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DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) 

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
100.7034	New Section
100.9730	Amendment
- 4) Statutory Authority: Implementing Sections 709.5 and 1501 of the Illinois Income Tax Act [35 ILCS 5/709.5, 1501] as authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401] and Section 2505-795 of the Department of Revenue Law [20 ILCS 2505/2505-795].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Part 100 Income Tax, Subpart EE Definitions, Section 100.9730 Investment Partnerships, implementing the changes in Public Act 103-0009 to the definition of "investment partnership" in the Illinois Income Tax Act Section 1501(a)(11.5). Additional updates and corrections to this section are included in the rulemaking. This rulemaking adds a new section (Section 100.7034) to Part 100 Income Tax, Subpart S Requirement and Amount of Withholding, implementing the changes in Public Act 103-0009 which amends the Illinois Income Tax Act to add Section 709.5(d) requiring investment partnerships to withhold an amount from each nonresident partner for taxable years ending on and after December 31, 2023.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No.
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citations</u>
100.2198	Amendment	47 Ill. Reg. 13167; September 15, 2023
100.7380	Amendment	47 Ill. Reg. 13167; September 15, 2023
100.2055	Amendment	47 Ill. Reg. 13825; September 29, 2023

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- 100.2199 Amendment 47 Ill. Reg. 13825; September 29, 2023
- 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 West Jefferson  
Springfield, Illinois 62794
- (217) 782-2844  
REV.GCO@illinois.gov
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: No impact on these entities.
- B) Reporting, bookkeeping or other procedures required for compliance: Regular income tax recordkeeping.
- C) Types of professional skills necessary for compliance: Accounting; General business acumen
- 14) Small Business Impact Analysis: No adverse impact on small businesses.
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2023

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

**Section 100.7034 Investment Partnership Withholding (IITA Section 709.5)**

- a) In General. For taxable years ending on and after December 31, 2023, a taxpayer that is an investment partnership, as defined in IITA Section 1501 and Section 100.9730, and is a member of one or more other

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partnerships (as defined in Section 100.9750(d)) with income allocable or apportionable to Illinois shall withhold from each nonresident partner an amount as calculated in subsection (c).

b) Exemption from Withholding.

1) An investment partnership is not required to withhold an amount from a nonresident partner:

A) Who is exempt from tax under IRC Section 501(a) or IITA Section 205. Under the provisions of IITA Section 709.5(d), an investment partnership is required to withhold an amount with respect to a partner that is itself a partnership or S corporation.

B) Who is a retired partner, to the extent that partner's distributions are exempt from tax under IITA Section 203(a)(2)(F).

2) The provisions of IITA Section 709.5(c), allowing for exemption from withholding, shall not apply for purposes of this Section. (IITA Section 709.5(d))

3) No nonresident partner has any right of action against an investment partnership for withholding tax from that partner despite exemption under this subsection. (See IITA Section 712.) Instead, the investment partnership may file a claim for credit or refund as provided in subsection (h) of this Section.

c) Withholding Tax Computation.

1) The amount of withholding tax due from the investment partnership is equal to:

A) The sum of (i) the investment partnership's distributable share of income from other partnerships that, but for the provisions of IITA Sections 205(b) and 305(c-5), would be apportioned to Illinois by the investment partnership under

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IITA Section 305(a) and (ii) the investment partnership's distributable share of income from other partnerships that, but for the provisions of IITA Sections 205(b) and 305(c-5), would be allocated to Illinois by the investment partnership under IITA Sections 305(b) and 303 (other than nonbusiness income that is allocated based on commercial domicile) that is distributable to each nonresident partner of the investment partnership under IRC Sections 702 and 704 (whether or not distributed);

B) Multiplied by the applicable rates of tax for that partner under IITA Section 201(a) through (d), net of the investment partnership's distributive share of any IITA Article 2 credit passed through from other partnerships and first allowable against the tax liability of that partner for a taxable year ending on or after December 31, 2023. (IITA Section 709.5(d)(1) – (3))

