

1 AN ACT concerning taxes.

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 304 as follows:

6 (35 ILCS 5/304) (from Ch. 120, par. 3-304)

7 Sec. 304. Business income of persons other than
8 residents.

9 (a) In general. The business income of a person other
10 than a resident shall be allocated to this State if such
11 person's business income is derived solely from this State.
12 If a person other than a resident derives business income
13 from this State and one or more other states, then, for tax
14 years ending on or before December 30, 1998, for tax years
15 ending on or after December 31, 2003 and before December 31,
16 2008, and except as otherwise provided by this Section, such
17 person's business income shall be apportioned to this State
18 by multiplying the income by a fraction, the numerator of
19 which is the sum of the property factor (if any), the payroll
20 factor (if any) and 200% of the sales factor (if any), and
21 the denominator of which is 4 reduced by the number of
22 factors other than the sales factor which have a denominator
23 of zero and by an additional 2 if the sales factor has a
24 denominator of zero. For tax years ending on or after
25 December 31, 1998, and except as otherwise provided by this
26 Section, persons other than residents who derive business
27 income from this State and one or more other states shall
28 compute their apportionment factor by weighting their
29 property, payroll, and sales factors as provided in
30 subsection (h) of this Section.

31 (1) Property factor.

1 (A) The property factor is a fraction, the
2 numerator of which is the average value of the person's
3 real and tangible personal property owned or rented and
4 used in the trade or business in this State during the
5 taxable year and the denominator of which is the average
6 value of all the person's real and tangible personal
7 property owned or rented and used in the trade or
8 business during the taxable year.

9 (B) Property owned by the person is valued at its
10 original cost. Property rented by the person is valued at
11 8 times the net annual rental rate. Net annual rental
12 rate is the annual rental rate paid by the person less
13 any annual rental rate received by the person from
14 sub-rentals.

15 (C) The average value of property shall be
16 determined by averaging the values at the beginning and
17 ending of the taxable year but the Director may require
18 the averaging of monthly values during the taxable year
19 if reasonably required to reflect properly the average
20 value of the person's property.

21 (2) Payroll factor.

22 (A) The payroll factor is a fraction, the numerator
23 of which is the total amount paid in this State during
24 the taxable year by the person for compensation, and the
25 denominator of which is the total compensation paid
26 everywhere during the taxable year.

27 (B) Compensation is paid in this State if:

28 (i) The individual's service is performed
29 entirely within this State;

30 (ii) The individual's service is performed
31 both within and without this State, but the service
32 performed without this State is incidental to the
33 individual's service performed within this State; or

34 (iii) Some of the service is performed within

1 this State and either the base of operations, or if
2 there is no base of operations, the place from which
3 the service is directed or controlled is within this
4 State, or the base of operations or the place from
5 which the service is directed or controlled is not
6 in any state in which some part of the service is
7 performed, but the individual's residence is in this
8 State.

9 Beginning with taxable years ending on or after
10 December 31, 1992, for residents of states that impose a
11 comparable tax liability on residents of this State, for
12 purposes of item (i) of this paragraph (B), in the case
13 of persons who perform personal services under personal
14 service contracts for sports performances, services by
15 that person at a sporting event taking place in Illinois
16 shall be deemed to be a performance entirely within this
17 State.

18 (3) Sales factor.

19 (A) The sales factor is a fraction, the numerator
20 of which is the total sales of the person in this State
21 during the taxable year, and the denominator of which is
22 the total sales of the person everywhere during the
23 taxable year.

24 (B) Sales of tangible personal property are in this
25 State if:

26 (i) The property is delivered or shipped to a
27 purchaser, other than the United States government,
28 within this State regardless of the f. o. b. point
29 or other conditions of the sale; or

30 (ii) The property is shipped from an office,
31 store, warehouse, factory or other place of storage
32 in this State and either the purchaser is the United
33 States government or the person is not taxable in
34 the state of the purchaser; provided, however, that

1 premises owned or leased by a person who has
2 independently contracted with the seller for the
3 printing of newspapers, periodicals or books shall
4 not be deemed to be an office, store, warehouse,
5 factory or other place of storage for purposes of
6 this Section. Sales of tangible personal property
7 are not in this State if the seller and purchaser
8 would be members of the same unitary business group
9 but for the fact that either the seller or purchaser
10 is a person with 80% or more of total business
11 activity outside of the United States and the
12 property is purchased for resale.

13 (B-1) Patents, copyrights, trademarks, and similar
14 items of intangible personal property.

15 (i) Gross receipts from the licensing, sale,
16 or other disposition of a patent, copyright,
17 trademark, or similar item of intangible personal
18 property are in this State to the extent the item is
19 utilized in this State during the year the gross
20 receipts are included in gross income.

