

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.3405 Apportionment of Business Income of Financial Organizations for Taxable Years Ending on or after December 31, 2008 (IITA Section 304(c))
--

TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.3405 Apportionment of Business Income of Financial Organizations for Taxable Years Ending on or after December 31, 2008 (IITA Section 304(c))

- a) In General. For taxable years ending on or after December 31, 2008, *the business income of a financial organization shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is its gross receipts from sources in this State or otherwise attributable to this State's marketplace and the denominator of which is its gross receipts everywhere during the taxable year.* (IITA Section 304(c)(3)) Any gross receipt that is excluded from base income or subtracted in the computation of base income of the financial organization must be excluded from the numerator and denominator of this formula. See *Continental Illinois National Bank and Trust Company of Chicago v. Lenckos*, 102 Ill.2d 210 (1984). For example, dividends deducted from federal taxable income under 26 USC 243 or subtracted in the computation of base income under IITA Section 203(b)(2)(O) are excluded from the apportionment formula.

- b) Definitions. For purposes of this Section, the following definitions shall apply:
 - 1) Fixed Place of Business. *The term "fixed place of business" has the same meaning as that term is given in Section 864 of the Internal Revenue Code and the related Treasury regulations.* (IITA Section 1501(a)(9.5))
 - A) As a general rule, a "fixed place of business" is a fixed facility, that is, a place, site, structure or other similar facility, through which the taxpayer engages in a trade or business. (See 26 CFR 1.864-7(b)(1).)
 - B) A taxpayer is not considered to have a fixed place of business merely because the taxpayer uses another person's fixed place of business, whether or not the other person and the taxpayer are related persons, through which to transact a trade or business, if the trade or business activities of the taxpayer in that fixed place of business are relatively sporadic or infrequent, taking into account the overall needs and conduct of that trade or business. (See 26 CFR 1.864-7(b)(2).)
 - C) A fixed place of business of an agent of the taxpayer who is not an independent agent is not a fixed place of business of the taxpayer unless the agent has the authority to negotiate and conclude contracts in the name of the taxpayer, and regularly exercises that authority. (See 26 CFR 1.864-7(d)(1)(i).)

- D) A fixed place of business of an independent agent of the taxpayer shall not be treated as the office or other fixed place of business of the taxpayer, irrespective of whether the agent has authority to negotiate and conclude contracts in the name of the principal and regularly exercises that authority. (See 26 CFR 1.864-7(d)(2).)
- E) For purposes of this subsection (b)(1), "independent agent" means a general commission agent, broker or other agent of an independent status acting in the ordinary course of his or her business in that capacity. (See 26 CFR 1.864-7(d)(3).)
- 2) Gross Receipts. "Gross receipts" means *gross income, including net taxable gain on disposition of assets, including securities and money market instruments, when derived from transactions and activities in the regular course of the financial organization's trade or business.* (IITA Section 304(c)(3))
- 3) State of Residence or Commercial Domicile. Unless a financial organization has actual knowledge that the residence or commercial domicile of a person is in a state other than the state in which the person's billing address is located, the person shall be deemed to be a resident or have its commercial domicile in the state in which the billing address is located.
- 4) Substantive Contacts. "Substantive contacts" with an investment asset or trading activity means the research, approval and administration activities conducted by employees of the taxpayer in connection with its investments or trading, and are conducted at the fixed place of business at which the employees involved in these activities perform services for the taxpayer.
 - A) Research. "Research" means the procedures and activities whereby employees of the taxpayer evaluate potential investments or trades.
 - B) Approval. "Approval" means the procedures whereby employees of the taxpayer make the final determination to invest in or dispose of assets or to engage in a specific trading activity.
 - C) Administration. "Administration" means the management of investments or trading activities, and includes bookkeeping, collection or making of payments, communications with brokers, customers and other persons with regard to investment or trading activities, and reporting to management on investment or trading activities.
- c) Sourcing Rules. For the purposes of this Section, gross receipts from sources in this State or otherwise attributable to this State's marketplace is the sum of the following amounts:
 - 1) Lease and Rental Receipts.
 - A) *Receipts from the lease or rental of real or tangible personal property are in this State if the property is located in this State during the rental period.*

