DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Income Tax

2) Code Citation: 86 Ill. Adm. Code 100

3) Section Number: 100.2430 — Proposed Action: Amendment

Section Number:	Proposed Action:
100.2430	Amendment

4) Statutory Authority: Implementing Section 203 of the Illinois Income Tax Act [35 ILCS 5/203] as authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401] and Section 2505-795 of the Department of Revenue Law [20 ILCS 2505/2505-795].

5) A Complete Description of the Subjects and Issues Involved: The rulemaking amends the current rule under 86 Ill. Adm. Code 100.2430 to reflect the statutory changes enacted under Public Act 104-6 (the Act). The rulemaking provides examples that illustrate application of the statutory provisions.

The Act amended IITA sections 203(a)(2)(D-17), (a)(2)(D-18), (b)(2)(E-12), (b)(2)(E-13), (c)(2)(G-12), (c)(2)(G-13), (d)(2)(d-7), and (d)(2)(D-8). These statutory provisions require taxpayers, subject to certain exceptions, to make addition modifications in the computation of base income in amounts equal to the federal deductions allowed for interest or intangible expenses or costs paid to 80/20 affiliates. The Act made two changes to these provisions. First, for taxpayers whose interest expense deduction is limited under the provisions of IRC §163(j), the Act deems any disallowed interest deduction as relating first to interest paid to unrelated parties. Second, the Act repeals two of the available exceptions to the addition modification for interest and one of the exceptions for intangible expenses.

6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

7) Will this proposed rulemaking replace an emergency rule currently in effect? No

8) Does this rulemaking contain an automatic repeal date? No

9) Does this proposed amendment contain incorporations by reference? No

10) Are there any other proposed rulemakings pending on this Part? Yes

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Section Numbers	Proposed Action	Illinois Register Citations
100.3200	Amendment	50 Ill. Reg. 59; January 2, 2026
100.3370	Amendment	50 Ill. Reg. 59; January 2, 2026
100.3375	New Section	50 Ill. Reg. 59; January 2, 2026
100.5200	Amendment	50 Ill. Reg. 59; January 2, 2026
100.5201	Amendment	50 Ill. Reg. 59; January 2, 2026
100.5210	Amendment	50 Ill. Reg. 59; January 2, 2026
100.5215	Amendment	50 Ill. Reg. 59; January 2, 2026
100.5250	Amendment	50 Ill. Reg. 59; January 2, 2026
100.5270	Amendment	50 Ill. Reg. 59; January 2, 2026
100.9720	Amendment	50 Ill. Reg. 59; January 2, 2026

11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.

12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Brian Stocker
Illinois Department of Revenue
Legal Services Office
101 W. Jefferson St.
Springfield, Illinois 62702
217-782-7055
REV.GCO@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Description of the type of small business, not for profit corporations or small municipalities subject to the proposed amendment: None

B) Description of the proposed reporting, bookkeeping and other procedures required for compliance with the amendment: General tax preparation and recordkeeping

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C) Description of the types of professional skills necessary for compliance: Basic accounting and computer skills

14) Small Business Economic Impact Analysis: The rulemaking does not adversely impact small business

15) Regulatory Agenda on which this rulemaking was summarized: January 2026

16) Any other information or justification for the proposed rule or amendment that the agency believes would be helpful to the public regarding the proposed rule or amendment. For example, a discussion or analysis of the benefits of the proposed rule or amendment is projected to have on the Illinois public, consumers, investors or other similar groups.: None

The full text of the Proposed Amendment begins on the next page:

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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 100
INCOME TAX

SUBPART A: TAX IMPOSED

SUBPART B: CREDITS

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SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS OCCURRING PRIOR TO DECEMBER 31, 1986

Section

SUBPART D: ILLINOIS NET LOSS DEDUCTIONS FOR LOSSES OCCURRING ON OR AFTER DECEMBER 31, 1986

Section

SUBPART E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF INDIVIDUALS, CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

Section

SUBPART F: BASE INCOME OF INDIVIDUALS

Section

SUBPART G: BASE INCOME OF CORPORATIONS

Section

SUBPART H: BASE INCOME OF TRUSTS AND ESTATES

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SUBPART N: ACCOUNTING

SUBPART O: TIME AND PLACE FOR FILING RETURNS

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SUBPART P: COMPOSITE RETURNS

Section

SUBPART Q: COMBINED RETURNS

Section

SUBPART R: PAYMENTS

Section

SUBPART S: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section

SUBPART T: AMOUNT EXEMPT FROM WITHHOLDING

Section

SUBPART U: INFORMATION STATEMENT

Section
100.7200 Reports for Employee (IITA Section 703)

SUBPART V: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

Section
100.7300 Returns and Payments of Income Tax Withheld from Wages (IITA Sections 704 and 704A)
100.7310 Returns Filed and Payments Made on Annual Basis (IITA Sections 704 and 704A)
100.7320 Time for Filing Returns and Making Payments for Taxes Required to Be Withheld Prior to January 1, 2008 (IITA Section 704)
100.7325 Time for Filing Returns and Making Payments for Taxes Required to Be Withheld On or After January 1, 2008 (IITA Section 704A)
100.7330 Payment of Tax Required to be Shown Due on a Return (IITA Sections 704 and 704A)
100.7340 Correction of Underwithholding or Overwithholding (IITA Section 704)
100.7350 Domestic Service Employment (IITA Sections 704 and 704A)
100.7360 Definitions and Special Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)
100.7370 Penalty and Interest Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)
100.7380 Economic Development for a Growing Economy (EDGE) and Small Business Job Creation Credit (IITA Section 704A(g) and (h))
100.7381 REV Tax Credit (IITA Section 704A(g-1))
100.7382 MICRO Tax Credit (IITA Section 704A(g-2))
100.7385 Live Theater Production Tax Credit (IITA Section 704A(k))
100.7386 Local Journalism Sustainability Tax Credit (IITA Section 704 A(k))
100.7390 Minimum Wage Tax Credit (IITA Section 704A(i))

SUBPART W: ESTIMATED TAX PAYMENTS

Section
100.8000 Payment of Estimated Tax (IITA Section 803)
100.8010 Failure to Pay Estimated Tax (IITA Sections 804 and 806)

SUBPART X: COLLECTION AUTHORITY

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SUBPART DD: JUDICIAL REVIEW

Section

SUBPART EE: DEFINITIONS

Section

SUBPART FF: LETTER RULING PROCEDURES

Section

SUBPART GG: MISCELLANEOUS

Section

AUTHORITY: Implementing Section 505 of the Illinois Income Tax Act [35 ILCS 5] as authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5] and Section 2505-795 of the Department of Revenue Law [20 ILCS 2505].

SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49, p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4624, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28, 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839, effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29, 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg. 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997; emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998; amended at 22 Ill. Reg. 19033, effective

October 1, 1998; amended at 22 Ill. Reg. 21623, effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26, 2000; emergency amendment at 24 Ill. Reg. 17585, effective November 17, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 23, 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687, effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill. Reg. 8333, effective June 22, 2001; amended at 26 Ill. Reg. 192, effective December 20, 2001; amended at 26 Ill. Reg. 1274, effective January 15, 2002; amended at 26 Ill. Reg. 9854, effective June 20, 2002; amended at 26 Ill. Reg. 13237, effective August 23, 2002; amended at 26 Ill. Reg. 15304, effective October 9, 2002; amended at 26 Ill. Reg. 17250, effective November 18, 2002; amended at 27 Ill. Reg. 13536, effective July 28, 2003; amended at 27 Ill. Reg. 18225, effective November 17, 2003; emergency amendment at 27 Ill. Reg. 18464, effective November 20, 2003, for a maximum of 150 days; emergency expired April 17, 2004; amended at 28 Ill. Reg. 1378, effective January 12, 2004; amended at 28 Ill. Reg. 5694, effective March 17, 2004; amended at 28 Ill. Reg. 7125, effective April 29, 2004; amended at 28 Ill. Reg. 8881, effective June 11, 2004; emergency amendment at 28 Ill. Reg. 14271, effective October 18, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 14868, effective October 26, 2004; emergency amendment at 28 Ill. Reg. 15858, effective November 29, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 2420, effective January 28, 2005; amended at 29 Ill. Reg. 6986, effective April 26, 2005; amended at 29 Ill. Reg. 13211, effective August 15, 2005; amended at 29 Ill. Reg. 20516, effective December 2, 2005; amended at 30 Ill. Reg. 6389, effective March 30, 2006; amended at 30 Ill. Reg. 10473, effective May 23, 2006; amended by 30 Ill. Reg. 13890, effective August 1, 2006; amended at 30 Ill. Reg. 18739, effective November 20, 2006; amended at 31 Ill. Reg. 16240, effective November 26, 2007; amended at 32 Ill. Reg. 872, effective January 7, 2008; amended at 32 Ill. Reg. 1407, effective January 17, 2008; amended at 32 Ill. Reg. 3400, effective February 25, 2008; amended at 32 Ill. Reg. 6055, effective March 25, 2008; amended at 32 Ill. Reg. 10170, effective June 30, 2008; amended at 32 Ill. Reg. 13223, effective July 24, 2008; amended at 32 Ill. Reg. 17492, effective October 24, 2008; amended at 33 Ill. Reg. 1195, effective December 31, 2008; amended at 33 Ill. Reg. 2306, effective January 23, 2009; amended at 33 Ill. Reg. 14168, effective September 28, 2009; amended at 33 Ill. Reg. 15044, effective October 26, 2009; amended at 34 Ill. Reg. 550, effective December 22, 2009; amended at 34 Ill. Reg. 3886, effective March 12, 2010; amended at 34 Ill. Reg. 12891, effective August 19, 2010; amended at 35 Ill. Reg. 4223, effective February 25, 2011; amended at 35 Ill. Reg. 15092, effective August 24, 2011; amended at 36 Ill. Reg. 2363, effective January 25, 2012; amended at 36 Ill. Reg. 9247, effective June 5, 2012; amended at 37 Ill. Reg. 5823, effective April 19, 2013; amended at 37 Ill. Reg. 20751, effective December 13, 2013; recodified at 38 Ill. Reg. 4527; amended at 38 Ill. Reg. 9550, effective April 21, 2014; amended at 38 Ill. Reg. 13941, effective June 19, 2014; amended at 38 Ill. Reg. 15994, effective July 9, 2014; amended at 38 Ill. Reg. 17043, effective July 23, 2014; amended at 38 Ill. Reg. 18568, effective August 20, 2014; amended at 38 Ill. Reg. 23158, effective November 21, 2014; emergency amendment at 39 Ill. Reg. 483, effective December 23, 2014, for a maximum of 150 days; amended at 39 Ill. Reg. 1768, effective January 7, 2015; amended at 39 Ill. Reg. 5057, effective March 17, 2015; amended at 39 Ill. Reg. 6884, effective April 29, 2015; amended at 39 Ill. Reg. 15594, effective November 18, 2015; amended at 40 Ill. Reg. 1848, effective January 5, 2016; amended at 40 Ill. Reg. 10925, effective July 29, 2016; amended at 40 Ill. Reg. 13432, effective September 7, 2016; amended at 40 Ill. Reg. 14762, effective October 12, 2016; amended at 40 Ill. Reg. 15575, effective November 2, 2016; amended at 41 Ill. Reg. 4193, effective March 27, 2017; amended at 41 Ill. Reg. 6379, effective May 22, 2017; amended at 41 Ill. Reg. 10662, effective August 3, 2017; amended at 41 Ill. Reg. 12608, effective September 21, 2017; amended at 41 Ill. Reg. 14217, effective November 7, 2017; emergency amendment at 41 Ill. Reg. 15097, effective November 30, 2017, for a maximum of 150 days; amended at 42 Ill. Reg. 4953, effective February 28, 2018; amended at 42 Ill. Reg. 6451, effective March 21, 2018; recodified Subpart H to Subpart G at 42 Ill. Reg. 7980; amended at 42 Ill. Reg. 17852, effective September 24, 2018; amended at 42 Ill. Reg. 19190, effective October 12, 2018; amended at 43 Ill. Reg. 727, effective December 18, 2018; amended at 43 Ill. Reg. 10124, effective August 27, 2019; amended at 44 Ill. Reg. 2363, effective January 17, 2020; amended at 44 Ill. Reg. 2845, effective January 30, 2020; emergency amendment at 44 Ill. Reg. 4700, effective March 4, 2020, for a maximum of 150 days; emergency expired July 31, 2020; amended at 44 Ill. Reg. 10907, effective June 10, 2020; emergency amendment at 44 Ill. Reg. 11208, effective June 17, 2020, for a maximum of 150 days; emergency expired November 13, 2020; amended at 44 Ill. Reg. 17414, effective October 13, 2020; amended at 45 Ill. Reg. 2006, effective January 29, 2021; amended at 45 Ill. Reg. 5523, effective April 15, 2021; amended at 46 Ill. Reg. 13312, effective July 12, 2022; amended at 46 Ill. Reg. 14550, effective August 2, 2022; amended at 46 Ill. Reg. 15317, effective August 24, 2022; amended at 46 Ill. Reg. 18102, effective October 26, 2022; amended at 47 Ill. Reg. 1402, effective January 10, 2023; amended at 47 Ill. Reg. 2093, effective January 24, 2023; amended at 47 Ill. Reg. 5726, effective April 4, 2023; amended at 47 Ill. Reg. 6030, effective April 12, 2023; amended at 47 Ill. Reg. 13669, effective September 11, 2023; emergency amendment at 47 Ill. Reg. 17214, effective November 6, 2023, for a maximum of 150 days; amended at 48 Ill. Reg. 1677, effective January 10, 2024; amended at 48 Ill. Reg. 2243, effective January 29, 2024; amended at 48 Ill. Reg. 4433, effective March 11, 2024; amended at 48 Ill. Reg. 10281, effective June 25, 2024; amended at 48 Ill. Reg. 10846, effective July 11, 2024; emergency amendment at 48 Ill. Reg. 17848, effective November 26, 2024, for a maximum of 150 days; amended at 49 Ill. Reg. 1861, effective January 31, 2025; amended at 49 Ill. Reg. 3115, effective February 26, 2025; amended at 49 Ill. Reg. 6621, effective April 22, 2025; amended at 49 Ill. Reg. 12066, effective September 12, 2025; amended at 50 Ill. Reg. _____, effective __________.

