

ILLINOIS REGISTER

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>
100.3405	Amendment
100.9710	Amendment
- 4) Statutory Authority: Implementing Sections 304 and 1501 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] Civil Administrative Code of Illinois. (Department of Revenue Law)
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking changes the apportionment method for investment income of financial organizations as provided in Public Act 103-0592. This rulemaking also updates the limit for a small loan company and various other references and citations.
- 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? 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:

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: Small businesses that operate a bank or other financial institution
- B) Reporting, bookkeeping or other procedures required for compliance: General accounting and tax preparation
- C) Types of professional skills necessary for compliance: General accounting and tax preparation

14) Small Business Impact Analysis:

Determine whether the rulemaking has an impact on small business (fewer than 50 full-time employees or less than \$4,000,000 in gross annual sales). Non-Illinois based financial organizations that sourced investment income to their commercial domicile will now have to apportion a percentage to Illinois. Illinois-based financial organizations that conduct investment activities in Illinois may apportion a lesser percentage to Illinois instead of allocating all of it here.

- A) Types of businesses subject to the proposed rule:
 - 52 Finance and Insurance
- B) Categories that the agency reasonably believes the rulemaking will impact, including:
 - viii. record keeping

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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

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

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 100

INCOME TAX

SUBPART A: TAX IMPOSED

Section

100.2000	Introduction
100.2050	Net Income (IITA Section 202)
100.2055	Standard Exemption (IITA Section 204)
100.2060	Compassionate Use of Medical Cannabis Pilot Program Act Surcharge (IITA Section 201(o))

SUBPART B: CREDITS

Section

100.2100	Replacement Tax Investment Credit Prior to January 1, 1994 (IITA Section 201(e))
100.2101	Replacement Tax Investment Credit (IITA 201(e))
100.2110	Economic Development for a Growing Economy Credit (IITA Section 211)
100.2111	REV Tax Credit (IITA Section 236)
100.2112	MICRO Tax Credit (IITA Section 238)
100.2120	Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone and River Edge Redevelopment Zone (IITA Section 201(g))
100.2130	Investment Credit; High Impact Business (IITA 201(h))
100.2131	Investment Credit; Enterprise Zone and River Edge Redevelopment Zone (IITA Section 201(f))
100.2135	REV Illinois Investment Tax Credit (IITA Section 237)
100.2140	Credit Against Income Tax for Replacement Tax (IITA 201(i))
100.2150	Training Expense Credit (IITA 201(j))
100.2160	Research and Development Credit (IITA Section 201(k))
100.2161	Quantum Computing Campuses Tax Credit (IITA Section 241)
100.2163	Environmental Remediation Credit (IITA 201(l))
100.2164	Data Center Construction Employment Tax Credit (IITA Section 229)
100.2165	Education Expense Credit (IITA 201(m))
100.2170	Tax Credits for Coal Research and Coal Utilization Equipment (IITA 206)

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

100.2171	Angel Investment Credit (IITA 220)
100.2175	Invest in Kids Credit (IITA 224)
100.2179	Volunteer Emergency Worker Credit (IITA Section 234)
100.2180	Credit for Residential Real Property Taxes (IITA 208)
100.2181	Credit for Instructional Materials and Supplies (IITA Section 225)
100.2185	Film Production Services Credit (IITA Section 213)
100.2190	Tax Credit for Affordable Housing Donations (IITA Section 214)
100.2193	Student-Assistance Contributions Credit (IITA 218)
100.2195	Dependent Care Assistance Program Tax Credit (IITA 210)
100.2196	Employee Child Care Assistance Program Tax Credit (IITA Section 210.5)
100.2197	Foreign Tax Credit (IITA Section 601(b)(3))
100.2198	Economic Development for a Growing Economy Credit (IITA 211) (Renumbered)
100.2199	Illinois Earned Income Tax Credit (IITA Section 212)

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

Section	
100.2200	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Scope
100.2210	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) – Definitions
100.2220	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Current Net Operating Losses: Offsets Between Members
100.2230	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Carrybacks and Carryforwards
100.2240	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Effect of Combined Net Operating Loss in Computing Illinois Base Income
100.2250	Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group:

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

(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	
100.2300	Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
100.2310	Computation of the Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
100.2320	Determination of the Amount of Illinois Net Loss for Losses Occurring On or After December 31, 1986
100.2330	Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring On or After December 31, 1986 (IITA Section 207)
100.2340	Illinois Net Losses and Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Separate Unitary Versus Combined Unitary Returns
100.2350	Illinois Net Losses and Illinois Net Loss Deductions, for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Changes in Membership
100.2360	Illinois Net Losses and Illinois Net Loss Deductions for Losses of Cooperatives Occurring On or After December 31, 1986 (IITA Section 203(e)(2)(F))

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

Section	
100.2405	Gross Income, Adjusted Gross Income, Taxable Income and Base Income Defined; Double Deductions Prohibited; Legislative Intention (IITA Section 203(e), (g) and (h))
100.2410	Net Operating Loss Carryovers for Individuals, and Capital Loss and Other Carryovers for All Taxpayers (IITA Section 203)
100.2430	Addition and Subtraction Modifications for Transactions with 80/20 and Noncombination Rule Companies
100.2435	Addition Modification for Student-Assistance Contribution Credit (IITA Sections 203(a)(2)(D-23), (b)(2)(E-16), (c)(2)(G-15), (d)(2)(D-10))

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 100.2450 IIT Refunds (IITA Section 203(a)(2)(H), (b)(2)(F), (c)(2)(J) and (d)(2)(F))
- 100.2455 Subtraction Modification: Federally Disallowed Deductions (IITA Sections 203(a)(2)(M), 203(b)(2)(I), 203(c)(2)(L) and 203(d)(2)(J))
- 100.2465 Claim of Right Repayments (IITA Section 203(a)(2)(P), (b)(2)(Q), (c)(2)(P) and (d)(2)(M))
- 100.2470 Subtraction of Amounts Exempt from Taxation by Virtue of Illinois Law, the Illinois or U.S. Constitutions, or by Reason of U.S. Treaties or Statutes (IITA Sections 203(a)(2)(N), 203(b)(2)(J), 203(c)(2)(K) and 203(d)(2)(G))
- 100.2480 Enterprise Zone and River Edge Redevelopment Zone Dividend Subtraction (IITA Sections 203(a)(2)(J), 203(b)(2)(K), 203(c)(2)(M) and 203(d)(2)(K))
- 100.2490 Foreign Trade Zone/High Impact Business Dividend Subtraction (IITA Sections 203(a)(2)(K), 203(b)(2)(L), 203(c)(2)(O), 203(d)(2)(M))

SUBPART F: BASE INCOME OF INDIVIDUALS

- Section
- 100.2510 Subtraction for Contributions to Illinois Qualified Tuition Programs (Section 529 Plans) (IITA Section 203(a)(2)(Y))
- 100.2565 Subtraction for Recovery of Itemized Deductions (IITA Section 203(a)(2)(I))
- 100.2580 Medical Care Savings Accounts (IITA Sections 203(a)(2)(D-5), 203(a)(2)(S) and 203(a)(2)(T))
- 100.2590 Taxation of Certain Employees of Railroads, Motor Carriers, Air Carriers and Water Carriers

SUBPART G: BASE INCOME OF CORPORATIONS

- Section
- 100.2655 Subtraction Modification for Enterprise Zone and River Edge Redevelopment Zone Interest (IITA Section 203(b)(2)(M))
- 100.2657 Subtraction Modification for High Impact Business Interest (IITA Section 203(b)(2)(M-1))
- 100.2665 Subtraction for Payments to an Attorney-in-Fact (IITA Section 203(b)(2)(R))
- 100.2668 Subtraction for Dividends from Controlled Foreign Corporations (IITA Section 203(b)(2)(Z))

SUBPART H: BASE INCOME OF TRUSTS AND ESTATES

Section

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 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

- Section

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

100.3300	Allocation and Apportionment of Base Income (IITA Section 304)
100.3310	Business Income of Persons Other Than Residents (IITA Section 304) – In General
100.3320	Business Income of Persons Other Than Residents (IITA Section 304) – Apportionment (Repealed)
100.3330	Business Income of Persons Other Than Residents (IITA Section 304) – Allocation
100.3340	Business Income of Persons Other Than Residents (IITA Section 304)
100.3350	Property Factor (IITA Section 304)
100.3360	Payroll Factor (IITA Section 304)
100.3370	Sales Factor (IITA Section 304)
100.3371	Sales Factor for Telecommunications Services
100.3373	Sales Factor for Publishing
100.3380	Special Rules (IITA Section 304)
100.3390	Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))
100.3400	Apportionment of Business Income of Financial Organizations for Taxable Years Ending Prior to December 31, 2008 (IITA Section 304(c))
100.3405	Apportionment of Business Income of Financial Organizations for Taxable Years Ending on or after December 31, 2008 (IITA Section 304(c))
100.3420	Apportionment of Business Income of Insurance Companies (IITA Section 304(b))
100.3450	Apportionment of Business Income of Transportation Companies (IITA Section 304(d))
100.3500	Allocation and Apportionment of Base Income by Nonresident Partners
100.3600	Combined Apportionment for Taxpayers Using Different Apportionment Formulas (IITA Section 1501(a)(27))

SUBPART N: ACCOUNTING

Section	
100.4100	Taxable Years (IITA Section 401)
100.4500	Carryovers of Tax Attributes (IITA Section 405)

