



Rep. Jonathan Carroll

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1 AMENDMENT TO SENATE BILL 2430

2 AMENDMENT NO. _____. Amend Senate Bill 2430 by replacing
3 everything after the enacting clause with the following:

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

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

7 Sec. 1501. Definitions.

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

11 (1) Business income. The term "business income" means
12 all income that may be treated as apportionable business
13 income under the Constitution of the United States.
14 Business income is net of the deductions allocable
15 thereto. Such term does not include compensation or the
16 deductions allocable thereto. For each taxable year

1 beginning on or after January 1, 2003, a taxpayer may
2 elect to treat all income other than compensation as
3 business income. This election shall be made in accordance
4 with rules adopted by the Department and, once made, shall
5 be irrevocable.

6 (1.5) Captive real estate investment trust:

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

9 (i) that is considered a real estate
10 investment trust for the taxable year under
11 Section 856 of the Internal Revenue Code;

12 (ii) the certificates of beneficial interest
13 or shares of which are not regularly traded on an
14 established securities market; and

15 (iii) of which more than 50% of the voting
16 power or value of the beneficial interest or
17 shares, at any time during the last half of the
18 taxable year, is owned or controlled, directly,
19 indirectly, or constructively, by a single
20 corporation.

21 (B) The term "captive real estate investment
22 trust" does not include:

23 (i) a real estate investment trust of which
24 more than 50% of the voting power or value of the
25 beneficial interest or shares is owned or
26 controlled, directly, indirectly, or

1 asset value at the close of its taxable
2 year is represented by real estate assets
3 (as defined in Section 856(c)(5)(B) of the
4 Internal Revenue Code, thereby including
5 shares or certificates of beneficial
6 interest in any real estate investment
7 trust), cash and cash equivalents, and
8 U.S. Government securities;

9 (2) the entity is not subject to tax
10 on amounts that are distributed to its
11 beneficial owners or is exempt from
12 entity-level taxation;

13 (3) the entity distributes at least
14 85% of its taxable income (as computed in
15 the jurisdiction in which it is organized)
16 to the holders of its shares or
17 certificates of beneficial interest on an
18 annual basis;

19 (4) either (i) the shares or
20 beneficial interests of the entity are
21 regularly traded on an established
22 securities market or (ii) not more than
23 10% of the voting power or value in the
24 entity is held, directly, indirectly, or
25 constructively, by a single entity or
26 individual; and

1 (5) the entity is organized in a
2 country that has entered into a tax treaty
3 with the United States; or

4 (ii) during its first taxable year for which
5 it elects to be treated as a real estate
6 investment trust under Section 856(c)(1) of the
7 Internal Revenue Code, a real estate investment
8 trust the certificates of beneficial interest or
9 shares of which are not regularly traded on an
10 established securities market, but only if the
11 certificates of beneficial interest or shares of
12 the real estate investment trust are regularly
13 traded on an established securities market prior
14 to the earlier of the due date (including
15 extensions) for filing its return under this Act
16 for that first taxable year or the date it
17 actually files that return.

18 (C) For the purposes of this subsection (1.5), the
19 constructive ownership rules prescribed under Section
20 318(a) of the Internal Revenue Code, as modified by
21 Section 856(d)(5) of the Internal Revenue Code, apply
22 in determining the ownership of stock, assets, or net
23 profits of any person.

24 (D) For the purposes of this item (1.5), for
25 taxable years ending on or after August 16, 2007, the
26 voting power or value of the beneficial interest or

1 shares of a real estate investment trust does not
2 include any voting power or value of beneficial
3 interest or shares in a real estate investment trust
4 held directly or indirectly in a segregated asset
5 account by a life insurance company (as described in
6 Section 817 of the Internal Revenue Code) to the
7 extent such voting power or value is for the benefit of
8 entities or persons who are either immune from
9 taxation or exempt from taxation under subtitle A of
10 the Internal Revenue Code.

