

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3)

<u>Section Numbers:</u> 100.2050 100.2055 100.5270 100.7050 100.7070 100.7100	<u>Proposed Actions:</u> Amendment New Section Amendment Amendment Amendment Amendment
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- 4) Statutory Authority: 35 ILCS 35/10
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking adds new Section 100.2055 and amends Sections 100.2050, 100.5270, 100.7050, 100.7070 and 100.7100 of the income tax regulations to reflect changes in the IITA provisions regarding the exemption amounts and tax rates. .
- 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 Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citation</u>
100.3380	Amendment	40 Ill. Reg. 15878; December 2, 2016
100.3390	Amendment	40 Ill. Reg. 15878; December 2, 2016
100.3370	Amendment	40 Ill. Reg. 16711, December 30, 2016
100.9910	New Section	41 Ill. Reg. 2025, February 17, 2017

- 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:

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13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected:
This rulemaking provides guidance to small businesses on income tax rates and exemption amounts.
- 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 2017

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

SUBPART A: TAX IMPOSED

Section 100.2050 Net Income (IITA Section 202)

- a) A taxpayer's net income under the ~~Illinois Income Tax Act (IITA)~~ is that portion of the taxpayer's base income (determined under IITA Section 203) for the taxable year which is allocable or apportionable to Illinois under the provisions of Article 3 of the ~~IITA Act~~, less the Illinois net loss deduction allowed by IITA Section 207 and the ~~standard exemptions~~ allowed by IITA Section 204 and Section 100.2055. In computing net income, any Illinois net operating loss deduction shall be subtracted before the subtraction for the ~~standard exemptions~~. (IITA Section 202)
- b) For tax years ending on or after December 31, 1986, net income for income tax (IITA Section 201(a) and (b)) and for replacement tax (IITA Section 201(c) and (d)) are identical amounts. For prior tax years, the net income amount for replacement tax was usually a greater amount than net income for income tax. For purposes of the net loss deduction that may be subtracted from net income in ~~those such~~ prior years, the amount deductible for income tax purposes shall govern and the amount that may be deducted for replacement tax purposes in a given tax year shall be the same amount as may be deducted for income tax purposes.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 100.2055 Standard Exemption (IITA Section 204)

- a) In computing net income, there shall be allowed as an exemption the sum of the basic amounts provided under subsections (b) and (c) plus the additional exemptions allowed under subsection (d), multiplied by a fraction, the numerator of which is the amount of the taxpayer's base income allocable to this State for the taxable year and the denominator of which is the taxpayer's total base income for the taxable year. (IITA Section 204(a))
- b) Each taxpayer shall be allowed an exemption in the basic amount equal to:

- 1) in the case of an individual:
 - A) for taxable years ending prior to December 31, 1998, \$1000; (IITA Section 204(b))
 - B) for taxable years ending on or after December 31, 1998 and prior to December 31, 1999, \$1,300; (IITA Section 204(b)(1))
 - C) for taxable years ending on or after December 31, 1999 and prior to December 31, 2000, \$1,650; (IITA Section 204(b)(2))
 - D) for taxable years ending on or after December 31, 2000, and prior to December 31, 2012, \$2,000; (IITA Section 204(b)(3))
 - E) for taxable years ending on or after December 31, 2012 and prior to December 31, 2013 and for taxable years beginning on or after June 1, 2017, \$2,050; (IITA Section 204(b)(4)) and
 - F) for taxable years ending on or after December 31, 2013 and beginning prior to June 1, 2017, \$2,050 plus the cost-of-living adjustment under subsection (e). (IITA Section 204(b)(5), which is subject to sunset under IITA Section 250, effective for taxable years beginning on or after June 1, 2017, the fifth anniversary of the effective date of Public Act 97-0652.)
- 2) for taxable years ending on or after December 31, 1992, a taxpayer whose Illinois base income exceeds the basic amount and who is claimed as a dependent on another person's tax return under the Internal Revenue Code shall not be allowed any basic amount under this subsection. (IITA Section 204(b))
- 3) in the case of a corporation, \$1000 for taxable years ending prior to December 31, 2003 and \$0 for taxable years ending on or after December 31, 2003. (IITA Section 204(b))
- 4) in the case of an organization exempt from tax under IITA Section 205(a), \$0. (IITA Section 205)
- 5) in all other cases, \$1000. (IITA Section 204(b))
- c) Each individual taxpayer shall be allowed an additional exemption equal to the basic amount for each exemption in excess of one allowable to that individual taxpayer for the taxable year under 26 USC 151. (IITA Section 204(c))
- d) Each individual taxpayer is allowed:
 - 1) an additional exemption of \$1,000 for the taxpayer if he or she has attained the age of 65 before the end of the taxable year; (IITA Section 204(d)(1))
 - 2) an additional exemption of \$1,000 for the taxpayer if he or she is blind at the end of the taxable year; (IITA Section 204(d)(2))

