

SB1975



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1975

Introduced 2/20/2009, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

35 ILCS 5/1501

from Ch. 120, par. 15-1501

Amends the Illinois Income Tax Act concerning the definition of "captive real estate investment trusts". Provides that, to be a captive real estate investment trust, at least 50% of the voting power must be controlled by a single corporation (now, controlled by a single person). Exempts from the definition certain real estate investment trusts that are owned and controlled by certain entities that are organized outside of the laws of the United States. Imposes conditions on any rulemaking authority. Effective immediately.

LRB096 03138 HLH 13154 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
12 corporation ~~person~~.

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

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

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

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

1 Section 512 of the Internal Revenue Code;

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

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

15 (e) an entity that is organized outside of
16 the laws of the United States and that
17 satisfies all of the following criteria:

18 (1) at least 75% of the entity's total
19 asset value at the close of its taxable
20 year is represented by real estate assets
21 (as defined in Section 856(c)(5)(B) of the
22 Internal Revenue Code, thereby including
23 shares or certificates of beneficial
24 interest in any real estate investment
25 trust), cash and cash equivalents, and
26 U.S. Government securities;

1 (2) the entity is not subject to tax on
2 amounts that are distributed to its
3 beneficial owners or is exempt from
4 entity-level taxation;

5 (3) the entity distributes at least
6 85% of its taxable income (as computed in
7 the jurisdiction in which it is organized)
8 to the holders of its shares or
9 certificates of beneficial interest on an
10 annual basis;

11 (4) either (i) the shares or
12 beneficial interests of the entity are
13 regularly traded on an established
14 securities market or (ii) not more than 10%
15 of the voting power or value in the entity
16 is held, directly, indirectly, or
17 constructively, by a single entity or
18 individual; and

19 (5) the entity is organized in a
20 country that has entered into a tax treaty
21 with the United States; or

22 (ii) during its first taxable year for which it
23 elects to be treated as a real estate investment
24 trust under Section 856(c)(1) of the Internal
25 Revenue Code, a real estate investment trust the
26 certificates of beneficial interest or shares of

1 which are not regularly traded on an established
2 securities market, but only if the certificates of
3 beneficial interest or shares of the real estate
4 investment trust are regularly traded on an
5 established securities market prior to the earlier
6 of the due date (including extensions) for filing
7 its return under this Act for that first taxable
8 year or the date it actually files that return.

9 (C) For the purposes of this subsection (1.5), the
10 constructive ownership rules prescribed under Section
11 318(a) of the Internal Revenue Code, as modified by
12 Section 856(d)(5) of the Internal Revenue Code, apply
13 in determining the ownership of stock, assets, or net
14 profits of any person.

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

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

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

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

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

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

8 (8) Financial organization.

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

25 (B) For purposes of subparagraph (A) of this
26 paragraph, the term "bank" includes (i) any entity that

1 is regulated by the Comptroller of the Currency under
2 the National Bank Act, or by the Federal Reserve Board,
3 or by the Federal Deposit Insurance Corporation and
4 (ii) any federally or State chartered bank operating as
5 a credit card bank.

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

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

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

23 (b) an installment, charge, credit, or
24 similar contract or agreement arising from the
25 sale of tangible personal property or services
26 in a transaction involving a deferred payment

1 price payable in one or more installments
2 subsequent to the sale; or

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

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

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

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

21 (b) more than 50% of the gross income of
22 the corporation for the taxable year must be
23 interest income derived from qualifying loans.
24 A "qualifying loan" is a loan made to a member
25 of the corporation's affiliated group that
26 originates customer receivables (within the

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

24 (c) the total of all shareholder's equity
25 (including, without limitation, paid-in
26 capital on common and preferred stock and

1 retained earnings) of the corporation plus the
2 total of all of its loans, advances, and other
3 obligations payable or owed to members of its
4 affiliated group may not exceed 20% of the
5 total assets of the corporation at any time
6 during the tax year; and

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

13 This amendatory Act of the 91st General Assembly is
14 declaratory of existing law.

15 (D) Subparagraphs (B) and (C) of this paragraph are
16 declaratory of existing law and apply retroactively,
17 for all tax years beginning on or before December 31,
18 1996, to all original returns, to all amended returns
19 filed no later than 30 days after the effective date of
20 this amendatory Act of 1996, and to all notices issued
21 on or before the effective date of this amendatory Act
22 of 1996 under subsection (a) of Section 903, subsection
23 (a) of Section 904, subsection (e) of Section 909, or
24 Section 912. A taxpayer that is a "financial
25 organization" that engages in any transaction with an
26 affiliate shall be a "financial organization" for all

1 purposes of this Act.