- 2) In computing the required amount of withholding tax, an investment partnership's distributive share of Illinois source losses from other partnerships, to the extent distributable to its nonresident partners, may be netted against its distributive share of Illinois source income distributable to nonresident partners.
- 3) Losses and deductions from other investments of the investment partnership may not be netted against income subject to withholding for purposes of computing the amount of withholding tax owed.
- 4) Only credits and losses passed through in the current year of the investment partnership may reduce the required withholding amount. Any excess credits and losses from other years may not be carried over in determining the amount of withholding tax owed.
- 5) If an investment partnership invests in a partnership that makes the Pass-through Entity tax election, the investment partnership may use the credit allowed under IITA Section 201(p) to reduce its

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amount of withholding tax owed, to the extent that such credit would otherwise be distributable to its nonresident partners.

- d) Withholding Tax Rate. If the nonresident partner is a partnership or subchapter S corporation, the applicable withholding tax rate in subsection (c)(1)(B) is equal to the individual tax rate under IITA Section 201(b). (IITA Section 709.5(d)(2))
- e) Time for Filing Return and Paying Tax Withheld. An investment partnership required to withhold tax under IITA Section 709.5(d) shall report the amounts withheld and the owners from whom the amounts were withheld, and pay over the amounts withheld, no later than the due date (without regard to extensions) of the tax return for the taxable year of a partnership. (IITA Section 711(a-5)) For purposes of abatement of penalties under Section 3-8 of the Uniform Penalty and Interest Act, an investment partnership shall be deemed to have reasonable cause for not filing the report by the due date required under this subsection if the report is filed no later than the due date under IITA Section 505 (including extensions) of the return for the taxable year.
- f) Credit for Taxes Withheld.
- 1) Except as provided in this section, no credit for taxes withheld shall be allowed to the nonresident partners of an investment partnership under IITA Section 709.5(b) for amounts withheld under this Section by the investment partnership. (IITA Section 709.5(d))
  - 2) A nonresident partner is entitled to a credit as provided in IITA Section 709.5(b) and Section 100.7035(d) if the nonresident partner's share of the income of an investment partnership is business income under IITA Section 305(c-5).
  - 3) If an investment partnership is itself a member of a second investment partnership and the second investment partnership is subject to nonresident partner withholding, as required in this Section, the first investment partnership is allowed a credit against its withholding requirement under this Section for the withholding amount paid by the second investment partnership on income

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distributable to the nonresident partners of the first investment partnership.

- 4) If one of the partners of an investment partnership is itself a partnership, subchapter S corporation, or trust, with Illinois resident partners, shareholders, or beneficiaries, the Illinois resident partners, shareholders, or beneficiaries may claim a credit for their shares of withholding tax paid by the investment partnership against their liability under IITA Section 201 for the taxable year in which that income is included in base income.
- 5) Nonresident taxpayers (other than individuals) that are commercially domiciled in Illinois and have income from an investment partnership are allowed a credit for their shares of withholding tax paid by the investment partnership.
- 6) The total amount of credit claimed under this subsection may not exceed the amount of tax withheld by the investment partnership with respect to the partner.
- g) Pass-through Entity Tax Election. An investment partnership may elect to be subject to Pass-through Entity tax under IITA Section 201(p) (PTE tax). Any investment partnership that elects to pay PTE tax is not exempt from the withholding requirement under this Section. However, an investment partnership may elect to subtract its income subject to the withholding requirement when computing its PTE tax under IITA Section 201(p).
- h) Overpayments. An investment partnership may claim a refund or credit for any overpayment of withholding due under this Section, except to the extent the overpayment is attributable to tax withheld on the distributive share of a partner who is allowed a credit for such withholding under subsection (f) of this Section. In addition, no partner has any right of action against an investment partnership for overpayment of withholding. (See IITA Section 712.) With respect to an overpayment of withholding that is attributable to tax withheld on the distributive share of a partner who is allowed a credit for such withholding under subsection (f) of this Section, the remedy is for the partner to file a timely claim for credit or refund for any amount withheld under this Section.

