DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Income Tax

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

3)

Section Numbers:	Proposed Actions:
100.3200	Amendment
100.3370	Amendment
100.3375	New Section
100.5200	Amendment
100.5201	Amendment
100.5210	Amendment
100.5215	Amendment
100.5250	Amendment
100.5270	Amendment
100.9720	Amendment

4) Statutory Authority: Implementing Section 304(e) 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].

5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends several sections of Part 100, Income Tax, to implement Public Act 104-0006, which provides that the apportionment of sales within a unitary business group will be computed using the "Finnigan" method for tax years ending on or after December 31, 2025. Under this method, a unitary business group will be considered taxable in a state if any member of the group is subject to tax in that state. When computing the unitary business group's sales factor apportionment, each taxpayer member of the group must include in its sales factor numerator a portion of the aggregate Illinois sales of non-taxpayer members based on a ratio.

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) Do these proposed amendments contain incorporations by reference? No

10) Are there any other proposed rulemakings pending on this Part? No

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:

Jennifer Uhles
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 amendments: None

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

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

14) Small Business Economic Impact Analysis: None

15) Regulatory Agenda on which this rulemaking was summarized: July 2025

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.

The full text of the Proposed Amendments 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

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

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Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Deadline for Filing Claims Based on Net Operating Losses Carried Back From a Combined Apportionment Year

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

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Section
100.2770 Subtraction for Recovery of Itemized Deductions of a Decedent (IITA Section 203(c)(2)(W))
100.2775 Subtraction for Refunds of Taxes Paid to Other States for Which a Credit Was Claimed (IITA Section 203(c)(2)(X))

SUBPART I: BASE INCOME OF PARTNERSHIPS

Section
100.2850 Subtraction Modification for Personal Service Income or Reasonable Allowance for Compensation to Partners (IITA Section 203(d)(2)(H))

SUBPART J: GENERAL RULES OF ALLOCATION AND APPORTIONMENT OF BASE INCOME

Section
100.3000 Terms Used in Article 3 (IITA Section 301)
100.3010 Business and Nonbusiness Income (IITA Section 301)
100.3015 Business Income Election (IITA Section 1501)
100.3020 Resident (IITA Section 301)

SUBPART K: COMPENSATION

Section
100.3100 Compensation (IITA Section 302)
100.3110 State (IITA Section 302)
100.3120 Allocation of Compensation Paid to Nonresidents (IITA Section 302)

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

Section
100.3200 Taxability in Other State (IITA Section 303)
100.3210 Commercial Domicile (IITA Section 303)
100.3220 Allocation of Certain Items of Nonbusiness Income by Persons Other Than Residents (IITA Section 303)

SUBPART M: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

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SUBPART N: ACCOUNTING

SUBPART O: TIME AND PLACE FOR FILING RETURNS

Section

DEPARTMENT OF REVENUE

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SUBPART P: COMPOSITE RETURNS

SUBPART Q: COMBINED RETURNS

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SUBPART R: PAYMENTS

SUBPART S: REQUIREMENT AND AMOUNT OF WITHHOLDING

SUBPART T: AMOUNT EXEMPT FROM WITHHOLDING

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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)

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SUBPART X: COLLECTION AUTHORITY

Section
100.9000 General Income Tax Procedures (IITA Section 901)
100.9010 Collection Authority (IITA Section 901)
100.9020 Child Support Collection (IITA Section 901)

SUBPART Y: NOTICE AND DEMAND

Section
100.9100 Notice and Demand (IITA Section 902)

SUBPART Z: ASSESSMENT

Section
100.9200 Assessment (IITA Section 903)
100.9210 Waiver of Restrictions on Assessment (IITA Section 907)

SUBPART AA: DEFICIENCIES AND OVERPAYMENTS

Section
100.9300 Deficiencies and Overpayments (IITA Section 904)
100.9310 Application of Tax Payments Within Unitary Business Groups (IITA Section 603)
100.9320 Limitations on Notices of Deficiency (IITA Section 905)
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SUBPART BB: CREDITS AND REFUNDS

Section
100.9400 Credits and Refunds (IITA Section 909)
100.9410 Limitations on Claims for Refund (IITA Section 911)
100.9420 Recovery of Erroneous Refund (IITA Section 912)

SUBPART CC: INVESTIGATIONS AND HEARINGS

Section
100.9500 Access to Books and Records (IITA Section 913)

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NOTICE OF PROPOSED AMENDMENTS

SUBPART DD: JUDICIAL REVIEW

SUBPART EE: DEFINITIONS

SUBPART FF: LETTER RULING PROCEDURES

SUBPART GG: MISCELLANEOUS

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

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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 L: 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 the taxpayer 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 the taxpayer is subject to one of the specified taxes, but that the taxpayer, 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 the taxpayer's activities in that state are such as to give the state jurisdiction to subject the taxpayer 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 the taxpayer 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 U.S.C. 164(a)(3) or for which a foreign tax credit may be claimed under 26 U.S.C. 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 U.S.C. 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. For taxable years ending before December 31, 2022, 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. For taxable years ending on or after December 31, 2022, if jurisdiction is otherwise present, due to income-producing activities conducted by the taxpayer, that foreign country or political subdivision is not considered as being without jurisdiction by reason of the provisions of a treaty between that foreign country or political subdivision and the United States.

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 the taxpayer 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 and statutes of the United States.

3) For taxable years ending on or after December 31, 2025, a person is taxable in another state if any member of its unitary business group is taxable in that other state under the tests set forth in subsections (a)(1)(A) or (a)(1)(B).

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.

3) EXAMPLE 3. C corporation sells large mining equipment to customers in foreign country W in April 2022. The equipment is disassembled before shipping, and employees of C travel to W to re-assemble the equipment. C's activities in W thus exceed the protections of Public Law 86-272. However, due to a bilateral treaty between W and the United States, W will impose a net income tax only upon taxpayers maintaining a permanent establishment in W. C's activities in W do not constitute a permanent establishment. C meets the test specified in subsection (a)(1)(B) because W has jurisdiction to impose a net income tax on C, irrespective of the treaty provision, for tax years ending on or after December 31, 2022.

4) EXAMPLE 4. 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 is exempt from taxation in State Y due to the provisions of Public Law 86-272. State Y does not impose a corporate income tax or similar business tax. Corporation A is not taxable in State Y because it does not meet the tests specified in subsections (a)(1)(A) or (a)(1)(B). Corporation B has taxable nexus in State Y, and under the test in subsection (a)(1)(B), Corporation B is taxable in State Y. For the combined group's taxable year ending June 30, 2026, the out-of-state sales made by Corporation A to customers in State Y will not be thrown back to Illinois because Corporation B is taxable in the destination state.

5) EXAMPLE 5. Assume the same facts as in Example 4, except that Corporation B does not have taxable nexus in State Y. For the combined group's taxable year ending June 30, 2026, the out-of-state sales made by Corporation A to State Y will be thrown back to Illinois

because no member of the unitary business group is subject to tax in the destination state.

6) EXAMPLE 6. Corporation A and Subchapter S Corporation B are members of a unitary business group. The group filed separate unitary returns for taxable year ending December 31, 2025, as provided under Section 100.5215 of this Part. Corporation A is located in Illinois and ships products from Illinois to customers in State Y. Corporation A is exempt from taxation in State Y due to the provisions of Public Law 86-272. State Y does not impose a corporate income tax or similar business tax. Corporation A is not taxable in State Y because it does not meet the tests specified in subsections (a)(1)(A) or (a)(1)(B). Subchapter S Corporation B has taxable nexus in State Y, and under the test in subsection (a)(1)(B), is taxable in State Y. Both Corporation A and Subchapter S Corporation B use the unitary business group's everywhere factor or factors in calculating the apportionment fraction denominator. In calculating its apportionment fraction numerator, Corporation A is not required to throw back its sales made to customers in State Y because Subchapter S Corporation B is taxable in the destination state and satisfies the conditions in subsection (a)(1) for the entire unitary business group.

7) EXAMPLE 7. Corporations G and H are members of a unitary business group. Corporation G, an Illinois corporation, sells services to customers in State A. Corporation G is exempt from taxation in State A. State A does not impose a corporate income tax or similar business tax. Corporation G is not taxable in State A because it does not meet the tests specified in subsections (a)(1)(A) or (a)(1)(B). Corporation H has taxable nexus in State A, and under the test in subsection (a)(1)(B), Corporation H is taxable in State A. For the combined group's taxable year ending December 31, 2025, the sales of services made by Corporation G to customers in State A will not be excluded from the sales factor because Corporation H is taxable in the state where the services were received.

8) EXAMPLE 8. Assume the same facts as Example 7, but Corporation H is not taxable in State A. The sales of services made by Corporation G to customers in State A will be excluded from the sales factor because

no member of the unitary business group is taxable in the state where the services were received.

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

SUBPART M: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section 100.3370 Sales Factor (IITA Section 304)

a) In General

1) IITA Section 1501(a)(21) defines the term "sales" to mean all gross receipts of the person not allocated under IITA Sections 301, 302 and 303. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the person, the term "sales" means all gross receipts derived by the person from transactions and activity in the regular course of his or her trade or business. The following are rules for determining "sales" in various situations, except in instances in which an alternative method of determining the sales factor is prescribed in Section 100.3380. If the determination prescribed by this Section does not clearly reflect the taxpayer's business activities in Illinois (for taxable years ending before December 31, 2008) or the market for the taxpayer's goods, services or other sources of income in Illinois (for taxable years ending on or after December 31, 2008), the taxpayer may request the use of an alternative method of apportionment under Section 100.3390.

A) In the case of a person engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of those goods or products (or other property of a kind that would properly be included in the inventory of the person if on hand at the close of the tax period) held by the person primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges attendant to those sales. Federal and State excise taxes

(including sales taxes) shall be included as part of the receipts if the taxes are passed on to the buyer or included as part of the selling price of the product.

B) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.

C) In the case of a person engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, "sales" includes the gross receipts from the performance of those services, including fees, commissions and similar items.

D) In the case of a person engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease or licensing of the use of the property.

E) In the case of a person engaged in the sale, assignment or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

F) If a person derives receipts from the sale of equipment used in its business, those receipts constitute "sales". For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks shall be included in the sales factor.

2) The following gross receipts are not included in the sales factor:

A) For taxable years ending on or after December 31, 1995, *dividends; amounts included under IRC section 78; and Subpart F income* are excluded from the sales factor under IITA Section 304(a)(3)(D).

B) Gross receipts that are excluded from or deducted in the computation of federal taxable income or federal adjusted

gross income, and that are not added back in the computation of base income. For example, in years ending prior to December 31, 1995, dividends received from a domestic corporation are excluded from the sales factor to the extent the taxpayer is allowed a deduction under IRC section 243 with respect to those dividends.

C) Gross receipts that are subtracted from federal taxable income or federal adjusted gross income in the computation of base income or that are eliminated in the computation of taxable income in the case of a unitary business group under Section 100.5270 (b)(1). Examples of gross receipts excluded from the sales factor under this provision include:

i) Interest on federal obligations subtracted under IITA Section 203(a)(2)(N), (b)(2)(J), (c)(2)(K) or (d)(2)(G).

ii) For taxable years ending prior to December 31, 1995, dividends included in federal taxable income or federal adjusted gross income are excluded from the sales factor if eliminated in combination or to the extent subtracted under IITA Section 203(a)(2)(J), (a)(2)(K), (b)(2)(K), (b)(2)(L), (b)(2)(O), (c)(2)(M), (c)(2)(O), (d)(2)(K) or (d)(2)(M).

D) Gross receipts that are excluded from or deducted in the computation of federal taxable income or federal adjusted gross income, but are added back in the computation of base income, are included in the sales factor unless subtracted or eliminated in combination. For example:

i) Interest on State obligations excluded from federal taxable income or adjusted gross income under IRC section 103 and added back in the computation of base income under IITA Section 203(a)(2)(A), (b)(2)(A), (c)(2)(A) or (d)(2)(A) shall be included in the sales factor except in the case of interest on certain Illinois

obligations that is exempt from Illinois Income Tax. (See 86 Ill. Adm. Code 100.2470(f).)

ii) Gross receipts from intercompany transactions between two corporate members of a federal consolidated group, the taxable income on which is deferred under 26 CFR 1.1502-13, shall be included in the sales factor of the recipient unless subtracted under a provision of IITA Section 203 or eliminated in combination of the two corporations as members of a unitary business group.