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

24 (F) Finance Leases. For purposes of this
25 subsection, a finance lease shall be treated as a loan
26 or other extension of credit, rather than as a lease,

1 regardless of how the transaction is characterized for
2 any other purpose, including the purposes of any
3 regulatory agency to which the lessor is subject. A
4 finance lease is any transaction in the form of a lease
5 in which the lessee is treated as the owner of the
6 leased asset entitled to any deduction for
7 depreciation allowed under Section 167 of the Internal
8 Revenue Code.

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

12 (9.5) Fixed place of business. The term "fixed place of
13 business" has the same meaning as that term is given in
14 Section 864 of the Internal Revenue Code and the related
15 Treasury regulations.

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

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

24 (11.5) Investment partnership.

25 (A) The term "investment partnership" means any
26 entity that is treated as a partnership for federal

1 income tax purposes that meets the following
2 requirements:

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

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

13 (iii) the partnership is not a dealer in
14 qualifying investment securities.

15 (B) For purposes of this paragraph (11.5), the term
16 "qualifying investment securities" includes all of the
17 following:

18 (i) common stock, including preferred or debt
19 securities convertible into common stock, and
20 preferred stock;

21 (ii) bonds, debentures, and other debt
22 securities;

23 (iii) foreign and domestic currency deposits
24 secured by federal, state, or local governmental
25 agencies;

26 (iv) mortgage or asset-backed securities

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

3 (v) repurchase agreements and loan
4 participations;

5 (vi) foreign currency exchange contracts and
6 forward and futures contracts on foreign
7 currencies;

8 (vii) stock and bond index securities and
9 futures contracts and other similar financial
10 securities and futures contracts on those
11 securities;

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

16 (ix) regulated futures contracts;

17 (x) commodities (not described in Section
18 1221(a)(1) of the Internal Revenue Code) or
19 futures, forwards, and options with respect to
20 such commodities, provided, however, that any item
21 of a physical commodity to which title is actually
22 acquired in the partnership's capacity as a dealer
23 in such commodity shall not be a qualifying
24 investment security;

25 (xi) derivatives; and

26 (xii) a partnership interest in another

1 partnership that is an investment partnership.

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

6 (A) arithmetic errors or incorrect computations on
7 the return or supporting schedules;

8 (B) entries on the wrong lines;

9 (C) omission of required supporting forms or
10 schedules or the omission of the information in whole
11 or in part called for thereon; and

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

16 (13) Nonbusiness income. The term "nonbusiness income"
17 means all income other than business income or
18 compensation.

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

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

25 (16) Partnership and partner. The term "partnership"
26 includes a syndicate, group, pool, joint venture or other

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

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

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

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

25 (18) Person. The term "person" shall be construed to
26 mean and include an individual, a trust, estate,

1 partnership, association, firm, company, corporation,
2 limited liability company, or fiduciary. For purposes of
3 Section 1301 and 1302 of this Act, a "person" means (i) an
4 individual, (ii) a corporation, (iii) an officer, agent, or
5 employee of a corporation, (iv) a member, agent or employee
6 of a partnership, or (v) a member, manager, employee,
7 officer, director, or agent of a limited liability company
8 who in such capacity commits an offense specified in
9 Section 1301 and 1302.

10 (18A) Records. The term "records" includes all data
11 maintained by the taxpayer, whether on paper, microfilm,
12 microfiche, or any type of machine-sensible data
13 compilation.

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

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

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

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

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

26 (D) An irrevocable trust, the grantor of which was

1 domiciled in this State at the time such trust became
2 irrevocable. For purpose of this subparagraph, a trust
3 shall be considered irrevocable to the extent that the
4 grantor is not treated as the owner thereof under
5 Sections 671 through 678 of the Internal Revenue Code.