SUBPART O: TIME AND PLACE FOR FILING RETURNS

Section	
100.5000	Time for Filing Returns (IITA Section 505)
100.5010	Place for Filing Returns: All Taxpayers (IITA Section 505)

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

100.5020	Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)
100.5030	Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return Years, and Arising in Certain Loss Carryback Years (IITA Section 506)
100.5040	Innocent Spouses
100.5050	Frivolous Returns
100.5060	Reportable Transactions (IITA Section 501(b))
100.5070	List of Investors in Potentially Abusive Tax Shelters and Reportable Transactions
100.5080	Registration of Tax Shelters (IITA Section 1405.5)

SUBPART P: COMPOSITE RETURNS

Section	
100.5100	Composite Returns: Eligibility (IITA Section 502(f))
100.5110	Composite Returns: Responsibilities of Authorized Agent
100.5120	Composite Returns: Individual Liability
100.5130	Composite Returns: Required forms and computation of Income (IITA Section 502(f))
100.5140	Composite Returns: Estimated Payments
100.5150	Composite Returns: Tax, Penalties and Interest
100.5160	Composite Returns: Credits on Separate Returns
100.5170	Composite Returns: Definition of a "Lloyd's Plan of Operation"
100.5180	Composite Returns: Overpayments and Underpayments

SUBPART Q: COMBINED RETURNS

Section	
100.5200	Filing of Combined Returns
100.5201	Definitions and Miscellaneous Provisions Relating to Combined Returns
100.5205	Election to File a Combined Return
100.5210	Procedures for Elective and Mandatory Filing of Combined Returns
100.5215	Filing of Separate Unitary Returns (IITA Section 304(e))
100.5220	Designated Agent for the Members (IITA Section 304(e))
100.5230	Combined Estimated Tax Payments
100.5240	Claims for Credit of Overpayments
100.5250	Liability for Combined Tax, Penalty and Interest
100.5260	Combined Amended Returns

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

100.5265	Common Taxable Year
100.5270	Computation of Combined Net Income and Tax (IITA Section 304(e))
100.5280	Combined Return Issues Related to Audits

SUBPART R: PAYMENTS

Section	
100.6000	Payment on Due Date of Return (IITA Section 601)

SUBPART S: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section	
100.7000	Requirement of Withholding (IITA Section 701)
100.7010	Compensation Paid in this State (IITA Section 701)
100.7020	Transacting Business Within this State (IITA Section 701)
100.7030	Payments to Residents (IITA Section 701)
100.7034	Investment Partnership Withholding (IITA Section 709.5)
100.7035	Nonresident Partners, Subchapter S Corporation Shareholders, and Trust Beneficiaries (IITA Section 709.5)
100.7036	Withholding of Lottery, Gambling and Sports Wagering Winnings (IITA Section 710)
100.7040	Employer Registration (IITA Section 701)
100.7050	Computation of Amount Withheld (IITA Section 702)
100.7060	Additional Withholding (IITA Section 701)
100.7070	Voluntary Withholding (IITA Section 701)
100.7080	Correction of Underwithholding or Overwithholding (IITA Section 701)
100.7090	Reciprocal Agreement (IITA Section 701)
100.7095	Cross References

SUBPART T: AMOUNT EXEMPT FROM WITHHOLDING

Section	
100.7100	Withholding Exemption (IITA Section 702)
100.7110	Withholding Exemption Certificate (IITA Section 702)
100.7120	Exempt Withholding Under Reciprocal Agreements (IITA Section 702)

SUBPART U: INFORMATION STATEMENT

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Section

100.7200 Reports for Employee (IITA Section 703)

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

Section

100.7300 Returns and Payments of Income Tax Withheld from Wages (IITA Sections 704 and 704A)

100.7310 Returns Filed and Payments Made on Annual Basis (IITA Sections 704 and 704A)

100.7320 Time for Filing Returns and Making Payments for Taxes Required to Be Withheld Prior to January 1, 2008 (IITA Section 704)

100.7325 Time for Filing Returns and Making Payments for Taxes Required to Be Withheld On or After January 1, 2008 (IITA Section 704A)

100.7330 Payment of Tax Required to be Shown Due on a Return (IITA Sections 704 and 704A)

100.7340 Correction of Underwithholding or Overwithholding (IITA Section 704)

100.7350 Domestic Service Employment (IITA Sections 704 and 704A)

100.7360 Definitions and Special Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)

100.7370 Penalty and Interest Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)

100.7380 Economic Development for a Growing Economy (EDGE) and Small Business Job Creation Credit (IITA Section 704A(g) and (h))

100.7381 REV Tax Credit (IITA Section 704A(g-1))

100.7382 MICRO Tax Credit (IITA Section 704A(g-2))

100.7385 Live Theater Production Tax Credit (IITA Section 704A(k))

100.7386 Local Journalism Sustainability Tax Credit (IITA Section 704 A(k))

100.7390 Minimum Wage Tax Credit (IITA Section 704A(i))

SUBPART W: ESTIMATED TAX PAYMENTS

Section

100.8000 Payment of Estimated Tax (IITA Section 803)

100.8010 Failure to Pay Estimated Tax (IITA Sections 804 and 806)

SUBPART X: COLLECTION AUTHORITY

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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)
- 100.9330 Further Notices of Deficiency Restricted (IITA Section 906)

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)
- 100.9505 Access to Books and Records – 60-Day Letters (IITA Section 913) (Repealed)
- 100.9510 Taxpayer Representation and Practice Requirements

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

100.9520 Conduct of Investigations and Hearings (IITA Section 914)
100.9530 Books and Records

SUBPART DD: JUDICIAL REVIEW

Section
100.9600 Administrative Review Law (IITA Section 1201)

SUBPART EE: DEFINITIONS

Section
100.9700 Unitary Business Group Defined (IITA Section 1501)
100.9710 Financial Organizations (IITA Section 1501)
100.9715 Transportation Companies (IITA Section 304(d))
100.9720 Nexus
100.9730 Investment Partnerships (IITA Section 1501(a)(11.5))
100.9750 Corporation, Subchapter S Corporation, Partnership and Trust Defined (IITA Section 1501)

SUBPART FF: LETTER RULING PROCEDURES

Section
100.9800 Letter Ruling Procedures

SUBPART GG: MISCELLANEOUS

Section
100.9900 Tax Shelter Voluntary Compliance Program
100.9910 State Tax Preparer Oversight Act [35 ILCS 35]

100.APPENDIX A Business Income Of Persons Other Than Residents (Repealed)
 100.TABLE A Example of Unitary Business Apportionment (Repealed)
 100.TABLE B Example of Unitary Business Apportionment for Groups Which
 Include Members Using Three-Factor and Single-Factor Formulas
 (Repealed)

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

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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,

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

effective June 5, 2012; amended at 37 Ill. Reg. 5823, effective April 19, 2013; amended at 37 Ill. Reg. 20751, effective December 13, 2013; recodified at 38 Ill. Reg. 4527; amended at 38 Ill. Reg. 9550, effective April 21, 2014; amended at 38 Ill. Reg. 13941, effective June 19, 2014; amended at 38 Ill. Reg. 15994, effective July 9, 2014; amended at 38 Ill. Reg. 17043, effective July 23, 2014; amended at 38 Ill. Reg. 18568, effective August 20, 2014; amended at 38 Ill. Reg. 23158, effective November 21, 2014; emergency amendment at 39 Ill. Reg. 483, effective December 23, 2014, for a maximum of 150 days; amended at 39 Ill. Reg. 1768, effective January 7, 2015; amended at 39 Ill. Reg. 5057, effective March 17, 2015; amended at 39 Ill. Reg. 6884, effective April 29, 2015; amended at 39 Ill. Reg. 15594, effective November 18, 2015; amended at 40 Ill. Reg. 1848, effective January 5, 2016; amended at 40 Ill. Reg. 10925, effective July 29, 2016; amended at 40 Ill. Reg. 13432, effective September 7, 2016; amended at 40 Ill. Reg. 14762, effective October 12, 2016; amended at 40 Ill. Reg. 15575, effective November 2, 2016; amended at 41 Ill. Reg. 4193, effective March 27, 2017; amended at 41 Ill. Reg. 6379, effective May 22, 2017; amended at 41 Ill. Reg. 10662, effective August 3, 2017; amended at 41 Ill. Reg. 12608, effective September 21, 2017; amended at 41 Ill. Reg. 14217, effective November 7, 2017; emergency amendment at 41 Ill. Reg. 15097, effective November 30, 2017, for a maximum of 150 days; amended at 42 Ill. Reg. 4953, effective February 28, 2018; amended at 42 Ill. Reg. 6451, effective March 21, 2018; recodified Subpart H to Subpart G at 42 Ill. Reg. 7980; amended at 42 Ill. Reg. 17852, effective September 24, 2018; amended at 42 Ill. Reg. 19190, effective October 12, 2018; amended at 43 Ill. Reg. 727, effective December 18, 2018; amended at 43 Ill. Reg. 10124, effective August 27, 2019; amended at 44 Ill. Reg. 2363, effective January 17, 2020; amended at 44 Ill. Reg. 2845, effective January 30, 2020; emergency amendment at 44 Ill. Reg. 4700, effective March 4, 2020, for a maximum of 150 days; emergency expired July 31, 2020; amended at 44 Ill. Reg. 10907, effective June 10, 2020; emergency amendment at 44 Ill. Reg. 11208, effective June 17, 2020, for a maximum of 150 days; emergency expired November 13, 2020; amended at 44 Ill. Reg. 17414, effective October 13, 2020; amended at 45 Ill. Reg. 2006, effective January 29, 2021; amended at 45 Ill. Reg. 5523, effective April 15, 2021; amended at 46 Ill. Reg. 13312, effective July 12, 2022; amended at 46 Ill. Reg. 14550, effective August 2, 2022; amended at 46 Ill. Reg. 15317, effective August 24, 2022; amended at 46 Ill. Reg. 18102, effective October 26, 2022; amended at 47 Ill. Reg. 1402, effective January 10, 2023; amended at 47 Ill. Reg. 2093, effective January 24, 2023; amended at 47 Ill. Reg. 5726, effective April 4, 2023; amended at 47 Ill. Reg. 6030, effective April 12, 2023; amended at 47 Ill. Reg. 13669, effective September 11, 2023; emergency amendment at 47 Ill. Reg. 17214, effective November 6, 2023, for a maximum of 150 days; amended at 48 Ill. Reg. 1677, effective January 10, 2024; amended at 48 Ill. Reg. 2243, effective January 29, 2024; amended at 48 Ill. Reg. 4433, effective March 11, 2024; amended at 48 Ill. Reg. 10281, effective June 25,

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

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. _____, effective _____.