3) an additional exemption of \$1,000 for the spouse of the taxpayer if the spouse has attained the age of 65 before the end of the taxable year plus an additional exemption of \$1,000 for the spouse of the taxpayer if the spouse is blind as of the end of the taxable year and, in either case:

A) a joint return is not made by the taxpayer and his or her spouse;

B) for the calendar year in which the taxable year of the taxpayer begins, the spouse has no gross income and is not the dependent of another taxpayer. (IITA Section 204(d)(1) and (2))

For purposes of this subsection, an individual is blind only if his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his or her visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual fields subtends an angle no greater than 20 degrees, and a spouse who dies before the end of a taxpayer's taxable year and who is blind at the time of his or her death shall be treated as blind as of the end of the taxable year. (IITA Section 204(d)(2))

e) The cost-of-living adjustment for any calendar year and for taxable years ending prior to the end of the subsequent calendar year is equal to \$2,050 times the percentage (if any) by which the Consumer Price Index for the preceding calendar year, exceeds the Consumer Price Index for the calendar year 2011. For purposes of this subsection:

1) The Consumer Price Index for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of that calendar year.

2) The term "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the United States Department of Labor or any successor agency.

3) If any cost-of-living adjustment is not a multiple of \$25, that adjustment shall be rounded to the next lowest multiple of \$25. (IITA Section 204(d-5))

f) In the case of a taxable year for a period of less than 12 months, the standard exemption allowed under this Section shall be prorated on the basis of the number of days in such year to 365. (IITA Section 401(b))

(Source: Added at 41 Ill. Reg. _____, effective _____)

SUBPART Q: COMBINED RETURNS

Section 100.5270 Computation of Combined Net Income and Tax

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

- 1) Combined net income. The designated agent will determine combined base income by treating all members of the unitary business group (including ineligible members) as if they constituted a federal consolidated group and by applying the federal regulations for determining consolidated taxable income, except that the separate return limitation year provisions and the limitations on consolidation of life and non-life companies in ~~26 CFR Treasury Reg. Section 1.1502-47~~ shall not apply. (See ~~Treasury Reg. Section 1.1502-11~~, 26 CFR 1.1502-11.) A consolidated net operating loss deduction, as defined in ~~Treasury Reg. Section 1.1502-21~~, 26 CFR 1.1502-21, shall be added back to taxable income, in whole or in part, in accordance with subsections (a)(2), (4) and (5) below. Pursuant to IITA Section 203(e)(2)(E), combined base income shall be determined as if the election provided by ~~26 USC Section 243(b)(2) of the Internal Revenue Code~~ had been in effect.

~~EXAMPLE Example~~ 1. Corporations A and B properly make an election under IITA Section 502(e), or are properly required to file a combined return under IITA Section 502(e). On a separate return basis, A's federal taxable income would be a loss of (\$500). This amount does not include an excess capital loss of \$75 pursuant to ~~26 USC Internal Revenue Code Section 1211(a)~~. B's federal taxable income is \$1,000 of which \$100 is capital gain. As a result of applying ~~26 CFR Treasury Reg. Section 1.1502-11 and 26 CFR Section 1.1502-22 (26 CFR 1.1502-22)~~, the combined federal taxable income for A and B is \$425.

