

1 AN ACT concerning taxation.

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

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

6 (35 ILCS 5/304) (from Ch. 120, par. 3-304)

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

9 (a) In general. The business income of a person other  
10 than a resident shall be allocated to this State if such  
11 person's business income is derived solely from this State.  
12 If a person other than a resident derives business income  
13 from this State and one or more other states, then, for tax  
14 years ending on or before December 30, 1998, and except as  
15 otherwise provided by this Section, such person's business  
16 income shall be apportioned to this State by multiplying the  
17 income by a fraction, the numerator of which is the sum of  
18 the property factor (if any), the payroll factor (if any) and  
19 200% of the sales factor (if any), and the denominator of  
20 which is 4 reduced by the number of factors other than the  
21 sales factor which have a denominator of zero and by an  
22 additional 2 if the sales factor has a denominator of zero.  
23 For tax years ending on or after December 31, 1998, and  
24 except as otherwise provided by this Section, persons other  
25 than residents who derive business income from this State and  
26 one or more other states shall compute their apportionment  
27 factor by weighting their property, payroll, and sales  
28 factors as provided in subsection (h) of this Section.

29 (1) Property factor.

30 (A) The property factor is a fraction, the  
31 numerator of which is the average value of the person's

1 real and tangible personal property owned or rented and  
2 used in the trade or business in this State during the  
3 taxable year and the denominator of which is the average  
4 value of all the person's real and tangible personal  
5 property owned or rented and used in the trade or  
6 business during the taxable year.

7 (B) Property owned by the person is valued at its  
8 original cost. Property rented by the person is valued at  
9 8 times the net annual rental rate. Net annual rental  
10 rate is the annual rental rate paid by the person less  
11 any annual rental rate received by the person from  
12 sub-rentals.

13 (C) The average value of property shall be  
14 determined by averaging the values at the beginning and  
15 ending of the taxable year but the Director may require  
16 the averaging of monthly values during the taxable year  
17 if reasonably required to reflect properly the average  
18 value of the person's property.

19 (2) Payroll factor.

20 (A) The payroll factor is a fraction, the numerator  
21 of which is the total amount paid in this State during  
22 the taxable year by the person for compensation, and the  
23 denominator of which is the total compensation paid  
24 everywhere during the taxable year.

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

26 (i) The individual's service is performed  
27 entirely within this State;

28 (ii) The individual's service is performed  
29 both within and without this State, but the service  
30 performed without this State is incidental to the  
31 individual's service performed within this State; or

32 (iii) Some of the service is performed within  
33 this State and either the base of operations, or if  
34 there is no base of operations, the place from which

1 the service is directed or controlled is within this  
 2 State, or the base of operations or the place from  
 3 which the service is directed or controlled is not  
 4 in any state in which some part of the service is  
 5 performed, but the individual's residence is in this  
 6 State.

7 Beginning with taxable years ending on or after  
 8 December 31, 1992, for residents of states that impose a  
 9 comparable tax liability on residents of this State, for  
 10 purposes of item (i) of this paragraph (B), in the case  
 11 of persons who perform personal services under personal  
 12 service contracts for sports performances, services by  
 13 that person at a sporting event taking place in Illinois  
 14 shall be deemed to be a performance entirely within this  
 15 State.

16 (3) Sales factor.

17 (A) The sales factor is a fraction, the numerator  
 18 of which is the total sales of the person in this State  
 19 during the taxable year, and the denominator of which is  
 20 the total sales of the person everywhere during the  
 21 taxable year.

22 (B) Sales of tangible personal property are in this  
 23 State if: (i) the property is delivered or shipped to a  
 24 purchaser, ~~other than the United States government,~~  
 25 within this State regardless of the f. o. b. point or  
 26 other conditions of the sale; ~~or (ii) The property is~~  
 27 ~~shipped from an office, store, warehouse, factory or~~  
 28 ~~other place of storage in this State and either the~~  
 29 ~~purchaser is the United States government or the person~~  
 30 ~~is not taxable in the state of the purchaser; provided,~~  
 31 ~~however, that premises owned or leased by a person who~~  
 32 ~~has independently contracted with the seller for the~~  
 33 ~~printing of newspapers, periodicals or books shall not be~~  
 34 ~~deemed to be an office, store, warehouse, factory or~~

1 ~~other-place-of-storage--for--purposes--of--this--Section.~~  
2 Sales of tangible personal property are not in this State  
3 if the seller and purchaser would be members of the same  
4 unitary business group but for the fact that either the  
5 seller or purchaser is a person with 80% or more of total  
6 business activity outside of the United States and the  
7 property is purchased for resale.

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

10 (i) Gross receipts from the licensing, sale,  
11 or other disposition of a patent, copyright,  
12 trademark, or similar item of intangible personal  
13 property are in this State to the extent the item is  
14 utilized in this State during the year the gross  
15 receipts are included in gross income.

16 (ii) Place of utilization.