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- i) Underpayments. If an investment partnership fails to timely pay the full amount of withholding due under this Section, the investment partnership is not relieved of its obligation to pay any amount due with respect to a partner, except to the extent such underpayment is attributable to withholding required on a partner's distributive share of income which, under the provisions of IITA Section 305(c-5), is business income or is allocable to Illinois under, and if the partner has paid its liability under the IITA on the income from which withholding was required. In addition, the investment partnership is not relieved of any penalty or interest otherwise applicable with respect to its failure to timely pay the withholding. (See IITA Section 713.)
- ii) Examples. The following examples may be used to illustrate the provisions of this Section.

EXAMPLE 1. Assume Partnership A, an investment partnership, consists of partners B and C. Partner B is a partnership and Partner C is a nonresident individual. In addition, assume that both Partnership A and Partner B are commercially domiciled in Illinois and that neither Partnership A nor Partner B has made the election under IITA Section 201(p) to be subject to PTE tax. For its taxable year ending 12/31/23, Partnership A's income consists of the following:

<u>Dividends</u>	<u>\$ 200</u>
<u>Capital gains</u>	<u>\$1,200</u>
<u>Distributive share income:</u>	
<u>    Business income apportioned to Illinois (305(a))</u>	<u>\$ 600</u>
<u>    Nonbusiness rent income from IL real estate (303)</u>	<u>\$ 400</u>
	<u>\$1,000</u>
<u>Total</u>	<u>\$2,400</u>

Partnership A computes withholding tax of \$49.50. Tax is computed on the sum of \$600 apportioned to Illinois under IITA Section 305(a) and the \$400 allocated to Illinois under IITA Section 305(b), multiplied by the 4.95% individual rate of its partners (including Partner B). Partner C may not claim credit under IITA Section 709.5(b) for its respective share of withholding tax.

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Because Partner B is not an investment partnership, it is not subject to withholding tax under IITA Section 709.5(d). However, as Partner B is commercially domiciled in Illinois, it is subject to replacement tax on its \$500 distributive share (along with any other sources of Illinois net income) and may be subject to withholding under IITA Section 709.5(a) with respect to other sources of income. Under the provisions of IITA Section 305(c-5), Partner B's distributive share is deemed nonbusiness income and allocable to the taxpayer's commercial domicile. Therefore, all of Partner B's distributive share is subject to replacement tax and not just its share of \$500 on which Partnership A paid withholding tax. Under subsection (f)(5) of this Section, Partner B may claim a credit for the tax withheld on its distributive share. IITA Section 709.5(b) and Section 100.7035(d)(1) allow Partner B to claim a credit against its withholding obligation under IITA Section 709.5(a) in lieu of claiming the credit against its liability under IITA Section 201. If Partner B has Illinois resident partners, those partners may not claim credit under subsection (f)(4) of this Section for any amount claimed as a credit by Partner B against its liability as provided in Section 100.7035(d)(1) of this Subpart.

EXAMPLE 2. Assume the same facts as in Example 1, except that Partnership A also has distributive share of nonbusiness rental losses of \$200 from Illinois real estate under IITA Sections 305(b) and 303. In computing the required amount of withholding, Partnership A's distributive share of Illinois source losses distributable to its nonresident partners may be netted against its distributive share of Illinois source income distributable to its nonresident partners. Therefore, Partnership A computes withholding tax of \$39.60. Tax is computed on the sum of \$600 apportioned to Illinois under IITA Section 305(a) and the \$400 allocated to Illinois under IITA Section 305(b), less the \$200 allocated to Illinois under IITA Section 305(b), multiplied by the 4.95% individual rate of its partners (including Partner B). Partner C may not claim credit under IITA Section 709.5(b) for its respective share of withholding tax.

