



Illinois Department of Revenue

Legal Services Office
101 W. Jefferson St. MC 5-500
Springfield, IL 62702

SECOND NOTICE OF PROPOSED RULEMAKING

- 1) Agency: Illinois Department of Revenue
- 2) Title and Ill. Adm. Code Citation of Proposed Rulemaking: Income Tax, 86 Ill. Adm. Code 100
- 3) Date, Issue, and page number of the Illinois Register in which the First Notice was published: January 2, 2026, Issue 1, 50 Ill. Reg. 59
- 4) Text and Location of any Changes Made to the Proposed Rulemaking During the First Notice Period: See attached First Notice Changes.
- 5) Final Regulatory Flexibility Analysis:
 - A. Summary of the issues raised by affected small businesses during the First Notice Period: Small businesses did not raise any issues during the First Notice Period.
 - B. Description of actions taken on any alternatives to the proposed rule suggested by small businesses during the First Notice Period, including reasons for rejecting alternatives not utilized: Not applicable.
- 6) Analysis of the Economic and Budgetary Effects of the Proposed Rulemaking: See attached.
- 7) Response to Recommendations Made by the Administrative Code Division for Changes in the Rule to Make It Comply with the Codification Scheme: All changes requested by the Administrative Code Division have been made.
- 8) Evaluation of the comments received by the agency from interested persons during the first notice period (but not including any questions raised by the Joint Committee in a preliminary review) including:
 - A. Date of any public hearing held during the first notice period. Name of the person or group requesting a hearing: No public hearing requested.

B. The names and addresses of all individuals or groups making comments or requesting the opportunity to make comments:

Comments were submitted by:

- i. Maurice J. Scholten
President
Taxpayers' Federation of Illinois (TFI)
430 Vine St., Suite A
Springfield, IL 62703
- ii. Jason R. Fletcher
Managing Director
Financial Services – Indirect Tax
Ernst & Young LLP
155 N. Wacker Drive
Chicago, IL 60606

C. A list of all specific criticisms and suggestions raised in the comments:

- i. The Department received the following suggestions from Maurice J. Scholten, made in a letter dated December 12, 2025:

The Taxpayers' Federation of Illinois appreciates the opportunity to submit comments on the proposed revisions to Regulation 100.3200 et seq., which adopt the Finnigan method for apportioning sales within a unitary business group for tax years ending on or after December 31, 2025. We commend the Department for its efforts to modernize and clarify the regulations. We respectfully request additional clarification on two areas.

Partnerships:

Example 6 in Section 100.3200 describes a fact pattern in which Corporation A and Subchapter S Corporation B are members of a unitary business group that files separate unitary returns under Section 100.5215. Although Corporation A is not taxable in State Y under Public Law 86-272, Subchapter S Corporation B has taxable nexus in that state and satisfies the taxability tests in subsection (a)(1) for the group. As a result, Corporation A is not required to throw back its sales to State Y.

We request that the Department provide a parallel example where the pass-through entity is a partnership rather than an S corporation. Many taxpayers operate in structures where a partnership conducts business in a destination state while corporate members lack nexus. A partnership-focused example would clarify whether the analysis in Example 6 applies in those circumstances and would promote consistent application of the rules.

Special apportionment:

The draft regulations contain helpful examples demonstrating how combined apportionment operates. We request an additional example involving a member of the group that is not taxable in Illinois due to Public Law 86-272 and that uses an alternative apportionment method, such as a financial organization or a transportation company. These entities may be included in a unitary business group yet apportion income under special formulas and lack Illinois taxability under subsection (a)(1). An example addressing this situation would clarify how their factors are treated in the combined computation and how their presence affects the numerator and potential throwback or throwout.

- ii. The Department received the following suggestions from Jason R. Fletcher, made in an email dated January 8, 2026:

I see that the regulation updates for Finnigan have been posted to the Register. However, I didn't see any added example(s) for subgroup combinations. Did the Department decide against that change or is it being held back to potential inclusion in the second notice period?

- iii. The Department received the following suggestions from Maurice J. Scholten, made in a letter dated February 10, 2026:

The Taxpayers' Federation of Illinois appreciates the opportunity to submit comments on the proposed revisions to Regulation 100.3200 et seq., which adopt the Finnigan method for apportioning sales within a unitary business group for tax years ending on or after December 31, 2025. We commend the Department for its efforts to modernize and clarify the regulations. We respectfully request the Department address the

example below:

Corporations A and B are members of a unitary business group. Corporation A, a corporation located in State X, ships products from Illinois to customers in State Y. Corporation A does not file a corporate income tax return in State Y because its activities in State Y are limited to solicitation and are protected under the provisions of Public Law 86-272.

Corporation B's activities in State Y exceed the protections of Public Law 86-272. State Y imposes a corporate income tax. Corporation B files a corporate income tax return in State Y for the taxable year ending December 31, 2026. However, Corporation B does not owe any corporate income tax to State Y for that year because its taxable income is fully offset by net operating loss deductions allowable under State Y law.

For the combined group's taxable year ending December 31, 2026, clarification is requested as to whether Corporation B is considered subject to tax in State Y for purposes of Section 303(f) of the Illinois Income Tax Act, and whether the out-of-state sales made by Corporation A to customers in State Y are required to be thrown back to Illinois.

D. The agency's evaluation of each of the specific criticisms and suggestions:

- i. The Department's responses to the comments made by Maurice J. Scholten are as follows:

Response:

No change is required for the suggested partnership example. If Corporation A is a partner in Partnership B, then the Department would need to determine whether the activities of Partnership B are attributable to its partner, and thereby making Corporation A itself taxable in the destination state. Taxpayers may invoke the letter ruling process for additional guidance regarding specific fact patterns.