E) In some cases, certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this State the income of the person's trade or business. (See 86 Ill. Adm. Code 100.3380(c).)

F) For taxable years ending on or after December 31, 1999, *gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property may be included in the sales factor only if gross receipts from licenses, sales, or other dispositions of these items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the 2 immediately preceding tax years; provided that, when a taxpayer is a member of a unitary business group, the determination shall be made on the basis of the gross receipts of the entire unitary business group*. (IITA Section 304(a)(3)(B-2)) For purposes of this Section:

i) "Gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property" includes amounts received as damages or settlements from claims of infringement.

ii) "Gross receipts from the licensing, sale, or other disposition of a patent" includes only amounts received from a person using the patent in the production, fabrication, manufacturing, or other processing of a product or from a person producing, fabricating or manufacturing a product subject to the patent.

iii) "Gross receipts from the licensing, sale, or other disposition of a copyright" includes only amounts received by the taxpayer from a person engaged in printing or other publication of the material protected by the copyright, which are governed by Section 100.3373. The term does not include gross receipts from broadcasting within the meaning of IITA Section 304(a)(3)(B-7) or from publishing or advertising within the meaning of IITA Section 304(a)(3)(C-5)(iv).

iv) If a taxpayer has been in existence less than three taxable years, its gross receipts from the licensing, sale, or other disposition of patents, copyrights, trademarks or similar items of intangible personal property shall be included in its sales factor if those gross receipts comprise more than 50% of its total gross receipts during each taxable year of its existence.

v) "Patent" means a patent issued under 35 U.S.C. 151.

vi) "Copyright" means a copyright registered or eligible for registration under 17 U.S.C. 408.

vii) "Trademark" means a trademark registered or eligible for registration under 15 U.S.C. 1051.

viii) A "similar item" means an item of intellectual property that is registered or otherwise enforceable under a law equivalent to 35 U.S.C. 151, 17 U.S.C. 408 or 15 U.S.C. 1051 or that is otherwise recognized in the country under whose law the sale or license agreement would

be enforced, or under which an infringement claim would be brought.

ix) In the case of a unitary business group, the "total gross receipts and gross receipts from the licensing, sale or other disposition of a patent, copyright, trademark or similar item of intangible personal property in the two years immediately preceding the tax year" includes the gross receipts and gross receipts from the licensing, sale or other disposition of a patent, copyright, trademark or similar item of intangible personal property of all persons who are members of the unitary business group at some time during the taxable year, whether or not those persons were also members of the unitary business group in a preceding tax year, and only of those persons.

3) In filing returns with this State, if the person departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the person shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the person with all states to which the person reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the person shall disclose in its return to this State the nature and extent of the variance.

4) For taxable years ending prior to December 31, 2008, sales of electricity are sales other than sales of tangible personal property sourced under IITA Section 304(a)(3)(C). For taxable years ending on or after December 31, 2008 and prior to July 16, 2009, sales of electricity are sales of service sourced under IITA Section 304(a)(3)(C-5)(iv). For taxable years ending after July 15, 2009, sales of electricity are sales of tangible personal property sourced under IITA Section 304(a)(3)(B). (See Exelon Corp. v. Department of Revenue, 234 Ill 2d 266 (2009)).

b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the person from transactions and activity in the regular course of its trade or business, except receipts excluded under 86 Ill. Adm. Code 100.3380(c).

c) Numerator. The numerator of the sales factor shall include the gross receipts attributable to this State and derived by the person from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to those gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

1) Sales of Tangible Personal Property in this State

A) Gross receipts from the sales of tangible personal property (except sales to the United States Government) (see subsection (c)(2)) are in this State:

i) if the property is delivered or shipped to a purchaser within this State regardless of the f.o.b. (free on board) point or other conditions of sale; or

ii) if the property is shipped from an office, store, warehouse, factory or other place of storage in this State and the taxpayer is not taxable in the state of the purchaser. However, premises owned or leased by a person who has independently contracted with the taxpayer for the printing of newspapers, periodicals or books shall not be deemed to be an office, store, warehouse, factory or other place of storage. For taxable years ending on or after December 31, 2025, if the taxpayer is a member of a unitary business group and is not taxable in the state of the purchaser, the gross receipts are in this State if no member of the unitary business group is taxable in the state of the purchaser.

B) Property shall be deemed to be delivered or shipped to a purchaser within this State if the recipient is located in this State, even though the property is ordered from outside this State.

EXAMPLE: A corporation, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states including this State. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to purchaser's branch store in this State. The branch store in this State is the "purchaser within this State" with respect to $25,000 of the corporation's sales.

C) Property is delivered or shipped to a purchaser within this State if the shipment terminates in this State, even though the property is subsequently transferred by the purchaser to another state.

EXAMPLE: A corporation makes a sale to a purchaser who maintains a central warehouse in this State at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the corporation's products shipped to the purchaser's warehouse in this State is property "delivered or shipped to a purchaser within this State".

D) The term "purchaser within this State" shall include the ultimate recipient of the property if the person in this State, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this State.

EXAMPLE: A corporation in this State sold merchandise to a purchaser in State A. The corporation directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this State pursuant to purchaser's instructions. The sale by the corporation is "in this State".

E) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this State, the sales are in this State.

EXAMPLE: Corporation X, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in this State in which state Corporation X is subject to tax. The sale by the corporation is attributed to this State.

F) If the person is not taxable in the state of the purchaser, the sale is attributed to this State if the property is shipped from an office, store, warehouse, factory, or other place of storage in this State (subject to the exception noted in (c)(1)(A)(ii)).

EXAMPLE: A corporation has its head office and factory in State A. It maintains a branch office and inventory in this State. The corporation's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in this State for approval and are filled by shipment from the inventory in this State. Since the corporation is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to this State, the state from which the merchandise was shipped.

G) For taxable years ending on or after December 31, 2025, if a member of a unitary business group is not taxable in the state of the purchaser, the sale is attributed to this State if the property is shipped from an office, store, warehouse, factory, or other place of storage in this State (subject to the exception noted in subsection (c)(1)(A)(ii)) and no other member of the unitary business group is taxable in the state of the purchaser.

EXAMPLE: Corporations A and B are members of a unitary business group. Corporation A has its factory in State X and

maintains inventory in Illinois. Corporation A ships products from Illinois to customers in State Y. Corporation A is exempt from taxation in State Y due to the provisions of Public Law 86-272. Corporation B has taxable nexus in State Y. For the combined group's taxable year ending April 30, 2026, the sales of products by Corporation A to purchasers in State Y are not attributed to this State because another member of the unitary business group is taxable in State Y.

2) Sales of tangible personal property to the United States Government in this State. Gross receipts from the sales of tangible personal property to the United States Government are in this State if the property is shipped from an office, store, warehouse, factory, or other place of storage in this State. For the purposes of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of the contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

EXAMPLE A: A corporation contracts with General Services Administration to deliver X number of trucks that were paid for by the United States Government. The sale is a sale to the United States Government.

EXAMPLE B: A corporation as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a component of a rocket for $1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

3) For taxable years ending on or after December 31, 1999, *gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property* that are not excluded from the sales factor under subsection (a)(2)(F) are included in the numerator of the sales factor *to the extent the item is utilized in this State during the year the gross receipts are included*

in gross income. (IITA Section 304(a)(3)(B-1)) For purposes of this subsection (c)(3):

A) *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 a patent is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts of the licensee or purchaser from sales or leases of items produced, fabricated, manufactured, or processed within that state using the patent and of patented items produced within that state, divided by the total of the gross receipts for all states in which the patent is utilized.* (IITA Section 304(a)(3)(B-1)(ii)(I))

B) *A copyright is utilized in a state to the extent that printing or other publication originates in the state*. Printing or other publication originates at the place at which the licensee of the copyright incorporates the copyrighted material into the physical medium by which it will be delivered to the purchaser of the material or, if the copyrighted material is delivered to the purchaser without use of a physical medium, the place at which delivery of the copyrighted material to the person purchasing the material from the licensee originates. *If a copyright is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts from sales or licenses of materials printed or published in that state divided by the total of the gross receipts for all states in which the copyright is utilized.* (IITA Section 304(a)(3)(B-1)(ii)(II))

C) *Trademarks and other items of intangible personal property governed by this subsection (c)(3) are utilized in the state in which the commercial domicile of the licensee or purchaser is located.* (IITA Section 304(a)(3)(B-1)(ii)(III))

D) If the place of utilization of an item of property under subsection (c)(3)(A), (B) or (C) *cannot be determined from the*

taxpayer's books and records or from the books and records of any person related to the taxpayer within the meaning of IRC section 267(b), the gross receipts attributable to that item shall be excluded from both the numerator and the denominator of the sales factor. (IITA Section 304(a)(3)(B-1)(iii))

4) *For taxable years ending on or after December 31, 2013, gross receipts from winnings under the Illinois Lottery Law* [20 ILCS 1605] *and from the assignment of a prize under Section 13-1 of the Illinois Lottery Law are received in this State.* (IITA Section 304(a)(3)(B-8))

5) *For taxable years ending on or after December 31, 2019, gross receipts from winnings from pari-mutuel wagering conducted at a wagering facility licensed under the Illinois Horse Racing Act of 1975* [230 ILCS 5] *or from winnings from gambling games conducted on a riverboat or in a casino or organization gaming facility licensed under the Illinois Gambling Act* [230 ILCS 10] *are in this State.* (IITA Section 304(a)(3)(B-9))

6) *For taxable years ending on or after December 31, 2021, gross receipts from winnings from sports wagering conducted in accordance with the Sports Wagering Act* [230 ILCS 45] *are in this State.* (IITA Section 304(a)(3)(B-10))

7) For taxable years ending prior to December 31, 2008, gross receipts from transactions not governed by the provisions of subsection (c)(1), (2), (3) or (4) and, for taxable years ending on or after December 31, 2008, from transactions involving intangible personal property when the taxpayer is not a dealer with respect to the intangible personal property, are attributed to this State if the income producing activity that gave rise to the receipts is performed wholly within this State. Also, gross receipts are attributed to this State if, with respect to a particular item of income, the income producing activity is performed in this State, based on costs of performance.

A) Income Producing Activity Defined. The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by

the person in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a person, such as those conducted on its behalf by an independent contractor. The mere holding of intangible personal property is not, of itself, an income producing activity. Accordingly, the income producing activity includes but is not limited to the following:

i) The rendering of personal services by employees or the utilization of tangible and intangible property by the person in performing a service.

ii) The sale, rental, leasing, licensing or other use of real property.

iii) The rental, leasing, licensing or other use of tangible personal property.

iv) The sale, licensing or other use of intangible personal property.

B) Costs of Performance Defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the person.

C) Application. Receipts sourced under this subsection (c)(7) in respect to a particular income producing activity are in this State if:

i) the income producing activity is performed wholly within this State; or

ii) the income producing activity is performed both in and outside this State and, based on costs of performance, a greater proportion of the income producing activity is

performed in this State than without this State (for taxable years ending prior to December 31, 2008) or a greater proportion of the income-producing activity of the taxpayer is performed within this State than in any other state (for taxable years ending on or after December 31, 2008).

D) Special Rules. The following are special rules for determining when receipts from the income producing activities described in this subsection (c)(7)(D) are in this State.

i) Gross receipts from the sale, lease, rental or licensing of real property are in this State if the real property is located in this State.

ii) Gross receipts from the rental, lease, or licensing of tangible personal property are in this State if the property is located in this State. The principal cost of performance in a rental, leasing or licensing transaction is the depreciation or amortization of the tangible personal property, and the depreciation or amortization expense is incurred in the state in which the tangible personal property is located. The rental, lease, licensing or other use of tangible personal property in this State is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this State during the rental, lease or licensing period, gross receipts attributable to this State shall be measured by the ratio which the time the property was physically present or was used in this State bears to the total time or use of the property everywhere during that period.

