



Rep. Mark H. Beaubien Jr.

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09500HB4454ham002

LRB095 16946 HLH 48844 a

1 AMENDMENT TO HOUSE BILL 4454

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4454, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Illinois Income Tax Act is amended by  
6 changing Section 404 as follows:

7 (35 ILCS 5/404) (from Ch. 120, par. 4-404)

8 Sec. 404. Reallocation of Items.

9 (a) If ~~it appears to~~ the Director determines that any  
10 agreement, understanding or arrangement exists between any  
11 persons which causes any person's base income allocable to this  
12 State to be improperly or inaccurately reflected, the Director  
13 may adjust ~~such~~ items of income and deduction, and any related  
14 apportionment factor taken into account in allocating that  
15 income to this State, to such extent as may reasonably be  
16 required to determine the base income of such person properly

1 allocable to this State.

2 (b) Unless the principal purpose of the agreement,  
3 understanding, or arrangement is for the avoidance of a tax on  
4 or measured by net income imposed by any State, any adjustment  
5 under this Section must be made in accordance with Section 482  
6 of the Internal Revenue Code, as amended, and any applicable  
7 federal regulations. For any taxable year, unless established  
8 by a preponderance of the evidence to the contrary, an  
9 agreement, understanding, or arrangement for the principal  
10 purpose of avoidance of a tax on or measured by net income  
11 imposed by any State is presumed to exist between one or more  
12 members of a unitary business group and a person who would be a  
13 member of that unitary business group if not for the  
14 prohibitions in item (27) of subsection (a) of Section 1501 of  
15 this Act against including in a unitary business group persons  
16 who apportion their business incomes under different  
17 subsections of Section 304 of this Act or against inclusion in  
18 any unitary business group of a person who conducts 80% or more  
19 of his or her business activity outside the United States, if  
20 that excluded person:

21 (1) has de minimis real or tangible personal property  
22 or payroll for the taxable year, as determined for purposes  
23 of subsection (a) of Section 304 of this Act;

24 (2) earns a return for the taxable year on all of its  
25 real and tangible personal property that is substantially  
26 more than the aggregate return earned by the members of the

1       unitary business group on all of real and tangible personal  
2       property of the unitary business group; for purposes of  
3       this paragraph (2) the return on real and tangible personal  
4       property of a person for a taxable year is equal to the  
5       base income of that person for that taxable year, divided  
6       by that person's real and tangible personal property for  
7       that taxable year, as determined for purposes of subsection  
8       (a) of Section 304 of this Act; or

9       (3) conducts substantially all of its business  
10       activity, as shown by gross receipts for the taxable year,  
11       with one or more persons who are members of the unitary  
12       business group or who would be members of that unitary  
13       business group if not for the prohibitions in item (27) of  
14       subsection (a) of Section 1501 of this Act against  
15       including in a unitary business group persons who apportion  
16       their business incomes under different subsections of  
17       Section 304 of this Act or against inclusion in any unitary  
18       business group of a person that conducts 80% or more of its  
19       business activity outside the United States.

20       (c) The Director may not make an adjustment to base income  
21       under this Section that has the same effect as retroactively  
22       applying any amendments to this Act made by Public Act 93-0840,  
23       Public Act 95-0233, or Public Act 95-0707.

24       (d) Notwithstanding any other rulemaking authority that  
25       may exist, neither the Governor nor any agency or agency head  
26       under the jurisdiction of the Governor has any authority to

1 make or promulgate rules to implement or enforce the provisions  
2 of this amendatory Act of the 95th General Assembly. If,  
3 however, the Governor believes that rules are necessary to  
4 implement or enforce the provisions of this amendatory Act of  
5 the 95th General Assembly, the Governor may suggest rules to  
6 the General Assembly by filing them with the Clerk of the House  
7 and the Secretary of the Senate and by requesting that the  
8 General Assembly authorize such rulemaking by law, enact those  
9 suggested rules into law, or take any other appropriate action  
10 in the General Assembly's discretion. Nothing contained in this  
11 amendatory Act of the 95th General Assembly shall be  
12 interpreted to grant rulemaking authority under any other  
13 Illinois statute where such authority is not otherwise  
14 explicitly given. For the purposes of this paragraph, "rules"  
15 is given the meaning contained in Section 1-70 of the Illinois  
16 Administrative Procedure Act, and "agency" and "agency head"  
17 are given the meanings contained in Sections 1-20 and 1-25 of  
18 the Illinois Administrative Procedure Act to the extent that  
19 such definitions apply to agencies or agency heads under the  
20 jurisdiction of the Governor.

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

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law."