2636  
2637 B) The provisions of subsection (c)(1)(A) of this Section shall not  
2638 apply to the imposition of a net income tax by any State or political  
2639 subdivision thereof, with respect to –

2640  
2641 i) Any corporation which is incorporated under the laws of  
2642 such state; or

2643  
2644 ii) any individual who, under the laws of such state, is  
2645 domiciled in, or a resident of, such state.

2646  
2647 C) For the purposes of subsection (c)(1)(A) of this Section, a person  
2648 shall not be considered to have engaged in business activities  
2649 within a state during any taxable year merely by reason of sales in  
2650 such state, or the solicitation of orders for sales in such state, of  
2651 tangible personal property on behalf of such person by one or more  
2652 independent contractors whose activities on behalf of such person  
2653 in such state consist solely of making sales, or soliciting orders for  
2654 sales, of tangible personal property.

2655  
2656 D) For purposes of this subsection (c)(1) –  
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- i) The term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for the sale of tangible personal property for more than one principal and who holds ~~themselves~~ ~~himself~~ out as such in the regular course of ~~his~~-business activities; and
  - ii) the term "representative" does not include an independent contractor.
- 2) The terms of PL 86-272 affect nexus for taxation under the IITA according to the following principles:
- A) If a nonresident taxpayer's activities exceed "mere solicitation", as set forth in subsection (a) of PL 86-272 (subsection (c)(1)(A) of this Section), it obtains no immunity under that federal statute. The taxpayer is subject to Illinois income tax and personal property tax replacement income tax for the entire taxable year and its business income is apportioned under IITA Section 304. Whether a nonresident taxpayer's conduct exceeds "mere solicitation" depends upon the facts in each particular case.
  - B) Nature of Property Being Sold
    - i) PL 86-272 immunizes solicitation only for sale of tangible personal property. Efforts to sell intangibles, such as services, franchises, patents, copyrights, trademarks and service marks, are not protected, nor is solicitation for the leasing, renting or licensing of tangible personal property.
    - ii) The sale, delivery and the solicitation for the sale or delivery of any type of service that is not either ancillary to solicitation, or otherwise set forth as a protected activity under subsection (c)(5), is also not protected under PL 86-272 or this Section.
  - C) Solicitation of Orders. Solicitation of orders means speech or conduct that explicitly or implicitly invites an order and activity ancillary to invitations for an order.
    - i) To be ancillary to invitations for orders, an activity must serve no independent business function for the seller apart from its connection to the solicitation of orders.

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- ii) Activity that a seller would engage in apart from soliciting orders shall not be considered ancillary to the solicitation of orders.
  - iii) Assignment of an activity to a salesperson does not, merely by such assignment, make that activity ancillary to solicitation of orders.
  - iv) Activity that attempts to promote sales is not ancillary, nor is activity that facilitates sales. PL 86-272 only protects ancillary activity that facilitates the invitation of an order.
- D) De minimus activities are those that, when taken together, establish only a trivial additional connection with this State. An activity regularly conducted within this State on a regular or systematic basis or pursuant to a company policy (whether such policy is in writing or not) shall normally not be considered trivial. Whether an activity consists of a trivial or non-trivial additional connection with this State is to be measured on both a qualitative and quantitative basis. If the activity either qualitatively or quantitatively creates a non-trivial connection with this State, then the activity exceeds the protection of PL 86-272. The amount of unprotected activities conducted within this State relative to the amount of protected activities conducted within this State is not determinative of the issue of whether the unprotected activities are de minimus. The determination of whether an unprotected activity creates a non-trivial connection with this State is made on the basis of the taxpayer's entire business activity, not merely its activities conducted within this State. An unprotected activity that would not be de minimus if it were the only business activity of the taxpayer conducted in this State will not be de minimus merely because the taxpayer also conducts a substantial amount of protected activities within this State, nor will an unprotected activity that would be de minimus if conducted in conjunction with a substantial amount of protected activities fail to be de minimus merely because no protected activities are conducted in this State.
- 3) Listing of Specific Unprotected and Protected Activities.
- A) Subsection (c)(4) lists specific activities that are considered to be beyond "mere solicitation" and, therefore, unprotected by PL 86-272.