SUBPART E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF INDIVIDUALS, CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

Section 100.2430 Addition and Subtraction Modifications for Transactions with 80/20 and Noncombination Rule Companies

a) For taxable years ending on or after December 31, 2004, IITA Section 203 requires a taxpayer, in computing base income, to add back deductions allowed in computing federal taxable income or adjusted gross income for interest expenses and intangible expenses incurred in transactions with a person who would be a member of a unitary business group with the taxpayer, if not for the 80/20 test. These provisions were expanded by Public Act 95-233 and Public Act 95-707 to also require the add-back of deductions for interest expenses, intangible expenses and insurance premium expenses when incurred in taxable years ending on or after December 31, 2008, in transactions with a person who would be a member of a unitary business group with a taxpayer if not for the prohibition in IITA Section 1501(a)(27) against including in a single unitary business group taxpayers who use different apportionment formulas under IITA Section 304 (the "noncombination rule"). The noncombination rule was repealed by Public Act 100-22, so that the expansions of the add-back provisions in Public Act 95-233 and Public Act 95-707 have no application for taxable years ending on or after December 31, 2017. Taxpayers are also allowed subtraction modifications that would ensure that the addition modifications do not result in double taxation. Exceptions are provided for instances in which requiring the addition modifications would not be appropriate. Interest expense and intangible expenses deducted in computing federal taxable income must be added back to the extent provided in this Section regardless of whether the same expenses are disallowed as a deduction in computing modified taxable income under 26 U.S.C. 59A(c) or whether the taxpayer is subject to the base erosion minimum tax under 26 U.S.C. 59A(a).

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b) Definitions.

1) Dividend Included in Base Income. "Dividend" means any item defined as a dividend under 26 U.S.C. 316 and any other item of income characterized or treated as a dividend under the Internal Revenue Code, and includes any item *included in gross income under Sections 951 through 964 of the Internal Revenue Code and amounts included in gross income under Section 78 of the Internal Revenue Code.* (IITA Section 203(a)(2)(D-17), (D-18) and (D-19), (b)(2)(E-12), (E-13) and (E-14), (c)(2)(G-12), (G-13) and (G-14), and (d)(2)(D-7), (D-8) and (D-9)) A dividend is included in base income of a taxpayer only to the extent the dividend is neither deducted in computing the federal taxable or adjusted gross income of the taxpayer nor subtracted from federal taxable income or adjusted gross income under IITA Section 203.

2) Foreign Person. A "foreign person" is any person who would be included in a unitary business group with the taxpayer if not for the fact that *80% or more of that person's business activities are conducted outside the United States*. (IITA Section 1501(a)(30))

3) Interest. "Interest" means "compensation for the use or forbearance of money". (See Deputy v. Du~~du~~ Pont, 308 U.S. 488, 498 (1940).) Interest includes the amortization of any discount at which an obligation is purchased and is net of the amortization of any premium at which an obligation is purchased.

4) Intangible Expense. "Intangible expense" includes *expenses, losses, and costs for, or related to, the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property; losses incurred, directly or indirectly, from factoring transactions or discounting transactions; royalty, patent, technical, and copyright fees; licensing fees; and other similar expenses and costs.* (IITA Section 203(a)(2)(D-18), (b)(2)(E-13), (c)(2)(G-13) and (d)(2)(D-8))

5) Intangible Income. "Intangible income" means the income received or accrued by a person from a transaction that generates intangible expense for the other party to the transaction.

6) Intangible Property. "Intangible property" includes *patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets*, including any property that meets the definition of intangible property under 26 C.F.R. 1.482-4(b). (IITA Section 203(a)(2)(D-18), (b)(2)(E-13), (c)(2)(G-13) and (d)(2)(D-8))

7) Related Party. "Related parties" means persons disallowed a deduction for losses by 26 U.S.C. ~~section~~ 267(b), (c) and (f)(1) (and without regard to (f)(2) and (f)(3)) ~~of the Internal Revenue Code~~, as well as a partner and its partnership and each of the other partners in that partnership.

8) Noncombination Rule Company. "Noncombination rule company" means any person who would be a member of a unitary business group with a taxpayer if not for the prohibition in IITA Section 1501(a)(27) against including in a single unitary business group persons who use different apportionment formulas under IITA Section 304.

9) Insurance Premiums. "Insurance premiums" means the total amount paid or accrued during the taxable year, net of refunds or abatements, for coverage against any risk under a policy issued by an entity that is required to apportion its business income under the provisions of IITA Section 304(b) or that would be required to do so if it were subject to Illinois income taxation.

10) Federal Deduction Allowed for Interest Paid to Foreign Person

A) Under 26 U.S.C. 163(j), for taxable years beginning after December 31, 2017, a taxpayer's federal income tax deduction for business interest paid is limited to an amount equal to the sum of the taxpayer's business interest income plus 30% of its adjusted taxable income plus its floor plan financing interest.

Business interest in excess of that limitation is carried forward under 26 U.S.C. 163(j)(2) and treated as interest paid in the following taxable year. For purposes of this Section, in the case of a taxpayer whose federal income tax deduction for business interest expense for a taxable year beginning after December 31, 2017, is subject to limitation by 26 U.S.C. 163(j):

i) For taxable years ending before December 31, 2025, the deduction allowed in computing federal taxable income for business interest paid to a foreign person for that taxable year equals the business interest paid to that foreign person for that taxable year (including any amount of business interest paid to that foreign person in the preceding taxable year and carried forward from the preceding taxable year under 26 USC 163(j)(2)) times a fraction equal to the deduction allowed under 26 USC 163(j) in computing federal taxable income for business interest paid for that taxable year divided by the total business interest paid for that taxable year (including any amount of business interest paid in the preceding taxable year and carried forward from the preceding taxable year under 26 USC 163(j)(2)); ~~and~~

ii) For taxable years ending before December 31, 2025, the amount of business interest paid to a foreign person for a taxable year and carried forward to the next taxable year under 26 U.S.C. 163(j)(2) equals the business interest paid to that foreign person for that taxable year (including any amount of business interest carried forward from the preceding taxable year under 26 U.S.C. 163(j)(2)) times a fraction equal to the total amount of business interest to be carried forward to the next taxable year under 26 USC 163(j)(2) divided by the total business interest paid for that taxable year (including any amount of business interest carried forward from the preceding taxable year and carried forward to that taxable year under 26 U.S.C. 163(j)(2)); and~~.~~

iii) For taxable years ending on and after December 31, 2025, the deduction allowed in computing federal taxable income for business interest paid to a foreign person for that taxable year, and the amount of business interest paid to a foreign person for a taxable year and carried forward to the next taxable year under 26 U.S.C. 163(j)(2), shall be determined by applying the ordering rules set forth in 26 C.F.R. 1.59A-3(c)(4)(ii), except that the deduction is classified and treated first as interest paid or accrued to foreign persons as defined in this Section (pro rata), second as foreign related business interest expense and domestic related business interest expense (pro rata), and finally as unrelated business interest expense. Accordingly, the classifications required under this paragraph are made in the year the interest expense is first paid, accrued, or incurred.

