



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB4718**

by Rep. Mark H. Beaubien, Jr.

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/1501

from Ch. 120, par. 15-1501

Amends the Illinois Income Tax Act. Provides that, for any financial organization and its subsidiaries and affiliates that directly or indirectly own more than 50% of a captive real estate investment trust in a manner that is substantially similar to the ownership structure described in a certain ruling by the Department of Revenue, the income taxation of that organization is on the same basis with respect to the captive real estate investment trust as described in that ruling. Effective immediately.

LRB095 18513 BDD 44599 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

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

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

7 Sec. 1501. Definitions.

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

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

21 (1.5) Captive real estate investment trust:

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

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

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

7 (iii) of which more than 50% of the voting  
8 power or value of the beneficial interest or  
9 shares, at any time during the last half of the  
10 taxable year, is owned or controlled, directly,  
11 indirectly, or constructively, by a single person.

12 (B) The term "captive real estate investment  
13 trust" does not include:

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

19 (a) a real estate investment trust, other  
20 than a captive real estate investment trust;

21 (b) a person who is exempt from taxation  
22 under Section 501 of the Internal Revenue Code,  
23 and who is not required to treat income  
24 received from the real estate investment trust  
25 as unrelated business taxable income under  
26 Section 512 of the Internal Revenue Code;

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

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

14          (ii) during its first taxable year for which it  
15          elects to be treated as a real estate investment  
16          trust under Section 856(c)(1) of the Internal  
17          Revenue Code, a real estate investment trust the  
18          certificates of beneficial interest or shares of  
19          which are not regularly traded on an established  
20          securities market, but only if the certificates of  
21          beneficial interest or shares of the real estate  
22          investment trust are regularly traded on an  
23          established securities market prior to the earlier  
24          of the due date (including extensions) for filing  
25          its return under this Act for that first taxable  
26          year or the date it actually files that return.

1 (C) For the purposes of this subsection (1.5), the  
2 constructive ownership rules prescribed under Section  
3 318(a) of the Internal Revenue Code, as modified by  
4 Section 856(d)(5) of the Internal Revenue Code, apply  
5 in determining the ownership of stock, assets, or net  
6 profits of any person.

7 (D) Notwithstanding any other provision of this  
8 Act or any other law, for taxable years ending prior to  
9 January 1, 2009, for any financial organization and its  
10 subsidiaries and affiliates that directly or  
11 indirectly own more than 50% of a captive real estate  
12 investment trust in a manner that is substantially  
13 similar to the ownership structure described in ruling  
14 IT 98-0010-PLR of the Department, the income taxation  
15 of that organization is on the same basis with respect  
16 to the captive real estate investment trust as  
17 described in that ruling.

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

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

24 (4) Corporation. The term "corporation" includes  
25 associations, joint-stock companies, insurance companies  
26 and cooperatives. Any entity, including a limited

1 liability company formed under the Illinois Limited  
2 Liability Company Act, shall be treated as a corporation if  
3 it is so classified for federal income tax purposes.

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

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

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

11 (8) Financial organization.

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

1 Holding Company Act of 1956.

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

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

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

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

26 (b) an installment, charge, credit, or

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

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

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

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

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

24 (b) more than 50% of the gross income of  
25 the corporation for the taxable year must be  
26 interest income derived from qualifying loans.



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

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

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

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

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

1 Section 912. A taxpayer that is a "financial  
2 organization" that engages in any transaction with an  
3 affiliate shall be a "financial organization" for all  
4 purposes of this Act.

5 (E) For all tax years beginning on or before  
6 December 31, 1996, a taxpayer that falls within the  
7 definition of a "financial organization" under  
8 subparagraphs (B) or (C) of this paragraph, but who  
9 does not fall within the definition of a "financial  
10 organization" under the Proposed Regulations issued by  
11 the Department of Revenue on July 19, 1996, may  
12 irrevocably elect to apply the Proposed Regulations  
13 for all of those years as though the Proposed  
14 Regulations had been lawfully promulgated, adopted,  
15 and in effect for all of those years. For purposes of  
16 applying subparagraphs (B) or (C) of this paragraph to  
17 all of those years, the election allowed by this  
18 subparagraph applies only to the taxpayer making the  
19 election and to those members of the taxpayer's unitary  
20 business group who are ordinarily required to  
21 apportion business income under the same subsection of  
22 Section 304 of this Act as the taxpayer making the  
23 election. No election allowed by this subparagraph  
24 shall be made under a claim filed under subsection (d)  
25 of Section 909 more than 30 days after the effective  
26 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           (9.5) Fixed place of business. The term "fixed place of  
16 business" has the same meaning as that term is given in  
17 Section 864 of the Internal Revenue Code and the related  
18 Treasury regulations.

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

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

1 (11.5) Investment partnership.

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

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

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

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

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

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

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

26 (iii) foreign and domestic currency deposits

1           secured by federal, state, or local governmental  
2           agencies;

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

6           (v) repurchase agreements and loan  
7           participations;

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

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

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

19          (ix) regulated futures contracts;

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

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

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

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

11 (B) entries on the wrong lines;

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

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

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

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

24 (15) Paid, incurred and accrued. The terms "paid",  
25 "incurred" and "accrued" shall be construed according to  
26 the method of accounting upon the basis of which the

1 person's base income is computed under this Act.

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

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

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

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



1 establishment of domicile in another State.

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

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

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

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

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

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

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

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

9 (21) Sales. The term "sales" means all gross receipts  
10 of the taxpayer not allocated under Sections 301, 302 and  
11 303.

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

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

1           computed under this Act. "Taxable year" means, in the case  
2           of a return made for a fractional part of a year under the  
3           provisions of this Act, the period for which such return is  
4           made.

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

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

12          (26) Income Tax Return Preparer.

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

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

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

25                         (ii) prepare returns or claims for refunds for  
26                         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 whose business  
18 activity outside the United States is 80% or more of any  
19 such member's total business activity; for purposes of this  
20 paragraph and clause (a)(3)(B)(ii) of Section 304,  
21 business activity within the United States shall be  
22 measured by means of the factors ordinarily applicable  
23 under subsections (a), (b), (c), (d), or (h) of Section 304  
24 except that, in the case of members ordinarily required to  
25 apportion business income by means of the 3 factor formula  
26 of property, payroll and sales specified in subsection (a)

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

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

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

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

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

1 of 1982 and have applied instead the prior federal  
2 Subchapter S rules as in effect on July 1, 1982.

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

9 (b) Other definitions.

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

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

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

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

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

25 (3) Other terms. Any term used in any Section of this



1           Act with respect to the application of, or in connection  
2           with, the provisions of any other Section of this Act shall  
3           have the same meaning as in such other Section.

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

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