SUBPART M: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section 100.3405 Apportionment of Business Income of Financial Organizations for Taxable Years Ending on or after December 31, 2008 (IITA Section 304(c))

- a) In General. For taxable years ending on or after December 31, 2008, *the business income of a financial organization shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is its gross receipts from sources in this State or otherwise attributable to this State's marketplace and the denominator of which is its gross receipts everywhere during the taxable year.* (IITA Section 304(c)(3)) Any gross receipt that is excluded from base income or subtracted in the computation of base income of the financial organization must be excluded from the numerator and denominator of this formula. See *Continental Illinois National Bank and Trust Company of Chicago v. Lenckos*, 102 Ill.2d 210 (1984). For example, dividends deducted from federal taxable income under 26 ~~U.S.C.~~ ~~USE~~ 243 or subtracted in the computation of base income under IITA Section 203(b)(2)(O) are excluded from the apportionment formula.
- b) Definitions. For purposes of this Section, the following definitions shall apply:
 - 1) Fixed Place of Business. *The term "fixed place of business" has the same meaning as that term is given in Section 864 of the Internal Revenue Code and the related Treasury regulations.* (IITA Section 1501(a)(9.5))
 - A) As a general rule, a "fixed place of business" is a fixed facility, that is, a place, site, structure or other similar facility, through which the taxpayer engages in a trade or business. (See 26 CFR 1.864-7(b)(1).)

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- B) A taxpayer is not considered to have a fixed place of business merely because the taxpayer uses another person's fixed place of business, whether or not the other person and the taxpayer are related persons, through which to transact a trade or business, if the trade or business activities of the taxpayer in that fixed place of business are relatively sporadic or infrequent, taking into account the overall needs and conduct of that trade or business. (See 26 CFR 1.864-7(b)(2).)
 - C) A fixed place of business of an agent of the taxpayer who is not an independent agent is not a fixed place of business of the taxpayer unless the agent has the authority to negotiate and conclude contracts in the name of the taxpayer, and regularly exercises that authority. (See 26 CFR 1.864-7(d)(1)(i).)
 - D) A fixed place of business of an independent agent of the taxpayer shall not be treated as the office or other fixed place of business of the taxpayer, irrespective of whether the agent has authority to negotiate and conclude contracts in the name of the principal and regularly exercises that authority. (See 26 CFR 1.864-7(d)(2).)
 - E) For purposes of this subsection (b)(1), "independent agent" means a general commission agent, broker or other agent of an independent status acting in the ordinary course of his or her business in that capacity. (See 26 CFR 1.864-7(d)(3).)
- 2) Gross Receipts. "Gross receipts" means *gross income, including net taxable gain on disposition of assets, including securities and money market instruments, when derived from transactions and activities in the regular course of the financial organization's trade or business.* (IITA Section 304(c)(3))
 - 3) State of Residence or Commercial Domicile. Unless a financial organization has actual knowledge that the residence or commercial domicile of a person is in a state other than the state in which the person's billing address is located, the person shall be deemed to be

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

a resident or have its commercial domicile in the state in which the billing address is located.

- 4) Substantive Contacts. "Substantive contacts" with an investment asset or trading activity means the research, approval and administration activities conducted by employees of the taxpayer in connection with its investments or trading, and are conducted at the fixed place of business at which the employees involved in these activities perform services for the taxpayer.
 - A) Research. "Research" means the procedures and activities whereby employees of the taxpayer evaluate potential investments or trades.
 - B) Approval. "Approval" means the procedures whereby employees of the taxpayer make the final determination to invest in or dispose of assets or to engage in a specific trading activity.
 - C) Administration. "Administration" means the management of investments or trading activities, and includes bookkeeping, collection or making of payments, communications with brokers, customers and other persons with regard to investment or trading activities, and reporting to management on investment or trading activities.
- c) Sourcing Rules. For the purposes of this Section, gross receipts from sources in this State or otherwise attributable to this State's marketplace is the sum of the following amounts:
 - 1) Lease and Rental Receipts.
 - A) *Receipts from the lease or rental of real or tangible personal property are in this State if the property is located in this State during the rental period.*
 - B) *Receipts from the lease or rental of tangible personal property that is characteristically moving property, including, but not*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, are from sources in this State to the extent that the property is used in this State. (IITA Section 304(c)(3)(i))
If the 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 comparing the time the property was physically present or was used in this State with the total time or use of the property everywhere during that period.

- 2) *Interest income, commissions, fees, gains on disposition, and other receipts from assets in the nature of loans that are secured primarily by real estate or tangible personal property are from sources in this State if the security is located in this State. (IITA Section 304(c)(3)(ii))*
 - A) For tangible personal property, the property is located in this State if the debtor is a resident of this State (in the case of an individual, trust or estate) or has its commercial domicile in this State as of the date the loan is made.
 - B) In the case of a loan secured by property located within and without this State, the gross receipts from the loan that are from sources within this State equal the total gross receipts times a fraction equal to the value of the real estate and tangible property securing the loan that is located within this State at the time the loan is made, divided by the total value of the real estate and tangible property securing the loan at the time the loan is made.
- 3) *Interest income, commissions, fees, gains on disposition, and other receipts from consumer loans that are not secured by real or tangible personal property are from sources in this State if the debtor is a resident of this State. (IITA Section 304(c)(3)(iii))*
- 4) *Interest income, commissions, fees, gains on disposition, and other receipts from commercial loans and installment obligations that are not secured by real or tangible personal property are from sources in this State if the proceeds of the loan are to be applied in this State. If it*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

cannot be determined where the funds are to be applied, the income and receipts are from sources in this State if the office of the borrower from which the loan was negotiated in the regular course of business is located in this State. If the location of this office cannot be determined, the income and receipts shall be excluded from the numerator and denominator of the sales factor. (IITA Section 304(c)(3)(iv))

- 5) *Interest income, fees, gains on disposition, service charges, merchant discount income, and other receipts from credit card receivables are from sources in this State if the card charges are regularly billed to a customer in this State. (IITA Section 304(c)(3)(v))*
- 6) *Receipts from the performance of services, including, but not limited to, fiduciary, advisory, and brokerage services, are in this State if the services are received in this State within the meaning of IITA Section 304(a)(3)(C-5)(iv). (IITA Section 304(c)(3)(vi)) See Section ~~100.3370(c)(7)(D)~~~~100.3370(c)(6)(D)~~ for more guidance.*
- 7) *Receipts from the issuance of travelers checks and money orders are from sources in this State if the checks and money orders are issued from a location within this State. (IITA Section 304(c)(3)(vii))*
- 8) *~~For tax years ending before December 31, 2024, receipts~~Receipts from investment assets and activities and trading assets and activities are included in the receipts factor as follows:*
 - A) *Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities from trading assets and activities shall be included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. (IITA Section 304(c)(3)(viii)(1))*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- i) *The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements. (IITA Section 304(c)(3)(viii)(1)(A))*
 - ii) *The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities. (IITA Section 304(c)(3)(viii)(1)(B))*
- B) *The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities that are attributable to this State, as follows:*
 - i) *The amount of interest, dividends, net gains (but not less than zero), and other income from investment assets and activities in the investment account to be attributed to this State and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a fixed place of business of the taxpayer within this State, and the denominator of which is the gross income from all such assets and activities. (IITA Section 304(c)(3)(viii)(2)(A))*
 - ii) *The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this State and included in the numerator is determined by multiplying the total of*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

those items by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a fixed place of business of the taxpayer within this State and the denominator of which is the gross income from all such funds and such securities. (IITA Section 304(c)(3)(viii)(2)(B))

iii) *The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, but excluding amounts described in subsection (c)(8)(B)(i) or (ii), attributable to this State and included in the numerator is determined by multiplying the total of those items by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a fixed place of business of the taxpayer within this State, and the denominator of which is the gross income from all such assets and activities. (IITA Section 304(c)(3)(viii)(2)(C))*

iv) *An investment or trading asset or activity is assigned to the fixed place of business with which it has a preponderance of substantive contacts. An investment or trading asset or activity assigned by the taxpayer to a fixed place of business without the State shall be presumed to have been properly assigned if:*