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B) Subsection (c)(5) lists specific activities that are considered by this State to be "protected activities". Included on the list of "protected activities" are those specific activities that are protected by PL 86-272 and those specific activities that this State, in its discretion, deems worthy of protection. Inclusion of an activity on the listing of "protected activities" is neither a declaration nor an admission by this State that the activity must be afforded protection under PL 86-272.

4) Unprotected Activities. The following activities (assuming they are not de minimus) do not constitute "mere solicitation" of orders, nor are they ancillary, nor otherwise protected under PL 86-272. If one or more of the following activities are conducted within this State, an otherwise protected nonresident taxpayer shall become subject to taxation by Illinois.

A) Making repairs or providing maintenance or service to the property sold or to be sold.

B) Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise.

C) Investigating credit worthiness.

D) Installation or supervision of installation at or after shipment or delivery.

E) Conducting training courses, seminars or lectures for personnel other than personnel involved only in solicitation of sales of tangible personal property.

F) Providing any kind of technical assistance or services, including, but not limited to, engineering assistance or design service, when one of the purposes of the assistance or service is other than the facilitation of the solicitation of orders.

G) Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer.

H) Approving or accepting orders.

- 2787 I) Repossessing property.
- 2788
- 2789 J) Securing deposits on sales.
- 2790
- 2791 K) Picking up or replacing damaged or returned property.
- 2792
- 2793 L) Hiring, training, or supervising personnel, other than personnel
- 2794 involved only in solicitation.
- 2795
- 2796 M) Maintaining a sample or display room in excess of two weeks (14
- 2797 days) at any one location within the State during the tax year.
- 2798
- 2799 N) Carrying samples for sale, exchange or distribution in any manner
- 2800 for consideration.
- 2801
- 2802 O) Owning, leasing, or maintaining any of the following facilities or
- 2803 property in-state:
- 2804
- 2805 i) Repair shop.
- 2806
- 2807 ii) Parts department.
- 2808
- 2809 iii) Any kind of office other than an in-home office as
- 2810 described as permitted under subsections (c)(4)(Q) and
- 2811 (c)(5)(B).
- 2812
- 2813 iv) Warehouse.
- 2814
- 2815 v) Meeting place for directors, officers, or employees.
- 2816
- 2817 vi) Stock of goods other than samples for sales personnel or
- 2818 that are used entirely ancillary to solicitation.
- 2819
- 2820 vii) Telephone answering service that is publicly attributed to
- 2821 the nonresident or to an employee or agent of the
- 2822 nonresident in his or her representative status.
- 2823
- 2824 viii) Mobile stores, i.e., vehicles with drivers who are sales
- 2825 personnel making sales from the vehicles.
- 2826
- 2827 ix) Real property or fixtures to real property of any kind.
- 2828
- 2829 P) Consigning stock of goods or other tangible personal property to

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any person, including an independent contractor, for sale.

Q) The maintenance of any office or other place of business in this State that does not strictly qualify as an "in-home" office as described in subsection (c)(5)(M) shall, by itself, cause the loss of protection under PL 86-272. A telephone listing or other public listing within the State for the nonresident or for an employee or other representative of the nonresident in such capacity or other indication through advertising or business literature that the nonresident or its employee or representative can be contacted at a specific address within the State shall normally be determined as the nonresident maintaining within this State an office or place of business attributable to the nonresident or to its employee or representative in a representative capacity. However, the normal distribution and use of business cards and ~~stationery~~stationary identifying the employee's or representative's name, address, telephone and fax numbers and affiliation with the nonresident shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the nonresident or to its employee or other representative.

R) Entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchiser or licensor to its franchisee or licensee within the State.

S) Conducting any activity that is not on the list of "protected activities" in subsection (c)(5), and that is not entirely ancillary to requests for orders, even if the activity helps to increase purchases.

5) Protected Activities. The following in-state activities will not cause the loss of immunity for otherwise protected sales:

A) Soliciting orders for sales by any type of advertising.

B) Soliciting orders for sales by an in-state resident employee or representative of the nonresident, so long as that person does not maintain or use any office or place of business in the State besides an "in-home" office as described in subsection (c)(5)(M).

C) Carrying samples and promotional materials only for display or for distribution without charge or other consideration.

