

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: 100.3373 Proposed Action:
New Section
- 4) Statutory Authority: 35 ILCS 5/304(a)(3)(C-5)(iv)
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking provides guidance on when publishing and advertising services are received in Illinois for purposes of computing the sales factor used to determine the percentage of a nonresident's business income that is taxable by Illinois. The Department is expressly authorized to adopt rules providing guidance on this issue by IITA Section 304(a)(3)(C-5)(iv).
- 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? No
- 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) 782-7055

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected:
Small businesses engaged in multistate publishing will receive guidance on the computation of their sales factor.

- 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: January 2012

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

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section 100.3373 Sales Factor for Publishing

- a) For taxable years ending on or after December 31, 2008, sales of services (other than sales covered by IITA Section 304(a)(3)(B-1), (B-2) and (B-5)) are in this State if the services are received in this State. The Department may 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). This section provides guidance for determining where publishing services are received, and applies only to the gross receipts from publishing services of a taxpayer required to source gross receipts under IITA Section 304(a)(3)(C-5) in computing its sales factor.
- b) Definitions. For purposes of this section, the following terms have the following meanings:
 - 1) “Circulation factor” means, for each individual publication by the taxpayer of published material containing advertising, the ratio that the taxpayer's in-state circulation to purchasers and subscribers of the published material bears to its total circulation of the published material to purchasers and subscribers everywhere. If the geographic location of purchasers and subscribers of a publication is determined by the taxpayer for a business purpose (for example, in determining advertising rates), the circulation factor shall be determined for that publication using the geographic information used by the taxpayer for that purpose. Otherwise, the circulation factor shall be determined from the taxpayer's books and records or, if the books and records of the taxpayer are inadequate to allow the determination of the circulation factor of a publication or if the taxpayer so elects, the circulation factor for a publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations, Internet World Stats, or other comparable sources, provided that the source selected is consistently used from year to year for such purpose.

Example 1, Company A publishes advertising on the Internet for its customers. In order to calculate its circulation factor, Company A elects to utilize Internet World Stats. Company A determines its circulation factor by multiplying Illinois' population by the Internet penetration percentage of the United States, as reported on Internet World Stats, divided by the combined populations of the jurisdictions in which Company A does business multiplied by their respective Internet penetration percentages as reported on Internet World Stats. Company A must use this method consistently from year to year to compute its circulation factor.

- 2) "Publication" or "published material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of published material shall be made without regard to its content. Published material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any property or medium (including any electronic medium, such as, for example, the internet, but not including any broadcasting medium governed by IITA Section 304(a)(3)(B-7)).
 - 3) "Publishing" or "publishing services" means deriving business income from publishing, selling, licensing (other than licensing to another person for purposes of printing or other publication of the licensed material by that person within the meaning of IITA Section 304(a)(3)(B-1)) or distributing newspapers, magazines, periodicals, trade journals or other published material. "Publishing" or "publishing services" does not include delivery of materials published by a third party, and does not include delivery of materials published by the taxpayer when a separate charge is made for delivery. Fees for delivery services performed by a taxpayer who is not itself the publisher of the materials (such as a newspaper carrier) or which are charged separately by the publisher are sourced under Section 100.3370(c)(5), not under the provisions of this Section.
 - 4) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the published material. Neither of such terms shall mean or include a wholesaler, retailer or other distributor of published material.
- c) Sales within this State from publishing include:
- 1) Gross receipts derived from the sale of published materials in the form of tangible personal property, as provided in Sections 100.3370(c) and 100.3380(c) of this Part.
 - 2) The portion of gross receipts derived from sales of published materials in a form other than tangible personal property, from advertising and from the sale, rental or other use of the taxpayer's customer lists for a particular publication or any portion thereof attributed to this State using the taxpayer's circulation factor for that publication during the applicable tax period.
- d) For the purposes of this section, other than sales of tangible personal property under paragraph (c)(1):
- 1) Gross receipts from the performance of publishing services provided to a corporation, partnership, or trust may ~~only~~ be attributed only to a state where that corporation, partnership, or trust has a fixed place of business, as defined in Section 100.3405(b)(1). (IITA Section 304(a)(3)(C-5)(iv)) When the circulation factor is determined by a method other than the taxpayer's own books and records, this paragraph shall not apply.
 - 2) If the state where the publishing services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the services does not have a fixed place of business, the services shall be deemed to be

received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. (IITA Section 304(a)(3)(C-5)(iv)) When the circulation factor is determined by a method other than the taxpayer's own books and records, this paragraph shall not apply.

3) If the ordering office cannot be determined, the publishing services shall be deemed to be received at the office of the customer to which the services are billed. (IITA Section 304(a)(3)(C-5)(iv)) When the circulation factor is determined by a method other than the taxpayer's own books and records, this paragraph shall not apply.

4) If the taxpayer is not taxable in the state in which the publishing services are received, the sale must be excluded from both the numerator and the denominator of the sales factor. (IITA Section 304(a)(3)(C-5)(iv)) See Section 100.3200 for guidance on determining when a taxpayer is taxable in a state.

Example 2. In computing its circulation factor, Company A from Example 1 must exclude from the denominator the population (weighted by the Internet penetration percentage as reported on Internet World Stats) of any jurisdiction in which Company A is not taxable.

(Source: Added at 36 Ill. Reg. _____, effective _____)