21 (ii) Place of utilization.

22 (I) A patent is utilized in a state to
23 the extent that it is employed in production,
24 fabrication, manufacturing, or other processing
25 in the state or to the extent that a patented
26 product is produced in the state. If a patent
27 is utilized in more than one state, the extent
28 to which it is utilized in any one state shall
29 be a fraction equal to the gross receipts of
30 the licensee or purchaser from sales or leases
31 of items produced, fabricated, manufactured, or
32 processed within that state using the patent
33 and of patented items produced within that
34 state, divided by the total of such gross

1 receipts for all states in which the patent is
2 utilized.

3 (II) A copyright is utilized in a state
4 to the extent that printing or other
5 publication originates in the state. If a
6 copyright is utilized in more than one state,
7 the extent to which it is utilized in any one
8 state shall be a fraction equal to the gross
9 receipts from sales or licenses of materials
10 printed or published in that state divided by
11 the total of such gross receipts for all states
12 in which the copyright is utilized.

13 (III) Trademarks and other items of
14 intangible personal property governed by this
15 paragraph (B-1) are utilized in the state in
16 which the commercial domicile of the licensee
17 or purchaser is located.

18 (iii) If the state of utilization of an item
19 of property governed by this paragraph (B-1) cannot
20 be determined from the taxpayer's books and records
21 or from the books and records of any person related
22 to the taxpayer within the meaning of Section 267(b)
23 of the Internal Revenue Code, 26 U.S.C. 267, the
24 gross receipts attributable to that item shall be
25 excluded from both the numerator and the denominator
26 of the sales factor.

27 (B-2) Gross receipts from the license, sale, or
28 other disposition of patents, copyrights, trademarks, and
29 similar items of intangible personal property may be
30 included in the numerator or denominator of the sales
31 factor only if gross receipts from licenses, sales, or
32 other disposition of such items comprise more than 50% of
33 the taxpayer's total gross receipts included in gross
34 income during the tax year and during each of the 2

1 immediately preceding tax years; provided that, when a
2 taxpayer is a member of a unitary business group, such
3 determination shall be made on the basis of the gross
4 receipts of the entire unitary business group.

5 (C) Sales, other than sales governed by paragraphs
6 (B) and (B-1), are in this State if:

7 (i) The income-producing activity is performed
8 in this State; or

9 (ii) The income-producing activity is
10 performed both within and without this State and a
11 greater proportion of the income-producing activity
12 is performed within this State than without this
13 State, based on performance costs.

14 (D) For taxable years ending on or after December
15 31, 1995, the following items of income shall not be
16 included in the numerator or denominator of the sales
17 factor: dividends; amounts included under Section 78 of
18 the Internal Revenue Code; and Subpart F income as
19 defined in Section 952 of the Internal Revenue Code. No
20 inference shall be drawn from the enactment of this
21 paragraph (D) in construing this Section for taxable
22 years ending before December 31, 1995.

23 (E) Paragraphs (B-1) and (B-2) shall apply to tax
24 years ending on or after December 31, 1999, provided that
25 a taxpayer may elect to apply the provisions of these
26 paragraphs to prior tax years. Such election shall be
27 made in the form and manner prescribed by the Department,
28 shall be irrevocable, and shall apply to all tax years;
29 provided that, if a taxpayer's Illinois income tax
30 liability for any tax year, as assessed under Section 903
31 prior to January 1, 1999, was computed in a manner
32 contrary to the provisions of paragraphs (B-1) or (B-2),
33 no refund shall be payable to the taxpayer for that tax
34 year to the extent such refund is the result of applying

1 the provisions of paragraph (B-1) or (B-2) retroactively.
2 In the case of a unitary business group, such election
3 shall apply to all members of such group for every tax
4 year such group is in existence, but shall not apply to
5 any taxpayer for any period during which that taxpayer is
6 not a member of such group.

7 (b) Insurance companies.

8 (1) In general. Except as otherwise provided by
9 paragraph (2), business income of an insurance company
10 for a taxable year shall be apportioned to this State by
11 multiplying such income by a fraction, the numerator of
12 which is the direct premiums written for insurance upon
13 property or risk in this State, and the denominator of
14 which is the direct premiums written for insurance upon
15 property or risk everywhere. For purposes of this
16 subsection, the term "direct premiums written" means the
17 total amount of direct premiums written, assessments and
18 annuity considerations as reported for the taxable year
19 on the annual statement filed by the company with the
20 Illinois Director of Insurance in the form approved by
21 the National Convention of Insurance Commissioners or
22 such other form as may be prescribed in lieu thereof.