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- D) Furnishing and setting up display racks and advising customers on the display of the nonresident's products without charge or other consideration.
  - E) Providing automobiles to sales personnel for their use in conducting protected activities.
  - F) Passing orders, inquiries and complaints on to the home office.
  - G) Missionary sales activities; i.e., the solicitation of indirect customers for the nonresident's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if those solicitation activities are otherwise immune.
  - H) Coordinating shipment or delivery without payment or other consideration and providing information relating to shipment or delivery either prior or subsequent to the placement of an order.
  - I) Checking of customers' inventories without charge (for re-order, but not for other purposes such as quality control).
  - J) Maintaining a sample or display room for two weeks (14 days) or less at any one location within the State during the tax year.
  - K) Recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel.
  - L) Mediating direct customer complaints when the purpose is solely for ingratiating the sales personnel with the customer and facilitating requests for orders.
  - M) Owning, leasing, using or maintaining personal property for use in the employee's or representative's "in-home" office located within the residence of the employee or other representative that is not publicly attributed to the nonresident or to the employee or other representative of the nonresident in a representative capacity or automobile, when that use is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software, shall not, by itself,

2916 remove the protection under this Section, so long as the use of the  
2917 office is limited to:

- 2918
- 2919 i) soliciting and receiving orders from customers;
- 2920
- 2921 ii) transmitting orders outside the State for acceptance or
- 2922 rejection by the nonresident; or
- 2923
- 2924 iii) other activities that are protected under PL 86-272 or this
- 2925 Section.
- 2926

2927 N) Shipping or delivering goods into this State by means of vehicles  
2928 or other modes of transportation owned or leased by the  
2929 nonresident taxpayer or by means of private carrier, whether by  
2930 motor vehicle, rail, water, air or other carrier and irrespective of  
2931 whether a shipment or delivery fee or other charge is imposed,  
2932 directly or indirectly, upon the purchaser.

2933

2934 6) Independent Contractors. PL 86-272 provides immunity to certain in-state  
2935 activities, if conducted by an independent contractor, that would not be  
2936 afforded if performed by the nonresident or its employees or other  
2937 representatives.

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2939 A) Notwithstanding the provisions of subsection (c)(4), independent  
2940 contractors may engage in the following limited activities in the  
2941 State without the nonresident's loss of immunity:

- 2942
- 2943 i) soliciting sales;
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- 2945 ii) making sales;
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- 2947 iii) maintaining an office.
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2949 B) Sales representatives who represent a single principal are not  
2950 considered to be independent contractors and are subject to the  
2951 same limitations as those provided under PL 86-272 and this  
2952 Section.

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2954 C) Maintenance of a stock of goods in the State, by the independent  
2955 contractor under consignment or any other type of arrangement  
2956 with the nonresident, except for purposes of display and  
2957 solicitation, shall remove the protection.

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- 7) Application of Destination State Law in Case of Conflict.
    - A) When it appears that Illinois and one or more other states that are signatories to the "Statement of Information concerning practices of the Multistate Tax Commission and Signatory States under PL 86-272" have included or will include the same receipts from a sale in their respective sales factor numerators, at the written request of the nonresident, the states will, in good faith, confer with one another to determine which state should be assigned the receipts. The conference shall identify what law, regulation or written guideline, if any, has been adopted in the state of destination with respect to the issue. The state of destination shall be that location at which the purchaser or its designee actually receives the property, regardless of F.O.B. (Free on Board) point or other conditions of sale.
    - B) In determining which state is to receive the assignment of the receipts at issue, preference shall be given to any clearly applicable law, regulation or written guideline that has been adopted in the state of destination. However, except in the case of the definition of what constitutes "tangible personal property", Illinois is not required by this Section to follow any other state's law, regulation or written guideline should Illinois determine that to do so:
      - i) would conflict with Illinois laws, regulations, or written guidelines; and
      - ii) would not clearly reflect the income-producing activity of the nonresident within Illinois.
    - C) Notwithstanding any provision set forth in this Section to the contrary, as between Illinois and any other signatory state, Illinois agrees to apply the definition of "tangible personal property" that exists in the state of destination to determine the application of PL 86-272 and issues of throwback, if any. Should the state of destination not have any applicable definition of tangible personal property so that it could be reasonably determined whether the property at issue constitutes tangible personal property, then each signatory state may treat the property in any manner that would clearly reflect the income-producing activity of the nonresident within that state.
  - 8) Application of this Section to Foreign Commerce

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A) PL 86-272 specifically applies, by its terms, to "interstate commerce" and does not directly apply to foreign commerce. The states are free, however, to apply the same standards set forth in PL 86-272 to business activities in foreign commerce to ensure that foreign and interstate commerce are treated on the same basis. Such an application also avoids the necessity of expensive and difficult efforts in the identification and application of the varied jurisdictional laws and rules existing in foreign countries.

