

**Illinois Department of Revenue  
Regulations**

**Title 86 Part 100 Section 100.3350 Property Factor (IITA Section 304)**

**TITLE 86: REVENUE**

**PART 100  
INCOME TAX**

**Section 100.3350 Property Factor (IITA Section 304)**

- a) In general. The property factor of the apportionment formula for each trade or business of a person shall include all real and tangible personal property owned or rented by such person and used during the tax period in the regular course of such trade or business. The term "real and tangible personal property" includes land, building, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency. Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of a person's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the person's trade or business. The method of determining that portion of the value to be included in the factor will depend on the facts of each case. The property factor shall include the average value of property includable in the factor. See subsection (g), below.
  
- b) Property used for the production of business income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the person. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period (except inventorable goods in process), shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the person. If the property is partially used in the regular course of the trade or business of the person while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the person shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time (normally five years) during which the property is held for sale.
  - 1) Example 1: Corporation A closed its manufacturing plant in State X and held such property for sale. The property remained vacant until its sale one year later. The value of the manufacturing plant is included in the property factor until the plant is sold.

- 2) Example 2: Same as above except that the property was rented until the plant was sold. The plant is included in the property factor until the plant is sold.
  - 3) Example 3: Corporation A operates a chain of retail grocery stores. The corporation closed Store A, which was then remodeled into three small retail stores, such as a dress shop, dry cleaning, and barber shop, which were leased to unrelated parties. The property is removed from the property factor on the date the remodeling of Store A commenced.
- c) Consistency in reporting. In filing returns with this State, if a person departs from or modifies the manner of valuing property, or of excluding or including property in the property factor used in returns for prior years, the person shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the person with all states to which the person reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the person shall disclose in its return to this State the nature and extent of the variance.
- d) Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the person and used in this State during the tax period in the regular course of the trade or business of the person. Property in transit between locations of the person to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a person in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this State during the tax period, shall be determined for purposes of the numerator of the factor on the basis of total time within the State during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.
- e) Valuation of owned property. Property owned by the person shall be valued at its original cost. As a general rule "original cost" is the basis of property for federal income tax purposes at the time of acquisition and will not reflect any federal adjustments thereafter for deductions for depreciation, depletion, amortization and the like.
- 1) In addition, however, the valuation will include the original cost, at acquisition, of any capital improvement as well as partial dispositions of any portion by reason of sale, exchange, abandonment, etc.
  - 2) However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes. Intangible drilling and development costs include such elements as wages, fuel, repairs, hauling draining, roadbuilding, surveying, geological works, construction of derricks, tanks, pipelines, and other physical

structures necessary for the drilling of wells and their preparation for the production of oil and gas, and supplies incident to and necessary for the drilling of wells and clearing of ground.

- 3) Example 1: Corporation W acquired a factory building in this State at a cost of \$500,000 and 18 months later expended \$100,000 for major remodeling of the building. The corporation files its return for the current taxable year on the calendar-year basis. Depreciation deduction in the amount of \$22,000 was claimed on the building for its return for the current taxable year. The value of the building includable in the numerator and denominator of the property factor is \$600,000 as the depreciation deduction is not taken into account in determining the value of the building for purposes of the factor.
  - 4) Example 2: During the current taxable year, X Corporation merges into Y Corporation in a tax-free reorganization under the Internal Revenue Code. At the time of the merger, X Corporation owns a factory which X built five years earlier at a cost of \$1,000,000. X has been depreciating the factory at the rate of two percent per year, and its basis in X's hands at the time of the merger is \$900,000. Since the property is acquired by Y in a transaction in which, under the Internal Revenue Code, its basis in Y's hands is the same as its basis in X's, Y includes the property in Y's property factor at X's original cost, without adjustment for depreciation, i.e., \$1,000,000.
  - 5) Example 3: Corporation Y acquires the assets of Corporation X in a liquidation by which Y is entitled to use its stock cost as the basis of the X assets under 26 USC Section 334(b)(2) (i.e. stock possessing 80 percent control is purchased and liquidated within two years). Under these circumstances, Y's cost of the assets is the purchase price of the X stock, prorated over the X assets.
    - A) If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the person.
    - B) Inventory or stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.
    - C) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.
- f) Valuation of rented property
- 1) Property rented by the person is valued at eight times the net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the person for such property, less the aggregate annual subrental rates paid by subtenants of the person. (See Section 100.3380(a) for special rules where the use of such net annual rental rate produces a negative or clearly inaccurate value or where property is used by the person at no charge or rented at a nominal rental rate.) Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is

used in the regular course of a trade or business of the person when it is producing such income. Accordingly there is no reduction in its value.

- A) Example A: Corporation A receives subrents from a bakery concession in a food market operated by it. Since the subrents are business income they are not deducted from the rent paid by Corporation A for the food market.
  - B) Example B: Corporation B rents a 5-story office building primarily for use in its multistate business, uses three floors for its offices and subleases two floors to various other businesses and persons such as professional people, shops and the like. The rental of the two floors is attendant to the operation of the corporation's trade or business. Since the subrents are business income they are not deducted from the rent paid by the corporation.
  - C) Example C: Corporation C rents a 20-story office building and uses the lower two stories for its general corporation headquarters. The remaining 18 floors are subleased to others. The rental of the eighteen floors is not attendant to but rather is separate from the operation of the corporation's trade or business. Since the subrents are nonbusiness income they are to be deducted from the rent paid by the corporation.
- 2) "Annual rental rate" is the amount paid as rental for property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a corporation has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.
- A) Example A: Corporation A which ordinarily files its returns based on a calendar year is merged into Corporation B on April 30. The net rent paid under a lease with 5 years remaining is \$2,500 a month. The rent for the tax period January 1 to April 30 is \$10,000. After the rent is annualized the net rent is \$30,000 ( $\$2,500 \times 12$ ).
  - B) Example B: Same facts as in Example A except that the lease would have terminated August 31. In this case the annualized net rent is \$20,000 ( $2,500 \times 8$ ).
- 3) "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the person or for its benefit for the use of the property and includes:

A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.  
Example: A corporation pursuant to the terms of a lease, pays a lessor \$1,000 per month as a base rental and at the end of the year pays the lessor one percent of its gross sales of \$400,000. The annual rent is \$16,000 (\$12,000 plus one percent of \$400,000 or \$4,000).

B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

i) Example i: A corporation, pursuant to the terms of a lease, pays the lessor \$12,000 a year rent plus taxes in the amount of \$2,000 and interest on a mortgage in the amount of \$1,000. The annual rent is \$15,000.

ii) Example ii: A corporation stores part of its inventory in a public warehouse. The total charge for the year was \$1,000 of which \$700 was for the use of storage space and \$300 for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is \$700.

C) "Annual rent" includes royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty, rental or otherwise. "Annual rent" does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

4) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the person regardless of whether the person is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

g) Averaging property values

1) As a general rule the average value of property owned by the person shall be determined by averaging the values at the beginning and ending of the tax period. However, the Director may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the person's property for the tax period. Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist

during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

2) Example: The monthly value of the person's property was as follows:

January	\$2,000	July	\$15,000
February	2,000	August	17,000
March	3,000	September	23,000
April	3,500	October	25,000
May	4,500	November	13,000
June	10,000	December	2,000
		TOTAL	\$120,000

A) The average value of the person's property includable in the property factor for the taxable year is determined as follows:

$\$120,000$  divided by 12 =  $\$10,000$

B) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in subsection (e) above.

(Source: Amended at 26 Ill. Reg. 13237, effective August 23, 2002)