

Section 100.3220 Allocation of Certain Items of Nonbusiness Income by Persons Other Than Residents (IITA Section 303)

- a) In General. IITA Section 303 provides rules for the allocation by any person other than a resident of Illinois of any item of capital gain or loss, and any item of income from rents or royalties from real or tangible personal property, interest, dividends, and patent or copyright royalties, together with any item of deduction directly allocable thereto, to the extent the item constitutes nonbusiness income. For the tests as to whether any item constitutes business or nonbusiness income, see Section 100.3010.
- b) *Capital Gains and Losses*
 - 1) *Real Property. Capital gains and losses from sales or exchanges of real property are allocated to Illinois if the property is located in Illinois.* (IITA Section 303(b)(1)) Economic interests in minerals in place, such as oil or gas, are real property under IITA Section 303. Examples of these interests are royalties, overriding royalties, participating interests, production payments and working interests.
 - 2) *Tangible Personal Property. Capital gains and losses from sales or exchanges of tangible personal property are allocated to Illinois, if at the time of the sale or exchange:*
 - A) *the property has its situs in Illinois; or*
 - B) *the taxpayer has its commercial domicile in Illinois and is not taxable in the state in which the property has its situs.* (IITA Section 303(b)(2)) For the tests of taxability in another state and commercial domicile, see Sections 100.3200 and 100.3210.
 - 3) *Intangible Personal Property. Capital gains and losses from sales or exchanges of intangible personal property are allocated to Illinois if the taxpayer has its commercial domicile in Illinois at the time of the sale or exchange.* (IITA Section 303(b)(3)) For the tests of commercial domicile, see Section 100.3210.
- c) *Rents and Royalties*
 - 1) *Real Property. Rents and royalties from real property are allocated to Illinois if the property is located in Illinois.* (IITA Section 303(c)(1)) Economic interests in minerals in place, such as oil or gas, are real property under IITA Section 303. Examples of these interests are royalties, overriding royalties, participating interests, production payments and working interests.

- 2) *Tangible Personal Property. Rents and royalties from tangible personal property are allocated to Illinois:*
- A) *if and to the extent that the property is utilized in Illinois; or*
 - B) *in their entirety if, at the time rents or royalties are paid or accrued, the taxpayer has its commercial domicile in Illinois and was not organized under the laws of, or is not taxable with respect to the rents or royalties in, the state in which the property is utilized. (IITA Section 303(c)(2)) For the tests of taxability in another state and commercial domicile, see Sections 100.3200 and 100.3210. The extent of utilization of tangible personal property in a state is determined by multiplying the rents or royalties derived from the property by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property is located at the time the rental or royalty payor obtains possession.*
- 3) Examples. Section 100.3220(c) may be illustrated by the following examples:
- A) **EXAMPLE A.** A is a resident of Missouri. A purchases an interest in oil royalty under an oil and gas lease in Illinois. During 1970, A receives \$2,000 in royalty payments. Under Section 100.3010(c)(3)(B), the royalty income is presumed to be nonbusiness income. As such it is allocated to Illinois, being derived from real property located in Illinois.
 - B) **EXAMPLE B.** B is a resident of Iowa, with a summer home in Illinois. B owns a sailboat that he keeps in Iowa during the winter months and tows to Illinois by trailer for use in the summer. During 1970, B is unable to visit his summer home, and rents his sailboat for the months of July through September to C, the owner of the adjoining property in Illinois. Under Section 100.3010(c)(3)(B), the rent is presumed to be nonbusiness income. C takes the boat from Iowa to Illinois and returns it to B in Iowa on October 1, 1970. Although the boat is physically located in Iowa during the months of January through June and October through December, the rental period is only the months of July through

September. During the rental period, the boat is located in Illinois. Hence, it is utilized in Illinois and, accordingly, the rental income is allocated to Illinois.

- C) EXAMPLE C. The facts are the same as in Example B, except that B rents the boat through a want ad and does not know C, nor where he uses the boat during the months of July through September. In this case, since C takes possession of the boat in Iowa, it is utilized in Iowa and, accordingly, the rental income is not allocated to Illinois.

d) *Patent and Copyright Royalties*

1) *Allocation. Patent and copyright royalties are allocated to Illinois:*

A) *if and to the extent that the patent or copyright is utilized by the payor of the royalties in Illinois; or*

B) *if and to the extent that the patent or copyright is utilized by the payor of the royalties in a state in which the taxpayer is not taxable with respect to the royalties and, at the time the royalties are paid or accrued, the taxpayer has its commercial domicile in Illinois. (IITA Section 303(d)(1)) For the tests of taxability in another state and commercial domicile, see Sections 100.3200 and 100.3210.*

2) *Utilization*

A) *Patents. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures of the royalty payor do not reflect states of utilization, the patent is utilized in Illinois if the taxpayer has its commercial domicile in Illinois. (IITA Section 303(d)(2)(A))*

B) *Copyrights. A copyright is utilized in a state to the extent that printing or other publication originates in that state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures of the royalty payor do not reflect states of utilization, the copyright is utilized in Illinois if the taxpayer has its commercial domicile in Illinois. (IITA Section 303(d)(2)(B))*

3) *Example. A, a resident of New York, is not in the business of being an*

inventor, but owns a patent on a single invention, which he licenses to a manufacturer of automatic garage door openers. Royalties are a percentage of the manufacturer's sales. The manufacturer has plants situated in Missouri, Illinois and Indiana. Under Section 100.3050(c)(2)(B), the royalty income is presumed to be nonbusiness income. If A's royalties can be allocated to Missouri, Illinois and Indiana on the basis of sales from the manufacturer's plants in each of those states, those royalties attributable to sales from the Illinois plant are allocated to Illinois. If, however, the manufacturer's accounting procedures do not reflect sales from the specific plants, but royalties are paid on the basis of total sales not broken down by plant, then, since A is not a resident of Illinois, the patent is not utilized in Illinois and none of the royalties are allocated to Illinois.

- e) Taxability in another state. For the test of taxability in another state, see Section 100.3200.
- f) Interest and dividends. For allocation of interest and dividends, see Section 100.3300(b)(2).
- g) *Illinois Lottery Prizes. Prizes awarded under the Illinois Lottery Law [20 ILCS 1605] are allocable to this State. Payments received in taxable years ending on or after December 31, 2013, from the assignment of a prize under Section 13.1 of the Illinois Lottery Law, are allocable to this State. (IITA Section 303(e))*
- h) Unemployment Compensation. Unemployment compensation paid by this State is allocated to this State. (See IITA Section 303(e-5).)

(Source: Amended at 38 Ill. Reg. 13941, effective June 29, 2014)