

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 100
INCOME TAX

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404 AUTHORITY: Implementing Section 505 of the Illinois Income Tax Act [35 ILCS 5] as
 405 authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5] and Section 2505-795 of
 406 the Department of Revenue Law [20 ILCS 2505].
 407

408 SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49, p. 84,
 409 effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at
 410 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4624, effective April 14, 1981;
 411 amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May
 412 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843,
 413 effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at
 414 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December
 415 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399,
 416 effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8
 417 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg.
 418 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986;
 419 amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941,
 420 effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986;
 421 amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410,
 422 effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12
 423 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25,
 424 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307,
 425 effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13
 426 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990;
 427 amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective
 428 June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency
 429 amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days;
 430 amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective

431 August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective
 432 November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18
 433 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28,
 434 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839,
 435 effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency
 436 amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended
 437 at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29,
 438 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg.
 439 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997;
 440 emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150
 441 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998;
 442 amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 22 Ill. Reg. 21623,
 443 effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended
 444 at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26,
 445 2000; emergency amendment at 24 Ill. Reg. 17585, effective November 17, 2000, for a
 446 maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at
 447 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 23,
 448 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687,
 449 effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill.
 450 Reg. 8333, effective June 22, 2001; amended at 26 Ill. Reg. 192, effective December 20, 2001;
 451 amended at 26 Ill. Reg. 1274, effective January 15, 2002; amended at 26 Ill. Reg. 9854, effective
 452 June 20, 2002; amended at 26 Ill. Reg. 13237, effective August 23, 2002; amended at 26 Ill. Reg.
 453 15304, effective October 9, 2002; amended at 26 Ill. Reg. 17250, effective November 18, 2002;
 454 amended at 27 Ill. Reg. 13536, effective July 28, 2003; amended at 27 Ill. Reg. 18225, effective
 455 November 17, 2003; emergency amendment at 27 Ill. Reg. 18464, effective November 20, 2003,
 456 for a maximum of 150 days; emergency expired April 17, 2004; amended at 28 Ill. Reg. 1378,
 457 effective January 12, 2004; amended at 28 Ill. Reg. 5694, effective March 17, 2004; amended at
 458 28 Ill. Reg. 7125, effective April 29, 2004; amended at 28 Ill. Reg. 8881, effective June 11,
 459 2004; emergency amendment at 28 Ill. Reg. 14271, effective October 18, 2004, for a maximum
 460 of 150 days; amended at 28 Ill. Reg. 14868, effective October 26, 2004; emergency amendment
 461 at 28 Ill. Reg. 15858, effective November 29, 2004, for a maximum of 150 days; amended at 29
 462 Ill. Reg. 2420, effective January 28, 2005; amended at 29 Ill. Reg. 6986, effective April 26,
 463 2005; amended at 29 Ill. Reg. 13211, effective August 15, 2005; amended at 29 Ill. Reg. 20516,
 464 effective December 2, 2005; amended at 30 Ill. Reg. 6389, effective March 30, 2006; amended at
 465 30 Ill. Reg. 10473, effective May 23, 2006; amended by 30 Ill. Reg. 13890, effective August 1,
 466 2006; amended at 30 Ill. Reg. 18739, effective November 20, 2006; amended at 31 Ill. Reg.
 467 16240, effective November 26, 2007; amended at 32 Ill. Reg. 872, effective January 7, 2008;
 468 amended at 32 Ill. Reg. 1407, effective January 17, 2008; amended at 32 Ill. Reg. 3400, effective
 469 February 25, 2008; amended at 32 Ill. Reg. 6055, effective March 25, 2008; amended at 32 Ill.
 470 Reg. 10170, effective June 30, 2008; amended at 32 Ill. Reg. 13223, effective July 24, 2008;
 471 amended at 32 Ill. Reg. 17492, effective October 24, 2008; amended at 33 Ill. Reg. 1195,
 472 effective December 31, 2008; amended at 33 Ill. Reg. 2306, effective January 23, 2009; amended
 473 at 33 Ill. Reg. 14168, effective September 28, 2009; amended at 33 Ill. Reg. 15044, effective