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

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

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

23 (5) Department. The term "Department" means the
24 Department of Revenue of this State.

25 (6) Director. The term "Director" means the Director
26 of Revenue of this State.

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

4 (8) Financial organization.

5 (A) The term "financial organization" means any
6 bank, bank holding company, trust company, savings
7 bank, industrial bank, land bank, safe deposit
8 company, private banker, savings and loan association,
9 building and loan association, credit union, currency
10 exchange, cooperative bank, small loan company, sales
11 finance company, investment company, or any person
12 which is owned by a bank or bank holding company. For
13 the purpose of this Section a "person" will include
14 only those persons which a bank holding company may
15 acquire and hold an interest in, directly or
16 indirectly, under the provisions of the Bank Holding
17 Company Act of 1956 (12 U.S.C. 1841, et seq.), except
18 where interests in any person must be disposed of
19 within certain required time limits under the Bank
20 Holding Company Act of 1956.

21 (B) For purposes of subparagraph (A) of this
22 paragraph, the term "bank" includes (i) any entity
23 that is regulated by the Comptroller of the Currency
24 under the National Bank Act, or by the Federal Reserve
25 Board, or by the Federal Deposit Insurance Corporation
26 and (ii) any federally or State chartered bank

1 operating as a credit card bank.

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

5 (i) A person primarily engaged in one or more
6 of the following businesses: the business of
7 purchasing customer receivables, the business of
8 making loans upon the security of customer
9 receivables, the business of making loans for the
10 express purpose of funding purchases of tangible
11 personal property or services by the borrower, or
12 the business of finance leasing. For purposes of
13 this item (i), "customer receivable" means:

14 (a) a retail installment contract or
15 retail charge agreement within the meaning of
16 the Sales Finance Agency Act, the Retail
17 Installment Sales Act, or the Motor Vehicle
18 Retail Installment Sales Act;

19 (b) an installment, charge, credit, or
20 similar contract or agreement arising from the
21 sale of tangible personal property or services
22 in a transaction involving a deferred payment
23 price payable in one or more installments
24 subsequent to the sale; or

25 (c) the outstanding balance of a contract
26 or agreement described in provisions (a) or

1 (b) of this item (i).

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

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

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

17 (b) more than 50% of the gross income of
18 the corporation for the taxable year must be
19 interest income derived from qualifying loans.
20 A "qualifying loan" is a loan made to a member
21 of the corporation's affiliated group that
22 originates customer receivables (within the
23 meaning of item (i)) or to whom customer
24 receivables originated by a member of the
25 affiliated group have been transferred, to the
26 extent the average outstanding balance of

1 loans from that corporation to members of its
2 affiliated group during the taxable year do
3 not exceed the limitation amount for that
4 corporation. The "limitation amount" for a
5 corporation is the average outstanding
6 balances during the taxable year of customer
7 receivables (within the meaning of item (i))
8 originated by all members of the affiliated
9 group. If the average outstanding balances of
10 the loans made by a corporation to members of
11 its affiliated group exceed the limitation
12 amount, the interest income of that
13 corporation from qualifying loans shall be
14 equal to its interest income from loans to
15 members of its affiliated groups times a
16 fraction equal to the limitation amount
17 divided by the average outstanding balances of
18 the loans made by that corporation to members
19 of its affiliated group;

20 (c) the total of all shareholder's equity
21 (including, without limitation, paid-in
22 capital on common and preferred stock and
23 retained earnings) of the corporation plus the
24 total of all of its loans, advances, and other
25 obligations payable or owed to members of its
26 affiliated group may not exceed 20% of the

1 total assets of the corporation at any time
2 during the tax year; and

3 (d) more than 50% of all interest-bearing
4 obligations of the affiliated group payable to
5 persons outside the group determined in
6 accordance with generally accepted accounting
7 principles must be obligations of the
8 corporation.

