

SB2643



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2643

Introduced 2/15/2008, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

35 ILCS 5/1501

from Ch. 120, par. 15-1501

Amends the Illinois Income Tax Act concerning the definition of "captive real estate investment trusts". Provides that, to be a captive real estate investment trust, at least 50% of the voting power must be controlled by a single association that is taxable as a corporation (now, controlled by a single person). Exempts from the definition certain real estate investment trusts that are owned and controlled by certain entities that are organized outside of the laws of the United States. Effective immediately.

LRB095 19690 BDD 46044 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 1501 as follows:

6 (35 ILCS 5/1501) (from Ch. 120, par. 15-1501)

7 Sec. 1501. Definitions.

8 (a) In general. When used in this Act, where not otherwise
9 distinctly expressed or manifestly incompatible with the
10 intent thereof:

11 (1) Business income. The term "business income" means
12 all income that may be treated as apportionable business
13 income under the Constitution of the United States.
14 Business income is net of the deductions allocable thereto.
15 Such term does not include compensation or the deductions
16 allocable thereto. For each taxable year beginning on or
17 after January 1, 2003, a taxpayer may elect to treat all
18 income other than compensation as business income. This
19 election shall be made in accordance with rules adopted by
20 the Department and, once made, shall be irrevocable.

21 (1.5) Captive real estate investment trust:

22 (A) The term "captive real estate investment
23 trust" means a corporation, trust, or association:

1 (i) that is considered a real estate
2 investment trust for the taxable year under
3 Section 856 of the Internal Revenue Code;

4 (ii) the certificates of beneficial interest
5 or shares of which are not regularly traded on an
6 established securities market; and

7 (iii) of which more than 50% of the voting
8 power or value of the beneficial interest or
9 shares, at any time during the last half of the
10 taxable year, is owned or controlled, directly,
11 indirectly, or constructively, by a single entity
12 that is treated as an association that is taxable
13 as a corporation under the Internal Revenue Code
14 person.

15 (B) The term "captive real estate investment
16 trust" does not include:

17 (i) a real estate investment trust of which
18 more than 50% of the voting power or value of the
19 beneficial interest or shares is owned or
20 controlled, directly, indirectly, or
21 constructively, by:

22 (a) a real estate investment trust, other
23 than a captive real estate investment trust;

24 (b) a person who is exempt from taxation
25 under Section 501 of the Internal Revenue Code,
26 and who is not required to treat income

1 received from the real estate investment trust
2 as unrelated business taxable income under
3 Section 512 of the Internal Revenue Code;

4 (c) a listed Australian property trust, if
5 no more than 50% of the voting power or value
6 of the beneficial interest or shares of that
7 trust, at any time during the last half of the
8 taxable year, is owned or controlled, directly
9 or indirectly, by a single person; ~~or~~

10 (d) an entity organized as a trust,
11 provided a listed Australian property trust
12 described in subparagraph (c) owns or
13 controls, directly or indirectly, or
14 constructively, 75% or more of the voting power
15 or value of the beneficial interests or shares
16 of such entity; or

17 (e) an entity that is organized outside of
18 the laws of the United States and that
19 satisfies all of the following criteria:

20 (1) at least 75% of the entity's total
21 asset value at the close of its taxable
22 year is represented by real estate assets
23 (as defined in Section 856(c)(5)(B) of the
24 Internal Revenue Code, thereby including
25 shares or certificates of beneficial
26 interest in any real estate investment

1 trust), cash and cash equivalents, and
2 U.S. Government securities;

3 (2) the entity is not subject to tax on
4 amounts that are distributed to its
5 beneficial owners or that is exempt from
6 entity-level taxation;

7 (3) the entity distributes at least
8 85% of its taxable income (as computed in
9 the jurisdiction in which it is organized)
10 to the holders of its shares or
11 certificates of beneficial interest on an
12 annual basis;

13 (4) either (i) the shares or
14 beneficial interests of the entity are
15 regularly traded on an established
16 securities market or (ii) not more than 10%
17 of the voting power or value in the entity
18 is held, directly, indirectly, or
19 constructively, by a single entity or
20 individual; and

21 (5) the entity is organized in a
22 country that has entered into a tax treaty
23 with the United States; or

24 (ii) during its first taxable year for which it
25 elects to be treated as a real estate investment
26 trust under Section 856(c)(1) of the Internal

1 Revenue Code, a real estate investment trust the
2 certificates of beneficial interest or shares of
3 which are not regularly traded on an established
4 securities market, but only if the certificates of
5 beneficial interest or shares of the real estate
6 investment trust are regularly traded on an
7 established securities market prior to the earlier
8 of the due date (including extensions) for filing
9 its return under this Act for that first taxable
10 year or the date it actually files that return.