- 2) Combined Illinois net loss. The combined group's current year combined taxable income may be less than zero, in which case it shall be determined by applying the provisions of ~~26 CFR Treasury Reg. 1.1502-21(f)~~ (consolidated net operating loss) to the unitary business group.

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

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

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

$$\text{Corp. A: } 500/1,300 \times (375) = 144$$

$$\text{Corp. C: } 800/1,300 \times (375) = 231$$

- 4) NOL addition modification of federal net operating loss deductions from a loss incurred in a taxable year ending on or after December 31, 1986. IITA Section 203(b)(2)(D) requires that the amount of any federal net operating loss deduction taken in arriving at taxable income for federal tax purposes, other than from a loss in a taxable year ending prior to December 31, 1986, shall be added back to taxable income in the computation of base income. See Section 100.2320(a) ~~of this Part~~.
- 5) NOL addition modification of pre December 31, 1986, federal losses. IITA Section 203(b)(2)(E) requires an addition modification subject to two limitations for taxable years in which a federal net operating loss carryforward from a taxable year ending prior to December 31, 1986, is an element of taxable income. Consequently, each member allowed to carryback or forward a portion of the group's combined net operating loss from a year in which that combined loss was used to offset a portion of the group's combined excess addition modifications must take as an addition modification in the carryback or carryover year its respective share of the NOL addition modification required by IITA Section 203(b)(2)(E). In accordance with Section 100.2240 ~~of this Part~~, the respective shares shall be determined in the same manner as the determination of the amount of NOL carryback or carryover.

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

$$\text{Corp. A: } 500/1,300 \times 100 = 38$$

$$\text{Corp. C: } 800/1,300 \times 100 = 62$$

- b) Combined base income allocable to Illinois. Combined base income allocable to Illinois is the sum of the combined business income or loss apportioned to Illinois plus the combined nonbusiness income or loss allocated to Illinois plus the combined business nonunitary partnership income or loss apportioned allocated to Illinois by partnerships in which the members are partners (other than partnerships that apportion business income under Section 100.3380(d)), less the combined net loss deduction.
 - 1) Combined business income apportionable to Illinois. In the case of a combined group required to apportion its business income using the three-factor (payroll, property and sales) formula under IITA Section 304(a) ~~of the IITA~~, the designated agent will apportion the unitary business group's combined business income by using the total Illinois payroll, property and sales of each member of the combined group and the total everywhere payroll, property and sales of each member of the unitary business group (including ineligible members). In the case of groups composed exclusively of one-factor apportionment taxpayers (financial, insurance, or transportation), the unitary business group's combined business income will be apportioned by using the combined group's total Illinois financial, insurance, or transportation factors and total everywhere factors of the unitary business group. Items of income and deduction arising from transactions between members of the unitary business groups must be eliminated whenever necessary to avoid distortion of the denominators used by the unitary business group in calculating

apportionment factors, or of the numerators used by the combined group or by ineligible members of the group in calculating apportionment factors.

A) EXAMPLE Example-1:

- i) Corporations A, B, and C constitute a unitary business group. Corporations A and B are eligible to make the election under IITA Section 502(e) for tax years ending before December 31, 1993. However, under Public Law 86-272, Corporation C is not taxable in Illinois.
- ii) Based on these facts, if the election to be treated as one taxpayer is made, the combined Illinois sales factor must be determined by dividing the combined group's total combined Illinois sales (that is, excluding any sales of Corporation C shipped to purchasers in Illinois) by the total combined sales of the unitary business group everywhere. If the same facts are applied to a tax year ending on or after December 31, 1993, the same result will occur in the mandatory combined return situation.

B) EXAMPLE Example-2:

- i) Same facts as in Example 1, except these additional facts also exist. Under Public Law 86-272, Corporations B and C are taxable in South Carolina, but corporation A is not.
- ii) Based on these facts, if the election to be treated as one taxpayer is made, or the taxpayers are required to be treated as one taxpayer, the combined Illinois sales factor must be determined by dividing the combined group's total Illinois sales (including any sales of Corporation A shipped to purchasers in South Carolina from any place of storage in Illinois, i.e., throwback sales) by the total sales of the unitary business group everywhere.