EXAMPLE: Corporation X is the owner of 10 railroad cars. During the year, the total of the days each railroad car was present in this State was 50 days for a total of 500 days. The receipts attributable to the use of each of

the railroad cars in this State are a separate item of income. Total receipts attributable to this State shall be determined as follows:

(10 x 50)/3650 x Total Receipts

iii) Gross receipts for the performance of personal services are attributable to this State to the extent those services are performed partly within and partly outside this State. The gross receipts for the performance of those services shall be attributable to this State only if a greater portion of the services were performed in this State, based on costs of performance. When services are performed partly within and partly outside this State and the services performed in each state constitute a separate income producing activity, the gross receipts for the performance of services attributable to this State shall be measured by the ratio that the time spent in performing the services in this State bears to the total time spent in performing the services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to the gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

EXAMPLE 1: Corporation X, a road show, gave theatrical performances at various locations in State X and in this State during the tax period. All gross receipts from performances given in this State are attributed to this State.

EXAMPLE 2: A public opinion survey corporation conducted a poll by its employees in State X and in this State for the sum of $9,000. The project required 600 labor ~~man~~ hours to obtain the basic data and prepare

the survey report. Two hundred of the 600 labor ~~man~~ hours were expended in this State. The receipts attributable to this State are $3,000, calculated as follows:

200/600 x $9,000

8) For taxable years ending on or after December 31, 2008, gross receipts from transactions not governed by the provisions of subsection (c)(1), (2), (3), (4), (5), (6) or (7) *are in this State if any of the following criteria are met*:

A) *Sales from the sale or lease of real property are in this State if the property is located in this State.* (IITA Section 304(a)(3)(C-5)(i))

B) *Sales from the lease or rental of tangible personal property are in this State if the property is located in this State during the rental period. Sales from the lease or rental of tangible personal property that is characteristically moving property, including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, are in this State to the extent that the property is used in this State.* (IITA Section 304(a)(3)(C-5)(ii))

C) *In the case of interest, net gains (but not less than zero) and other items of income from intangible personal property, the sale is in this State if:*

i) *in the case of a taxpayer who:*

- *is a dealer in the item of intangible personal property within the meaning of IRC section 475, the income or gain is received from a customer in this State*. A taxpayer is a dealer with respect to an item of intangible personal property if the taxpayer is a dealer with respect to the item under IRC section 475(c)(1), or would be a dealer

with respect to the item under IRC section 475(c)(1) if the item were a security as defined under IRC section 475(c)(2). *For purposes of this subsection (c)(8)(C)(i), a customer is in this State if the customer is an individual, trust or estate who is a resident of this State and, for all other customers, if the customer's commercial domicile is in this State. Unless the dealer has actual knowledge of the residence or commercial domicile of a customer during a taxable year, the customer shall be deemed to be a customer in this State if the billing address of the customer, as shown in the records of the dealer, is in this State.* (IITA Section 304(a)(3)(C-5)(iii)(a)) A dealer shall treat the person with whom it engages in a transaction as the customer, even when that person is acting on behalf of a third party, unless the dealer has actual knowledge of the party on whose behalf the person is acting. If a taxpayer is a dealer with respect to an item of intangible personal property and recognizes gain or loss with respect to that item other than in connection with a transaction with a customer (for example, unrealized gain or loss from marking the item to market under IRC section 475), that gain or loss shall be excluded from the numerator and denominator of the sales factor; or

- is not a dealer with *respect* to the item of *intangible* personal property, *if the income-producing activity of the taxpayer is performed in this State or, if the income-producing activity of the taxpayer is performed both within and without this State, if a greater proportion of the income-producing activity of the taxpayer is performed within this State than in any other state, based on performance costs.* (IITA Section

304(a)(3)(C-5)(iii)(b)) (See subsection (c)(7) of this Section.)

ii) For purposes of this subsection (c)(8)(C), an item of "intangible personal property" includes only an item that can ordinarily be resold or otherwise reconveyed by the person acquiring the item from the taxpayer, and does not include any obligation of the taxpayer to make any payment, perform any act, or otherwise provide anything of value to another person.

EXAMPLE 1: A ticket to attend a sporting event would not be an item of intangible personal property for the owner of the stadium who issues the ticket and is obliged to grant admission to the holder of the ticket. Rather, the sale of the ticket is a prepayment for a service to be provided. However, the ticket would be an item of intangible personal property in the hands of the original purchaser or any subsequent purchaser of the ticket, and a ticket broker engaged in the business of buying and reselling tickets would be a dealer with respect to the ticket.

EXAMPLE 2: A taxpayer selling canned computer software is selling intangible personal property. (First National Bank of Springfield v. Dept. of Revenue, 85 Ill.2d 84 (1981)) If the taxpayer sells software to customers in the ordinary course of its business, it is a dealer with respect to those sales. In contrast, a taxpayer providing programming or maintenance services to its customers is selling services rather than intangible personal property.

EXAMPLE 3: A taxpayer administers a "rewards program" for a group of unrelated businesses. Under the program, a customer of one business can earn discounts or rebates on products and services provided by any of the businesses. As each customer earns

rewards, measured in "units", from one of the businesses, that business pays a specified amount per unit to the taxpayer. When a customer uses units earned in the program to purchase products or services at a discount from a participating business, the taxpayer pays that business a specified amount per unit used by the customer. Rebates may be paid to the customer directly by the taxpayer or by one of the businesses, which is then reimbursed by the taxpayer. To the extent payments made to the taxpayer by businesses awarding units exceed the payments the taxpayer must make for discounts and rebates, the excess is payment for operating the program. The units awarded are obligations of the taxpayer to make payments to the business providing products or services at a discount or to pay rebates. Accordingly, payments received by the taxpayer from the participating businesses for units awarded are not income from sales of intangible personal property by the taxpayer.

D) *Sales of services are in this State if the services are received in this State.* (IITA Section 304(a)(3)(C-5)(iv))

i) General Rule. Gross receipts from services are assigned to the numerator of the sales factor to the extent that the receipts may be attributed to services received in Illinois.

ii) A contract that involves the provision of a service by the taxpayer and the use of property of the taxpayer by the service recipient shall be treated as a sale of service unless the contract is properly treated as a lease of property under IRC section 7701(e)(1), taking into account all relevant factors, including whether:

- the service recipient is in physical possession of the property;

- the service recipient controls the property;

- the service recipient has a significant economic or possessory interest in the property;

- the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract;

- the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient; and

- the total contract price does not substantially exceed the rental value of the property for the contract period.

EXAMPLE: A taxpayer selling access to an online database or applications software, and who is required to perform regular update services to the database or software, retains control over the contents of the database or software, and provides access to the same database or software to multiple customers is not selling or licensing an item of intangible personal property to its customers, but rather is providing a service.

iii) Services received in this State include, but are not limited to:

- When the subject matter of the service is an item of tangible personal property, the service is received in this State if possession of the property is restored to the recipient of the service under the principles in subsection (c)(1)

for determining whether a sale of that property is in this State.

EXAMPLE 1: A customer returns a computer to the manufacturer for repair. The manufacturer performs the repairs in Indiana and ships the computer to the customer's Illinois address. The service is received in this State.

EXAMPLE 2: Individual purchases clothing from Merchant at a store in this State, using a credit card issued by Bank A pursuant to a licensing agreement with Credit Card Company. Credit Card Company is not a financial organization required to apportion its business income under Section 100.3405. Bank A remits the purchase price to Credit Card Company, which deposits the purchase price with Merchant's bank, minus a fee or discount. All fees and discounts earned by Credit Card Company in connection with this purchase are for services received in this State.

- When the subject matter of the service is an item of real property, the service is received in the state in which the real property is located.

  EXAMPLE 3: Individual purchases a parcel of land in Illinois and constructs a house on the parcel. Services performed at an architect's office in Wisconsin regarding the design and construction of the house are received in this State.

- When the service is performed on or with respect to the person of an individual (for example, medical treatment services), the service is received in the state in which the

individual is located at the time the service is performed.

- Services performed by a taxpayer that are directly connected to or in support of services received in this State are also services received in this State.

  EXAMPLE 4: Individual purchases automobile repair services from Automobile Dealership at its facility located in this State, using a credit card issued by Bank A pursuant to a licensing agreement with Credit Card Company. Bank A remits the purchase price to Credit Card Company, which deposits the purchase price with Automobile Dealership's bank, minus a fee or discount. All fees and discounts earned by Credit Card Company in connection with this purchase are for services received in this State.

  EXAMPLE 5: Services performed by an investment fund on behalf of an investor are received in this State if the investor resides in this State (in the case of an individual) or has its ordering or billing address in this State (for other investors). In the case of services provided by Taxpayer to or on behalf of the investment fund that are directly connected with services provided separately to the investors, such as preparation of communications and statements to investors, and allocations of earnings and distributions to investors, the service is also received in this State to the extent the investors reside (or have their ordering or billing address) in this State. Accordingly, receipts of Taxpayer for these services are allocated to this State on the basis of the ratio of: the average of the outstanding shares in the fund owned by

shareholders, partners or other investors residing (or having their ordering or billing address) within this State at the beginning and end of each taxable year of the taxpayer; and the average of the total number of outstanding shares in the fund at the beginning and end of each year. Residence or ordering or billing address of the shareholder, partner or other investor is determined by the mailing address in the records of the investment fund or the taxpayer. Services provided to an investment fund that are not directly connected to or in support of services provided separately to investors, such as brokerage services or investment advising, are not received by the customer at the location of its investors.

iv) Special Rules

- Under IITA Section 304(a)(3)(C-5)(iv), *if the state where the services are received is not readily determinable, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business, or, if the ordering office cannot be determined, at the office of the customer to which the services are billed.* If the service is provided to an individual who provides a residential address as the place from which the services are ordered or to which the services are billed, rather than an office address, the residential address shall be used. For purposes of this provision, the state where services are received is not readily determinable if the facts necessary to make the determination are not contained in the books and records of the taxpayer or any person related to the taxpayer

within the meaning of IRC section 267(b) or if the available facts would allow reasonable persons to reach different determinations of the state in which the services were received.

- Under IITA Section 304(a)(3)(C-5)(iv), *if the services are provided to a corporation, partnership, or trust and the services are received in a state in which the corporation, partnership, or trust does not maintain a fixed place of business* (as defined in Section 100.3405(b)(1)), *the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business, or, if the ordering office cannot be determined, at the office of the customer to which the services are billed*. For purposes of this provision, in the case of services performed by the taxpayer as a subcontractor or as an agent acting on behalf of a principal, if either the contractor or principal has a fixed place of business in the state in which the services are received or the customer of the contractor or principal either is an individual or has a fixed place of business in the state in which the services are received, the service shall be treated as received in a state in which the customer of the taxpayer has a fixed place of business.

- Under IITA Section 304(a)(3)(C-5)(iv), *if the taxpayer is not taxable in the state in which the services are received or deemed to be received, the gross receipts attributed to those services must be excluded from both the numerator and denominator of the sales factor*. (See Section 100.3200 for guidance on determining when a

taxpayer is taxable in another state.) For taxable years ending on or after December 31, 2025, gross receipts attributed to sales of services made by a member of a unitary business group that is not taxable in the state where the services were received or deemed to be received are excluded from the sales factor if no member of the unitary business group is taxable in that state.

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

Section 100.3375 Combined Apportionment (IITA Section 304(e))

a) *Where 2 or more persons are engaged in a unitary business as described in* IITA Section 1501(a)(27), *a part of which is conducted in this State by one or more members of the group, the business income attributable to this State by any such member or members shall be apportioned by means of the combined apportionment method.* (IITA Section 304(e))

b) All members of a unitary business group must use the combined apportionment method to determine business income attributable to Illinois, including the provisions for determining taxability in another state as set forth in Section 100.3200 of this Part.

c) The combined apportionment method is applied by first computing the business income of each member of the unitary business group to derive the total business income of the group. Next, the apportionment factor for each group member subject to Illinois income tax is computed using the individual group member's Illinois sales as the numerator and the entire unitary business group's sales as the denominator. This apportionment factor is applied to the group's total business income to derive the amount of business income on which the group member would pay Illinois income tax. (See *General Telephone Co. v. Johnson* 469 N.E.2d 1067 (Ill. 1984).)

d) *For tax years ending on or after December 31, 2025, sales of each member of a unitary business group who is not a taxpayer, as defined* in IITA Section 1501(a)(24), *shall be determined based upon the apportionment rules*

applicable to the member and shall be aggregated. Each taxpayer member of the unitary business group shall include in its sales factor numerator a portion of the aggregate Illinois sales of the non-taxpayer members based on a ratio, the numerator of which is that taxpayer member's Illinois sales taking into account its applicable sales factor provisions, and the denominator of which is the aggregate Illinois sales of all the taxpayer members of the group taking into account their respective sales factor provisions. In addition, if inclusion of sales in the sales factor or numerator of the sales factor depends on whether a taxpayer is considered taxable in another state within the meaning of IITA Section 303(f), *that taxpayer shall be considered taxable in any state in which any member of its unitary business group is considered taxable under* IITA Section 303(f). (IITA Section 304(e))

e) The following examples illustrate the provisions of this Section:

EXAMPLE 1: Corporations A, B, and C constitute a unitary business group. All members have a taxable year ending June 30, 2024, and all members are taxable in Illinois. Corporation A has $5,000,000 in business income, $1,000,000 in Illinois sales, and $5,000,000 in everywhere sales. Corporation B has $2,000,000 in business income, $1,500,000 in Illinois sales, and $2,000,000 in everywhere sales. Corporation C has $3,000,000 in business income, $2,000,000 in Illinois sales, and $3,000,000 in everywhere sales. Total combined apportionable income is $10,000,000. The combined income apportionable to Illinois for the common tax year is computed as follows: $10,000,000 in combined business income x ($4,500,000 of A, B, and C's Illinois sales/$10,000,000 of combined total sales) = $4,500,000.