23 (2) Reinsurance. If the principal source of
24 premiums written by an insurance company consists of
25 premiums for reinsurance accepted by it, the business
26 income of such company shall be apportioned to this State
27 by multiplying such income by a fraction, the numerator
28 of which is the sum of (i) direct premiums written for
29 insurance upon property or risk in this State, plus (ii)
30 premiums written for reinsurance accepted in respect of
31 property or risk in this State, and the denominator of
32 which is the sum of (iii) direct premiums written for
33 insurance upon property or risk everywhere, plus (iv)
34 premiums written for reinsurance accepted in respect of

1 property or risk everywhere. For purposes of this
2 paragraph, premiums written for reinsurance accepted in
3 respect of property or risk in this State, whether or not
4 otherwise determinable, may, at the election of the
5 company, be determined on the basis of the proportion
6 which premiums written for reinsurance accepted from
7 companies commercially domiciled in Illinois bears to
8 premiums written for reinsurance accepted from all
9 sources, or, alternatively, in the proportion which the
10 sum of the direct premiums written for insurance upon
11 property or risk in this State by each ceding company
12 from which reinsurance is accepted bears to the sum of
13 the total direct premiums written by each such ceding
14 company for the taxable year.

15 (c) Financial organizations.

16 (1) In general. Business income of a financial
17 organization shall be apportioned to this State by
18 multiplying such income by a fraction, the numerator of
19 which is its business income from sources within this
20 State, and the denominator of which is its business
21 income from all sources. For the purposes of this
22 subsection, the business income of a financial
23 organization from sources within this State is the sum of
24 the amounts referred to in subparagraphs (A) through (E)
25 following, but excluding the adjusted income of an
26 international banking facility as determined in paragraph
27 (2):

28 (A) Fees, commissions or other compensation
29 for financial services rendered within this State;

30 (B) Gross profits from trading in stocks,
31 bonds or other securities managed within this State;

32 (C) Dividends, and interest from Illinois
33 customers, which are received within this State;

34 (D) Interest charged to customers at places of

1 business maintained within this State for carrying
2 debit balances of margin accounts, without deduction
3 of any costs incurred in carrying such accounts; and

4 (E) Any other gross income resulting from the
5 operation as a financial organization within this
6 State. In computing the amounts referred to in
7 paragraphs (A) through (E) of this subsection, any
8 amount received by a member of an affiliated group
9 (determined under Section 1504(a) of the Internal
10 Revenue Code but without reference to whether any
11 such corporation is an "includible corporation"
12 under Section 1504(b) of the Internal Revenue Code)
13 from another member of such group shall be included
14 only to the extent such amount exceeds expenses of
15 the recipient directly related thereto.

16 (2) International Banking Facility.

17 (A) Adjusted Income. The adjusted income of
18 an international banking facility is its income
19 reduced by the amount of the floor amount.

20 (B) Floor Amount. The floor amount shall be
21 the amount, if any, determined by multiplying the
22 income of the international banking facility by a
23 fraction, not greater than one, which is determined
24 as follows:

25 (i) The numerator shall be:

26 The average aggregate, determined on a
27 quarterly basis, of the financial
28 organization's loans to banks in foreign
29 countries, to foreign domiciled borrowers
30 (except where secured primarily by real estate)
31 and to foreign governments and other foreign
32 official institutions, as reported for its
33 branches, agencies and offices within the state
34 on its "Consolidated Report of Condition",

1 Schedule A, Lines 2.c., 5.b., and 7.a., which
2 was filed with the Federal Deposit Insurance
3 Corporation and other regulatory authorities,
4 for the year 1980, minus

5 The average aggregate, determined on a
6 quarterly basis, of such loans (other than
7 loans of an international banking facility), as
8 reported by the financial institution for its
9 branches, agencies and offices within the
10 state, on the corresponding Schedule and lines
11 of the Consolidated Report of Condition for the
12 current taxable year, provided, however, that
13 in no case shall the amount determined in this
14 clause (the subtrahend) exceed the amount
15 determined in the preceding clause (the
16 minuend); and

17 (ii) the denominator shall be the average
18 aggregate, determined on a quarterly basis, of
19 the international banking facility's loans to
20 banks in foreign countries, to foreign
21 domiciled borrowers (except where secured
22 primarily by real estate) and to foreign
23 governments and other foreign official
24 institutions, which were recorded in its
25 financial accounts for the current taxable
26 year.