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

32 (II) A copyright is utilized in a state  
33 to the extent that printing or other  
34 publication originates in the state. If a

1 copyright is utilized in more than one state,  
2 the extent to which it is utilized in any one  
3 state shall be a fraction equal to the gross  
4 receipts from sales or licenses of materials  
5 printed or published in that state divided by  
6 the total of such gross receipts for all states  
7 in which the copyright is utilized.

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

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

22 (B-2) Gross receipts from the license, sale, or  
23 other disposition of patents, copyrights, trademarks, and  
24 similar items of intangible personal property may be  
25 included in the numerator or denominator of the sales  
26 factor only if gross receipts from licenses, sales, or  
27 other disposition of such items comprise more than 50% of  
28 the taxpayer's total gross receipts included in gross  
29 income during the tax year and during each of the 2  
30 immediately preceding tax years; provided that, when a  
31 taxpayer is a member of a unitary business group, such  
32 determination shall be made on the basis of the gross  
33 receipts of the entire unitary business group.

34 (C) Sales, other than sales governed by paragraphs

1 (B) and (B-1), are in this State if:

2 (i) The income-producing activity is performed  
3 in this State; or

4 (ii) The income-producing activity is  
5 performed both within and without this State and a  
6 greater proportion of the income-producing activity  
7 is performed within this State than without this  
8 State, based on performance costs.

9 (D) For taxable years ending on or after December  
10 31, 1995, the following items of income shall not be  
11 included in the numerator or denominator of the sales  
12 factor: dividends; amounts included under Section 78 of  
13 the Internal Revenue Code; and Subpart F income as  
14 defined in Section 952 of the Internal Revenue Code. No  
15 inference shall be drawn from the enactment of this  
16 paragraph (D) in construing this Section for taxable  
17 years ending before December 31, 1995.

18 (E) Paragraphs (B-1) and (B-2) shall apply to tax  
19 years ending on or after December 31, 1999, provided that  
20 a taxpayer may elect to apply the provisions of these  
21 paragraphs to prior tax years. Such election shall be  
22 made in the form and manner prescribed by the Department,  
23 shall be irrevocable, and shall apply to all tax years;  
24 provided that, if a taxpayer's Illinois income tax  
25 liability for any tax year, as assessed under Section 903  
26 prior to January 1, 1999, was computed in a manner  
27 contrary to the provisions of paragraphs (B-1) or (B-2),  
28 no refund shall be payable to the taxpayer for that tax  
29 year to the extent such refund is the result of applying  
30 the provisions of paragraph (B-1) or (B-2) retroactively.  
31 In the case of a unitary business group, such election  
32 shall apply to all members of such group for every tax  
33 year such group is in existence, but shall not apply to  
34 any taxpayer for any period during which that taxpayer is

1 not a member of such group.

2 (b) Insurance companies.

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

18 (2) Reinsurance. If the principal source of  
19 premiums written by an insurance company consists of  
20 premiums for reinsurance accepted by it, the business  
21 income of such company shall be apportioned to this State  
22 by multiplying such income by a fraction, the numerator  
23 of which is the sum of (i) direct premiums written for  
24 insurance upon property or risk in this State, plus (ii)  
25 premiums written for reinsurance accepted in respect of  
26 property or risk in this State, and the denominator of  
27 which is the sum of (iii) direct premiums written for  
28 insurance upon property or risk everywhere, plus (iv)  
29 premiums written for reinsurance accepted in respect of  
30 property or risk everywhere. For purposes of this  
31 paragraph, premiums written for reinsurance accepted in  
32 respect of property or risk in this State, whether or not  
33 otherwise determinable, may, at the election of the  
34 company, be determined on the basis of the proportion

1 which premiums written for reinsurance accepted from  
2 companies commercially domiciled in Illinois bears to  
3 premiums written for reinsurance accepted from all  
4 sources, or, alternatively, in the proportion which the  
5 sum of the direct premiums written for insurance upon  
6 property or risk in this State by each ceding company  
7 from which reinsurance is accepted bears to the sum of  
8 the total direct premiums written by each such ceding  
9 company for the taxable year.

10 (c) Financial organizations.

11 (1) In general. Business income of a financial  
12 organization shall be apportioned to this State by  
13 multiplying such income by a fraction, the numerator of  
14 which is its business income from sources within this  
15 State, and the denominator of which is its business  
16 income from all sources. For the purposes of this  
17 subsection, the business income of a financial  
18 organization from sources within this State is the sum of  
19 the amounts referred to in subparagraphs (A) through (E)  
20 following, but excluding the adjusted income of an  
21 international banking facility as determined in paragraph  
22 (2):

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

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

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

29 (D) Interest charged to customers at places of  
30 business maintained within this State for carrying  
31 debit balances of margin accounts, without deduction  
32 of any costs incurred in carrying such accounts; and

33 (E) Any other gross income resulting from the  
34 operation as a financial organization within this



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

11 (2) International Banking Facility.