EXAMPLE 2: Corporations X, Y, and Z constitute a unitary business group. All members have a taxable year ending June 30, 2024. Corporation Z is protected by Public Law 86-272 and not taxable in Illinois. Corporation X has $800,000 in business income, $600,000 in Illinois sales, and $800,000 in everywhere sales. Corporation Y has $1,000,000 in business income, $500,000 in Illinois sales, and $1,000,000 in everywhere sales. Corporation Z has $4,000,000 in business income, $200,000 in Illinois sales, and $4,000,000 in everywhere sales. Total combined apportionable income is $5,800,000. The combined income apportionable to Illinois for the common tax year is computed as follows: $5,800,000 in combined business income x

($1,100,000 of X and Y's Illinois sales/$5,800,000 of combined total sales) = $1,100,000.

EXAMPLE 3: Corporations D, E, and F constitute a unitary business group. All members have a taxable year ending December 31, 2025. Corporation F is protected by Public Law 86-272 and not taxable in Illinois. Corporation D has $800,000 in business income, $600,000 in Illinois sales, and $800,000 in everywhere sales. Corporation E has $1,000,000 in business income, $500,000 in Illinois sales, and $1,000,000 in everywhere sales. Corporation F has $4,000,000 in business income, $200,000 in Illinois sales, and $4,000,000 in everywhere sales. Total combined apportionable income is $5,800,000. Corporation D must include in its sales factor numerator $109,091 of Corporation F's Illinois sales computed as follows: $200,000 of F's Illinois sales x ($600,000 of D's Illinois sales/$1,100,000 of D and E's combined Illinois sales). Corporation E must include in its sales factor numerator $90,909 of Corporation F's Illinois sales computed as follows: $200,000 of F's Illinois sales x ($500,000 of E's Illinois sales/$1,100,000 of D and E's combined Illinois sales). The combined income apportionable to Illinois for the common tax year is computed as follows: $5,800,000 in combined business income x [($600,000 D's Illinois sales + $109,091 F's apportioned Illinois sales)/$5,800,000 of combined total sales + ($500,000 E's Illinois sales + $90,909 F's apportioned Illinois sales)/$5,800,000 of combined total sales] = $1,300,000.

EXAMPLE 4: Corporations R, S, and T constitute a unitary business group. All members have a taxable year ending December 31, 2025. Corporation T is protected by Public Law 86-272 and not taxable in Illinois. Corporation T has $500,000 in sales from Illinois to customers in State M, where one or more members of the unitary business group has taxable nexus. As at least one member of the unitary business group has taxable nexus in State M, Illinois' throwback rule would not apply to the sales made by Corporation T to customers in State M. These sales are considered taxable in another state because the unitary business group has a connection to State M. The combined sales factor denominator remains the total combined sales of the group.

(Source: Added at 50 Ill. Reg. _____, effective _____)

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

SUBPART Q: COMBINED RETURNS

Section 100.5200 Filing of Combined Returns

For a number of years, Illinois corporate taxpayers that were members of a unitary business group were able to elect to file combined returns. Section 100.5205 provides guidance for the tax years for which this election was available. Taxpayers are now required to file combined returns in certain situations. *For taxable years ending on or after December 31, 1993, taxpayers that are corporations (other than Subchapter S corporations) and that are members of the same unitary business group shall be treated as one taxpayer for purposes of any original return, amended return which includes the same taxpayers of the unitary group which joined in filing the original return, extension, claim for refund, assessment, collection and payment and determination of the group's tax liability under* the *Act* (IITA Section 502(e)). The rules in this Subpart Q ~~P~~ are promulgated under the express statutory direction that *the Department shall make, promulgate and enforce such reasonable rules and regulations, and prescribe such forms as it may deem appropriate, to require all taxpayers that are corporations (other than Subchapter S corporations) and that are members of the same unitary business groups to be treated as one taxpayer*. (IITA Section 1401(b)(2))

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

Section 100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns

a) In general. These definitions and provisions apply to this Subpart Q ~~P~~.

b) Combined apportionment. The term "combined apportionment" shall have the same meaning as provided in IITA Section 304(e) and Section 100.3375 of this Part.

c)~~b)~~ Combined group. The term "combined group" means those eligible members of a unitary business group who have made an election to be treated as one taxpayer, or who are required to be treated as one taxpayer, under IITA Section 502(e).

d)~~c)~~ Combined return. The term "combined return" means a single tax return filed on behalf of a combined group. A combined return shall be filed using a single Form IL-1120 with Schedule UB (Unitary Business Schedule).

e)~~d)~~ Combined return year. The term "combined return year" means a taxable year for which a combined return is filed or is required to be filed.

f)~~e)~~ Common taxable year. The term "common taxable year" means the taxable year used by a combined group in reporting its combined net income, as determined under the provisions of Section 100.5265.

g)~~f)~~ Controlling corporation. The "controlling corporation" of a combined group is the corporation, if any, that directly or indirectly owns a controlling interest in all of the other eligible members of a combined group. A controlling interest means more than 50% of the outstanding voting stock of a member. Indirect ownership of an interest in a corporation includes constructive ownership (under Section 318 of the Internal Revenue Code) of an interest in the corporation which is owned by a related party, whether or not the related party is itself a member of the combined group.

h)~~g)~~ Designated agent. The term "designated agent" means the member appointed under Section 100.5220.

i)~~h)~~ Election. The term "election" refers to the election provided in Section IITA 502(e), as in effect for taxable years ending prior to December 31, 1993, to be treated as one taxpayer.

j)~~i)~~ Eligible member. The term "eligible member" means a corporation which is a member of a unitary business group and which has taxable presence in Illinois. Part-year members of a unitary business group are eligible members. Noncorporate taxpayers and Subchapter S corporations are not eligible members, either in combination with corporations which are eligible members or in combination with other noncorporate taxpayers or Subchapter S corporations. Members of a unitary business group are eligible members even though the unitary business group includes noncorporate members or Subchapter S corporations which are not eligible to join in the filing of a combined return.

k)~~j)~~ Separate company return. The term "separate company return" means an Illinois income tax return filed by a corporation which is not a member of a unitary business group.

l)~~k)~~ Separate company items. The term "separate company items" means the income, deductions, credits, tax liability and other facts of a corporation relevant to the computation of its Illinois Income Tax liabilities, determined as if such corporation was neither a member of an affiliated group filing consolidated federal income tax returns nor a member of a combined group.

m)~~l)~~ Separate unitary return. The term "separate unitary return" means an Illinois income tax return of a member of a unitary business group which has not elected to file a combined return for a taxable year ending prior to December 31, 1993 or by a member of a unitary business group which is not eligible to join in the filing of a combined return.

n)~~m)~~ Unitary business group. The term "unitary business group" shall have the same meaning as provided in IITA Section 1501(a)(27) and Section 100.9700 of this Part.

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

Section 100.5210 Procedures for Elective and Mandatory Filing of Combined Returns

a) Conditions of the election and election procedures. This subsection (a) applies to taxable years ending on or after December 31, 1985 and prior to December 31, 1993.

1) Conditions

A) The election, if made, must include all eligible members of the unitary business group, not just some.

B) For taxable years ending on or after December 31, 1987, taxpayers are not required to have the same taxable year.

C) For taxable years ending on or after December 31, 1985 and before December 31, 1987, taxpayers were required to have

the same taxable year to be eligible for the election. Corporate members with taxable years which were different from the common taxable year were required to file their own separate unitary returns or, in the case of two or more corporate members which have the same taxable year that is different from other corporate members making the election, they were allowed to elect to file their own combined return.

2) Consent. The election to file a combined return shall be upon the condition that all eligible members shall consent to this Subpart Q ~~P~~, and shall consent to be represented by the designated agent appointed on the Schedule UB in all matters described in Section 100.5220 of this Part. The filing of a combined return that includes the income and factors of any eligible member shall be the consent as to that member. If an eligible member fails to have its income and factors included in the combined return, then the tax liability of that member shall be determined on the basis of a separate unitary return unless the failure of such member was due to a mistake of law or fact, or to inadvertence (as determined by the designated agent) in which case the failure must be corrected prior to the issuance of any Notice of Deficiency. Where such failure is corrected, such member shall be treated as if it had properly consented and been included in the election from the beginning.

3) Making the election. The election is to be made by properly completing and filing a combined return (using Form IL-1120 and Schedule UB) by its due date (including extensions). In the case of a first combined return year, a combined request for extension of time to file the first combined return can be made.

4) Revocation. An election to be treated as a single taxpayer for the purposes set forth in IITA Section 502(e) remains in effect until it is revoked. If a taxpayer ceases to be a member, or was never properly a member, of a unitary business group for which an election is in effect, the election will automatically be revoked as to that taxpayer. In the case of a taxpayer that was improperly included in a combined return and whose election has been revoked, the Department shall consider the combined return to be the return filed by the taxpayer only for the

limited purposes of determining the limitations period within which certain actions must occur (e.g., the limitations period for issuing a notice of deficiency) and shall use the filing date of the combined return for purposes of determining any late filing penalty. Once an election is in effect for a taxable year, it cannot be revoked for that year unless the combined group is not a unitary business group, in which case the election will automatically be revoked. The Department shall revoke the election for abusive failure to comply with these regulations, such as blatant omission of members or a non-responsive designated agent, if the failure is not rectified after notification to the designated agent. The designated agent may revoke the election on behalf of all members for any taxable year by notifying the Department in writing of its intent prior to the due date for the filing of the return (excluding extensions) at the address stated in the instructions of Schedule UB.

b) Mandatory filing of combined returns

1) For taxable years ending on or after December 31, 1993, each group of eligible members is required to file combined returns and to be treated as one taxpayer for purposes of any original return, amended return which includes the same taxpayers of the unitary group which joined in filing the original return, extension, claim for refund, assessment, collection and payment and determination of the group's tax liability under the IITA.

2) Each combined group is required to properly complete and file a combined return (using Form IL-1120 and Schedule UB) by the due date of the return (including extensions). For the first year for which a combined return must be filed, a single combined request for extension of time to file the return can be made by one member acting as designated agent on behalf of the entire combined group, even though the designated agent will not actually be appointed until the combined return is filed.

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

Section 100.5215 Filing of Separate Unitary Returns (IITA Section 304(e))

a) Not every member of a unitary business group is eligible to join in the filing of a combined return and, for taxable years ending prior to December 31, 1993, joining in the filing of a combined return was elective.

b) Each member of a unitary business group who is subject to Illinois income tax and who properly does not join in the filing of a combined return must file a separate return, and compute its business income apportionable to Illinois by computing the base income of the unitary business group in accordance with Section 100.5270(a)(1) and by multiplying the business income included in the base income by an apportionment fraction computed by using the Illinois apportionment factor or factors applicable to the return filer under IITA Section 304 and the everywhere factor or factors of the entire unitary business group.

c) Each member of a unitary business group who is subject to Illinois income tax and who properly does not join in the filing of a combined return shall separately determine the amount of its nonbusiness income allocable to Illinois, the amount of the exemption allowed to it under IITA Section 204, the amounts of net loss carryovers, and the amounts of any credits and credit carryforwards to which it is entitled, without regard to the income, deductions, credits and other tax items of other members of the unitary business group, except to the extent those items enter into the computation of business income of the member apportioned to Illinois under subsection (b).

d) Examples. The following examples illustrate the provisions of this Section.