474 October 26, 2009; amended at 34 Ill. Reg. 550, effective December 22, 2009; amended at 34 Ill.
 475 Reg. 3886, effective March 12, 2010; amended at 34 Ill. Reg. 12891, effective August 19, 2010;
 476 amended at 35 Ill. Reg. 4223, effective February 25, 2011; amended at 35 Ill. Reg. 15092,
 477 effective August 24, 2011; amended at 36 Ill. Reg. 2363, effective January 25, 2012; amended at
 478 36 Ill. Reg. 9247, effective June 5, 2012; amended at 37 Ill. Reg. 5823, effective April 19, 2013;
 479 amended at 37 Ill. Reg. 20751, effective December 13, 2013; recodified at 38 Ill. Reg. 4527;
 480 amended at 38 Ill. Reg. 9550, effective April 21, 2014; amended at 38 Ill. Reg. 13941, effective
 481 June 19, 2014; amended at 38 Ill. Reg. 15994, effective July 9, 2014; amended at 38 Ill. Reg.
 482 17043, effective July 23, 2014; amended at 38 Ill. Reg. 18568, effective August 20, 2014;
 483 amended at 38 Ill. Reg. 23158, effective November 21, 2014; emergency amendment at 39 Ill.
 484 Reg. 483, effective December 23, 2014, for a maximum of 150 days; amended at 39 Ill. Reg.
 485 1768, effective January 7, 2015; amended at 39 Ill. Reg. 5057, effective March 17, 2015;
 486 amended at 39 Ill. Reg. 6884, effective April 29, 2015; amended at 39 Ill. Reg. 15594, effective
 487 November 18, 2015; amended at 40 Ill. Reg. 1848, effective January 5, 2016; amended at 40 Ill.
 488 Reg. 10925, effective July 29, 2016; amended at 40 Ill. Reg. 13432, effective September 7, 2016;
 489 amended at 40 Ill. Reg. 14762, effective October 12, 2016; amended at 40 Ill. Reg. 15575,
 490 effective November 2, 2016; amended at 41 Ill. Reg. 4193, effective March 27, 2017; amended
 491 at 41 Ill. Reg. 6379, effective May 22, 2017; amended at 41 Ill. Reg. 10662, effective August 3,
 492 2017; amended at 41 Ill. Reg. 12608, effective September 21, 2017; amended at 41 Ill. Reg.
 493 14217, effective November 7, 2017; emergency amendment at 41 Ill. Reg. 15097, effective
 494 November 30, 2017, for a maximum of 150 days; amended at 42 Ill. Reg. 4953, effective
 495 February 28, 2018; amended at 42 Ill. Reg. 6451, effective March 21, 2018; recodified Subpart H
 496 to Subpart G at 42 Ill. Reg. 7980; amended at 42 Ill. Reg. 17852, effective September 24, 2018;
 497 amended at 42 Ill. Reg. 19190, effective October 12, 2018; amended at 43 Ill. Reg. 727, effective
 498 December 18, 2018; amended at 43 Ill. Reg. 10124, effective August 27, 2019; amended at 44
 499 Ill. Reg. 2363, effective January 17, 2020; amended at 44 Ill. Reg. 2845, effective January 30,
 500 2020; emergency amendment at 44 Ill. Reg. 4700, effective March 4, 2020, for a maximum of
 501 150 days; emergency expired July 31, 2020; amended at 44 Ill. Reg. 10907, effective June 10,
 502 2020; emergency amendment at 44 Ill. Reg. 11208, effective June 17, 2020, for a maximum of
 503 150 days; emergency expired November 13, 2020; amended at 44 Ill. Reg. 17414, effective
 504 October 13, 2020; amended at 45 Ill. Reg. 2006, effective January 29, 2021; amended at 45 Ill.
 505 Reg. 5523, effective April 15, 2021; amended at 46 Ill. Reg. 13312, effective July 12, 2022;
 506 amended at 46 Ill. Reg. 14550, effective August 2, 2022; amended at 46 Ill. Reg. 15317,
 507 effective August 24, 2022; amended at 46 Ill. Reg. 18102, effective October 26, 2022; amended
 508 at 47 Ill. Reg. 1402, effective January 10, 2023; amended at 47 Ill. Reg. 2093, effective January
 509 24, 2023; amended at 47 Ill. Reg. 5726, effective April 4, 2023; amended at 47 Ill. Reg. 6030,
 510 effective April 12, 2023; amended at 47 Ill. Reg. 13669, effective September 11, 2023;
 511 emergency amendment at 47 Ill. Reg. 17214, effective November 6, 2023, for a maximum of 150
 512 days; amended at 48 Ill. Reg. 1677, effective January 10, 2024; amended at 48 Ill. Reg. 2243,
 513 effective January 29, 2024; amended at 48 Ill. Reg. 4433, effective March 11, 2024; amended at
 514 48 Ill. Reg. _____, effective _____.

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SUBPART S: REQUIREMENT AND AMOUNT OF WITHHOLDING

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Section 100.7034 Investment Partnership Withholding (IITA Section 709.5)