9 This amendatory Act of the 91st General Assembly
10 is declaratory of existing law.

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

24 (E) For all tax years beginning on or before
25 December 31, 1996, a taxpayer that falls within the
26 definition of a "financial organization" under

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

20 (F) Finance Leases. For purposes of this
21 subsection, a finance lease shall be treated as a loan
22 or other extension of credit, rather than as a lease,
23 regardless of how the transaction is characterized for
24 any other purpose, including the purposes of any
25 regulatory agency to which the lessor is subject. A
26 finance lease is any transaction in the form of a lease

1 in which the lessee is treated as the owner of the
2 leased asset entitled to any deduction for
3 depreciation allowed under Section 167 of the Internal
4 Revenue Code.

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

8 (9.5) Fixed place of business. The term "fixed place
9 of business" has the same meaning as that term is given in
10 Section 864 of the Internal Revenue Code and the related
11 Treasury regulations.

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

16 (11) Internal Revenue Code. The term "Internal Revenue
17 Code" means the United States Internal Revenue Code of
18 1954 or any successor law or laws relating to federal
19 income taxes in effect for the taxable year.

20 (11.5) Investment partnership.

21 (A) The term "investment partnership" means any
22 entity that is treated as a partnership for federal
23 income tax purposes that meets the following
24 requirements:

25 (i) no less than 90% of the partnership's cost
26 of its total assets consists of qualifying

1 investment securities, deposits at banks or other
2 financial institutions, and office space and
3 equipment reasonably necessary to carry on its
4 activities as an investment partnership; and

5 (ii) no less than 90% of its gross income
6 consists of interest, dividends, ~~and~~ gains from
7 the sale or exchange of qualifying investment
8 securities, and the distributive share of
9 partnership income from lower-tier partnership
10 interests meeting the definition of qualifying
11 investment security under item (xiii) of
12 subparagraph (B) of this paragraph (11.5); gross
13 income does not include income from partnerships
14 that are operating at a federal taxable loss; and

15 (iii) (blank). ~~the partnership is not a dealer~~
16 ~~in qualifying investment securities.~~

17 (B) For purposes of this paragraph (11.5), the
18 term "qualifying investment securities" (other than
19 securities with respect to which the taxpayer is
20 required to apply the rules of Internal Revenue Code
21 Section 475(a)) includes all of the following:

22 (i) common stock, including preferred or debt
23 securities convertible into common stock, and
24 preferred stock;

25 (ii) bonds, debentures, and other debt
26 securities;

1 (iii) foreign and domestic currency deposits
2 secured by federal, state, or local governmental
3 agencies;

4 (iv) mortgage or asset-backed securities
5 secured by federal, state, or local governmental
6 agencies;

7 (v) repurchase agreements and loan
8 participations;

9 (vi) foreign currency exchange contracts and
10 forward and futures contracts on foreign
11 currencies;

12 (vii) stock and bond index securities and
13 futures contracts and other similar financial
14 securities and futures contracts on those
15 securities;

16 (viii) options for the purchase or sale of any
17 of the securities, currencies, contracts, or
18 financial instruments described in items (i) to
19 (vii), inclusive;

20 (ix) regulated futures contracts;

21 (x) commodities (not described in Section
22 1221(a)(1) of the Internal Revenue Code) or
23 futures, forwards, and options with respect to
24 such commodities, provided, however, that any item
25 of a physical commodity to which title is actually
26 acquired in the partnership's capacity as a dealer

1 in such commodity shall not be a qualifying
2 investment security;

3 (xi) derivatives; ~~and~~

4 (xii) a partnership interest in another
5 partnership that is an investment partnership; and

6 -
7 (xiii) a partnership interest which, in the
8 hands of the partnership, qualifies as a security
9 within the meaning of Section 2(a)(1) of the
10 federal Securities Act of 1933.

11 This amendatory Act of the 102nd General Assembly is
12 intended as a clarification of existing law and not as a
13 new enactment.