1) EXAMPLE 1: Individual A is a nonresident and is the sole shareholder of Corporation S, a subchapter S corporation, and Corporation C, a subchapter C corporation. Corporation S and Corporation C are engaged in a unitary business within the meaning of IITA Section 1501(a)(27). Corporation S' taxable year is the calendar year. Corporation C's taxable year is the fiscal year ending June 30. For its taxable year ending 12/31/14, Corporation S has business income (as defined in Section 100.3010(a)(2)) of $125,000, Illinois sales of $750,000, and total sales of $1,000,000. For its taxable year ending 6/30/14, Corporation C has business income of $75,000, Illinois sales

of $40,000, and total sales of $500,000. Under subsection (b), Corporation S must file a separate return using the combined apportionment method to determine its business income apportionable to Illinois. Combined apportionment must be computed on the basis of Corporation S' taxable year. Because Corporation C's taxable year differs, Corporation S may elect to apply any of the methods available under Section 100.5265 by treating S' taxable year as the common taxable year. Assume S elects to use method 3 to determine combined business income for the common taxable year ending 12/31/14. S' business income apportionable to Illinois is computed as follows: $200,000 × ($750,000/$1,500,000) = $100,000. Corporation C must also file a separate return computing its business income apportionable to Illinois by applying the combined apportionment method. Corporation C may elect to apply any of the methods available under Section 100.5265 to determine the amount of business income and apportionment factors of Corporation S to be used in computing Corporation C's business income apportioned to Illinois.

2) EXAMPLE 2: Assume that Corporation A owns a 91% interest, Corporation B a 4% interest and nonresident Individual Y a 5% interest, in P, a partnership. Corporation A and P are engaged in a unitary business within the meaning of IITA Section 1501(a)(27). Because Corporation A owns more than 90% of P, the alternative apportionment provisions for unitary partners and partnerships in Section 100.3380(d)(2) do not apply and P shall be treated as a member of Corporation A's unitary business group for all purposes. (See Section 100.3380(d)(4).) Corporation A, Corporation B, Individual Y, and P all use the calendar year as their taxable year. For taxable year 12/31/14, Corporation A has business income of $300,000 (not including any business income from P), Illinois sales of $450,000, and total sales of $600,000. P has business income of $100,000, Illinois sales of $30,000, and total sales of $400,000. There are no intercompany sales. Under Section 100.3380(d)(4), substantially all of the interests in P are owned or controlled by members of the same unitary business group, so that P is treated as a member of the unitary business group for all purposes. Because Corporation A's share of the business income of P will be eliminated in combination, combined

business income is $400,000. Under subsection (b), Corporation A and P are required to file separate returns in which business income apportionable to Illinois is computed by applying the combined apportionment method under IITA Section 304(e). Under the combined apportionment method, P's business income apportionable to Illinois is computed by combining its business income and total sales everywhere with the business income and total sales everywhere of A. P's business income apportioned to Illinois is thus $12,000, computed as follows: $400,000 in combined business income × ($30,000 of P's Illinois sales/$1,000,000 of combined total sales) = $12,000. Under IITA Section 304(e), Corporation A's business income apportionable to Illinois is $180,000, computed as follows: $400,000 in combined business income × ($450,000 of Corporation A's Illinois sales/$1,000,000 of combined total sales) = $180,000. In addition, under IITA Section 305(a), Corporation A must include its $10,920 distributive share (i.e., 91% × $12,000) of the business income of P apportioned to Illinois in its Illinois net income. Also, Individual Y must include her $600 distributable share of the business income of P apportioned to Illinois in her Illinois net income (i.e., 5% × $12,000), and Corporation B must include its $480 distributable share of the business income of P apportioned to Illinois in its Illinois net income (i.e., 4% of $12,000). Finally, P computes Illinois personal property tax replacement income tax on net income of $600, computed as follows: $400,000 - $380,000 (95% of its base income distributable to partners subject to replacement tax) = $20,000, and $20,000 × ($30,000/$1,000,000) = $600.

3) EXAMPLE 3: Assume the same facts as Example 2, except that P's business income is a loss of ($100,000). Under the combined apportionment method, P's business income apportionable to Illinois is computed by combining its business loss and total sales everywhere with the business income and total sales everywhere of A. P's business income apportioned to Illinois is thus $6,000, computed as follows: $200,000 × ($30,000/$1,000,000) = $6,000. Under IITA Section 304(e), Corporation A's business income apportionable to Illinois is $90,000, computed as follows: $200,000 × ($450,000/$1,000,000) = $90,000. In addition, Corporation A must

include its $5,460 distributive share of the business income of P apportioned to Illinois in its Illinois net income. Individual Y must include her $300 distributable share of the business income of P apportioned to Illinois in her Illinois net income (i.e., 5% × $6,000), and Corporation B must include its $240 distributable share. P computes Illinois personal property tax replacement income tax on net income of $300, computed as follows: $200,000 - $190,000 = $10,000, and $10,000 × ($30,000/$1,000,000) = $300.

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

Section 100.5250 Liability for Combined Tax, Penalty and Interest

a) Joint and several liability of members of a combined group. The members of a combined group shall be jointly and severally liable for the combined tax, penalty and interest computed in accordance with this Subpart Q ~~P~~, as well as the Uniform Penalty and Interest Act and rules adopted pursuant to the UPIA at 86 Ill. Adm. Code 700.

b) Effect of intercompany agreements. No agreement entered into by one or more members of a combined group with any other member of such group or with any other person shall in any case have the effect of reducing the liability prescribed under this Section.

c) Penalties. If a penalty is imposed under the IITA and the UPIA with respect to a combined return year, the amount shall be based on the combined tax liability or deficiency for the common taxable year.

1) For purposes of applying the penalties for failure to file a return imposed by Section 3-3(a), Section 3-3(a-5) and Section 3-3(a-10) of the Uniform Penalty and Interest Act (UPIA) [35 ILCS 735/3-3]:

A) A corporation which erroneously fails to join in the filing of a combined return, but which timely files a separate Illinois income tax return or joins in the timely filing of a combined return for another combined group, shall not be subject to any penalty. In determining whether such separate or combined return is timely filed, the separate taxable year of such

corporation or the common taxable year of the combined group such corporation erroneously joined shall be used, rather than the common taxable year of the combined group with which such corporation should have filed.

B) A corporation which erroneously fails to join in the filing of a combined return, and which fails, without reasonable cause, to timely file a separate Illinois income tax return or to join in the timely filing of a combined return for another combined group, shall be subject to penalty computed on the amount of tax shown (or required to be shown) due on the combined return for its proper combined group. Because it is the duty of the designated agent, acting on behalf of the combined group, to include such corporation in the combined return, the members of the combined groups shall be jointly and severally liable for the penalty.

C) A corporation which erroneously joins in the timely filing of a combined return shall not be subject to penalty for failure to file a return.

2) For purposes of applying the penalty for failure to timely pay tax imposed by UPIA Section 3-3(b), Section 3-3(b-5), ~~and~~ Section 3-3(b-10), Section 3-3(b-15), Section 3-3(b-20) and Section 3-3(b-25) [35 ILCS 735/3-3]:

A) In a case where a corporation erroneously fails to join in the filing of a combined return for a common taxable year, neither that corporation nor the combined group shall be subject to any failure-to-pay penalty under UPIA Section 3-3(b)(1), Section 3-3(b-5)(1), ~~or~~ Section 3-3(b-10)(1), Section 3-3(b-15), Section 3-3(b-20)(1), or Section 3-3(b-25)(1) if timely payment is made of the tax shown on a separate return filed by such corporation or on a combined return in which it erroneously joins in filing for each taxable year ending with or within such common taxable year. Unless there is reasonable cause for the failure of such corporation to join in the filing of the combined return, such corporation and the combined group

may be jointly and severally liable for a penalty under UPIA Section 3-3(b)(2), Section 3-3(b-5)(2), ~~or~~ Section 3-3(b-10)(2), Section 3-3(b-15), Section 3-3(b-20)(2), or Section 3-3(b-25)(2) for failure to pay any additional amount which would have been shown on the combined return had such corporation been included.

B) A corporation which erroneously fails to join in the filing of a combined return for a common taxable year and also fails to timely pay the tax shown on a separate return it files or on a combined return in which it joins in filing for each taxable year ending with or within such common taxable year shall be subject to penalty under UPIA Section 3-3(b)(1), Section 3-3(b-5)(1), ~~or~~ Section 3-3(b-10)(1), Section 3-3(b-15), Section 3-3(b-20)(1), or Section 3-3(b-25)(1) only for failure to pay the tax shown on the return it actually files or joins in filing. Unless there is reasonable cause for the failure of such corporation to join in the filing of the combined return, such corporation and the combined group may be jointly and severally liable for a penalty under UPIA Section 3-3(b)(2), Section 3-3(b-5)(2), ~~or~~ Section 3-3(b-10)(2), Section 3-3(b-15), Section 3-3(b-20)(2), or Section 3-3(b-25)(2) for failure to pay any additional amount which would have been shown on the combined return had such corporation been included.

C) If a corporation erroneously joins in the filing of a combined return, neither such corporation nor the combined group shall be subject to penalty under UPIA Section 3-3(b)(2), Section 3-3(b-5)(2), ~~or~~ Section 3-3(b-10)(2), Section 3-3(b-15), Section 3-3(b-20)(2), or Section 3-3(b-25)(2) for failure to pay any tax required to be shown on a separate company return and the combined group shall not be subject to penalty under UPIA Section 3-3(b)(2), Section 3-3(b-5)(2), ~~or~~ Section 3-3(b-10)(2), Section 3-3(b-15), Section 3-3(b-20)(2), or Section 3-3(b-25)(2) for failure to pay any increase in tax resulting from the exclusion of such corporation from the combined group if the tax timely paid with the original combined return exceeds the total tax required to be shown on the correct returns.

3) For purposes of applying the negligence penalty imposed by UPIA Section 3-5 [35 ILCS 735/3-5] or the fraud penalty imposed by UPIA Section 3-6 [35 ILCS 735/3-6] in any case in which a corporation erroneously joins or fails to join in the filing of a combined return, the penalty may be imposed on any deficiency resulting from such error, without taking into account any overpayment which may have resulted from the error.

Example. Corporations A, B and C meet all the requirements of a unitary business group, except that Corporations A and B are financial organizations which cannot be included in the same unitary business group as Corporation C, a manufacturer. On a separate-return basis, Corporation A has an Illinois net loss of $500, Corporation B has Illinois net income of $300 and Corporation C has Illinois net income of $700. Corporations A and C file a combined return reporting combined Illinois net income of $200, while Corporation B files a separate return reporting Illinois net income of $300. On audit, the Department corrects the liabilities by combining Corporations A and B, which eliminates Corporation B's separate return income and entitles them to a refund of the taxes paid by Corporation B, and by determining a separate return deficiency for Corporation C. If the combination of Corporations B and C on the original return was due to negligence or an intent to defraud, Corporation C will be subject to the applicable penalty on its entire deficiency without regard to the overpayment made by Corporation B.

4) For purposes of applying the penalty for failure to pay estimated taxes under IITA Section 804, see Section 100.5230 of this Part.

d) Interest. If interest is imposed under the IITA, at the rate determined under the UPIA, with respect to a combined return year, the amount shall be based on the combined tax liability or deficiency for the common taxable year. For purposes of computing any combined overpayment or underpayment on which interest is imposed:

1) in a case in which one or more corporations erroneously failed to join in the filing of the combined return, all payments, credits and other

amounts collected from such corporations which are properly attributable to the common taxable year shall be treated as having been paid by the combined group for such common taxable year; and

2) in a case where one or more corporations are erroneously included in a combined return, the designated agent may allocate to each such corporation some or all of the payments, credits and other amounts collected from the combined group which are properly attributable to the common taxable year, and all overpayments and underpayments for such corporations and the combined group will be computed in accordance with such allocation. The amount of estimated tax payments allocated to each such corporation pursuant to this subsection (d)(2) must be consistent with the amounts allocated to such corporation under Section 100.5230(a) and (g) of this Part.

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

Section 100.5270 Computation of Combined Net Income and Tax (IITA Section 304(e))

a) Determination of Base Income. The combined base income shall be determined by first computing the combined group's combined taxable income and then modifying this amount by the combined group's combined Illinois addition and subtraction modification amounts.