- a) In General. For taxable years ending on and after December 31, 2023, a taxpayer that is an investment partnership, as defined in IITA Section 1501 and Section 100.9730, and is a member of one or more other partnerships (as defined in Section 100.9750(d)) with income allocable or apportionable to Illinois shall withhold from each nonresident partner an amount as calculated in subsection (c).
- b) Exemption from Withholding.
 - 1) An investment partnership is not required to withhold an amount from a nonresident partner:
 - A) Who is exempt from tax under IRC Section 501(a) or IITA Section 205. Under the provisions of IITA Section 709.5(d), an investment partnership is required to withhold an amount with respect to a partner that is itself a partnership or S corporation.
 - B) Who is a retired partner, to the extent that partner's distributions are exempt from tax under IITA Section 203(a)(2)(F).
 - 2) The provisions of IITA Section 709.5(c), allowing for exemption from withholding, shall not apply for purposes of this Section. (IITA Section 709.5(d))
 - 3) No nonresident partner has any right of action against an investment partnership for withholding tax from that partner despite exemption under this subsection. (See IITA Section 712.) Instead, the investment partnership may file a claim for credit or refund as provided in subsection (h).
- c) Withholding Tax Computation.
 - 1) The amount of withholding tax due from the investment partnership is equal to:
 - A) The sum of:
 - i) the investment partnership's distributable share of income from other partnerships that, but for the provisions of IITA Sections 205(b) and 305(c-5), would be apportioned to

- 560 Illinois by the investment partnership under IITA Section
561 305(a); and
562
563 ii) the investment partnership's distributable share of income
564 from other partnerships that, but for the provisions of IITA
565 Sections 205(b) and 305(c-5), would be allocated to Illinois
566 by the investment partnership under IITA Sections 305(b)
567 and 303 (other than nonbusiness income that is allocated
568 based on commercial domicile) that is distributable to each
569 nonresident partner of the investment partnership under
570 IRC Sections 702 and 704 (whether or not distributed);
571
572 B) Multiplied by the applicable rates of tax for that partner under
573 IITA Section 201(a) through (d), net of the investment
574 partnership's distributive share of any IITA Article 2 credit passed
575 through from other partnerships and first allowable against the tax
576 liability of that partner for a taxable year ending on or after
577 December 31, 2023. (IITA Section 709.5(d)(1) through (3))
578
579 2) In computing the required amount of withholding tax, an investment
580 partnership's distributive share of Illinois source losses from other
581 partnerships, to the extent distributable to its nonresident partners, may be
582 netted against its distributive share of Illinois source income distributable
583 to nonresident partners.
584
585 3) Losses and deductions from other investments of the investment
586 partnership may not be netted against income subject to withholding for
587 purposes of computing the amount of withholding tax owed.
588
589 4) Only credits and losses passed through in the current year of the
590 investment partnership may reduce the required withholding amount. Any
591 excess credits and losses from other years may not be carried over in
592 determining the amount of withholding tax owed.
593
594 5) If an investment partnership invests in a partnership that makes the Pass-
595 through Entity tax election, the investment partnership may use the credit
596 allowed under IITA Section 201(p) to reduce its amount of withholding
597 tax owed, to the extent that such credit would otherwise be distributable to
598 its nonresident partners.
599
600 d) Withholding Tax Rate. If the nonresident partner is a partnership or subchapter
601 S corporation, the applicable withholding tax rate in subsection (c)(1)(B) is equal
602 to the individual tax rate under IITA Section 201(b). (IITA Section 709.5(d)(2))

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- e) Time for Filing Return and Paying Tax Withheld. An investment partnership required to withhold tax under IITA Section 709.5(d) shall report the amounts withheld and the owners from whom the amounts were withheld, and pay over the amounts withheld, no later than the due date (without regard to extensions) of the tax return for the taxable year of a partnership. (IITA Section 711(a-5)) For purposes of abatement of penalties under Section 3-8 of the Uniform Penalty and Interest Act, an investment partnership shall be deemed to have reasonable cause for not filing the report by the due date required under this subsection if the report is filed no later than the due date under IITA Section 505 (including extensions) of the return for the taxable year.

- f) Credit for Taxes Withheld.
 - 1) Except as provided in this Section, no credit for taxes withheld shall be allowed to the nonresident partners of an investment partnership under IITA Section 709.5(b) for amounts withheld under this Section by the investment partnership. (IITA Section 709.5(d))

 - 2) A nonresident partner is entitled to a credit as provided in IITA Section 709.5(b) and Section 100.7035(d) if the nonresident partner's share of the income of an investment partnership is business income under IITA Section 305(c-5).

 - 3) If an investment partnership is itself a member of a second investment partnership and the second investment partnership is subject to nonresident partner withholding, as required in this Section, the first investment partnership is allowed a credit against its withholding requirement under this Section for the withholding amount paid by the second investment partnership on income distributable to the nonresident partners of the first investment partnership.

 - 4) If one of the partners of an investment partnership is itself a partnership, subchapter S corporation, or trust, with Illinois resident partners, shareholders, or beneficiaries, the Illinois resident partners, shareholders, or beneficiaries may claim a credit for their shares of withholding tax paid by the investment partnership, less their shares of any amount applied by the partnership against its own liability for tax, against their liability under IITA Section 201 for the taxable year in which that income is included in base income.

 - 5) Nonresident taxpayers (other than individuals) that are commercially domiciled in Illinois and have income from an investment partnership are

646 allowed a credit for their shares of withholding tax paid by the investment
 647 partnership.

648
 649 6) The total amount of credit claimed under this subsection may not exceed
 650 the amount of tax withheld by the investment partnership with respect to
 651 the partner.