11 (C) For the purposes of this subsection (1.5), the
12 constructive ownership rules prescribed under Section
13 318(a) of the Internal Revenue Code, as modified by
14 Section 856(d)(5) of the Internal Revenue Code, apply
15 in determining the ownership of stock, assets, or net
16 profits of any person.

17 (2) Commercial domicile. The term "commercial
18 domicile" means the principal place from which the trade or
19 business of the taxpayer is directed or managed.

20 (3) Compensation. The term "compensation" means wages,
21 salaries, commissions and any other form of remuneration
22 paid to employees for personal services.

23 (4) Corporation. The term "corporation" includes
24 associations, joint-stock companies, insurance companies
25 and cooperatives. Any entity, including a limited
26 liability company formed under the Illinois Limited

1 Liability Company Act, shall be treated as a corporation if
2 it is so classified for federal income tax purposes.

3 (5) Department. The term "Department" means the
4 Department of Revenue of this State.

5 (6) Director. The term "Director" means the Director of
6 Revenue of this State.

7 (7) Fiduciary. The term "fiduciary" means a guardian,
8 trustee, executor, administrator, receiver, or any person
9 acting in any fiduciary capacity for any person.

10 (8) Financial organization.

11 (A) The term "financial organization" means any
12 bank, bank holding company, trust company, savings
13 bank, industrial bank, land bank, safe deposit
14 company, private banker, savings and loan association,
15 building and loan association, credit union, currency
16 exchange, cooperative bank, small loan company, sales
17 finance company, investment company, or any person
18 which is owned by a bank or bank holding company. For
19 the purpose of this Section a "person" will include
20 only those persons which a bank holding company may
21 acquire and hold an interest in, directly or
22 indirectly, under the provisions of the Bank Holding
23 Company Act of 1956 (12 U.S.C. 1841, et seq.), except
24 where interests in any person must be disposed of
25 within certain required time limits under the Bank
26 Holding Company Act of 1956.

1 (B) For purposes of subparagraph (A) of this
2 paragraph, the term "bank" includes (i) any entity that
3 is regulated by the Comptroller of the Currency under
4 the National Bank Act, or by the Federal Reserve Board,
5 or by the Federal Deposit Insurance Corporation and
6 (ii) any federally or State chartered bank operating as
7 a credit card bank.

8 (C) For purposes of subparagraph (A) of this
9 paragraph, the term "sales finance company" has the
10 meaning provided in the following item (i) or (ii):

11 (i) A person primarily engaged in one or more
12 of the following businesses: the business of
13 purchasing customer receivables, the business of
14 making loans upon the security of customer
15 receivables, the business of making loans for the
16 express purpose of funding purchases of tangible
17 personal property or services by the borrower, or
18 the business of finance leasing. For purposes of
19 this item (i), "customer receivable" means:

20 (a) a retail installment contract or
21 retail charge agreement within the meaning of
22 the Sales Finance Agency Act, the Retail
23 Installment Sales Act, or the Motor Vehicle
24 Retail Installment Sales Act;

25 (b) an installment, charge, credit, or
26 similar contract or agreement arising from the

1 sale of tangible personal property or services
2 in a transaction involving a deferred payment
3 price payable in one or more installments
4 subsequent to the sale; or

5 (c) the outstanding balance of a contract
6 or agreement described in provisions (a) or (b)
7 of this item (i).

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

16 (ii) A corporation meeting each of the
17 following criteria:

18 (a) the corporation must be a member of an
19 "affiliated group" within the meaning of
20 Section 1504(a) of the Internal Revenue Code,
21 determined without regard to Section 1504(b)
22 of the Internal Revenue Code;

23 (b) more than 50% of the gross income of
24 the corporation for the taxable year must be
25 interest income derived from qualifying loans.
26 A "qualifying loan" is a loan made to a member