B) EXAMPLE:

i) For its taxable year ending December 31, 2023~~In Year 1~~, Taxpayer paid $100 in business interest to Foreign Person and $900 in business interest to unrelated Bank, or $1,000 in total business interest. There was no carryforward under 26 U.S.C. 163(j)(2) from the prior year. Under 26 U.S.C. 163(j), Taxpayer's federal income tax deduction for business interest for its 2023 taxable year ~~in Year 1~~ was limited to $800. For its taxable year ending December 31, 2024~~In Year 2~~, Taxpayer paid $130 in business interest to Foreign Person and $1,670 in business interest to unrelated Bank, or $1,800 in total business interest. Taxpayer's federal income tax deduction for business interest for its 2024 taxable year ~~in Year 2~~ was limited under 26 U.S.C. 163(j) to $1,200.

ii) For purposes of this Section, the federal income tax deduction allowed to Taxpayer for interest paid to Foreign Person in for the 2023 taxable year~~Year 1~~ equals $80: the $100 actually paid multiplied by 80% (the $800 federal income tax deduction allowed for business interest divided by the $1,000 in total business interest paid). The carryforward of interest paid to Foreign Person in 2023~~Year 1~~ to 2024~~Year 2~~ equals $20: the $100 actually paid to Foreign Person multiplied by 20% (the $200 carryforward to 2024~~Year 2~~ divided by the $1,000 in total business interest paid in 2023~~Year 1~~).

iii) For purposes of this Section, the federal income tax deduction allowed to Taxpayer for interest paid to Foreign Person in 2024~~Year 2~~ equals $90: the $130 in interest actually paid to Foreign Person in 2024~~Year 2~~ plus the $20 paid to Foreign Person in 2023~~Year 1~~ and carried forward to 2024~~Year 2~~, or $150, multiplied by 60% (the $1,200 federal income tax deduction allowed for business interest divided by the $2,000 in total business interest for 2024~~Year 2~~, which equals the $1,800 actually paid plus the $200 carryover from 2023~~Year 1~~. The carryforward of interest paid to Foreign Person in 2024~~Year 2~~ to 2025~~Year 3~~ equals $60: the $150 paid to Foreign Person in 2024~~Year 2~~ or carried forward from 2023~~Year 1~~, multiplied by 40% (the $800 carryforward to 2025~~Year 3~~ divided by the $2,000 in total business interest paid in 2024~~Year 2~~ or carried forward from 2023~~Year 1~~). Under 26 C.F.R. 1.163(j)-5(b)(2), current year business interest expense is deducted in the current taxable year before any disallowed business interest expense carryforwards from a prior taxable year are deducted in the current year, and disallowed business interest expense carryforwards are deducted in the current year in the order of the taxable years in which they arose, beginning with the earliest taxable year. Therefore, the $90 allowed as a deduction for interest paid to Foreign Person consists of current year interest. The $60 of interest paid to Foreign Person carried forward to 2025 consists of $20 of interest expense carried forward from 2023 plus $40 of interest expense paid to Foreign Person in 2024.

iv) For its taxable year ending December 31, 2025, Taxpayer pays the following amounts of business interest expense: $200 that is paid to Foreign Person, and $400 that is paid to unrelated Bank, or $600 in total business interest expense. Taxpayer is permitted to deduct $300 of business interest expense under 26 U.S.C. 163(j)(1). Under 26 C.F.R. 1.163(j)-5(b)(2), current year business interest expense is deducted in the current taxable year before any disallowed business interest expense carryforwards from a prior taxable year are deducted. Under paragraph (10)(A)(iii) of this subsection, the deduction is classified and treated first as paid to Foreign Person, and second as unrelated business interest expense (Bank). As a result, of the $300 business interest expense that is permitted under 26 U.S.C. 163(j)(1), $200 is treated as business interest expense paid to Foreign Person, and $100 is treated as paid to unrelated Bank.

v) For its taxable year ending December 31, 2026, Taxpayer pays the following amounts of business interest expense: $45 that is paid to Foreign Person and $50 that is paid to unrelated Bank. Taxpayer is permitted to deduct $200 of business interest expense under 26 U.S.C. 163(j)(1). Under 26 C.F.R. 1.163(j)-5(b)(2), current year business interest expense is deducted in the current taxable year before any disallowed business interest expense carryforwards from a prior taxable year are deducted. Under paragraph (10)(A)(iii) of this subsection, the deduction is classified and treated first as paid to Foreign Person, and second as paid to unrelated Bank. As a result, of the $200 in business interest expense that is permitted under 26 U.S.C. 163(j)(1), $45 is treated as business interest expense paid to Foreign Person and $50 is treated as paid to unrelated Bank. Under 26 C.F.R. 1.163(j)-5(b)(2), disallowed business interest expense carryforwards are deducted in the order of the taxable years in which they arose, beginning with the earliest taxable year. Under 26 C.F.R. §1.59A-3(c)(4)(ii), the ordering rule is applied separately to each annual amount of 26 U.S.C. 163(j) disallowed business interest expense carryforward. With respect to the 2023 layer, which is deducted first, the deduction is treated first as business interest paid to Foreign Person, and second as paid to unrelated Bank. Consequently, all of the $20 of business interest expense carryforward from 2023 for interest paid to Foreign Person is permitted as a deduction in 2026, and $85 of the business interest expense carryforward for interest paid to unrelated Bank is permitted as a deduction in 2026. The remaining $95 of the 2023 layer with respect to interest paid to unrelated Bank is not allowed as a deduction in 2026. In addition, none of the 2024 layer is permitted as a deduction in 2026 and remains treated as $40 paid to Foreign Person and $560 paid to unrelated Bank.

Finally, none of the 2025 layer is permitted as a deduction in 2026 and remains treated as $300 paid to unrelated Bank.

c) Addition Modifications.