652
 653 g) Pass-through Entity Tax Election. An investment partnership may elect to be
 654 subject to Pass-through Entity tax under IITA Section 201(p) (PTE tax). Any
 655 investment partnership that elects to pay PTE tax is not exempt from the
 656 withholding requirement under this Section. However, an investment partnership
 657 may elect to subtract its income subject to the withholding requirement when
 658 computing its PTE tax under IITA Section 201(p).

659
 660 h) Overpayments. An investment partnership may claim a refund or credit for any
 661 overpayment of withholding due under this Section, except to the extent the
 662 overpayment is attributable to tax withheld on the distributive share of a partner
 663 who is allowed a credit for such withholding under subsection (f). In addition, no
 664 partner has any right of action against an investment partnership for overpayment
 665 of withholding. (See IITA Section 712.) With respect to an overpayment of
 666 withholding that is attributable to tax withheld on the distributive share of a
 667 partner who is allowed a credit for such withholding under subsection (f), the
 668 remedy is for the partner to file a timely claim for credit or refund for any amount
 669 withheld under this Section.

670
 671 i) Underpayments. If an investment partnership fails to timely pay the full amount
 672 of withholding due under this Section, the investment partnership is not relieved
 673 of its obligation to pay any amount due with respect to a partner, except to the
 674 extent such underpayment is attributable to withholding required on a partner's
 675 distributive share of income which, under the provisions of IITA Section 305(c-
 676 5), is business income or is allocable to Illinois and if the partner has paid its
 677 liability under the IITA on the income from which withholding was required
 678 without claiming the credit otherwise allowed under subsection (f). In addition,
 679 the investment partnership is not relieved of any penalty or interest otherwise
 680 applicable with respect to its failure to timely pay the withholding. (See IITA
 681 Section 713.)

682
 683 j) Examples. The following examples may be used to illustrate the provisions of
 684 this Section.

685
 686 EXAMPLE 1. Assume Partnership A, an investment partnership, consists of
 687 equal partners B and C. Partner B is a partnership and Partner C is a nonresident
 688 individual. In addition, assume that both Partnership A and Partner B are

689 commercially domiciled in Illinois and that neither Partnership A nor Partner B
 690 has made the election under IITA Section 201(p) to be subject to PTE tax. For its
 691 taxable year ending December 31, 2023, Partnership A's income consists of the
 692 following:
 693

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

694
 695 Partnership A computes withholding tax of \$49.50. Tax is computed on the sum
 696 of \$600 apportioned to Illinois under IITA Section 305(a) and the \$400 allocated
 697 to Illinois under IITA Section 305(b), multiplied by the 4.95% individual rate of
 698 its partners (including Partner B). Partner C may not claim credit under IITA
 699 Section 709.5(b) for its respective share of withholding tax.

700
 701 Because Partner B is not an investment partnership, it is not subject to
 702 withholding tax under IITA Section 709.5(d). However, as Partner B is
 703 commercially domiciled in Illinois, it is subject to replacement tax on its \$500
 704 distributive share (along with any other sources of Illinois net income) and may
 705 be subject to withholding under IITA Section 709.5(a) with respect to other
 706 sources of income. Under the provisions of IITA Section 305(c-5), Partner B's
 707 distributive share is deemed nonbusiness income and allocable to the taxpayer's
 708 commercial domicile. Therefore, all of Partner B's distributive share is subject to
 709 replacement tax and not just its share of \$500 on which Partnership A paid
 710 withholding tax. Under subsection (f)(5), Partner B may claim a credit for the tax
 711 withheld on its distributive share. IITA Section 709.5(b) and Section
 712 100.7035(d)(1) allow Partner B to claim a credit against its withholding obligation
 713 under IITA Section 709.5(a) in lieu of claiming the credit against its liability
 714 under IITA Section 201. If Partner B has Illinois resident partners, those partners
 715 may not claim credit under subsection (f)(4) for any amount claimed as a credit by
 716 Partner B against its liability as provided in Section 100.7035(d)(1).

717
 718 EXAMPLE 2. Assume the same facts as in Example 1, except that Partnership A
 719 also has distributive share of nonbusiness rental losses of \$200 from Illinois real
 720 estate under IITA Sections 305(b) and 303. In computing the required amount of
 721 withholding, Partnership A's distributive share of Illinois source losses
 722 distributable to its nonresident partners may be netted against its distributive share
 723 of Illinois source income distributable to its nonresident partners. Therefore,
 724 Partnership A computes withholding tax of \$39.60. Tax is computed on the sum

of \$600 apportioned to Illinois under IITA Section 305(a) and the \$400 allocated to Illinois under IITA Section 305(b), less the \$200 allocated to Illinois under IITA Section 305(b), multiplied by the 4.95% individual rate of its partners (including Partner B). Partner C may not claim credit under IITA Section 709.5(b) for its respective share of withholding tax.