- 2) Combined nonbusiness income and business nonunitary partnership income apportioned allocable to Illinois by partnerships in which the members are partners (other than partnerships that apportion business income under Section 100.3380(d)). The designated agent shall compute the amount of combined nonbusiness income or loss allocable to Illinois by first determining the amount for each member of the combined group and then combining these amounts. Similarly, the designated agent shall compute the amount of combined business nonunitary partnership income or loss apportioned allocable to Illinois by partnerships in which the members are partners (other than partnerships that apportion business income under Section 100.3380(d)) by first determining the amount for each member and then combining these amounts.
- 3) Combined Illinois net loss deduction. The designated agent shall compute the combined Illinois net loss deduction for losses originating in tax years ending on or after December 31, 1986 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 of this Part 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 designated agent shall compute the combined exemption by multiplying the amount of the exemption allowed under IITA Section 204 and Section 100.2055 \$1,000 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 subject to the requirement, and for members of unitary groups ineligible to make the election, or not subject to the requirement, is computed by multiplying the amount of the exemption allowed under IITA Section 204 and Section 100.2055 \$1,000 by a fraction, the numerator of which is 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. The designated agent will compute any credit allowed by the IITA based on the combined activities of the members of the combined group and that such credit will 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) and 206(b) are available when certain property is purchased and placed in service by a taxpayer. The combined group shall be entitled to a combined credit, assuming the other statutory or regulatory requirements applicable to the given credit are satisfied, even if one of the members purchases the qualified property and another member uses the property in a qualified manner.
 - 3) Effective January 1, 1994, the investment credit provided in IITA Section 201(e) is allowed for a taxpayer who is *primarily engaged in manufacturing, or in mining coal or fluorite, or in retailing*. In the case of a combined group, the determination of eligibility shall be made for the combined group as a whole, rather than for any individual member. The determination of whether a combined group is primarily engaged in a qualifying activity shall be made by applying the 50% of gross receipts test in Section 100.2101(f) of this Part by taking into account the gross receipts of only the eligible members of the combined group. Gross receipts of corporations which would otherwise be members of the combined group, but which have no taxable presence in Illinois or which cannot be combined for any other reason, are not considered in this determination. In determining whether a combined group is primarily engaged in retailing, gross receipts from transactions between eligible members of the combined group shall be eliminated from both the numerator and the denominator of the computation. In determining whether a combined group is primarily engaged in manufacturing or in the mining of coal or fluorite, gross receipts from manufacturing or the mining of coal or fluorite shall include:
 - A) gross receipts from sales of products manufactured or coal or fluorite mined by one eligible member of the combined group to another eligible member of the combined group for use or consumption, and not for resale, provided, however, that the amount of those such gross receipts shall be subject to adjustment by the Department under the provisions of IITA Section 404 of the IITA; and

B) gross receipts from sales to persons outside the combined group by one eligible member of the combined group of items manufactured, or coal or fluorite mined, by another eligible member of the combined group.

4) The additional credit provided in IITA Section 201(e) and the credit provided in [IITA Section 201\(g\)](#) are based on specified increases in employment in Illinois. For purposes of determining entitlement to these credits during a combined-return year, the increase in employment shall be determined with respect to the employment of all members of the combined group in Illinois and not an individual member's employment. For purposes of determining the increase in employment in Illinois for a common taxable year, the Illinois employment of all taxpayers who are members of the combined group during that common taxable year shall be used; that is, both prior and current year Illinois employment of current members who were not members of the combined group in the prior year shall be included in the determination, while prior and current year Illinois employment of taxpayers who ceased to be members of the combined group during the current or prior year shall be excluded. The application of this subsection (d)(4) is illustrated by the following examples:

EXAMPLE Example-1. Corporations A, B and C were members of a unitary business group which elected to file a combined return for 1989. Corporation D was not a member of the ABC combined group in 1989, but becomes a member of combined group ABCD filing a combined return for 1990. During 1989, Corporations A, B and C employed a total of 150 persons in Illinois and Corporation D employed 50 people in Illinois, for a total of 200.

