

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.3370 Sales Factor (IITA Section 304)

TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.3370 Sales Factor (IITA Section 304)

- a) In general.
 - 1) IITA Section 1501 (a)(22) defines the term "sales" to mean all gross receipts of the person not allocated under IITA Sections 301, 302 and 303. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the person, the term "sales" means all gross receipts derived by the person from transactions and activity in the regular course of such trade or business. The following are rules for determining "sales" in various situations:
 - A) In the case of a person engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the person if on hand at the close of the tax period) held by the person primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges attendant to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.
 - B) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.
 - C) In the case of a person engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.
 - D) In the case of a person engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing of the use of the property.

- E) In the case of a person engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.
 - F) If a person derives receipts from the sale of equipment used in its business, such receipts constitute "sales". For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.
- 2) The following gross receipts are not included in the sales factor:
- A) For taxable years ending on or after December 31, 1995, *dividends; amounts included under Section 78 of the Internal Revenue Code; and Subpart F income* are excluded from the sales factor under IITA Section 304(a)(3)(D).
 - B) Gross receipts that are excluded from or deducted in the computation of federal taxable income or federal adjusted gross income, and that are not added back in the computation of base income. For example, in years ending prior to December 31, 1995, dividends received from a domestic corporation are excluded from the sales factor to the extent the taxpayer is allowed a deduction under Section 243 of the Internal Revenue Code with respect to such dividends.
 - C) Gross receipts that are subtracted from federal taxable income or federal adjusted gross income in the computation of base income or that are eliminated in the computation of taxable income in the case of a unitary business group under Section 100.5270(b)(1) of this Part. Examples of gross receipts excluded from the sales factor under this provision include:
 - i) Interest on federal obligations subtracted under IITA Section 203(a)(2)(N), (b)(2)(J), (c)(2)(K) or (d)(2)(G).
 - ii) For taxable years ending prior to December 31, 1995, dividends included in federal taxable income or federal adjusted gross income are excluded from the sales factor if eliminated in combination or to the extent subtracted under IITA Section 203(a)(2)(J), (a)(2)(K), (b)(2)(K), (b)(2)(L), (b)(2)(O), (c)(2)(M), (c)(2)(O), (d)(2)(K) or (d)(2)(M).
 - D) Gross receipts that are excluded from or deducted in the computation of federal taxable income or federal adjusted gross income, but are added back in the computation of base income, are included in the sales factor unless subtracted or eliminated in combination. For example:
 - i) Interest on state obligations excluded from income under Section 103 of the Internal Revenue Code and added back in the computation of base income under IITA Section 203(a)(2)(A), (b)(2)(A), (c)(2)(A) or (d)(2)(A) is included in the sales factor except

in the case of interest on certain Illinois obligations that is exempt from Illinois Income Tax. See 86 Ill. Adm. Code 100.2470(f).

- ii) Gross receipts from intercompany transactions between two corporate members of a federal consolidated group, the taxable income on which is deferred under Treas. Reg. Section 1.1502-13, will be included in the sales factor of the recipient unless subtracted under a provision of IITA Section 203 or eliminated in combination of the two corporations as members of a unitary business group.
- E) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this State the income of the person's trade or business. See 86 Ill. Adm. Code 100.3380(b).
- 3) In filing returns with this State, if the person departs from or modifies the basis for excluding or including gross receipts in the sales 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 inclusion or exclusion of gross receipts, the person shall disclose in its return to this State the nature and extent of the variance.
- b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the person from transactions and activity in the regular course of its trade or business, except receipts excluded under 86 Ill. Adm. Code 100.3380(b).
- c) Numerator. The numerator of the sales factor shall include the gross receipts attributable to this State and derived by the person from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.
- 1) Sales of tangible personal property in this State
- A) Gross receipts from the sales of tangible personal property (except sales to the United States Government) (see 86 Ill. Adm. Code 100.3370(c)(2)) are in this State:
 - i) if the property is delivered or shipped to a purchaser within this State regardless of the f.o.b. point or other conditions of sale; or
 - ii) if the property is shipped from an office, store, warehouse, factory or other place of storage in this State and the taxpayer is not taxable in the state of the purchaser. However, premises owned or leased by a person who has independently contracted with the taxpayer for the printing of newspapers, periodicals or books shall

not be deemed to be an office, store, warehouse, factory or other place of storage.

- B) Property shall be deemed to be delivered or shipped to a purchaser within this State if the recipient is located in this State, even though the property is ordered from outside this State.

Example: A corporation, with inventory in State A, sold \$100,000 of its products to a purchaser having branch stores in several states including this State. The order for the purchase was placed by the purchaser's central purchasing department located in State B. \$25,000 of the purchase order was shipped directly to purchaser's branch store in this State. The branch store in this State is the "purchaser within this State" with respect to \$25,000 of the corporation's sales.

