



Sen. Patrick Welch

Adopted in Senate on May 20, 2004

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LRB093 05717 MKM 51245 a

1 AMENDMENT TO HOUSE BILL 848

2 AMENDMENT NO. _____. Amend House Bill 848 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title; effectiveness. This Act may be
5 cited as the Tax Shelter Voluntary Compliance Act. This Act is
6 of no force and effect unless and until House Bill 4266 of the
7 93rd General Assembly becomes law in the same form as it passed
8 both houses of the General Assembly on April 29, 2004.

9 Section 5. Tax shelter voluntary compliance program.

10 (a) In general. The Department shall establish and
11 administer a tax shelter voluntary compliance program as
12 provided in this Section for eligible taxpayers subject to tax
13 under the Illinois Income Tax Act. The tax shelter voluntary
14 compliance program shall be conducted from October 15, 2004 to
15 November 30, 2004 and shall apply to tax liabilities under
16 Section 201 of the Illinois Income Tax Act attributable to the
17 use of abusive tax avoidance transactions for taxable years
18 beginning before January 1, 2004. The Department shall adopt
19 rules, issue forms and instructions, and take such other
20 actions as it deems necessary to implement the provisions of
21 this Act. Any correspondence mailed by the Department to a
22 taxpayer at the taxpayer's last known address outlining the tax
23 shelter voluntary compliance program constitutes a "contact"
24 within the meaning of Sections 1005(b)(6) and 1005(c) of the

1 Illinois Income Tax Act for taxable years to which this Act
2 applies.

3 (b) Election. An eligible taxpayer that meets the
4 requirements of subsection (c) of this Section with respect to
5 any taxable year to which this Act applies may elect to
6 participate in the tax shelter voluntary compliance program
7 under either (but not both) paragraph (1) or paragraph (2) of
8 this subsection. Such election shall be made in the form and
9 manner prescribed by the Department and, once made, shall be
10 irrevocable.

11 (1) Voluntary compliance without appeal. If a taxpayer
12 elects to participate under this paragraph, then: (i) the
13 Department shall abate and not seek to collect any penalty
14 that may be applicable to the underreporting or
15 underpayment of Illinois income tax attributable to the use
16 of abusive tax avoidance transactions for such taxable
17 year; (ii) except as otherwise provided in this Act, the
18 Department shall not seek civil or criminal prosecution
19 against the taxpayer for such taxable year with respect to
20 abusive tax avoidance transactions; and (iii) the taxpayer
21 may not file a claim for credit or refund of amounts paid
22 for such taxable year in connection with abusive tax
23 avoidance transactions. No penalty may be waived or abated
24 under this Act if the penalty imposed relates to an amount
25 of Illinois income tax assessed prior to October 15, 2004.

26 (2) Voluntary compliance with appeal. If an eligible
27 taxpayer elects to participate under this paragraph, then:
28 (i) the Department shall abate and not seek to collect the
29 penalties imposed under Sections 1005(b) and 1005(c) of the
30 Illinois Income Tax Act with respect to such taxable year;
31 (ii) except as otherwise provided in this Act, the
32 Department shall not seek civil or criminal prosecution
33 against the taxpayer for such taxable year with respect to
34 abusive tax avoidance transactions; and (iii) the taxpayer

1 may file a claim for credit or refund as provided in the
2 Illinois Income Tax Act with respect to such taxable year.
3 Notwithstanding Section 909(e) of the Illinois Income Tax
4 Act, the taxpayer may not file a written protest until
5 after either of the following: (i) the Department issues a
6 notice of denial, or (ii) the earlier of (1) the date which
7 is 180 days after the date of a final determination by the
8 Internal Revenue Service with respect to the transactions
9 at issue, or (2) the date that is 4 years after the date
10 the claim for refund was filed or one year after full
11 payment of all tax, including penalty and interest. No
12 penalty may be waived or abated under this Act if the
13 penalty imposed relates to an amount of Illinois income tax
14 assessed prior to October 15, 2004.

15 (c) Eligible taxpayer. The tax shelter voluntary
16 compliance program applies to any taxpayer who, during the
17 period from October 15, 2004 to November 30, 2004, does both of
18 the following:

19 (1) Files an amended return for the taxable year for
20 which the taxpayer used an abusive tax avoidance
21 transaction to under report the taxpayer's Illinois income
22 tax liability, reporting the total Illinois net income and
23 tax for such taxable year computed without regard to any
24 abusive tax avoidance transactions; and

25 (2) Makes full payment of the entire amount of Illinois
26 income tax and interest due for such taxable year (not
27 including a payment made under protest as provided in
28 Section 2a.1 of the State Officers and Employees Money
29 Disposition Act (30 ILCS 230/2a.1)).

30 Section 10. Abusive tax avoidance transaction. For
31 purposes of this Act, the term "abusive tax avoidance
32 transaction" means a plan or arrangement devised for the
33 principal purpose of avoiding federal or Illinois income tax.

1 Abusive tax avoidance transactions include, but are not limited
2 to, "listed transactions", as defined in Treasury Regulations
3 Section 1.6011-4(b)(2), and Illinois listed transactions as
4 defined in Section 501(b)(2)(A)(2) of the Illinois Income Tax
5 Act.

6 Section 15. Article 2 Credits. In the event a taxpayer does
7 not participate in the tax shelter voluntary compliance program
8 with respect to a taxable year in which there exists a
9 deficiency attributable in whole or in part to an abusive tax
10 avoidance transaction, the following apply:

11 (i) Any Article 2 credit otherwise earned in such
12 taxable year shall be disallowed.

13 (ii) Any Article 2 credit carried over or back to such
14 taxable year shall be disallowed.

15 Any Article 2 credit disallowed under item (i) or (ii), or
16 both, of this Section shall be deemed absorbed in such taxable
17 year, and shall not be carried forward or back to any other
18 taxable year.

19 Section 20. The fact of a taxpayer's participation in the
20 tax shelter voluntary compliance program shall not be
21 considered evidence that the taxpayer in fact engaged in an
22 abusive tax avoidance transaction.

23 Section 25. Application of Act. Nothing in this Act
24 applies to small businesses as defined in the Small Business
25 Advisory Act.

26 Section 905. If and only if House Bill 4266 of the 93rd
27 General Assembly becomes law in the same form as passed both
28 houses of the General Assembly on April 29, 2004, the Statute
29 on Statutes is amended by changing Section 1.23 as follows:

1 (5 ILCS 70/1.23) (from Ch. 1, par. 1024)

2 Sec. 1.23. General Revenue Law of Illinois; economic
3 substance doctrine.

4 (a) The "General Revenue Law of Illinois", or any
5 equivalent expression, when used with reference to revenue,
6 shall be deemed to refer to the Property Tax Code and all
7 existing and future amendments thereto and modifications
8 thereof, and all rules now or hereafter adopted pursuant
9 thereto.

10 (b) Economic substance doctrine. In applying the
11 provisions of Chapter 35 (relating to revenue), the economic
12 substance doctrine shall apply.

13 The economic substance doctrine means the common law
14 doctrine under which tax benefits with respect to a transaction
15 or arrangement are not allowable if the transaction or
16 arrangement does not have economic substance or lacks a
17 business purpose (including a transaction or arrangement in
18 which an entity is disregarded as lacking economic substance).
19 For purposes of applying the economic substance doctrine, a
20 transaction or arrangement shall be considered as having
21 economic substance only if (i) the transaction changes in a
22 meaningful way (apart from its tax effects), the taxpayer's
23 economic position, and (ii) the taxpayer has a substantial
24 nontax purpose for entering into such transaction and the
25 transaction is a reasonable means of accomplishing such
26 purpose.

27 (c) The changes made to this Section by this amendatory Act
28 of the 93rd General Assembly do not apply to any small business
29 as defined in the Small Business Advisory Act.

30 (Source: P.A. 88-670, eff. 12-2-94.)

31 Section 910. If and only if House Bill 4266 of the 93rd
32 General Assembly becomes law in the same form as passed both
33 houses of the General Assembly on April 29, 2004, the Illinois

1 Income Tax Act is amended by changing Sections 203, 205, 207,
2 304, 305, 501, 502, 711, 712, 713, 804, 905, 911, 1001, 1002,
3 1005, and 1501 and by adding Sections 709.5, 1007, 1008,
4 1405.5, and 1405.6 as follows:

5 (35 ILCS 5/203) (from Ch. 120, par. 2-203)

6 Sec. 203. Base income defined.

7 (a) Individuals.

8 (1) In general. In the case of an individual, base
9 income means an amount equal to the taxpayer's adjusted
10 gross income for the taxable year as modified by paragraph
11 (2).

12 (2) Modifications. The adjusted gross income referred
13 to in paragraph (1) shall be modified by adding thereto the
14 sum of the following amounts:

15 (A) An amount equal to all amounts paid or accrued
16 to the taxpayer as interest or dividends during the
17 taxable year to the extent excluded from gross income
18 in the computation of adjusted gross income, except
19 stock dividends of qualified public utilities
20 described in Section 305(e) of the Internal Revenue
21 Code;

22 (B) An amount equal to the amount of tax imposed by
23 this Act to the extent deducted from gross income in
24 the computation of adjusted gross income for the
25 taxable year;

26 (C) An amount equal to the amount received during
27 the taxable year as a recovery or refund of real
28 property taxes paid with respect to the taxpayer's
29 principal residence under the Revenue Act of 1939 and
30 for which a deduction was previously taken under
31 subparagraph (L) of this paragraph (2) prior to July 1,
32 1991, the retrospective application date of Article 4
33 of Public Act 87-17. In the case of multi-unit or

1 multi-use structures and farm dwellings, the taxes on
2 the taxpayer's principal residence shall be that
3 portion of the total taxes for the entire property
4 which is attributable to such principal residence;

5 (D) An amount equal to the amount of the capital
6 gain deduction allowable under the Internal Revenue
7 Code, to the extent deducted from gross income in the
8 computation of adjusted gross income;

9 (D-5) An amount, to the extent not included in
10 adjusted gross income, equal to the amount of money
11 withdrawn by the taxpayer in the taxable year from a
12 medical care savings account and the interest earned on
13 the account in the taxable year of a withdrawal
14 pursuant to subsection (b) of Section 20 of the Medical
15 Care Savings Account Act or subsection (b) of Section
16 20 of the Medical Care Savings Account Act of 2000;

17 (D-10) For taxable years ending after December 31,
18 1997, an amount equal to any eligible remediation costs
19 that the individual deducted in computing adjusted
20 gross income and for which the individual claims a
21 credit under subsection (l) of Section 201;

22 (D-15) For taxable years ending on or after
23 December 31, 2000 and before December 31, 2004 ~~2001 and~~
24 ~~thereafter~~, an amount equal to the bonus depreciation
25 deduction ~~(30% of the adjusted basis of the qualified~~
26 ~~property)~~ taken on the taxpayer's federal income tax
27 return for the taxable year under subsection (k) of
28 Section 168 of the Internal Revenue Code; ~~and~~

29 (D-16) If the taxpayer reports a capital gain or
30 loss on the taxpayer's federal income tax return for
31 the taxable year based on a sale or transfer of
32 property for which the taxpayer was required in any
33 taxable year to make an addition modification under
34 subparagraph (D-15), then an amount equal to the

1 aggregate amount of the deductions taken in all taxable
2 years under subparagraph (Z) with respect to that
3 property.~~†~~

4 The taxpayer is required to make the addition
5 modification under this subparagraph only once with
6 respect to any one piece of property;~~† and~~

7 (D-17) For taxable years ending on or after
8 December 31, 2004, an amount equal to the amount
9 otherwise allowed as a deduction in computing base
10 income for interest paid, accrued, or incurred,
11 directly or indirectly, to a foreign person who would
12 be a member of the same unitary business group but for
13 the fact that foreign person's business activity
14 outside the United States is 80% or more of the foreign
15 person's total business activity. The addition
16 modification required by this subparagraph shall be
17 reduced to the extent that dividends were included in
18 base income for the same taxable year and received by
19 the taxpayer or by a member of the taxpayer's unitary
20 business group (including amounts included in gross
21 income under Sections 951 through 964 of the Internal
22 Revenue Code and amounts included in gross income under
23 Section 78 of the Internal Revenue Code) with respect
24 to the stock of the same person to whom the interest
25 was paid, accrued, or incurred. This subparagraph does
26 not apply to an item of interest paid, accrued, or
27 incurred, directly or indirectly, to a foreign person
28 that is subject in a foreign country to a tax on or
29 measured by net income with respect to such interest;

30 (D-18) For taxable years ending on or after
31 December 31, 2004, an amount equal to the amount of
32 intangible expenses and costs otherwise allowed as a
33 deduction in computing base income, and that were paid,
34 accrued, or incurred, directly or indirectly, to a

1 foreign person who would be a member of the same
2 unitary business group but for the fact that the
3 foreign person's business activity outside the United
4 States is 80% or more of that person's total business
5 activity. The addition modification required by this
6 subparagraph shall be reduced to the extent that
7 dividends were included in base income for the same
8 taxable year and received by the taxpayer or by a
9 member of the taxpayer's unitary business group
10 (including amounts included in gross income under
11 Sections 951 through 964 of the Internal Revenue Code
12 and amounts included in gross income under Section 78
13 of the Internal Revenue Code) with respect to the stock
14 of the same person to whom the intangible expenses and
15 costs were directly or indirectly paid, incurred, or
16 accrued. The preceding sentence does not apply to the
17 extent that the same dividends caused a reduction to
18 the addition modification required under Section
19 203(a)(2)(D-17) of this Act. This subparagraph shall
20 not apply to any item of intangible expenses or costs
21 paid, accrued, or incurred, directly or indirectly,
22 from a transaction with a foreign person that is
23 subject in a foreign country to a tax on or measured by
24 net income with respect to such item. As used in this
25 subparagraph, the term "intangible expenses and costs"
26 includes (1) expenses, losses, and costs for, or
27 related to, the direct or indirect acquisition, use,
28 maintenance or management, ownership, sale, exchange,
29 or any other disposition of intangible property; (2)
30 losses incurred, directly or indirectly, from
31 factoring transactions or discounting transactions;
32 (3) royalty, patent, technical, and copyright fees;
33 (4) licensing fees; and (5) other similar expenses and
34 costs. For purposes of this subparagraph, "intangible

1 property" includes patents, patent applications, trade
2 names, trademarks, service marks, copyrights, mask
3 works, trade secrets, and similar types of intangible
4 assets;

5 (D-20) ~~(D-15)~~ For taxable years beginning on or
6 after January 1, 2002, in the case of a distribution
7 from a qualified tuition program under Section 529 of
8 the Internal Revenue Code, other than (i) a
9 distribution from a College Savings Pool created under
10 Section 16.5 of the State Treasurer Act or (ii) a
11 distribution from the Illinois Prepaid Tuition Trust
12 Fund, an amount equal to the amount excluded from gross
13 income under Section 529(c) (3) (B); and

14 (D-25) For taxable years ending on or after
15 December 31, 2004, an amount equal to the amount
16 excluded from gross income under Section 101(a) of the
17 Internal Revenue Code with respect to an
18 employer-owned life insurance contract, but only to
19 the extent that this amount exceeds the sum of the
20 premiums or other amounts paid for the contract. The
21 addition modification provided under this subparagraph
22 does not apply to the extent that proceeds are payable
23 to a member of the family (within the meaning of
24 Section 267(c) (4) of the Internal Revenue Code) of the
25 insured, to any individual who is the designated
26 beneficiary (other than the employer or an affiliate of
27 the employer) of the insured under the contract, to a
28 trust established for the benefit of any such person,
29 or to the estate of the insured, or are to be used to
30 purchase an equity interest in the employer (or an
31 affiliate) from any such person.

32 and by deducting from the total so obtained the sum of the
33 following amounts:

34 (E) For taxable years ending before December 31,

1 2001, any amount included in such total in respect of
2 any compensation (including but not limited to any
3 compensation paid or accrued to a serviceman while a
4 prisoner of war or missing in action) paid to a
5 resident by reason of being on active duty in the Armed
6 Forces of the United States and in respect of any
7 compensation paid or accrued to a resident who as a
8 governmental employee was a prisoner of war or missing
9 in action, and in respect of any compensation paid to a
10 resident in 1971 or thereafter for annual training
11 performed pursuant to Sections 502 and 503, Title 32,
12 United States Code as a member of the Illinois National
13 Guard. For taxable years ending on or after December
14 31, 2001, any amount included in such total in respect
15 of any compensation (including but not limited to any
16 compensation paid or accrued to a serviceman while a
17 prisoner of war or missing in action) paid to a
18 resident by reason of being a member of any component
19 of the Armed Forces of the United States and in respect
20 of any compensation paid or accrued to a resident who
21 as a governmental employee was a prisoner of war or
22 missing in action, and in respect of any compensation
23 paid to a resident in 2001 or thereafter by reason of
24 being a member of the Illinois National Guard. The
25 provisions of this amendatory Act of the 92nd General
26 Assembly are exempt from the provisions of Section 250;

27 (F) An amount equal to all amounts included in such
28 total pursuant to the provisions of Sections 402(a),
29 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the
30 Internal Revenue Code, or included in such total as
31 distributions under the provisions of any retirement
32 or disability plan for employees of any governmental
33 agency or unit, or retirement payments to retired
34 partners, which payments are excluded in computing net

1 earnings from self employment by Section 1402 of the
2 Internal Revenue Code and regulations adopted pursuant
3 thereto;

4 (G) The valuation limitation amount;

5 (H) An amount equal to the amount of any tax
6 imposed by this Act which was refunded to the taxpayer
7 and included in such total for the taxable year;

8 (I) An amount equal to all amounts included in such
9 total pursuant to the provisions of Section 111 of the
10 Internal Revenue Code as a recovery of items previously
11 deducted from adjusted gross income in the computation
12 of taxable income;

13 (J) An amount equal to those dividends included in
14 such total which were paid by a corporation which
15 conducts business operations in an Enterprise Zone or
16 zones created under the Illinois Enterprise Zone Act,
17 and conducts substantially all of its operations in an
18 Enterprise Zone or zones;

19 (K) An amount equal to those dividends included in
20 such total that were paid by a corporation that
21 conducts business operations in a federally designated
22 Foreign Trade Zone or Sub-Zone and that is designated a
23 High Impact Business located in Illinois; provided
24 that dividends eligible for the deduction provided in
25 subparagraph (J) of paragraph (2) of this subsection
26 shall not be eligible for the deduction provided under
27 this subparagraph (K);

28 (L) For taxable years ending after December 31,
29 1983, an amount equal to all social security benefits
30 and railroad retirement benefits included in such
31 total pursuant to Sections 72(r) and 86 of the Internal
32 Revenue Code;

33 (M) With the exception of any amounts subtracted
34 under subparagraph (N), an amount equal to the sum of

1 all amounts disallowed as deductions by (i) Sections
2 171(a) (2), and 265(2) of the Internal Revenue Code of
3 1954, as now or hereafter amended, and all amounts of
4 expenses allocable to interest and disallowed as
5 deductions by Section 265(1) of the Internal Revenue
6 Code of 1954, as now or hereafter amended; and (ii) for
7 taxable years ending on or after August 13, 1999,
8 Sections 171(a) (2), 265, 280C, and 832(b) (5) (B) (i) of
9 the Internal Revenue Code; the provisions of this
10 subparagraph are exempt from the provisions of Section
11 250;

12 (N) An amount equal to all amounts included in such
13 total which are exempt from taxation by this State
14 either by reason of its statutes or Constitution or by
15 reason of the Constitution, treaties or statutes of the
16 United States; provided that, in the case of any
17 statute of this State or of the United States, any
18 treaty of the United States, the Illinois
19 Constitution, or the United States Constitution that
20 exempts income derived from bonds or other obligations
21 from the tax imposed under this Act, the amount
22 exempted shall be the income ~~interest~~ net of bond
23 premium amortization, interest expense incurred on
24 indebtedness to carry the bond or other obligation,
25 expenses incurred in producing the income to be
26 deducted, and all other related expenses. The amount of
27 expenses to be taken into account under this provision
28 may not exceed the amount of income that is exempted;

29 (O) An amount equal to any contribution made to a
30 job training project established pursuant to the Tax
31 Increment Allocation Redevelopment Act;

32 (P) An amount equal to the amount of the deduction
33 used to compute the federal income tax credit for
34 restoration of substantial amounts held under claim of

1 right for the taxable year pursuant to Section 1341 of
2 the Internal Revenue Code of 1986;

3 (Q) An amount equal to any amounts included in such
4 total, received by the taxpayer as an acceleration in
5 the payment of life, endowment or annuity benefits in
6 advance of the time they would otherwise be payable as
7 an indemnity for a terminal illness;

8 (R) An amount equal to the amount of any federal or
9 State bonus paid to veterans of the Persian Gulf War;

10 (S) An amount, to the extent included in adjusted
11 gross income, equal to the amount of a contribution
12 made in the taxable year on behalf of the taxpayer to a
13 medical care savings account established under the
14 Medical Care Savings Account Act or the Medical Care
15 Savings Account Act of 2000 to the extent the
16 contribution is accepted by the account administrator
17 as provided in that Act;

18 (T) An amount, to the extent included in adjusted
19 gross income, equal to the amount of interest earned in
20 the taxable year on a medical care savings account
21 established under the Medical Care Savings Account Act
22 or the Medical Care Savings Account Act of 2000 on
23 behalf of the taxpayer, other than interest added
24 pursuant to item (D-5) of this paragraph (2);

25 (U) For one taxable year beginning on or after
26 January 1, 1994, an amount equal to the total amount of
27 tax imposed and paid under subsections (a) and (b) of
28 Section 201 of this Act on grant amounts received by
29 the taxpayer under the Nursing Home Grant Assistance
30 Act during the taxpayer's taxable years 1992 and 1993;

31 (V) Beginning with tax years ending on or after
32 December 31, 1995 and ending with tax years ending on
33 or before December 31, 2004, an amount equal to the
34 amount paid by a taxpayer who is a self-employed

1 taxpayer, a partner of a partnership, or a shareholder
2 in a Subchapter S corporation for health insurance or
3 long-term care insurance for that taxpayer or that
4 taxpayer's spouse or dependents, to the extent that the
5 amount paid for that health insurance or long-term care
6 insurance may be deducted under Section 213 of the
7 Internal Revenue Code of 1986, has not been deducted on
8 the federal income tax return of the taxpayer, and does
9 not exceed the taxable income attributable to that
10 taxpayer's income, self-employment income, or
11 Subchapter S corporation income; except that no
12 deduction shall be allowed under this item (V) if the
13 taxpayer is eligible to participate in any health
14 insurance or long-term care insurance plan of an
15 employer of the taxpayer or the taxpayer's spouse. The
16 amount of the health insurance and long-term care
17 insurance subtracted under this item (V) shall be
18 determined by multiplying total health insurance and
19 long-term care insurance premiums paid by the taxpayer
20 times a number that represents the fractional
21 percentage of eligible medical expenses under Section
22 213 of the Internal Revenue Code of 1986 not actually
23 deducted on the taxpayer's federal income tax return;

24 (W) For taxable years beginning on or after January
25 1, 1998, all amounts included in the taxpayer's federal
26 gross income in the taxable year from amounts converted
27 from a regular IRA to a Roth IRA. This paragraph is
28 exempt from the provisions of Section 250;

29 (X) For taxable year 1999 and thereafter, an amount
30 equal to the amount of any (i) distributions, to the
31 extent includible in gross income for federal income
32 tax purposes, made to the taxpayer because of his or
33 her status as a victim of persecution for racial or
34 religious reasons by Nazi Germany or any other Axis

1 regime or as an heir of the victim and (ii) items of
2 income, to the extent includible in gross income for
3 federal income tax purposes, attributable to, derived
4 from or in any way related to assets stolen from,
5 hidden from, or otherwise lost to a victim of
6 persecution for racial or religious reasons by Nazi
7 Germany or any other Axis regime immediately prior to,
8 during, and immediately after World War II, including,
9 but not limited to, interest on the proceeds receivable
10 as insurance under policies issued to a victim of
11 persecution for racial or religious reasons by Nazi
12 Germany or any other Axis regime by European insurance
13 companies immediately prior to and during World War II;
14 provided, however, this subtraction from federal
15 adjusted gross income does not apply to assets acquired
16 with such assets or with the proceeds from the sale of
17 such assets; provided, further, this paragraph shall
18 only apply to a taxpayer who was the first recipient of
19 such assets after their recovery and who is a victim of
20 persecution for racial or religious reasons by Nazi
21 Germany or any other Axis regime or as an heir of the
22 victim. The amount of and the eligibility for any
23 public assistance, benefit, or similar entitlement is
24 not affected by the inclusion of items (i) and (ii) of
25 this paragraph in gross income for federal income tax
26 purposes. This paragraph is exempt from the provisions
27 of Section 250;

28 (Y) For taxable years beginning on or after January
29 1, 2002, moneys contributed in the taxable year to a
30 College Savings Pool account under Section 16.5 of the
31 State Treasurer Act, except that amounts excluded from
32 gross income under Section 529(c)(3) (C)(i) of the
33 Internal Revenue Code shall not be considered moneys
34 contributed under this subparagraph (Y). This

1 subparagraph (Y) is exempt from the provisions of
2 Section 250;

3 (Z) For each taxable year ending before December
4 31, 2004 ~~years 2001 and thereafter~~, for the taxable
5 year in which the bonus depreciation deduction ~~(30% of~~
6 ~~the adjusted basis of the qualified property)~~ is taken
7 on the taxpayer's federal income tax return under
8 subsection (k) of Section 168 of the Internal Revenue
9 Code and for each applicable taxable year thereafter,
10 an amount equal to "x", where:

11 (1) "y" equals the amount of the depreciation
12 deduction taken for the taxable year on the
13 taxpayer's federal income tax return on property
14 for which the bonus depreciation deduction ~~(30% of~~
15 ~~the adjusted basis of the qualified property)~~ was
16 taken in any year under subsection (k) of Section
17 168 of the Internal Revenue Code (for this purpose,
18 the depreciation deduction taken for the taxable
19 year on the taxpayer's federal income tax return is
20 deemed to take into account any depreciation
21 adjustment required under Section 203(e)(2)(I)),
22 but not including the bonus depreciation
23 deduction; and

24 (2) for property on which a bonus depreciation
25 deduction of 30% of the adjusted basis was taken,
26 "x" equals "y" multiplied by 30 and then divided by
27 70 (or "y" multiplied by 0.429), and for property
28 on which a bonus depreciation deduction of 50% of
29 the adjusted basis was taken, "x" equals "y"
30 multiplied by 1.0.

31 The aggregate amount deducted under this
32 subparagraph in all taxable years for any one piece of
33 property may not exceed the amount of the bonus
34 depreciation deduction ~~(30% of the adjusted basis of~~

1 ~~the qualified property~~ taken on that property on the
2 taxpayer's federal income tax return under subsection
3 (k) of Section 168 of the Internal Revenue Code; ~~and~~

4 (AA) If the taxpayer reports a capital gain or loss
5 on the taxpayer's federal income tax return for the
6 taxable year based on a sale or transfer of property
7 for which the taxpayer was required in any taxable year
8 to make an addition modification under subparagraph
9 (D-15), then an amount equal to that addition
10 modification.