- the taxpayer has assigned, in the regular course of its business, such asset or activity on its records to a fixed place of business consistent with federal or state regulatory requirements; (IITA Section 304(c)(3)(viii)(2)(D)(i~~1~~))*
- such assignment on its records is based upon substantive contacts of the asset or activity to such fixed place of business; and (IITA Section 304(c)(3)(viii)(2)(D)(ii~~2~~))*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- *the taxpayer uses such records reflecting assignment of such assets or activities for the filing of all state and local tax returns for which an assignment of such assets or activities to a fixed place of business is required. (IITA Section 304(c)(3)(viii)(2)(D)(iii3))*
- v) *The presumption of proper assignment of an investment or trading asset or activity provided in subsection (c)(8)(B)(iv) may be rebutted upon a showing by the Department, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such asset or activity did not occur at the fixed place of business to which it was assigned on the taxpayer's records. If the fixed place of business that has a preponderance of substantive contacts cannot be determined for an investment or trading asset or activity to which the presumption of proper assignment does not apply or with respect to which that presumption has been rebutted, that asset or activity is properly assigned to the state in which the taxpayer's commercial domicile is located. For purposes of this subsection (c)(8)(B)(v), it is presumed, subject to rebuttal, that taxpayer's commercial domicile is in the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected with the management of the investment or trading income or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year. (IITA Section 304(c)(3)(viii)(2)(E))*
- 9) *For tax years ending on or after December 31, 2024, receipts from investment assets and activities and trading assets and activities are included in the receipts factor as follows:*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- A) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities from trading assets and activities shall be included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. (IITA Section 304(c)(3)(ix)(1))
- i) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements. (IITA Section 304(c)(3)(ix)(1)(A))
- ii) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities. (IITA Section 304(c)(3)(ix)(1)(B))
- B) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero), and other income from investment assets and activities and from trading assets and activities that are attributable to this State, as follows:
- i) The amount of interest, dividends, net gains (but not less than zero), and other income from investment assets and activities in the investment account to be attributed to this State and included in the numerator is determined by multiplying all of the income from those assets and activities by a fraction, the numerator of

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

which is the total receipts included in the numerator pursuant to subsection (c)(1) through (c)(7) and the denominator of which is all total receipts included in the denominator, other than interest, dividends, net gains (but not less than zero), and other income from investment assets and activities and trading assets and activities. (IITA Section 304(c)(3)(ix)(2)(A))

ii) *The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this State and included in the numerator is determined by multiplying the total of those items net of interest expense by a fraction, the numerator of which is the total receipts included in the numerator pursuant to subsection (c)(1) through (c)(7) and the denominator of which is all total receipts included in the denominator, other than interest, dividends, net gains (but not less than zero), and other income from investment assets and activities and trading assets and activities. (IITA Section 304(c)(3)(ix)(2)(B))*

iii) *The amount of interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, but excluding amounts described in subsection (c)(9)(B)(i) or (ii), attributable to this State and included in the numerator is determined by multiplying the amount described in subsection (c)(9)(A)(ii) by a fraction, the numerator of which is the total receipts included in the numerator pursuant to subsection (c)(1) through (c)(7) and the denominator of which is all total receipts included in the denominator, other than interest, dividends, net gains (but not less than zero), and other income from investment assets and activities*

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

and trading assets and activities. (IITA Section 304(c)(3)(ix)(2)(C))

- 109)** Any receipts that are includable in the denominator of the fraction in subsection (a) and that are not governed by subsection (c)(1) through ~~(9)(8)~~ are from sources within this State to the extent the receipts would be characterized as "sales in this State" under IITA Section 304(a)(3) and Sections 100.3370 and 100.3380 of this Part, except that the provisions in IITA Section 304(a)(3)(B-2) (excluding gross receipts from the licensing, sale or other disposition of patents, copyrights, trademarks and similar items from the numerator and denominator of the apportionment factor, unless those items comprise more than 50% of the taxpayer's gross receipts) do not apply.

(Source: Amended at 49 Ill. Reg. ____, effective ____)

SUBPART EE: DEFINITIONS

Section 100.9710 Financial Organizations (IITA Section 1501)

- a) General Definition. The term "financial organization" is defined in IITA Section 1501(a)(8)(A) to mean *any bank, bank holding company, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, building and loan association, credit union, currency exchange, cooperative bank, small loan company, sales finance company, investment company, or any person which is owned by a bank or bank holding company. For the purpose of this Section a "person" will include only those persons which a bank holding company may acquire and hold an interest in, directly or indirectly, under the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. ~~456~~ 1841), except where interests in any person must be disposed of within certain required time limits under the Bank Holding Company Act of 1956.* This definition constitutes an exclusive and exhaustive list of the types of organization that are "financial organizations" under the Illinois Income Tax Act.
- b) Entities Engaged in Financial Organization Activities and Other Activities. For purposes of this Section, an entity that is classified as a "bank" under

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

subsection (e) of this Section; as a "bank holding company" under subsection (f) of this Section; or as a person owned by a bank or bank holding company under subsection (g) of this Section, is a "financial organization" regardless of whether the entity is predominantly engaged in the business activities characteristic of a financial organization. In order for any other entity to be characterized as a "financial organization" in any tax year, the entity must be predominantly engaged in the business activities of a financial organization during the year. For this purpose, an entity engaged in business activities of a financial organization, as well as other business activities in the same tax year, is predominantly engaged in the business activities of a financial organization during that year only if more than 80% (50% in the case of a sales finance company under subsection (d)(10) of this Section) of the entity's gross income, averaged over a period of three years, which includes the current tax year and the immediately preceding two tax years, is derived from the business activities characteristic of one or more of the categories of financial organization defined in this Section for which the entity otherwise qualifies. For purposes of this subsection, gross income shall include only amounts that are received in the ordinary course of the entity's regular business activities and that are included in net income under the Illinois Income Tax Act. For purposes of determining whether an entity is predominantly engaged in the business activities of a financial organization when an entity is formed in a current tax year or in its immediately preceding tax year, only the years for which the entity is in existence will be used in determining whether the entity meets the 80% test (or 50% test in the case of a sales finance company under subsection (d)(10) of this Section).

- 1) Income which results from transactions outside the ordinary course of an entity's regular business activities is not taken into account for the purposes of the gross income test. For example, amounts received from the sale of an entity's headquarters shall be disregarded, whether or not the gain is characterized as business income.
- 2) The classification of an entity as a "financial organization" under the IITA is relevant to how the business income of the entity shall be apportioned to Illinois under IITA Section 304(c). The treatment of items of income that are not included in apportionable business income is not affected by such classification, and such items are

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

therefore disregarded for purposes of the gross income test. For example, interest received on United States Treasury obligations is excluded from Illinois base income, and accordingly is disregarded for purposes of determining whether the business income of an entity should be apportioned using the financial organization formula. Similarly, dividends received by a corporation shall be disregarded to the extent the dividends are deducted from federal taxable income under section 243 of the Internal Revenue Code or are subtracted in the computation of Illinois base income under IITA Section 203(b)(2)(O).

- 3) In the case of a sale or disposition of any asset (whether tangible or intangible, and whether the asset is part of the taxpayer's stock in trade) that occurs in the ordinary course of an entity's regular business activities, only the net gain shall be taken into account for purposes of the gross income test. Thus, for example, gross income from the sale of inventory is equal to its gross receipts minus the cost of goods sold; while gross income from the sale of stock is equal to the sales price minus any brokerage commission and minus the taxpayer's basis in the stock. If gross income from a transaction is negative, the loss shall not be considered for purposes of the gross income test.
- 4) Leasing Activities. For purposes of the IITA and the Internal Revenue Code, a "finance lease" is treated as an extension of credit, rather than as a true lease. In a finance lease, the lessor is treated as a creditor, and the lessee is treated as the owner of the leased asset entitled to any deduction for depreciation allowed under section 167 of the Internal Revenue Code. For purposes of this Section, a finance lease shall be treated as a loan or other extension of credit, rather than as a lease, regardless of how the transaction is characterized for any other purpose, including the purposes of any regulatory agency to which the lessor is subject.
- 5) In applying the gross income test to an entity engaged in the businesses of more than one of the types of organization defined in subsection (d) of this Section, "gross income from financial services" shall include gross income derived from all services characteristic of

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

any specific defined type of organization for which the entity qualifies.
For example:

- A) Selling and exchanging currency is a characteristic service only of banks. Accordingly, "gross income from financial services" of an entity which qualifies as a bank under subsection (d)(1) of this Section, and as a safe deposit company under subsection (d)(6) of this Section, includes both income from trading in foreign currency and safe deposit box rentals. However, "gross income from financial services" of an entity which qualifies as a safe deposit company, but not as a bank, does not include income from trading in foreign currency.
 - B) A taxpayer that meets all other qualifications of a sales finance company and also of a small loan company, and that derives 40% of its gross income from transactions characteristic of a sales finance company and 35% of its gross income from transactions characteristic of a small loan company is not a financial organization because it does not meet either the 50% test for sales finance companies nor the 80% test applicable to other types of financial organization. If, however, the taxpayer derives 45% of its gross income from transactions characteristic of a sales finance company and 36% of its gross income from transactions characteristic of a small loan company, it would not be a sales finance company because it does not meet the 50% test, but it would be a financial organization under the 80% test.
- 6) IITA Section 1501(a)(8)(D) provides that an entity *that is a "financial organization" that engages in any transaction with an affiliate shall be a "financial organization" for all purposes of the Act.* Accordingly, in applying the gross income test, an entity's transactions with a person to which it is related (including transactions with a member of the entity's unitary business group which are eliminated in combination under Section ~~100.5270(b)(1)~~~~100.3320(d)~~ of this Part) shall be treated in the same manner as transactions between the entity and an unrelated person, subject in all cases to the authority of the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Department under IITA Section 404 to make such adjustments as are necessary to properly reflect each party's Illinois business activities.