1) Combined Net Income. Combined base income shall be determined by treating all members of the unitary business group (including ineligible members) as if they constituted a federal consolidated group and by applying the federal regulations for determining consolidated taxable income, except that the separate return limitation year provisions and the limitations on consolidation of life and non-life companies in 26 CFR 1.1502-47 do not apply. (See 26 CFR 1.1502-11.) A consolidated net operating loss deduction, as defined in 26 CFR 1.1502-21 shall be added back to taxable income, in whole or in part, in accordance with subsections (a)(2), (a)(4) and (a)(5). Pursuant to IITA Section 203(e)(2)(E), combined base income shall be determined as if the election provided by IRC section 243(b)(2) had been in effect.

EXAMPLE 1: Corporations A and B properly make an election under IITA Section 502(e), or are properly required to file a combined return under IITA Section 502(e). On a separate return basis, A's federal taxable income would be a loss of ($500). This amount does not include an excess capital loss of $75 pursuant to IRC section 1211(a). B's federal taxable income is $1,000 of which $100 is capital gain. As a result of applying 26 CFR 1.1502-11 and 26 CFR 1.1502-22, the combined federal taxable income for A and B is $425.

2) Combined Illinois Net Loss. The combined group's current year combined taxable income may be less than zero, in which case combined taxable income shall be determined by applying the provisions of 26 CFR 1.1502-21(f) (consolidated net operating loss) to the unitary business group.

EXAMPLE 2: Same facts as Example 1 in subsection (a)(1) except that Corporation C has also properly joined in the election, or is properly required to join in the combined return filing, and its federal taxable income is a loss of ($800). If there are no addition or subtraction modifications and all of the group's base income is apportioned to Illinois, the group's combined Illinois net loss for the taxable year is ($375).

3) Carrybacks and Carryovers. Carrybacks and carryovers, if any, shall be determined for each member and not for the group. A pro rata share of the loss is attributable to each of the loss members. For Illinois net losses that occurred in taxable years ending on or after December 31, 1986, the amount of any carryback or carryover shall be determined by applying Sections 100.2340 and 100.2350(c)(3) and (c)(4). For federal net operating losses that occurred in taxable years ending prior to December 31, 1986, the amount of any carryback or carryforward shall be determined by applying Section 100.2230.

EXAMPLE 3: Same facts as Example 2 in subsection (a)(2). Assuming the taxable year ends prior to December 31, 1986, the group's combined net operating loss of ($375) shall be divided between A and C as follows for purposes of carryback and carryover:

Corp. A: 500/1,300 x (375) = 144

Corp. C: 800/1,300 x (375) = 231

4) Addition Modification of Federal Net Operating Loss (NOL) Deductions from a Loss Incurred in a Taxable Year Ending on or after December 31, 1986. IITA Section 203(b)(2)(D) requires that the amount of any federal net operating loss deduction taken in arriving at taxable income for federal tax purposes, other than from a loss in a taxable year ending prior to December 31, 1986, shall be added back to taxable income in the computation of base income. (See Section 100.2320(a).)

5) Addition Modification of Pre-December 31, 1986 Federal Losses. IITA Section 203(b)(2)(E) requires an addition modification subject to two limitations for taxable years in which a federal net operating loss carryforward from a taxable year ending prior to December 31, 1986 is an element of taxable income. Consequently, each member allowed to carryback or forward a portion of the group's combined net operating loss from a year in which that combined loss was used to offset a portion of the group's combined excess addition modifications shall take as an addition modification in the carryback or carryover year its respective share of the NOL addition modification required by IITA Section 203(b)(2)(E). In accordance with Section 100.2240, the respective shares shall be determined in the same manner as the determination of the amount of NOL carryback or carryover.

EXAMPLE 4: Same facts as Example 2 in subsection (a)(2) except that the group had combined excess addition modifications of $100. This amount will be divided among the loss members as follows:

Corp. A: 500/1,300 x 100 = 38

Corp. C: 800/1,300 x 100 = 62

b) Combined Base Income Allocable to Illinois. Combined base income allocable to Illinois is the sum of the combined business income or loss

apportioned to Illinois plus the combined nonbusiness income or loss allocated to Illinois plus the combined business income or loss apportioned to Illinois by partnerships in which the members are partners (other than partnerships that apportion business income under Section 100.3380(d)), less the combined net loss deduction.

1) Combined Business Income Apportionable to Illinois. In the case of a combined group composed solely of members that apportion their business income under the same subsection of IITA Section 304 (that is, insurance companies apportioning business income under IITA Section 304(b), financial organizations apportioning business income under IITA Section 304(c), federally regulated exchanges apportioning business income under IITA Section 304(c-1), transportation companies apportioning business income under IITA Section 304(d), and all other businesses apportioning business income under IITA Section 304(a)), the combined group's combined business income shall be apportioned using the total Illinois factors of the combined group and total everywhere factors of the unitary business group. In the case of a combined group that includes members that apportion their business income under different subsections of IITA Section 304, the combined group's combined business income is apportioned as provided in Section 100.3600. Items of income and deduction arising from transactions between members of the unitary business groups shall be eliminated whenever necessary to avoid distortion of the denominators used by the unitary business group in calculating apportionment factors, or of the numerators used by the combined group or by ineligible members of the group in calculating apportionment factors.

EXAMPLE 1: Corporations A, B and C constitute a unitary business group. Corporations A and B are eligible to make the election under IITA Section 502(e) for tax years ending before December 31, 1993. However, under Public Law 86-272, Corporation C is not taxable in Illinois. Based on these facts, if the election to be treated as one taxpayer is made, the combined Illinois sales factor shall be determined by dividing the combined group's total combined Illinois sales (that is, excluding any sales of Corporation C shipped to purchasers in Illinois) by the total combined sales of the unitary

business group everywhere. If the same facts are applied to a tax year ending on or after December 31, 1993, and ending before December 31, 2025, the same result will occur in the mandatory combined return situation. If the same facts are applied to a tax year ending on or after December 31, 2025, both Corporation A and B shall include in their sales factor numerator a portion of the Illinois sales of Corporation C based on a ratio, the numerator of which is that taxpayer member's Illinois sales, and the denominator of which is the aggregate Illinois sales of all the taxpayer members of the group. The combined Illinois sales factor shall be determined by dividing the combined group's total combined Illinois sales (which includes the portion of Corporation C's Illinois sales included in each of the sales factor numerators of Corporation A and B) by the total combined sales of the unitary business group everywhere.

EXAMPLE 2: Same facts as in Example 1, except these additional facts also exist. Under Public Law 86-272, Corporations B and C are taxable in South Carolina, but Corporation ~~corporation~~ A is not. Based on these facts, if the election to be treated as one taxpayer is made, or the taxpayers are required to be treated as one taxpayer for tax years ending before December 31, 2025, the combined Illinois sales factor shall be determined by dividing the combined group's total Illinois sales (including any sales of Corporation A shipped to purchasers in South Carolina from any place of storage in Illinois, i.e., throwback sales) by the total sales of the unitary business group everywhere. If the taxpayers are required to be treated as one taxpayer for tax years ending on or after December 31, 2025, then Illinois' throwback rule would not apply as at least one member of the unitary business group is taxable in South Carolina. The combined Illinois sales factor shall be determined by dividing the combined group's total Illinois sales (excluding any sales of Corporation A shipped to purchasers in South Carolina from any place of storage in Illinois) by the total sales of the unitary business group everywhere.

2) Combined Nonbusiness Income and Business Income Apportioned to Illinois by Partnerships in which the Members are Partners (other than partnerships that apportion business income under Section 100.3380(d)). The amount of combined nonbusiness income or loss

allocable to Illinois shall be computed by first determining the amount for each member of the combined group and then combining these amounts. Similarly, the amount of combined business income or loss apportioned to Illinois by partnerships in which the members are partners (other than partnerships that apportion business income under Section 100.3380(d)) shall be computed by first determining the amount for each member and then combining these amounts.

3) Combined Illinois Net Loss Deduction. The combined Illinois net loss deduction for losses originating in tax years ending on or after December 31, 1986 shall be computed by determining the amount of deduction available for each member of the combined group in accordance with Sections 100.2330, 100.2340 and 100.2350 and then by combining these amounts.

c) Combined Exemption. Under the election or requirement to be treated as one taxpayer, there is one exemption per combined return. The combined exemption shall be computed by multiplying the amount of the exemption allowed under IITA Section 204 and Section 100.2055 by a fraction, the numerator of which is combined base income allocable to Illinois and the denominator of which is the group's combined base income. The exemption amount for members of unitary groups not making the election, or not subject to the requirement, and for members of unitary groups ineligible to make the election, or not subject to the requirement, shall be computed by multiplying the amount of the exemption allowed under IITA Sections 204 and 100.2055 by a fraction, the numerator of which shall be that member's base income allocable to Illinois, and the denominator of which is the group's combined base income.

d) Combined Credits

1) Applicability of Credits. Any credit allowed by the IITA is determined based on the combined activities of the members of the combined group and that credit shall be applied against the combined liability of the combined group.

2) Credits Based on Members' Activities. The investment credits provided in IITA Sections 201(e), (f) and (h), 237, and 239 ~~206(b)~~ are

available when certain property is purchased and placed in service by a taxpayer. The combined group is entitled to a combined credit, assuming the other statutory or regulatory requirements applicable to the given credit are satisfied, even if one of the members purchases the qualified property and another member uses the property in a qualified manner.

3) Effective January 1, 1994, the investment credit provided in IITA Section 201(e) is allowed for a taxpayer who is *primarily engaged in manufacturing, or in mining coal or fluorite, or in retailing*. In the case of a combined group, the determination of eligibility shall be made for the combined group as a whole, rather than for any individual member. The determination of whether a combined group is primarily engaged in a qualifying activity shall be made by applying the 50% of gross receipts test in Section 100.2101(f) by taking into account the gross receipts of only the eligible members of the combined group. Gross receipts of corporations that would otherwise be members of the combined group, but have no taxable presence in Illinois or that cannot be combined for any other reason, shall not be considered in this determination. In determining whether a combined group is primarily engaged in retailing, gross receipts from transactions between eligible members of the combined group shall be eliminated from both the numerator and the denominator of the computation. In determining whether a combined group is primarily engaged in manufacturing or in the mining of coal or fluorite, gross receipts from manufacturing or the mining of coal or fluorite shall include:

A) gross receipts from sales of products manufactured or coal or fluorite mined by one eligible member of the combined group to another eligible member of the combined group for use or consumption, and not for resale. However, the amount of those gross receipts shall be subject to adjustment by the Department under IITA Section 404; and

B) gross receipts from sales to persons outside the combined group by one eligible member of the combined group of items manufactured, or coal or fluorite mined, by another eligible member of the combined group.

4) The additional credit provided in IITA Section 201(e) and the credit provided in IITA Section 201(g) are based on specified increases in employment in Illinois. For purposes of determining entitlement to these credits during a combined-return year, the increase in employment shall be determined with respect to the employment of all members of the combined group in Illinois and not an individual member's employment. For purposes of determining the increase in employment in Illinois for a common taxable year, the Illinois employment of all taxpayers who are members of the combined group during that common taxable year shall be used; that is, both prior and current year Illinois employment of current members who were not members of the combined group in the prior year shall be included in the determination, while prior and current year Illinois employment of taxpayers who ceased to be members of the combined group during the current or prior year shall be excluded. The application of this subsection (d)(4) is illustrated by the following examples:

EXAMPLE 1: Corporations A, B and C were members of a unitary business group that elected to file a combined return for 1989. Corporation D was not a member of the ABC combined group in 1989, but becomes a member of combined group ABCD filing a combined return for 1990. During 1989, Corporations A, B and C employed a total of 150 persons in Illinois and Corporation D employed 50 people in Illinois, for a total of 200. During 1990, Corporations A, B and C employed 100 persons in Illinois and Corporation D employed 100 persons in Illinois, again for a total of 200. IITA Section 201(e), which provides for a Replacement Tax Investment Credit for qualified property placed in service by the taxpayer during the year, allows an additional 0.5% credit for that property to a taxpayer whose Illinois employment has increased by at least 1% over its Illinois employment in the immediately preceding year. Combined group ABCD cannot qualify for the additional 0.5% credit during 1990 because the combined Illinois employment of Corporations A, B, C and D remained unchanged between 1989 and 1990. Because eligibility is determined at the combined group level, no additional credit is allowed for qualified property placed in service by Corporation D in

1990, even though Corporation D's Illinois employment doubled between 1989 and 1990.

