

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Number: 100.3374 Proposed Action:
New Section
- 4) Statutory Authority: 35 ILCS 5/304(a)(3)(C-5)(iv) and 5/1401
- 5) A Complete Description of the Subjects and Issues Involved: The rulemaking provides guidance on the sourcing of gross receipts from the provision of electrical utility services for purposes of apportionment of business income under IITA Section 304(a)(3)(C-5)(iv), as adopted and amended in Public Acts 95-0233 and 95-0707.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking:
None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Number</u>	<u>Proposed Action</u>	<u>IL Register Citation</u>
100.3371	New Section	32 Ill. Reg. 16037, October 3, 2008
100.2310	Amendment	32 Ill. Reg. 16309, October 10, 2008
100.5070	Amendment	32 Ill. Reg. 16682, October 17, 2008
100.5080	Amendment	32 Ill. Reg. 16682, October 17, 2008
100.2430	Amendment	32 Ill. Reg. 16951, October 24, 2008
100.5100	Amendment	32 Ill. Reg. 17105, October 31, 2008
100.5140	Amendment	32 Ill. Reg. 17105, October 31, 2008
100.5160	Amendment	32 Ill. Reg. 17105, October 31, 2008
100.5180	New Section	32 Ill. Reg. 17105, October 31, 2008
100.7035	New Section	32 Ill. Reg. 17105, October 31, 2008
100.7120	Amendment	32 Ill. Reg. 17394, November 7, 2008

- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this rulemaking: Persons who wish to submit comments on this rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Paul Caselton
Deputy General Counsel - Income Tax

Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 524-3951

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: The rulemaking provides guidance on the sourcing of gross receipts from the provision of electrical utility services for purposes of apportionment of business income under IITA Section 304(a)(3)(C-5)(iv), as adopted and amended in Public Acts 95-0233 and 95-0707.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2008

The full text of the Proposed Amendment begins on the next page:

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section 100.3374 - Sales Factor for the Sale, Transmission and Delivery of Electricity (IITA Section 304(c)(3)(C)(iv))

- a) For taxable years ending on or after December 31, 2008, sales of services are in this State if the services are received in this State. The Department shall adopt rules prescribing where specific types of service are received, including, but not limited to, broadcast, cable, advertising, publishing, and utility service. IITA Section 304(a)(3)(C-5)(iv).
- b) Definitions. For purposes of this Section, the following terms have the following meanings:
- 1) “Ancillary electricity transactions and services” means transactions and services that are associated with or incidental to the generation, sale, transmission and delivery of electricity, including, but not limited to, any associated or incidental charges included in the “purchase price” of electricity under Section 2-3(d) of the Electricity Excise Tax Law (35 ILCS 640/2-3) and the transactions and services listed in Section 2-3(d) of the Electricity Excise Tax Law as exempt from that tax.
 - 2) “Brokerage services” means services performed in arranging the purchase or sale of electricity or transportation or distribution services by a person other than the person selling the electricity or transportation or distribution services.
 - 3) “Capacity” means the load for which a generating unit, generating station, or other electrical apparatus is rated either by the user or by the manufacturer.
 - 4) “Customer’s billing address” means the address to which the customer has directed the taxpayer to mail or send the customer’s billing invoice.

- 5) “Customer’s office” means the location from which the customer’s employee transacted the purchase of electricity or electricity financial transactions and services.
- 6) “Distribution” means the delivery of electricity over lines which operate at a voltage level typically equal to or greater than 110 volts and less than 69,000 volts to the ultimate electricity consumer.
- 7) “Electricity broker” means a person who facilitates or otherwise arranges for the purchase or sale of electricity or ancillary services to retail customers, but who generally does not sell electricity.
- 8) “Electricity consumer” means a retail purchaser of electricity who uses or consumes the electricity purchased and does not resell the electricity purchased.
- 9) “Generation” means the act or process of transforming other forms of energy into electric energy.
- 10) “Generator” means an entity whose primary business is the generation of electric energy.
- 11) “Gross receipts” are net of any credit, rebate or similar relief given to a customer under Public Act 095-0481 or any similar legislation. “Gross receipts” do not include receipts from a sale at cost of electricity procured:
 - A) through the reverse auction process, procurement plans consistent with the requirements of the Illinois Power Agency Act or subsequent procurement plans established by the Illinois Power Agency or any successor, or through any similar power procurement program in any other state, and sold to a retail electricity consumer; or
 - B) through the Illinois Power Agency procurement process or through any similar power procurement program in any other state and required to be sold back to an independent system operator as part of a process of supplying electricity to retail customers.
- 12) “Illinois Power Agency” means the agency established and defined pursuant to the provisions of Section 1-15 of the Illinois Power Agency Act (20 ILCS 3855/1-15).
- 13) “Independent system operator” means an organization that operates a control center to provide independent, open and fair access to a region’s electricity transmission system; to establish a non discriminatory governance structure; to facilitate market based wholesale electric rates; and to ensure efficient management and reliable operation of the bulk power system.
- 14) “Independent system operator load” means the amount of electricity flowing through the independent system operator or more technically, megawatts of load for firm energy delivered to load located electrically within the independent system operator. The definition of an independent system operator load may vary by independent system operator.
- 15) “Location in this State” means having a dwelling, premise or other physical location or place of business in the State of Illinois, e.g., owning or leasing real or tangible property in Illinois or having one or more employees located in Illinois.
- 16) “Power marketer” means a person that generally becomes the owner of electricity for the purpose of selling the electricity at wholesale but does not own a generation, transmission or distribution facility.