11 The taxpayer is allowed to take the deduction under
12 this subparagraph only once with respect to any one
13 piece of property; ~~and~~

14 (BB) ~~(Z)~~ Any amount included in adjusted gross
15 income, other than salary, received by a driver in a
16 ridesharing arrangement using a motor vehicle; ~~;~~

17 (CC) The amount of (i) any interest income (net of
18 the deductions allocable thereto) taken into account
19 for the taxable year with respect to a transaction with
20 a taxpayer that is required to make an addition
21 modification with respect to such transaction under
22 Section 203(a)(2)(D-17), 203(b)(2)(E-13),
23 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
24 the amount of that addition modification, and (ii) any
25 income from intangible property (net of the deductions
26 allocable thereto) taken into account for the taxable
27 year with respect to a transaction with a taxpayer that
28 is required to make an addition modification with
29 respect to such transaction under Section
30 203(a)(2)(D-18), 203(b)(2)(E-14), 203(c)(2)(G-13), or
31 203(d)(2)(D-8), but not to exceed the amount of that
32 addition modification;

33 (DD) An amount equal to the interest income taken
34 into account for the taxable year (net of the

1 deductions allocable thereto) with respect to
2 transactions with a foreign person who would be a
3 member of the taxpayer's unitary business group but for
4 the fact that the foreign person's business activity
5 outside the United States is 80% or more of that
6 person's total business activity, but not to exceed the
7 addition modification required to be made for the same
8 taxable year under Section 203(a)(2)(D-17) for
9 interest paid, accrued, or incurred, directly or
10 indirectly, to the same foreign person; and

11 (EE) An amount equal to the income from intangible
12 property taken into account for the taxable year (net
13 of the deductions allocable thereto) with respect to
14 transactions with a foreign person who would be a
15 member of the taxpayer's unitary business group but for
16 the fact that the foreign person's business activity
17 outside the United States is 80% or more of that
18 person's total business activity, but not to exceed the
19 addition modification required to be made for the same
20 taxable year under Section 203(a)(2)(D-18) for
21 intangible expenses and costs paid, accrued, or
22 incurred, directly or indirectly, to the same foreign
23 person.

24 (b) Corporations.

25 (1) In general. In the case of a corporation, base
26 income means an amount equal to the taxpayer's taxable
27 income for the taxable year as modified by paragraph (2).

28 (2) Modifications. The taxable income referred to in
29 paragraph (1) shall be modified by adding thereto the sum
30 of the following amounts:

31 (A) An amount equal to all amounts paid or accrued
32 to the taxpayer as interest and all distributions
33 received from regulated investment companies during

1 the taxable year to the extent excluded from gross
2 income in the computation of taxable income;

3 (B) An amount equal to the amount of tax imposed by
4 this Act to the extent deducted from gross income in
5 the computation of taxable income for the taxable year;

6 (C) In the case of a regulated investment company,
7 an amount equal to the excess of (i) the net long-term
8 capital gain for the taxable year, over (ii) the amount
9 of the capital gain dividends designated as such in
10 accordance with Section 852(b)(3)(C) of the Internal
11 Revenue Code and any amount designated under Section
12 852(b)(3)(D) of the Internal Revenue Code,
13 attributable to the taxable year (this amendatory Act
14 of 1995 (Public Act 89-89) is declarative of existing
15 law and is not a new enactment);

16 (D) The amount of any net operating loss deduction
17 taken in arriving at taxable income, other than a net
18 operating loss carried forward from a taxable year
19 ending prior to December 31, 1986;

20 (E) For taxable years in which a net operating loss
21 carryback or carryforward from a taxable year ending
22 prior to December 31, 1986 is an element of taxable
23 income under paragraph (1) of subsection (e) or
24 subparagraph (E) of paragraph (2) of subsection (e),
25 the amount by which addition modifications other than
26 those provided by this subparagraph (E) exceeded
27 subtraction modifications in such earlier taxable
28 year, with the following limitations applied in the
29 order that they are listed:

30 (i) the addition modification relating to the
31 net operating loss carried back or forward to the
32 taxable year from any taxable year ending prior to
33 December 31, 1986 shall be reduced by the amount of
34 addition modification under this subparagraph (E)

1 which related to that net operating loss and which
2 was taken into account in calculating the base
3 income of an earlier taxable year, and

4 (ii) the addition modification relating to the
5 net operating loss carried back or forward to the
6 taxable year from any taxable year ending prior to
7 December 31, 1986 shall not exceed the amount of
8 such carryback or carryforward;

9 For taxable years in which there is a net operating
10 loss carryback or carryforward from more than one other
11 taxable year ending prior to December 31, 1986, the
12 addition modification provided in this subparagraph
13 (E) shall be the sum of the amounts computed
14 independently under the preceding provisions of this
15 subparagraph (E) for each such taxable year;

16 (E-5) For taxable years ending after December 31,
17 1997, an amount equal to any eligible remediation costs
18 that the corporation deducted in computing adjusted
19 gross income and for which the corporation claims a
20 credit under subsection (l) of Section 201;

21 (E-10) For taxable years ending on or after
22 December 31, 2000 and before December 31, 2004 ~~2001 and~~
23 ~~thereafter~~, an amount equal to the bonus depreciation
24 deduction ~~(30% of the adjusted basis of the qualified~~
25 ~~property)~~ taken on the taxpayer's federal income tax
26 return for the taxable year under subsection (k) of
27 Section 168 of the Internal Revenue Code; ~~and~~

28 (E-11) If the taxpayer reports a capital gain or
29 loss on the taxpayer's federal income tax return for
30 the taxable year based on a sale or transfer of
31 property for which the taxpayer was required in any
32 taxable year to make an addition modification under
33 subparagraph (E-10), then an amount equal to the
34 aggregate amount of the deductions taken in all taxable

1 years under subparagraph (T) with respect to that
2 property.~~†~~

3 The taxpayer is required to make the addition
4 modification under this subparagraph only once with
5 respect to any one piece of property;

6 (E-12) For taxable years ending on or after
7 December 31, 2004, to the extent not otherwise included
8 in base income, an amount equal to the amount of
9 dividends received, directly or indirectly, (including
10 amounts included in gross income pursuant to Sections
11 951 through 964 of the Internal Revenue Code and
12 amounts included in gross income under Section 78 of
13 the Internal Revenue Code) with respect to the stock of
14 a passive income affiliate, as defined in Section
15 1501(a)(29) of this Act;

16 (E-13) For taxable years ending on or after
17 December 31, 2004, an amount equal to the amount
18 otherwise allowed as a deduction in computing base
19 income for interest paid, accrued, or incurred,
20 directly or indirectly, to a foreign person who would
21 be a member of the same unitary business group but for
22 the fact the foreign person's business activity
23 outside the United States is 80% or more of the foreign
24 person's total business activity. The addition
25 modification required by this subparagraph shall be
26 reduced to the extent that dividends were included in
27 base income for the same taxable year and received by
28 the taxpayer or by a member of the taxpayer's unitary
29 business group (including amounts included in gross
30 income pursuant to Sections 951 through 964 of the
31 Internal Revenue Code and amounts included in gross
32 income under Section 78 of the Internal Revenue Code)
33 with respect to the stock of the same person to whom
34 the interest was paid, accrued, or incurred. This

1 subparagraph shall not apply to an item of interest
2 paid, accrued, or incurred, directly or indirectly, to
3 a foreign person who is subject in a foreign country to
4 a tax on or measured by net income with respect to such
5 interest;

6 (E-14) For taxable years ending on or after
7 December 31, 2004, an amount equal to the amount of
8 intangible expenses and costs otherwise allowed as a
9 deduction in computing base income, and that were paid,
10 accrued, or incurred, directly or indirectly, to a
11 foreign person who would be a member of the same
12 unitary business group but for the fact that the
13 foreign person's business activity outside the United
14 States is 80% or more of that person's total business
15 activity. The addition modification required by this
16 subparagraph shall be reduced to the extent that
17 dividends were included in base income for the same
18 taxable year and received by the taxpayer or by a
19 member of the taxpayer's unitary business group
20 (including amounts included in gross income pursuant
21 to Sections 951 through 964 of the Internal Revenue
22 Code and amounts included in gross income under Section
23 78 of the Internal Revenue Code) with respect to the
24 stock of the same person to whom the intangible
25 expenses and costs were directly or indirectly paid,
26 incurred, or accrued. The preceding sentence shall not
27 apply to the extent that the same dividends caused a
28 reduction to the addition modification required under
29 Section 203(b) (2) (E-13) of this Act. This subparagraph
30 shall not apply to any item of intangible expenses or
31 costs paid, accrued, or incurred, directly or
32 indirectly, from a transaction with a foreign person
33 who is subject in a foreign country to a tax on or
34 measured by net income with respect to such item. As

1 used in this subparagraph, the term "intangible
2 expenses and costs" includes (1) expenses, losses, and
3 costs for, or related to, the direct or indirect
4 acquisition, use, maintenance or management,
5 ownership, sale, exchange, or any other disposition of
6 intangible property; (2) losses incurred, directly or
7 indirectly, from factoring transactions or discounting
8 transactions; (3) royalty, patent, technical, and
9 copyright fees; (4) licensing fees; and (5) other
10 similar expenses and costs. For purposes of this
11 subparagraph, "intangible property" includes patents,
12 patent applications, trade names, trademarks, service
13 marks, copyrights, mask works, trade secrets, and
14 similar types of intangible assets; and

15 (E-15) For taxable years ending on or after
16 December 31, 2004, an amount equal to the amount
17 excluded from gross income under Section 101(a) of the
18 Internal Revenue Code with respect to an
19 employer-owned life insurance contract, but only to
20 the extent that this amount exceeds the sum of the
21 premiums or other amounts paid for the contract. The
22 addition modification provided under this subparagraph
23 does not apply to the extent that proceeds are payable
24 to a member of the family (within the meaning of
25 Section 267(c)(4) of the Internal Revenue Code) of the
26 insured, to any individual who is the designated
27 beneficiary (other than the employer or an affiliate of
28 the employer) of the insured under the contract, to a
29 trust established for the benefit of any such person,
30 or to the estate of the insured, or are to be used to
31 purchase an equity interest in the employer (or an
32 affiliate) from any such person.

33 and by deducting from the total so obtained the sum of the
34 following amounts:

1 (F) An amount equal to the amount of any tax
2 imposed by this Act which was refunded to the taxpayer
3 and included in such total for the taxable year;

4 (G) An amount equal to any amount included in such
5 total under Section 78 of the Internal Revenue Code;

6 (H) In the case of a regulated investment company,
7 an amount equal to the amount of exempt interest
8 dividends as defined in subsection (b) (5) of Section
9 852 of the Internal Revenue Code, paid to shareholders
10 for the taxable year;

11 (I) With the exception of any amounts subtracted
12 under subparagraph (J), an amount equal to the sum of
13 all amounts disallowed as deductions by (i) Sections
14 171(a) (2), and 265(a)(2) and amounts disallowed as
15 interest expense by Section 291(a)(3) of the Internal
16 Revenue Code, as now or hereafter amended, and all
17 amounts of expenses allocable to interest and
18 disallowed as deductions by Section 265(a)(1) of the
19 Internal Revenue Code, as now or hereafter amended; and
20 (ii) for taxable years ending on or after August 13,
21 1999, Sections 171(a)(2), 265, 280C, 291(a)(3), and
22 832(b)(5)(B)(i) of the Internal Revenue Code; the
23 provisions of this subparagraph are exempt from the
24 provisions of Section 250;

25 (J) An amount equal to all amounts included in such
26 total which are exempt from taxation by this State
27 either by reason of its statutes or Constitution or by
28 reason of the Constitution, treaties or statutes of the
29 United States; provided that, in the case of any
30 statute of this State or of the United States, any
31 treaty of the United States, the Illinois
32 Constitution, or the United States Constitution that
33 exempts income derived from bonds or other obligations
34 from the tax imposed under this Act, the amount

1 exempted shall be the income ~~interest~~ net of bond
2 premium amortization, interest expense incurred on
3 indebtedness to carry the bond or other obligation,
4 expenses incurred in producing the income to be
5 deducted, and all other related expenses. The amount of
6 expenses to be taken into account under this provision
7 may not exceed the amount of income that is exempted;

8 (K) An amount equal to those dividends included in
9 such total which were paid by a corporation which
10 conducts business operations in an Enterprise Zone or
11 zones created under the Illinois Enterprise Zone Act
12 and conducts substantially all of its operations in an
13 Enterprise Zone or zones;

14 (L) An amount equal to those dividends included in
15 such total that were paid by a corporation that
16 conducts business operations in a federally designated
17 Foreign Trade Zone or Sub-Zone and that is designated a
18 High Impact Business located in Illinois; provided
19 that dividends eligible for the deduction provided in
20 subparagraph (K) of paragraph 2 of this subsection
21 shall not be eligible for the deduction provided under
22 this subparagraph (L);

23 (M) For any taxpayer that is a financial
24 organization within the meaning of Section 304(c) of
25 this Act, an amount included in such total as interest
26 income from a loan or loans made by such taxpayer to a
27 borrower, to the extent that such a loan is secured by
28 property which is eligible for the Enterprise Zone
29 Investment Credit. To determine the portion of a loan
30 or loans that is secured by property eligible for a
31 Section 201(f) investment credit to the borrower, the
32 entire principal amount of the loan or loans between
33 the taxpayer and the borrower should be divided into
34 the basis of the Section 201(f) investment credit

1 property which secures the loan or loans, using for
2 this purpose the original basis of such property on the
3 date that it was placed in service in the Enterprise
4 Zone. The subtraction modification available to
5 taxpayer in any year under this subsection shall be
6 that portion of the total interest paid by the borrower
7 with respect to such loan attributable to the eligible
8 property as calculated under the previous sentence;

9 (M-1) For any taxpayer that is a financial
10 organization within the meaning of Section 304(c) of
11 this Act, an amount included in such total as interest
12 income from a loan or loans made by such taxpayer to a
13 borrower, to the extent that such a loan is secured by
14 property which is eligible for the High Impact Business
15 Investment Credit. To determine the portion of a loan
16 or loans that is secured by property eligible for a
17 Section 201(h) investment credit to the borrower, the
18 entire principal amount of the loan or loans between
19 the taxpayer and the borrower should be divided into
20 the basis of the Section 201(h) investment credit
21 property which secures the loan or loans, using for
22 this purpose the original basis of such property on the
23 date that it was placed in service in a federally
24 designated Foreign Trade Zone or Sub-Zone located in
25 Illinois. No taxpayer that is eligible for the
26 deduction provided in subparagraph (M) of paragraph
27 (2) of this subsection shall be eligible for the
28 deduction provided under this subparagraph (M-1). The
29 subtraction modification available to taxpayers in any
30 year under this subsection shall be that portion of the
31 total interest paid by the borrower with respect to
32 such loan attributable to the eligible property as
33 calculated under the previous sentence;

34 (N) Two times any contribution made during the

1 taxable year to a designated zone organization to the
2 extent that the contribution (i) qualifies as a
3 charitable contribution under subsection (c) of
4 Section 170 of the Internal Revenue Code and (ii) must,
5 by its terms, be used for a project approved by the
6 Department of Commerce and Economic Opportunity
7 ~~Community Affairs~~ under Section 11 of the Illinois
8 Enterprise Zone Act;

9 (O) An amount equal to: (i) 85% for taxable years
10 ending on or before December 31, 1992, or, a percentage
11 equal to the percentage allowable under Section
12 243(a)(1) of the Internal Revenue Code of 1986 for
13 taxable years ending after December 31, 1992, of the
14 amount by which dividends included in taxable income
15 and received from a corporation that is not created or
16 organized under the laws of the United States or any
17 state or political subdivision thereof, including, for
18 taxable years ending on or after December 31, 1988,
19 dividends received or deemed received or paid or deemed
20 paid under Sections 951 through 964 of the Internal
21 Revenue Code, exceed the amount of the modification
22 provided under subparagraph (G) of paragraph (2) of
23 this subsection (b) which is related to such dividends;
24 plus (ii) 100% of the amount by which dividends,
25 included in taxable income and received, including,
26 for taxable years ending on or after December 31, 1988,
27 dividends received or deemed received or paid or deemed
28 paid under Sections 951 through 964 of the Internal
29 Revenue Code, from any such corporation specified in
30 clause (i) that would but for the provisions of Section
31 1504 (b) (3) of the Internal Revenue Code be treated as
32 a member of the affiliated group which includes the
33 dividend recipient, exceed the amount of the
34 modification provided under subparagraph (G) of

1 paragraph (2) of this subsection (b) which is related
2 to such dividends;

3 (P) An amount equal to any contribution made to a
4 job training project established pursuant to the Tax
5 Increment Allocation Redevelopment Act;

6 (Q) An amount equal to the amount of the deduction
7 used to compute the federal income tax credit for
8 restoration of substantial amounts held under claim of
9 right for the taxable year pursuant to Section 1341 of
10 the Internal Revenue Code of 1986;

11 (R) In the case of an attorney-in-fact with respect
12 to whom an interinsurer or a reciprocal insurer has
13 made the election under Section 835 of the Internal
14 Revenue Code, 26 U.S.C. 835, an amount equal to the
15 excess, if any, of the amounts paid or incurred by that
16 interinsurer or reciprocal insurer in the taxable year
17 to the attorney-in-fact over the deduction allowed to
18 that interinsurer or reciprocal insurer with respect
19 to the attorney-in-fact under Section 835(b) of the
20 Internal Revenue Code for the taxable year;

21 (S) For taxable years ending on or after December
22 31, 1997, in the case of a Subchapter S corporation, an
23 amount equal to all amounts of income allocable to a
24 shareholder subject to the Personal Property Tax
25 Replacement Income Tax imposed by subsections (c) and
26 (d) of Section 201 of this Act, including amounts
27 allocable to organizations exempt from federal income
28 tax by reason of Section 501(a) of the Internal Revenue
29 Code. This subparagraph (S) is exempt from the
30 provisions of Section 250;

31 (T) For each taxable year ending before December
32 31, 2004 ~~years 2001 and thereafter~~, for the taxable
33 year in which the bonus depreciation deduction ~~(30% of~~
34 ~~the adjusted basis of the qualified property)~~ is taken

1 on the taxpayer's federal income tax return under
2 subsection (k) of Section 168 of the Internal Revenue
3 Code and for each applicable taxable year thereafter,
4 an amount equal to "x", where:

5 (1) "y" equals the amount of the depreciation
6 deduction taken for the taxable year on the
7 taxpayer's federal income tax return on property
8 for which the bonus depreciation deduction ~~(30% of~~
9 ~~the adjusted basis of the qualified property)~~ was
10 taken in any year under subsection (k) of Section
11 168 of the Internal Revenue Code (for this purpose,
12 the depreciation deduction taken for the taxable
13 year on the taxpayer's federal income tax return is
14 deemed to take into account any depreciation
15 adjustment required under Section 203(e)(2)(I)),
16 but not including the bonus depreciation
17 deduction; and

18 (2) for property on which a bonus depreciation
19 deduction of 30% of the adjusted basis was taken,
20 "x" equals "y" multiplied by 30 and then divided by
21 70 (or "y" multiplied by 0.429), and for property
22 on which a bonus depreciation deduction of 50% of
23 the adjusted basis was taken, "x" equals "y"
24 multiplied by 1.0.

25 The aggregate amount deducted under this
26 subparagraph in all taxable years for any one piece of
27 property may not exceed the amount of the bonus
28 depreciation deduction ~~(30% of the adjusted basis of~~
29 ~~the qualified property)~~ taken on that property on the
30 taxpayer's federal income tax return under subsection
31 (k) of Section 168 of the Internal Revenue Code; and

32 (U) If the taxpayer reports a capital gain or loss
33 on the taxpayer's federal income tax return for the
34 taxable year based on a sale or transfer of property

1 for which the taxpayer was required in any taxable year
2 to make an addition modification under subparagraph
3 (E-10), then an amount equal to that addition
4 modification.

5 The taxpayer is allowed to take the deduction under
6 this subparagraph only once with respect to any one
7 piece of property;~~z-~~

8 (V) The amount of: (i) any interest income (net of
9 the deductions allocable thereto) taken into account
10 for the taxable year with respect to a transaction with
11 a taxpayer that is required to make an addition
12 modification with respect to such transaction under
13 Section 203(a)(2)(D-17), 203(b)(2)(E-13),
14 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
15 the amount of such addition modification and (ii) any
16 income from intangible property (net of the deductions
17 allocable thereto) taken into account for the taxable
18 year with respect to a transaction with a taxpayer that
19 is required to make an addition modification with
20 respect to such transaction under Section
21 203(a)(2)(D-18), 203(b)(2)(E-14), 203(c)(2)(G-13), or
22 203(d)(2)(D-8), but not to exceed the amount of such
23 addition modification;

24 (W) An amount equal to the interest income taken
25 into account for the taxable year (net of the
26 deductions allocable thereto) with respect to
27 transactions with a foreign person who would be a
28 member of the taxpayer's unitary business group but for
29 the fact that the foreign person's business activity
30 outside the United States is 80% or more of that
31 person's total business activity, but not to exceed the
32 addition modification required to be made for the same
33 taxable year under Section 203(b)(2)(E-13) for
34 interest paid, accrued, or incurred, directly or

1 indirectly, to the same foreign person; and

2 (X) An amount equal to the income from intangible
3 property taken into account for the taxable year (net
4 of the deductions allocable thereto) with respect to
5 transactions with a foreign person who would be a
6 member of the taxpayer's unitary business group but for
7 the fact that the foreign person's business activity
8 outside the United States is 80% or more of that
9 person's total business activity, but not to exceed the
10 addition modification required to be made for the same
11 taxable year under Section 203(b)(2)(E-14) for
12 intangible expenses and costs paid, accrued, or
13 incurred, directly or indirectly, to the same foreign
14 person.

15 (3) Special rule. For purposes of paragraph (2) (A),
16 "gross income" in the case of a life insurance company, for
17 tax years ending on and after December 31, 1994, shall mean
18 the gross investment income for the taxable year.

19 (c) Trusts and estates.

20 (1) In general. In the case of a trust or estate, base
21 income means an amount equal to the taxpayer's taxable
22 income for the taxable year as modified by paragraph (2).

23 (2) Modifications. Subject to the provisions of
24 paragraph (3), the taxable income referred to in paragraph
25 (1) shall be modified by adding thereto the sum of the
26 following amounts:

27 (A) An amount equal to all amounts paid or accrued
28 to the taxpayer as interest or dividends during the
29 taxable year to the extent excluded from gross income
30 in the computation of taxable income;

31 (B) In the case of (i) an estate, \$600; (ii) a
32 trust which, under its governing instrument, is
33 required to distribute all of its income currently,

1 \$300; and (iii) any other trust, \$100, but in each such
2 case, only to the extent such amount was deducted in
3 the computation of taxable income;

4 (C) An amount equal to the amount of tax imposed by
5 this Act to the extent deducted from gross income in
6 the computation of taxable income for the taxable year;

7 (D) The amount of any net operating loss deduction
8 taken in arriving at taxable income, other than a net
9 operating loss carried forward from a taxable year
10 ending prior to December 31, 1986;

11 (E) For taxable years in which a net operating loss
12 carryback or carryforward from a taxable year ending
13 prior to December 31, 1986 is an element of taxable
14 income under paragraph (1) of subsection (e) or
15 subparagraph (E) of paragraph (2) of subsection (e),
16 the amount by which addition modifications other than
17 those provided by this subparagraph (E) exceeded
18 subtraction modifications in such taxable year, with
19 the following limitations applied in the order that
20 they are listed:

21 (i) the addition modification relating to the
22 net operating loss carried back or forward to the
23 taxable year from any taxable year ending prior to
24 December 31, 1986 shall be reduced by the amount of
25 addition modification under this subparagraph (E)
26 which related to that net operating loss and which
27 was taken into account in calculating the base
28 income of an earlier taxable year, and

29 (ii) the addition modification relating to the
30 net operating loss carried back or forward to the
31 taxable year from any taxable year ending prior to
32 December 31, 1986 shall not exceed the amount of
33 such carryback or carryforward;

34 For taxable years in which there is a net operating

1 loss carryback or carryforward from more than one other
2 taxable year ending prior to December 31, 1986, the
3 addition modification provided in this subparagraph
4 (E) shall be the sum of the amounts computed
5 independently under the preceding provisions of this
6 subparagraph (E) for each such taxable year;

7 (F) For taxable years ending on or after January 1,
8 1989, an amount equal to the tax deducted pursuant to
9 Section 164 of the Internal Revenue Code if the trust
10 or estate is claiming the same tax for purposes of the
11 Illinois foreign tax credit under Section 601 of this
12 Act;

13 (G) An amount equal to the amount of the capital
14 gain deduction allowable under the Internal Revenue
15 Code, to the extent deducted from gross income in the
16 computation of taxable income;

17 (G-5) For taxable years ending after December 31,
18 1997, an amount equal to any eligible remediation costs
19 that the trust or estate deducted in computing adjusted
20 gross income and for which the trust or estate claims a
21 credit under subsection (l) of Section 201;

22 (G-10) For taxable years ending on or after
23 December 31, 2000 and before December 31, 2004 ~~2001 and~~
24 ~~thereafter~~, an amount equal to the bonus depreciation
25 deduction ~~(30% of the adjusted basis of the qualified~~
26 ~~property)~~ taken on the taxpayer's federal income tax
27 return for the taxable year under subsection (k) of
28 Section 168 of the Internal Revenue Code; and

29 (G-11) If the taxpayer reports a capital gain or
30 loss on the taxpayer's federal income tax return for
31 the taxable year based on a sale or transfer of
32 property for which the taxpayer was required in any
33 taxable year to make an addition modification under
34 subparagraph (G-10), then an amount equal to the

1 aggregate amount of the deductions taken in all taxable
2 years under subparagraph (R) with respect to that
3 property.~~†~~

4 The taxpayer is required to make the addition
5 modification under this subparagraph only once with
6 respect to any one piece of property;

7 (G-12) For taxable years ending on or after
8 December 31, 2004, an amount equal to the amount
9 otherwise allowed as a deduction in computing base
10 income for interest paid, accrued, or incurred,
11 directly or indirectly, to a foreign person who would
12 be a member of the same unitary business group but for
13 the fact that the foreign person's business activity
14 outside the United States is 80% or more of the foreign
15 person's total business activity. The addition
16 modification required by this subparagraph shall be
17 reduced to the extent that dividends were included in
18 base income for the same taxable year and received by
19 the taxpayer or by a member of the taxpayer's unitary
20 business group (including amounts included in gross
21 income pursuant to Sections 951 through 964 of the
22 Internal Revenue Code and amounts included in gross
23 income under Section 78 of the Internal Revenue Code)
24 with respect to the stock of the same person to whom
25 the interest was paid, accrued, or incurred. This
26 subparagraph shall not apply to an item of interest
27 paid, accrued, or incurred, directly or indirectly, to
28 a foreign person that is subject in a foreign country
29 to a tax on or measured by net income with respect to
30 such interest;

31 (G-13) For taxable years ending on or after
32 December 31, 2004, an amount equal to the amount of
33 intangible expenses and costs otherwise allowed as a
34 deduction in computing base income, and that were paid,

1 accrued, or incurred, directly or indirectly, to a
2 foreign person who would be a member of the same
3 unitary business group but for the fact that the
4 foreign person's business activity outside the United
5 States is 80% or more of that person's total business
6 activity. The addition modification required by this
7 subparagraph shall be reduced to the extent that
8 dividends were included in base income for the same
9 taxable year and received by the taxpayer or by a
10 member of the taxpayer's unitary business group
11 (including amounts included in gross income pursuant
12 to Sections 951 through 964 of the Internal Revenue
13 Code and amounts included in gross income under Section
14 78 of the Internal Revenue Code) with respect to the
15 stock of the same person to whom the intangible
16 expenses and costs were directly or indirectly paid,
17 incurred, or accrued. The preceding sentence shall not
18 apply to the extent that the same dividends caused a
19 reduction to the addition modification required under
20 Section 203 (c) (2) (G-12) of this Act. This
21 subparagraph shall not apply to any item of intangible
22 expenses or costs paid, accrued, or incurred, directly
23 or indirectly, from a transaction with a foreign person
24 who is subject in a foreign country to a tax on or
25 measured by net income with respect to such item. As
26 used in this subparagraph, the term "intangible
27 expenses and costs" includes: (1) expenses, losses,
28 and costs for or related to the direct or indirect
29 acquisition, use, maintenance or management,
30 ownership, sale, exchange, or any other disposition of
31 intangible property; (2) losses incurred, directly or
32 indirectly, from factoring transactions or discounting
33 transactions; (3) royalty, patent, technical, and
34 copyright fees; (4) licensing fees; and (5) other

1 similar expenses and costs. For purposes of this
2 subparagraph, "intangible property" includes patents,
3 patent applications, trade names, trademarks, service
4 marks, copyrights, mask works, trade secrets, and
5 similar types of intangible assets; and

6 (G-15) For taxable years ending on or after
7 December 31, 2004, an amount equal to the amount
8 excluded from gross income under Section 101(a) of the
9 Internal Revenue Code with respect to an
10 employer-owned life insurance contract, but only to
11 the extent that this amount exceeds the sum of the
12 premiums or other amounts paid for the contract. The
13 addition modification provided under this item does
14 not apply to the extent that proceeds are payable to a
15 member of the family (within the meaning of Section
16 267(c) (4) of the Internal Revenue Code) of the insured,
17 to any individual who is the designated beneficiary
18 (other than the employer or an affiliate of the
19 employer) of the insured under the contract, to a trust
20 established for the benefit of any such person, or to
21 the estate of the insured, or are to be used to
22 purchase an equity interest in the employer (or an
23 affiliate) from any such person.