EXAMPLE 3. Assume the same facts as in Example 1, except that Partnership A has \$5 of an Article 2 credit passed through from Partnership Z, which is first allowable against the tax liability of Partnership A for its tax year ending on December 31, 2023, and \$200 of an Article 2 credit passed through from Partnership Z carried over from its tax year ending on December 31, 2022. Partnership A computes withholding tax of \$44.50, the \$49.50 determined as provided in Example 1 less the \$5 Article 2 credit passed through from Partnership Z.

EXAMPLE 4. Assume the same facts as in Example 1, except that Partnership A has \$3,000 of an Article 2 credit passed through from Partnership Z which is first allowable against the tax liability of Partnership A for its tax year ending on December 31, 2023. Partnership A would compute no withholding tax. Partnership A may not use the excess credit amount against any future withholding tax obligation.

EXAMPLE 5. Assume Partnership A, an investment partnership, consists of equal partners B, C, and D. Partner B is itself an investment partnership, whose partners include resident individuals E and F, and nonresident individual G. Partners C and D are nonresident individuals. In addition, assume that both Partnership A and Partner B are commercially domiciled in Illinois and that neither Partnership A nor Partner B has made the election under IITA Section 201(p) to be subject to PTE tax. For its taxable year ending December 31, 2023, Partnership A's income consists of the following:

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

Partnership A computes withholding tax of \$59.40. Tax is computed on the sum of \$800 apportioned to Illinois under IITA Section 305(a) and the \$400 allocated to Illinois under IITA Section 305(b), multiplied by the 4.95% individual rate of

760 its partners (including Partner B). Partners C and D may not claim credit under
 761 IITA Section 709.5(b) for their respective shares of withholding tax.

762
 763 Partner B, an investment partnership, owes no withholding tax. Although Partner
 764 B, but for the provisions of IITA Section 305(c-5), has total income apportioned
 765 to Illinois under IITA Section 305(a) and (b) of \$400, \$133.33 of which is
 766 distributable to nonresident individual G, resulting in a withholding tax of \$6.60,
 767 Partner B is allowed a credit under subsection (f)(3) against its withholding
 768 obligation under this Section of \$6.60. In addition, resident individuals E and F
 769 may each claim a credit under subsection (f)(4) of \$6.60 against their liability
 770 under IITA Section 201 for their taxable year in which their distributive shares of
 771 Partner B's income is included in base income. The credit shall be applied as
 772 provided in IITA Section 709.5(b).

773
 774 EXAMPLE 6. Assume the same facts as in Example 5, except that Partnership A
 775 makes the election under IITA Section 201(p) to be subject to PTE tax for its tax
 776 year ending December 31, 2023. Making the election does not exempt Partnership
 777 A from the requirement to withhold under IITA Section 709.5(d). However,
 778 Partnership A may elect to subtract its income subject to withholding in
 779 computing its base income under IITA Section 201(p)(3). Therefore, Partnership
 780 A's base income for purposes of computing PTE tax is \$1,600 (\$2,800 - \$1,200).
 781 If Partner B also makes the election under IITA Section 201(p), it subtracts its
 782 distributive share of Partnership A's income in computing its base income under
 783 IITA Section 201(p)(3).

784
 785 EXAMPLE 7. Assume the same facts as in Example 5, except that Partner B is a
 786 corporation that is commercially domiciled outside of Illinois. In addition, assume
 787 that Partner B makes the election under IITA Section 1501(a)(1) to treat all of its
 788 income as business income. Partnership A computes withholding tax of \$77.60.
 789 Tax is computed on the sum of \$800 apportioned to Illinois under IITA Section
 790 305(a) and the \$400 allocated to Illinois under IITA Section 305(b), multiplied by
 791 the 9.5% rate applicable to Partner B's distributive share and the 4.95% rate
 792 applicable to Partners C and D's distributive shares. Partners C and D are not
 793 allowed a credit under IITA Section 709.5(b) for their respective shares of
 794 withholding tax. Under IITA Section 305(c-5), Partner B's distributive share is
 795 treated as business income and apportioned as if Partner B received the income
 796 directly (rather than as a distributive share of Partnership A's income). Therefore,
 797 Partner B's Illinois net income includes its \$267 distributive share of Partnership
 798 A's distributive share of business income (one-third of \$800). Partner B may treat
 799 its \$38 share of tax withheld by Partnership A as a credit as provided in IITA
 800 Section 709.5(b) and Section 100.7035(d). Partner B's distributive share of
 801 Partnership A's other items of income is deemed business income and apportioned
 802 using Partner's apportionment factor.