1 of the corporation's affiliated group that
2 originates customer receivables (within the
3 meaning of item (i)) or to whom customer
4 receivables originated by a member of the
5 affiliated group have been transferred, to the
6 extent the average outstanding balance of
7 loans from that corporation to members of its
8 affiliated group during the taxable year do not
9 exceed the limitation amount for that
10 corporation. The "limitation amount" for a
11 corporation is the average outstanding
12 balances during the taxable year of customer
13 receivables (within the meaning of item (i))
14 originated by all members of the affiliated
15 group. If the average outstanding balances of
16 the loans made by a corporation to members of
17 its affiliated group exceed the limitation
18 amount, the interest income of that
19 corporation from qualifying loans shall be
20 equal to its interest income from loans to
21 members of its affiliated groups times a
22 fraction equal to the limitation amount
23 divided by the average outstanding balances of
24 the loans made by that corporation to members
25 of its affiliated group;

26 (c) the total of all shareholder's equity

1 (including, without limitation, paid-in
2 capital on common and preferred stock and
3 retained earnings) of the corporation plus the
4 total of all of its loans, advances, and other
5 obligations payable or owed to members of its
6 affiliated group may not exceed 20% of the
7 total assets of the corporation at any time
8 during the tax year; and

9 (d) more than 50% of all interest-bearing
10 obligations of the affiliated group payable to
11 persons outside the group determined in
12 accordance with generally accepted accounting
13 principles must be obligations of the
14 corporation.

15 This amendatory Act of the 91st General Assembly is
16 declaratory of existing law.

17 (D) Subparagraphs (B) and (C) of this paragraph are
18 declaratory of existing law and apply retroactively,
19 for all tax years beginning on or before December 31,
20 1996, to all original returns, to all amended returns
21 filed no later than 30 days after the effective date of
22 this amendatory Act of 1996, and to all notices issued
23 on or before the effective date of this amendatory Act
24 of 1996 under subsection (a) of Section 903, subsection
25 (a) of Section 904, subsection (e) of Section 909, or
26 Section 912. A taxpayer that is a "financial

1 organization" that engages in any transaction with an
2 affiliate shall be a "financial organization" for all
3 purposes of this Act.

4 (E) For all tax years beginning on or before
5 December 31, 1996, a taxpayer that falls within the
6 definition of a "financial organization" under
7 subparagraphs (B) or (C) of this paragraph, but who
8 does not fall within the definition of a "financial
9 organization" under the Proposed Regulations issued by
10 the Department of Revenue on July 19, 1996, may
11 irrevocably elect to apply the Proposed Regulations
12 for all of those years as though the Proposed
13 Regulations had been lawfully promulgated, adopted,
14 and in effect for all of those years. For purposes of
15 applying subparagraphs (B) or (C) of this paragraph to
16 all of those years, the election allowed by this
17 subparagraph applies only to the taxpayer making the
18 election and to those members of the taxpayer's unitary
19 business group who are ordinarily required to
20 apportion business income under the same subsection of
21 Section 304 of this Act as the taxpayer making the
22 election. No election allowed by this subparagraph
23 shall be made under a claim filed under subsection (d)
24 of Section 909 more than 30 days after the effective
25 date of this amendatory Act of 1996.

26 (F) Finance Leases. For purposes of this

1 subsection, a finance lease shall be treated as a loan
2 or other extension of credit, rather than as a lease,
3 regardless of how the transaction is characterized for
4 any other purpose, including the purposes of any
5 regulatory agency to which the lessor is subject. A
6 finance lease is any transaction in the form of a lease
7 in which the lessee is treated as the owner of the
8 leased asset entitled to any deduction for
9 depreciation allowed under Section 167 of the Internal
10 Revenue Code.

11 (9) Fiscal year. The term "fiscal year" means an
12 accounting period of 12 months ending on the last day of
13 any month other than December.

14 (9.5) Fixed place of business. The term "fixed place of
15 business" has the same meaning as that term is given in
16 Section 864 of the Internal Revenue Code and the related
17 Treasury regulations.

18 (10) Includes and including. The terms "includes" and
19 "including" when used in a definition contained in this Act
20 shall not be deemed to exclude other things otherwise
21 within the meaning of the term defined.

22 (11) Internal Revenue Code. The term "Internal Revenue
23 Code" means the United States Internal Revenue Code of 1954
24 or any successor law or laws relating to federal income
25 taxes in effect for the taxable year.

26 (11.5) Investment partnership.

1 (A) The term "investment partnership" means any
2 entity that is treated as a partnership for federal
3 income tax purposes that meets the following
4 requirements:

5 (i) no less than 90% of the partnership's cost
6 of its total assets consists of qualifying
7 investment securities, deposits at banks or other
8 financial institutions, and office space and
9 equipment reasonably necessary to carry on its
10 activities as an investment partnership;

11 (ii) no less than 90% of its gross income
12 consists of interest, dividends, and gains from
13 the sale or exchange of qualifying investment
14 securities; and

15 (iii) the partnership is not a dealer in
16 qualifying investment securities.