EXAMPLE 2: Corporations P, Q, R and S filed a combined Illinois return for calendar year 1990. On January 1, 1991, Corporation S was sold to an unrelated purchaser. Corporations P, Q and R filed a combined Illinois return for calendar year 1991. Combined group PQRS employed 400 people in Illinois during 1990, 100 of whom were actually employees of Corporation P and 100 of whom were actually employees of Corporation S. Combined group PQR employed 350 people in Illinois during 1991, 50 of whom were actually employees of Corporation P. Combined group PQR can qualify for the additional 0.5% Replacement Tax Investment Credit allowed under IITA Section 201(e) for qualified property placed in service during 1990 because the Illinois employment of the three members of the combined group increased from 300 in 1989 to 400 in 1990. Because the eligibility is determined at the combined group level, property placed in service by Corporation P during 1990 may qualify for the additional 0.5% credit even though Corporation P's Illinois employment actually decreased.

EXAMPLE 3: Prior to its 2013 repeal by Public Act 98-109, IITA Section 201(g) allowed a Jobs Tax Credit equal to $500 per eligible employee hired to work in an enterprise zone during a taxable year. The taxpayer must hire 5 or more eligible employees during the taxable year in order to qualify for the credit. The credit is taken in the taxable year following the year the employee is hired. Corporations W, X, Y and Z filed a combined Illinois return for calendar year 1990. Corporation Z was sold to an unrelated purchaser on December 31, 1990. Corporations W, X and Y filed a combined return for 1991. During 1990, WXYZ hired 5 eligible employees to work in an enterprise zone, 3 of whom were actually hired by Corporation Z. Combined group WXY may claim a Jobs Tax Credit of $2,500 for 1991 because it hired 5 eligible employees during 1990. The fact that Corporation Z, which hired 3 of the employees, left the combined group at the beginning of 1991 does not alter the fact that the combined group earned the Jobs Tax Credit nor entitle Corporation Z to any portion of the credit for its separate company return for 1991.

5) The research and development credit provided in IITA Section 203(k) ~~203(j)~~ is based on increasing research activities in this State (see Section 100.2160). For purposes of determining entitlement to the credit during a combined-return year, the increase in research activities shall be determined with respect to research activities conducted by all members of the combined group in Illinois and not an individual member's research activities. The following series of examples illustrate the application of the research and development credit in combined return situations involving Corporations A, B and C that incurred the following expenses for qualified research activities in Illinois:

	1990	1991	1992	1993
Corp. A	50,000	50,000	50,000	0
Corp. B	25,000	25,000	100,000	200,000
Corp. C	75,000	125,000	100,000	100,000
	150,000	200,000	250,000	300,000

EXAMPLE 1: A, B, and C filed combined returns for the years ending December 31, 1990, December 31, 1991, December 31, 1992 and December 31, 1993. The proper amount of the Research and Development Credit for the year ending December 31, 1993 is determined based upon the combined activities on the combined return and is calculated as follows:

Total qualified expenditures for 1993..... 300,000

Average qualified expenditures for 1990-92..... 200,000

Excess of 1993 expenditures over base period..... 100,000

Research and development credit for 1993..... 6,500

EXAMPLE 2: A and B filed a combined return for the year ending December 31, 1990. C filed a separate return for the year ending December 31, 1990. A purchased the common stock of C on January 1, 1991. A, B and C filed combined returns for the years ending

December 31, 1991, December 31, 1992 and December 31, 1993. The $75,000 of expenses for qualified research activities in Illinois incurred by C for the year ending December 31, 1990 should be included in the calculation of the average qualified expenditures for the base period. The credit for the combined return is calculated as follows:

Total qualified expenditures for 1993..... 300,000

Average qualified expenditures for 1990-92..... 200,000

Excess of 1993 expenditures over base period..... 100,000

Research & Development Credit for 1993..... 6,500

EXAMPLE 3: A, B and C filed combined returns for the years ending December 31, 1990, December 31, 1991 and December 31, 1992. On January 1, 1993, A sold the common stock of C to P (an unrelated corporation). For the year ending December 31, 1993, C was included in the combined return filed by P. In determining the proper amount of the Research and Development Credit for the combined return filed by A and B for the year ending December 31, 1993, the expenses for qualified research activities in Illinois incurred by C of $75,000, $125,000 and $100,000 for the years ending December 31, 1990, December 31, 1991 and December 31, 1992, respectively, shall not be included in the calculation of the average qualified expenditures for the base period for A and B for the year ending December 31, 1993. The credit for the combined return for A and B for the year ending December 31, 1993 is calculated as follows:

Total qualified expenditures for 1993..... 200,000

Average qualified expenditures for 1990-92..... 100,000

Excess of 1993 expenditures over base period..... 100,000

Research & Development Credit for
1993.....6,500

6) Credit Carryforward. Any combined credit carryforward shall be available to the combined group for the next combined-return year. For purposes of the credits allowed with respect to certain qualifying property under IITA Sections 201(e), (f), and (h), 237, and 239 ~~and 206(b)~~, when a member becomes ineligible to join in the election, or is no longer required to be part of the combined return, the credit carryforward shall be available to the remaining members if those members continue to both own and use the property for which the credit was claimed in a qualifying manner for 48 months after the placed-in-service date. The credit carryforward shall be available to the former member that has become ineligible if that former member both owns and uses the property for which the credit was claimed in a qualifying manner for the remainder of the 48-month period after the placed-in-service date. If a credit carryforward is available to the former member that has become ineligible, the amount of the carryforward is equal to the combined unused credit multiplied by a fraction, the numerator of which shall be the credit attributable to the qualified property of that former member for the combined unused credit year, and the denominator of which shall be the qualified property of the combined group for the unused credit year.

EXAMPLE: In 1985, Corporation A purchased $300,000 of eligible property, $200,000 of which was used by A and $100,000 of which was transferred to and used by Corporation B. A and B filed a combined return for the year that showed an income tax liability of $1,000 and an investment credit of $1,500. The group's unused credit was $500. In 1987, B left the group, and during that year it owned and continued to use the $100,000 of eligible property. Its credit carryforward would be computed as follows:

$500 x $100,000/$300,000 = $166.67

7) Recapture. For purposes of credits that are recaptured when property ceases to be qualified property or is moved out of Illinois or when property is moved outside of an enterprise zone within 48 months after the placed-in-service date, the members of the combined group

are responsible for the recapture of any personal property replacement tax or income tax.

EXAMPLE: Same facts as in the Example in subsection (d)(6) except in 1987 Corporation A transferred its eligible property (originally purchased for $200,000 in 1985) to Corporation B. Corporation B was acquired by Corporation C in 1987 and, immediately afterward, B sold all the eligible property (originally purchased for a total of $300,000) to an unrelated third party. B and C file a combined return for that year and their tax liability is increased by $1,000 due to the credit that was allowed on the combined return filed by A and B in 1985 and recaptured in 1987.

e) Ineligible Members. If a unitary business group contains one or more ineligible members (e.g., a partnership that is not required to apply the apportionment method prescribed in Section 100.3380(d), a subchapter S corporation or, for years ending prior to December 31, 1987, a corporation with a different taxable year), the ineligible members shall file separate unitary returns (see Section 100.5215). ~~In the separate unitary return, the apportionment percentage of that ineligible member shall be determined by dividing the Illinois factor or factors of that member by the combined everywhere factor or factors of all members of the unitary business group. The apportionment percentage shall then be multiplied by the combined business income of the unitary business group to determine the business income of that ineligible member apportionable to Illinois. The taxable income of the members shall be their combined taxable income as determined under subsection (a)(1). If a corporation is ineligible because it has a different taxable year, either method of accounting available to part-year members and set forth in subsection (f)(2) may be used to determine the combined taxable income. If two or more corporations are ineligible because they have an accounting period that is different from other members making the election, they may elect to file their own combined return if they have the same taxable year. The foregoing rule also applies in the case of erroneous inclusion of a member in a group otherwise required to file a combined return.~~

f) Part-year Members

1) General Rule. If a corporation becomes a member of a unitary business group after the beginning of the combined return year or ceases to be a member of the unitary business group during the combined return year, two tax returns will be affected for that taxable year. The combined return shall include the separate company items of that corporation for the part of the year it was a member of the unitary business group. Separate company items of a part-year member for any portion of its taxable year prior to the date it joins or after the date it leaves the unitary business group shall either be reported in a short-year separate return filed by that part-year member (if it is subject to Illinois income tax during that period) or included in any combined return filed on behalf of a unitary business group to which that part-year member belongs during that portion of the year.

2) Accounting. The part-year member shall use either Method 1 or Method 2 (described in Section 100.5265(b)) to determine its separate company items for the portion of the year before it becomes a member and the portion of the year after it becomes a member of the combined group.

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

SUBPART EE: DEFINITIONS

Section 100.9720 Nexus

a) IITA Section 201(a) imposes the Illinois Income Tax, a tax measured by net income, on *individuals, corporations, trusts and estates for the privilege of earning or receiving income in or as a resident of this State*. IITA Section 201(c) imposes a second tax measured by net income, the Personal Property Tax Replacement Income Tax, on *corporations, partnerships and trusts for the privilege of earning or receiving income in or as a resident of this State*. In general, a resident of this State will always be subject to these taxes. Activity conducted in interstate commerce may establish sufficient nexus with Illinois to permit imposition of these taxes on a non-resident taxpayer, as well, when the non-resident earns or receives income in this State within the meaning of the IITA. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 97 S.

Ct. 1076 (1977); Quill v. North Dakota, 504 U.S. 298, 112 S. Ct. 1904 (1992). However, the fact that Article 3 of the IITA requires a non-resident taxpayer to allocate or apportion income to this State does not create a presumption that the taxpayer has nexus.

b) Standards for determining sufficient tax nexus are found in federal statutes regulating interstate commerce, in United States Constitutional jurisprudence, and in Illinois tax statutes.

c) The scope of federal statutes limiting nexus for imposition of Illinois income and replacement taxes are described in this subsection (c):

1) Public Law 86-272. In 1959, Congress enacted PL 86-272 (15 USC 381-384), which prohibits states and their political subdivisions from imposing a net income tax on nonresident taxpayers who operate primarily in interstate commerce and whose activity within a state is limited. PL 86-272 provides in pertinent part:

A) No state or political subdivision thereof shall have the power to impose . . . a net income tax on the income derived within such state by any person from interstate commerce if the only business activities within such state by or on behalf of such person during such taxable year are either, or both of the following:

i) the solicitation of orders by such person, or his representative, in such state for sales of tangible personal property, which orders are sent outside the state for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the state; and

ii) the solicitation of orders by such person, or his representative, in such state in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in subsection (c)(1)(A)(i).

B) The provisions of subsection (c)(1)(A) of this Section shall not apply to the imposition of a net income tax by any State or political subdivision thereof, with respect to –

i) Any corporation which is incorporated under the laws of such state; or

ii) any individual who, under the laws of such state, is domiciled in, or a resident of, such state.

C) For the purposes of subsection (c)(1)(A) of this Section, a person shall not be considered to have engaged in business activities within a state during any taxable year merely by reason of sales in such state, or the solicitation of orders for sales in such state, of tangible personal property on behalf of such person by one or more independent contractors whose activities on behalf of such person in such state consist solely of making sales, or soliciting orders for sales, of tangible personal property.

D) For purposes of this subsection (c)(1) –

i) The term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for the sale of tangible personal property for more than one principal and who holds themself ~~himself~~ out as such in the regular course of ~~his~~ business activities; and

ii) the term "representative" does not include an independent contractor.

2) The terms of PL 86-272 affect nexus for taxation under the IITA according to the following principles:

A) If a nonresident taxpayer's activities exceed "mere solicitation", as set forth in subsection (a) of PL 86-272

(subsection (c)(1)(A) of this Section), it obtains no immunity under that federal statute. The taxpayer is subject to Illinois income tax and personal property tax replacement income tax for the entire taxable year and its business income is apportioned under IITA Section 304. Whether a nonresident taxpayer's conduct exceeds "mere solicitation" depends upon the facts in each particular case.