6 (21) Sales. The term "sales" means all gross receipts
7 of the taxpayer not allocated under Sections 301, 302 and
8 303.

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

21 (23) Taxable year. The term "taxable year" means the
22 calendar year, or the fiscal year ending during such
23 calendar year, upon the basis of which the base income is
24 computed under this Act. "Taxable year" means, in the case
25 of a return made for a fractional part of a year under the
26 provisions of this Act, the period for which such return is

1 made.

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

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

9 (26) Income Tax Return Preparer.

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

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

20 (i) furnish typing, reproducing, or other
21 mechanical assistance;

22 (ii) prepare returns or claims for refunds for
23 the employer by whom he or she is regularly and
24 continuously employed;

25 (iii) prepare as a fiduciary returns or claims
26 for refunds for any person; or

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

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

1 property and payroll factor computations of subsection (a)
2 of Section 304 shall be divided by 2 (by one if either the
3 property or payroll factor has a denominator of zero). The
4 computation required by the preceding sentence shall, in
5 each case, involve the division of the member's property,
6 payroll, or revenue miles in the United States, insurance
7 premiums on property or risk in the United States, or
8 financial organization business income from sources within
9 the United States, as the case may be, by the respective
10 worldwide figures for such items. Common ownership in the
11 case of corporations is the direct or indirect control or
12 ownership of more than 50% of the outstanding voting stock
13 of the persons carrying on unitary business activity.
14 Unitary business activity can ordinarily be illustrated
15 where the activities of the members are: (1) in the same
16 general line (such as manufacturing, wholesaling,
17 retailing of tangible personal property, insurance,
18 transportation or finance); or (2) are steps in a
19 vertically structured enterprise or process (such as the
20 steps involved in the production of natural resources,
21 which might include exploration, mining, refining, and
22 marketing); and, in either instance, the members are
23 functionally integrated through the exercise of strong
24 centralized management (where, for example, authority over
25 such matters as purchasing, financing, tax compliance,
26 product line, personnel, marketing and capital investment

1 is not left to each member). In no event, however, will any
2 unitary business group include members which are
3 ordinarily required to apportion business income under
4 different subsections of Section 304 except that for tax
5 years ending on or after December 31, 1987 this prohibition
6 shall not apply to a unitary business group composed of one
7 or more taxpayers all of which apportion business income
8 pursuant to subsection (b) of Section 304, or all of which
9 apportion business income pursuant to subsection (d) of
10 Section 304, and a holding company of such single-factor
11 taxpayers (see definition of "financial organization" for
12 rule regarding holding companies of financial
13 organizations). If a unitary business group would, but for
14 the preceding sentence, include members that are
15 ordinarily required to apportion business income under
16 different subsections of Section 304, then for each
17 subsection of Section 304 for which there are two or more
18 members, there shall be a separate unitary business group
19 composed of such members. For purposes of the preceding two
20 sentences, a member is "ordinarily required to apportion
21 business income" under a particular subsection of Section
22 304 if it would be required to use the apportionment method
23 prescribed by such subsection except for the fact that it
24 derives business income solely from Illinois. As used in
25 this paragraph, the phrase "United States" means only the
26 50 states and the District of Columbia, but does not

1 include any territory or possession of the United States or
2 any area over which the United States has asserted
3 jurisdiction or claimed exclusive rights with respect to
4 the exploration for or exploitation of natural resources.

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

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

26 (30) Foreign person. The term "foreign person" means

1 any person who is a nonresident alien individual and any
2 nonindividual entity, regardless of where created or
3 organized, whose business activity outside the United
4 States is 80% or more of the entity's total business
5 activity.

6 (b) Other definitions.

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

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

12 (B) Words importing the plural include the
13 singular; and

14 (C) Words importing the masculine gender include
15 the feminine as well.

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

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

1 (c) Rulemaking authority to implement this amendatory Act
2 of the 96th General Assembly, if any, is conditioned on the
3 rules being adopted in accordance with all provisions of the
4 Illinois Administrative Procedure Act and all rules and
5 procedures of the Joint Committee on Administrative Rules; any
6 purported rule not so adopted, for whatever reason, is
7 unauthorized.

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

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.