EXAMPLE 3. Assume the same facts as in Example 1, except that Partnership A has \$5 of an Article 2 credit passed through from Partnership Z, which is first allowable against the tax liability of Partnership A for its tax year ending on 12/31/23, and \$200 of an Article 2 credit passed through from Partnership Z carried over from its tax year ending on 12/31/22. Partnership A computes withholding tax of \$44.50.



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the \$49.50 determined as provided in Example 1 less the \$5 Article 2 credit passed through from Partnership Z.

EXAMPLE 4. Assume the same facts as in Example 1, except that Partnership A has \$3,000 of an Article 2 credit passed through from Partnership Z which is first allowable against the tax liability of Partnership A for its tax year ending on 12/31/23. Partnership A would compute no withholding tax. Partnership A may not use the excess credit amount against any future withholding tax obligation.

EXAMPLE 5. Assume Partnership A, an investment partnership, consists of partners B, C, and D. Partner B is itself an investment partnership, whose partners include resident individuals E and F, and nonresident individual G. Partners C and D are nonresident individuals. In addition, assume that both Partnership A and Partner B are commercially domiciled in Illinois and that neither Partnership A nor Partner B has made the election under IITA Section 201(p) to be subject to PTE tax. For its taxable year ending 12/31/23, Partnership A's income consists of the following:

<u>Dividends</u>	<u>\$ 500</u>
<u>Capital gains</u>	<u>\$1,000</u>
<u>Distributive share income:</u>	
<u>Business income apportioned to Illinois (305(a))</u>	<u>\$800</u>
<u>Nonbusiness dividend income (305(b), 301(c)(2))</u>	<u>\$100</u>
<u>Nonbusiness rent income from IL real estate (303)</u>	<u>\$400</u>
	<u>\$1,300</u>
<u>Total</u>	<u>\$2,800</u>

Partnership A computes withholding tax of \$59.40. Tax is computed on the sum of \$800 apportioned to Illinois under IITA Section 305(a) and the \$400 allocated to Illinois under IITA Section 305(b), multiplied by the 4.95% individual rate of its partners (including Partner B). Partners C and D may not claim credit under IITA Section 709.5(b) for their respective shares of withholding tax.

Partner B, an investment partnership, owes no withholding tax. Although Partner B, but for the provisions of IITA Section 305(c-5), has total income apportioned to Illinois under IITA Section 305(a) and (b) of \$400, \$133.33 of which is distributable to nonresident individual G, resulting in a

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withholding tax of \$6.60, Partner B is allowed a credit under subsection (f)(2) against its withholding obligation under this Section of \$6.60. In addition, resident individuals E and F may each claim a credit under subsection (f)(4) of this Section of \$6.60 against their liability under IITA Section 201 for their taxable year in which their distributive shares of Partner B's income is included in base income. The credit shall be applied as provided in IITA Section 709.5(b).

EXAMPLE 6. Assume the same facts as in Example 5, except that Partnership A makes the election under IITA Section 201(p) to be subject to PTE tax for its tax year ending 12/31/2023. Making the election does not exempt Partnership A from the requirement to withhold under IITA Section 709.5(d). However, Partnership A may elect to subtract its income subject to withholding in computing its base income under IITA Section 201(p)(3). Therefore, Partnership A's base income for purposes of computing PTE tax is \$1,600 (\$2,800 - \$1,200). If Partner B also makes the election under IITA Section 201(p), it subtracts its distributive share of Partnership A's income in computing its base income under IITA Section 201(p)(3).