17 (B) For purposes of this paragraph (11.5), the term
18 "qualifying investment securities" includes all of the
19 following:

20 (i) common stock, including preferred or debt
21 securities convertible into common stock, and
22 preferred stock;

23 (ii) bonds, debentures, and other debt
24 securities;

25 (iii) foreign and domestic currency deposits
26 secured by federal, state, or local governmental

1 agencies;

2 (iv) mortgage or asset-backed securities
3 secured by federal, state, or local governmental
4 agencies;

5 (v) repurchase agreements and loan
6 participations;

7 (vi) foreign currency exchange contracts and
8 forward and futures contracts on foreign
9 currencies;

10 (vii) stock and bond index securities and
11 futures contracts and other similar financial
12 securities and futures contracts on those
13 securities;

14 (viii) options for the purchase or sale of any
15 of the securities, currencies, contracts, or
16 financial instruments described in items (i) to
17 (vii), inclusive;

18 (ix) regulated futures contracts;

19 (x) commodities (not described in Section
20 1221(a)(1) of the Internal Revenue Code) or
21 futures, forwards, and options with respect to
22 such commodities, provided, however, that any item
23 of a physical commodity to which title is actually
24 acquired in the partnership's capacity as a dealer
25 in such commodity shall not be a qualifying
26 investment security;

1 (xi) derivatives; and
2 (xii) a partnership interest in another
3 partnership that is an investment partnership.

4 (12) Mathematical error. The term "mathematical error"
5 includes the following types of errors, omissions, or
6 defects in a return filed by a taxpayer which prevents
7 acceptance of the return as filed for processing:

8 (A) arithmetic errors or incorrect computations on
9 the return or supporting schedules;

10 (B) entries on the wrong lines;

11 (C) omission of required supporting forms or
12 schedules or the omission of the information in whole
13 or in part called for thereon; and

14 (D) an attempt to claim, exclude, deduct, or
15 improperly report, in a manner directly contrary to the
16 provisions of the Act and regulations thereunder any
17 item of income, exemption, deduction, or credit.

18 (13) Nonbusiness income. The term "nonbusiness income"
19 means all income other than business income or
20 compensation.

21 (14) Nonresident. The term "nonresident" means a
22 person who is not a resident.

23 (15) Paid, incurred and accrued. The terms "paid",
24 "incurring" and "accrued" shall be construed according to
25 the method of accounting upon the basis of which the
26 person's base income is computed under this Act.

1 (16) Partnership and partner. The term "partnership"
2 includes a syndicate, group, pool, joint venture or other
3 unincorporated organization, through or by means of which
4 any business, financial operation, or venture is carried
5 on, and which is not, within the meaning of this Act, a
6 trust or estate or a corporation; and the term "partner"
7 includes a member in such syndicate, group, pool, joint
8 venture or organization.

9 The term "partnership" includes any entity, including
10 a limited liability company formed under the Illinois
11 Limited Liability Company Act, classified as a partnership
12 for federal income tax purposes.

13 The term "partnership" does not include a syndicate,
14 group, pool, joint venture, or other unincorporated
15 organization established for the sole purpose of playing
16 the Illinois State Lottery.

17 (17) Part-year resident. The term "part-year resident"
18 means an individual who became a resident during the
19 taxable year or ceased to be a resident during the taxable
20 year. Under Section 1501(a)(20)(A)(i) residence commences
21 with presence in this State for other than a temporary or
22 transitory purpose and ceases with absence from this State
23 for other than a temporary or transitory purpose. Under
24 Section 1501(a)(20)(A)(ii) residence commences with the
25 establishment of domicile in this State and ceases with the
26 establishment of domicile in another State.

1 (18) Person. The term "person" shall be construed to
2 mean and include an individual, a trust, estate,
3 partnership, association, firm, company, corporation,
4 limited liability company, or fiduciary. For purposes of
5 Section 1301 and 1302 of this Act, a "person" means (i) an
6 individual, (ii) a corporation, (iii) an officer, agent, or
7 employee of a corporation, (iv) a member, agent or employee
8 of a partnership, or (v) a member, manager, employee,
9 officer, director, or agent of a limited liability company
10 who in such capacity commits an offense specified in
11 Section 1301 and 1302.

12 (18A) Records. The term "records" includes all data
13 maintained by the taxpayer, whether on paper, microfilm,
14 microfiche, or any type of machine-sensible data
15 compilation.