- c) Some of the types of organizations listed in subsection (a) of this Section are defined by State or federal statutes. The remaining types of organization are terms frequently used in other states' laws to refer to entities engaged in the same businesses as the entities in one or more of the types defined in Illinois or federal law. An entity defined as a bank or a bank holding company, or that is owned by a bank or bank holding company, under subsection (e), (f) or (g) of this Section, is a financial organization regardless of its actual business activities. For any other entity, notwithstanding the title or characterization of the entity for purposes of any other law, the entity is a "financial organization" for purposes of the IITA only if that entity is predominantly engaged in a business which is identical in all material respects to the characteristic business of an entity within one or more of the types of organization defined in Illinois or federal law. In order for an entity's business to be identical in all material respects to the business of one of the defined types of organization, the entity must:
 - 1) provide substantially all of the characteristic services provided by entities in the defined type of organization; and
 - 2) be subject to regulation by the Illinois or federal agency (if any) with authority over entities in the defined type of organization or by the equivalent authority (if any) established under the laws of the entity's state or country of formation or of its commercial domicile. However, "sales finance companies", as defined in subsections (d)(10)(A) and (B) of this Section are not required to be regulated by any state or federal authority.
- d) **Application to Defined Types of Financial Organization.** This subsection lists the types of financial organization defined in Illinois or federal law and describes the characteristic business of each type as provided in the relevant Illinois or federal statutes. The references to Illinois State and federal statutes and authorities in this subsection shall be construed to refer to any predecessor to the current statute or authority, whenever appropriate.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Entities engaged in the business of a "bank". The term "bank" includes any entity described in subsection (e) of this Section. In addition, for purposes of categorizing an entity that does not come within the scope of subsection (e) of this Section, the term "bank" means an entity predominantly engaged in the business activities characteristic of an entity which has been issued a charter by the ~~Secretary of Financial and Professional Regulation~~Commissioner of Banks and Real Estate under 205 ILCS 5/13 or that has been given a certificate of authority to commence banking by the Comptroller of the Currency under 12 ~~U.S.C.~~USE 27. The terms "savings bank", "industrial bank" and "cooperative bank" are sometimes used in the laws of other states to refer to entities engaged in the same business as a "bank" as defined in Illinois or federal law. The term "private banker" means an unincorporated bank, conducted as a partnership of individuals or as an individual proprietorship. Notwithstanding that an entity does or does not come within the meaning of any of these terms for any other purpose, the determination of whether an entity is engaged in the business of a "bank" for purposes of the IITA shall be made pursuant to the following standards:
 - A) Characteristic Services. The Illinois and federal statutes providing for the formation of banks state that the characteristic activities of banks are accepting deposits, making loans, discounting evidences of debt, and buying and selling exchange. (See 205 ILCS 5/3; 12 ~~U.S.C.~~USE 24; and section 581 of the Internal Revenue Code.) In order to be engaged in a business identical in all material respects to the business of a "bank," an entity formed under the laws of another state or of a foreign country as a bank, savings bank, industrial bank, or cooperative bank must engage in each of these characteristic financial services of a bank. Thus, for example, an entity that does not accept deposits is not engaged in the business of a bank. For purposes of applying the 80% of gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a bank include:

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans or provide other credits;
- ii) service charges and early withdrawal or other penalties received in connection with deposit accounts;
- iii) fees and gains realized from buying and selling exchange, including foreign currency;
- iv) loan servicing fees and charges received in connection with syndicated loans or loans sold to third parties; and
- v) discounts and gains realized on the purchase or resale of loans.

Examples of items of income that are not gross income from the characteristic services of a bank include rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; and interest and dividends received from, and gains realized on the sale or exchange of, securities.

- B) Regulation. Illinois State banks are subject to regulation by the Secretary of Financial and Professional Regulation Commissioner of Banks and Real Estate (see 205 ILCS 5/48), while national banks are subject to regulation by the Comptroller of the Currency (see 12 U.S.C.~~USE~~ 27(b)(2)). These entities qualify as banks under subsection (e) of this Section regardless of their business activities. In order to qualify as a bank, an entity that is not a bank within the meaning of subsection (e) of this Section must be regulated by the authority (if any) equivalent to the Secretary of Financial and Professional Regulation Commissioner of Banks and Real Estate or the Comptroller of the Currency having regulatory jurisdiction within the entity's state or country of formation or commercial domicile.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 2) Entities engaged in the business of a "trust company". The term "trust company" means a corporation organized under the laws of the State of Illinois for the purpose of accepting and executing trusts [205 ILCS 620/1-5.11], and that has received a certificate of authority to accept trusts from the Secretary of Financial and Professional Regulation Commissioner of Banks and Real Estate under 205 ILCS 620/2-4.
- A) Characteristic Services. A trustee performs services as a fiduciary on behalf of the trust's beneficiaries. A trustee is entitled to reimbursement for expenses properly incurred in the administration and protection of the trust, and for expenses that were not properly incurred in the administration of the trust but would prevent unjust enrichment of the trust (see 760 ILCS 3/709)~~A trustee is entitled to compensation for expenses incurred on behalf of the trust and to reasonable compensation for services rendered (see 760 ILCS 5/7).~~ Under Illinois law, a trustee may continue an unincorporated business on behalf of the trust in certain circumstances (see 760 ILCS 3/816(36), (37)~~5/4-23 and 4-24~~). A trustee may act as an advisor or manager of a mutual fund in which trust funds are invested, without having to reduce or waive its compensation for such services when provided to a trust (see 760 ILCS 3/802(e)~~5/5-2~~). However, the trustee is not entitled to any profit from any business it conducts on behalf of a trust or beneficiary, but only to compensation for services rendered to the trust. Accordingly, the gross income from characteristic services of a trust company shall include only trustees' fees or other compensation receivable for services rendered as a trustee on behalf of trusts. Amounts received for services provided other than as a trustee, such as fees received as an advisor or manager of a mutual fund in which trust funds are invested, are not gross income from characteristic services of a trust company.
- B) Regulation. A trust company conducting business within Illinois is subject to the Corporate Fiduciary Act [205 ILCS 620]. Some types of regulated entities, such as national

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

banks, are authorized by law to engage in trust activities (see 12 ~~U.S.C. §~~ 92a). Any entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state.

- 3) Entities engaged in the business of a "savings bank". The term "savings bank" means a taxpayer which is predominantly engaged in the business of an entity that is either chartered as a federal savings bank under the Home Owners' Loan Act (12 ~~U.S.C. §~~ 1462 and 1464(a)) and whose investments comply with the guidelines of 12 ~~U.S.C. §~~ 1464(c) or of an entity which has been issued a certificate of organization by the ~~Secretary of Financial and Professional Regulation~~~~Commissioner of Savings and Loan Associations~~ under the Savings Bank Act [205 ILCS 205/3007] and that, as required by 205 ILCS 205/1009, maintains at least 60% of its total assets in qualifying "domestic ~~buildingsavings~~ and loan association" assets described in section 7701(a)(19) of the Internal Revenue Code. ~~The qualifying assets listed in Section 7701(a)(19) are cash, federal and municipal obligations, loans secured by deposits or shares in the lender, residential real estate loans, educational loans, and related investments.~~ The terms "bank", "savings and loan association", "building and loan association", "industrial bank" and "cooperative bank" are sometimes used in the laws of other states to refer to entities engaged in the same business as a "savings bank" as defined in Illinois or federal law. Notwithstanding that an entity does or does not come within the meaning of any of these terms for any other purpose, the determination of whether the entity is engaged in the business of a "savings bank" for purposes of the IITA shall be made pursuant to the following standards:

- A) Characteristic Services. The business of a savings bank consists principally of acquiring the savings of the public and investing in loans (section 7701(a)(19)(B) of the Internal Revenue Code). In general, qualifying loans are related to residential real estate. An entity that does not take deposits from the public and invest the deposited funds primarily in qualifying loans to the public is not a savings bank for purposes of the IITA. For purposes of applying the 80% of

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a savings bank include:

- i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans or provide other credits;
- ii) service charges and early withdrawal or other penalties received in connection with deposit accounts;
- iii) loan servicing fees and charges received in connection with syndicated loans or loans sold to third parties; and
- iv) discounts and gains realized on the purchase or resale of loans.

Examples of items of income that are not gross income from the characteristic services of a savings bank include rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; interest and dividends received from, and gains realized on the sale or exchange of, securities.

- B) Regulation. No entity is a savings bank for purposes of the IITA unless it is subject to regulation by the Secretary of Financial and Professional Regulation~~Commissioner of Banks and Real Estate~~ under the Savings Bank Act [205 ILCS 205/1003], the Office of the Comptroller of the Currency~~Thrift Supervision under the Home Owners' Loan Act~~ (12 U.S.C.~~USE~~ 1461), or the appropriate authority of another state responsible for regulating savings banks.