During 1990, Corporations A, B and C employed 100 persons in Illinois and Corporation D employed 100 persons in Illinois, again for a total of 200.

IITA Section 201(e), which provides for a Replacement Tax Investment Credit for qualified property placed in service by the taxpayer during the year, allows an additional 0.5% credit for ~~that such~~ property to a taxpayer whose Illinois employment has increased by at least 1% over its Illinois employment in the immediately preceding year. Combined group ABCD cannot qualify for the additional 0.5% credit during 1990 because the combined Illinois employment of Corporations A, B, C and D remained unchanged between 1989 and 1990. Because eligibility is determined at the combined group level, no additional credit can be allowed for qualified property placed in service by Corporation D in 1990, even though Corporation D's Illinois employment doubled between 1989 and 1990.

EXAMPLE Example-2. Corporations P, Q, R and S filed a combined Illinois return for calendar year 1990. On January 1, 1991, Corporation S was sold to an unrelated purchaser. Corporations P, Q and R filed a combined Illinois return for calendar year 1991.

Combined group PQRS employed 400 people in Illinois during 1990, 100 of whom were actually employees of Corporation P and 100 of whom were actually employees of Corporation S. Combined group PQR employed 350 people in Illinois during 1991, 50 of whom were actually employees of Corporation P.

Combined group PQR can qualify for the additional 0.5% Replacement Tax Investment Credit allowed under IITA Section 201(e) for qualified property

placed in service during 1990 because the Illinois employment of the three members of the combined group increased from 300 in 1989 to 400 in 1990. Because the eligibility is determined at the combined group level, property placed in service by Corporation P during 1990 may qualify for the additional 0.5% credit even though Corporation P's Illinois employment actually decreased.

EXAMPLE ~~Example~~ 3. Prior to its 2013 repeal by Public Act 98-109, IITA Section 201(g) allowed ~~allows~~ a Jobs Tax Credit equal to \$500 per eligible employee hired to work in an enterprise zone during a taxable year. The taxpayer must hire 5 or more eligible employees during the taxable year in order to qualify for the credit. The credit is taken in the taxable year following the year the employee is hired. Corporations W, X, Y and Z filed a combined Illinois return for calendar year 1990. Corporation Z was sold to an unrelated purchaser on December 31, 1990. Corporations W, X and Y filed a combined return for 1991.

During 1990, WXYZ hired 5 eligible employees to work in an enterprise zone, 3 of whom were actually hired by Corporation Z. Combined group WXY may claim a Jobs Tax Credit of \$2,500 for 1991 because it hired 5 eligible employees during 1990. The fact that Corporation Z, which hired 3 of the employees, left the combined group at the beginning of 1991 does not alter the fact that the combined group earned the Jobs Tax Credit nor entitle Corporation Z to any portion of the credit for its separate company return for 1991.

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

	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
	<u>150,000</u>	<u>200,000</u>	<u>250,000</u>	<u>300,000</u>

- A) **EXAMPLE ~~Example~~ 1.** A, B, and C filed combined returns for the years ending December 31, 1990, December 31, 1991, December 31, 1992 and December 31, 1993. The proper amount of the Research and Development Credit for the year ending December 31, 1993 is determined based upon the combined activities on the combined return and is calculated as follows:

Total qualified expenditures for 1993..... 300,000

Average qualified expenditures for 1990-92..... 200,000

Excess of 1993 expenditures over base period..... 100,000

Research and development credit for 1993..... 6,500

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

Total qualified expenditures for 1993..... 300,000

Average qualified expenditures for 1990-92..... 200,000

Excess of 1993 expenditures over base period..... 100,000

Research & Development Credit for 1993..... 6,500

- C) EXAMPLE Example-3. A, B and C filed combined returns for the years ending December 31, 1990, December 31, 1991 and December 31, 1992. On January 1, 1993, A sold the common stock of C to P (an unrelated corporation). For the year ending December 31, 1993, C was included in the combined return filed by P. In determining the proper amount of the Research and Development Credit for the combined return filed by A and B for the year ending December 31, 1993, the expenses for qualified research activities in Illinois incurred by C of \$75,000, \$125,000 and \$100,000 for the years ending December 31, 1990, December 31, 1991 and December 31, 1992, respectively, may not be included in the calculation of the average qualified expenditures for the base period for A and B for the year ending December 31, 1993. The credit for the combined return for A and B for the year ending December 31, 1993 would be calculated as follows:

Total qualified expenditures for 1993..... 200,000

Average qualified expenditures for 1990-92..... 100,000

Excess of 1993 expenditures over base period..... 100,000

Research & Development Credit for 1993..... 6,500

- 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) and 206(b), where 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 such 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 is the credit attributable to the qualified property of ~~that such~~ former member for the combined unused credit year, and the denominator of which is the qualified property of the combined group for ~~the such~~ unused credit year.

EXAMPLE ~~Example~~-1. 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 that year which 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 which 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 of the placed-in-service date, the members of the combined group are responsible for the recapture of any personal property replacement tax or income tax.

EXAMPLE ~~Example~~-2. Same facts as in the Example 1 in subsection (d)(6) ~~above~~—except in 1987 Corporation A transferred its eligible property (originally purchased for \$200,000, in 1985) to Corporation B. Corporation B was acquired by Corporation C in 1987 and, immediately afterward, B sold all the eligible property (originally purchased for a total of \$300,000) to an unrelated third party. B and C file a combined return for that year and they must increase their tax liability by \$1,000 due to the credit that was allowed on the combined return filed by A and B in 1985.

- e) Ineligible members. If a unitary business group contains one or more ~~an~~ ineligible members (~~e.g., a partnership that is not required to apply the apportionment method prescribed in Section 100.3380(d), a subchapter i.e., an~~ S Corporation or, for years ending prior to December 31, 1987, a corporation with a different taxable year), the ineligible members shall file ~~a~~ separate unitary returns. In the separate unitary return, the apportionment percentage of any ~~that such~~ ineligible member shall be determined by dividing the Illinois factor or factors of that member by the combined everywhere factor or factors of all members of the unitary business group. The apportionment percentage shall then be multiplied by the combined business income of the unitary business group to determine the business income of ~~that such~~ ineligible member apportionable to Illinois. The taxable income of the members ~~that joined in the election~~ shall be their combined taxable income as determined under subsection (a)(1) of this Section. If a corporation is ineligible because it has a different taxable year, it shall use either method of accounting available to part-year members and set forth in subsection (f)(2) of this Section. If two or more corporations are ineligible because they have an accounting period that is different

from other members making the election, they may elect to file their own combined return if they have the same taxable year. The foregoing rule also applies in the case of erroneous inclusion of a member in a group otherwise required to file a combined return.

f) Part-year members

- 1) General rule. If a corporation becomes a member of a unitary business group after the beginning of the combined return year or ceases to be a member of the unitary business group during the combined return year, two tax returns will be affected for that taxable year. The combined return shall include the separate company items of ~~that such~~ corporation for the part of the year it was a member of the unitary business group. Separate company items of a part-year member for any portion of its taxable year prior to the date it joins or after the date it leaves the unitary business group shall either be reported in a short-year separate return filed by ~~that such~~ part-year member (if it is subject to Illinois income tax during that period) or included in any combined return filed on behalf of a unitary business group to which ~~that such~~ part-year member belongs during that portion of the year.
- 2) Accounting. The part-year member shall use either Method 1 or Method 2 (described in Section 100.5265(b) ~~of this Part~~) to determine its separate company items for the portion of the year before it becomes a member and the portion of the year after it becomes a member of the combined group.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART S: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section 100.7050 Computation of Amount Withheld (IITA Section 702)