16 (19) Regulations. The term "regulations" includes
17 rules promulgated and forms prescribed by the Department.

18 (20) Resident. The term "resident" means:

19 (A) an individual (i) who is in this State for
20 other than a temporary or transitory purpose during the
21 taxable year; or (ii) who is domiciled in this State
22 but is absent from the State for a temporary or
23 transitory purpose during the taxable year;

24 (B) The estate of a decedent who at his or her
25 death was domiciled in this State;

26 (C) A trust created by a will of a decedent who at

1 his death was domiciled in this State; and

2 (D) An irrevocable trust, the grantor of which was
3 domiciled in this State at the time such trust became
4 irrevocable. For purpose of this subparagraph, a trust
5 shall be considered irrevocable to the extent that the
6 grantor is not treated as the owner thereof under
7 Sections 671 through 678 of the Internal Revenue Code.

8 (21) Sales. The term "sales" means all gross receipts
9 of the taxpayer not allocated under Sections 301, 302 and
10 303.

11 (22) State. The term "state" when applied to a
12 jurisdiction other than this State means any state of the
13 United States, the District of Columbia, the Commonwealth
14 of Puerto Rico, any Territory or Possession of the United
15 States, and any foreign country, or any political
16 subdivision of any of the foregoing. For purposes of the
17 foreign tax credit under Section 601, the term "state"
18 means any state of the United States, the District of
19 Columbia, the Commonwealth of Puerto Rico, and any
20 territory or possession of the United States, or any
21 political subdivision of any of the foregoing, effective
22 for tax years ending on or after December 31, 1989.

23 (23) Taxable year. The term "taxable year" means the
24 calendar year, or the fiscal year ending during such
25 calendar year, upon the basis of which the base income is
26 computed under this Act. "Taxable year" means, in the case

1 of a return made for a fractional part of a year under the
2 provisions of this Act, the period for which such return is
3 made.

4 (24) Taxpayer. The term "taxpayer" means any person
5 subject to the tax imposed by this Act.

6 (25) International banking facility. The term
7 international banking facility shall have the same meaning
8 as is set forth in the Illinois Banking Act or as is set
9 forth in the laws of the United States or regulations of
10 the Board of Governors of the Federal Reserve System.

11 (26) Income Tax Return Preparer.

12 (A) The term "income tax return preparer" means any
13 person who prepares for compensation, or who employs
14 one or more persons to prepare for compensation, any
15 return of tax imposed by this Act or any claim for
16 refund of tax imposed by this Act. The preparation of a
17 substantial portion of a return or claim for refund
18 shall be treated as the preparation of that return or
19 claim for refund.

20 (B) A person is not an income tax return preparer
21 if all he or she does is

22 (i) furnish typing, reproducing, or other
23 mechanical assistance;

24 (ii) prepare returns or claims for refunds for
25 the employer by whom he or she is regularly and
26 continuously employed;

1 (iii) prepare as a fiduciary returns or claims
2 for refunds for any person; or

3 (iv) prepare claims for refunds for a taxpayer
4 in response to any notice of deficiency issued to
5 that taxpayer or in response to any waiver of
6 restriction after the commencement of an audit of
7 that taxpayer or of another taxpayer if a
8 determination in the audit of the other taxpayer
9 directly or indirectly affects the tax liability
10 of the taxpayer whose claims he or she is
11 preparing.

12 (27) Unitary business group. The term "unitary
13 business group" means a group of persons related through
14 common ownership whose business activities are integrated
15 with, dependent upon and contribute to each other. The
16 group will not include those members whose business
17 activity outside the United States is 80% or more of any
18 such member's total business activity; for purposes of this
19 paragraph and clause (a)(3)(B)(ii) of Section 304,
20 business activity within the United States shall be
21 measured by means of the factors ordinarily applicable
22 under subsections (a), (b), (c), (d), or (h) of Section 304
23 except that, in the case of members ordinarily required to
24 apportion business income by means of the 3 factor formula
25 of property, payroll and sales specified in subsection (a)
26 of Section 304, including the formula as weighted in

