

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.3200 Taxability in Other State (IITA Section 303)

TITLE 86: REVENUE

**PART 100
INCOME TAX**

SUBPART K: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section 100.3200 Taxability in Other State (IITA Section 303)

- a) General definition
- 1) For purposes of allocation of nonbusiness income and for purposes of the sales factor used in apportioning business income, a taxpayer is taxable in another state if:
 - A) *in that state he or she is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax [35 ILCS 5/303(f)(1)]; or*
 - B) *that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not subject the taxpayer to such a tax [35 ILCS 5/303(f)(2)].*
 - 2) A taxpayer is subject to one of the specified taxes in subsection (a)(1)(A) in a particular state only if he or she is subject to the tax by reason of income-producing activities in that state. For example, a corporation that pays a minimum franchise tax in order to qualify for the privilege of doing business in a state is not subject to tax by that state within the meaning of subsection (a)(1)(A) if the amount of that minimum tax bears no relation to the corporation's activities within that state. Further, a taxpayer claiming to be taxable in another state under the test set forth in subsection (a)(1)(A) must establish not only that under the laws of that state he or she is subject to one of the specified taxes, but that he or she, in fact, pays the tax. If a taxpayer is subject to one of the taxes specified in subsection (a)(1)(A) but does not, in fact, pay the tax, the taxpayer may not claim to be taxable in the state imposing the tax under the test set forth in subsection (a)(1)(A) or (a)(1)(B). (See *Dover Corp. v. Dept. of Revenue*, 271 Ill. App. 3d 700 (1995).) On the other hand, if a taxpayer is not subject in a given state to any of the taxes specified in subsection (a)(1)(A) but the taxpayer establishes that his or her activities in that state are such as to give the state jurisdiction to subject him or her to a net income tax, then, under the test set forth in this subsection (a)(2), the taxpayer is taxable in that state, notwithstanding the fact that that state has not enacted legislation subjecting him or her to the tax. For purposes of this Section:

- A) A net income tax is a tax for which an individual may claim a deduction under 26 USC 164(a)(3) or for which a foreign tax credit may be claimed under 26 USC 901.
- B) In the case of any state other than a foreign country or political subdivision of a foreign country, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax will be determined under the Constitution, statutes and treaties of the United States. Such a state does not have jurisdiction to subject the taxpayer to a net income tax if it is prohibited from imposing that tax by reason of the provisions of Public Law 86-272 (15 USC Sections 381-385). See 100.9720 of this Part for guidance on nexus standards under the Constitution and statutes of the United States.
- C) In the case of any foreign country or political subdivision of a foreign country, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax will be determined as if the foreign country or political subdivision were a state of the United States or a political subdivision of a U.S. state. A person who is not required to pay net income tax by a foreign country or political subdivision as the result of a treaty provision exempting certain persons, business activities or sources of income from tax is not subject to net income tax in that jurisdiction.
- D) A person is not subject to tax in another state or in a foreign country under subsection (a)(1)(B) if that state or country imposes a tax on net income, unless he or she can show a specific provision of that state's or country's constitution, statutes or regulations, or a holding of that state's or country's courts or taxing authorities, that exempts the person from taxation even though that person could be subject to a net income tax under the Constitution, statutes and treaties of the United States.

- b) Examples. Section 100.3200 of this Part may be illustrated by the following examples:
 - 1) **EXAMPLE 1.** A corporation, although subject to the provisions of the net income tax statute imposed by X state, has never filed income tax returns in that jurisdiction and has never paid income tax to X. For purposes of allocation and apportionment of A's income, A is not taxable in X state because it does not meet the test specified in either subsection (a)(1)(A) or (1)(B).
 - 2) **EXAMPLE 2.** B corporation, an Illinois corporation, is actively engaged in manufacturing farm equipment in Y foreign country. Y does not impose a franchise tax measured by net income or a corporate stock tax. It does impose a franchise tax for the privilege of doing business, but B corporation is not subject to that tax because it applies only to corporations incorporated under Y's laws. Y also imposes a net income tax upon foreign corporations doing business within its boundaries, but B is not subject to that tax because the income tax statute grants tax exemption to corporations manufacturing farm equipment. For purposes of allocation and apportionment of B's income, B is taxable in Y country. B does not meet the test specified in subsection (a)(1)(A), but does meet the test specified in subsection (a)(1)(B), since Y has jurisdiction to impose a net income tax on B.

(Source: Amended at 34 Ill. Reg. 12891, effective August 19, 2010)