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

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

20 (i) The numerator shall be:

21 The average aggregate, determined on a  
22 quarterly basis, of the financial  
23 organization's loans to banks in foreign  
24 countries, to foreign domiciled borrowers  
25 (except where secured primarily by real estate)  
26 and to foreign governments and other foreign  
27 official institutions, as reported for its  
28 branches, agencies and offices within the state  
29 on its "Consolidated Report of Condition",  
30 Schedule A, Lines 2.c., 5.b., and 7.a., which  
31 was filed with the Federal Deposit Insurance  
32 Corporation and other regulatory authorities,  
33 for the year 1980, minus

34 The average aggregate, determined on a

1           quarterly basis, of such loans (other than  
2           loans of an international banking facility), as  
3           reported by the financial institution for its  
4           branches, agencies and offices within the  
5           state, on the corresponding Schedule and lines  
6           of the Consolidated Report of Condition for the  
7           current taxable year, provided, however, that  
8           in no case shall the amount determined in this  
9           clause (the subtrahend) exceed the amount  
10          determined in the preceding clause (the  
11          minuend); and

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

22           (C) Change to Consolidated Report of Condition  
23          and in Qualification. In the event the Consolidated  
24          Report of Condition which is filed with the Federal  
25          Deposit Insurance Corporation and other regulatory  
26          authorities is altered so that the information  
27          required for determining the floor amount is not  
28          found on Schedule A, lines 2.c., 5.b. and 7.a., the  
29          financial institution shall notify the Department  
30          and the Department may, by regulations or otherwise,  
31          prescribe or authorize the use of an alternative  
32          source for such information. The financial  
33          institution shall also notify the Department should  
34          its international banking facility fail to qualify

1 as such, in whole or in part, or should there be any  
2 amendment or change to the Consolidated Report of  
3 Condition, as originally filed, to the extent such  
4 amendment or change alters the information used in  
5 determining the floor amount.

6 (d) Transportation services. Business income derived  
7 from furnishing transportation services shall be apportioned  
8 to this State in accordance with paragraphs (1) and (2):

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

23 (A) relative railway operating income from  
24 total passenger and total freight service, as  
25 reported to the Interstate Commerce Commission, in  
26 the case of transportation by railroad, and

27 (B) relative gross receipts from passenger and  
28 freight transportation, in case of transportation  
29 other than by railroad.

30 (2) Such business income derived from  
31 transportation by pipeline shall be apportioned to this  
32 State by multiplying such income by a fraction, the  
33 numerator of which is the revenue miles of the person in  
34 this State, and the denominator of which is the revenue

1 miles of the person everywhere. For the purposes of this  
2 paragraph, a revenue mile is the transportation by  
3 pipeline of 1 barrel of oil, 1,000 cubic feet of gas, or  
4 of any specified quantity of any other substance, the  
5 distance of 1 mile for a consideration.

6 (e) Combined apportionment. Where 2 or more persons are  
7 engaged in a unitary business as described in subsection  
8 (a)(27) of Section 1501, a part of which is conducted in this  
9 State by one or more members of the group, the business  
10 income attributable to this State by any such member or  
11 members shall be apportioned by means of the combined  
12 apportionment method.

13 (f) Alternative allocation. If the allocation and  
14 apportionment provisions of subsections (a) through (e) and  
15 of subsection (h) do not fairly represent the extent of a  
16 person's business activity in this State, the person may  
17 petition for, or the Director may require, in respect of all  
18 or any part of the person's business activity, if reasonable:

- 19 (1) Separate accounting;  
20 (2) The exclusion of any one or more factors;  
21 (3) The inclusion of one or more additional factors  
22 which will fairly represent the person's business  
23 activities in this State; or

24 (4) The employment of any other method to  
25 effectuate an equitable allocation and apportionment of  
26 the person's business income.

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

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

- 33 (1) for tax years ending on or after December 31,  
34 1998 and before December 31, 1999,  $16 \frac{2}{3}\%$  of the

1 property factor plus 16 2/3% of the payroll factor plus  
2 66 2/3% of the sales factor;

3 (2) for tax years ending on or after December 31,  
4 1999 and before December 31, 2000, 8 1/3% of the property  
5 factor plus 8 1/3% of the payroll factor plus 83 1/3% of  
6 the sales factor;

7 (3) for tax years ending on or after December 31,  
8 2000, the sales factor.

9 If, in any tax year ending on or after December 31, 1998 and  
10 before December 31, 2000, the denominator of the payroll,  
11 property, or sales factor is zero, the apportionment factor  
12 computed in paragraph (1) or (2) of this subsection for that  
13 year shall be divided by an amount equal to 100% minus the  
14 percentage weight given to each factor whose denominator is  
15 equal to zero.

16 (Source: P.A. 90-562, eff. 12-16-97; 90-613, eff. 7-9-98;  
17 91-541, eff. 8-13-99.)

18 Section 99. Effective date. This Act takes effect upon  
19 becoming law.