- C) Property is delivered or shipped to a purchaser within this State if the shipment terminates in this State, even though the property is subsequently transferred by the purchaser to another state.

Example: A corporation makes a sale to a purchaser who maintains a central warehouse in this State at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the corporation's products shipped to the purchaser's warehouse in this State is property "delivered or shipped to a purchaser within this State".

- D) The term "purchaser within this State" shall include the ultimate recipient of the property if the person in this State, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this State.

Example: A corporation in this State sold merchandise to a purchaser in State A. The corporation directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this State pursuant to purchaser's instructions. The sale by the corporation is "in this State".

- E) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this State, the sales are in this State.

Example: Corporation X, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in this State in which state Corporation X is subject to tax. The sale by the corporation is attributed to this State.

- F) If the person is not taxable in the state of the purchaser, the sale is attributed to this State if the property is shipped from an office, store,

warehouse, factory, or other place of storage in this State (subject to the exception noted in (c)(1)(A)(ii) above).

Example: A corporation has its head office and factory in State A. It maintains a branch office and inventory in this State. The corporation's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in this State for approval and are filled by shipment from the inventory in this State. Since the corporation is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to this State, the state from which the merchandise was shipped.

- 2) Sales of tangible personal property to the United States Government in this State. Gross receipts from the sales of tangible personal property to the United States Government are in this State if the property is shipped from an office, store, warehouse, factory, or other place of storage in this State. For the purposes of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of the contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.
 - A) Example A: A corporation contracts with General Services Administration to deliver X number of trucks which were paid for by the United States Government. The sale is a sale to the United States Government.
 - B) Example B: A corporation as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a component of a rocket for \$1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.
- 3) Sales other than sales of tangible personal property in this State. The sales factor includes gross receipts from transactions other than sales of tangible personal property (including transactions with the United States Government); gross receipts are attributed to this State if the income producing activity which gave rise to the receipts is performed wholly within this State. Also, gross receipts are attributed to this State if, with respect to a particular item of income, the income producing activity is performed in this State, based on costs of performance.
 - A) Income producing activity defined. The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the person in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a person, such as those conducted on its behalf by an independent contractor. The mere holding of intangible personal property is not, of itself, an income producing activity. Accordingly, the income producing activity includes but is not limited to the following:

- i) The rendering of personal services by employees or the utilization of tangible and intangible property by the person in performing a service.
 - ii) The sale, rental, leasing, licensing or other use of real property.
 - iii) The rental, leasing, licensing or other use of tangible personal property.
 - iv) The sale, licensing or other use of intangible personal property.
- B) Costs of performance defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the person.
- C) Application. Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this State if:
 - i) the income producing activity is performed wholly within this State;
or
 - ii) the income producing activity is performed both in and outside this State and a greater proportion of the income producing activity is performed in this State than without this State, based on costs of performance.
- D) Special Rules. The following are special rules for determining when receipts from the income producing activities described below are in this State.
 - i) Gross receipts from the sale, lease, rental or licensing of real property are in this State if the real property is located in this State.
 - ii) Gross receipts from the rental, lease, or licensing of tangible personal property are in this State if the property is located in this State. The principal cost of performance in a rental, leasing or licensing transaction is the depreciation or amortization of the tangible personal property, and the depreciation or amortization expense is incurred in the state in which the tangible personal property is located. The rental, lease, licensing or other use of tangible personal property in this State is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this State during the rental, lease or licensing period, gross receipts attributable to this State shall be measured by the ratio which the time the property was physically

present or was used in this State bears to the total time or use of the property everywhere during such period.

Example: Corporation X is the owner of 10 railroad cars. During the year, the total of the days each railroad car was present in this State was 50 days. The receipts attributable to the use of each of the railroad cars in this State are a separate item of income. Total receipts attributable to this State shall be determined as follows:

$$(10 \times 50)/3650 \times \text{Total Receipts}$$

- iii) Gross receipts for the performance of personal services are attributable to this State to the extent such services are performed partly within and partly without this State, the gross receipts for the performance of such services shall be attributable to this State only if a greater portion of the services were performed in this State, based on costs of performance. Where services are performed partly within and partly without this State and the services performed in each state constitute a separate income producing activity, the gross receipts for the performance of services attributable to this State shall be measured by the ratio which the time spent in performing such services in this State bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

Example: Corporation X, a road show, gave theatrical performances at various locations in State X and in this State during the tax period. All gross receipts from performances given in this State are attributed to this State.

Example: A public opinion survey corporation conducted a poll by its employees in State X and in this State for the sum of \$9,000. The project required 600 man hours to obtain the basic data and prepare the survey report. Two hundred of the 600 man hours were expended in this State. The receipts attributable to this State are \$3,000, calculated as follows:

$$200/600 \times \$9,000$$

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