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

18 (A) arithmetic errors or incorrect computations on
19 the return or supporting schedules;

20 (B) entries on the wrong lines;

21 (C) omission of required supporting forms or
22 schedules or the omission of the information in whole
23 or in part called for thereon; and

24 (D) an attempt to claim, exclude, deduct, or
25 improperly report, in a manner directly contrary to
26 the provisions of the Act and regulations thereunder

1 any item of income, exemption, deduction, or credit.

2 (13) Nonbusiness income. The term "nonbusiness income"
3 means all income other than business income or
4 compensation.

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

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

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

19 The term "partnership" includes any entity, including
20 a limited liability company formed under the Illinois
21 Limited Liability Company Act, classified as a partnership
22 for federal income tax purposes.

23 The term "partnership" does not include a syndicate,
24 group, pool, joint venture, or other unincorporated
25 organization established for the sole purpose of playing
26 the Illinois State Lottery.

1 (17) Part-year resident. The term "part-year resident"
2 means an individual who became a resident during the
3 taxable year or ceased to be a resident during the taxable
4 year. Under Section 1501(a)(20)(A)(i) residence commences
5 with presence in this State for other than a temporary or
6 transitory purpose and ceases with absence from this State
7 for other than a temporary or transitory purpose. Under
8 Section 1501(a)(20)(A)(ii) residence commences with the
9 establishment of domicile in this State and ceases with
10 the establishment of domicile in another State.

11 (18) Person. The term "person" shall be construed to
12 mean and include an individual, a trust, estate,
13 partnership, association, firm, company, corporation,
14 limited liability company, or fiduciary. For purposes of
15 Section 1301 and 1302 of this Act, a "person" means (i) an
16 individual, (ii) a corporation, (iii) an officer, agent,
17 or employee of a corporation, (iv) a member, agent or
18 employee of a partnership, or (v) a member, manager,
19 employee, officer, director, or agent of a limited
20 liability company who in such capacity commits an offense
21 specified in Section 1301 and 1302.

22 (18A) Records. The term "records" includes all data
23 maintained by the taxpayer, whether on paper, microfilm,
24 microfiche, or any type of machine-sensible data
25 compilation.

26 (19) Regulations. The term "regulations" includes

1 rules promulgated and forms prescribed by the Department.

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

3 (A) an individual (i) who is in this State for
4 other than a temporary or transitory purpose during
5 the taxable year; or (ii) who is domiciled in this
6 State but is absent from the State for a temporary or
7 transitory purpose during the taxable year;

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

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

12 (D) An irrevocable trust, the grantor of which was
13 domiciled in this State at the time such trust became
14 irrevocable. For purpose of this subparagraph, a trust
15 shall be considered irrevocable to the extent that the
16 grantor is not treated as the owner thereof under
17 Sections 671 through 678 of the Internal Revenue Code.

18 (21) Sales. The term "sales" means all gross receipts
19 of the taxpayer not allocated under Sections 301, 302 and
20 303.

21 (22) State. The term "state" when applied to a
22 jurisdiction other than this State means any state of the
23 United States, the District of Columbia, the Commonwealth
24 of Puerto Rico, any Territory or Possession of the United
25 States, and any foreign country, or any political
26 subdivision of any of the foregoing. For purposes of the

1 foreign tax credit under Section 601, the term "state"
2 means any state of the United States, the District of
3 Columbia, the Commonwealth of Puerto Rico, and any
4 territory or possession of the United States, or any
5 political subdivision of any of the foregoing, effective
6 for tax years ending on or after December 31, 1989.

7 (23) Taxable year. The term "taxable year" means the
8 calendar year, or the fiscal year ending during such
9 calendar year, upon the basis of which the base income is
10 computed under this Act. "Taxable year" means, in the case
11 of a return made for a fractional part of a year under the
12 provisions of this Act, the period for which such return
13 is made.

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

16 (25) International banking facility. The term
17 international banking facility shall have the same meaning
18 as is set forth in the Illinois Banking Act or as is set
19 forth in the laws of the United States or regulations of
20 the Board of Governors of the Federal Reserve System.