- B) *Receipts from the lease or rental of tangible personal property that is characteristically moving property, including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, are from sources in this State to the extent that the property is used in this State. (IITA Section 304(c)(3)(i))* If the 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 comparing the time the property was physically present or was used in this State with the total time or use of the property everywhere during that period.
- 2) *Interest income, commissions, fees, gains on disposition, and other receipts from assets in the nature of loans that are secured primarily by real estate or tangible personal property are from sources in this State if the security is located in this State. (IITA Section 304(c)(3)(ii))*
- A) For tangible personal property, the property is located in this State if the debtor is a resident of this State (in the case of an individual, trust or estate) or has its commercial domicile in this State as of the date the loan is made.
- B) In the case of a loan secured by property located within and without this State, the gross receipts from the loan that are from sources within this State equal the total gross receipts times a fraction equal to the value of the real estate and tangible property securing the loan that is located within this State at the time the loan is made, divided by the total value of the real estate and tangible property securing the loan at the time the loan is made.
- 3) *Interest income, commissions, fees, gains on disposition, and other receipts from consumer loans that are not secured by real or tangible personal property are from sources in this State if the debtor is a resident of this State. (IITA Section 304(c)(3)(iii))*
- 4) *Interest income, commissions, fees, gains on disposition, and other receipts from commercial loans and installment obligations that are not secured by real or tangible personal property are from sources in this State if the proceeds of the loan are to be applied in this State. If it cannot be determined where the funds are to be applied, the income and receipts are from sources in this State if the office of the borrower from which the loan was negotiated in the regular course of business is located in this State. If the location of this office cannot be determined, the income and receipts shall be excluded from the numerator and denominator of the sales factor. (IITA Section 304(c)(3)(iv))*
- 5) *Interest income, fees, gains on disposition, service charges, merchant discount income, and other receipts from credit card receivables are from sources in this State if the card charges are regularly billed to a customer in this State. (IITA Section 304(c)(3)(v))*
- 6) *Receipts from the performance of services, including, but not limited to, fiduciary, advisory, and brokerage services, are in this State if the services are received in this State within the meaning of IITA Section 304(a)(3)(C-5)(iv). (IITA Section 304(c)(3)(vi))* See Section 100.3370(c)(6)(D) for more guidance.

- 7) *Receipts from the issuance of travelers checks and money orders are from sources in this State if the checks and money orders are issued from a location within this State. (IITA Section 304(c)(3)(vii))*
- 8) *Receipts from investment assets and activities and trading assets and activities are included in the receipts factor as follows:*
- A) *Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities from trading assets and activities shall be included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. (IITA Section 304(c)(3)(viii)(1))*
- i) *The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements. (IITA Section 304(c)(3)(viii)(1)(A))*
- ii) *The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities. (IITA Section 304(c)(3)(viii)(1)(B))*
- B) *The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities that are attributable to this State, as follows:*
- i) *The amount of interest, dividends, net gains (but not less than zero), and other income from investment assets and activities in the investment account to be attributed to this State and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a fixed place of business of the taxpayer within this State, and the denominator of which is the gross income from all such assets and activities. (IITA Section 304(c)(3)(viii)(2)(A))*
- ii) *The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this State and included in the numerator is determined by multiplying the total of those items by a fraction, the numerator of which is the gross income from such funds and such securities which are properly*

assigned to a fixed place of business of the taxpayer within this State and the denominator of which is the gross income from all such funds and such securities. (IITA Section 304(c)(3)(viii)(2)(B))

- iii) *The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, but excluding amounts described in subsection (c)(8)(B)(i) or (ii), attributable to this State and included in the numerator is determined by multiplying the total of those items by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a fixed place of business of the taxpayer within this State, and the denominator of which is the gross income from all such assets and activities. (IITA Section 304(c)(3)(viii)(2)(C))*
- iv) *An investment or trading asset or activity is assigned to the fixed place of business with which it has a preponderance of substantive contacts. An investment or trading asset or activity assigned by the taxpayer to a fixed place of business without the State shall be presumed to have been properly assigned if:*
- *the taxpayer has assigned, in the regular course of its business, such asset or activity on its records to a fixed place of business consistent with federal or state regulatory requirements; (IITA Section 304(c)(3)(viii)(2)(D)(1))*
 - *such assignment on its records is based upon substantive contacts of the asset or activity to such fixed place of business; and (IITA Section 304(c)(3)(viii)(2)(D)(2))*
 - *the taxpayer uses such records reflecting assignment of such assets or activities for the filing of all state and local tax returns for which an assignment of such assets or activities to a fixed place of business is required. (IITA Section 304(c)(3)(viii)(2)(D)(3))*
- v) *The presumption of proper assignment of an investment or trading asset or activity provided in subsection (c)(8)(B)(iv) may be rebutted upon a showing by the Department, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such asset or activity did not occur at the fixed place of business to which it was assigned on the taxpayer's records. If the fixed place of business that has a preponderance of substantive contacts cannot be determined for an investment or trading asset or activity to which the presumption of proper assignment does not apply or with respect to which that presumption has been rebutted, that asset or activity is properly assigned to the state in which the taxpayer's commercial domicile is located. For purposes of this subsection (c)(8)(B)(v), it is presumed, subject to rebuttal, that taxpayer's commercial domicile is in the state of the United States or the District of Columbia to*

which the greatest number of employees are regularly connected with the management of the investment or trading income or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.
(IITA Section 304(c)(3)(viii)(2)(E))

- 9) Any receipts that are includable in the denominator of the fraction in subsection (a) and that are not governed by subsection (c)(1) through (8) are from sources within this State to the extent the receipts would be characterized as "sales in this State" under IITA Section 304(a)(3) and Sections 100.3370 and 100.3380 of this Part, except that the provisions in IITA Section 304(a)(3)(B-2) (excluding gross receipts from the licensing, sale or other disposition of patents, copyrights, trademarks and similar items from the numerator and denominator of the apportionment factor, unless those items comprise more than 50% of the taxpayer's gross receipts) do not apply.

(Source: Added at 33 Ill. Reg. _____, effective October 26, 2009)