803
 804 EXAMPLE 8. Assume Partnership A is an investment partnership and has
 805 income subject to withholding of \$1,000. Investment Partnership A consists of
 806 Partner B, who is itself an investment partnership and whose partners include
 807 Partner C, a corporation. Investment Partnership A is not required to withhold
 808 with respect to Investment Partnership B's share, but if it does withhold at the
 809 4.95% rate, then Investment Partnership B may use that amount as a credit against
 810 its own withholding tax liability. In this scenario, Investment Partnership B has
 811 income subject to withholding with respect to its distributive share of Investment
 812 Partnership A's income subject to withholding. Under IITA 709.5(d)(1) and
 813 Section 100.3500(b)(3) of this Part, Investment Partnership B has income that
 814 would, but for the provisions of IITA Section 305(c-5), be apportioned or
 815 allocated under IITA Section 305(a) or (b). Therefore, Investment Partnership B
 816 owes withholding tax of 9.5% on Corporate Partner C's distributive share less any
 817 credit for the share of withholding tax paid by Investment Partnership A.
 818

819 (Source: Added at 48 Ill. Reg. _____, effective _____)
 820

821 SUBPART EE: DEFINITIONS
 822

823 **Section 100.9730 Investment Partnerships (IITA Section 1501(a)(11.5))**
 824

- 825 a) For taxable years ending on or after December 31, 2004, an "investment
 826 partnership" is exempt from Illinois income taxation. (IITA Section 205(b)) *For*
 827 *tax years ending before December 31, 2023, the*~~The~~ term "investment
 828 partnership" means *any entity that is treated as a partnership for federal income*
 829 *tax purposes and that meets each of the following requirements:*
 830
- 831 1) *No less than 90% of the partnership's cost of its total assets consists of*
 832 *qualifying investment securities, deposits at banks or other financial*
 833 *institutions, and office space and equipment reasonably necessary to carry*
 834 *on its activities as an investment partnership. (IITA Section*
 835 *1501(a)(11.5)(A)(i)) The "asset test" under this subsection (a)(1) is*
 836 *applied for each taxable year by computing the percentage of the*
 837 *partnership's cost of its total assets that consists of qualifying investment*
 838 *securities, deposits at banks or financial institutions, and office space and*
 839 *equipment as of the beginning of the taxable year and as of the end of each*
 840 *month of the taxable year, and then computing the average of those*
 841 *percentages; and*
 842
 - 843 2) *No less than 90% of its gross income consists of interest, dividends, and*
 844 *gains from the sale or exchange of qualifying investment securities. (IITA*
 845 *Section 1501(a)(11.5)(A)(ii)) The "gross income test" under this*

846 subsection (a)(2) is computed separately for each taxable year on the basis
 847 of gross income for the entire taxable year, determined using the method
 848 of accounting used for federal income tax purposes for the taxable year;
 849 and

850
 851 3) *The partnership is not a dealer in qualifying investment securities.* (IITA
 852 Section 1501(a)(11.5)(A)(iii))

853
 854 A) A partnership is a dealer in qualifying investment securities if it
 855 regularly purchases qualifying investment securities from or sells
 856 qualifying investment securities to customers in the ordinary
 857 course of a trade or business or regularly offers to enter into,
 858 assume, offset, assign or otherwise terminate positions in
 859 qualifying investment securities with customers in the ordinary
 860 course of a trade or business. (IRC Section 475(c)(1))

861
 862 B) A partnership that, at any time during a taxable year, holds or
 863 derives gross income from any qualifying investment security in
 864 which it is a dealer shall not qualify as an investment partnership
 865 for that taxable year.

866
 867 b) *For tax years ending on or after December 31, 2023, the term "investment*
 868 *partnership" means any entity that is treated as a partnership for federal income*
 869 *tax purposes and that meets each of the following requirements:*

870
 871 1) *No less than 90% of the partnership's cost of its total assets consists of*
 872 *qualifying investment securities, deposits at banks or other financial*
 873 *institutions, and office space and equipment reasonably necessary to carry*
 874 *on its activities as an investment partnership.* (IITA Section
 875 *1501(a)(11.5)(A-5)(i)* The "asset test" under this subsection (b)(1) is
 876 *applied for each taxable year by computing the percentage of the*
 877 *partnership's cost of its total assets that consists of qualifying investment*
 878 *securities, deposits at banks or financial institutions, and office space and*
 879 *equipment as of the beginning of the taxable year and as of the end of each*
 880 *month of the taxable year, and then computing the average of those*
 881 *percentages; and*

882
 883 2) *No less than 90% of its gross income consists of interest, dividends, gains*
 884 *from the sale or exchange of qualifying investment securities, and the*
 885 *distributive share of partnership income from lower-tier partnership*
 886 *interests meeting the definition of qualifying investment security under*
 887 *subsection (c)(13).* *For purposes of this subsection (b)(2), "gross income"*
 888 *does not include income from partnerships that are operating at a federal*

889 taxable loss. (IITA Section 1501(a)(11.5)(A-5)(ii)) The "gross income
 890 test" under this subsection (b)(2) is computed separately for each taxable
 891 year on the basis of gross income for the entire taxable year, determined
 892 using the method of accounting used for federal income tax purposes for
 893 the taxable year.