21 (26) Income Tax Return Preparer.

22 (A) The term "income tax return preparer" means
23 any person who prepares for compensation, or who
24 employs one or more persons to prepare for
25 compensation, any return of tax imposed by this Act or
26 any claim for refund of tax imposed by this Act. The

1 preparation of a substantial portion of a return or
2 claim for refund shall be treated as the preparation
3 of that return or claim for refund.

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

6 (i) furnish typing, reproducing, or other
7 mechanical assistance;

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

11 (iii) prepare as a fiduciary returns or claims
12 for refunds for any person; or

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

22 (27) Unitary business group.

23 (A) The term "unitary business group" means a
24 group of persons related through common ownership
25 whose business activities are integrated with,
26 dependent upon and contribute to each other. The group

1 will not include those members whose business activity
2 outside the United States is 80% or more of any such
3 member's total business activity; for purposes of this
4 paragraph and clause (a)(3)(B)(ii) of Section 304,
5 business activity within the United States shall be
6 measured by means of the factors ordinarily applicable
7 under subsections (a), (b), (c), (d), or (h) of
8 Section 304 except that, in the case of members
9 ordinarily required to apportion business income by
10 means of the 3 factor formula of property, payroll and
11 sales specified in subsection (a) of Section 304,
12 including the formula as weighted in subsection (h) of
13 Section 304, such members shall not use the sales
14 factor in the computation and the results of the
15 property and payroll factor computations of subsection
16 (a) of Section 304 shall be divided by 2 (by one if
17 either the property or payroll factor has a
18 denominator of zero). The computation required by the
19 preceding sentence shall, in each case, involve the
20 division of the member's property, payroll, or revenue
21 miles in the United States, insurance premiums on
22 property or risk in the United States, or financial
23 organization business income from sources within the
24 United States, as the case may be, by the respective
25 worldwide figures for such items. Common ownership in
26 the case of corporations is the direct or indirect

1 control or ownership of more than 50% of the
2 outstanding voting stock of the persons carrying on
3 unitary business activity. Unitary business activity
4 can ordinarily be illustrated where the activities of
5 the members are: (1) in the same general line (such as
6 manufacturing, wholesaling, retailing of tangible
7 personal property, insurance, transportation or
8 finance); or (2) are steps in a vertically structured
9 enterprise or process (such as the steps involved in
10 the production of natural resources, which might
11 include exploration, mining, refining, and marketing);
12 and, in either instance, the members are functionally
13 integrated through the exercise of strong centralized
14 management (where, for example, authority over such
15 matters as purchasing, financing, tax compliance,
16 product line, personnel, marketing and capital
17 investment is not left to each member).

18 (B) In no event, for taxable years ending prior to
19 December 31, 2017, shall any unitary business group
20 include members which are ordinarily required to
21 apportion business income under different subsections
22 of Section 304 except that for tax years ending on or
23 after December 31, 1987 this prohibition shall not
24 apply to a holding company that would otherwise be a
25 member of a unitary business group with taxpayers that
26 apportion business income under any of subsections

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

1 exclusive rights with respect to the exploration for
2 or exploitation of natural resources, but does not
3 include any territory or possession of the United
4 States.

5 (C) Holding companies.

6 (i) For purposes of this subparagraph, a
7 "holding company" is a corporation (other than a
8 corporation that is a financial organization under
9 paragraph (8) of this subsection (a) of Section
10 1501 because it is a bank holding company under
11 the provisions of the Bank Holding Company Act of
12 1956 (12 U.S.C. 1841, et seq.) or because it is
13 owned by a bank or a bank holding company) that
14 owns a controlling interest in one or more other
15 taxpayers ("controlled taxpayers"); that, during
16 the period that includes the taxable year and the
17 2 immediately preceding taxable years or, if the
18 corporation was formed during the current or
19 immediately preceding taxable year, the taxable
20 years in which the corporation has been in
21 existence, derived substantially all its gross
22 income from dividends, interest, rents, royalties,
23 fees or other charges received from controlled
24 taxpayers for the provision of services, and gains
25 on the sale or other disposition of interests in
26 controlled taxpayers or in property leased or

1 licensed to controlled taxpayers or used by the
2 taxpayer in providing services to controlled
3 taxpayers; and that incurs no substantial expenses
4 other than expenses (including interest and other
5 costs of borrowing) incurred in connection with
6 the acquisition and holding of interests in
7 controlled taxpayers and in the provision of
8 services to controlled taxpayers or in the leasing
9 or licensing of property to controlled taxpayers.