1) Interest. Except as otherwise provided in this subsection (c)(1), every taxpayer must add back to its base income any deduction otherwise allowed in the taxable year for interest paid to a foreign person or (for taxable years ending on or after December 31, 2008 and prior to December 31, 2017) to a noncombination rule company, to the extent the interest exceeds the amount of dividends received from the foreign person or noncombination rule company by the taxpayer and included in base income for the same taxable year. (See IITA Section 203(a)(2)(D-17), (b)(2)(E-12), (c)(2)(G-12) and (d)(2)(D-7).) In the case of a section 951A inclusion, dividends shall be deemed from a foreign person in the same proportion that the foreign person's tested income bears to the total tested income of controlled foreign corporations with respect to which the section 951A inclusion is determined. This addition modification shall not apply to an item of interest expense if~~:~~ subparagraph (A), (B), (C), (D), or (E) of this paragraph (1) is applicable.

A) For taxable years ending prior to December 31, 2025, the~~The~~ foreign person or noncombination rule company is subject in a foreign country or state, other than a state that requires mandatory unitary reporting by the taxpayer and the foreign person or noncombination rule company, to a tax on or measured by net income with respect to the interest. The foreign person or noncombination rule company is subject to a tax on or measured by net income with respect to the interest if the interest is included in its tax base, even if the tax base is offset in whole or in part by deductions for expenses incurred in the production of income or by generally-applicable exemptions, or if the tax imposed by the foreign country or state is offset in whole or in part by credits that are not contingent on the receipt of the interest. If the foreign person or noncombination rule company is a partnership, subchapter S corporation or trust, the foreign person or noncombination rule company is subject to a tax on or measured by net income with respect to the interest to the extent that the interest is included in the tax base of a partner, shareholder or beneficiary who is subject to a tax on or measured by net income in a foreign country or state. For purposes of this subsection (c)(1)(A), it is irrelevant that, under the laws of the foreign country or state, the interest is included in the tax base in a period other than the taxable year in which the deduction is otherwise allowable.

B) The taxpayer can establish, based on a preponderance of the evidence, that both subparagraphs (i) and (ii) of this subparagraph (B) are applicable. ~~both of the following:~~

i) The~~the~~ foreign person or noncombination rule company (during the same taxable year in which the taxpayer paid the interest) paid, accrued, or incurred the interest to a person that is not a related party. This subparagraph (i) is not applicable unless the interest paid, accrued, or incurred to a person that is not a related party is with respect to indebtedness incurred for the purpose of relending the proceeds to the taxpayer, and the proceeds of the indebtedness are actually used for that purpose. Accordingly, the indebtedness of the foreign person or noncombination rule company must, taking into account all facts and circumstances, be directly attributable to an investment in a receivable due from the taxpayer (and not merely the carrying of that investment). No allocation, apportionment, or fungibility concept may be relied upon for this purpose.~~; and~~

ii) The~~the~~ transaction giving rise to the interest expense between the taxpayer and the foreign person or noncombination rule company did not have as a principal purpose the avoidance of Illinois income tax, and interest is paid pursuant to a contract or agreement that reflects an arms-length interest rate and terms.

C) For taxable years ending prior to December 31, 2025, the~~The~~ taxpayer can establish, based on clear and convincing evidence, that the item of interest relates to a contract or agreement entered into at arms-length rates and terms and the principal purpose for the payment is not federal or Illinois tax avoidance.

D) The taxpayer establishes by clear and convincing evidence that the adjustment would be unreasonable. For taxable years ending on and after December 31, 2025, the addition modification is not unreasonable solely on the basis of any of the following factors or combination of such factors: (i) that the foreign person is subject in a foreign country or state to a tax on or measured by net income with respect to the interest, (ii) that the item of interest relates to a contract or agreement entered into at arm's length rates and terms, or (iii) that the principal purpose for the payment is not federal or Illinois tax avoidance. The determination of whether the adjustment is unreasonable shall be made consistent with ~~in view of~~ the purpose of IITA Sections 203(a)(2)(D-1~~9~~7), (b)(2)(E-12), (c)(2)(G-1~~4~~2) and (d)(2)(D-~~9~~7), which is to prevent interest expense arising from intercompany arrangements between persons who would be members of the same unitary business group but for the 80/20 rule from improperly reducing the base income of persons or groups subject to or otherwise subject to Illinois income tax. All relevant facts and circumstances are to be considered. See paragraph (4) of this subsection (c) for examples where the adjustment may be considered unreasonable. Taxpayers who seek to establish that the adjustment is unreasonable ~~should~~ may request a Private Letter Ruling following the procedures set forth in 2 Ill. Adm. Code 1200.110. A Private Letter Ruling is not required in order to establish that the adjustment would be unreasonable.

E) The taxpayer has received permission under Section 100.3390 to use an alternative method of apportionment allowing the deduction of the item.

2) Intangible Expenses. Except as otherwise provided in this subsection (c)(2), every taxpayer must add back to its base income any deduction otherwise allowed in the taxable year for intangible expenses incurred with respect to transactions with a foreign person or (for taxable years ending on or after December 31, 2008 and prior to December 31, 2017) with a noncombination rule company, to the extent the intangible expenses exceed the amount of dividends received from the foreign person or noncombination rule company by the taxpayer and included in base income for the same taxable year. If a taxpayer incurs both interest and intangible expenses with the same foreign person or noncombination rule company, any dividends received from that foreign person or noncombination rule company shall be applied first against interest under subsection (c)(1) and only the excess (if any) of the dividends over the interest expenses shall be applied against intangible expenses under this subsection (c)(2). (See IITA Section 203(a)(2)(D-18), (b)(2)(E-13), (c)(2)(G-13) and (d)(2)(D-8).) In the case of a section 951A inclusion, dividends shall be deemed received from a foreign person in the same proportion that the foreign person's tested income bears to the total tested income of controlled foreign corporations with respect to which the section 951A inclusion is determined. This addition modification shall not apply to an item of intangible expense if subparagraph (A), (B), (C), or (D) of this paragraph (2) is applicable.~~:~~

A) For taxable years ending prior to December 31, 2025, the~~The~~ item arises from a transaction with a foreign person or noncombination rule company who is subject in a foreign country or state, other than a state that requires mandatory unitary reporting by the taxpayer and the foreign person or noncombination rule company, to a tax on or measured by net income with respect to the intangible income related to the item. The foreign person or noncombination rule company is subject to a tax on, or measured by net income with respect to, the intangible income if the intangible income is included in its tax base, even if the tax base is offset in whole or in part by deductions for expenses incurred in the production of income or by generally-applicable exemptions or if the tax imposed by the foreign country or state is offset in whole or in part by credits that are not contingent on the receipt of the intangible income. If the foreign person or noncombination rule company is a partnership, subchapter S corporation or trust, the foreign person or noncombination rule company is subject to a tax on or measured by net income with respect to the intangible income to the extent that the intangible income is included in the tax base of a partner, shareholder or beneficiary who is subject to a tax on or measured by net income in a foreign country or state. For purposes of this subsection (c)(2)(A), it is irrelevant that, under the laws of the foreign country or state, the intangible income is included in the tax base in a period other than the taxable year in which the deduction for the intangible expense is otherwise allowable.