24 and by deducting from the total so obtained the sum of the
25 following amounts:

26 (H) An amount equal to all amounts included in such
27 total pursuant to the provisions of Sections 402(a),
28 402(c), 403(a), 403(b), 406(a), 407(a) and 408 of the
29 Internal Revenue Code or included in such total as
30 distributions under the provisions of any retirement
31 or disability plan for employees of any governmental
32 agency or unit, or retirement payments to retired
33 partners, which payments are excluded in computing net
34 earnings from self employment by Section 1402 of the

1 Internal Revenue Code and regulations adopted pursuant
2 thereto;

3 (I) The valuation limitation amount;

4 (J) An amount equal to the amount of any tax
5 imposed by this Act which was refunded to the taxpayer
6 and included in such total for the taxable year;

7 (K) An amount equal to all amounts included in
8 taxable income as modified by subparagraphs (A), (B),
9 (C), (D), (E), (F) and (G) which are exempt from
10 taxation by this State either by reason of its statutes
11 or Constitution or by reason of the Constitution,
12 treaties or statutes of the United States; provided
13 that, in the case of any statute of this State or of
14 the United States, any treaty of the United States, the
15 Illinois Constitution, or the United States
16 Constitution that exempts income derived from bonds or
17 other obligations from the tax imposed under this Act,
18 the amount exempted shall be the income interest net of
19 bond premium amortization, interest expense incurred
20 on indebtedness to carry the bond or other obligation,
21 expenses incurred in producing the income to be
22 deducted, and all other related expenses. The amount of
23 expenses to be taken into account under this provision
24 may not exceed the amount of income that is exempted;

25 (L) With the exception of any amounts subtracted
26 under subparagraph (K), an amount equal to the sum of
27 all amounts disallowed as deductions by (i) Sections
28 171(a) (2) and 265(a) (2) of the Internal Revenue Code,
29 as now or hereafter amended, and all amounts of
30 expenses allocable to interest and disallowed as
31 deductions by Section 265(1) of the Internal Revenue
32 Code of 1954, as now or hereafter amended; and (ii) for
33 taxable years ending on or after August 13, 1999,
34 Sections 171(a) (2), 265, 280C, and 832(b) (5) (B) (i) of

1 the Internal Revenue Code; the provisions of this
2 subparagraph are exempt from the provisions of Section
3 250;

4 (M) An amount equal to those dividends included in
5 such total which were paid by a corporation which
6 conducts business operations in an Enterprise Zone or
7 zones created under the Illinois Enterprise Zone Act
8 and conducts substantially all of its operations in an
9 Enterprise Zone or Zones;

10 (N) An amount equal to any contribution made to a
11 job training project established pursuant to the Tax
12 Increment Allocation Redevelopment Act;

13 (O) An amount equal to those dividends included in
14 such total that were paid by a corporation that
15 conducts business operations in a federally designated
16 Foreign Trade Zone or Sub-Zone and that is designated a
17 High Impact Business located in Illinois; provided
18 that dividends eligible for the deduction provided in
19 subparagraph (M) of paragraph (2) of this subsection
20 shall not be eligible for the deduction provided under
21 this subparagraph (O);

22 (P) An amount equal to the amount of the deduction
23 used to compute the federal income tax credit for
24 restoration of substantial amounts held under claim of
25 right for the taxable year pursuant to Section 1341 of
26 the Internal Revenue Code of 1986;

27 (Q) For taxable year 1999 and thereafter, an amount
28 equal to the amount of any (i) distributions, to the
29 extent includible in gross income for federal income
30 tax purposes, made to the taxpayer because of his or
31 her status as a victim of persecution for racial or
32 religious reasons by Nazi Germany or any other Axis
33 regime or as an heir of the victim and (ii) items of
34 income, to the extent includible in gross income for

1 federal income tax purposes, attributable to, derived
2 from or in any way related to assets stolen from,
3 hidden from, or otherwise lost to a victim of
4 persecution for racial or religious reasons by Nazi
5 Germany or any other Axis regime immediately prior to,
6 during, and immediately after World War II, including,
7 but not limited to, interest on the proceeds receivable
8 as insurance under policies issued to a victim of
9 persecution for racial or religious reasons by Nazi
10 Germany or any other Axis regime by European insurance
11 companies immediately prior to and during World War II;
12 provided, however, this subtraction from federal
13 adjusted gross income does not apply to assets acquired
14 with such assets or with the proceeds from the sale of
15 such assets; provided, further, this paragraph shall
16 only apply to a taxpayer who was the first recipient of
17 such assets after their recovery and who is a victim of
18 persecution for racial or religious reasons by Nazi
19 Germany or any other Axis regime or as an heir of the
20 victim. The amount of and the eligibility for any
21 public assistance, benefit, or similar entitlement is
22 not affected by the inclusion of items (i) and (ii) of
23 this paragraph in gross income for federal income tax
24 purposes. This paragraph is exempt from the provisions
25 of Section 250;

26 (R) For each taxable year ending before December
27 31, 2004 ~~years 2001 and thereafter~~, for the taxable
28 year in which the bonus depreciation deduction ~~(30% of~~
29 ~~the adjusted basis of the qualified property)~~ is taken
30 on the taxpayer's federal income tax return under
31 subsection (k) of Section 168 of the Internal Revenue
32 Code and for each applicable taxable year thereafter,
33 an amount equal to "x", where:

34 (1) "y" equals the amount of the depreciation

1 deduction taken for the taxable year on the
2 taxpayer's federal income tax return on property
3 for which the bonus depreciation deduction ~~(30% of~~
4 ~~the adjusted basis of the qualified property)~~ was
5 taken in any year under subsection (k) of Section
6 168 of the Internal Revenue Code (for this purpose,
7 the depreciation deduction taken for the taxable
8 year on the taxpayer's federal income tax return is
9 deemed to take into account any depreciation
10 adjustment required under Section 203(e)(2)(I)),
11 but not including the bonus depreciation
12 deduction; and

13 (2) for property on which a bonus depreciation
14 deduction of 30% of the adjusted basis was taken,
15 "x" equals "y" multiplied by 30 and then divided by
16 70 (or "y" multiplied by 0.429), and for property
17 on which a bonus depreciation deduction of 50% of
18 the adjusted basis was taken, "x" equals "y"
19 multiplied by 1.0.

20 The aggregate amount deducted under this
21 subparagraph in all taxable years for any one piece of
22 property may not exceed the amount of the bonus
23 depreciation deduction ~~(30% of the adjusted basis of~~
24 ~~the qualified property)~~ taken on that property on the
25 taxpayer's federal income tax return under subsection
26 (k) of Section 168 of the Internal Revenue Code; and

27 (S) If the taxpayer reports a capital gain or loss
28 on the taxpayer's federal income tax return for the
29 taxable year based on a sale or transfer of property
30 for which the taxpayer was required in any taxable year
31 to make an addition modification under subparagraph
32 (G-10), then an amount equal to that addition
33 modification.

34 The taxpayer is allowed to take the deduction under

1 this subparagraph only once with respect to any one
2 piece of property~~:-~~

3 (T) The amount of (i) any interest income (net of
4 the deductions allocable thereto) taken into account
5 for the taxable year with respect to a transaction with
6 a taxpayer that is required to make an addition
7 modification with respect to such transaction under
8 Section 203(a)(2)(D-17), 203(b)(2)(E-13),
9 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
10 the amount of such addition modification and (ii) any
11 income from intangible property (net of the deductions
12 allocable thereto) taken into account for the taxable
13 year with respect to a transaction with a taxpayer that
14 is required to make an addition modification with
15 respect to such transaction under Section
16 203(a)(2)(D-18), 203(b)(2)(E-14), 203(c)(2)(G-13), or
17 203(d)(2)(D-8), but not to exceed the amount of such
18 addition modification;

19 (U) An amount equal to the interest income taken
20 into account for the taxable year (net of the
21 deductions allocable thereto) with respect to
22 transactions with a foreign person who would be a
23 member of the taxpayer's unitary business group but for
24 the fact the foreign person's business activity
25 outside the United States is 80% or more of that
26 person's total business activity, but not to exceed the
27 addition modification required to be made for the same
28 taxable year under Section 203(c)(2)(G-12) for
29 interest paid, accrued, or incurred, directly or
30 indirectly, to the same foreign person; and

31 (V) An amount equal to the income from intangible
32 property taken into account for the taxable year (net
33 of the deductions allocable thereto) with respect to
34 transactions with a foreign person who would be a

1 member of the taxpayer's unitary business group but for
2 the fact that the foreign person's business activity
3 outside the United States is 80% or more of that
4 person's total business activity, but not to exceed the
5 addition modification required to be made for the same
6 taxable year under Section 203(c)(2)(G-13) for
7 intangible expenses and costs paid, accrued, or
8 incurred, directly or indirectly, to the same foreign
9 person.

10 (3) Limitation. The amount of any modification
11 otherwise required under this subsection shall, under
12 regulations prescribed by the Department, be adjusted by
13 any amounts included therein which were properly paid,
14 credited, or required to be distributed, or permanently set
15 aside for charitable purposes pursuant to Internal Revenue
16 Code Section 642(c) during the taxable year.

17 (d) Partnerships.

18 (1) In general. In the case of a partnership, base
19 income means an amount equal to the taxpayer's taxable
20 income for the taxable year as modified by paragraph (2).

21 (2) Modifications. The taxable income referred to in
22 paragraph (1) shall be modified by adding thereto the sum
23 of the following amounts:

24 (A) An amount equal to all amounts paid or accrued
25 to the taxpayer as interest or dividends during the
26 taxable year to the extent excluded from gross income
27 in the computation of taxable income;

28 (B) An amount equal to the amount of tax imposed by
29 this Act to the extent deducted from gross income for
30 the taxable year;

31 (C) The amount of deductions allowed to the
32 partnership pursuant to Section 707 (c) of the Internal
33 Revenue Code in calculating its taxable income;

1 (D) An amount equal to the amount of the capital
2 gain deduction allowable under the Internal Revenue
3 Code, to the extent deducted from gross income in the
4 computation of taxable income;

5 (D-5) For taxable years ending on or after December
6 31, 2000 and before December 31, 2004 ~~2001 and~~
7 ~~thereafter~~, an amount equal to the bonus depreciation
8 deduction ~~(30% of the adjusted basis of the qualified~~
9 ~~property)~~ taken on the taxpayer's federal income tax
10 return for the taxable year under subsection (k) of
11 Section 168 of the Internal Revenue Code; ~~and~~

12 (D-6) If the taxpayer reports a capital gain or
13 loss on the taxpayer's federal income tax return for
14 the taxable year based on a sale or transfer of
15 property for which the taxpayer was required in any
16 taxable year to make an addition modification under
17 subparagraph (D-5), then an amount equal to the
18 aggregate amount of the deductions taken in all taxable
19 years under subparagraph (O) with respect to that
20 property.~~†~~

21 The taxpayer is required to make the addition
22 modification under this subparagraph only once with
23 respect to any one piece of property;

24 (D-7) For taxable years ending on or after December
25 31, 2004, an amount equal to the amount otherwise
26 allowed as a deduction in computing base income for
27 interest paid, accrued, or incurred, directly or
28 indirectly, to a foreign person who would be a member
29 of the same unitary business group but for the fact the
30 foreign person's business activity outside the United
31 States is 80% or more of the foreign person's total
32 business activity. The addition modification required
33 by this subparagraph shall be reduced to the extent
34 that dividends were included in base income for the

1 same taxable year and received by the taxpayer or by a
2 member of the taxpayer's unitary business group
3 (including amounts included in gross income pursuant
4 to Sections 951 through 964 of the Internal Revenue
5 Code and amounts included in gross income under Section
6 78 of the Internal Revenue Code) with respect to the
7 stock of the same person to whom the interest was paid,
8 accrued, or incurred. This subparagraph shall not
9 apply to an item of interest paid, accrued, or
10 incurred, directly or indirectly, to a foreign person
11 that is subject in a foreign country to a tax on or
12 measured by net income with respect to such interest;

13 (D-8) For taxable years ending on or after December
14 31, 2004, an amount equal to the amount of intangible
15 expenses and costs otherwise allowed as a deduction in
16 computing base income, and that were paid, accrued, or
17 incurred, directly or indirectly, to a foreign person
18 who would be a member of the same unitary business
19 group but for the fact that the foreign person's
20 business activity outside the United States is 80% or
21 more of that person's total business activity. The
22 addition modification required by this subparagraph
23 shall be reduced to the extent that dividends were
24 included in base income for the same taxable year and
25 received by the taxpayer or by a member of the
26 taxpayer's unitary business group (including amounts
27 included in gross income pursuant to Sections 951
28 through 964 of the Internal Revenue Code and amounts
29 included in gross income under Section 78 of the
30 Internal Revenue Code) with respect to the stock of the
31 same person to whom the intangible expenses and costs
32 were directly or indirectly paid, incurred or accrued.
33 The preceding sentence shall not apply to the extent
34 that the same dividends caused a reduction to the

1 addition modification required under Section 203
2 (d) (2) (D-7) of this Act. This subparagraph shall not
3 apply to any item of intangible expenses or costs paid,
4 accrued, or incurred, directly or indirectly, from a
5 transaction with a foreign person that is subject in a
6 foreign country to a tax on or measured by net income
7 with respect to such item. As used in this
8 subparagraph, the term "intangible expenses and costs"
9 includes (1) expenses, losses, and costs for, or
10 related to, the direct or indirect acquisition, use,
11 maintenance or management, ownership, sale, exchange,
12 or any other disposition of intangible property; (2)
13 losses incurred, directly or indirectly, from
14 factoring transactions or discounting transactions;
15 (3) royalty, patent, technical, and copyright fees;
16 (4) licensing fees; and (5) other similar expenses and
17 costs. For purposes of this subparagraph, "intangible
18 property" includes patents, patent applications, trade
19 names, trademarks, service marks, copyrights, mask
20 works, trade secrets, and similar types of intangible
21 assets; and

22 (D-10) For taxable years ending on or after
23 December 31, 2004, an amount equal to the amount
24 excluded from gross income under Section 101(a) of the
25 Internal Revenue Code with respect to an
26 employer-owned life insurance contract, but only to
27 the extent that this amount exceeds the sum of the
28 premiums or other amounts paid for the contract. The
29 addition modification provided under this item does
30 not apply to the extent that proceeds are payable to a
31 member of the family (within the meaning of Section
32 267(c) (4) of the Internal Revenue Code) of the insured,
33 to any individual who is the designated beneficiary
34 (other than the employer or an affiliate of the

1 employer) of the insured under the contract, to a trust
2 established for the benefit of any such person, or to
3 the estate of the insured, or are to be used to
4 purchase an equity interest in the employer (or an
5 affiliate) from any such person;

6 and by deducting from the total so obtained the following
7 amounts:

8 (E) The valuation limitation amount;

9 (F) An amount equal to the amount of any tax
10 imposed by this Act which was refunded to the taxpayer
11 and included in such total for the taxable year;

12 (G) An amount equal to all amounts included in
13 taxable income as modified by subparagraphs (A), (B),
14 (C) and (D) which are exempt from taxation by this
15 State either by reason of its statutes or Constitution
16 or by reason of the Constitution, treaties or statutes
17 of the United States; provided that, in the case of any
18 statute of this State or of the United States, any
19 treaty of the United States, the Illinois
20 Constitution, or the United States Constitution that
21 exempts income derived from bonds or other obligations
22 from the tax imposed under this Act, the amount
23 exempted shall be the interest net of bond premium
24 amortization, interest expense incurred on
25 indebtedness to carry the bond or other obligation,
26 expenses incurred in producing the income to be
27 deducted, and all other related expenses. The amount of
28 expenses to be taken into account under this provision
29 may not exceed the amount of income that is exempted;

30 (H) Any income of the partnership which
31 constitutes personal service income as defined in
32 Section 1348 (b) (1) of the Internal Revenue Code (as
33 in effect December 31, 1981) or a reasonable allowance
34 for compensation paid or accrued for services rendered

1 by partners to the partnership, whichever is greater;

2 (I) An amount equal to all amounts of income
3 distributable to an entity subject to the Personal
4 Property Tax Replacement Income Tax imposed by
5 subsections (c) and (d) of Section 201 of this Act
6 including amounts distributable to organizations
7 exempt from federal income tax by reason of Section
8 501(a) of the Internal Revenue Code;

9 (J) With the exception of any amounts subtracted
10 under subparagraph (G), an amount equal to the sum of
11 all amounts disallowed as deductions by (i) Sections
12 171(a) (2), and 265(2) of the Internal Revenue Code of
13 1954, as now or hereafter amended, and all amounts of
14 expenses allocable to interest and disallowed as
15 deductions by Section 265(1) of the Internal Revenue
16 Code, as now or hereafter amended; and (ii) for taxable
17 years ending on or after August 13, 1999, Sections
18 171(a) (2), 265, 280C, and 832(b) (5) (B) (i) of the
19 Internal Revenue Code; the provisions of this
20 subparagraph are exempt from the provisions of Section
21 250;

22 (K) An amount equal to those dividends included in
23 such total which were paid by a corporation which
24 conducts business operations in an Enterprise Zone or
25 zones created under the Illinois Enterprise Zone Act,
26 enacted by the 82nd General Assembly, and conducts
27 substantially all of its operations in an Enterprise
28 Zone or Zones;

29 (L) An amount equal to any contribution made to a
30 job training project established pursuant to the Real
31 Property Tax Increment Allocation Redevelopment Act;

32 (M) An amount equal to those dividends included in
33 such total that were paid by a corporation that
34 conducts business operations in a federally designated

1 Foreign Trade Zone or Sub-Zone and that is designated a
2 High Impact Business located in Illinois; provided
3 that dividends eligible for the deduction provided in
4 subparagraph (K) of paragraph (2) of this subsection
5 shall not be eligible for the deduction provided under
6 this subparagraph (M);

7 (N) An amount equal to the amount of the deduction
8 used to compute the federal income tax credit for
9 restoration of substantial amounts held under claim of
10 right for the taxable year pursuant to Section 1341 of
11 the Internal Revenue Code of 1986;

12 (O) For each taxable year ending before December
13 31, 2004 ~~years 2001 and thereafter~~, for the taxable
14 year in which the bonus depreciation deduction ~~(30% of~~
15 ~~the adjusted basis of the qualified property)~~ is taken
16 on the taxpayer's federal income tax return under
17 subsection (k) of Section 168 of the Internal Revenue
18 Code and for each applicable taxable year thereafter,
19 an amount equal to "x", where:

20 (1) "y" equals the amount of the depreciation
21 deduction taken for the taxable year on the
22 taxpayer's federal income tax return on property
23 for which the bonus depreciation deduction ~~(30% of~~
24 ~~the adjusted basis of the qualified property)~~ was
25 taken in any year under subsection (k) of Section
26 168 of the Internal Revenue Code (for this purpose,
27 the depreciation deduction taken for the taxable
28 year on the taxpayer's federal income tax return is
29 deemed to take into account any depreciation
30 adjustment required under Section 203(e)(2)(I)),
31 but not including the bonus depreciation
32 deduction; and

33 (2) for property on which a bonus depreciation
34 deduction of 30% of the adjusted basis was taken,

1 "x" equals "y" multiplied by 30 and then divided by
2 70 (or "y" multiplied by 0.429), and for property
3 on which a bonus depreciation deduction of 50% of
4 the adjusted basis was taken, "x" equals "y"
5 multiplied by 1.0.

6 The aggregate amount deducted under this
7 subparagraph in all taxable years for any one piece of
8 property may not exceed the amount of the bonus
9 depreciation deduction ~~(30% of the adjusted basis of~~
10 ~~the qualified property)~~ taken on that property on the
11 taxpayer's federal income tax return under subsection
12 (k) of Section 168 of the Internal Revenue Code; and

13 (P) If the taxpayer reports a capital gain or loss
14 on the taxpayer's federal income tax return for the
15 taxable year based on a sale or transfer of property
16 for which the taxpayer was required in any taxable year
17 to make an addition modification under subparagraph
18 (D-5), then an amount equal to that addition
19 modification.

20 The taxpayer is allowed to take the deduction under
21 this subparagraph only once with respect to any one
22 piece of property; ~~and~~

23 (Q) The amount of (i) any interest income (net of
24 the deductions allocable thereto) taken into account
25 for the taxable year with respect to a transaction with
26 a taxpayer that is required to make an addition
27 modification with respect to such transaction under
28 Section 203(a)(2)(D-17), 203(b)(2)(E-13),
29 203(c)(2)(G-12), or 203(d)(2)(D-7), but not to exceed
30 the amount of such addition modification and (ii) any
31 income from intangible property (net of the deductions
32 allocable thereto) taken into account for the taxable
33 year with respect to a transaction with a taxpayer that
34 is required to make an addition modification with

1 respect to such transaction under Section
2 203(a)(2)(D-18), 203(b)(2)(E-14), 203(c)(2)(G-13), or
3 203(d)(2)(D-8), but not to exceed the amount of such
4 addition modification;

5 (R) An amount equal to the interest income taken
6 into account for the taxable year (net of the
7 deductions allocable thereto) with respect to
8 transactions with a foreign person who would be a
9 member of the taxpayer's unitary business group but for
10 the fact that the foreign person's business activity
11 outside the United States is 80% or more of that
12 person's total business activity, but not to exceed the
13 addition modification required to be made for the same
14 taxable year under Section 203(d)(2)(D-7) for interest
15 paid, accrued, or incurred, directly or indirectly, to
16 the same foreign person; and

17 (S) An amount equal to the income from intangible
18 property taken into account for the taxable year (net
19 of the deductions allocable thereto) with respect to
20 transactions with a foreign person who would be a
21 member of the taxpayer's unitary business group but for
22 the fact that the foreign person's business activity
23 outside the United States is 80% or more of that
24 person's total business activity, but not to exceed the
25 addition modification required to be made for the same
26 taxable year under Section 203(d)(2)(D-8) for
27 intangible expenses and costs paid, accrued, or
28 incurred, directly or indirectly, to the same foreign
29 person.

30 (e) Gross income; adjusted gross income; taxable income.

31 (1) In general. Subject to the provisions of paragraph
32 (2) and subsection (b) (3), for purposes of this Section
33 and Section 803(e), a taxpayer's gross income, adjusted

1 gross income, or taxable income for the taxable year shall
2 mean the amount of gross income, adjusted gross income or
3 taxable income properly reportable for federal income tax
4 purposes for the taxable year under the provisions of the
5 Internal Revenue Code. With respect to taxable years ending
6 on or after December 31, 2004, for purposes of determining
7 the amount of gross income, adjusted gross income, or
8 taxable income properly reportable for federal income tax
9 purposes: (i) there shall be taken into account the
10 depreciation adjustment and the basis adjustment required
11 by paragraph (2)(I) of this subsection; (ii) the provisions
12 of Section 179 of the Internal Revenue Code apply to the
13 extent that the Section is elected for federal income tax
14 purposes with respect to "Section 179 property", except
15 that the dollar limitation of Section 179(b)(1) shall be
16 deemed to be \$25,000 for all taxable years and the
17 reduction in limitation under Section 179(b)(2) shall be
18 deemed to be \$200,000 for all taxable years, without any
19 adjustment under Section 179(b)(5); and (iii) the gross
20 income, adjusted gross income, or taxable income shall be
21 determined as if the Internal Revenue Code required that,
22 with respect to property placed in service in taxable years
23 ending on or after December 31, 2004, the depreciation
24 deduction determined under Section 168 of the Internal
25 Revenue Code must be determined under Section 168(g)(2)
26 (including the straight-line method and without any
27 special allowance under Section 168(k)). Taxable income
28 may be less than zero. However, for taxable years ending on
29 or after December 31, 1986, net operating loss
30 carryforwards from taxable years ending prior to December
31 31, 1986, may not exceed the sum of federal taxable income
32 for the taxable year before net operating loss deduction,
33 plus the excess of addition modifications over subtraction
34 modifications for the taxable year. For taxable years

1 ending prior to December 31, 1986, taxable income may never
2 be an amount in excess of the net operating loss for the
3 taxable year as defined in subsections (c) and (d) of
4 Section 172 of the Internal Revenue Code, provided that
5 when taxable income of a corporation (other than a
6 Subchapter S corporation), trust, or estate is less than
7 zero and addition modifications, other than those provided
8 by subparagraph (E) of paragraph (2) of subsection (b) for
9 corporations or subparagraph (E) of paragraph (2) of
10 subsection (c) for trusts and estates, exceed subtraction
11 modifications, an addition modification must be made under
12 those subparagraphs for any other taxable year to which the
13 taxable income less than zero (net operating loss) is
14 applied under Section 172 of the Internal Revenue Code or
15 under subparagraph (E) of paragraph (2) of this subsection
16 (e) applied in conjunction with Section 172 of the Internal
17 Revenue Code.