B) Illinois will apply the provisions of PL 86-272 and of this Section to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by a nonresident selling tangible personal property into a country outside of the United States from a point within Illinois or by a nonresident selling such property into Illinois from a point outside of the United States, the principles under this Section apply equally to determine whether the sales transactions are protected and the nonresident is immune from taxation in either Illinois or in the foreign country, as the case might be, and whether, if applicable, Illinois will apply its throwback provisions.

9) Application to Corporation Incorporated in this State or to a Person Resident or Domiciled in this State. The protection afforded by PL 86-272 and this Section does not apply to any corporation incorporated within Illinois or to any person who is a resident of or domiciled in Illinois.

10) Registration or Qualification to do Business. A business that registers or otherwise formally qualifies to do business within Illinois does not, by that fact alone, lose its protection under PL 86-272.

11) Loss of Protection for Conducting Unprotected Activity During Part of a Tax Year. The protection afforded under PL 86-272 and this Section shall be determined on a tax year by tax year basis. Therefore, if at any time during a tax year the nonresident conducts activities that are not protected under PL 86-272 or this Section, no income earned or received in this State by the nonresident during any part of that tax year shall be protected from taxation under PL 86-272 or this Section.

d) Illinois Statutory Provisions. PA 88-361 amended the Illinois Income Tax Act to provide that *a person not otherwise subject to the tax imposed under the IITA shall not become subject to the tax imposed by the IITA by reason of:*

- 3045 1) *that person's ownership of tangible personal property located at the*  
3046 *premises of a printer in this State with which the person has contracted for*  
3047 *printing; or*  
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- 3049 2) *activities of the person's employees or agents located solely at the*  
3050 *premises of a printer and related to quality control, distribution, or*  
3051 *printing services performed by a printer in the State with which the person*  
3052 *has contracted for printing. (IITA Section 205(f))*  
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- 3054 e) U.S. Constitutional Jurisprudence. If not protected by U.S. or Illinois statute, an  
3055 income-producing activity may, nonetheless, be protected from State taxation by  
3056 principles of U.S. Constitutional jurisprudence. Controlling decisions that assert  
3057 protections afforded by the Interstate Commerce Clause, the Foreign Commerce  
3058 Clause and the Due Process Clause are accepted by this State as limitations on the  
3059 reach of its income tax and personal property tax replacement income tax statutes.  
3060 However, nothing stated in this subsection (e) shall prevent Illinois from  
3061 challenging taxpayer assertions of U.S. Constitutional protection.  
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- 3063 f) Application of the Joyce ~~and Finnigan Rules~~Rule. For taxable years ending  
3064 before December 31, 2025, in~~It~~ determining whether the activity of a nonresident  
3065 taxpayer conducted in this State is sufficient to create nexus for application of  
3066 Illinois income tax or replacement tax, the principles established in Appeal of  
3067 Joyce Inc., Cal. St. Bd. of Equal. (11/23/66), commonly known as the "Joyce  
3068 rule", shall apply. Only activity conducted by or on behalf of the nonresident  
3069 taxpayer shall be considered for this purpose. Because the income of a  
3070 partnership, a Subchapter S corporation or any other pass-through entity is treated  
3071 as income of its owners, activity of a pass-through entity is conducted on behalf  
3072 of its owners. Activity conducted by any other person, whether or not affiliated  
3073 with the nonresident taxpayer, shall not be considered attributable to the taxpayer,  
3074 unless the other person was acting in a representative capacity on behalf of the  
3075 taxpayer. For taxable years ending on or after December 31, 2025, see IITA  
3076 Section 304(e) and Section 100.3375 of this Part for purposes of applying the  
3077 Finnigan rule for combined apportionment and throwback/throwout.  
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3079 (Source: Amended at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)