1 subsection (h) of Section 304, such members shall not use
2 the sales factor in the computation and the results of the
3 property and payroll factor computations of subsection (a)
4 of Section 304 shall be divided by 2 (by one if either the
5 property or payroll factor has a denominator of zero). The
6 computation required by the preceding sentence shall, in
7 each case, involve the division of the member's property,
8 payroll, or revenue miles in the United States, insurance
9 premiums on property or risk in the United States, or
10 financial organization business income from sources within
11 the United States, as the case may be, by the respective
12 worldwide figures for such items. Common ownership in the
13 case of corporations is the direct or indirect control or
14 ownership of more than 50% of the outstanding voting stock
15 of the persons carrying on unitary business activity.
16 Unitary business activity can ordinarily be illustrated
17 where the activities of the members are: (1) in the same
18 general line (such as manufacturing, wholesaling,
19 retailing of tangible personal property, insurance,
20 transportation or finance); or (2) are steps in a
21 vertically structured enterprise or process (such as the
22 steps involved in the production of natural resources,
23 which might include exploration, mining, refining, and
24 marketing); and, in either instance, the members are
25 functionally integrated through the exercise of strong
26 centralized management (where, for example, authority over

1 such matters as purchasing, financing, tax compliance,
2 product line, personnel, marketing and capital investment
3 is not left to each member). In no event, however, will any
4 unitary business group include members which are
5 ordinarily required to apportion business income under
6 different subsections of Section 304 except that for tax
7 years ending on or after December 31, 1987 this prohibition
8 shall not apply to a unitary business group composed of one
9 or more taxpayers all of which apportion business income
10 pursuant to subsection (b) of Section 304, or all of which
11 apportion business income pursuant to subsection (d) of
12 Section 304, and a holding company of such single-factor
13 taxpayers (see definition of "financial organization" for
14 rule regarding holding companies of financial
15 organizations). If a unitary business group would, but for
16 the preceding sentence, include members that are
17 ordinarily required to apportion business income under
18 different subsections of Section 304, then for each
19 subsection of Section 304 for which there are two or more
20 members, there shall be a separate unitary business group
21 composed of such members. For purposes of the preceding two
22 sentences, a member is "ordinarily required to apportion
23 business income" under a particular subsection of Section
24 304 if it would be required to use the apportionment method
25 prescribed by such subsection except for the fact that it
26 derives business income solely from Illinois. As used in

1 this paragraph, the phrase "United States" means only the
2 50 states and the District of Columbia, but does not
3 include any territory or possession of the United States or
4 any area over which the United States has asserted
5 jurisdiction or claimed exclusive rights with respect to
6 the exploration for or exploitation of natural resources.

7 If the unitary business group members' accounting
8 periods differ, the common parent's accounting period or,
9 if there is no common parent, the accounting period of the
10 member that is expected to have, on a recurring basis, the
11 greatest Illinois income tax liability must be used to
12 determine whether to use the apportionment method provided
13 in subsection (a) or subsection (h) of Section 304. The
14 prohibition against membership in a unitary business group
15 for taxpayers ordinarily required to apportion income
16 under different subsections of Section 304 does not apply
17 to taxpayers required to apportion income under subsection
18 (a) and subsection (h) of Section 304. The provisions of
19 this amendatory Act of 1998 apply to tax years ending on or
20 after December 31, 1998.

21 (28) Subchapter S corporation. The term "Subchapter S
22 corporation" means a corporation for which there is in
23 effect an election under Section 1362 of the Internal
24 Revenue Code, or for which there is a federal election to
25 opt out of the provisions of the Subchapter S Revision Act
26 of 1982 and have applied instead the prior federal

1 Subchapter S rules as in effect on July 1, 1982.

2 (30) Foreign person. The term "foreign person" means
3 any person who is a nonresident alien individual and any
4 nonindividual entity, regardless of where created or
5 organized, whose business activity outside the United
6 States is 80% or more of the entity's total business
7 activity.

8 (b) Other definitions.

9 (1) Words denoting number, gender, and so forth, when
10 used in this Act, where not otherwise distinctly expressed
11 or manifestly incompatible with the intent thereof:

12 (A) Words importing the singular include and apply
13 to several persons, parties or things;

14 (B) Words importing the plural include the
15 singular; and

16 (C) Words importing the masculine gender include
17 the feminine as well.

18 (2) "Company" or "association" as including successors
19 and assigns. The word "company" or "association", when used
20 in reference to a corporation, shall be deemed to embrace
21 the words "successors and assigns of such company or
22 association", and in like manner as if these last-named
23 words, or words of similar import, were expressed.

24 (3) Other terms. Any term used in any Section of this
25 Act with respect to the application of, or in connection

1 with, the provisions of any other Section of this Act shall
2 have the same meaning as in such other Section.

3 (Source: P.A. 95-233, eff. 8-16-07; 95-707, eff. 1-11-08.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.