18 (2) Special rule. For purposes of paragraph (1) of this
19 subsection, the taxable income properly reportable for
20 federal income tax purposes shall mean:

21 (A) Certain life insurance companies. In the case
22 of a life insurance company subject to the tax imposed
23 by Section 801 of the Internal Revenue Code, life
24 insurance company taxable income, plus the amount of
25 distribution from pre-1984 policyholder surplus
26 accounts as calculated under Section 815a of the
27 Internal Revenue Code;

28 (B) Certain other insurance companies. In the case
29 of mutual insurance companies subject to the tax
30 imposed by Section 831 of the Internal Revenue Code,
31 insurance company taxable income;

32 (C) Regulated investment companies. In the case of
33 a regulated investment company subject to the tax
34 imposed by Section 852 of the Internal Revenue Code,

1 investment company taxable income;

2 (D) Real estate investment trusts. In the case of a
3 real estate investment trust subject to the tax imposed
4 by Section 857 of the Internal Revenue Code, real
5 estate investment trust taxable income;

6 (E) Consolidated corporations. In the case of a
7 corporation which is a member of an affiliated group of
8 corporations filing a consolidated income tax return
9 for the taxable year for federal income tax purposes,
10 taxable income determined as if such corporation had
11 filed a separate return for federal income tax purposes
12 for the taxable year and each preceding taxable year
13 for which it was a member of an affiliated group. For
14 purposes of this subparagraph, the taxpayer's separate
15 taxable income shall be determined as if the election
16 provided by Section 243(b) (2) of the Internal Revenue
17 Code had been in effect for all such years;

18 (F) Cooperatives. In the case of a cooperative
19 corporation or association, the taxable income of such
20 organization determined in accordance with the
21 provisions of Section 1381 through 1388 of the Internal
22 Revenue Code;

23 (G) Subchapter S corporations. In the case of: (i)
24 a Subchapter S corporation for which there is in effect
25 an election for the taxable year under Section 1362 of
26 the Internal Revenue Code, the taxable income of such
27 corporation determined in accordance with Section
28 1363(b) of the Internal Revenue Code, except that
29 taxable income shall take into account those items
30 which are required by Section 1363(b)(1) of the
31 Internal Revenue Code to be separately stated; and (ii)
32 a Subchapter S corporation for which there is in effect
33 a federal election to opt out of the provisions of the
34 Subchapter S Revision Act of 1982 and have applied

1 instead the prior federal Subchapter S rules as in
2 effect on July 1, 1982, the taxable income of such
3 corporation determined in accordance with the federal
4 Subchapter S rules as in effect on July 1, 1982; and

5 (H) Partnerships. In the case of a partnership,
6 taxable income determined in accordance with Section
7 703 of the Internal Revenue Code, except that taxable
8 income shall take into account those items which are
9 required by Section 703(a)(1) to be separately stated
10 but which would be taken into account by an individual
11 in calculating his taxable income.

12 (I) Depreciation and basis adjustments for all
13 taxpayers.

14 (A) Depreciation adjustment. With respect to
15 property placed in service in taxable years ending
16 before December 31, 2004, the depreciation
17 deduction allowed under Section 167 of the
18 Internal Revenue Code, with respect to property as
19 to which the deduction is determined under Section
20 168 of the Code, shall be determined as if the
21 Internal Revenue Code required a switch to the
22 straight-line method beginning with that
23 property's adjusted basis for federal income tax
24 purposes as of the beginning of the last taxable
25 year beginning before December 31, 2004.

26 (B) Basis adjustment. With respect to property
27 subject to subparagraph (A) of this paragraph, the
28 adjustment otherwise required under Section 1016
29 of the Internal Revenue Code shall take into
30 account the depreciation adjustment required under
31 subparagraph (A).

32 (3) Recapture of business expenses on disposition of
33 asset or business. Notwithstanding any other law to the
34 contrary, if in prior years income from an asset or

1 business has been classified as business income and in a
2 later year is demonstrated to be non-business income, then
3 all expenses, without limitation, deducted in prior years
4 related to that asset or business that generated the
5 non-business income shall be added back and recaptured as
6 business income in the year of the disposition of the asset
7 or business. Such amount shall be apportioned to Illinois
8 using the greater of the apportionment fraction computed
9 for the business under Section 304 of this Act for the
10 taxable year or the average of the apportionment fractions
11 computed for the business under Section 304 of this Act for
12 the taxable year and for the 2 immediately preceding
13 taxable years.

14 (f) Valuation limitation amount.

15 (1) In general. The valuation limitation amount
16 referred to in subsections (a) (2) (G), (c) (2) (I) and
17 (d) (2) (E) is an amount equal to:

18 (A) The sum of the pre-August 1, 1969 appreciation
19 amounts (to the extent consisting of gain reportable
20 under the provisions of Section 1245 or 1250 of the
21 Internal Revenue Code) for all property in respect of
22 which such gain was reported for the taxable year; plus

23 (B) The lesser of (i) the sum of the pre-August 1,
24 1969 appreciation amounts (to the extent consisting of
25 capital gain) for all property in respect of which such
26 gain was reported for federal income tax purposes for
27 the taxable year, or (ii) the net capital gain for the
28 taxable year, reduced in either case by any amount of
29 such gain included in the amount determined under
30 subsection (a) (2) (F) or (c) (2) (H).

31 (2) Pre-August 1, 1969 appreciation amount.

32 (A) If the fair market value of property referred
33 to in paragraph (1) was readily ascertainable on August

1 1, 1969, the pre-August 1, 1969 appreciation amount for
2 such property is the lesser of (i) the excess of such
3 fair market value over the taxpayer's basis (for
4 determining gain) for such property on that date
5 (determined under the Internal Revenue Code as in
6 effect on that date), or (ii) the total gain realized
7 and reportable for federal income tax purposes in
8 respect of the sale, exchange or other disposition of
9 such property.

10 (B) If the fair market value of property referred
11 to in paragraph (1) was not readily ascertainable on
12 August 1, 1969, the pre-August 1, 1969 appreciation
13 amount for such property is that amount which bears the
14 same ratio to the total gain reported in respect of the
15 property for federal income tax purposes for the
16 taxable year, as the number of full calendar months in
17 that part of the taxpayer's holding period for the
18 property ending July 31, 1969 bears to the number of
19 full calendar months in the taxpayer's entire holding
20 period for the property.

21 (C) The Department shall prescribe such
22 regulations as may be necessary to carry out the
23 purposes of this paragraph.

24 (g) Double deductions. Unless specifically provided
25 otherwise, nothing in this Section shall permit the same item
26 to be deducted more than once.

27 (h) Legislative intention. Except as expressly provided by
28 this Section there shall be no modifications or limitations on
29 the amounts of income, gain, loss or deduction taken into
30 account in determining gross income, adjusted gross income or
31 taxable income for federal income tax purposes for the taxable
32 year, or in the amount of such items entering into the

1 computation of base income and net income under this Act for
2 such taxable year, whether in respect of property values as of
3 August 1, 1969 or otherwise.

4 (i) The changes made to this Section by this amendatory Act
5 of the 93rd General Assembly do not apply to any small business
6 as defined in the Small Business Advisory Act.

7 (Source: P.A. 91-192, eff. 7-20-99; 91-205, eff. 7-20-99;
8 91-357, eff. 7-29-99; 91-541, eff. 8-13-99; 91-676, eff.
9 12-23-99; 91-845, eff. 6-22-00; 91-913, eff. 1-1-01; 92-16,
10 eff. 6-28-01; 92-244, eff. 8-3-01; 92-439, eff. 8-17-01;
11 92-603, eff. 6-28-02; 92-626, eff. 7-11-02; 92-651, eff.
12 7-11-02; 92-846, eff. 8-23-02; revised 10-15-03.)

13 (35 ILCS 5/205) (from Ch. 120, par. 2-205)

14 Sec. 205. Exempt organizations.

15 (a) Charitable, etc. organizations. The base income of an
16 organization which is exempt from the federal income tax by
17 reason of Section 501(a) of the Internal Revenue Code shall not
18 be determined under section 203 of this Act, but shall be its
19 unrelated business taxable income as determined under section
20 512 of the Internal Revenue Code, without any deduction for the
21 tax imposed by this Act. The standard exemption provided by
22 section 204 of this Act shall not be allowed in determining the
23 net income of an organization to which this subsection applies.

24 (b) Partnerships. A partnership as such shall not be
25 subject to the tax imposed by subsection 201 (a) and (b) of
26 this Act, but shall be subject to the replacement tax imposed
27 by subsection 201 (c) and (d) of this Act and shall compute its
28 base income as described in subsection (d) of Section 203 of
29 this Act. For taxable years ending on or after December 31,
30 2004, an investment partnership, as defined in Section
31 1501(a)(11.5) of this Act, shall not be subject to the tax
32 imposed by subsections (c) and (d) of Section 201 of this Act.

33 A partnership shall file such returns and other information at

1 such time and in such manner as may be required under Article 5
2 of this Act. The partners in a partnership shall be liable for
3 the replacement tax imposed by subsection 201 (c) and (d) of
4 this Act on such partnership, to the extent such tax is not
5 paid by the partnership, as provided under the laws of Illinois
6 governing the liability of partners for the obligations of a
7 partnership. Persons carrying on business as partners shall be
8 liable for the tax imposed by subsection 201 (a) and (b) of
9 this Act only in their separate or individual capacities.

10 (c) Subchapter S corporations. A Subchapter S corporation
11 shall not be subject to the tax imposed by subsection 201 (a)
12 and (b) of this Act but shall be subject to the replacement tax
13 imposed by subsection 201 (c) and (d) of this Act and shall
14 file such returns and other information at such time and in
15 such manner as may be required under Article 5 of this Act.

16 (d) Combat zone death. An individual relieved from the
17 federal income tax for any taxable year by reason of section
18 692 of the Internal Revenue Code shall not be subject to the
19 tax imposed by this Act for such taxable year.

20 (e) Certain trusts. A common trust fund described in
21 Section 584 of the Internal Revenue Code, and any other trust
22 to the extent that the grantor is treated as the owner thereof
23 under sections 671 through 678 of the Internal Revenue Code
24 shall not be subject to the tax imposed by this Act.

25 (f) Certain business activities. A person not otherwise
26 subject to the tax imposed by this Act shall not become subject
27 to the tax imposed by this Act by reason of:

28 (1) that person's ownership of tangible personal
29 property located at the premises of a printer in this State
30 with which the person has contracted for printing, or

31 (2) activities of the person's employees or agents
32 located solely at the premises of a printer and related to
33 quality control, distribution, or printing services
34 performed by a printer in the State with which the person

1 has contracted for printing.

2 (g) The changes made to this Section by this amendatory Act
3 of the 93rd General Assembly do not apply to any small business
4 as defined in the Small Business Advisory Act.

5 (Source: P.A. 88-361.)

6 (35 ILCS 5/207) (from Ch. 120, par. 2-207)

7 Sec. 207. Net Losses.

8 (a) If after applying all of the (i) modifications provided
9 for in paragraph (2) of Section 203(b), paragraph (2) of
10 Section 203(c) and paragraph (2) of Section 203(d) and (ii) the
11 allocation and apportionment provisions of Article 3 of this
12 Act and subsection (c) of this Section, the taxpayer's net
13 income results in a loss;

14 (1) for any taxable year ending prior to December 31,
15 1999, such loss shall be allowed as a carryover or
16 carryback deduction in the manner allowed under Section 172
17 of the Internal Revenue Code;

18 (2) for any taxable year ending on or after December
19 31, 1999 and prior to December 31, 2003, such loss shall be
20 allowed as a carryback to each of the 2 taxable years
21 preceding the taxable year of such loss and shall be a net
22 operating loss carryover to each of the 20 taxable years
23 following the taxable year of such loss; and

24 (3) for any taxable year ending on or after December
25 31, 2003, such loss shall be allowed as a net operating
26 loss carryover to each of the 12 taxable years following
27 the taxable year of such loss.

28 (a-5) Election to relinquish carryback and order of
29 application of losses.

30 (A) For losses incurred in tax years ending prior
31 to December 31, 2003, the taxpayer may elect to
32 relinquish the entire carryback period with respect to
33 such loss. Such election shall be made in the form and

1 manner prescribed by the Department and shall be made
2 by the due date (including extensions of time) for
3 filing the taxpayer's return for the taxable year in
4 which such loss is incurred, and such election, once
5 made, shall be irrevocable.

6 (B) The entire amount of such loss shall be carried
7 to the earliest taxable year to which such loss may be
8 carried. The amount of such loss which shall be carried
9 to each of the other taxable years shall be the excess,
10 if any, of the amount of such loss over the sum of the
11 deductions for carryback or carryover of such loss
12 allowable for each of the prior taxable years to which
13 such loss may be carried.

14 (b) Any loss determined under subsection (a) of this
15 Section must be carried back or carried forward in the same
16 manner for purposes of subsections (a) and (b) of Section 201
17 of this Act as for purposes of subsections (c) and (d) of
18 Section 201 of this Act.

19 (c) Notwithstanding any other provision of this Act, for
20 each taxable year ending on or after December 31, 2004, for
21 purposes of computing the loss for the taxable year under
22 subsection (a) of this Section and the deduction taken into
23 account for the taxable year for a net operating loss carryover
24 under paragraphs (1), (2), and (3) of subsection (a) of this
25 Section, the loss and net operating loss carryover shall be
26 reduced in an amount equal to the reduction to the net
27 operating loss and net operating loss carryover to the taxable
28 year, respectively, required under Section 108(b)(2)(A) of the
29 Internal Revenue Code, multiplied by a fraction, the numerator
30 of which is the amount of discharge of indebtedness income that
31 is excluded from gross income for the taxable year (but only if
32 the taxable year ends on or after December 31, 2004) under
33 Section 108(a) of the Internal Revenue Code and that would have
34 been allocated and apportioned to this State under Article 3 of

1 this Act but for that exclusion, and the denominator of which
2 is the total amount of discharge of indebtedness income
3 excluded from gross income under Section 108(a) of the Internal
4 Revenue Code for the taxable year. The reduction required under
5 this subsection (c) shall be made after the determination of
6 Illinois net income for the taxable year in which the
7 indebtedness is discharged.

8 (d) The changes made to this Section by this amendatory Act
9 of the 93rd General Assembly do not apply to any small business
10 as defined in the Small Business Advisory Act.

11 (Source: P.A. 93-29, eff. 6-20-03.)

12 (35 ILCS 5/304) (from Ch. 120, par. 3-304)

13 Sec. 304. Business income of persons other than residents.

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

1 (1) Property factor.

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

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

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

21 (2) Payroll factor.

22 (A) The payroll factor is a fraction, the numerator of
23 which is the total amount paid in this State during the
24 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 entirely
29 within this State;

30 (ii) The individual's service is performed both
31 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 this

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

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

17 (3) Sales factor.

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

22 (B) Sales of tangible personal property are in this
23 State if:

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

28 (ii) The property is shipped from an office, store,
29 warehouse, factory or other place of storage in this
30 State and either the purchaser is the United States
31 government or the person is not taxable in the state of
32 the purchaser; provided, however, that premises owned
33 or leased by a person who has independently contracted
34 with the seller for the printing of newspapers,

1 periodicals or books shall not be deemed to be an
2 office, store, warehouse, factory or other place of
3 storage for purposes of this Section. For taxable years
4 ending before December 31, 2004, sales ~~Sales~~ of
5 tangible personal property are not in this State if the
6 seller and purchaser would be members of the same
7 unitary business group but for the fact that either the
8 seller or purchaser is a person with 80% or more of
9 total business activity outside of the United States
10 and the property is purchased for resale.

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

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

19 (ii) Place of utilization.

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

34 (II) A copyright is utilized in a state to the

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

9 (III) Trademarks and other items of intangible
10 personal property governed by this paragraph (B-1)
11 are utilized in the state in which the commercial
12 domicile of the licensee or purchaser is located.

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

22 (B-2) Gross receipts from the license, sale, or other
23 disposition of patents, copyrights, trademarks, and
24 similar items of intangible personal property may be
25 included in the numerator or denominator of the sales
26 factor only if gross receipts from licenses, sales, or
27 other disposition of such items comprise more than 50% of
28 the taxpayer's total gross receipts included in gross
29 income during the tax year and during each of the 2
30 immediately preceding tax years; provided that, when a
31 taxpayer is a member of a unitary business group, such
32 determination shall be made on the basis of the gross
33 receipts of the entire unitary business group.

34 (C) For taxable years ending before December 31, 2004,

1 sales ~~Sales~~, other than sales governed by paragraphs (B),
2 ~~and~~ (B-1), and (B-2), are in this State if:

3 (i) The income-producing activity is performed in
4 this State; or

5 (ii) The income-producing activity is performed
6 both within and without this State and a greater
7 proportion of the income-producing activity is
8 performed within this State than without this State,
9 based on performance costs.

10 (C-5) For taxable years ending on or after December 31,
11 2004, sales, other than sales governed by paragraphs (B),
12 (B-1), and (B-2), are in this State if the purchaser is in
13 this State or the sale is otherwise attributable to this
14 State's marketplace. The following examples are
15 illustrative:

16 (i) Sales from the sale or lease of real property
17 are in this State if the property is located in this
18 State.

19 (ii) Sales from the lease or rental of tangible
20 personal property are in this State if the property is
21 located in this State during the rental period. Sales
22 from the lease or rental of tangible personal property
23 that is characteristically moving property, including,
24 but not limited to, motor vehicles, rolling stock,
25 aircraft, vessels, or mobile equipment are in this
26 State to the extent that the property is used in this
27 State.

28 (iii) Sales of intangible personal property are in
29 this State if the purchaser uses or realizes benefit
30 from the property in this State. If the purchaser uses
31 or realizes benefit from the the property both within
32 and without this State, the gross receipts from the
33 sale shall be divided among those states having
34 jurisdiction to tax the sale in proportion to the use

1 or benefit in each state. If the proportionate use or
2 benefit in this State cannot be determined, the sale
3 shall be excluded from both the numerator and the
4 denominator of the sales factor.

5 (iv) Sales of services are in this State if the
6 benefit of the service is enjoyed or realized in this
7 State. If the benefit of the service is enjoyed or
8 realized both within and without this State, the gross
9 receipts from the sale shall be divided among those
10 states having jurisdiction to tax the sale in
11 proportion to the benefit of service enjoyed or
12 realized in each state. If the proportionate benefit in
13 this State cannot be determined, the sale shall be
14 excluded from both the numerator and the denominator of
15 the sales factor. The Department may adopt rules
16 prescribing where the benefit of specific types of
17 service, including, but not limited to,
18 telecommunications, broadcast, cable, advertising,
19 publishing, and utility service, is enjoyed or
20 realized.

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

30 (E) Paragraphs (B-1) and (B-2) shall apply to tax years
31 ending on or after December 31, 1999, provided that a
32 taxpayer may elect to apply the provisions of these
33 paragraphs to prior tax years. Such election shall be made
34 in the form and manner prescribed by the Department, shall

1 be irrevocable, and shall apply to all tax years; provided
2 that, if a taxpayer's Illinois income tax liability for any
3 tax year, as assessed under Section 903 prior to January 1,
4 1999, was computed in a manner contrary to the provisions
5 of paragraphs (B-1) or (B-2), no refund shall be payable to
6 the taxpayer for that tax year to the extent such refund is
7 the result of applying the provisions of paragraph (B-1) or
8 (B-2) retroactively. In the case of a unitary business
9 group, such election shall apply to all members of such
10 group for every tax year such group is in existence, but
11 shall not apply to any taxpayer for any period during which
12 that taxpayer is not a member of such group.

13 (b) Insurance companies.

14 (1) In general. Except as otherwise provided by
15 paragraph (2), business income of an insurance company for
16 a taxable year shall be apportioned to this State by
17 multiplying such income by a fraction, the numerator of
18 which is the direct premiums written for insurance upon
19 property or risk in this State, and the denominator of
20 which is the direct premiums written for insurance upon
21 property or risk everywhere. For purposes of this
22 subsection, the term "direct premiums written" means the
23 total amount of direct premiums written, assessments and
24 annuity considerations, and surplus line contracts, but
25 excluding deposit-type funds, as reported for the taxable
26 year on the annual statement filed ~~by the company with the~~
27 ~~Illinois Director of Insurance~~ in the form approved by the
28 National Convention of Insurance Commissioners as filed by
29 the taxpayer with the Illinois Department of Insurance or,
30 if no report is filed with the Illinois Department of
31 Insurance, as filed by the taxpayer with its state of
32 domicile. If no such annual report is filed with any of the
33 United States for a particular year, "direct premiums
34 written" shall be determined by applying the instructions

1 to the Illinois annual report form for that year ~~or such~~
2 ~~other form as may be prescribed in lieu thereof.~~

3 (2) Reinsurance. If the principal source of premiums
4 written by an insurance company consists of premiums for
5 reinsurance accepted by it, the business income of such
6 company shall be apportioned to this State by multiplying
7 such income by a fraction, the numerator of which is the
8 sum of (i) direct premiums written for insurance upon
9 property or risk in this State, plus (ii) premiums written
10 for reinsurance accepted in respect of property or risk in
11 this State, and the denominator of which is the sum of
12 (iii) direct premiums written for insurance upon property
13 or risk everywhere, plus (iv) premiums written for
14 reinsurance accepted in respect of property or risk
15 everywhere. For taxable years ending before December 31,
16 2004, for purposes of this paragraph, premiums written for
17 reinsurance accepted in respect of property or risk in this
18 State, whether or not otherwise determinable, may, at the
19 election of the company, be determined on the basis of the
20 proportion which premiums written for reinsurance accepted
21 from companies commercially domiciled in Illinois bears to
22 premiums written for reinsurance accepted from all
23 sources, or, alternatively, in the proportion which the sum
24 of the direct premiums written for insurance upon property
25 or risk in this State by each ceding company from which
26 reinsurance is accepted bears to the sum of the total
27 direct premiums written by each such ceding company for the
28 taxable year.

29 (c) Financial organizations.

30 (1) In general. For taxable years ending before
31 December 31, 2004, business ~~Business~~ income of a financial
32 organization shall be apportioned to this State by
33 multiplying such income by a fraction, the numerator of
34 which is its business income from sources within this

1 State, and the denominator of which is its business income
2 from all sources. For the purposes of this subsection, the
3 business income of a financial organization from sources
4 within this State is the sum of the amounts referred to in
5 subparagraphs (A) through (E) following, but excluding the
6 adjusted income of an international banking facility as
7 determined in paragraph (2):

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

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

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

14 (D) Interest charged to customers at places of
15 business maintained within this State for carrying
16 debit balances of margin accounts, without deduction
17 of any costs incurred in carrying such accounts; and

18 (E) Any other gross income resulting from the
19 operation as a financial organization within this
20 State. In computing the amounts referred to in
21 paragraphs (A) through (E) of this subsection, any
22 amount received by a member of an affiliated group
23 (determined under Section 1504(a) of the Internal
24 Revenue Code but without reference to whether any such
25 corporation is an "includible corporation" under
26 Section 1504(b) of the Internal Revenue Code) from
27 another member of such group shall be included only to
28 the extent such amount exceeds expenses of the
29 recipient directly related thereto.

30 (2) International Banking Facility. For taxable years
31 ending before December 31, 2004:

32 (A) Adjusted Income. The adjusted income of an
33 international banking facility is its income reduced
34 by the amount of the floor amount.

1 (B) Floor Amount. The floor amount shall be the
2 amount, if any, determined by multiplying the income of
3 the international banking facility by a fraction, not
4 greater than one, which is determined as follows:

5 (i) The numerator shall be:

6 The average aggregate, determined on a
7 quarterly basis, of the financial organization's
8 loans to banks in foreign countries, to foreign
9 domiciled borrowers (except where secured
10 primarily by real estate) and to foreign
11 governments and other foreign official
12 institutions, as reported for its branches,
13 agencies and offices within the state on its
14 "Consolidated Report of Condition", Schedule A,
15 Lines 2.c., 5.b., and 7.a., which was filed with
16 the Federal Deposit Insurance Corporation and
17 other regulatory authorities, for the year 1980,
18 minus

19 The average aggregate, determined on a
20 quarterly basis, of such loans (other than loans of
21 an international banking facility), as reported by
22 the financial institution for its branches,
23 agencies and offices within the state, on the
24 corresponding Schedule and lines of the
25 Consolidated Report of Condition for the current
26 taxable year, provided, however, that in no case
27 shall the amount determined in this clause (the
28 subtrahend) exceed the amount determined in the
29 preceding clause (the minuend); and

30 (ii) the denominator shall be the average
31 aggregate, determined on a quarterly basis, of the
32 international banking facility's loans to banks in
33 foreign countries, to foreign domiciled borrowers
34 (except where secured primarily by real estate)

1 and to foreign governments and other foreign
2 official institutions, which were recorded in its
3 financial accounts for the current taxable year.

4 (C) Change to Consolidated Report of Condition and
5 in Qualification. In the event the Consolidated Report
6 of Condition which is filed with the Federal Deposit
7 Insurance Corporation and other regulatory authorities
8 is altered so that the information required for
9 determining the floor amount is not found on Schedule
10 A, lines 2.c., 5.b. and 7.a., the financial institution
11 shall notify the Department and the Department may, by
12 regulations or otherwise, prescribe or authorize the
13 use of an alternative source for such information. The
14 financial institution shall also notify the Department
15 should its international banking facility fail to
16 qualify as such, in whole or in part, or should there
17 be any amendment or change to the Consolidated Report
18 of Condition, as originally filed, to the extent such
19 amendment or change alters the information used in
20 determining the floor amount.

21 (3) For taxable years ending on or after December 31,
22 2004, the business income of a financial organization shall
23 be apportioned to this State by multiplying such income by
24 a fraction, the numerator of which is its gross receipts
25 from sources in this State or otherwise attributable to
26 this State's marketplace and the denominator of which is
27 its gross receipts everywhere during the taxable year.
28 "Gross receipts" for purposes of this subparagraph (3)
29 means gross income, including net taxable gain on
30 disposition of assets, including securities and money
31 market instruments, when derived from transactions and
32 activities in the regular course of the financial
33 organization's trade or business. The following examples
34 are illustrative:

1 (i) Receipts from the lease or rental of real or
2 tangible personal property are in this State if the
3 property is located in this State during the rental
4 period. Receipts from the lease or rental of tangible
5 personal property that is characteristically moving
6 property, including, but not limited to, motor
7 vehicles, rolling stock, aircraft, vessels, or mobile
8 equipment are in this State to the extent that the
9 property is used in this State.

10 (ii) Interest income, commissions, fees, gains on
11 disposition, and other receipts from assets in the
12 nature of loans that are secured primarily by real
13 estate or tangible personal property are attributable
14 to this State's marketplace if the security is located
15 in this State.

16 (iii) Interest income, commissions, fees, gains on
17 disposition, and other receipts from consumer loans
18 that are not secured by real or tangible personal
19 property are this State if the debtor is a resident of
20 this State.

21 (iv) Interest income, commissions, fees, gains on
22 disposition, and other receipts from commercial loans
23 and installment obligations that are not unsecured by
24 real or tangible personal property are in this State if
25 the proceeds of the loan are to be applied in this
26 State. If it cannot be determined where the funds are
27 to be applied, the income and receipts are attributable
28 to this State's marketplace if the office of the
29 borrower from which the loan was procured in the
30 regular course of business is located in this State. If
31 the location of this office cannot be determined, such
32 receipts shall be excluded from the numerator and
33 denominator of the sales factor.

34 (v) Interest income, fees, gains on disposition,

1 service charges, and other receipts from credit card
2 receivables are in this State if the card charges are
3 regularly billed to a customer in this State.

4 (vi) Receipts from the performance of fiduciary
5 and other services are in this State if the benefit of
6 the service is enjoyed or realized in this State. If
7 the benefit of the service is enjoyed or realized both
8 within and without this State, the gross receipts from
9 the sale shall be divided among those states having
10 jurisdiction to tax the sale in proportion to the
11 benefit of service enjoyed or realized in each state.
12 If the proportionate benefit in this State cannot be
13 determined, the sale shall be excluded from both the
14 numerator and the denominator of the gross receipts
15 factor.