- 4) Entities engaged in the business of a "land bank". The term "land bank" was defined in federal law to mean a federally chartered association organized to make loans on farm security at low interest rates as governed by 12 U.S.C.~~USE~~, ch. 23 (Farm Credit System).

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Under the Agricultural Credit Act of 1987 (P.L. 100-233), the federal land banks were merged with the Federal Intermediate Credit Banks which had also been created under the Farm Credit System. Under current law, the surviving entities are exempt from state income taxation (see 12 ~~U.S.C.~~USE 2098).

- A) Characteristic Services. Congress established the federal land banks as cooperatives to encourage farmer and rancher ownership and control over a system of credit for agriculture. The characteristic service of a land bank is making loans to farmers. Gross income from characteristic services of a land bank include application and origination fees, points, interest, late payment fees and other charges received in connection with loans to farmers and ranchers.
- B) Regulation. Federal land banks are not subject to Illinois taxation. A land bank that was not created under federal statute must be subject to any regulation by any authority equivalent to the Farm Credit System regulation as may exist in the state or country of incorporation or commercial domicile of the land bank.

- 5) Entities engaged in the business of a "safe deposit company". The term "safe deposit company" means an entity licensed by the ~~Division~~Department of Financial Institutions under the Safety Deposit License Act [240 ILCS 5/22] to engage in the business of renting or permitting the use of, for compensation, safety deposit boxes, safes, vaults or other facilities for the safekeeping of personal property (see 240 ILCS 5/2). The Safety Deposit License Act does not apply to banks, savings and loans, credit unions, warehouses, or grain storage companies (see 240 ILCS 5/3).

- A) Characteristic Services. A safe deposit company provides facilities for the safekeeping of personal property in safes or vaults, as compared to warehouses. Gross income from the characteristic services of a safe deposit company includes rental income or similar charges for safe deposit boxes.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

B) Regulation. Safe deposit companies doing business in Illinois must be licensed by the ~~Division~~**Department** of Financial Institutions. An entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state.

6) Entities engaged in the business of a "savings and loan association". The term "savings and loan association" means a federal savings and loan association chartered under the Home Owners' Loan Act of 1933 (12 ~~U.S.C.~~**USE** 1462 and 1464(a)) whose investments comply with the guidelines of 12 ~~U.S.C.~~**USE** 1464(c) or a savings and loan association organized under the ~~Savings Bank Act~~**Illinois Savings and Loan Act of 1985** [205 ILCS ~~205/1001~~**105/2-6**] and whose investments comply with the requirements of ~~Article 6 of the Savings Bank Act (205 ILCS 205/6001 et. seq.)~~**205 ILCS 105/5-1 through 5-16. In particular, 205 ILCS 105/5-3 provides that savings and loan associations must generally make their assets available to make loans to their members secured by the members' shares or for residential real estate purchase; construction and related matters under 205 ILCS 105/5-2.** The Internal Revenue Code provides special rules for savings and loan associations, which are defined in section 7701(a)(19) of the Internal Revenue Code as depository institutions that invest at least 60% of their assets in cash, federal and municipal obligations, loans secured by deposits or shares in the lender, residential real estate loans, educational loans, and related investments. The terms "bank", "savings bank", "building and loan association" and "cooperative bank" are sometimes used in the laws of other states or of other countries to refer to entities engaged in the same business as a "savings and loan association" as defined in Illinois or federal law. Notwithstanding that an entity does or does not come within the meaning of any of these terms for any other purpose, the determination of whether the entity is engaged in the business of a "savings and loan association" for purposes of the IITA shall be made pursuant to the following standards:

A) Characteristic Services. The business of a savings and loan association consists principally of acquiring the savings of the public and investing in loans (section 7701(a)(19)(B) of the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Internal Revenue Code). An entity that does not take deposits and invest primarily in qualifying loans is not a savings and loan association for purposes of the IITA. For purposes of applying the gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a savings and loan association include:

- i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans or provide other credits;
- ii) service charges and early withdrawal or other penalties received in connection with deposit accounts;
- iii) loan servicing fees and charges received in connection with syndicated loans or loans sold to third parties; and
- iv) discounts and gains realized on the purchase or resale of loans.

Examples of items of income that are not gross income from the characteristic services of a savings and loan association include rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; interest and dividends received from, and gains realized on the sale or exchange of, securities.

- B) Regulation. No entity is a savings and loan association for purposes of the IITA unless it is subject to regulation by the ~~Division of Banking~~Office of Banks and Real Estate under the Savings Bank Act [205 ILCS ~~205/1001-105/7-1~~], the Office of ~~the Comptroller of the Currency~~Thrift Supervision (12 U.S.C. ~~USE~~ 1462), or the appropriate authority (if any) of another state responsible for regulating savings and loan associations.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 7) Entities engaged in the business of a "credit union". Federal credit unions that have received a charter under 12 ~~U.S.C. §~~ 1754 are exempt from state income taxation (see 12 ~~U.S.C. §~~ 1768). Under present law, only "cooperative, non-profit" credit unions may be incorporated under the Illinois Credit Union Act or permitted to do business in Illinois (see 205 ILCS 305/1.1 (defining "credit union") and 7 (permitting credit unions chartered in other states to do business in Illinois)). Under current law, a credit union doing business in Illinois is most likely exempt from Illinois Income Tax pursuant to IITA Section 205(a) and ~~Sections 12 §~~ 501(a) and (c)(14) ~~of the Internal Revenue Code~~. 12 ~~U.S.C. §~~ 1753(5) and 205 ILCS 305/2(2)(b) each require an entity applying for permission to organize as a credit union to define the class of persons entitled to membership.
- A) Characteristic Services. 12 ~~U.S.C. §~~ 1752~~(a)~~(1) provides that a federal credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes and 12 ~~U.S.C. §~~ 1757(7) requires a federal credit union to invest its funds in loans to its members, bank accounts, government securities and in other credit unions. 205 ILCS 305/1.1 defines "credit union" to mean a *cooperative, non-profit association, incorporated for the purposes of encouraging thrift, creating a source of credit at a reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social conditions*, and 205 ILCS 305/59 allows credit unions to invest only in loans to members, bank accounts, government securities and other credit unions. The characteristic services of a credit union involve taking interest-paying deposits from its members and making loans to its members. For purposes of applying the gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a credit union include:
- i) application and origination fees, points, interest, late payment fees and other charges received in connection

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

with loans or with commitments to make loans to members; and

- ii) service charges and early withdrawal or other penalties received in connection with deposit accounts.

Examples of items of income that are not gross income from the characteristic services of a credit union include interest and other income from loans to non-members; rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; interest and dividends received from, and gains realized on the sale or exchange of, securities.

- B) Regulation. In order for an entity to qualify as a credit union, an entity must be subject to regulation by any appropriate authority in the state of organization, and the class of persons entitled to membership in the entity must be defined by law or approved by the appropriate state authority.

- 8) Entities engaged in the business of a "currency exchange". The term "currency exchange" means an entity licensed by the Director of [the Division of Financial Institutions](#) under the Currency Exchange Act [205 ILCS 405/4] *for purposes of engaging in the business of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money for a consideration or selling or issuing money orders in the entity's own name* [205 ILCS 405/1].

- A) Characteristic Services. Currency exchanges cash checks and other evidences of money for the general public, and may issue money orders. Currency exchanges are not permitted to accept any form of deposit or bailment of money (see 205 ILCS 405/3). The gross income from characteristic services of a currency exchange is the fees or other charges for cashing checks or issuing money orders. Interest or other income earned from investment of funds received from the issuance of money orders during the period between the issuance of a

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

money order and its clearance is not gross income from a characteristic service of a currency exchange.

B) Regulation. A currency exchange doing business in Illinois must be licensed by the Director of the Division of Financial Institutions and meet certain bonding requirements to protect its customers. An entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state.

9) Entities engaged in the business of a "small loan company". The term "small loan company" means an entity licensed by the Director of the Division of Financial Institutions under the Consumer Installment Loan Act [205 ILCS 670/1] for the purpose of making loans in a principal amount not exceeding ~~\$40,000~~\$25,000. Small loan companies are required to disclose the terms of their loans pursuant to specific statutory requirements or in conformity with the federal Truth in Lending Act (see 205 ILCS 670/16 (referencing 15 U.S.C.~~USE~~ 1601)). The predecessor of the Consumer Installment Loan Act, the Small Loans Act (Ill. Rev. Stat., ch. 74, par. 27 (1933)), was held to apply only to lenders, and not to persons selling goods or services on a credit or installment basis. (See, e.g., Wernick v. National Bond and Investment Co., 276 Ill. App. 84 (1934).)

A) Characteristic Services. Small loan companies are permitted to make loans not exceeding an aggregate principal amount of ~~\$40,000~~\$25,000 to any obligor and for terms not exceeding ~~181~~121 months. [205 ILCS 670/17] A credit or installment sale of goods or services is not a characteristic service of a small loan company. Gross income from the provision of the characteristic services of a small loan company includes loan application and origination fees, interest, late payment charges and similar amounts realized in connection with loans not exceeding the principal amount of ~~\$40,000~~\$25,000 and for terms not exceeding ~~181~~121 months. Amounts received or accrued in connection with any loan for a principal amount in excess of ~~\$40,000~~\$25,000 or for a term in excess of ~~181~~121 months are not gross income from the provision of the

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

characteristic services of a small loan company. Finally, because 205 ILCS 670/21 provides that the Consumer Installment Loan Act does not apply to persons making loans to business associations or corporations, or to sole proprietors of businesses for the purpose of carrying on or acquiring such businesses, amounts received in connection with such business loans are not gross income from the provision of the characteristic services of a small loan company.