B) The taxpayer can establish, based on a preponderance of the evidence, that both subparagraphs (i) and (ii) of this subparagraph (B) are applicable.~~both of the following:~~

i) The~~the~~ foreign person or noncombination rule company (during the same taxable year in which the taxpayer paid the intangible expense) paid, accrued, or incurred the intangible expense to a person that is not a related party. This paragraph is not applicable unless the intangible expense of the taxpayer and the intangible expense of the foreign person or noncombination rule company relate to the same item of intangible property or rights with respect to the same item of intangible property.~~; and~~

ii) The~~the~~ transaction giving rise to the intangible expense between the taxpayer and the foreign person or noncombination rule company did not have as a principal purpose the avoidance of Illinois income tax, and is paid pursuant to a contract or agreement that reflects arms-length terms.

C) If the taxpayer establishes, by clear and convincing evidence, that the adjustments are unreasonable. For taxable years ending on and after December 31, 2025, the addition modification is not unreasonable solely on the basis of any of the following factors or combinations of such factors: (i) that the foreign person is subject in a foreign country or state to a tax on or measured by net income with respect to the intangible income related to the item, (ii) that the item of intangible expense relates to a contract or agreement entered into at arm's length rates and terms, or (iii) that the principal purpose for the payment is not Illinois tax avoidance. The determination of whether the adjustment is unreasonable shall be made ~~in view of~~ consistent with the purpose of IITA Sections 203(a)(2)(D-~~19~~18), (b)(2)(E-13), (c)(2)(G-~~14~~13) and (d)(2)(D-~~9~~8), which is to prevent intangible expenses and costs arising from intercompany arrangements between persons who would be members of the same unitary business group but for the 80/20 rule from improperly reducing the base income of persons or groups subject to or otherwise subject to Illinois income tax. All relevant facts and circumstances are to be considered. See paragraph (4) of this subsection (c) for examples where the adjustment may be considered unreasonable. Taxpayers who seek to establish that the adjustment is unreasonable ~~should~~ may request a Private Letter Ruling following the procedures set forth in 2 Ill Adm. Code 1200.110. A Private Letter Ruling is not required in order to establish that the adjustment would be unreasonable.

D) The taxpayer has received permission under Section 100.3390 to use an alternative method of apportionment, allowing the deduction of the item.

3) Insurance Premiums. For taxable years ending on or after December 31, 2008 and prior to December 31, 2017, every taxpayer must add back to its base income any deduction otherwise allowed in the taxable year for insurance premiums paid to a noncombination rule company, to the extent the insurance premium expense exceeds the amount of dividends received from the noncombination rule company by the taxpayer and included in base income for the same taxable year. If a taxpayer incurs both interest or intangible expenses and insurance premium expenses with the same noncombination rule company, any dividends received from that noncombination rule company shall be applied first against interest under subsection (c)(1), then against intangibles expenses under subsection (c)(2), and only the excess (if any) of the dividends over the interest expenses and intangible expenses shall be applied against insurance premium expenses under this subsection (c)(3). (See IITA Section 203(a)(2)(D-19), (b)(2)(E-14), (c)(2)(G-14) and (d)(2)(D-9).)

4) The following examples illustrate the application of this subsection (c). Assume that all transactions are taken into account for a taxable year ending on and after December 31, 2025.

A) Example 1. FP is a foreign corporation that owns all of the stock of FC, a foreign corporation, and DC, a United States corporation. DC is part of a unitary group of taxpayers that files an Illinois combined return. FP and FC would be members of the unitary business group including DC but for the fact that 80% or more of their business activity occurs outside the United States. DC pays or accrues interest to FC, which is fully deductible in computing DC's federal taxable income. FC then incurs the interest to FP. Under IITA Section 203(b)(2)(E-12) and this subsection, DC is required to add back the amount of its federal deduction for interest paid to FC in the computation of base income. Regardless of whether DC's interest expense to FC can be traced to FC's interest expense to FP, the exception provided in paragraph (1)(B) of this subsection does not apply because FC paid the interest to FP, a related party.

B) Example 2. Assume the same facts as in Example 1, except that FC borrowed $70 million at 7% interest from unrelated bank for the purpose of relending the proceeds to DC. Upon receiving the loan proceeds from unrelated bank, FC then loaned the same amount to DC at 8% interest. The rate of interest FC charges DC meets the arm's length standard set forth in 26 C.F.R. 1.482-2(a)(2). In addition, the loan from FC to DC did not have as a principal purpose the avoidance of Illinois income tax. During the taxable year, DC pays or accrues interest on the loan to FC of $5,600,000 ($70 million times 8%). DC deducts this amount in computing its federal taxable income for the year. During the same year, FC pays or accrues interest on the loan from unrelated bank of $4,900,000 ($70 million times 7%). Under IITA Section 203(b)(2)(E-12) and this subsection (c), DC is required to add back the amount of its federal deduction for interest paid to FC to the extent of $700,000. DC is not required to add back $4,900,000 of its federal deduction for interest paid to FC because the exception provided in subparagraph (B) of paragraph (1) of this subsection (c) applies. FC's loan from unrelated bank was for the purpose of relending the proceeds to DC, and the proceeds of that loan can be traced to the loan to DC.

C) Example 3. Assume the same facts as in Example 2, except that only $35 million of the $70 million loan from FC to DC can be traced to funds borrowed from unrelated bank. During the taxable year, DC pays or accrues interest on the loan to FC of $5,600,000 ($70 million times 8%). DC deducts this amount in computing its federal taxable income for the year. During the same year, FC pays or accrues interest on the loan from unrelated bank of $2,450,000 ($35 million times 7%). Under IITA Section 203(b)(2)(E-12) and this subsection, DC is required to add back $3,150,000 of its federal deduction for interest paid to FC in the computation of base income. DC is not required to add back $2,450,000 of its federal deduction for interest paid to FC because the exception provided in subparagraph (B) of paragraph (1) of this subsection (c) applies.