EXAMPLE 7. Assume the same facts as in Example 5, except that Partner B is a corporation that is commercially domiciled outside of Illinois. In addition, assume that Partner B makes the election under IITA Section 1501(a)(1) to treat all of its income as business income. Partnership A computes withholding tax of \$77.60. Tax is computed on the sum of \$800 apportioned to Illinois under IITA Section 305(a) and the \$400 allocated to Illinois under IITA Section 305(b), multiplied by the 9.5% rate applicable to Partner B's distributive share and the 4.95% rate applicable to Partners C and D's distributive shares. Partners C and D are not allowed a credit under IITA Section 709.5(b) for their respective shares of withholding tax. Under IITA Section 305(c-5), Partner B's distributive share is treated as business income and apportioned as if Partner B received the income directly (rather than as a distributive share of Partnership A's income). Therefore, Partner B's Illinois net income includes its \$267 distributive share of Partnership A's distributive share of business income (one-third of \$800). Partner B may treat its \$38 share of tax withheld by Partnership A as a credit as provided in IITA Section 709.5(b) and Section 100.7035(d). Partner B's distributive share of Partnership A's other items of income is deemed business income and apportioned using Partner's apportionment factor.

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(Source: Added at 48 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART EE: DEFINITIONS

**Section 100.9730 Investment Partnerships (IITA Section 1501(a)(11.5))**

- a) For taxable years ending on or after December 31, 2004, an "investment partnership" is exempt from Illinois income taxation. (IITA Section 205(b)) *For tax years ending before December 31, 2023, the term "investment partnership" means any entity that is treated as a partnership for federal income tax purposes and that meets each of the following requirements:*
- 1) *No less than 90% of the partnership's cost of its total assets consists of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership.* (IITA Section 1501(a)(11.5)(A)(i)) The "asset test" under this subsection (a)(1) is applied for each taxable year by computing the percentage of the partnership's cost of its total assets that consists of qualifying investment securities, deposits at banks or financial institutions, and office space and equipment as of the beginning of the taxable year and as of the end of each month of the taxable year, and then computing the average of those percentages; and
  - 2) *No less than 90% of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities.* (IITA Section 1501(a)(11.5)(A)(ii)) The "gross income test" under this subsection (a)(2) is computed separately for each taxable year on the basis of gross income for the entire taxable year, determined using the method of accounting used for federal income tax purposes for the taxable year; and
  - 3) *The partnership is not a dealer in qualifying investment securities.* (IITA Section 1501(a)(11.5)(A)(iii))
    - A) A partnership is a dealer in qualifying investment securities if it regularly purchases qualifying investment securities from or sells qualifying investment securities to customers in the

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ordinary course of a trade or business or regularly offers to enter into, assume, offset, assign or otherwise terminate positions in qualifying investment securities with customers in the ordinary course of a trade or business. (IRC Section 475(c)(1))

- B) A partnership that, at any time during a taxable year, holds or derives gross income from any qualifying investment security in which it is a dealer shall not qualify as an investment partnership for that taxable year.
- b) *For tax years ending on or after December 31, 2023, the term "investment partnership" means any entity that is treated as a partnership for federal income tax purposes and that meets each of the following requirements:*
- 1) *No less than 90% of the partnership's cost of its total assets consists of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership. (IITA Section 1501(a)(11.5)(A-5)(i)) The "asset test" under this subsection (b)(1) is applied for each taxable year by computing the percentage of the partnership's cost of its total assets that consists of qualifying investment securities, deposits at banks or financial institutions, and office space and equipment as of the beginning of the taxable year and as of the end of each month of the taxable year, and then computing the average of those percentages; and*
  - 2) *No less than 90% of its gross income consists of interest, dividends, gains from the sale or exchange of qualifying investment securities, and the distributive share of partnership income from lower-tier partnership interests meeting the definition of qualifying investment security under subsection (c)(13). For purposes of this subsection (b)(2), "gross income" does not include income from partnerships that are operating at a federal taxable loss. (IITA Section 1501(a)(11.5)(A-5)(ii)) The "gross income test" under this subsection (b)(2) is computed separately for each taxable year on the basis of gross income for the entire taxable year, determined using the method of accounting used for federal income tax purposes for the taxable year.*