16 (vii) Receipts from the issuance of travelers
17 checks and money orders are in this State if the checks
18 and money orders are issued from a location within this
19 State.

20 (viii) In the case of a financial organization that
21 accepts deposits, receipts from investments and from
22 money market instruments are apportioned to this State
23 based on the ratio that the total deposits of the
24 financial organization (including all members of the
25 financial organization's unitary group) from this
26 State, its residents, any business with an office or
27 other place of business in this State, and its
28 political subdivisions, agencies, and
29 instrumentalities bear to total deposits everywhere.
30 For purposes of this subdivision, deposits must be
31 attributed to this State under the preceding sentence,
32 whether or not the deposits are accepted or maintained
33 by the financial organization at locations within this
34 State. In the case of a financial organization that

1 does not accept deposits, receipts from investments in
2 securities and from money market instruments shall be
3 excluded from the numerator and the denominator of the
4 gross receipts factor.

5 (4) As used in subparagraph (3), "deposit" includes but
6 is not limited to:

7 (i) the unpaid balance of money or its equivalent
8 received or held by a financial institution in the
9 usual course of business and for which it has given or
10 is obligated to give credit, either conditionally or
11 unconditionally, to a commercial, checking, savings,
12 time, or thrift account whether or not advance notice
13 is required to withdraw the credited funds, or which is
14 evidenced by its certificate of deposit, thrift
15 certificate, investment certificate, or certificate of
16 indebtedness, or other similar name, or a check or
17 draft drawn against a deposit account and certified by
18 the financial organization, or a letter of credit or a
19 traveler's check on which the financial organization
20 is primarily liable. However, without limiting the
21 generality of the term "money or its equivalent", any
22 such account or instrument must be regarded as
23 evidencing the receipt of the equivalent of money when
24 credited or issued in exchange for checks or drafts or
25 for a promissory note upon which the person obtaining
26 the credit or instrument is primarily or secondarily
27 liable, or for a charge against a deposit account, or
28 in settlement of checks, drafts, or other instruments
29 forwarded to the bank for collection;

30 (ii) trust funds received or held by the financial
31 organization, whether held in the trust department or
32 held or deposited in any other department of the
33 financial organization;

34 (iii) money received or held by a financial

1 organization, or the credit given for money or its
2 equivalent received or held by a financial
3 organization, in the usual course of business for a
4 special or specific purpose, regardless of the legal
5 relationship so established. Under this paragraph,
6 "deposit" includes, but is not limited to, escrow
7 funds, funds held as security for an obligation due to
8 the financial organization or others, including funds
9 held as dealers reserves, or for securities loaned by
10 the financial organization, funds deposited by a
11 debtor to meet maturing obligations, funds deposited
12 as advance payment on subscriptions to United States
13 government securities, funds held for distribution or
14 purchase of securities, funds held to meet its
15 acceptances or letters of credit, and withheld taxes.
16 It does not include funds received by the financial
17 organization for immediate application to the
18 reduction of an indebtedness to the receiving
19 financial organization, or under condition that the
20 receipt of the funds immediately reduces or
21 extinguishes the indebtedness;

22 (iv) outstanding drafts, including advice of
23 another financial organization, cashier's checks,
24 money orders, or other officer's checks issued in the
25 usual course of business for any purpose, but not
26 including those issued in payment for services,
27 dividends, or purchases or other costs or expenses of
28 the financial organization itself; and

29 (v) money or its equivalent held as a credit
30 balance by a financial organization on behalf of its
31 customer if the entity is engaged in soliciting and
32 holding such balances in the regular course of its
33 business.

34 (5) As used in subparagraph (3), "money market

1 instruments" includes but is not limited to:

2 (i) Interest-bearing deposits, federal funds sold
3 and securities purchased under agreements to resell,
4 commercial paper, banker's acceptances, and purchased
5 certificates of deposit and similar instruments to the
6 extent that the instruments are reflected as assets
7 under generally accepted accounting principles.

8 "Securities" means United States Treasury
9 securities, obligations of United States government
10 agencies and corporations, obligations of state and
11 political subdivisions, corporate stock, bonds, and
12 other securities, participations in securities backed
13 by mortgages held by United States or state government
14 agencies, loan-backed securities and similar
15 investments to the extent the investments are
16 reflected as assets under generally accepted
17 accounting principles.

18 (ii) For purposes of subparagraph (3), "money
19 market instruments shall include investments in
20 investment partnerships, trusts, pools, funds,
21 investment companies, or any similar entity in
22 proportion to the investment of such entity in money
23 market instruments, and "securities" shall include
24 investments in investment partnerships, trusts, pools,
25 funds, investment companies, or any similar entity in
26 proportion to the investment of such entity in
27 securities.

28 (d) Transportation services. For taxable years ending
29 before December 31, 2004, business ~~Business~~ income derived from
30 furnishing transportation services shall be apportioned to
31 this State in accordance with paragraphs (1) and (2):

32 (1) Such business income (other than that derived from
33 transportation by pipeline) shall be apportioned to this
34 State by multiplying such income by a fraction, the

1 numerator of which is the revenue miles of the person in
2 this State, and the denominator of which is the revenue
3 miles of the person everywhere. For purposes of this
4 paragraph, a revenue mile is the transportation of 1
5 passenger or 1 net ton of freight the distance of 1 mile
6 for a consideration. Where a person is engaged in the
7 transportation of both passengers and freight, the
8 fraction above referred to shall be determined by means of
9 an average of the passenger revenue mile fraction and the
10 freight revenue mile fraction, weighted to reflect the
11 person's

12 (A) relative railway operating income from total
13 passenger and total freight service, as reported to the
14 Interstate Commerce Commission, in the case of
15 transportation by railroad, and

16 (B) relative gross receipts from passenger and
17 freight transportation, in case of transportation
18 other than by railroad.

19 (2) Such business income derived from transportation
20 by pipeline shall be apportioned to this State by
21 multiplying such income by a fraction, the numerator of
22 which is the revenue miles of the person in this State, and
23 the denominator of which is the revenue miles of the person
24 everywhere. For the purposes of this paragraph, a revenue
25 mile is the transportation by pipeline of 1 barrel of oil,
26 1,000 cubic feet of gas, or of any specified quantity of
27 any other substance, the distance of 1 mile for a
28 consideration.

29 (3) For taxable years ending on or after December 31,
30 2004, business income derived from providing
31 transportation services other than airline services shall
32 be apportioned to this State by using a fraction, (a) the
33 numerator of which shall be (i) all receipts from any
34 movement or shipment of people, goods, mail, oil, gas, or

1 any other substance that both originates and terminates in
2 this State, plus (ii) that portion of the person's gross
3 receipts from movements or shipments of people, goods,
4 mail, oil, gas, or any other substance passing through,
5 into, or out of this State, that is determined by the ratio
6 that the miles traveled in this State bears to total miles
7 from point of origin to point of destination and (b) the
8 denominator of which shall be all revenue derived from the
9 movement or shipment of people, goods, mail, oil, gas, or
10 any other substance. If a person derives business income
11 from activities other than the provision of transportation
12 services, only its business income from transportation
13 services shall be apportioned according to this
14 subsection.

15 (4) For taxable years ending on or after December 31,
16 2004, business income derived from providing airline
17 services shall be apportioned to this State by using a
18 fraction, (a) the numerator of which shall be all receipts
19 from any movement or shipment of people, goods, or mail,
20 multiplied by the ratio equal to arrivals of aircraft to
21 and departures from this State weighted as to cost of
22 aircraft by type divided by total arrivals and departures
23 of aircraft weighted as to cost of aircraft by type and (b)
24 the denominator of which shall be all revenue derived from
25 the movement or shipment of people, goods, or mail. If a
26 person derives business income from activities other than
27 the provision of airline services only, its business income
28 from airline services shall be apportioned according to
29 this subsection.

30 (e) Combined apportionment. Where 2 or more persons are
31 engaged in a unitary business as described in subsection
32 (a) (27) of Section 1501, a part of which is conducted in this
33 State by one or more members of the group, the business income
34 attributable to this State by any such member or members shall

1 be apportioned by means of the combined apportionment method.

2 (f) Alternative allocation. If the allocation and
3 apportionment provisions of subsections (a) through (e) and of
4 subsection (h) do not fairly represent the extent of a person's
5 business activity in this State, the person may petition for,
6 or the Director may, without a petition, permit or require, in
7 respect of all or any part of the person's business activity,
8 if reasonable:

9 (1) Separate accounting;

10 (2) The exclusion of any one or more factors;

11 (3) The inclusion of one or more additional factors
12 which will fairly represent the person's business
13 activities in this State; or

14 (4) The employment of any other method to effectuate an
15 equitable allocation and apportionment of the person's
16 business income.

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

19 (h) For tax years ending on or after December 31, 1998, the
20 apportionment factor of persons who apportion their business
21 income to this State under subsection (a) shall be equal to:

22 (1) for tax years ending on or after December 31, 1998
23 and before December 31, 1999, 16 2/3% of the property
24 factor plus 16 2/3% of the payroll factor plus 66 2/3% of
25 the sales factor;

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

30 (3) for tax years ending on or after December 31, 2000,
31 the sales factor.

32 If, in any tax year ending on or after December 31, 1998 and
33 before December 31, 2000, the denominator of the payroll,
34 property, or sales factor is zero, the apportionment factor

1 computed in paragraph (1) or (2) of this subsection for that
2 year shall be divided by an amount equal to 100% minus the
3 percentage weight given to each factor whose denominator is
4 equal to zero.

5 (i) The changes made to this Section by this amendatory Act
6 of the 93rd General Assembly do not apply to any small business
7 as defined in the Small Business Advisory Act.

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

10 (35 ILCS 5/305) (from Ch. 120, par. 3-305)

11 Sec. 305. Allocation of Partnership Income by partnerships
12 and partners other than residents. (a) Allocation of
13 partnership business income by partners other than residents.
14 The respective shares of partners other than residents in so
15 much of the business income of the partnership as is allocated
16 or apportioned to this State in the possession of the
17 partnership shall be taken into account by such partners pro
18 rata in accordance with their respective distributive shares of
19 such partnership income for the partnership's taxable year and
20 allocated to this State.

21 (b) Allocation of partnership nonbusiness income by
22 partners other than residents. The respective shares of
23 partners other than residents in the items of partnership
24 income and deduction not taken into account in computing the
25 business income of a partnership shall be taken into account by
26 such partners pro rata in accordance with their respective
27 distributive shares of such partnership income for the
28 partnership's taxable year, and allocated as if such items had
29 been paid, incurred or accrued directly to such partners in
30 their separate capacities.

31 (c) Allocation or apportionment of base income by
32 partnership. Base income of a partnership shall be allocated or
33 apportioned to this State pursuant to Article 3, in the same

1 manner as it is allocated or apportioned for any other
2 nonresident.

3 (c-5) Taxable income of an investment partnership, as
4 defined in Section 1501(a)(11.5) of this Act, that is
5 distributable to a nonresident partner shall be treated as
6 nonbusiness income and shall be allocated to the partner's
7 state of residence (in the case of an individual) or commercial
8 domicile (in the case of any other person). However, any income
9 distributable to a nonresident partner shall be treated as
10 business income and apportioned as if such income had been
11 received directly by the partner if the partner has made an
12 election under Section 1501(a)(1) of this Act to treat all
13 income as business income or if such income is from investment
14 activity:

15 (1) that is directly or integrally related to any other
16 business activity conducted in this State by the
17 nonresident partner (or any member of that partner's
18 unitary business group);

19 (2) that serves an operational function to any other
20 business activity of the nonresident partner (or any member
21 of that partner's unitary business group) in this State; or

22 (3) where assets of the investment partnership were
23 acquired with working capital from a trade or business
24 activity conducted in this State in which the nonresident
25 partner (or any member of that partner's unitary business
26 group) owns an interest.

27 (d) Cross reference. For allocation of partnership income
28 or deductions by residents, see Section 301(a).

29 (e) The changes made to this Section by this amendatory Act
30 of the 93rd General Assembly do not apply to any small business
31 as defined in the Small Business Advisory Act.

32 (Source: P.A. 84-550.)

33 (35 ILCS 5/501) (from Ch. 120, par. 5-501)

1 Sec. 501. Notice or Regulations Requiring Records,
2 Statements and Special Returns.

3 (a) In general. Every person liable for any tax imposed by
4 this Act shall keep such records, render such statements, make
5 such returns and notices, and comply with such rules and
6 regulations as the Department may from time to time prescribe.
7 Whenever in the judgment of the Director it is necessary, he
8 may require any person, by notice served upon such person or by
9 regulations, to make such returns and notices, render such
10 statements, or keep such records, as the Director deems
11 sufficient to show whether or not such person is liable for tax
12 under this Act.

13 (b) Reportable transactions.

14 (1) Federal transactions. For each taxable year in which a
15 taxpayer is required to make a disclosure statement under
16 Treasury Regulations Section 1.6011-4 (26 CFR 1.6011-4)
17 (including any taxpayer that is a member of a consolidated
18 group required to make such disclosure) with respect to a
19 reportable transaction (including a listed transaction) in
20 which the taxpayer participated in a taxable year for which a
21 return is required under Section 502 of this Act, such taxpayer
22 shall file a copy of such disclosure with the Department.
23 Disclosure under this paragraph (1) is required to be made by
24 any taxpayer that is a member of a unitary business group that
25 includes any person required to make a disclosure statement
26 under Treasury Regulations Section 1.6011-4. Disclosure under
27 this paragraph (1) is required with respect to any transaction
28 entered into after February 28, 2000 that becomes a listed
29 transaction at any time and shall be made in the manner
30 prescribed by the Department. With respect to listed
31 transactions in which the taxpayer participated for taxable
32 years ending before December 31, 2004, disclosure shall be made
33 by the due date (including extensions) of the first return
34 required under Section 502 of this Act due after the effective

1 date of this Public Act of the 93rd General Assembly. With
2 respect to transactions in which the taxpayer participated for
3 taxable years ending on and after December 31, 2004, disclosure
4 shall be made at the time disclosure is required under Treasury
5 regulations (Section 1.6011-4).

6 (2) Illinois transactions. Any taxpayer that has
7 participated in an "Illinois reportable transaction" is
8 required to disclose such transaction on a return or statement
9 at the time, and in the form and manner prescribed by the
10 Department. Disclosure is required for each taxable year in
11 which the taxpayer participates in an Illinois reportable
12 transaction. If such reportable transaction results in a loss
13 which is carried back to a prior year, such disclosure must be
14 attached to the taxpayer's amended tax return for that prior
15 year.

16 (A) Definitions.

17 (i) Illinois reportable transaction. The term
18 "Illinois reportable transaction" means any
19 transaction of a type that the Department shall by
20 regulation determine as having a potential for
21 avoidance or evasion of the tax imposed by this Act,
22 including deductions, basis, credits, entity
23 classification, dividend elimination, or omission of
24 income. An Illinois reportable transaction includes
25 (but is not limited to) "Illinois listed transactions"
26 as defined in this subparagraph (A), "confidential
27 transactions" as defined under Treasury Regulations
28 Section 1.6011-4(b)(3) and "transactions with
29 contractual protection" as defined under Treasury
30 Regulations Section 1.6011-4(b)(4).

31 (ii) Illinois listed transactions. The term
32 "Illinois listed transaction" means a reportable
33 transaction that is the same as, or substantially
34 similar to, one of the types of reportable transactions

1 and that has been specifically identified by the
2 Department as a tax avoidance transaction.

3 (iii) Participated. For purposes of paragraph (2)
4 of this subsection (b), the term "participated" shall
5 be defined for each type of Illinois reportable
6 transaction in the regulation or other published
7 guidance identifying that type of reportable
8 transaction or listed transaction.

9 (B) The Department shall identify and publish Illinois
10 listed transactions through the use of Informational
11 Bulletins or other published guidance.

12 (c) Inconsistent return position. Pursuant to regulations
13 prescribed by the Department, any taxpayer that reports for any
14 taxable year any item for Illinois income tax purposes in a
15 manner inconsistent with the manner in which the same item is
16 reported or reflected on any return filed for the same taxable
17 year with another state with respect to a tax on or measured by
18 net income or with the manner in which a substantially
19 identical item was reported or reflected for Illinois income
20 tax purposes for the immediately preceding taxable year
21 (inconsistent return position), shall disclose such
22 inconsistent return position on a return or statement in the
23 form and manner prescribed by the Department. An inconsistent
24 return position shall include, but shall not be limited to, the
25 following:

26 (1) The reporting of the same item as business
27 income on the Illinois return and as nonbusiness income
28 on the return filed in another state, or as nonbusiness
29 income on the Illinois return and as business income on
30 the return filed in another state (except that an item
31 reported as business income in Illinois by virtue of
32 the election provided under Section 1501(a) (1) of this
33 Act shall not be deemed to give rise to an inconsistent
34 return position).

1 (2) The reporting of the same item of gross
2 receipts as attributable to another state on the
3 Illinois return and as attributable to Illinois on the
4 return filed in another state.

5 (3) The reporting of the same person as a member of
6 the taxpayer's unitary business on the Illinois return
7 and as not a member of the unitary business on the
8 return filed in another state or the reporting of the
9 same person as not a member of the taxpayer's unitary
10 business on the Illinois return and as a member of the
11 unitary business on the return filed in another state.

12 (d) The changes made to this Section by this amendatory Act
13 of the 93rd General Assembly do not apply to any small business
14 as defined in the Small Business Advisory Act.

15 (Source: P.A. 76-261.)

16 (35 ILCS 5/502) (from Ch. 120, par. 5-502)

17 Sec. 502. Returns and notices.

18 (a) In general. A return with respect to the taxes imposed
19 by this Act shall be made by every person for any taxable year:

20 (1) for which such person is liable for a tax imposed
21 by this Act, or

22 (2) in the case of a resident or in the case of a
23 corporation which is qualified to do business in this
24 State, for which such person is required to make a federal
25 income tax return, regardless of whether such person is
26 liable for a tax imposed by this Act. However, this
27 paragraph shall not require a resident to make a return if
28 such person has an Illinois base income of the basic amount
29 in Section 204(b) or less and is either claimed as a
30 dependent on another person's tax return under the Internal
31 Revenue Code of 1986, or is claimed as a dependent on
32 another person's tax return under this Act.

33 Notwithstanding the provisions of paragraph (1), a

1 nonresident whose Illinois income tax liability under
2 subsections (a), (b), (c), and (d) of Section 201 of this Act
3 is paid in full after taking into account the credits allowed
4 under subsection (f) of this Section or allowed under Section
5 709.5 of this Act shall not be required to file a return under
6 this subsection (a).

7 (b) Fiduciaries and receivers.

8 (1) Decedents. If an individual is deceased, any return
9 or notice required of such individual under this Act shall
10 be made by his executor, administrator, or other person
11 charged with the property of such decedent.

12 (2) Individuals under a disability. If an individual is
13 unable to make a return or notice required under this Act,
14 the return or notice required of such individual shall be
15 made by his duly authorized agent, guardian, fiduciary or
16 other person charged with the care of the person or
17 property of such individual.

18 (3) Estates and trusts. Returns or notices required of
19 an estate or a trust shall be made by the fiduciary
20 thereof.

21 (4) Receivers, trustees and assignees for
22 corporations. In a case where a receiver, trustee in
23 bankruptcy, or assignee, by order of a court of competent
24 jurisdiction, by operation of law, or otherwise, has
25 possession of or holds title to all or substantially all
26 the property or business of a corporation, whether or not
27 such property or business is being operated, such receiver,
28 trustee, or assignee shall make the returns and notices
29 required of such corporation in the same manner and form as
30 corporations are required to make such returns and notices.

31 (c) Joint returns by husband and wife.

32 (1) Except as provided in paragraph (3), if a husband
33 and wife file a joint federal income tax return for a
34 taxable year they shall file a joint return under this Act

1 for such taxable year and their liabilities shall be joint
2 and several, but if the federal income tax liability of
3 either spouse is determined on a separate federal income
4 tax return, they shall file separate returns under this
5 Act.

6 (2) If neither spouse is required to file a federal
7 income tax return and either or both are required to file a
8 return under this Act, they may elect to file separate or
9 joint returns and pursuant to such election their
10 liabilities shall be separate or joint and several.

11 (3) If either husband or wife is a resident and the
12 other is a nonresident, they shall file separate returns in
13 this State on such forms as may be required by the
14 Department in which event their tax liabilities shall be
15 separate; but they may elect to determine their joint net
16 income and file a joint return as if both were residents
17 and in such case, their liabilities shall be joint and
18 several.

19 (4) Innocent spouses.

20 (A) However, for tax liabilities arising and paid
21 prior to August 13, 1999, an innocent spouse shall be
22 relieved of liability for tax (including interest and
23 penalties) for any taxable year for which a joint
24 return has been made, upon submission of proof that the
25 Internal Revenue Service has made a determination
26 under Section 6013(e) of the Internal Revenue Code, for
27 the same taxable year, which determination relieved
28 the spouse from liability for federal income taxes. If
29 there is no federal income tax liability at issue for
30 the same taxable year, the Department shall rely on the
31 provisions of Section 6013(e) to determine whether the
32 person requesting innocent spouse abatement of tax,
33 penalty, and interest is entitled to that relief.

34 (B) For tax liabilities arising on and after August

1 13, 1999 or which arose prior to that date, but remain
2 unpaid as of that date, if an individual who filed a
3 joint return for any taxable year has made an election
4 under this paragraph, the individual's liability for
5 any tax shown on the joint return shall not exceed the
6 individual's separate return amount and the
7 individual's liability for any deficiency assessed for
8 that taxable year shall not exceed the portion of the
9 deficiency properly allocable to the individual. For
10 purposes of this paragraph:

11 (i) An election properly made pursuant to
12 Section 6015 of the Internal Revenue Code shall
13 constitute an election under this paragraph,
14 provided that the election shall not be effective
15 until the individual has notified the Department
16 of the election in the form and manner prescribed
17 by the Department.

18 (ii) If no election has been made under Section
19 6015, the individual may make an election under
20 this paragraph in the form and manner prescribed by
21 the Department, provided that no election may be
22 made if the Department finds that assets were
23 transferred between individuals filing a joint
24 return as part of a scheme by such individuals to
25 avoid payment of Illinois income tax and the
26 election shall not eliminate the individual's
27 liability for any portion of a deficiency
28 attributable to an error on the return of which the
29 individual had actual knowledge as of the date of
30 filing.

31 (iii) In determining the separate return
32 amount or portion of any deficiency attributable
33 to an individual, the Department shall follow the
34 provisions in subsections (c) and (d) of Section

1 6015 of the Internal Revenue Code.

2 (iv) In determining the validity of an
3 individual's election under subparagraph (ii) and
4 in determining an electing individual's separate
5 return amount or portion of any deficiency under
6 subparagraph (iii), any determination made by the
7 Secretary of the Treasury, by the United States Tax
8 Court on petition for review of a determination by
9 the Secretary of the Treasury, or on appeal from
10 the United States Tax Court under Section 6015 of
11 the Internal Revenue Code regarding criteria for
12 eligibility or under subsection (d) of Section
13 6015 of the Internal Revenue Code regarding the
14 allocation of any item of income, deduction,
15 payment, or credit between an individual making
16 the federal election and that individual's spouse
17 shall be conclusively presumed to be correct. With
18 respect to any item that is not the subject of a
19 determination by the Secretary of the Treasury or
20 the federal courts, in any proceeding involving
21 this subsection, the individual making the
22 election shall have the burden of proof with
23 respect to any item except that the Department
24 shall have the burden of proof with respect to
25 items in subdivision (ii).

26 (v) Any election made by an individual under
27 this subsection shall apply to all years for which
28 that individual and the spouse named in the
29 election have filed a joint return.

30 (vi) After receiving a notice that the federal
31 election has been made or after receiving an
32 election under subdivision (ii), the Department
33 shall take no collection action against the
34 electing individual for any liability arising from

1 a joint return covered by the election until the
2 Department has notified the electing individual in
3 writing that the election is invalid or of the
4 portion of the liability the Department has
5 allocated to the electing individual. Within 60
6 days (150 days if the individual is outside the
7 United States) after the issuance of such
8 notification, the individual may file a written
9 protest of the denial of the election or of the
10 Department's determination of the liability
11 allocated to him or her and shall be granted a
12 hearing within the Department under the provisions
13 of Section 908. If a protest is filed, the
14 Department shall take no collection action against
15 the electing individual until the decision
16 regarding the protest has become final under
17 subsection (d) of Section 908 or, if
18 administrative review of the Department's decision
19 is requested under Section 1201, until the
20 decision of the court becomes final.

21 (d) Partnerships. Every partnership having any base income
22 allocable to this State in accordance with section 305(c) shall
23 retain information concerning all items of income, gain, loss
24 and deduction; the names and addresses of all of the partners,
25 or names and addresses of members of a limited liability
26 company, or other persons who would be entitled to share in the
27 base income of the partnership if distributed; the amount of
28 the distributive share of each; and such other pertinent
29 information as the Department may by forms or regulations
30 prescribe. The partnership shall make that information
31 available to the Department when requested by the Department.

32 (e) For taxable years ending on or after December 31, 1985,
33 and before December 31, 1993, taxpayers that are corporations
34 (other than Subchapter S corporations) having the same taxable

1 year and that are members of the same unitary business group
2 may elect to be treated as one taxpayer for purposes of any
3 original return, amended return which includes the same
4 taxpayers of the unitary group which joined in the election to
5 file the original return, extension, claim for refund,
6 assessment, collection and payment and determination of the
7 group's tax liability under this Act. This subsection (e) does
8 not permit the election to be made for some, but not all, of
9 the purposes enumerated above. For taxable years ending on or
10 after December 31, 1987, corporate members (other than
11 Subchapter S corporations) of the same unitary business group
12 making this subsection (e) election are not required to have
13 the same taxable year.

14 For taxable years ending on or after December 31, 1993,
15 taxpayers that are corporations (other than Subchapter S
16 corporations) and that are members of the same unitary business
17 group shall be treated as one taxpayer for purposes of any
18 original return, amended return which includes the same
19 taxpayers of the unitary group which joined in filing the
20 original return, extension, claim for refund, assessment,
21 collection and payment and determination of the group's tax
22 liability under this Act.

23 (f) The Department may promulgate regulations to permit
24 nonresident individual partners of the same partnership,
25 nonresident Subchapter S corporation shareholders of the same
26 Subchapter S corporation, and nonresident individuals
27 transacting an insurance business in Illinois under a Lloyds
28 plan of operation, and nonresident individual members of the
29 same limited liability company that is treated as a partnership
30 under Section 1501 (a)(16) of this Act, to file composite
31 individual income tax returns reflecting the composite income
32 of such individuals allocable to Illinois and to make composite
33 individual income tax payments. The Department may by
34 regulation also permit such composite returns to include the

1 income tax owed by Illinois residents attributable to their
2 income from partnerships, Subchapter S corporations, insurance
3 businesses organized under a Lloyds plan of operation, or
4 limited liability companies that are treated as partnership
5 under Section 1501(a)(16) of this Act, in which case such
6 Illinois residents will be permitted to claim credits on their
7 individual returns for their shares of the composite tax
8 payments. This paragraph of subsection (f) applies to taxable
9 years ending on or after December 31, 1987.