894
 895 c) "Qualifying investment securities" means and includes only:

- 896
 897 1) *Common stock, including preferred or debt securities convertible into*
 898 *common stock, and preferred stock. (IITA Section 1501(a)(11.5)(B)(i))*
 899 *"Stock" means shares in an association, joint stock company, or insurance*
 900 *company. (IRC Section 7701(a)(7)) "Stock" includes any interest in a*
 901 *publicly traded partnership that is treated as a corporation under IRC*
 902 *Section 7704.*
- 903
 904 2) *Bonds, debentures, and other debt securities. (IITA Section*
 905 *1501(a)(11.5)(B)(ii)) "Debt security" means any note, bond, debenture or*
 906 *other evidence of indebtedness, or any evidence of an interest in or right to*
 907 *subscribe to or purchase any of the foregoing. (See 26 CFR 1.864-*
 908 *2(c)(2)(i) (2007).)*
- 909
 910 3) *Foreign and domestic currency deposits secured by federal, state, or local*
 911 *governmental agencies. (IITA Section 1501(a)(11.5)(B)(iii)) "Currency*
 912 *deposits secured by federal, state or local government agencies" means*
 913 *any balance in a demand or time deposit at a bank, savings and loan, or*
 914 *similar financial institution and that is insured by the Federal Deposit*
 915 *Insurance Corporation or by a similar deposit insurance agency of a state*
 916 *or local government, including any balance in an otherwise insured*
 917 *account that is in excess of any insurance limit. Deposits secured by a*
 918 *foreign government agency, but not by an agency of the federal or of a*
 919 *state or local government, do not qualify.*
- 920
 921 4) *Mortgage or asset-backed securities secured by federal, state, or local*
 922 *governmental agencies. (IITA Section 1501(a)(11.5)(B)(iv)) Examples of*
 923 *mortgage-backed securities secured by a federal agency include securities*
 924 *issued or backed by the Federal Home Loan Mortgage Corporation, the*
 925 *Federal National Mortgage Association and the Government National*
 926 *Mortgage Association. Similar securities issued by a similar agency of a*
 927 *state or local government also qualify. Mortgage or asset-backed*
 928 *securities secured by a foreign government do not qualify under this*
 929 *subsection (c)(4)(b)(4).*
 930

- 931 5) *Repurchase agreements and loan participations.* (IITA Section
 932 1501(a)(11.5)(B)(v))
 933
 934 A) A repurchase agreement is a secured loan in which the loan
 935 agreement takes the form of a purchase by the lender of the
 936 collateral with the borrower agreeing to repurchase the collateral at
 937 a future date. See [Nebraska Dept. of Revenue v.](#)
 938 [Loewenstein](#)~~Nebraska Dept. of Revenue v. Loewenstein~~, 513 U.S.
 939 123 (1994). A repurchase agreement is a qualified investment
 940 security only if the item that is sold subject to repurchase is a
 941 qualified investment security.
 942
 943 B) A loan participation is an undivided fractional interest in a loan
 944 that is acquired by the participant by means of a sale of such
 945 undivided fractional interest by the lead lender to the participant, in
 946 contrast to a loan syndication, which is a loan made by an agent on
 947 behalf of a group of lenders or syndicate in which the member of
 948 the lender group or syndicate is a lender in the original loan.
 949 Generally, the borrower's obligations in a loan participation run
 950 only to the lead lender and not to the participant, and the
 951 participant's interest is generally limited to an undivided fractional
 952 interest in payments of principal or interest under the loan
 953 agreement between the lead lender and the borrower.
 954
 955 6) *Foreign currency exchange contracts and forward and futures contracts*
 956 *on foreign currencies.* (IITA Section 1501(a)(11.5)(B)(vi))
 957
 958 7) *Stock and bond index securities and futures contracts and other similar*
 959 *financial securities and futures contracts on those securities.* (IITA
 960 Section 1501(a)(11.5)(B)(vii))
 961
 962 8) *Options for the purchase or sale of any of the securities, currencies,*
 963 *contracts, or financial instruments described in [subsections \(c\)\(1\) through](#)*
 964 *[\(7\)](#)~~subsections (b)(1) through (7)~~.* (IITA Section 1501(a)(11.5)(B)(viii))
 965
 966 9) *Regulated futures contracts.* (IITA Section 1501(a)(11.5)(B)(ix)) A
 967 regulated futures contract is a contract bought, sold or traded on a
 968 regulated exchange, such as the Chicago Board of Trade.
 969
 970 10) *Commodities (not described in section 1221(a)(1) of the Internal Revenue*
 971 *Code) or futures, forwards, and options with respect to such commodities,*
 972 *provided, however, that any item of a physical commodity to which title is*
 973 *actually acquired in the partnership's capacity as a dealer in such*

974 *commodity shall not be a qualifying investment security.* (IITA Section
 975 1501(a)(11.5)(B)(x)) IRC ~~Section~~section 1221(a)(1) provides that stock in
 976 trade of the taxpayer or other property of a kind that would properly be
 977 included in the inventory of the taxpayer if on hand at the close of the
 978 taxable year, or property held by the taxpayer primarily for sale to
 979 customers in the ordinary course of the taxpayer's~~taxpayer's~~ trade or
 980 business are not capital assets.