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- c) "Qualifying investment securities" means and includes only:
- 1) *Common stock, including preferred or debt securities convertible into common stock, and preferred stock.* (IITA Section 1501(a)(11.5)(B)(i)) "Stock" means shares in an association, joint stock company, or insurance company. (IRC Section 7701(a)(7)) "Stock" includes any interest in a publicly traded partnership that is treated as a corporation under IRC Section 7704.
  - 2) *Bonds, debentures, and other debt securities.* (IITA Section 1501(a)(11.5)(B)(ii)) "Debt security" means any note, bond, debenture or other evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing. (See 26 CFR 1.864-2(c)(2)(i) (2007).)
  - 3) *Foreign and domestic currency deposits secured by federal, state, or local governmental agencies.* (IITA Section 1501(a)(11.5)(B)(iii)) "Currency deposits secured by federal, state or local government agencies" means any balance in a demand or time deposit at a bank, savings and loan, or similar financial institution and that is insured by the Federal Deposit Insurance Corporation or by a similar deposit insurance agency of a state or local government, including any balance in an otherwise insured account that is in excess of any insurance limit. Deposits secured by a foreign government agency, but not by an agency of the federal or of a state or local government, do not qualify.
  - 4) *Mortgage or asset-backed securities secured by federal, state, or local governmental agencies.* (IITA Section 1501(a)(11.5)(B)(iv)) Examples of mortgage-backed securities secured by a federal agency include securities issued or backed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association and the Government National Mortgage Association. Similar securities issued by a similar agency of a state or local government also qualify. Mortgage or asset-backed securities secured by a foreign government do not qualify under this subsection (c)(4)(4).

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- 5) *Repurchase agreements and loan participations.* (IITA Section 1501(a)(11.5)(B)(v))
- A) A repurchase agreement is a secured loan in which the loan agreement takes the form of a purchase by the lender of the collateral with the borrower agreeing to repurchase the collateral at a future date. See [Nebraska Dept. of Revenue v. Loewenstein](#), 513 U.S. 123 (1994). A repurchase agreement is a qualified investment security only if the item that is sold subject to repurchase is a qualified investment security.
- B) A loan participation is an undivided fractional interest in a loan that is acquired by the participant by means of a sale of such undivided fractional interest by the lead lender to the participant, in contrast to a loan syndication, which is a loan made by an agent on behalf of a group of lenders or syndicate in which the member of the lender group or syndicate is a lender in the original loan. Generally, the borrower's obligations in a loan participation run only to the lead lender and not to the participant, and the participant's interest is generally limited to an undivided fractional interest in payments of principal or interest under the loan agreement between the lead lender and the borrower.
- 6) *Foreign currency exchange contracts and forward and futures contracts on foreign currencies.* (IITA Section 1501(a)(11.5)(B)(vi))
- 7) *Stock and bond index securities and futures contracts and other similar financial securities and futures contracts on those securities.* (IITA Section 1501(a)(11.5)(B)(vii))
- 8) *Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in subsections (c)(1) through (7) .* (IITA Section 1501(a)(11.5)(B)(viii))
- 9) *Regulated futures contracts.* (IITA Section 1501(a)(11.5)(B)(ix)) A regulated futures contract is a contract bought, sold or traded on a regulated exchange, such as the Chicago Board of Trade.