No change is required for the special apportionment suggestion. The Department updated the 2025 instructions for the Schedule

UB (Combined Apportionment for Unitary Business Group) and Subgroup Schedule to provide additional guidance and examples for calculating combined apportionment with subgroup combinations. An allocation worksheet was also included in the updated instructions. Taxpayers may invoke the letter ruling process for additional guidance regarding specific fact patterns.

No change is required regarding the inquiry as to whether out-of-state sales are taxable to this State when taxable income in another state is fully offset by net operating loss deductions. This is not a new issue and the Department's policy has not changed. Nexus has always been a requirement to impose income tax and be deemed taxable in a jurisdiction. Nexus is established by the activity conducted by or on behalf of the taxpayer not the final result on the tax return. This inquiry would arise whether the Joyce rule or the Finnigan rule applies and is not specific to the changes made in this rulemaking. Taxpayers may invoke the letter ruling process for additional guidance regarding specific fact patterns.

- ii. The Department's responses to the comments made by Jason R. Fletcher are as follows:

Response:

No change is required. The Department updated the 2025 instructions for the Schedule UB (Combined Apportionment for Unitary Business Group) and Subgroup Schedule to provide additional guidance and examples for calculating combined apportionment with subgroup combinations. An allocation worksheet was also included in the updated instructions. Taxpayers may invoke the letter ruling process for additional guidance regarding specific fact patterns.

- E. A statement that the agency has considered all comments received during the First Notice Period: The Department has reviewed and considered all comments received during the First Notice Period.

- 9) An analysis of the expected effects of the proposed rulemaking, including:

- A. Impact on the public: This rulemaking implements Public Act 104-0006 which modifies the way Illinois sales by non-taxable members of a unitary business group are allocated and apportioned to this State

for taxable years ending on or after December 31, 2025.

- B. Changes in the agency's programs or structure resulting from implementation of the rulemaking: None.
- C. Impact of proposed rule on small businesses. Methods used by Agency to comply with 5 ILCS 100/5-30, including reasons for rejecting any methods not utilized: The Department has considered each method under 5 ILCS 100/5-30. This rulemaking implements Public Act 104-0006 and only impacts small businesses to the extent that such a business is a taxable member of a unitary business group. The allocation requirement is created by statute with specific requirements for computation. Therefore, none of the methods under 5 ILCS 100/5-30 are legal or feasible. The Department does not possess the authority to establish less stringent compliance or reporting requirements or deadlines; consolidate or simplify compliance or reporting requirements; establish performance standards; or exempt small businesses from the requirements of the rule. Prior to the First Notice Period, a draft rulemaking was reviewed by representatives of the business community as well as tax practitioners, and no adverse consequences for small businesses were noted.

10) A justification and rationale for the proposed rulemaking, including:

- A. Any changes in statutory language requiring the proposed rulemaking: This rulemaking implements the combined apportionment computation changes for taxable years ending on or after December 31, 2025, for taxable members of a unitary business group as provided in the Illinois Income Tax Act, 35 ILCS 5/304(e), adopted by Public Act 104-0006.
- B. Any changes in agency policy, procedures, or structure requiring the proposed rulemaking: None
- C. Relationship to any relevant federal rules, regulations, or funding requirements: None
- D. Court orders or rulings which are related to the rulemaking: None
- E. A complete explanation of any other reasons for the proposed rulemaking: No other reasons exist.

- 11) Does this rulemaking include an incorporation by reference pursuant to Section 5-75 of the Illinois Administrative Procedure Act? No.

Agency Personnel Who Will Respond to Joint Committee Questions Regarding the Proposed Rulemaking:

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Illinois Department of Revenue

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FIRST NOTICE CHANGES

Agency: Illinois Department of Revenue

Rulemaking: Income Tax (86 Ill. Adm. Code 100; 50 Ill. Reg. 59)

Changes:

1. In Line 202, replace "100.3375 Combined Apportionment (IITA Section 304(e))" with "100.3373 Sales Factor for Publishing"
2. In Line 203, replace "100.3373 Sales Factor for Publishing" with "100.3375 Combined Apportionment (IITA Section 304(e))"
3. In Line 705, add "in" after "as"
4. In Line 3063, add "and Finnigan" after "Joyce"
5. In Line 3063, add "s" to "Rule"
6. In Line 3074, add new sentence "For taxable years ending on or after December 31, 2025, see IITA Section 304(e) and Section 100.3375 of this Part for purposes of applying the Finnigan rule for combined apportionment and throwback/throwout."
7. In Lines 3076 – 3087, delete "g) Application of the Finnigan Rule. For taxable years ending on or after December 31, 2025, in determining whether the activity of a nonresident taxpayer conducted in this State is sufficient to create nexus for application of Illinois income tax or replacement tax, the principles established in Appeal of Finnigan Corporation, Cal. St. Bd. of Equal. (1/24/90), commonly known as the "Finnigan rule", shall apply. Only activity conducted by or on behalf of the nonresident taxpayer shall be considered for this purpose. Because the income of a partnership, a Subchapter S corporation or any other pass-through entity is treated as income of its owners, activity of a pass-through entity is conducted on behalf of its owners. Activity conducted by any other

person, whether or not affiliated with the nonresident taxpayer, shall not be considered attributable to the taxpayer, unless the other person was acting in a representative capacity on behalf of the taxpayer."