- 981
- 982 11) *Derivatives.* (IITA Section 1501(a)(11.5)(B)(xi)) A derivative is:
- 983
- 984 A) An interest rate, currency (of a kind customarily dealt in on an
 985 organized commodity exchange), equity, commodity or notional
 986 principal contract; or
- 987
- 988 B) An evidence of an interest, or a derivative financial instrument
 989 (including any option, forward contract, short position and any
 990 similar financial instrument), in any:
- 991
- 992 i) Commodity;
- 993
- 994 ii) Currency of a kind customarily dealt in on an organized
 995 commodity exchange;
- 996
- 997 iii) Share of stock under subsection (c)(1)~~(b)(1)~~;
- 998
- 999 iv) Partnership or beneficial ownership interest in a widely
 1000 held or publicly traded partnership or trust;
- 1001
- 1002 v) Note, bond, debenture or other evidence of indebtedness; or
- 1003
- 1004 vi) Notional principal contract.
- 1005

1006 12) *A partnership interest in another partnership that is an investment*
 1007 *partnership.* (IITA Section 1501(a)(11.5)(B)(xii))

1008

1009 13) *For tax years ending on or after December 31, 2023, a partnership*
 1010 *interest that, in the hands of the partnership, qualifies as a security within*
 1011 *the meaning of 15 U.S.C. 77b(a)(1).* (IITA Section 1501(a)(11.5)(B)(xiii))

1012

1013 de) Items that are not "qualified investment securities" include:

- 1014
- 1015 1) Loans, other than loan participations and repurchase agreements that are
 1016 characterized as loans.

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2) Bank deposits that are not insured by the federal government or by one of the states.

3) Securities, for tax years ending on or after December 31, 2023, subject to the dealer accounting rules in IRC Section 475.

ed) Cost of Assets. For purposes of applying the "cost of assets" test in IITA ~~Sections~~Section 1501(a)(11.5)(A)(i) and 1501(a)(11.5)(A-5)(i)~~(B)(i)~~, the cost of an asset shall be determined for federal income tax purposes without regard to depreciation or amortization of the asset, except that the cost of an asset shall include any accrued interest or discount, and shall be reduced by any premium amortization, that has been recognized in the computation of federal taxable income of the partnership and that is included on the partnership's balance sheet as of the date the cost of assets is determined.

fe) Gross Income. For purposes of applying the "gross income" test in IITA ~~Sections~~Section 1501(a)(11.5)(A)(ii) and 1501(a)(11.5)(A-5)(ii):

1) "Gross income" means income minus costs of sales or basis in an asset sold or traded, but without reduction for any other expenses or deductions. For purposes of this Section, gross income does not include any item of income that is excluded from base income of the partnership, either because it is excluded from federal taxable income of the partnership or because it is subtracted from taxable income in computing base income, and gross income does not include income that results from transactions outside the ordinary course of ~~aan~~ partnership's regular activities. For example, amounts received from the sale of an entity's office equipment shall be disregarded, whether or not the gain is characterized as business income. For tax years ending on or after December 31, 2023, "gross income" does not include income from partnerships that are operating at a federal taxable loss.

2) "Interest" means "compensation for the use or forbearance of money". See Deputy v. Du Pont~~Deputy v. du Pont~~, 308 U.S. 488, 498 (1940). Interest includes the amortization of any discount at which an obligation is purchased and is net of the amortization of any premium at which an obligation is purchased. Any amount in excess of the purchase price received in payment of an obligation purchased at an arm's-length discount shall be rebuttably presumed to be interest. Interest includes any amount received upon the sale, exchange or other disposition of an obligation to the extent that such amount represents the accrual of interest

- 1059 on the unpaid balance of the obligation since the most recent payment
1060 made on that obligation.
1061
- 1062 3) "Dividend" means any item defined as a dividend under IRC
1063 ~~Section~~[section](#) 316 and any other item of income characterized or treated
1064 as a dividend under the Internal Revenue Code.
1065
- 1066 4) "Gain from sale or exchange" of qualifying investment securities is the
1067 sum of all gains realized on the sale or exchange of qualifying investment
1068 securities, without reduction or offset for losses realized on such sales or
1069 exchanges.
1070
- 1071 5) For purposes of the gross income test, gross income derived from
1072 investment in a partnership, subchapter S corporation, trust or estate shall
1073 be characterized as if the taxpayer received the income directly and, in the
1074 case of any item of income reported to the taxpayer by the partnership,
1075 subchapter S corporation, trust or estate for federal income tax purposes as
1076 net of related expenses, include only such net amount. The provisions of
1077 this subsection (f)(5) only apply to tax years ending before December 31,
1078 2023.
1079

1080 (Source: Amended at 48 Ill. Reg. _____, effective _____)