10 For taxable years ending on or after December 31, 1999, the
11 Department may, by regulation, also permit any persons
12 transacting an insurance business organized under a Lloyds plan
13 of operation to file composite returns reflecting the income of
14 such persons allocable to Illinois and the tax rates applicable
15 to such persons under Section 201 and to make composite tax
16 payments and shall, by regulation, also provide that the income
17 and apportionment factors attributable to the transaction of an
18 insurance business organized under a Lloyds plan of operation
19 by any person joining in the filing of a composite return
20 shall, for purposes of allocating and apportioning income under
21 Article 3 of this Act and computing net income under Section
22 202 of this Act, be excluded from any other income and
23 apportionment factors of that person or of any unitary business
24 group, as defined in subdivision (a)(27) of Section 1501, to
25 which that person may belong.

26 For taxable years ending on or after December 31, 2004,
27 every nonresident shall be allowed a credit against his or her
28 liability under subsections (a) and (b) of Section 201 for any
29 amount of tax reported on a composite return and paid on his or
30 her behalf under this subsection (f). Residents (other than
31 persons transacting an insurance business organized under a
32 Lloyds plan of operation) may claim a credit for taxes reported
33 on a composite return and paid on their behalf under this
34 subsection (f) only as permitted by the Department by rule.

1 (f-5) For taxable years ending on or after December 31,
2 2004, the Department may promulgate rules to provide that, when
3 a partnership or Subchapter S corporation has made an error in
4 determining the amount of any item of income, deduction,
5 addition, subtraction, or credit required to be reported on its
6 return that affects the liability imposed under this Act on a
7 partner or shareholder, the partnership or Subchapter S
8 corporation may report the changes in liabilities of its
9 partners or shareholders and claim a refund of the resulting
10 overpayments, or pay the resulting underpayments, on behalf of
11 its partners and shareholders.

12 (g) The Department may adopt rules to authorize the
13 electronic filing of any return required to be filed under this
14 Section.

15 (h) The changes made to this Section by this amendatory Act
16 of the 93rd General Assembly do not apply to any small business
17 as defined in the Small Business Advisory Act.

18 (Source: P.A. 91-541, eff. 8-13-99; 91-913, eff. 1-1-01;
19 92-846, eff. 8-23-02.)

20 (35 ILCS 5/709.5 new)

21 Sec. 709.5. Withholding by partnerships, Subchapter S
22 corporations, and trusts.

23 (a) In general. For each taxable year ending on or after
24 December 31, 2004, every partnership (other than a publicly
25 traded partnership under Section 7704 of the Internal Revenue
26 Code), Subchapter S corporation, and trust must withhold from
27 each nonresident partner, shareholder, or beneficiary (other
28 than a partner, shareholder, or beneficiary included on a
29 composite return filed by the partnership or Subchapter S
30 corporation for the taxable year under subsection (f) of
31 Section 502 of this Act) an amount equal to the distributable
32 share of the business income apportionable to Illinois of that
33 partner, shareholder, or beneficiary under Sections 702 and 704

1 and Subchapter S of the Internal Revenue Code, whether or not
2 distributed, multiplied by the applicable rates of tax for that
3 partner or shareholder under subsections (a) through (d) of
4 Section 201 of this Act.

5 (b) Credit for taxes withheld. Any amount withheld under
6 subsection (a) of this Section and paid to the Department shall
7 be treated as a payment of the estimated tax liability or of
8 the liability for withholding under this Section of the
9 partner, shareholder, or beneficiary to whom the income is
10 distributable for the taxable year in which that person
11 incurred a liability under this Act with respect to that
12 income.

13 (c) The changes made to this Section by this amendatory Act
14 of the 93rd General Assembly do not apply to any small business
15 as defined in the Small Business Advisory Act.

16 (35 ILCS 5/711) (from Ch. 120, par. 7-711)

17 Sec. 711. Payor's Return and Payment of Tax Withheld. (a)
18 In general. Every payor required to deduct and withhold tax
19 under Section 710 ~~(and until January 1, 1989, Sections 708 and~~
20 ~~709)~~ shall be subject to the same reporting requirements
21 regarding taxes withheld and the same monthly and quarter
22 monthly (weekly) payment requirements as an employer subject to
23 the provisions of Section 701. For purposes of monthly and
24 quarter monthly (weekly) payments, the total tax withheld under
25 Sections 701, ~~708, 709~~ and 710 shall be considered in the
26 aggregate.

27 (a-5) Every partnership, Subchapter S corporation, or
28 trust required to withhold tax under Section 709.5 shall report
29 the amounts withheld and the partners, shareholders, or
30 beneficiaries from whom the amounts were withheld, and pay over
31 the amount withheld, no later than the due date (without regard
32 to extensions) of the tax return of the partnership, Subchapter
33 S corporation, or trust for the taxable year.

1 (b) Information statement. Every payor required to deduct
2 and withhold tax under Section 710 ~~(and until January 1, 1989,~~
3 ~~Sections 708 and 709)~~ shall furnish in duplicate to each party
4 entitled to the credit for such withholding under subsection
5 (b) of Section 709.5 ~~(c) of Section 708, subsection (c) of~~
6 ~~Section 709,~~ and subsection (b) of Section 710, respectively,
7 on or before January 31 of the succeeding calendar year for
8 amounts withheld under Section 710 or the due date (without
9 regard to extensions) of the return of the partnership,
10 Subchapter S corporation, or trust for the taxable year for
11 amounts withheld under Section 709.5 for the taxable year, a
12 written statement in such form as the Department may by
13 regulation prescribe showing the amount of the payments, the
14 amount deducted and withheld as tax, and such other information
15 as the Department may prescribe. A copy of such statement shall
16 be filed by the party entitled to the credit for the
17 withholding under subsection (b) of Section 709.5 ~~(c) of~~
18 ~~Section 708, subsection (c) of Section 709,~~ or subsection (b)
19 of Section 710 with his return for the taxable year to which it
20 relates.

21 (c) The changes made to this Section by this amendatory Act
22 of the 93rd General Assembly do not apply to any small business
23 as defined in the Small Business Advisory Act.

24 (Source: P.A. 85-299; 85-982.)

25 (35 ILCS 5/712) (from Ch. 120, par. 7-712)

26 Sec. 712. Payor's Liability For Withheld Taxes. Every payor
27 who deducts and withholds or is required to deduct and withhold
28 tax under Sections 709.5 or Section 710 ~~(and until January 1,~~
29 ~~1989, Sections 708 and 709)~~ is liable for such tax. For
30 purposes of assessment and collection, any amount withheld or
31 required to be withheld and paid over to the Department, and
32 any penalties and interest with respect thereto, shall be
33 considered the tax of the payor. Any amount of tax actually

1 deducted and withheld under Sections 709.5 or Section 710 ~~(and~~
2 ~~until January 1, 1989, Sections 708 and 709)~~ shall be held to
3 be a special fund in trust for the Department. No payee shall
4 have any right of action against his payor in respect of any
5 money deducted and withheld and paid over to the Department in
6 compliance or in intended compliance with Sections and 709.5 or
7 ~~Section 710~~ (and until January 1, 1989, Sections 708 and 709).

8 The changes made to this Section by this amendatory Act of
9 the 93rd General Assembly do not apply to any small business as
10 defined in the Small Business Advisory Act.

11 (Source: P.A. 85-299; 85-982.)

12 (35 ILCS 5/713) (from Ch. 120, par. 7-713)

13 Sec. 713. Payor's Failure To Withhold. If a payor fails to
14 deduct and withhold any amount of tax as required under
15 Sections and 709.5 or Section 710 ~~(and until January 1, 1989,~~
16 ~~Sections 708 and 709)~~ and thereafter the tax on account of
17 which such amount was required to be deducted and withheld is
18 paid, such amount of tax shall not be collected from the payor,
19 but the payor shall not be relieved from liability for
20 penalties or interest otherwise applicable in respect of such
21 failure to deduct and withhold. For purposes of this Section,
22 the tax on account of which an amount is required to be
23 deducted and withheld is the tax of the individual or
24 individuals who are entitled to a credit under subsection (b)
25 of Section 709.5 ~~(e) of Section 708, subsection (e) of Section~~
26 ~~709,~~ or subsection (b) of Section 710 for the withheld tax.

27 The changes made to this Section by this amendatory Act of
28 the 93rd General Assembly do not apply to any small business as
29 defined in the Small Business Advisory Act.

30 (Source: P.A. 85-299; 85-982.)

31 (35 ILCS 5/804) (from Ch. 120, par. 8-804)

32 Sec. 804. Failure to Pay Estimated Tax.

1 (a) In general. In case of any underpayment of estimated
2 tax by a taxpayer, except as provided in subsection (d) or (e),
3 the taxpayer shall be liable to a penalty in an amount
4 determined at the rate prescribed by Section 3-3 of the Uniform
5 Penalty and Interest Act upon the amount of the underpayment
6 (determined under subsection (b)) for each required
7 installment.

8 (b) Amount of underpayment. For purposes of subsection (a),
9 the amount of the underpayment shall be the excess of:

10 (1) the amount of the installment which would be
11 required to be paid under subsection (c), over

12 (2) the amount, if any, of the installment paid on or
13 before the last date prescribed for payment.

14 (c) Amount of Required Installments.

15 (1) Amount.

16 (A) In General. Except as provided in paragraph
17 (2), the amount of any required installment shall be
18 25% of the required annual payment.

19 (B) Required Annual Payment. For purposes of
20 subparagraph (A), the term "required annual payment"
21 means the lesser of

22 (i) 90% of the tax shown on the return for the
23 taxable year, or if no return is filed, 90% of the
24 tax for such year, or

25 (ii) 100% of the tax shown on the return of the
26 taxpayer for the preceding taxable year if a return
27 showing a liability for tax was filed by the
28 taxpayer for the preceding taxable year and such
29 preceding year was a taxable year of 12 months.

30 (2) Lower Required Installment where Annualized Income
31 Installment is Less Than Amount Determined Under Paragraph
32 (1).

33 (A) In General. In the case of any required
34 installment if a taxpayer establishes that the

1 annualized income installment is less than the amount
2 determined under paragraph (1),

3 (i) the amount of such required installment
4 shall be the annualized income installment, and

5 (ii) any reduction in a required installment
6 resulting from the application of this
7 subparagraph shall be recaptured by increasing the
8 amount of the next required installment determined
9 under paragraph (1) by the amount of such
10 reduction, and by increasing subsequent required
11 installments to the extent that the reduction has
12 not previously been recaptured under this clause.

13 (B) Determination of Annualized Income
14 Installment. In the case of any required installment,
15 the annualized income installment is the excess, if
16 any, of

17 (i) an amount equal to the applicable
18 percentage of the tax for the taxable year computed
19 by placing on an annualized basis the net income
20 for months in the taxable year ending before the
21 due date for the installment, over

22 (ii) the aggregate amount of any prior
23 required installments for the taxable year.

24 (C) Applicable Percentage.

25	In the case of the following	The applicable
26	required installments:	percentage is:
27	1st.....	22.5%
28	2nd.....	45%
29	3rd.....	67.5%
30	4th.....	90%

31 (D) Annualized Net Income; Individuals. For
32 individuals, net income shall be placed on an
33 annualized basis by:

34 (i) multiplying by 12, or in the case of a

1 taxable year of less than 12 months, by the number
2 of months in the taxable year, the net income
3 computed without regard to the standard exemption
4 for the months in the taxable year ending before
5 the month in which the installment is required to
6 be paid;

7 (ii) dividing the resulting amount by the
8 number of months in the taxable year ending before
9 the month in which such installment date falls; and

10 (iii) deducting from such amount the standard
11 exemption allowable for the taxable year, such
12 standard exemption being determined as of the last
13 date prescribed for payment of the installment.

14 (E) Annualized Net Income; Corporations. For
15 corporations, net income shall be placed on an
16 annualized basis by multiplying by 12 the taxable
17 income

18 (i) for the first 3 months of the taxable year,
19 in the case of the installment required to be paid
20 in the 4th month,

21 (ii) for the first 3 months or for the first 5
22 months of the taxable year, in the case of the
23 installment required to be paid in the 6th month,

24 (iii) for the first 6 months or for the first 8
25 months of the taxable year, in the case of the
26 installment required to be paid in the 9th month,
27 and

28 (iv) for the first 9 months or for the first 11
29 months of the taxable year, in the case of the
30 installment required to be paid in the 12th month
31 of the taxable year,

32 then dividing the resulting amount by the number of
33 months in the taxable year (3, 5, 6, 8, 9, or 11 as the
34 case may be).

1 (d) Exceptions. Notwithstanding the provisions of the
2 preceding subsections, the penalty imposed by subsection (a)
3 shall not be imposed if the taxpayer was not required to file
4 an Illinois income tax return for the preceding taxable year,
5 or, for individuals, if the taxpayer had no tax liability for
6 the preceding taxable year and such year was a taxable year of
7 12 months. The penalty imposed by subsection (a) shall also not
8 be imposed on any underpayments of estimated tax due before the
9 effective date of this amendatory Act of 1998 which
10 underpayments are solely attributable to the change in
11 apportionment from subsection (a) to subsection (h) of Section
12 304. The provisions of this amendatory Act of 1998 apply to tax
13 years ending on or after December 31, 1998.

14 (e) The penalty imposed for underpayment of estimated tax
15 by subsection (a) of this Section shall not be imposed to the
16 extent that the Director ~~Department~~ or his or her designate
17 determines, pursuant to Section 3-8 of the Uniform Penalty and
18 Interest Act that the penalty should not be imposed.

19 (f) Definition of tax. For purposes of subsections (b) and
20 (c), the term "tax" means the excess of the tax imposed under
21 Article 2 of this Act, over the amounts credited against such
22 tax under Sections 601(b) (3) and (4).

23 (g) Application of Section in case of tax withheld under
24 Article 7 ~~on compensation~~. For purposes of applying this
25 Section :

26 (1) in the case of an individual, tax withheld from
27 compensation ~~under Article 7~~ for the taxable year shall be
28 deemed a payment of estimated tax, and an equal part of
29 such amount shall be deemed paid on each installment date
30 for such taxable year, unless the taxpayer establishes the
31 dates on which all amounts were actually withheld, in which
32 case the amounts so withheld shall be deemed payments of
33 estimated tax on the dates on which such amounts were
34 actually withheld; -

1 (2) amounts timely paid by a partnership, Subchapter S
2 corporation, or trust on behalf of a partner, shareholder,
3 or beneficiary pursuant to subsection (f) of Section 502 or
4 Section 709.5 and claimed as a payment of estimated tax
5 shall be deemed a payment of estimated tax made on the last
6 day of the taxable year of the partnership, Subchapter S
7 corporation, or trust for which the income from the
8 withholding is made was computed; and

9 (3) all other amounts pursuant to Article 7 shall be
10 deemed a payment of estimated tax on the date the payment
11 is made to the taxpayer of the amount from which the tax is
12 withheld.

13 (g-5) Amounts withheld under the State Salary and Annuity
14 Withholding Act. An individual who has amounts withheld under
15 paragraph (10) of Section 4 of the State Salary and Annuity
16 Withholding Act may elect to have those amounts treated as
17 payments of estimated tax made on the dates on which those
18 amounts are actually withheld.

19 (i) Short taxable year. The application of this Section to
20 taxable years of less than 12 months shall be in accordance
21 with regulations prescribed by the Department.

22 The changes in this Section made by Public Act 84-127 shall
23 apply to taxable years ending on or after January 1, 1986.

24 (Source: P.A. 90-448, eff. 8-16-97; 90-613, eff. 7-9-98.)

25 (35 ILCS 5/905) (from Ch. 120, par. 9-905)

26 Sec. 905. Limitations on Notices of Deficiency.

27 (a) In general. Except as otherwise provided in this Act:

28 (1) A notice of deficiency shall be issued not later
29 than 3 years after the date the return was filed, and

30 (2) No deficiency shall be assessed or collected with
31 respect to the year for which the return was filed unless
32 such notice is issued within such period.

33 (b) Substantial omission of items.

1 (1) Omission of more than 25% of income. If the
2 taxpayer omits from base income an amount properly
3 includible therein which is in excess of 25% of the amount
4 of base income stated in the return, a notice of deficiency
5 may be issued not later than 6 years after the return was
6 filed. For purposes of this paragraph, there shall not be
7 taken into account any amount which is omitted in the
8 return if such amount is disclosed in the return, or in a
9 statement attached to the return, in a manner adequate to
10 apprise the Department of the nature and the amount of such
11 item.

12 (2) Reportable transactions. If a taxpayer fails to
13 include on any return or statement for any taxable year any
14 information with respect to a reportable transaction or
15 Illinois reportable transaction, as required under Section
16 501(b) of this Act, or fails to disclose an inconsistent
17 return position, as required under Section 501(c) of this
18 Act, a notice of deficiency may be issued not later than 6
19 years after the return is filed with respect to the taxable
20 year in which the taxpayer participated in the reportable
21 transaction or was required to disclose an inconsistent
22 return position.

23 (c) No return or fraudulent return. If no return is filed
24 or a false and fraudulent return is filed with intent to evade
25 the tax imposed by this Act, a notice of deficiency may be
26 issued at any time.

27 (d) Failure to report federal change. If a taxpayer fails
28 to notify the Department in any case where notification is
29 required by Section 304(c) or 506(b), or fails to report a
30 change or correction which is treated in the same manner as if
31 it were a deficiency for federal income tax purposes, a notice
32 of deficiency may be issued (i) at any time or (ii) on or after
33 August 13, 1999, at any time for the taxable year for which the
34 notification is required or for any taxable year to which the

1 taxpayer may carry an Article 2 credit, or a Section 207 loss,
2 earned, incurred, or used in the year for which the
3 notification is required; provided, however, that the amount of
4 any proposed assessment set forth in the notice shall be
5 limited to the amount of any deficiency resulting under this
6 Act from the recomputation of the taxpayer's net income,
7 Article 2 credits, or Section 207 loss earned, incurred, or
8 used in the taxable year for which the notification is required
9 after giving effect to the item or items required to be
10 reported.

11 (e) Report of federal change.

12 (1) Before August 13, 1999, in any case where
13 notification of an alteration is given as required by
14 Section 506(b), a notice of deficiency may be issued at any
15 time within 2 years after the date such notification is
16 given, provided, however, that the amount of any proposed
17 assessment set forth in such notice shall be limited to the
18 amount of any deficiency resulting under this Act from
19 recomputation of the taxpayer's net income, net loss, or
20 Article 2 credits for the taxable year after giving effect
21 to the item or items reflected in the reported alteration.

22 (2) On and after August 13, 1999, in any case where
23 notification of an alteration is given as required by
24 Section 506(b), a notice of deficiency may be issued at any
25 time within 2 years after the date such notification is
26 given for the taxable year for which the notification is
27 given or for any taxable year to which the taxpayer may
28 carry an Article 2 credit, or a Section 207 loss, earned,
29 incurred, or used in the year for which the notification is
30 given, provided, however, that the amount of any proposed
31 assessment set forth in such notice shall be limited to the
32 amount of any deficiency resulting under this Act from
33 recomputation of the taxpayer's net income, Article 2
34 credits, or Section 207 loss earned, incurred, or used in

1 the taxable year for which the notification is given after
2 giving effect to the item or items reflected in the
3 reported alteration.

4 (f) Extension by agreement. Where, before the expiration of
5 the time prescribed in this Section for the issuance of a
6 notice of deficiency, both the Department and the taxpayer
7 shall have consented in writing to its issuance after such
8 time, such notice may be issued at any time prior to the
9 expiration of the period agreed upon. In the case of a taxpayer
10 who is a partnership, Subchapter S corporation, or trust and
11 who enters into an agreement with the Department pursuant to
12 this subsection on or after January 1, 2003, a notice of
13 deficiency may be issued to the partners, shareholders, or
14 beneficiaries of the taxpayer at any time prior to the
15 expiration of the period agreed upon. Any proposed assessment
16 set forth in the notice, however, shall be limited to the
17 amount of any deficiency resulting under this Act from
18 recomputation of items of income, deduction, credits, or other
19 amounts of the taxpayer that are taken into account by the
20 partner, shareholder, or beneficiary in computing its
21 liability under this Act. The period so agreed upon may be
22 extended by subsequent agreements in writing made before the
23 expiration of the period previously agreed upon.

24 (g) Erroneous refunds. In any case in which there has been
25 an erroneous refund of tax payable under this Act, a notice of
26 deficiency may be issued at any time within 2 years from the
27 making of such refund, or within 5 years from the making of
28 such refund if it appears that any part of the refund was
29 induced by fraud or the misrepresentation of a material fact,
30 provided, however, that the amount of any proposed assessment
31 set forth in such notice shall be limited to the amount of such
32 erroneous refund.

33 Beginning July 1, 1993, in any case in which there has been
34 a refund of tax payable under this Act attributable to a net

1 loss carryback as provided for in Section 207, and that refund
2 is subsequently determined to be an erroneous refund due to a
3 reduction in the amount of the net loss which was originally
4 carried back, a notice of deficiency for the erroneous refund
5 amount may be issued at any time during the same time period in
6 which a notice of deficiency can be issued on the loss year
7 creating the carryback amount and subsequent erroneous refund.
8 The amount of any proposed assessment set forth in the notice
9 shall be limited to the amount of such erroneous refund.

10 (h) Time return deemed filed. For purposes of this Section
11 a tax return filed before the last day prescribed by law
12 (including any extension thereof) shall be deemed to have been
13 filed on such last day.

14 (i) Request for prompt determination of liability. For
15 purposes of subsection (a)(1), in the case of a tax return
16 required under this Act in respect of a decedent, or by his
17 estate during the period of administration, or by a
18 corporation, the period referred to in such Subsection shall be
19 18 months after a written request for prompt determination of
20 liability is filed with the Department (at such time and in
21 such form and manner as the Department shall by regulations
22 prescribe) by the executor, administrator, or other fiduciary
23 representing the estate of such decedent, or by such
24 corporation, but not more than 3 years after the date the
25 return was filed. This subsection shall not apply in the case
26 of a corporation unless:

27 (1) (A) such written request notifies the Department
28 that the corporation contemplates dissolution at or before
29 the expiration of such 18-month period, (B) the dissolution
30 is begun in good faith before the expiration of such
31 18-month period, and (C) the dissolution is completed;

32 (2) (A) such written request notifies the Department
33 that a dissolution has in good faith been begun, and (B)
34 the dissolution is completed; or

1 (3) a dissolution has been completed at the time such
2 written request is made.

3 (j) Withholding tax. In the case of returns required under
4 Article 7 of this Act (with respect to any amounts withheld as
5 tax or any amounts required to have been withheld as tax) a
6 notice of deficiency shall be issued not later than 3 years
7 after the 15th day of the 4th month following the close of the
8 calendar year in which such withholding was required.

9 (k) Penalties for failure to make information reports. A
10 notice of deficiency for the penalties provided by Subsection
11 1405.1(c) of this Act may not be issued more than 3 years after
12 the due date of the reports with respect to which the penalties
13 are asserted.

14 (l) Penalty for failure to file withholding returns. A
15 notice of deficiency for penalties provided by Section 1004 of
16 this Act for taxpayer's failure to file withholding returns may
17 not be issued more than three years after the 15th day of the
18 4th month following the close of the calendar year in which the
19 withholding giving rise to taxpayer's obligation to file those
20 returns occurred.

21 (m) Transferee liability. A notice of deficiency may be
22 issued to a transferee relative to a liability asserted under
23 Section 1405 during time periods defined as follows:

24 1) Initial Transferee. In the case of the liability of
25 an initial transferee, up to 2 years after the expiration
26 of the period of limitation for assessment against the
27 transferor, except that if a court proceeding for review of
28 the assessment against the transferor has begun, then up to
29 2 years after the return of the certified copy of the
30 judgment in the court proceeding.

31 2) Transferee of Transferee. In the case of the
32 liability of a transferee, up to 2 years after the
33 expiration of the period of limitation for assessment
34 against the preceding transferee, but not more than 3 years

1 after the expiration of the period of limitation for
2 assessment against the initial transferor; except that if,
3 before the expiration of the period of limitation for the
4 assessment of the liability of the transferee, a court
5 proceeding for the collection of the tax or liability in
6 respect thereof has been begun against the initial
7 transferor or the last preceding transferee, as the case
8 may be, then the period of limitation for assessment of the
9 liability of the transferee shall expire 2 years after the
10 return of the certified copy of the judgment in the court
11 proceeding.

12 (n) Notice of decrease in net loss. On and after the
13 effective date of this amendatory Act of the 92nd General
14 Assembly, no notice of deficiency shall be issued as the result
15 of a decrease determined by the Department in the net loss
16 incurred by a taxpayer under Section 207 of this Act unless the
17 Department has notified the taxpayer of the proposed decrease
18 within 3 years after the return reporting the loss was filed or
19 within one year after an amended return reporting an increase
20 in the loss was filed, provided that in the case of an amended
21 return, a decrease proposed by the Department more than 3 years
22 after the original return was filed may not exceed the increase
23 claimed by the taxpayer on the original return.

24 (o) The changes made to this Section by this amendatory Act
25 of the 93rd General Assembly do not apply to any small business
26 as defined in the Small Business Advisory Act.

27 (Source: P.A. 91-541, eff. 8-13-99; 92-846, eff. 8-23-02.)

28 (35 ILCS 5/911) (from Ch. 120, par. 9-911)

29 Sec. 911. Limitations on Claims for Refund.

30 (a) In general. Except as otherwise provided in this Act:

31 (1) A claim for refund shall be filed not later than 3
32 years after the date the return was filed (in the case of
33 returns required under Article 7 of this Act respecting any

1 amounts withheld as tax, not later than 3 years after the
2 15th day of the 4th month following the close of the
3 calendar year in which such withholding was made), or one
4 year after the date the tax was paid, whichever is the
5 later; and

6 (2) No credit or refund shall be allowed or made with
7 respect to the year for which the claim was filed unless
8 such claim is filed within such period.

9 (b) Federal changes.

10 (1) In general. In any case where notification of an
11 alteration is required by Section 506(b), a claim for
12 refund may be filed within 2 years after the date on which
13 such notification was due (regardless of whether such
14 notice was given), but the amount recoverable pursuant to a
15 claim filed under this Section shall be limited to the
16 amount of any overpayment resulting under this Act from
17 recomputation of the taxpayer's net income, net loss, or
18 Article 2 credits for the taxable year after giving effect
19 to the item or items reflected in the alteration required
20 to be reported.

21 (2) Tentative carryback adjustments paid before
22 January 1, 1974. If, as the result of the payment before
23 January 1, 1974 of a federal tentative carryback
24 adjustment, a notification of an alteration is required
25 under Section 506(b), a claim for refund may be filed at
26 any time before January 1, 1976, but the amount recoverable
27 pursuant to a claim filed under this Section shall be
28 limited to the amount of any overpayment resulting under
29 this Act from recomputation of the taxpayer's base income
30 for the taxable year after giving effect to the federal
31 alteration resulting from the tentative carryback
32 adjustment irrespective of any limitation imposed in
33 paragraph (1) of this subsection.