10 (ii) The income of a holding company which is
11 a member of more than one unitary business group
12 shall be included in each unitary business group
13 of which it is a member on a pro rata basis, by
14 including in each unitary business group that
15 portion of the base income of the holding company
16 that bears the same proportion to the total base
17 income of the holding company as the gross
18 receipts of the unitary business group bears to
19 the combined gross receipts of all unitary
20 business groups (in both cases without regard to
21 the holding company) or on any other reasonable
22 basis, consistently applied.

23 (iii) A holding company shall apportion its
24 business income under the subsection of Section
25 304 used by the other members of its unitary
26 business group. The apportionment factors of a

1 holding company which would be a member of more
2 than one unitary business group shall be included
3 with the apportionment factors of each unitary
4 business group of which it is a member on a pro
5 rata basis using the same method used in clause
6 (ii).

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

9 (D) If including the base income and factors of a
10 holding company in more than one unitary business
11 group under subparagraph (C) does not fairly reflect
12 the degree of integration between the holding company
13 and one or more of the unitary business groups, the
14 dependence of the holding company and one or more of
15 the unitary business groups upon each other, or the
16 contributions between the holding company and one or
17 more of the unitary business groups, the holding
18 company may petition the Director, under the
19 procedures provided under Section 304(f), for
20 permission to include all base income and factors of
21 the holding company only with members of a unitary
22 business group apportioning their business income
23 under one subsection of subsections (a), (b), (c), or
24 (d) of Section 304. If the petition is granted, the
25 holding company shall be included in a unitary
26 business group only with persons apportioning their

1 business income under the selected subsection of
2 Section 304 until the Director grants a petition of
3 the holding company either to be included in more than
4 one unitary business group under subparagraph (C) or
5 to include its base income and factors only with
6 members of a unitary business group apportioning their
7 business income under a different subsection of
8 Section 304.

9 (E) If the unitary business group members'
10 accounting periods differ, the common parent's
11 accounting period or, if there is no common parent,
12 the accounting period of the member that is expected
13 to have, on a recurring basis, the greatest Illinois
14 income tax liability must be used to determine whether
15 to use the apportionment method provided in subsection
16 (a) or subsection (h) of Section 304. The prohibition
17 against membership in a unitary business group for
18 taxpayers ordinarily required to apportion income
19 under different subsections of Section 304 does not
20 apply to taxpayers required to apportion income under
21 subsection (a) and subsection (h) of Section 304. The
22 provisions of this amendatory Act of 1998 apply to tax
23 years ending on or after December 31, 1998.

24 (28) Subchapter S corporation. The term "Subchapter S
25 corporation" means a corporation for which there is in
26 effect an election under Section 1362 of the Internal

1 Revenue Code, or for which there is a federal election to
2 opt out of the provisions of the Subchapter S Revision Act
3 of 1982 and have applied instead the prior federal
4 Subchapter S rules as in effect on July 1, 1982.

5 (30) Foreign person. The term "foreign person" means
6 any person who is a nonresident alien individual and any
7 nonindividual entity, regardless of where created or
8 organized, whose business activity outside the United
9 States is 80% or more of the entity's total business
10 activity.

11 (b) Other definitions.

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

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

17 (B) Words importing the plural include the
18 singular; and

19 (C) Words importing the masculine gender include
20 the feminine as well.

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

1 words, or words of similar import, were expressed.

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

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

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