27 (C) Change to Consolidated Report of Condition
28 and in Qualification. In the event the Consolidated
29 Report of Condition which is filed with the Federal
30 Deposit Insurance Corporation and other regulatory
31 authorities is altered so that the information
32 required for determining the floor amount is not
33 found on Schedule A, lines 2.c., 5.b. and 7.a., the
34 financial institution shall notify the Department

1 and the Department may, by regulations or otherwise,
2 prescribe or authorize the use of an alternative
3 source for such information. The financial
4 institution shall also notify the Department should
5 its international banking facility fail to qualify
6 as such, in whole or in part, or should there be any
7 amendment or change to the Consolidated Report of
8 Condition, as originally filed, to the extent such
9 amendment or change alters the information used in
10 determining the floor amount.

11 (d) Transportation services. Business income derived
12 from furnishing transportation services shall be apportioned
13 to this State in accordance with paragraphs (1) and (2):

14 (1) Such business income (other than that derived
15 from transportation by pipeline) shall be apportioned to
16 this State by multiplying such income by a fraction, the
17 numerator of which is the revenue miles of the person in
18 this State, and the denominator of which is the revenue
19 miles of the person everywhere. For purposes of this
20 paragraph, a revenue mile is the transportation of 1
21 passenger or 1 net ton of freight the distance of 1 mile
22 for a consideration. Where a person is engaged in the
23 transportation of both passengers and freight, the
24 fraction above referred to shall be determined by means
25 of an average of the passenger revenue mile fraction and
26 the freight revenue mile fraction, weighted to reflect
27 the person's

28 (A) relative railway operating income from
29 total passenger and total freight service, as
30 reported to the Interstate Commerce Commission, in
31 the case of transportation by railroad, and

32 (B) relative gross receipts from passenger and
33 freight transportation, in case of transportation
34 other than by railroad.

1 (2) Such business income derived from
2 transportation by pipeline shall be apportioned to this
3 State by multiplying such income by a fraction, the
4 numerator of which is the revenue miles of the person in
5 this State, and the denominator of which is the revenue
6 miles of the person everywhere. For the purposes of this
7 paragraph, a revenue mile is the transportation by
8 pipeline of 1 barrel of oil, 1,000 cubic feet of gas, or
9 of any specified quantity of any other substance, the
10 distance of 1 mile for a consideration.

11 (e) Combined apportionment. Where 2 or more persons are
12 engaged in a unitary business as described in subsection
13 (a)(27) of Section 1501, a part of which is conducted in this
14 State by one or more members of the group, the business
15 income attributable to this State by any such member or
16 members shall be apportioned by means of the combined
17 apportionment method.

18 (f) Alternative allocation. If the allocation and
19 apportionment provisions of subsections (a) through (e) and
20 of subsection (h) do not fairly represent the extent of a
21 person's business activity in this State, the person may
22 petition for, or the Director may require, in respect of all
23 or any part of the person's business activity, if reasonable:

- 24 (1) Separate accounting;
- 25 (2) The exclusion of any one or more factors;
- 26 (3) The inclusion of one or more additional factors
27 which will fairly represent the person's business
28 activities in this State; or

29 (4) The employment of any other method to
30 effectuate an equitable allocation and apportionment of
31 the person's business income.

32 (g) Cross reference. For allocation of business income
33 by residents, see Section 301(a).

34 (h) Apportionment of income. For tax years ending on or

1 after December 31, 1998, the apportionment factor of persons
2 who apportion their business income to this State under
3 subsection (a) shall be equal to:

4 (1) for tax years ending on or after December 31,
5 1998 and before December 31, 1999, 16 2/3% of the
6 property factor plus 16 2/3% of the payroll factor plus
7 66 2/3% of the sales factor;

8 (2) for tax years ending on or after December 31,
9 1999 and before December 31, 2000, 8 1/3% of the property
10 factor plus 8 1/3% of the payroll factor plus 83 1/3% of
11 the sales factor;

12 (3) for tax years ending on or after December 31,
13 2000 and before December 31, 2003, the sales factor;

14 (4) for tax years ending on or after December 31,
15 2003 and before December 31, 2008, as provided in
16 subsection (a);

17 (5) for tax years ending on or after December 31,
18 2008, the sales factor.

19 If, in any tax year ending on or after December 31, 1998 and
20 before December 31, 2000, the denominator of the payroll,
21 property, or sales factor is zero, the apportionment factor
22 computed in paragraph (1) or (2) of this subsection for that
23 year shall be divided by an amount equal to 100% minus the
24 percentage weight given to each factor whose denominator is
25 equal to zero.

26 (Source: P.A. 90-562, eff. 12-16-97; 90-613, eff. 7-9-98;
27 91-541, eff. 8-13-99.)

28 Section 99. Effective date. This Act takes effect upon
29 becoming law.