- a) Amount withheld. Every employer required to deduct and withhold a tax on compensation paid in Illinois to an individual shall deduct and withhold for each payroll period an amount equal to the tax rate in effect for the date the compensation is paid times 3% (.03) of the amount by which ~~that such~~ individual's compensation exceeds the proportionate part of his withholding exemption attributable to the payroll period for which ~~that such~~ compensation is payable. "Payroll period" for Illinois withholding purposes shall have the same definition as in 26 USC 3401 and shall include "miscellaneous payroll period" as that term is defined and used in that section and the regulations thereunder.
- b) Methods of computations
 - 1) General rules. Employers required to withhold Illinois income tax on compensation paid in this State shall compute the amount of tax to be withheld for each payroll period pursuant to the methods and rules provided for withholding on ~~that such~~ compensation under the Internal Revenue Code.
 - 2) Direct percentage computations
 - A) An employer may elect a direct percentage computation to determine the amount of withholding utilizing the following allowances per claimed exemption (see Section 100.7150 ~~of this Part~~) for the appropriate payroll period. A tax rate in effect for the date the compensation is paid of 3% (.03)

is to be used in the determination of the amount of tax to be withheld. For compensation paid in years prior to 1998, the exemption is:

Weekly	\$ 19.23
Bi-Weekly	38.46
Semi-monthly	41.67
Monthly	83.33
Quarterly	250.00
Semi-annually	500.00
Annually	1,000.00
Daily or Miscellaneous	2.74

For years after 1997, the basic amount of the exemption is changed from \$1,000. For those years, the amount of an exemption allocable to a period of less than a year should be taken from the applicable version of Booklet IL-700-T, Illinois ~~Employer's Withholding Tax Guide and~~ Withholding ~~Tax~~ Tables, available from the Department. If the Booklet IL-700-T is not available, these amounts can be computed by multiplying the above amounts by a fraction equal to the ~~basic~~ amount of exemption allowed for the year divided by \$1,000.

- B) The steps in computing the amount to be withheld under the percentage method of withholding are as follows:
- i) Step 1: Determine the amount of one withholding exemption for the particular payroll period from the preceding table;
 - ii) Step 2: Multiply the amount determined in Step 1 by the number of exemptions claimed by the employee;
 - iii) Step 3: Subtract the amount determined in Step 2 from the employee's compensation;
 - iv) Step 4: Multiply the difference determined in Step 3 by the tax rate in effect for the date the compensation is paid ~~3% (.03)~~. The result is the amount of tax to be withheld for the particular payroll period.
- C) If an employee has claimed no withholding exemptions, either by filing a withholding exemption certificate claiming zero exemptions or by not filing a withholding exemption certificate, the amount to be withheld is tax rate in effect for the date the compensation is paid times 3% (.03) ~~of the compensation payable for each payroll period.~~
- 3) Tables. An employer may elect to use the withholding tables set out in the Booklet IL-700-T, Illinois ~~Employer's Withholding Tax Guide and~~ Withholding ~~Tax~~ Tables, available from the Department.
- 4) Other methods
- A) An employer may use any other method for computing the amount of tax to be deducted and withheld for each payroll period that which is permitted for withholding for federal income tax purposes.

- B) If ~~the any such other~~ method for the computation of the amount of tax to be deducted and withheld for federal income tax purposes required prior approval of the Commissioner of Internal Revenue, then the Department shall be notified of ~~that such~~ federal approval by the submission of a copy of the employer's request and the Commissioner's approval.
- c) Supplemental wage payments. An employee's compensation may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period or without regard to a particular period. When ~~such~~ supplemental wages are paid, the amount of tax required to be withheld shall be determined in accordance with the same methods provided for withholding on ~~those such~~ wages under the Internal Revenue Code and the regulations thereunder. However, an employer may elect to compute the amount of tax to be withheld using the tax rate in effect for the date the compensation is paid ~~a flat rate of 3% (.03)~~.
- d) Vacation pay. ~~An amount Amount~~ of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for ~~that such~~ period, the allowance shall be treated as a supplemental wage payments.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 100.7070 Voluntary Withholding (IITA Section 701)