- 17) “Retail sale of electricity” means a transaction involving the sale of electricity to the electricity consumer of the electricity at issue and not a sale for resale.
- 18) “Reverse auction process” means a process approved by the Illinois Commerce Commission whereby electric public utilities procure electricity for their customers under a reverse-auction competitive bidding process managed by an independent third party pursuant to Illinois Commerce Commission Order Number 05-0159, dated January 24, 2006, or any order amending or succeeding that order.
- 19) “Transmission” means the delivery of electricity over lines that operate at a voltage level typically equal to or greater than 69,000 volts from generating facilities across interconnected high voltage lines to where it enters a distribution system.
- 20) “Wholesale sale of electricity” means all electricity sales other than retail sales of electricity.
- 21) “Ultimate delivery point” means the metered or unmetered point on a retail electricity consumer’s premises where an electric connection to serve such premises allows the consumer to receive electricity for consumption purposes.

c) Sales Factor Sourcing Rules – In calculating the sales factor:

- 1) Sourcing of Retail Sales of Electricity. Gross receipts from a retail sale of electricity are in this State if the electricity is delivered to the electricity consumer’s ultimate delivery point located in this State.
- 2) Sourcing of Wholesale Sales of Electricity:
 - A) Gross receipts from the wholesale sale of electricity, other than a sale through an independent system operator involving a customer that is not identified at the time of the transaction, are in this State if the customer’s office from which the transaction was entered into is in Illinois. If the customer’s office cannot be determined from the books and records of the taxpayer, the sale is in this State if the customer’s billing address for the sale is in this State.
 - B) Gross receipts from the wholesale sale of electricity through an independent system operator involving an unidentified customer at the time of the transaction requires that the gross receipts from such sales be sourced to Illinois based on the ratio of independent system operator load attributable to Illinois, as determined and defined by the independent system operator, to the independent system operator load attributable to all states within that particular independent system operator’s service area, as determined and defined by the independent system operator. If data to compute this ratio are not readily available from the independent system operator, this ratio may be computed using data from Form 714 Annual Electric Balancing Authority Area and Planning Area Reports filed with the Federal Energy Regulatory Commission by balancing authorities with the independent system operator. If data to compute this ratio are not readily available from the independent system operator nor from Forms 714, then this ratio may be computed using data from regulatory reports or publicly-available information acceptable to the Department. Electricity sales passing through an independent system operator where the customer is identifiable at the time of the sale are sourced to the customer as indicated in subparagraph (A).

- C) Gross receipts from a wholesale sale of electricity sold through the Illinois Reverse Auction Process, procurement plans consistent with the requirements of the Illinois Power Agency Act or subsequent procurement plans established by the Illinois Power Agency or its successor, if any, are in this State. Sales described in this subparagraph and sales through any similar power procurement program in any other state between members of a unitary business group shall not be eliminated in determining the sales factor of the group.
- 3) Gross receipts from electricity transmission services are in this State if the electricity is delivered to a customer at a point within this State. If the gross receipts are from electricity transmitted to points in more than one state such receipts are sourced in proportion to the ratio of the wire miles of the seller's transmission lines in Illinois divided by the wire mileage of the seller's transmission lines located in each state in which the electricity is delivered, as of the end of the tax year.
- 4) Gross receipts from the distribution of electricity are in this State if the electricity is delivered to the consumer's ultimate delivery point located in this State.
- 5) Gross receipts from the contracting of electricity capacity are in this State to the extent that the capacity resource or generation facility to which the contract relates is located in this State.
- 6) Gross receipts from ancillary electricity transactions and services are in this State to the extent that the gross receipts from the related electricity services are in this State.
- 7) Credits, rebates and similar relief to retail customers in Illinois excluded from "gross receipts" under paragraph (b)(11) of this Section shall reduce the Illinois numerator of the sales factor.
- 8) Gross receipts from brokerage services are in this State if, as a result of the sale, electricity is delivered to the electricity consumer's ultimate delivery point located in this State.
- 9) Any gross receipts that would be sourced under this regulation to another State in which the taxpayer is not taxable shall be excluded from the numerator and denominator of the Illinois sales factor. See Section 100.3200 for guidance on determining when a taxpayer is taxable in another state.

(Source: Added at 33 Ill. Reg. _____, effective _____)