D) Example 4. FP is a foreign corporation that owns all of the stock of FC, a foreign corporation, and DC, a United States corporation. DC is part of a unitary group of taxpayers that files an Illinois combined return. FP and FC would be members of the unitary business group including DC but for the fact that 80% or more of their business activity occurs outside the United States. FP enters into a license agreement with FC with respect to computer software developed by FP. Pursuant to the license agreement, FP grants to FC the right to use or market the software, on a worldwide basis, in exchange for royalty payments. The agreement further provides that FC shall have the right to grant sublicenses to use and market the software. The agreement includes a provision that royalties payable to FP are fixed at 95% of the net amount of all royalties due to FC by persons to which FC sublicenses any of the rights under the agreement. Pursuant to the sublicensing provisions of the agreement, FC enters into a license agreement with DC, granting to DC the right to use and market the software in the

United States in exchange for royalty payments equal to 50% of the gross revenues derived by DC from sales of the software. During the first year of the arrangement, DC made sales of the software of $1000x, and, pursuant to the sublicense agreement with FC, made royalty payments to FC of $500x ($1,000x times 50%). DC deducts the $500x royalty expense in computing its federal taxable income for the year. Pursuant to its license agreement with FP, FC made royalty payments to FP of $475x (95% of the royalties received under the sublicense agreement). Under IITA Section 203(b)(2)(E-13) and this subsection (c), DC is required to add back the amount of its federal deduction for royalties paid to FC. The exception provided in subparagraph (B) of paragraph (2) of this subsection (c) does not apply because FC paid the royalty to FP, a related party.

E) Example 5. The facts are the same as in Example 4, except that FC licenses the rights to the computer software from the developer, MP, a foreign corporation unrelated to FP, FC, or DC. In addition, the terms of the sublicense agreement between FC and DC meet the arm's length standard set forth under 26 C.F.R. 1.482-4, and the sublicense agreement did not have as a principal purpose the avoidance of Illinois income tax. During the first year of the arrangement, DC made sales of the software of $1,000x, and, pursuant to the sublicense agreement with FC, made royalty payments to FC of $500x ($1,000x times 50%). DC deducts the $500x royalty expense in computing its federal taxable income for the year. Pursuant to its license agreement with MP, FC made royalty payments to MP of $475x (95% of the royalties received under the sublicense agreement). Under IITA Section 203(b)(2)(E-13) and this subsection, DC is required to add back $25x of its federal deduction for royalty expense paid to FC in the computation of base income. The remaining $475x deduction is not required to be added back because the exception provided in subparagraph (B) of paragraph (2) of this subsection (c) applies.

F) Example 6. FP is a foreign corporation that owns all of the stock of FC, a foreign corporation, and DC, a United States corporation. DC is part of a unitary group of taxpayers that files an Illinois combined return. FP and FC would be members of the unitary business group including DC but for the fact that 80% or more of their business activity occurs outside the United States. FC conducts a trade or business in the United States (USTB) with effectively connected income. During the taxable year, DC makes interest payments to USTB, all of which DC deducts in computing its federal taxable income. FC treats the interest as income effectively connected with the conduct of its USTB. Under IITA Section 304(f) and 86 Ill. Adm. Code 100.3380(e)(1), FC does not use its worldwide apportionment factors to determine how much of its effectively connected income is apportioned to Illinois. Instead, FC uses only the apportionment factors related to USTB. In addition, under IITA Section 304(f) and 86 Ill. Adm. Code 100.3380(e)(1), in determining whether 80% or more of FC's total business activity is conducted outside the United States, FC uses only the apportionment factors related to its business income included in its federal taxable income and base income, rather than its worldwide factors. Accordingly, FC's USTB is treated as part of the combined group of taxpayers, including DC, that files an Illinois combined return. DC is not required to add back the amount of its federal deduction for interest paid to USTB because the exception provided in subparagraph (D) of paragraph (1) of this subsection (c) applies. The adjustment is unreasonable because FC's USTB includes the intercompany interest income on a combined return that includes DC's intercompany interest expense. If the facts were the same, except that FC does not treat the interest as income effectively connected with the conduct of its USTB, then the addition modification under this subsection (c) is not unreasonable.

G) Example 7. FP is a foreign corporation that owns all of the stock of FC, a foreign corporation, and DC, a United States corporation. DC is part of a unitary group of taxpayers that files an Illinois combined return. FP and FC would be members of the unitary business group including DC but for the fact that 80% or more of their business activity occurs outside the United States. FC sells to DC for $100x the United States patent rights related to a manufacturing process it developed. DC amortizes the patent on a straight-line basis over the 20-year useful life of the patent. DC fully deducts the $5 amortization charge in computing its federal taxable income. Under IITA Section 203(b)(2)(E-13) and this subsection (c), DC is required to add back the $5 amortization deduction in the computation of base income.

H) Example 8. FP is a foreign corporation that owns all the stock of FC, a foreign corporation, and DC, a United States corporation. DC is part of a unitary group of taxpayers that files an Illinois combined return. FP and FC would be members of the unitary business group including DC but for the fact that 80% or more of their business activity occurs outside the United States. DC pays interest to FC, which is fully deductible in computing DC's federal taxable income. The rate of interest FC charges DC meets the arm's length standard set forth in 26 C.F.R. 1.482-2(a)(2). In addition, the loan from FC to DC did not have as a principal purpose the avoidance of Illinois income tax. For federal income tax purposes, FC is subject to tax of 30% on the interest under 26 U.S.C. 881(a), and under 26 U.S.C. 1442, DC withholds such tax. However, FC either does not file an income tax return in Illinois reporting any of the interest income, or files an Illinois return claiming a subtraction modification for the interest under IITA Section

203(b)(2)(V). Under IITA Section 203(b)(2)(E-12) and this subsection, DC is required to add back the amount of its federal deduction for interest paid to FC in the computation of base income. None of the exceptions provided in paragraph (1) of this subsection (c) apply.

I) Example 9. Assume the same facts as in Example 8, except that FC is exempt from the tax imposed under 26 U.S.C. 881(a) pursuant to an income tax treaty between the United States and FC's country of residence. FC is subject to a net income tax with respect to the interest in its country of residence. Under IITA Section 203(b)(2)(E-12) and this subsection, DC is required to add back the amount of its federal deduction for interest paid to FC in the computation of base income. None of the exceptions provided in paragraph (1) of this subsection (c) apply.

J) Example 10. FP is a foreign corporation that owns all of the stock of FC, a foreign corporation, and DC, a United States corporation. DC is part of a unitary group of taxpayers that files an Illinois combined return. FP and FC would be members of the unitary business group including DC but for the fact that 80% or more of their business activity occurs outside of the United States. FC purchases United States patent rights related to a manufacturing process from an unrelated party for $100x. FC amortizes the patent using the straight-line method over the 20-year useful life of the patent. FC licenses the patent to DC in exchange for an annual royalty payment equal to 90% of the gross income DC realizes from selling products manufactured under the patent. During the taxable year, DC realizes gross income of $20x from sales of products manufactured under the patent, and pays a royalty to FC of $18x. DC fully deducts the $18x royalty expense in computing its federal taxable income. For federal income tax purposes, FC is subject to tax of 30% on the royalty under 26 U.S.C.