34 (c) Extension by agreement. Where, before the expiration of

1 the time prescribed in this section for the filing of a claim
2 for refund, both the Department and the claimant shall have
3 consented in writing to its filing after such time, such claim
4 may be filed at any time prior to the expiration of the period
5 agreed upon. The period so agreed upon may be extended by
6 subsequent agreements in writing made before the expiration of
7 the period previously agreed upon. In the case of a taxpayer
8 who is a partnership, Subchapter S corporation, or trust and
9 who enters into an agreement with the Department pursuant to
10 this subsection on or after January 1, 2003, a claim for refund
11 may be issued to the partners, shareholders, or beneficiaries
12 of the taxpayer at any time prior to the expiration of the
13 period agreed upon. Any refund allowed pursuant to the claim,
14 however, shall be limited to the amount of any overpayment of
15 tax due under this Act that results from recomputation of items
16 of income, deduction, credits, or other amounts of the taxpayer
17 that are taken into account by the partner, shareholder, or
18 beneficiary in computing its liability under this Act.

19 (d) Limit on amount of credit or refund.

20 (1) Limit where claim filed within 3-year period. If
21 the claim was filed by the claimant during the 3-year
22 period prescribed in subsection (a), the amount of the
23 credit or refund shall not exceed the portion of the tax
24 paid within the period, immediately preceding the filing of
25 the claim, equal to 3 years plus the period of any
26 extension of time for filing the return.

27 (2) Limit where claim not filed within 3-year period.
28 If the claim was not filed within such 3-year period, the
29 amount of the credit or refund shall not exceed the portion
30 of the tax paid during the one year immediately preceding
31 the filing of the claim.

32 (e) Time return deemed filed. For purposes of this section
33 a tax return filed before the last day prescribed by law for
34 the filing of such return (including any extensions thereof)

1 shall be deemed to have been filed on such last day.

2 (f) No claim for refund based on the taxpayer's taking a
3 credit for estimated tax payments as provided by Section
4 601(b)(2) or for any amount paid by a taxpayer pursuant to
5 Section 602(a) or for any amount of credit for tax withheld
6 pursuant to Article 7 ~~Section 701~~ may be filed more than 3
7 years after the due date, as provided by Section 505, of the
8 return which was required to be filed relative to the taxable
9 year for which the payments were made or for which the tax was
10 withheld. The changes in this subsection (f) made by this
11 amendatory Act of 1987 shall apply to all taxable years ending
12 on or after December 31, 1969.

13 (g) Special Period of Limitation with Respect to Net Loss
14 Carrybacks. If the claim for refund relates to an overpayment
15 attributable to a net loss carryback as provided by Section
16 207, in lieu of the 3 year period of limitation prescribed in
17 subsection (a), the period shall be that period which ends 3
18 years after the time prescribed by law for filing the return
19 (including extensions thereof) for the taxable year of the net
20 loss which results in such carryback (or, on and after August
21 13, 1999, with respect to a change in the carryover of an
22 Article 2 credit to a taxable year resulting from the carryback
23 of a Section 207 loss incurred in a taxable year beginning on
24 or after January 1, 2000, the period shall be that period that
25 ends 3 years after the time prescribed by law for filing the
26 return (including extensions of that time) for that subsequent
27 taxable year), or the period prescribed in subsection (c) in
28 respect of such taxable year, whichever expires later. In the
29 case of such a claim, the amount of the refund may exceed the
30 portion of the tax paid within the period provided in
31 subsection (d) to the extent of the amount of the overpayment
32 attributable to such carryback. On and after August 13, 1999,
33 if the claim for refund relates to an overpayment attributable
34 to the carryover of an Article 2 credit, or of a Section 207

1 loss, earned, incurred (in a taxable year beginning on or after
2 January 1, 2000), or used in a year for which a notification of
3 a change affecting federal taxable income must be filed under
4 subsection (b) of Section 506, the claim may be filed within
5 the period prescribed in paragraph (1) of subsection (b) in
6 respect of the year for which the notification is required. In
7 the case of such a claim, the amount of the refund may exceed
8 the portion of the tax paid within the period provided in
9 subsection (d) to the extent of the amount of the overpayment
10 attributable to the recomputation of the taxpayer's Article 2
11 credits, or Section 207 loss, earned, incurred, or used in the
12 taxable year for which the notification is given.

13 (h) Claim for refund based on net loss. On and after the
14 effective date of this amendatory Act of the 92nd General
15 Assembly, no claim for refund shall be allowed to the extent
16 the refund is the result of an amount of net loss incurred
17 under Section 207 of this Act that was not reported to the
18 Department within 3 years of the due date (including
19 extensions) of the return for the loss year on either the
20 original return filed by the taxpayer or on amended return.

21 (i) The changes made to this Section by this amendatory Act
22 of the 93rd General Assembly do not apply to any small business
23 as defined in the Small Business Advisory Act.

24 (Source: P.A. 91-541, eff. 8-13-99; 92-846, eff. 8-23-02.)

25 (35 ILCS 5/1001) (from Ch. 120, par. 10-1001)

26 Sec. 1001. Failure to File Tax Returns.

27 (a) In case of failure to file any tax return required
28 under this Act on the date prescribed therefor, (determined
29 with regard to any extensions of time for filing) there shall
30 be added as a penalty the amount prescribed by Section 3-3 of
31 the Uniform Penalty and Interest Act.

32 (b) Failure to disclose reportable transaction. Any
33 taxpayer who fails to comply with the requirements of Section

1 501(b)(1) of this Act or who fails to include on a return or
2 statement any information with respect to an Illinois
3 reportable transaction required under Section 501(b)(2) of
4 this Act and regulations promulgated thereunder to be included
5 with that return or statement shall pay a penalty in the amount
6 determined under this subsection. Such penalty shall be deemed
7 assessed upon the date of filing of the return for the taxable
8 year in which the taxpayer participates in the reportable
9 transaction. A taxpayer shall not be considered to have
10 complied with the requirements of Section 501(b)(1) of this Act
11 unless the disclosure statement filed with the Department
12 includes all of the information required to be disclosed with
13 respect to a reportable transaction pursuant to Treasury
14 Regulations Section 1.6011-4 (26 CFR 1.6011-4) and regulations
15 promulgated by the Department under Section 501(b)(1) of this
16 Act. A taxpayer shall not be considered to have complied with
17 the requirements of Section 501(b)(2) of this Act unless the
18 disclosure required under such Section includes all of the
19 information required to be disclosed under regulations
20 promulgated by the Department pursuant to such Section.

21 (1) Amount of penalty. Except as provided in paragraph (2),
22 the amount of the penalty under this subsection shall be
23 \$15,000 for each failure to comply with the requirements of
24 Section 501(b)(1) or Section 501(b)(2).

25 (2) Increase in penalty for listed transactions. In the
26 case of a failure to comply with the requirements of Section
27 501(b)(1) with respect to a "listed transaction", or in the
28 case of failure to properly disclose participation an Illinois
29 listed transaction as defined under Section 501(b)(2) of this
30 Act, the penalty under this subsection shall be \$30,000 for
31 each failure.

32 (3) Authority to Rescind Penalty. The Board of Appeals may
33 rescind all or any portion of any penalty imposed by this
34 subsection with respect to any violation, if all of the

1 following apply:

2 (A) The violation is with respect to a reportable
3 transaction or Illinois reportable transaction other than
4 a listed transaction or Illinois listed transaction;

5 (B) The person on whom the penalty is imposed has a
6 history of complying with the requirements of this Act;

7 (C) It is shown that the violation is due to an
8 unintentional mistake of fact;

9 (D) Imposing the penalty would be against equity and
10 good conscience; and

11 (E) Rescinding the penalty would promote compliance
12 with the requirements of this Act and effective tax
13 administration.

14 The exercise of authority under this subparagraph (3) shall
15 be at the sole discretion of the Board of Appeals and the
16 Director. Notwithstanding any other law or rule of law, any
17 determination under this subparagraph (3) may not be reviewed
18 in any administrative or judicial proceeding.

19 (4) Coordination with other penalties. The penalty imposed
20 by this subsection is in addition to any penalty imposed by
21 this Act or the Uniform Penalty and Interest Act.

22 (c) Penalty for failure to disclose inconsistent return
23 position. Any taxpayer that fails to properly disclose an
24 inconsistent return position with respect to any taxable year,
25 as required under Section 501(c) of this Act, shall incur a
26 penalty of \$15,000 for each position not reported. Such penalty
27 shall be deemed assessed upon the date of filing of the return
28 for the taxable year with respect to which the taxpayer was
29 required to disclose the inconsistent return position. The
30 penalty imposed by this subsection is in addition to any
31 penalty imposed by this Act or the Uniform Penalty and Interest
32 Act.

33 (d) The total penalty imposed under subsection (b) or
34 subsection (c) of this Section with respect to any taxable year

1 shall not exceed 10% of the increase in net income (or
2 reduction in Illinois net loss under Section 207 of this Act)
3 that would result had the taxpayer not participated in any
4 reportable transaction or Illinois reportable transaction
5 affecting its net income for such taxable year and reported
6 each inconsistent return position in a manner that would cause
7 it to report the greatest net income (or smallest Illinois net
8 loss) on its Illinois income tax return for the taxable year.

9 (e) The changes made to this Section by this amendatory Act
10 of the 93rd General Assembly do not apply to any small business
11 as defined in the Small Business Advisory Act.

12 (Source: P.A. 87-205.)

13 (35 ILCS 5/1002) (from Ch. 120, par. 10-1002)

14 Sec. 1002. Failure to Pay Tax.

15 (a) Negligence. If any part of a deficiency is due to
16 negligence or intentional disregard of rules and regulations
17 (but without intent to defraud) there shall be added to the tax
18 as a penalty the amount prescribed by Section 3-5 of the
19 Uniform Penalty and Interest Act.

20 (b) Fraud. If any part of a deficiency is due to fraud,
21 there shall be added to the tax as a penalty the amount
22 prescribed by Section 3-6 of the Uniform Penalty and Interest
23 Act.

24 (c) Nonwillful failure to pay withholding tax. If any
25 employer, without intent to evade or defeat any tax imposed by
26 this Act or the payment thereof, shall fail to make a return
27 and pay a tax withheld by him at the time required by or under
28 the provisions of this Act, such employer shall be liable for
29 such taxes and shall pay the same together with the interest
30 and the penalty provided by Sections 3-2 and 3-3, respectively,
31 of the Uniform Penalty and Interest Act and such interest and
32 penalty shall not be charged to or collected from the employee
33 by the employer.

1 (d) Willful failure to collect and pay over tax. Any person
2 required to collect, truthfully account for, and pay over the
3 tax imposed by this Act who willfully fails to collect such tax
4 or truthfully account for and pay over such tax or willfully
5 attempts in any manner to evade or defeat the tax or the
6 payment thereof, shall, in addition to other penalties provided
7 by law, be liable for the penalty imposed by Section 3-7 of the
8 Uniform Penalty and Interest Act.

9 (e) Penalties assessable.

10 (1) In general. Except as otherwise provided in this
11 Act ~~provided in paragraphs (2), (3) and (4)~~, the penalties
12 provided by this Act shall be paid upon notice and demand
13 and shall be assessed, collected, and paid in the same
14 manner as taxes and any reference in this Act to the tax
15 imposed by this Act shall be deemed also to refer to
16 penalties provided by this Act.

17 (2) Procedure for assessing certain penalties. For the
18 purposes of Article 9 any penalty under Section 804(a) or
19 Section 1001 shall be deemed assessed upon the filing of
20 the return for the taxable year.

21 (3) Procedure for assessing the penalty for failure to
22 file withholding returns or annual transmittal forms for
23 wage and tax statements. The penalty imposed by Section
24 1004 will be asserted by the Department's issuance of a
25 notice of deficiency. If taxpayer files a timely protest,
26 the procedures of Section 908 will be followed. If taxpayer
27 does not file a timely protest, the notice of deficiency
28 will constitute an assessment pursuant to subsection (c) of
29 Section 904.

30 (4) Assessment of penalty under Section 1005(a). The
31 penalty imposed under Section 1005(a) shall be deemed
32 assessed upon the assessment of the tax to which such
33 penalty relates and shall be collected and paid on notice
34 and demand in the same manner as the tax.

1 (f) Determination of deficiency. For purposes of
2 subsections (a) and (b), the amount shown as the tax by the
3 taxpayer upon his return shall be taken into account in
4 determining the amount of the deficiency only if such return
5 was filed on or before the last day prescribed by law for the
6 filing of such return, including any extensions of the time for
7 such filing.

8 (g) The changes made to this Section by this amendatory Act
9 of the 93rd General Assembly do not apply to any small business
10 as defined in the Small Business Advisory Act.

11 (Source: P.A. 89-379, eff. 1-1-96.)

12 (35 ILCS 5/1005) (from Ch. 120, par. 10-1005)

13 Sec. 1005. Penalty for Underpayment of Tax.

14 (a) In general. If any amount of tax required to be shown
15 on a return prescribed by this Act is not paid on or before the
16 date required for filing such return (determined without regard
17 to any extension of time to file), a penalty shall be imposed
18 in the manner and at the rate prescribed by the Uniform Penalty
19 and Interest Act. The provisions of this subsection shall apply
20 to all taxable years ending on or after January 1, 1986.

21 (b) Reportable transaction penalty. If a taxpayer has a
22 reportable transaction understatement for any taxable year,
23 there shall be added to the tax an amount equal to 20% of the
24 amount of that understatement. Such penalty shall be deemed
25 assessed upon the assessment of the tax to which such penalty
26 relates and shall be collected and paid on notice and demand in
27 the same manner as the tax.

28 (1) Reportable Transaction Understatement. For
29 purposes of this Section, the term "reportable transaction
30 understatement" means the sum of subparagraphs (A) and (B):

31 (A) The product of (i) the amount of the increase
32 (if any) in Illinois net income (or decrease in
33 Illinois net loss under Section 207 of this Act) that

1 results from a difference between the proper tax
2 treatment of an item to which this subsection applies
3 and the taxpayer's treatment of that item (as shown on
4 the taxpayer's return of tax), and (ii) the applicable
5 tax rates under Section 201 of this Act.

6 (B) The amount of the decrease (if any) in the
7 aggregate amount of credits determined under this Act
8 (including credits that may be carried forward to other
9 taxable years) that results from a difference between
10 the taxpayer's treatment of an item to which this
11 subsection applies (as shown on the taxpayer's return
12 of tax) and the proper tax treatment of that item.

13 (2) Items to which subsection applies. This subsection
14 applies to any item that is attributable to any listed
15 transaction, as defined in Treasury Regulations, Section
16 1.6011-4, or Illinois listed transaction, as defined in
17 Section 501(b) (2), and to any item that is attributable to
18 any reportable transaction, as defined in Treasury
19 Regulations, Section 1.6011-4, or Illinois reportable
20 transaction, as defined in Section 501(b) (2) (other than a
21 listed transaction or Illinois listed transaction) if a
22 significant purpose of the transaction is the avoidance or
23 evasion of federal or Illinois income tax.

24 (3) Subsection (b) shall be applied by substituting
25 "30%" for "20%" with respect to the portion of any
26 reportable transaction understatement with respect to the
27 relevant facts affecting the tax treatment of the item that
28 are not adequately disclosed in accordance with Section
29 501(b) of this Act. A taxpayer shall be treated as making
30 adequate disclosure if the penalty for failure to disclose
31 is rescinded under Section 1001(b) (4) of this Act.

32 (4) Reasonable Cause Exception.

33 (A) In general. No penalty shall be imposed under
34 this subsection with respect to any portion of a

1 reportable transaction understatement if it is shown
2 that there was a reasonable cause for such portion and
3 that the taxpayer acted in good faith with respect to
4 such portion.

5 (B) Special rules. If the taxpayer has been
6 contacted by the Department regarding the use of a
7 potentially abusive tax shelter, subparagraph (A) does
8 not apply unless all of the following requirements are
9 met:

10 (i) There is or was substantial authority for
11 such treatment; and

12 (ii) The taxpayer reasonably believed that
13 such treatment was more likely than not the proper
14 treatment.

15 (C) Rules relating to reasonable belief. For
16 purposes of subparagraph (B), a taxpayer shall be
17 treated as having a reasonable belief with respect to
18 the tax treatment of an item only if such belief meets
19 the requirements of this subparagraph (C):

20 (i) Such belief must be based on the facts and
21 law that exist at the time the return of tax that
22 includes that tax treatment is filed;

23 (ii) Such belief must relate solely to the
24 taxpayer's chances of success on the merits of that
25 treatment and does not take into account the
26 possibility that the return will not be audited,
27 that the treatment will not be raised on audit, or
28 that the treatment will be resolved through
29 settlement if it is raised; and

30 (iii) Such belief is not based, in whole or in
31 part, on the opinion of a disqualified tax advisor
32 or on a disqualified opinion.

33 (5) Definitions.

34 (i) Disqualified tax advisor. The term

1 "disqualified tax advisor" is a tax advisor that meets
2 any of the following conditions:

3 (I) Is a material advisor who participates in
4 the organization, management, promotion, or sale
5 of the transaction or who is related (within the
6 meaning of Sections 267(b) or 707(b)(1) of the
7 Internal Revenue Code) to any person who so
8 participates;

9 (II) Is compensated directly or indirectly by
10 a material advisor with respect to the
11 transaction;

12 (III) Has a fee arrangement with respect to the
13 transaction that is contingent on all or part of
14 the intended tax benefits from the transaction
15 being sustained; or

16 (IV) As determined under regulations
17 prescribed by either the Secretary of the Treasury
18 for federal income tax purposes or the Department,
19 has a continuing financial interest with respect
20 to the transaction.

21 (ii) Disqualified opinion. The term "disqualified
22 opinion" means an opinion that meets any of the
23 following conditions:

24 (I) Is based on unreasonable factual or legal
25 assumptions (including assumptions as to future
26 events);

27 (II) Unreasonably relies on representations,
28 statements, findings, or agreements of the
29 taxpayer or any other person;

30 (III) Does not identify and consider all
31 relevant facts; or

32 (IV) Fails to meet any other requirement as
33 either the Secretary of the Treasury for federal
34 income tax purposes or the Department may

1 prescribe.

2 (iii) Material Advisor. The term "material
3 advisor" shall have substantially the same meaning as
4 the same term is defined under Treasury Regulations
5 Section 301.6112-1, (26 CFR 301.6112-1) and shall
6 include any person that is a material advisor for
7 federal income tax purposes under such regulation.

8 (6) Amended returns. Except as provided in Treasury
9 Regulations, in no event may any tax treatment included
10 with an amendment or supplement to a return of tax be taken
11 into account in determining the amount of any reportable
12 transaction understatement if the amendment or supplement
13 is filed after the date the taxpayer is first contacted by
14 either the Internal Revenue Service for federal income tax
15 purposes or by the Department regarding the examination of
16 the return or such other date as specified by the
17 Department by regulation.

18 (7) Effective date. This subsection shall apply to
19 taxable years ending on and after December 31, 2004, except
20 that a reportable transaction understatement shall include
21 an understatement (as determined under paragraph (1)) with
22 respect to any taxable year for which the limitations
23 period on assessment has not expired that is attributable
24 to a transaction in which the taxpayer has invested after
25 February 28, 2000 that becomes a listed transaction (as
26 defined in Treasury Regulations Section 1.6011-4(b)(2)) or
27 Illinois listed transaction (as defined in Section
28 501(b)(2)(A)(2)) at any time.

29 (c) 100% Interest Penalty. If a taxpayer has been contacted
30 by the Internal Revenue Service or the Department regarding the
31 use of a potentially abusive tax shelter with respect to any
32 taxable year for which the limitations period on assessment has
33 not expired, and has a deficiency attributable to a potentially
34 abusive tax shelter with respect to such taxable year or years,

1 there shall be added to the tax an amount equal to 100% of the
2 interest assessed under the Uniform Penalty and Interest Act
3 for the period beginning on the last date prescribed by law for
4 the payment of such tax and ending on the date of the notice of
5 deficiency. Such penalty shall be deemed assessed upon the
6 assessment of the interest to which such penalty relates and
7 shall be collected and paid in the same manner as such
8 interest. The penalty imposed by this subsection is in addition
9 to any penalty imposed by this Act or the Uniform Penalty and
10 Interest Act. For purposes of this subsection and subsection
11 (d) of this Section, the term "potentially abusive tax shelter"
12 means (i) any tax shelter (as defined in Section 6111 of the
13 Internal Revenue Code) with respect to which registration is
14 required under Section 6111 of the Internal Revenue Code and
15 (ii) any entity, investment plan, arrangement, or other plan or
16 arrangement that is of a type that the Internal Revenue Service
17 or the Department determines by rule has a potential for tax
18 avoidance or evasion (including, but not limited to, listed
19 transactions and Illinois listed transactions).

20 (d) 150% Interest Rate. For taxable years ending on and
21 after July 1, 2002, for any notice of deficiency issued before
22 the taxpayer is contacted by the Internal Revenue Service or
23 the Department regarding a potentially abusive tax shelter, the
24 taxpayer is subject to interest as provided under Section 3-2
25 of the Uniform Penalty and Interest Act, but with respect to
26 any deficiency attributable to a potentially abusive tax
27 shelter, the taxpayer is subject to interest at a rate of 150%
28 of the otherwise applicable rate.

29 (e) Coordination with other penalties. Except as provided
30 in regulations, the penalties imposed by this Section are in
31 addition to any other penalty imposed by this Act or the
32 Uniform Penalty and Interest Act.

33 (f) The changes made to this Section by this amendatory Act
34 of the 93rd General Assembly do not apply to any small business

1 as defined in the Small Business Advisory Act.

2 ~~The provisions of this Section shall apply to all taxable years~~
3 ~~ending on or after January 1, 1986.~~

4 (Source: P.A. 87-205.)

5 (35 ILCS 5/1007 new)

6 Sec. 1007. Failure to register tax shelter or maintain
7 list.

8 (a) Penalty Imposed. Any person that fails to comply with
9 the requirements of Section 1405.5 or Section 1405.6 of this
10 Act shall incur a penalty as provided in this Section. A person
11 is not in compliance with the requirements of Section 1405.5
12 unless and until the required registration has been filed and
13 contains all of the information required to be included with
14 such registration under Section 6111 of the Internal Revenue
15 Code or such Section 1405.5. A person is not in compliance with
16 the requirements of Section 1405.6 unless, at the time the
17 required list is made available to the Department, such list
18 contains all of the information required to be maintained under
19 Section 6112 of the Internal Revenue Code or such Section
20 1405.6.

21 (b) Amount of Penalty. The following penalties apply:

22 (1) In the case of each failure to comply with
23 the requirements of subsection (a), subsection (b), or
24 subsection (e) of Section 1405.5, the penalty shall be
25 \$15,000.

26 (2) If the failure is with respect to a listed
27 transaction or Illinois listed transaction under
28 subsection (c) of Section 1405.5, the penalty shall be
29 \$100,000.

30 (3) In the case of each failure to comply with
31 the requirements of subsection (a) or subsection (b) of
32 Section 1405.6, the penalty shall be \$15,000.

33 (4) If the failure is with respect to a listed

1 transaction or Illinois listed transaction under
2 subsection (c) of Section 1405.6, the penalty shall be
3 \$100,000.

4 (c) Authority to rescind penalty. The Board of Appeals may
5 rescind all or any portion of any penalty imposed by this
6 Section with respect to any violation, if all of the following
7 apply:

8 (1) The violation is not with respect to a listed
9 transaction or Illinois listed transaction;

10 (2) The person on whom the penalty is imposed has a
11 history of complying with the requirements of this Act;

12 (3) It is shown that the violation is due to an
13 unintentional mistake of fact;

14 (4) Imposing the penalty would be against equity
15 and good conscience; and

16 (5) Rescinding the penalty would promote
17 compliance with the requirements of this Act and
18 effective tax administration. The exercise of
19 authority under this subsection shall be at the sole
20 discretion of the Director. Notwithstanding any other
21 law or rule of law, any determination under this
22 subsection may not be reviewed in any administrative or
23 judicial proceeding.

24 (d) Coordination with other penalties. The penalty imposed
25 by this Section is in addition to any penalty imposed by this
26 Act or the Uniform Penalty and Interest Act.

27 (e) The changes made to this Section by this amendatory Act
28 of the 93rd General Assembly do not apply to any small business
29 as defined in the Small Business Advisory Act.

30 (35 ILCS 5/1008 new)

31 Sec. 1008. Promoting abusive tax shelters. Except as herein
32 provided, the provisions of Section 6700 of the Internal
33 Revenue Code shall apply for purposes of this Act as if such

1 section applied to an Illinois deduction, credit, exclusion
2 from income, allocation or apportionment rule, or other
3 Illinois tax benefit. Notwithstanding Section 6700(a) of the
4 Internal Revenue Code, if an activity with respect to which a
5 penalty imposed under Section 6700(a) of the Internal Revenue
6 Code, as applied for purposes of this Act, involves a statement
7 described in Section 6700(a)(2)(A) of the Internal Revenue
8 Code, as applied for purposes of this Act, the amount of the
9 penalty imposed under this Section shall be the greater of
10 \$10,000 or 50% of the gross income received (or to be received)
11 from any person to whom such statement is furnished that is
12 required to file a return under Section 502 of this Act.

13 The changes made to this Section by this amendatory Act of
14 the 93rd General Assembly do not apply to any small business as
15 defined in the Small Business Advisory Act.

16 (35 ILCS 5/1405.5 new)

17 Sec. 1405.5.Registration of tax shelters.

18 (a) Federal tax shelter. Any tax shelter organizer required
19 to register a tax shelter under Section 6111 of the Internal
20 Revenue Code after the effective date of this amendatory Act of
21 the 93rd General Assembly shall send a duplicate of the federal
22 registration information (and any additional information
23 required by the Department) to the Department not later than
24 the day on which registration is required under federal law.
25 Any person required to register under Section 6111 of the
26 Internal Revenue Code who receives a tax registration number
27 from the Secretary of the Treasury shall, within 30 days after
28 request by the Department, file a statement of that
29 registration number.

30 (b) Illinois tax shelter. Registration with the Department
31 shall be required with respect to (i) any investment that would
32 be considered a "tax shelter" under Section 6111 of the
33 Internal Revenue Code if the definition of "tax shelter ratio"

1 in subsection (c) of such section included the provisions of
2 this Act for deductions, credits, apportionment and
3 allocation, or that would be considered a tax shelter under
4 subsection (d) of such Section but for the fact that a
5 significant purpose is the avoidance or evasion of the tax
6 imposed by this Act rather than avoidance or evasion of federal
7 income tax and (ii) any listed transaction or Illinois listed
8 transaction as defined under Section 501(b) of this Act. The
9 tax shelter organizer shall make the registration required
10 under this subsection with respect to tax shelters in which
11 interests are first offered for sale after the effective date
12 of this amendatory Act of the 93rd General Assembly in the form
13 and manner prescribed by the Department, which shall include
14 the same information required for federal tax shelters and any
15 other information required by the Department, and shall be made
16 not later than the day on which the first offering for sale of
17 interests in the shelter occurs or, if the tax shelter
18 organizer reasonably believes as of the day of such first
19 offering that the tax shelter will not satisfy the conditions
20 of subsection (d) of this Section, within 60 days after the tax
21 shelter meets any of the conditions of subsection (d) of this
22 Section.

23 (c) Additional requirements for listed transactions and
24 Illinois listed transactions.

25 (1) In addition to the requirements of this
26 Section, for any transactions entered into on or after
27 February 28, 2000 that become listed transactions (as
28 defined under Treasury Regulations Section 1.6011-4)
29 at any time, those transactions shall be registered
30 with the Department (in the form and manner prescribed
31 by the Department) by the later of (i) 60 days after
32 entering into the transaction, (ii) 60 days after the
33 transaction becomes a listed transaction, or (iii)
34 December 31, 2004;

1 (2) In addition to the requirements of this
2 Section, for any transactions entered into on or after
3 January 1, 2004 that become Illinois listed
4 transactions (as defined under Section 501(b) of this
5 Act) at any time, those transactions shall be
6 registered with the Department by the later of (i) 60
7 days after entering into the transaction, (ii) 60 days
8 after the transaction becomes an Illinois listed
9 transaction, or (iii) December 31, 2004.