- B) Regulation. A small loan company operating in Illinois must be licensed by the Director of [the Division of Financial Institutions](#). An entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state. In all cases, the entity must comply with the regulations issued by the Board of Governors of the Federal Reserve System under the Truth in Lending Act.

- 10) Entities engaged in the business of a "sales finance company". The term "sales finance company" has the meaning provided in subsection (d)(10)(A) or (B):

- A) Under IITA Section 1501(a)(8)(C)(i), the term "sales finance company" means an entity *primarily engaged in one or more of the following businesses: the business of purchasing customer receivables, the business of making loans upon the security of customer receivables, the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower, or the business of finance leasing*. For purposes of this subsection (d)(10)(A), a "customer receivable" means:

- i) *A retail installment contract or retail charge agreement within the meaning of the Sales Finance Agency Act [205 ILCS 660/2], the Retail Installment Sales Act [815 ILCS 405/2.6 and 2.7], or the Motor Vehicle Retail Installment Sales Act [815 ILCS 375/2.5];*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- ii) *An installment, charge, or similar contract or agreement arising from the sale of tangible personal property or services in a transaction involving a deferred payment price payable in one or more installments subsequent to the sale;*
- iii) *The outstanding balance of a contract or agreement described in subsection (d)(10)(A)(i) or (ii) of this Section; or*
- iv) A loan, or balance under a loan, made by a lender for the express purpose of funding purchases of tangible personal property or services by the borrower.

A customer receivable need not provide for payment of interest on deferred payments. A sales finance company may purchase a customer receivable from, or make a loan secured by a customer receivable to, the seller or lender in the original transaction or from or to a person who purchased the customer receivable directly or indirectly from that seller or lender.

Example 1: A manufacturer sells a product to a retailer. Payment is due 7 days after issuing the sales invoice. An account receivable is recorded when the invoice is issued. The receivable would constitute a customer receivable.

Example 2: An entity purchases or otherwise acquires customer receivables or finance leases. The entity sells those customer receivables or finance leases to a third party and enters into an agreement to service such receivables or finance leases in exchange for a fee. The purchase, sale and/or servicing of such receivables or finance leases is a business of a "sales finance company".

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- B) Under IITA Section 1501(a)(8)(C)(ii), the term "sales finance company" also means a corporation meeting each of the following criteria:
- i) *The corporation must be a member of an "affiliated group" within the meaning of section 1504(a) of the Internal Revenue Code, determined without regard to section 1504(b) of the Internal Revenue Code;*
 - ii) *More than 50% of the gross income of the corporation for the taxable year must be interest income derived from qualifying loans. A "qualifying loan" is a loan made to a member of the corporation's affiliated group that originates customer receivables or to whom customer receivables originated by a member of the affiliated group have been transferred, to the extent the average outstanding balance of loans from that corporation to members of its affiliated group during the taxable year do not exceed the limitation amount for that corporation. The "limitation amount" for a corporation is the average outstanding balances during the taxable year of customer receivables originated by all members of the affiliated group. If the average outstanding balances of the loans made by a corporation to members of its affiliated group exceed the limitation amount, the interest income of that corporation from qualifying loans shall be equal to its interest income from loans to members of its affiliated group times a fraction equal to the limitation amount divided by the average outstanding balances of the loans made by that corporation to members of its affiliated group;*
 - iii) *The total of all shareholder's equity (including, without limitation, paid-in capital on common and preferred stock and retained earnings) of the corporation plus the total of all of its loans, advances, and other obligations payable or owed to members of its affiliated group may*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

not exceed 20% of the total assets of the corporation at any time during the tax year; and

- iv) *More than 50% of all interest-bearing obligations of the affiliated group payable to persons outside the group determined in accordance with generally accepted accounting principles must be obligations of the corporation.*

Example 3: In connection with the conduct of its business, A Corporation either originates customer receivables (as defined in subsection (d)(10)(A) of this Section), or is transferred customer receivables from one or more of its affiliates. B Corporation, a wholly-owned subsidiary of A and a member of its affiliated group, conducts business exclusively in State X, its commercial domicile. B issues commercial paper and other debt obligations and uses the proceeds to make loans to A or other members of the affiliated group. B Corporation derives more than 50% of its gross income from interest on making "qualifying loans" to A or other members of the affiliated group. Assuming B also meets the tests in subsections (d)(10)(B)(iii) and (iv) of this Section, B would constitute a "sales finance company" as defined in IITA Section 1501(a)(8)(C)(ii).

- C) **Characteristic Services.** A "sales finance company" is defined by its characteristic services in subsections (d)(10)(A) and (B) of this Section. A company satisfies the primary test of subsection (d)(10)(A) of this Section if more than 50% of its gross income is from its characteristic services.
- D) **Regulation.** There is no requirement that a sales finance company that meets the definition provided in subsection (d)(10)(A) or (B) of this Section be subject to license or regulation by any state or federal authority.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 11) Entities engaged in the business of an “investment company”. The term “investment company” means an entity that comes within the meaning of 15 ~~U.S.C. §~~ 80a-3 and is predominantly engaged in the business of investing, reinvesting and trading in securities.
- A) Characteristic Services. In the Investment Company Act of 1940, 15 ~~U.S.C. §~~ 80a-3 defines an investment company as an entity engaged in the business of investing, reinvesting and trading in securities. Accordingly, the characteristic services of an investment company are the raising of capital from investors in order to purchase capital securities of other entities. Gross income from the characteristic services of an investment company includes interest, dividends and gains from sales of securities.
- B) Regulation. In order to be characterized as an investment company under the IITA, an entity doing business in the United States must be registered as an investment company with the Securities and Exchange Commission under the Investment Company Act of 1940. Any entity that is not doing business in the United States must be subject to the equivalent authority (if any) in its country of formation or commercial domicile.
- e) The term "bank" includes the following entities, regardless of whether the entity is engaged in the characteristic business of a bank as described in subsection (d)(1) of this Section. An entity described in this subsection (e) is a bank even if it qualifies as a financial organization under one of the provisions of subsection (d) of this Section:
- 1) any entity that is regulated by the Comptroller of the Currency under the National Bank Act, or by the Federal Reserve Board, or by the Federal Deposit Insurance Corporation.
- A) An "entity regulated by the Comptroller of the Currency under the National Bank Act" means a national banking association formed under 12 ~~U.S.C. §~~ 21.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- B) An "entity regulated by the Federal Reserve Board" means a member of the Federal Reserve System under the provisions of 12 ~~U.S.C. §~~ 222 or 12 ~~U.S.C. §~~ 321.
- C) An "entity regulated by the Federal Deposit Insurance Corporation" means an insured depository institution under 12 ~~U.S.C. §~~ 1814.
- 2) any federally or State chartered bank operating as a credit card bank. A "credit card bank" is the common term for an entity that comes within the definition of "bank" for purposes of the Bank Holding Company Act of 1956 (12 ~~U.S.C. §~~ 1841(c)(1)), but that is excluded from being treated as a bank under 12 ~~U.S.C. §~~ 1841(c)(2)(F).
- f) Entities Engaged in the Business of a "Bank Holding Company". The term "bank holding company" means an entity that directly or indirectly owns, controls or has power to vote 25% or more of any class of voting securities of any bank or of any other bank holding company (see 12 ~~U.S.C. §~~ 1841(a)), and which is registered with the Board of Governors of the Federal Reserve System under Section 1844(a) of the Bank Holding Company Act of 1956 (12 ~~U.S.C. §~~ 1844(a)).
- g) Special Rule for Persons Owned by a Bank or Bank Holding Company. The term "financial organization" under the Illinois Income Tax Act includes any person that is owned by a bank (within the meaning of subsection (d)(1) of this Section or subsection (e) of this Section) or by a bank holding company (within the meaning of subsection (f) of this Section). For purposes of this provision, the term "person" includes only those persons in which a bank holding company may acquire and hold an interest, directly or indirectly, under the provisions of the Bank Holding Company Act of 1956 (12 ~~U.S.C. §~~ 1841) and Regulation Y promulgated thereunder by the Board of Governors of the Federal Reserve System (12 CFR 225), and does not include any person that must be disposed of within certain required time limits under the Bank Holding Company Act of 1956. Under this provision, an entity that would not otherwise be a "financial organization" is deemed to be a financial organization for any period during which it is owned by a bank or bank holding company. For example, prior to the enactment of Public Law 106-102, 12 ~~U.S.C. §~~ 1843(c)(8) authorized bank holding companies to

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

own insurance companies in certain circumstances. 12 ~~U.S.C.~~ ~~USE~~ 1843(c)(8) allows a bank holding company that owned an insurance company prior to November 12, 1999, to continue to own that insurance company. An insurance company owned by a bank holding company is a "financial organization" for purposes of the IITA, even though the insurance company would not otherwise be a financial organization. The fact that an entity that is not owned by a bank holding company would be a financial organization under this provision if it were owned by a bank holding company, or that the entity in the past may have been owned by a bank holding company and therefore characterized as a financial organization, is irrelevant to the determination of whether the entity is a financial organization.