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- 10) *Commodities (not described in section 1221(a)(1) of the Internal Revenue Code) or futures, forwards, and options with respect to such commodities, provided, however, that any item of a physical commodity to which title is actually acquired in the partnership's capacity as a dealer in such commodity shall not be a qualifying investment security.* (IITA Section 1501(a)(11.5)(B)(x)) IRC Section 1221(a)(1) provides that stock in trade of the taxpayer or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business are not capital assets.
- 11) *Derivatives.* (IITA Section 1501(a)(11.5)(B)(xi)) A derivative is:
- A) An interest rate, currency (of a kind customarily dealt in on an organized commodity exchange), equity, commodity or notional principal contract; or
  - B) An evidence of an interest, or a derivative financial instrument (including any option, forward contract, short position and any similar financial instrument), in any:
    - i) Commodity;
    - ii) Currency of a kind customarily dealt in on an organized commodity exchange;
    - iii) Share of stock under subsection (c)(1)(~~4~~);
    - iv) Partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;
    - v) Note, bond, debenture or other evidence of indebtedness; or
    - vi) Notional principal contract.
- 12) *A partnership interest in another partnership that is an investment partnership.* (IITA Section 1501(a)(11.5)(B)(xii))

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- 13) *For tax years ending on or after December 31, 2023, a partnership interest that, in the hands of the partnership, qualifies as a security within the meaning of 15 U.S.C. §77b(a)(1). (IITA Section 1501(a)(11.5)(B)(xiii))*
- d) Items that are not "qualified investment securities" include:
- 1) Loans, other than loan participations and repurchase agreements that are characterized as loans.
  - 2) Bank deposits that are not insured by the federal government or by one of the states.
  - 3) Securities, for tax years ending on or after December 31, 2023, subject to the dealer accounting rules in IRC Section 475.
- e) Cost of Assets. For purposes of applying the "cost of assets" test in IITA Sections 1501(a)(11.5)(A)(i)(+) and 1501(a)(11.5)(A-5)(i), the cost of an asset shall be determined for federal income tax purposes without regard to depreciation or amortization of the asset, except that the cost of an asset shall include any accrued interest or discount, and shall be reduced by any premium amortization, that has been recognized in the computation of federal taxable income of the partnership and that is included on the partnership's balance sheet as of the date the cost of assets is determined.
- f) Gross Income. For purposes of applying the "gross income" test in IITA Sections 1501(a)(11.5)(A)(ii) and 1501(a)(11.5)(A-5)(ii):
- 1) "Gross income" means income minus costs of sales or basis in an asset sold or traded, but without reduction for any other expenses or deductions. For purposes of this Section, gross income does not include any item of income that is excluded from base income of the partnership, either because it is excluded from federal taxable income of the partnership or because it is subtracted from taxable income in computing base income, and gross income does not include income that results from transactions outside the ordinary course of a partnership's regular activities. For example, amounts received from the sale of an entity's office equipment shall be disregarded, whether or not the gain is characterized as business



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income. For tax years ending on or after December 31, 2023, "gross income" does not include income from partnerships that are operating at a federal taxable loss.

- 2) "Interest" means "compensation for the use or forbearance of money". See *Deputy v. Du Pont*, *Deputy v. du Pont*, 308 U.S. 488, 498 (1940). Interest includes the amortization of any discount at which an obligation is purchased and is net of the amortization of any premium at which an obligation is purchased. Any amount in excess of the purchase price received in payment of an obligation purchased at an arm's-length discount shall be rebuttably presumed to be interest. Interest includes any amount received upon the sale, exchange or other disposition of an obligation to the extent that such amount represents the accrual of interest on the unpaid balance of the obligation since the most recent payment made on that obligation.
- 3) "Dividend" means any item defined as a dividend under IRC Section 316 and any other item of income characterized or treated as a dividend under the Internal Revenue Code.
- 4) "Gain from sale or exchange" of qualifying investment securities is the sum of all gains realized on the sale or exchange of qualifying investment securities, without reduction or offset for losses realized on such sales or exchanges.
- 5) For purposes of the gross income test, gross income derived from investment in a partnership, subchapter S corporation, trust or estate shall be characterized as if the taxpayer received the income directly and, in the case of any item of income reported to the taxpayer by the partnership, subchapter S corporation, trust or estate for federal income tax purposes as net of related expenses, include only such net amount. The provisions of this subsection (f)(5) only apply to tax years ending before December 31, 2023.

(Source: Amended at 48 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)