881(a), and under 26 U.S.C. 1442, DC withholds such tax. FC either does not file an income tax return in Illinois reporting any of the royalty income or files an Illinois return claiming the subtraction modification for the royalty under IITA section 203(a)(2)(V). Under IITA Section 203(b)(2)(E-13) and this subsection, DC is required to add back $13x of its federal deduction for royalty expense paid to FC in the computation of base income. The remaining $5x deduction is not required to be added back because the exception provided in subparagraph (C) of paragraph (2) of this subsection (c) applies. To the extent of $5x, the adjustment is unreasonable because such amount equals the amortization charge related to the cost of the patent acquired from an unrelated party.

K) Example 11. DP and DC are domestic corporations and members of a unitary business group which files an Illinois combined return. DP owns all of the stock of CFC1, CFC2, and CFC3, foreign corporations that would be members of the unitary business group including DP and DC but for the fact that 80% or more of their business activity occurs outside the United States. During the taxable year, DC pays or accrues interest expense of $20x with respect to a loan from CFC1, and pays or accrues interest expense of $100x with respect to a loan from CFC2. The interest expense is fully deductible in computing DC's federal taxable income. Assume that neither CFC1, CFC2, nor CFC3 has Subpart F income, and that for purposes of computing DP's section 951A inclusion and section 78 gross-up, CFC1 has tested income of ($40x) (tested loss), CFC2 has tested income of $180x, and CFC3 has tested income of $120x. In addition, CFC2 incurs $9x of foreign income tax with respect to net CFC tested income, and CFC3 incurs $17x of foreign income tax with respect to net CFC tested income. For federal income tax purposes for the taxable year, DP reports a section 951A inclusion of $260x, section 78 gross-up of $26x with respect to net CFC tested income, and a section 250 deduction of $114x. For Illinois income tax purposes, DP is required under IITA section 203(b)(2)(E-19) to add back $104x of the section 250 deduction attributable to net CFC tested income. The portion of the section 250 deduction attributable to section 78 gross-up ($10x) is not required to be added back, but may not be subtracted under IITA section 203(b)(2)(G). In addition, DP is allowed a subtraction modification for foreign dividends under IITA section 203(b)(2)(O) of $130x (50% of the $260x section 951A inclusion). For purposes of computing the addition modification for interest paid to 80/20 companies under subsection (c) of this Section, $0 of the section 951A inclusion is attributable to CFC1 ($0/$300x times $260x) and $156x of the section 951A inclusion is attributable to CFC2 ($180x/$300x times $260x). Accordingly, DC is required to add back all $20x of interest expense paid to CFC1, and $22x of interest paid to CFC2 ($156x of section 951A inclusion attributable to CFC2, less 50% deducted under IITA section 203(b)(2)(O) equals $78x included in base income; $100x interest expense paid to CFC2 reduced by the $78x section 951A inclusion attributable to CFC2 equals $22x added back). The addition modification is not reduced by any amount of section 78 gross-up because to the extent such income is included in DP's federal taxable income, it is subtracted from base income under IITA Section 203(b)(2)(G).

d) Subtraction Modifications

1) Interest Income of a Foreign Person or Noncombination Rule Company. If interest paid to a foreign person or noncombination rule company is added back by a taxpayer under subsection (c)(1), the foreign person or noncombination rule company is allowed a subtraction for the amount of that interest included in its base income for the taxable year, net of deductions allocable to that income. The subtraction allowed under this subsection (d)(1) shall

not exceed the amount of the corresponding addition under subsection (c)(1). (See IITA Section 203(a)(2)(CC), (b)(2)(V), (c)(2)(T) and (d)(2)(Q).)

2) Intangible Income of a Foreign Person or Noncombination Rule Company. If intangible expense incurred in a transaction with a foreign person or noncombination rule company is added back by a taxpayer under subsection (c)(2), the foreign person or noncombination rule company is allowed a subtraction for the amount of the intangible income from that transaction included in its base income for the taxable year, net of deductions allocable to that income. The subtraction allowed under this subsection (d)(2) shall not exceed the amount of the corresponding addition under subsection (c)(2). (See IITA Section 203(a)(2)(CC), (b)(2)(V), (c)(2)(T) and (d)(2)(Q).)

3) Interest Income from a Foreign Person or Noncombination Rule Company. A taxpayer who receives interest income from a foreign person or noncombination rule company is allowed a subtraction for the amount of that interest income, net of deductions allocable to that income. The subtraction allowed in this subsection (d)(3) for a taxable year may not exceed the amount of the addition modification for the taxable year under subsection (c)(1) for interest paid by the taxpayer to the foreign person or noncombination rule company. (See IITA Section 203(a)(2)(DD), (b)(2)(W), (c)(2)(U) and (d)(2)(R).)

4) Intangible Income from a Foreign Person or Noncombination Rule Company. A taxpayer who receives intangible income from a transaction with a foreign person or noncombination rule company is allowed a subtraction for the amount of the intangible income, net of deductions allocable to that income. The subtraction allowed in this subsection (d)(4) for the taxable year may not exceed the amount of the addition modification for the taxable year under subsection (c)(2) for intangible expenses incurred by the taxpayer in transactions with

the foreign person or noncombination rule company. (See IITA Section 203(a)(2)(EE), (b)(2)(X), (c)(2)(V) and (d)(2)(S).)

5) Insurance Premium Income of a Noncombination Rule Company. If insurance premium expense incurred in a transaction with a noncombination rule company is added back by a taxpayer under subsection (c)(3), the noncombination rule company is allowed a subtraction for the amount of the insurance premium income from that transaction included in its base income for the taxable year, net of deductions allocable to that income. The subtraction allowed under this subsection (d)(5) shall not exceed the amount of the corresponding addition under subsection (c)(3). (See IITA Section 203(b)(2)(V).)

6) Insurance Paid by a Noncombination Rule Company. For taxable years ending on or after December 31, 2011, in the case of a taxpayer who added back any insurance premiums under subsection (c)(3), the taxpayer may elect to subtract that part of a reimbursement received from the insurance company to which the premiums were paid equal to the amount of the expense or loss (including expenses incurred by the insurance company) that would have been taken into account as a deduction for federal income tax purposes if the expense or loss had not been insured by the policy for which the premiums were paid. If a taxpayer makes the election provided for by this subsection (d)(6), the insurer to which the premiums were paid must (if required to file an Illinois income tax return) add back to its taxable income the amount subtracted by the taxpayer under this subsection (d)(6). (See IITA Section 203(a)(2)(GG), (b)(2)(Y) (c)(2)(Y) and (d)(2)(T).)

e) Unitary Business Groups. The provisions of this Section apply both to persons who are members of a unitary business group and to persons who are not members of a unitary business group because of the application of the 80/20 rule or (for taxable years ending on or after December 31, 2008 and prior to December 31, 2017) because of the prohibition in IITA Section 1501(a)(27) against including in a single unitary business group taxpayers using different apportionment formulas under IITA Section 304(a) through (d). In applying the provisions of this Section in the case of a unitary business group, any reference to the "taxpayer" in this Section shall be deemed to refer to the unitary business group.

(Source: Amended at 50 Ill. Reg. ______, effective ____________)