B) Nature of Property Being Sold

i) PL 86-272 immunizes solicitation only for sale of tangible personal property. Efforts to sell intangibles, such as services, franchises, patents, copyrights, trademarks and service marks, are not protected, nor is solicitation for the leasing, renting or licensing of tangible personal property.

ii) The sale, delivery and the solicitation for the sale or delivery of any type of service that is not either ancillary to solicitation, or otherwise set forth as a protected activity under subsection (c)(5), is also not protected under PL 86-272 or this Section.

C) Solicitation of Orders. Solicitation of orders means speech or conduct that explicitly or implicitly invites an order and activity ancillary to invitations for an order.

i) To be ancillary to invitations for orders, an activity must serve no independent business function for the seller apart from its connection to the solicitation of orders.

ii) Activity that a seller would engage in apart from soliciting orders shall not be considered ancillary to the solicitation of orders.

iii) Assignment of an activity to a salesperson does not, merely by such assignment, make that activity ancillary to solicitation of orders.

iv) Activity that attempts to promote sales is not ancillary, nor is activity that facilitates sales. PL 86-272 only protects ancillary activity that facilitates the invitation of an order.

D) De minimus activities are those that, when taken together, establish only a trivial additional connection with this State. An activity regularly conducted within this State on a regular or systematic basis or pursuant to a company policy (whether such policy is in writing or not) shall normally not be considered trivial. Whether an activity consists of a trivial or non-trivial additional connection with this State is to be measured on both a qualitative and quantitative basis. If the activity either qualitatively or quantitatively creates a non-trivial connection with this State, then the activity exceeds the protection of PL 86-272. The amount of unprotected activities conducted within this State relative to the amount of protected activities conducted within this State is not determinative of the issue of whether the unprotected activities are de minimus. The determination of whether an unprotected activity creates a non-trivial connection with this State is made on the basis of the taxpayer's entire business activity, not merely its activities conducted within this State. An unprotected activity that would not be de minimus if it were the only business activity of the taxpayer conducted in this State will not be de minimus merely because the taxpayer also conducts a substantial amount of protected activities within this State, nor will an unprotected activity that would be de minimus if conducted in conjunction with a substantial amount of protected activities fail to be de minimus merely because no protected activities are conducted in this State.

3) Listing of Specific Unprotected and Protected Activities.

A) Subsection (c)(4) lists specific activities that are considered to be beyond "mere solicitation" and, therefore, unprotected by PL 86-272.

B) Subsection (c)(5) lists specific activities that are considered by this State to be "protected activities". Included on the list of "protected activities" are those specific activities that are protected by PL 86-272 and those specific activities that this State, in its discretion, deems worthy of protection. Inclusion of an activity on the listing of "protected activities" is neither a declaration nor an admission by this State that the activity must be afforded protection under PL 86-272.

4) Unprotected Activities. The following activities (assuming they are not de minimus) do not constitute "mere solicitation" of orders, nor are they ancillary, nor otherwise protected under PL 86-272. If one or more of the following activities are conducted within this State, an otherwise protected nonresident taxpayer shall become subject to taxation by Illinois.

A) Making repairs or providing maintenance or service to the property sold or to be sold.

B) Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise.

C) Investigating credit worthiness.

D) Installation or supervision of installation at or after shipment or delivery.

E) Conducting training courses, seminars or lectures for personnel other than personnel involved only in solicitation of sales of tangible personal property.

F) Providing any kind of technical assistance or services, including, but not limited to, engineering assistance or design service, when one of the purposes of the assistance or service is other than the facilitation of the solicitation of orders.

G) Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer.

H) Approving or accepting orders.

I) Repossessing property.

J) Securing deposits on sales.

K) Picking up or replacing damaged or returned property.

L) Hiring, training, or supervising personnel, other than personnel involved only in solicitation.

M) Maintaining a sample or display room in excess of two weeks (14 days) at any one location within the State during the tax year.

N) Carrying samples for sale, exchange or distribution in any manner for consideration.

O) Owning, leasing, or maintaining any of the following facilities or property in-state:

i) Repair shop.

ii) Parts department.

iii) Any kind of office other than an in-home office as described as permitted under subsections (c)(4)(Q) and (c)(5)(B).

iv) Warehouse.

v) Meeting place for directors, officers, or employees.

vi) Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation.

vii) Telephone answering service that is publicly attributed to the nonresident or to an employee or agent of the nonresident in his or her representative status.

viii) Mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles.

ix) Real property or fixtures to real property of any kind.

P) Consigning stock of goods or other tangible personal property to any person, including an independent contractor, for sale.

Q) The maintenance of any office or other place of business in this State that does not strictly qualify as an "in-home" office as described in subsection (c)(5)(M) shall, by itself, cause the loss of protection under PL 86-272. A telephone listing or other public listing within the State for the nonresident or for an employee or other representative of the nonresident in such capacity or other indication through advertising or business literature that the nonresident or its employee or representative can be contacted at a specific address within the State shall normally be determined as the nonresident maintaining within this State an office or place of business attributable to the nonresident or to its employee or representative in a representative capacity. However, the normal distribution and use of business cards and stationery ~~stationary~~ identifying the employee's or representative's name, address, telephone and fax numbers and affiliation with the nonresident shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the nonresident or to its employee or other representative.

R) Entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to

such franchise or license by the franchiser or licensor to its franchisee or licensee within the State.

S) Conducting any activity that is not on the list of "protected activities" in subsection (c)(5), and that is not entirely ancillary to requests for orders, even if the activity helps to increase purchases.

5) Protected Activities. The following in-state activities will not cause the loss of immunity for otherwise protected sales:

A) Soliciting orders for sales by any type of advertising.

B) Soliciting orders for sales by an in-state resident employee or representative of the nonresident, so long as that person does not maintain or use any office or place of business in the State besides an "in-home" office as described in subsection (c)(5)(M).

C) Carrying samples and promotional materials only for display or for distribution without charge or other consideration.

D) Furnishing and setting up display racks and advising customers on the display of the nonresident's products without charge or other consideration.

E) Providing automobiles to sales personnel for their use in conducting protected activities.

F) Passing orders, inquiries and complaints on to the home office.

G) Missionary sales activities; i.e., the solicitation of indirect customers for the nonresident's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if those solicitation activities are otherwise immune.

H) Coordinating shipment or delivery without payment or other consideration and providing information relating to shipment or delivery either prior or subsequent to the placement of an order.

I) Checking of customers' inventories without charge (for re-order, but not for other purposes such as quality control).

J) Maintaining a sample or display room for two weeks (14 days) or less at any one location within the State during the tax year.

K) Recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel.

L) Mediating direct customer complaints when the purpose is solely for ingratiating the sales personnel with the customer and facilitating requests for orders.

M) Owning, leasing, using or maintaining personal property for use in the employee's or representative's "in-home" office located within the residence of the employee or other representative that is not publicly attributed to the nonresident or to the employee or other representative of the nonresident in a representative capacity or automobile, when that use is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software, shall not, by itself, remove the protection under this Section, so long as the use of the office is limited to:

i) soliciting and receiving orders from customers;

ii) transmitting orders outside the State for acceptance or rejection by the nonresident; or

iii) other activities that are protected under PL 86-272 or this Section.

N) Shipping or delivering goods into this State by means of vehicles or other modes of transportation owned or leased by the nonresident taxpayer or by means of private carrier, whether by motor vehicle, rail, water, air or other carrier and irrespective of whether a shipment or delivery fee or other charge is imposed, directly or indirectly, upon the purchaser.

6) Independent Contractors. PL 86-272 provides immunity to certain in-state activities, if conducted by an independent contractor, that would not be afforded if performed by the nonresident or its employees or other representatives.

A) Notwithstanding the provisions of subsection (c)(4), independent contractors may engage in the following limited activities in the State without the nonresident's loss of immunity:

i) soliciting sales;

ii) making sales;

iii) maintaining an office.

B) Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under PL 86-272 and this Section.

C) Maintenance of a stock of goods in the State, by the independent contractor under consignment or any other type of arrangement with the nonresident, except for purposes of display and solicitation, shall remove the protection.

7) Application of Destination State Law in Case of Conflict.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

A) When it appears that Illinois and one or more other states that are signatories to the "Statement of Information concerning practices of the Multistate Tax Commission and Signatory States under PL 86-272" have included or will include the same receipts from a sale in their respective sales factor numerators, at the written request of the nonresident, the states will, in good faith, confer with one another to determine which state should be assigned the receipts. The conference shall identify what law, regulation or written guideline, if any, has been adopted in the state of destination with respect to the issue. The state of destination shall be that location at which the purchaser or its designee actually receives the property, regardless of F.O.B. (Free on Board) point or other conditions of sale.

B) In determining which state is to receive the assignment of the receipts at issue, preference shall be given to any clearly applicable law, regulation or written guideline that has been adopted in the state of destination. However, except in the case of the definition of what constitutes "tangible personal property", Illinois is not required by this Section to follow any other state's law, regulation or written guideline should Illinois determine that to do so:

i) would conflict with Illinois laws, regulations, or written guidelines; and

ii) would not clearly reflect the income-producing activity of the nonresident within Illinois.

C) Notwithstanding any provision set forth in this Section to the contrary, as between Illinois and any other signatory state, Illinois agrees to apply the definition of "tangible personal property" that exists in the state of destination to determine the application of PL 86-272 and issues of throwback, if any. Should the state of destination not have any applicable definition of tangible personal property so that it could be reasonably determined whether the property at issue

constitutes tangible personal property, then each signatory state may treat the property in any manner that would clearly reflect the income-producing activity of the nonresident within that state.

8) Application of this Section to Foreign Commerce

A) PL 86-272 specifically applies, by its terms, to "interstate commerce" and does not directly apply to foreign commerce. The states are free, however, to apply the same standards set forth in PL 86-272 to business activities in foreign commerce to ensure that foreign and interstate commerce are treated on the same basis. Such an application also avoids the necessity of expensive and difficult efforts in the identification and application of the varied jurisdictional laws and rules existing in foreign countries.

B) Illinois will apply the provisions of PL 86-272 and of this Section to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by a nonresident selling tangible personal property into a country outside of the United States from a point within Illinois or by a nonresident selling such property into Illinois from a point outside of the United States, the principles under this Section apply equally to determine whether the sales transactions are protected and the nonresident is immune from taxation in either Illinois or in the foreign country, as the case might be, and whether, if applicable, Illinois will apply its throwback provisions.

9) Application to Corporation Incorporated in this State or to a Person Resident or Domiciled in this State. The protection afforded by PL 86-272 and this Section does not apply to any corporation incorporated within Illinois or to any person who is a resident of or domiciled in Illinois.

10) Registration or Qualification to do Business. A business that registers or otherwise formally qualifies to do business within Illinois does not, by that fact alone, lose its protection under PL 86-272.

11) Loss of Protection for Conducting Unprotected Activity During Part of a Tax Year. The protection afforded under PL 86-272 and this Section shall be determined on a tax year by tax year basis. Therefore, if at any time during a tax year the nonresident conducts activities that are not protected under PL 86-272 or this Section, no income earned or received in this State by the nonresident during any part of that tax year shall be protected from taxation under PL 86-272 or this Section.

d) Illinois Statutory Provisions. PA 88-361 amended the Illinois Income Tax Act to provide that *a person not otherwise subject to the tax imposed under the IITA shall not become subject to the tax imposed by the IITA by reason of:*

1) *that person's ownership of tangible personal property located at the premises of a printer in this State with which the person has contracted for printing; or*

2) *activities of the person's employees or agents located solely at the premises of a printer and related to quality control, distribution, or printing services performed by a printer in the State with which the person has contracted for printing.* (IITA Section 205(f))

e) U.S. Constitutional Jurisprudence. If not protected by U.S. or Illinois statute, an income-producing activity may, nonetheless, be protected from State taxation by principles of U.S. Constitutional jurisprudence. Controlling decisions that assert protections afforded by the Interstate Commerce Clause, the Foreign Commerce Clause and the Due Process Clause are accepted by this State as limitations on the reach of its income tax and personal property tax replacement income tax statutes. However, nothing stated in this subsection (e) shall prevent Illinois from challenging taxpayer assertions of U.S. Constitutional protection.

f) Application of the Joyce Rule. For taxable years ending before December 31, 2025, ~~i~~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 Joyce Inc., Cal. St. Bd. of Equal. (11/23/66), commonly known as the "Joyce 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.

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.

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