- h) Effective Dates and Elections. Public Act 89-711 amended the definition of "financial organization" in IITA Section 1501(a)(8) by adding the definition of "bank" in IITA Section 1501(a)(8)(B) and the definition of "sales finance company" in IITA Section 1501(a)(8)(C).
 - 1) Application of IITA Section 1501(a)(8) to taxable years beginning on or before December 31, 1996. The General Assembly declared in IITA Section 1501(a)(8)(D) that the definitions of the terms "bank" and "sales finance company" in IITA Section 1501(a)(8)(B) and (C) are *declaratory of existing law and apply retroactively for all tax years beginning on or before December 31, 1996*. No other definitions were changed. Accordingly, except as provided in this subsection (h), the interpretations of the statutory definitions contained in subsections (a) through (g) apply retroactively and for all purposes to all taxable years.
 - 2) For taxable years beginning on or before December 31, 1996, Public Act 89-711 provides that the definitions of "bank" and "sales finance company" shall apply to all original returns; to all amended returns filed within 30 days after the effective date of the Act; to all math error notices issued by the Department under IITA Section 903(a); to all Notices of Deficiency issued by the Department under IITA Section 904(a); to all notices of denial of refund claims issued under IITA Section 909(e); and to all assessments of erroneous refunds made under IITA Section 912.

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- A) Public Act 89-711 imposes no time limit for the filing of an original return applying its provisions to taxable years beginning on or prior to December 31, 1996. Accordingly, taxpayers may file original returns claiming financial organization status under the amended definitions of "bank" and "sales finance company" at any time, provided that such returns are filed within the applicable statute of limitations period and meet all other relevant requirements of the IITA.
- B) Taxpayers required to file amended returns in order to claim financial organization status for a taxable year beginning on or prior to December 31, 1996, were required to do so on or before March 17, 1997, which was 30 days after the enactment of Public Act 89-711.
- C) In the case of a taxpayer that had claimed financial organization status on an original or amended return and whose status as a financial organization was denied by the Department, IITA Section 1501(a)(8)(D) provides that the amended definitions of "bank" and "sales finance company" apply to the Notice of Deficiency or notice of denial of refund claim issued by the Department after review of such return.
 - i) If the Notice of Deficiency or notice of denial has not become final, a taxpayer with a matter pending before the Office of Administrative Hearings of the Illinois Department of Revenue for a particular taxable year may raise as an issue the taxpayer's status as a "bank" or "sales finance company" by the making of a motion in conformance with the rules on motion practice as set forth in 86 Ill. Adm. Code 200.185.
 - ii) If the Notice of Deficiency or notice of denial has become final, and the taxpayer is not contesting the Department's action in the courts under the Administrative Review Law [735 ILCS 5/Art. III] or the State Officers and Employees Money Disposition Act

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

[30 ILCS 230], the taxpayer must have filed a timely amended return as set forth in subsection (h)(2)(B) of this Section in order to assert a claim that it qualifies as a "bank" or "sales finance company" under the amended definitions.

- iii) A taxpayer with a matter pending before the courts of this State for a particular taxable year must request treatment as a "bank" or "sales finance company" by the making of a motion in conformance with the rules of the court.
- 3) Election under IITA Section 1501(a)(8)(E). IITA Section 1501(a)(8)(E) provides that, *for all taxable years beginning on or before December 31, 1996, a taxpayer that falls within the definition of a "financial organization" under Section 1501(a)(8)(B) or (C) of the IITA, but who does not fall within the definition of a "financial organization" under the Proposed Regulations issued by the Department of Revenue on July 19, 1996 (20 Ill. Reg. 9488) may irrevocably elect to apply the Proposed Regulations for all of those years as though the Proposed Regulations had been lawfully promulgated, adopted, and in effect for all of those years.*
- A) In order to support a claim for refund, the election must have been filed by March 17, 1997. Procedures for making an election which would support a claim for refund were published in Emergency Rule 100.9710 (21 Ill. Reg. 2969).
 - B) A taxpayer who has filed an original or amended return for any taxable year beginning on or before December 31, 1996, as a non-financial organization and that wishes to elect to be bound by the July 19, 1996, proposed rules solely for the purpose of preserving its return position, and not for purposes of claiming a refund for any year, may file an election document meeting the following requirements:

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- i) The election document must state on the first page "Financial Organization Election to Apply Proposed Rules Under Public Act 89-711 – No Refund Claim".
 - ii) The election document must be filed prior to the issuance of any Notice of Deficiency or notice of claim denial that is based in whole or in part on the retroactive application of Public Act 89-711 to treat the taxpayer as a financial organization.
 - iii) The election document must list all members of the unitary business group to whom the election applies. The election shall be binding on all such members, whether or not listed, and the Department may enforce such election against such members. In addition, no refund claimed after the effective date of Public Act 89-711 shall be allowed to the extent such refund results from the application of the July 19, 1996, proposed rules to any such member.
- C) All elections to apply the July 19, 1996, proposed rules, whether made by amended return or by an election document, shall be sent to the following address:

Deputy General Counsel – Income Tax
Legal Services Office – Room 5-500
Illinois Department of Revenue
P.O. Box 19014
Springfield, Illinois 62794-9014
- D) Effect of election.
 - i) Effect on "banks" as defined in IITA Section 1501(a)(8)(B). Public Act 89-711 expanded the definition of the term "bank" to include entities described in subsection (e) of this Section, without regard to the actual business activities of the entity. A taxpayer governed by an election under this subsection

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

(h) must be engaged in the business of a "bank" as described in subsection (d)(1) of this Section in order to be characterized as a bank. For example, under IITA Section 1501(a)(8)(B), a "credit card bank" is characterized as a "bank" even though a credit card bank is prohibited from accepting deposits from the public. A credit card bank governed by an election under this subsection (h) therefore cannot be a "bank" under subsection (d)(1) of this Section. Note, however, that a credit card bank governed by such an election may qualify as a financial organization under some other provision of this Section; in particular, a credit card bank may be engaged in the business of a sales finance company as defined in subsection (i)(3)(D)(ii) of this Section.

- ii) Effect on "sales finance companies" as defined in IITA Section 1501(a)(8)(C). Public Act 89-711 expanded the definition of "sales finance company" to include entities that buy, or make loans secured by, installment agreements or charge agreements of corporations and businesses and to include entities which are primarily engaged in the business of a sales finance company. An entity governed by an election under this subsection (h) will be a sales finance company only if: it is engaged in the business of buying, or making loans secured by, installment agreements and charge agreements arising from retail purchases for personal, family or household use; more than 80% of its gross income is derived from transactions characteristic of a financial organization; and it meets the other requirements of subsection (d)(10) of this Section.
- iii) An election made under Section 1501(a)(8)(E) applies only to taxable years beginning on or before December 31, 1996. For all subsequent taxable years, the provisions of Section 1501(a)(8) as amended in Public

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

Act 89-711 and interpreted in subsections (a) through (h) of this Section shall apply.

- iv) Section 1501(a)(8)(E) provides that the election applies *to those members of the taxpayer's unitary business group who are ordinarily required to apportion business income under the same subsection of Section 304 of the IITA*. An election made by one or more such members is binding on all such members, whether or not they expressly joined in the election, and the Department may enforce such election either directly or by offsetting any refund payable to the taxpayer as the result of the election by any underpayment of any other taxpayer to whom such election also applies to the extent such underpayment results from the making of the election.
 - v) Effective January 1, 2000, Public Act 91-535 amended the definition of the term "sales finance company" in IITA Section 1501(a)(8)(C). The General Assembly declared the definition of the term "sales finance company" in Public Act 91-535 to be declaratory of existing law. Accordingly, except as provided in this subsection (i), the interpretation of the term "sales finance company" shall apply retroactively and for all purposes to all taxable years.
- 1) The definition of "sales finance company" provided by Public Act 91-535 shall apply to all original returns; to all amended returns; to all math error notices issued by the Department under IITA Section 904(a); to all Notices of Denial of refund claims issued under IITA Section 909(e); and to all notices of erroneous refunds made under IITA Section 912.
- A) Public act 91-535 imposes no time limit for the filing of an original or amended return applying its provisions to a particular taxable year. Accordingly, taxpayers may file original or amended returns claiming financial organization

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

status under the amended definition of "sales finance company" at any time, provided that such returns are filed within the applicable statute of limitations period and meet all other relevant requirements of the IITA.

- B) In the case of a taxpayer that had claimed financial organization status on an original or amended return and whose status as a financial organization was denied by the Department:
- i) If the Notice of Deficiency or Notice of Denial has not become final, a taxpayer with a matter pending before the Office of Administrative Hearings of the Illinois Department of Revenue for a particular taxable year may raise as an issue the taxpayer's status as a "sales finance company" by making of a motion in conformance with the rules on motion practice as set forth in Section 100.185 of this Part.
 - ii) If the Notice of Deficiency or Notice of Denial has become final, and the taxpayer is not contesting the Department's action in the courts under the Administrative Review Law [735 ILCS 5/Art. III] or the State Officers and Employees Money Disposition Act [30 ILCS 230], the taxpayer must have filed a timely amended return as set forth in subsection (h)(2)(B) of this Section in order to assert a claim that it qualifies as a "sales finance company" under the amended definition.
 - iii) A taxpayer with a matter pending before the courts of this State for a particular taxable year must request treatment as a "sales finance company" by the making of a motion in conformance with the rules of the court.

(Source: Amended at 49 Ill. Reg. ____, effective _____)