Any individual receiving periodic payments may enter into an agreement with the payor to provide for withholding of Illinois income tax on ~~those such~~ payments. An agreement under this section between the payor and the individual shall be in writing and shall be governed by the provisions of Section 100.7060(b) ~~of this Part~~. The amount of tax to be deducted and withheld from each payment shall be equal to an amount mutually agreed upon in the written agreement or computed using the tax rate in effect for the date the compensation is paid ~~3% (.03)~~ and shall be considered as a tax withheld from compensation for the purposes of Article 6 and Article 7 of the ~~Illinois Income Tax~~ Act. A payor who has entered into an agreement under this section shall be considered an employer required to deduct and withhold tax for the purposes of Article 7 ~~of the Act~~ and IITA Section 1002 and shall accordingly be required to register as a withholding agent and file the reports and returns required of all employers withholding tax.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART T: AMOUNT EXEMPT FROM WITHHOLDING

Section 100.7100 Withholding Exemption (IITA Section 702)

- a) General rules. An employee is entitled to a withholding exemption equal to the basic amount under IITA Section 204 and Section 100.2055 multiplied by the number of withholding exemptions to which he or she is entitled for federal income tax withholding purposes plus additional exemptions in the amounts allowed under IITA Section 204 and Section 100.2055 ~~of \$1,000 if the taxpayer or the taxpayer's spouse is age 65 or older or is blind~~. Since the Act does not provide for itemized deductions for individuals in the computation of net income, no additional withholding allowances based on ~~those such~~ deductions (as provided under 26 USC 3402(m) are permitted). ~~The basic amount is~~

~~\$1,000 for years prior to 1998; \$1,300 for 1998; \$1,650 for 1999; and \$2,000 for subsequent years.~~

- b) Married employees. A married employee may not claim a withholding exemption for any dependent (as defined in 26 USC 152) unless, if he or she filed a separate federal income tax return, he or she could claim that dependent on that such separate return. He or she may claim any withholding exemption to which his or her spouse may be entitled (except for dependents) for federal withholding purposes if the spouse has not claimed that such exemption on an Illinois withholding exemption certificate. However, a married employee is not entitled to claim any withholding exemption in respect of a spouse unless they expect to file a joint Illinois income tax return.
- c) Examples. Section 100.7100(a) and (b) ~~of this Part~~ may be illustrated by the following examples:
- 1) ~~EXAMPLE Example-1~~: A and B are married and intend to file separate federal returns. A and B are residents of Illinois. A, is employed and works for a company in State X. None of the compensation received from his employer is subject to Illinois withholding (see Section 100.7010 ~~of this Part~~). B works in Illinois and her salary is subject to Illinois withholding. For federal withholding purposes, A claims no exemption and B claims two exemptions, one for herself and one for her spouse, who has not claimed a withholding exemption for himself on a federal withholding exemption certificate filed with his employer. Under IITA Section 502(c), A and B must file a return in Illinois on a separate basis. B may claim only one withholding exemption for Illinois withholding purposes (i.e., her own exemption) even though she is entitled to claim two exemptions for federal withholding purposes.
 - 2) ~~EXAMPLE Example-2~~: Assume the same facts as Example 1, except that A and B have both attained the age of 65. Accordingly, B claims four withholding exemptions for federal purposes. However, for Illinois withholding purposes B may claim only her own two exemptions; one exemption equal to the basic amount for herself and one additional \$1,000 exemption for having attained the age of 65.
 - 3) ~~EXAMPLE Example-3~~: Assume the same facts as Example 1, except that A and not B claims the two exemptions on a federal withholding exemption certificate. B is entitled to claim one withholding exemption (her own) for Illinois withholding purposes. However, if A and B expect to file a joint federal return and accordingly a joint Illinois return, B may claim two withholding exemptions for Illinois withholding purposes.
 - 4) ~~EXAMPLE Example-4~~: Assume the same facts as Example 1, except that A has two dependents who qualify as his dependents under 26 USC 152. Only A may claim these dependents as withholding exemptions for both federal and Illinois purposes.

(Source: Amended at 41 Ill. Reg. _____, effective _____)