10 (d) Tax Shelters subject to this Section. The provisions of
11 this section apply to any tax shelter herein described that
12 additionally satisfies any of the following conditions: (1)
13 organized in this State; (2) doing business in this State; (3)
14 deriving income from sources in this State; or (4) at least one
15 of its investors is an Illinois taxpayer.

16 (e) Tax Shelter Identification Number.

17 (1) Any person who sells (or otherwise transfers)
18 an interest in an Illinois tax shelter shall (at such
19 times and in such manner as required by the Department)
20 furnish to each investor who purchases (or otherwise
21 acquires) an interest in such shelter from such person
22 the identification number assigned by the Department
23 to such tax shelter.

24 (2) Any person required to file a return under this
25 Act and required to include on the person's federal tax
26 return a tax shelter identification number pursuant to
27 Section 6111 of the Internal Revenue Code, shall
28 furnish such number upon filing of the person's
29 Illinois return.

30 (3) Any person claiming any deduction, credit, or
31 other tax benefit by reason of an Illinois tax shelter
32 shall include (in such manner as the Department may
33 prescribe) on the return of tax on which such
34 deduction, credit, or other benefit is claimed the

1 identification number assigned by the Department to
2 such tax shelter.

3 (f) The changes made to this Section by this amendatory Act
4 of the 93rd General Assembly do not apply to any small business
5 as defined in the Small Business Advisory Act.

6 (35 ILCS 5/1405.6 new)

7 Sec. 1405.6. Investor lists.

8 (a) Federal abusive tax shelter. Any person required to
9 maintain a list under Section 6112 of the Internal Revenue Code
10 and Treasury Regulations Section 301.6112-1 with respect to a
11 potentially abusive tax shelter shall furnish such list to the
12 Department not later than the time such list is required to be
13 furnished to the Internal Revenue Service under federal income
14 tax law.

15 (b) Illinois abusive tax shelter. Each organizer and seller
16 of an Illinois potentially abusive tax shelter shall maintain a
17 list identifying each person who was sold an interest in such
18 shelter. Any person required to maintain a list under this
19 subsection shall make such list available to the Department
20 upon request by the Department, and except as otherwise
21 provided under regulations prescribed by the Department, shall
22 retain any information required to be included on such list for
23 7 years.

24 (1) Definitions.

25 (A) Illinois potentially abusive tax shelter. The
26 term "Illinois potentially abusive tax shelter" means
27 (i) any Illinois tax shelter (as defined in Section
28 1405.5) required to be registered under Section 1405.5
29 and (ii) any entity, investment, plan or arrangement,
30 or other plan or arrangement that is of a type that the
31 Department determines by regulation as having a
32 potential for avoidance or evasion of the tax imposed
33 by this Act (including an Illinois listed transaction

1 as defined under Section 501(b)). The term shall have
2 substantially the same meaning as a "potentially
3 abusive tax shelter" described in Treasury Regulations
4 Section 301.6112-1(b).

5 (B) Organizer or seller. An organizer or seller of
6 an Illinois potentially abusive tax shelter includes
7 any person that is a material adviser under Treasury
8 Regulations Section 301.6112-1 with respect to the
9 transaction that is an Illinois potentially abusive
10 tax shelter or would be considered a material adviser
11 under Treasury Regulations Section 301.6112-1 with
12 respect to the transaction if such transaction
13 constituted a potentially abusive tax shelter under
14 Treasury Regulations Section 301.6112-1.

15 (2) The list required under this Section shall include
16 the same information required with respect to a potentially
17 abusive tax shelter under Treasury Regulations Section
18 301.6112-1 and any other information as the Department may
19 require. Unless otherwise prescribed by the Department,
20 the list required under this Section shall be maintained in
21 the same form and manner as required with respect to a
22 potentially abusive tax shelter under Treasury Regulations
23 Section 301.6112-1.

24 (c) Additional requirements for listed transactions and
25 Illinois listed transactions.

26 (1) For transactions entered into on or after February
27 28, 2000, that become listed transactions (as defined under
28 Treasury Regulations Section 1.6011-4) at any time, the
29 list shall be furnished to the Department by the later of
30 (i) 60 days after entering into the transaction, (ii) 60
31 days after the transaction becomes a listed transaction, or
32 (iii) December 31, 2004.

33 (2) For transactions entered into on or after January
34 1, 2004 that become Illinois listed transactions (as

1 defined under Section 501(b) of this Act) at any time, the
2 list shall be furnished to the Department by the later of
3 (i) 60 days after entering into the transaction, (ii) 60
4 days after the transaction becomes an Illinois listed
5 transaction, or (iii) December 31, 2004.

6 (d) Tax Shelters subject to this Section. The provisions of
7 this section apply to any tax shelter herein described that
8 additionally satisfies any of the following conditions:

9 (1) Organized in this State;

10 (2) Doing business in this State;

11 (3) Deriving income from sources in this State; or

12 (4) At least one of its investors is an Illinois
13 taxpayer.

14 (e) The changes made to this Section by this amendatory Act
15 of the 93rd General Assembly do not apply to any small business
16 as defined in the Small Business Advisory Act.

17 (35 ILCS 5/1501) (from Ch. 120, par. 15-1501)

18 Sec. 1501. Definitions.

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

22 (1) Business income. The term "business income" means
23 all income that may be treated as apportionable business
24 income under the Constitution of the United States.
25 Business income is net of the deductions allocable thereto
26 income arising from transactions and activity in the
27 regular course of the taxpayer's trade or business, net of
28 the deductions allocable thereto, and includes income from
29 tangible and intangible property if the acquisition,
30 management, and disposition of the property constitute
31 integral parts of the taxpayer's regular trade or business
32 operations. Such term does not include compensation or the
33 deductions allocable thereto. For each taxable year

1 beginning on or after January 1, 2003, a taxpayer may elect
2 to treat all income other than compensation as business
3 income. This election shall be made in accordance with
4 rules adopted by the Department and, once made, shall be
5 irrevocable.

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

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

12 (4) Corporation. The term "corporation" includes
13 associations, joint-stock companies, insurance companies
14 and cooperatives. Any entity, including a limited
15 liability company formed under the Illinois Limited
16 Liability Company Act, shall be treated as a corporation if
17 it is so classified for federal income tax purposes.

18 (5) Department. The term "Department" means the
19 Department of Revenue of this State.

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

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

25 (8) Financial organization.

26 (A) The term "financial organization" means any
27 bank, bank holding company, trust company, savings
28 bank, industrial bank, land bank, ~~safe deposit~~
29 ~~company,~~ private banker, savings and loan association,
30 building and loan association, credit union, ~~currency~~
31 ~~exchange,~~ cooperative bank, ~~small loan company,~~ ~~sales~~
32 ~~finance company,~~ investment company, or any person
33 which is owned by a bank or bank holding company. For
34 the purpose of this Section a "person" will include

1 only those persons which a bank holding company may
2 acquire and hold an interest in, directly or
3 indirectly, under the provisions of the Bank Holding
4 Company Act of 1956 (12 U.S.C. 1841, et seq.), except
5 where interests in any person must be disposed of
6 within certain required time limits under the Bank
7 Holding Company Act of 1956.

8 (B) For purposes of subparagraph (A) of this
9 paragraph, the term "bank" includes (i) any entity that
10 is regulated by the Comptroller of the Currency under
11 the National Bank Act, or by the Federal Reserve Board,
12 or by the Federal Deposit Insurance Corporation and
13 (ii) any federally or State chartered bank operating as
14 a credit card bank.

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

18 (i) A person primarily engaged in one or more
19 of the following businesses: the business of
20 purchasing customer receivables, the business of
21 making loans upon the security of customer
22 receivables, the business of making loans for the
23 express purpose of funding purchases of tangible
24 personal property or services by the borrower, or
25 the business of finance leasing. For purposes of
26 this item (i), "customer receivable" means:

27 (a) a retail installment contract or
28 retail charge agreement within the meaning of
29 the Sales Finance Agency Act, the Retail
30 Installment Sales Act, or the Motor Vehicle
31 Retail Installment Sales Act;

32 (b) an installment, charge, credit, or
33 similar contract or agreement arising from the
34 sale of tangible personal property or services

1 in a transaction involving a deferred payment
2 price payable in one or more installments
3 subsequent to the sale; or

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

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

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

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

22 (b) more than 50% of the gross income of
23 the corporation for the taxable year must be
24 interest income derived from qualifying loans.
25 A "qualifying loan" is a loan made to a member
26 of the corporation's affiliated group that
27 originates customer receivables (within the
28 meaning of item (i)) or to whom customer
29 receivables originated by a member of the
30 affiliated group have been transferred, to the
31 extent the average outstanding balance of
32 loans from that corporation to members of its
33 affiliated group during the taxable year do not
34 exceed the limitation amount for that

1 corporation. The "limitation amount" for a
2 corporation is the average outstanding
3 balances during the taxable year of customer
4 receivables (within the meaning of item (i))
5 originated by all members of the affiliated
6 group. If the average outstanding balances of
7 the loans made by a corporation to members of
8 its affiliated group exceed the limitation
9 amount, the interest income of that
10 corporation from qualifying loans shall be
11 equal to its interest income from loans to
12 members of its affiliated groups times a
13 fraction equal to the limitation amount
14 divided by the average outstanding balances of
15 the loans made by that corporation to members
16 of its affiliated group;

17 (c) the total of all shareholder's equity
18 (including, without limitation, paid-in
19 capital on common and preferred stock and
20 retained earnings) of the corporation plus the
21 total of all of its loans, advances, and other
22 obligations payable or owed to members of its
23 affiliated group may not exceed 20% of the
24 total assets of the corporation at any time
25 during the tax year; and

26 (d) more than 50% of all interest-bearing
27 obligations of the affiliated group payable to
28 persons outside the group determined in
29 accordance with generally accepted accounting
30 principles must be obligations of the
31 corporation.

32 This amendatory Act of the 91st General Assembly is
33 declaratory of existing law.

34 (D) Subparagraphs (B) and (C) of this paragraph are

1 declaratory of existing law and apply retroactively,
2 for all tax years beginning on or before December 31,
3 1996, to all original returns, to all amended returns
4 filed no later than 30 days after the effective date of
5 this amendatory Act of 1996, and to all notices issued
6 on or before the effective date of this amendatory Act
7 of 1996 under subsection (a) of Section 903, subsection
8 (a) of Section 904, subsection (e) of Section 909, or
9 Section 912. A taxpayer that is a "financial
10 organization" that engages in any transaction with an
11 affiliate shall be a "financial organization" for all
12 purposes of this Act.

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

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

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

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

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

23 (11.5) Investment partnership.

24 (A) The term "investment partnership" means any
25 entity that is treated as a partnership for federal
26 income tax purposes that meets the following
27 requirements:

28 (i) no less than 90% of the partnership's cost
29 of its total assets consists of qualifying
30 investment securities, deposits at banks or other
31 financial institutions, and office space and
32 equipment reasonably necessary to carry on its
33 activities as an investment partnership;

34 (ii) no less than 90% of its gross income

1 consists of interest, dividends, and gains from
2 the sale or exchange of qualifying investment
3 securities; and

4 (iii) the partnership is not a dealer in
5 qualifying investment securities.

6 (B) For purposes of this paragraph (11.5), the term
7 'qualifying investment securities' includes all of the
8 following:

9 (i) common stock, including preferred or debt
10 securities convertible into common stock, and
11 preferred stock;

12 (ii) bonds, debentures, and other debt
13 securities;

14 (iii) foreign and domestic currency deposits
15 secured by federal, state, or local governmental
16 agencies;

17 (iv) mortgage or asset-backed securities
18 secured by federal, state, or local governmental
19 agencies;

20 (v) repurchase agreements and loan
21 participations;

22 (vi) foreign currency exchange contracts and
23 forward and futures contracts on foreign
24 currencies;

25 (vii) stock and bond index securities and
26 futures contracts and other similar financial
27 securities and futures contracts on those
28 securities;

29 (viii) options for the purchase or sale of any
30 of the securities, currencies, contracts, or
31 financial instruments described in items (i) to
32 (vii), inclusive;

33 (ix) regulated futures contracts;

34 (x) commodities (not described in Section

1 1221(a)(1) of the Internal Revenue Code) or
2 futures, forwards, and options with respect to
3 such commodities, provided, however, that any item
4 of a physical commodity to which title is actually
5 acquired in the partnership's capacity as a dealer
6 in such commodity shall not be a qualifying
7 investment security;

8 (xi) derivatives; and

9 (xii) a partnership interest in another
10 partnership that is an investment partnership.

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

15 (A) arithmetic errors or incorrect computations on
16 the return or supporting schedules;

17 (B) entries on the wrong lines;

18 (C) omission of required supporting forms or
19 schedules or the omission of the information in whole
20 or in part called for thereon; and

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

25 (13) Nonbusiness income. The term "nonbusiness income"
26 means all income other than business income or
27 compensation.

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

30 (15) Paid, incurred and accrued. The terms "paid",
31 "incurred" and "accrued" shall be construed according to
32 the method of accounting upon the basis of which the
33 person's base income is computed under this Act.

34 (16) Partnership and partner. The term "partnership"

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

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

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

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

26 (18) Person. The term "person" shall be construed to
27 mean and include an individual, a trust, estate,
28 partnership, association, firm, company, corporation,
29 limited liability company, or fiduciary. For purposes of
30 Section 1301 and 1302 of this Act, a "person" means (i) an
31 individual, (ii) a corporation, (iii) an officer, agent, or
32 employee of a corporation, (iv) a member, agent or employee
33 of a partnership, or (v) a member, manager, employee,
34 officer, director, or agent of a limited liability company

1 who in such capacity commits an offense specified in
2 Section 1301 and 1302.

3 (18A) Records. The term "records" includes all data
4 maintained by the taxpayer, whether on paper, microfilm,
5 microfiche, or any type of machine-sensible data
6 compilation.

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

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

10 (A) an individual (i) who is in this State for
11 other than a temporary or transitory purpose during the
12 taxable year; or (ii) who is domiciled in this State
13 but is absent from the State for a temporary or
14 transitory purpose during the taxable year;

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

17 (C) A trust created by a will of a decedent who at
18 his death was domiciled in this State; and

19 (D) An irrevocable trust, the grantor of which was
20 domiciled in this State at the time such trust became
21 irrevocable. For purpose of this subparagraph, a trust
22 shall be considered irrevocable to the extent that the
23 grantor is not treated as the owner thereof under
24 Sections 671 through 678 of the Internal Revenue Code.

25 (21) Sales. The term "sales" means all gross receipts
26 of the taxpayer not allocated under Sections 301, 302 and
27 303.

28 (22) State. The term "state" when applied to a
29 jurisdiction other than this State means any state of the
30 United States, the District of Columbia, the Commonwealth
31 of Puerto Rico, any Territory or Possession of the United
32 States, and any foreign country, or any political
33 subdivision of any of the foregoing. For purposes of the
34 foreign tax credit under Section 601, the term "state"

1 means any state of the United States, the District of
2 Columbia, the Commonwealth of Puerto Rico, and any
3 territory or possession of the United States, or any
4 political subdivision of any of the foregoing, effective
5 for tax years ending on or after December 31, 1989.

6 (23) Taxable year. The term "taxable year" means the
7 calendar year, or the fiscal year ending during such
8 calendar year, upon the basis of which the base income is
9 computed under this Act. "Taxable year" means, in the case
10 of a return made for a fractional part of a year under the
11 provisions of this Act, the period for which such return is
12 made.

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

15 (25) International banking facility. The term
16 international banking facility shall have the same meaning
17 as is set forth in the Illinois Banking Act or as is set
18 forth in the laws of the United States or regulations of
19 the Board of Governors of the Federal Reserve System.

20 (26) Income Tax Return Preparer.

21 (A) The term "income tax return preparer" means any
22 person who prepares for compensation, or who employs
23 one or more persons to prepare for compensation, any
24 return of tax imposed by this Act or any claim for
25 refund of tax imposed by this Act. The preparation of a
26 substantial portion of a return or claim for refund
27 shall be treated as the preparation of that return or
28 claim for refund.

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

31 (i) furnish typing, reproducing, or other
32 mechanical assistance;

33 (ii) prepare returns or claims for refunds for
34 the employer by whom he or she is regularly and

1 continuously employed;

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

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

13 (27) Unitary business group. The term "unitary
14 business group" means a group of persons related through
15 common ownership whose business activities are integrated
16 with, dependent upon and contribute to each other. The
17 group will not include those members who, in taxable years
18 on or after December 31, 2004, are foreign persons and
19 whose business activity outside the United States is 80% or
20 more of any such member's total business activity; for
21 purposes of this paragraph and clause (a)(3)(B)(ii) of
22 Section 304, business activity within the United States
23 shall be measured by means of the factors ordinarily
24 applicable under subsections (a), (b), (c), (d), or (h) of
25 Section 304 except that, in the case of members ordinarily
26 required to apportion business income by means of the 3
27 factor formula of property, payroll and sales specified in
28 subsection (a) of Section 304, including the formula as
29 weighted in subsection (h) of Section 304, such members
30 shall not use the sales factor in the computation and the
31 results of the property and payroll factor computations of
32 subsection (a) of Section 304 shall be divided by 2 (by one
33 if either the property or payroll factor has a denominator
34 of zero). The computation required by the preceding

1 sentence shall, in each case, involve the division of the
2 member's property, payroll, or revenue miles in the United
3 States, insurance premiums on property or risk in the
4 United States, or financial organization business income
5 from sources within the United States, as the case may be,
6 by the respective worldwide figures for such items. Common
7 ownership in the case of corporations is the direct or
8 indirect control or ownership of more than 50% of the
9 outstanding voting stock of the persons carrying on unitary
10 business activity. Unitary business activity can
11 ordinarily be illustrated where the activities of the
12 members are: (1) in the same general line (such as
13 manufacturing, wholesaling, retailing of tangible personal
14 property, insurance, transportation or finance); or (2)
15 are steps in a vertically structured enterprise or process
16 (such as the steps involved in the production of natural
17 resources, which might include exploration, mining,
18 refining, and marketing); and, in either instance, the
19 members are functionally integrated through the exercise
20 of strong centralized management (where, for example,
21 authority over such matters as purchasing, financing, tax
22 compliance, product line, personnel, marketing and capital
23 investment is not left to each member). For taxable years
24 ending before December 31, 2004, a ~~In no event, however,~~
25 ~~will any~~ unitary business group shall not include members
26 which are ordinarily required to apportion business income
27 under different subsections of Section 304, except that for
28 tax years ending on or after December 31, 1987 and before
29 December 31, 2004, this prohibition shall not apply to a
30 unitary business group composed of one or more taxpayers
31 all of which apportion business income pursuant to
32 subsection (b) of Section 304, or all of which apportion
33 business income pursuant to subsection (d) of Section 304,
34 and a holding company of such single-factor taxpayers (see

1 definition of "financial organization" for rule regarding
2 holding companies of financial organizations). If a
3 unitary business group would, but for the preceding
4 sentence, include members that are ordinarily required to
5 apportion business income under different subsections of
6 Section 304, then for each subsection of Section 304 for
7 which there are two or more members, there shall be a
8 separate unitary business group composed of such members.
9 For purposes of the preceding two sentences, a member is
10 "ordinarily required to apportion business income" under a
11 particular subsection of Section 304 if it would be
12 required to use the apportionment method prescribed by such
13 subsection except for the fact that it derives business
14 income solely from Illinois. Pursuant to rules adopted by
15 the Department, the members of a unitary business group (as
16 defined in this Section) may jointly elect to include in
17 the group for any taxable year ending on or after December
18 31, 2004, a passive income affiliate, as defined in
19 paragraph (29) of this subsection. Where the election is
20 made to include a passive income affiliate in the unitary
21 business group, for purposes of computing the affiliate's
22 base income under Section 203 of this Act, the affiliate's
23 federal taxable income shall be deemed to consist solely of
24 its passive income, as defined in subparagraph (B) of
25 paragraph (29) of this subsection, net of related expenses.
26 As used in this paragraph, for taxable years ending on or
27 after December 31, 2004, the phrase "United States" means
28 the 50 states, the District of Columbia, any territory or
29 possession of the United States, and any area over which
30 the United States has asserted jurisdiction or claimed
31 exclusive rights with respect to the exploration for or
32 exploitation of natural resources. This definition
33 includes, but is not limited to, Puerto Rico and the outer
34 continental shelf and any artificial islands and

1 structures therein.

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

16 (28) Subchapter S corporation. The term "Subchapter S
17 corporation" means a corporation for which there is in
18 effect an election under Section 1362 of the Internal
19 Revenue Code, or for which there is a federal election to
20 opt out of the provisions of the Subchapter S Revision Act
21 of 1982 and have applied instead the prior federal
22 Subchapter S rules as in effect on July 1, 1982.

23 (29) Passive income affiliate.

24 (A) In general. The term "passive income
25 affiliate" means any person if (i) the person would be
26 a member of a unitary business group under paragraph
27 (27) of this subsection except for the fact that the
28 person is a foreign person and 80% or more of the
29 person's business activity is outside the United
30 States (as determined under paragraph (27)) and (ii) at
31 least 50% of the person's total gross income (as
32 defined in this Section) for the taxable year consists
33 of "passive income" as set forth in subparagraph (B) of
34 this paragraph.

1 (B) Passive income. For purpose of subparagraph
2 (A), "passive income" includes the following items
3 (whether or not business income):

4 (i) dividends, interest, annuities, and
5 royalties (except that "royalties" does not
6 include "active business computer software
7 royalties", as defined in Section 543(d) of the
8 Internal Revenue Code);

9 (ii) gains from the sale or exchange of stock
10 or securities;

11 (iii) gains from futures transactions in any
12 commodity on or subject to the rules of a board of
13 trade or commodity exchange (except that, pursuant
14 to rules adopted by the Department, gains by a
15 producer, processor, merchant, or handler of the
16 commodity that arise out of bona fide hedging
17 transactions reasonably necessary to the conduct
18 of its business in the manner in which the business
19 is customarily and usually conducted by others
20 shall not be included);

21 (iv) amounts included in income under part I of
22 subchapter J of the Internal Revenue Code and gains
23 from the sale of other disposition of any interest
24 in an estate or trust;

25 (v) amounts received as compensation (however
26 designated and from whomever received) for the use
27 of, or the right to use, property of the person in
28 any case where the party entitled to the use of the
29 property (whether the right is obtained directly
30 from the person or by means of a sublease or other
31 arrangement) would be a member of the person's
32 unitary business group under paragraph (27) of
33 this subsection but for the fact that the person's
34 business activity outside the United States is 80%

1 or more of total business activity as determined
2 under paragraph (27);

3 (vi) rents, unless constituting 50% or more of
4 the gross income. The term "rents" as used in this
5 subparagraph means compensation, however
6 designated, for the use of, or right to use,
7 property but does not include amounts described in
8 subparagraph (v); and

9 (vii) pursuant to rules adopted by the
10 Department, amounts similar to the items set forth
11 in (i) through (vi) above.

12 (C) Gross income and special rules.

13 (i) Gross income. The term "gross income"
14 means the gross income of the person computed under
15 Section 61 of the Internal Revenue Code (without
16 regard to the provisions of subchapter N of the
17 Internal Revenue Code) in any case as if such
18 person were a domestic corporation, partnership,
19 or trust, as applicable. Gross income determined
20 with respect to transactions described in
21 subparagraphs (ii) and (iii) of subparagraph (B)
22 of this paragraph shall include only the excess of
23 gains over losses from such transactions.

24 (ii) 80/20 dividends. Dividends received by a
25 person, directly or indirectly, with respect to
26 the stock of a corporation that is not a passive
27 income affiliate (as defined in this paragraph)
28 and that would be a member of that person's unitary
29 business group under paragraph (27) of this
30 subsection but for the fact that the corporation or
31 person conducts 80% or more of their business
32 activities outside the United States (as
33 determined under paragraph (27) of this
34 subsection) shall not be considered passive income

1 under subparagraph (B) of this paragraph.

2 (iii) Exclusion of banks. A person that is
3 organized and doing business under the banking or
4 credit laws of a state or foreign country shall not
5 be considered a passive income affiliate if it is
6 established to the satisfaction of the Director
7 that the person is not formed or availed of for the
8 purpose of avoiding federal income tax or Illinois
9 income tax. If the Director is satisfied that the
10 person is not so formed or availed of, the Director
11 shall issue to the person annually or at other
12 periodic intervals a certification that the person
13 is not a passive income affiliate.

14 (30) Foreign person. The term "foreign person" means
15 any person who is a nonresident alien individual and any
16 nonindividual other than a person created or organized in
17 the United States or under the law of the United States or
18 of any State.

19 (31) Employer-owned life insurance contract. The term
20 "employer-owned life insurance contract" means a life
21 insurance contract:

22 (i) that is owned by a person engaged in a trade or
23 business;

24 (ii) under which that person (or the trade or
25 business of that person) is directly or indirectly the
26 beneficiary under the contract; and

27 (iii) covers the life of an insured who is an
28 employee with respect to the trade or business of that
29 person (or an affiliate thereof) on the date the
30 contract is issued.

31 If coverage for each insured under a master contract is
32 treated as a separate contract for purposes of Sections
33 817(h), 7702, and 7702A of the Internal Revenue Code, then
34 coverage for each insured shall be treated as a separate

1 contract.

2 The term "employer-owned life insurance contract" does
3 not include a life insurance contract under which, at the
4 time the contract is issued, the insured is either a
5 director or a highly compensated employee within the
6 meaning of Section 414(q) of the Internal Revenue Code
7 (without regard to paragraph (1)(B)(ii) thereof) or a
8 highly compensated individual within the meaning of
9 Section 105(h)(5) (except that "35 percent" shall be
10 substituted for "25 percent" in subparagraph (C) thereof)
11 of the Internal Revenue Code.

12 For purposes of this definition, the term "employee"
13 includes any officer or director of the taxpayer, and the
14 term "affiliate" includes any person who is related within
15 the meaning of Section 267(b) or 707(b)(1) of the Internal
16 Revenue Code.

17 (32) Small business. The term "small business" means
18 that term as it is defined in the Small Business Advisory
19 Act.

20 (b) Other definitions.

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

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

26 (B) Words importing the plural include the
27 singular; and

28 (C) Words importing the masculine gender include
29 the feminine as well.

30 (2) "Company" or "association" as including successors
31 and assigns. The word "company" or "association", when used
32 in reference to a corporation, shall be deemed to embrace
33 the words "successors and assigns of such company or

1 association", and in like manner as if these last-named
2 words, or words of similar import, were expressed.

3 (3) Other terms. Any term used in any Section of this
4 Act with respect to the application of, or in connection
5 with, the provisions of any other Section of this Act shall
6 have the same meaning as in such other Section.

7 (c) The changes made to this Section by this amendatory Act
8 of the 93rd General Assembly do not apply to any small business
9 as defined in the Small Business Advisory Act.

10 (Source: P.A. 91-535, eff. 1-1-00; 91-913, eff. 1-1-01; 92-846,
11 eff. 8-23-02.)

12 Section 999. Effective date. This Act takes effect July 1,
13 2004."