



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB6289

by Rep. David Harris

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/1501

from Ch. 120, par. 15-1501

805 ILCS 180/50-10

Amends the Illinois Income Tax Act. In provisions providing that a unitary business group does not include members whose business activity outside the United States is 80% or more of that member's total business activity, provides that the phrase "United States" means only the 50 states, the District of Columbia, and any area over which the United States has asserted jurisdiction or claimed exclusive rights with respect to the exploration for or exploitation of natural resources, but does not include any territory or possession of the United States (currently, for those purposes, "United States" means only the 50 states and the District of Columbia, but does not include any territory or possession of the United States or any area over which the United States has asserted jurisdiction or claimed exclusive rights with respect to the exploration for or exploitation of natural resources). Amends the Limited Liability Company Act. Reduces the fees for filing articles of organization, applications for admission, and restated articles of organization to \$125 for a series LLC (currently, \$750) and \$75 for all other LLCs (currently, \$500).

LRB098 21951 HLH 60814 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.

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;

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.

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

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

1 through the exercise of strong centralized management  
2 (where, for example, authority over such matters as  
3 purchasing, financing, tax compliance, product line,  
4 personnel, marketing and capital investment is not  
5 left to each member).

6 (B) In no event, shall any unitary business group  
7 include members which are ordinarily required to  
8 apportion business income under different subsections  
9 of Section 304 except that for tax years ending on or  
10 after December 31, 1987 this prohibition shall not  
11 apply to a holding company that would otherwise be a  
12 member of a unitary business group with taxpayers that  
13 apportion business income under any of subsections  
14 (b), (c), (c-1), or (d) of Section 304. If a unitary  
15 business group would, but for the preceding sentence,  
16 include members that are ordinarily required to  
17 apportion business income under different subsections  
18 of Section 304, then for each subsection of Section 304  
19 for which there are two or more members, there shall be  
20 a separate unitary business group composed of such  
21 members. For purposes of the preceding two sentences, a  
22 member is "ordinarily required to apportion business  
23 income" under a particular subsection of Section 304 if  
24 it would be required to use the apportionment method  
25 prescribed by such subsection except for the fact that  
26 it derives business income solely from Illinois. As

1 used in this paragraph, for taxable years ending before  
2 December 31, 2014, the phrase "United States" means  
3 only the 50 states and the District of Columbia, but  
4 does not include any territory or possession of the  
5 United States or any area over which the United States  
6 has asserted jurisdiction or claimed exclusive rights  
7 with respect to the exploration for or exploitation of  
8 natural resources. For taxable years ending on or after  
9 December 31, 2014, the phrase "United States", as used  
10 in this paragraph, means only the 50 states, the  
11 District of Columbia, and any area over which the  
12 United States has asserted jurisdiction or claimed  
13 exclusive rights with respect to the exploration for or  
14 exploitation of natural resources, but does not  
15 include any territory or possession of the United  
16 States.

17 (C) Holding companies.

18 (i) For purposes of this subparagraph, a  
19 "holding company" is a corporation (other than a  
20 corporation that is a financial organization under  
21 paragraph (8) of this subsection (a) of Section  
22 1501 because it is a bank holding company under the  
23 provisions of the Bank Holding Company Act of 1956  
24 (12 U.S.C. 1841, et seq.) or because it is owned by  
25 a bank or a bank holding company) that owns a  
26 controlling interest in one or more other



1 taxpayers ("controlled taxpayers"); that, during  
2 the period that includes the taxable year and the 2  
3 immediately preceding taxable years or, if the  
4 corporation was formed during the current or  
5 immediately preceding taxable year, the taxable  
6 years in which the corporation has been in  
7 existence, derived substantially all its gross  
8 income from dividends, interest, rents, royalties,  
9 fees or other charges received from controlled  
10 taxpayers for the provision of services, and gains  
11 on the sale or other disposition of interests in  
12 controlled taxpayers or in property leased or  
13 licensed to controlled taxpayers or used by the  
14 taxpayer in providing services to controlled  
15 taxpayers; and that incurs no substantial expenses  
16 other than expenses (including interest and other  
17 costs of borrowing) incurred in connection with  
18 the acquisition and holding of interests in  
19 controlled taxpayers and in the provision of  
20 services to controlled taxpayers or in the leasing  
21 or licensing of property to controlled taxpayers.

22 (ii) The income of a holding company which is a  
23 member of more than one unitary business group  
24 shall be included in each unitary business group of  
25 which it is a member on a pro rata basis, by  
26 including in each unitary business group that

1           portion of the base income of the holding company  
2           that bears the same proportion to the total base  
3           income of the holding company as the gross receipts  
4           of the unitary business group bears to the combined  
5           gross receipts of all unitary business groups (in  
6           both cases without regard to the holding company)  
7           or on any other reasonable basis, consistently  
8           applied.

9           (iii) A holding company shall apportion its  
10          business income under the subsection of Section  
11          304 used by the other members of its unitary  
12          business group. The apportionment factors of a  
13          holding company which would be a member of more  
14          than one unitary business group shall be included  
15          with the apportionment factors of each unitary  
16          business group of which it is a member on a pro  
17          rata basis using the same method used in clause  
18          (ii).

19          (iv) The provisions of this subparagraph (C)  
20          are intended to clarify existing law.

21          (D) If including the base income and factors of a  
22          holding company in more than one unitary business group  
23          under subparagraph (C) does not fairly reflect the  
24          degree of integration between the holding company and  
25          one or more of the unitary business groups, the  
26          dependence of the holding company and one or more of

1 the unitary business groups upon each other, or the  
2 contributions between the holding company and one or  
3 more of the unitary business groups, the holding  
4 company may petition the Director, under the  
5 procedures provided under Section 304(f), for  
6 permission to include all base income and factors of  
7 the holding company only with members of a unitary  
8 business group apportioning their business income  
9 under one subsection of subsections (a), (b), (c), or  
10 (d) of Section 304. If the petition is granted, the  
11 holding company shall be included in a unitary business  
12 group only with persons apportioning their business  
13 income under the selected subsection of Section 304  
14 until the Director grants a petition of the holding  
15 company either to be included in more than one unitary  
16 business group under subparagraph (C) or to include its  
17 base income and factors only with members of a unitary  
18 business group apportioning their business income  
19 under a different subsection of Section 304.

20 (E) If the unitary business group members'  
21 accounting periods differ, the common parent's  
22 accounting period or, if there is no common parent, the  
23 accounting period of the member that is expected to  
24 have, on a recurring basis, the greatest Illinois  
25 income tax liability must be used to determine whether  
26 to use the apportionment method provided in subsection

1 (a) or subsection (h) of Section 304. The prohibition  
2 against membership in a unitary business group for  
3 taxpayers ordinarily required to apportion income  
4 under different subsections of Section 304 does not  
5 apply to taxpayers required to apportion income under  
6 subsection (a) and subsection (h) of Section 304. The  
7 provisions of this amendatory Act of 1998 apply to tax  
8 years ending on or after December 31, 1998.

9 (28) Subchapter S corporation. The term "Subchapter S  
10 corporation" means a corporation for which there is in  
11 effect an election under Section 1362 of the Internal  
12 Revenue Code, or for which there is a federal election to  
13 opt out of the provisions of the Subchapter S Revision Act  
14 of 1982 and have applied instead the prior federal  
15 Subchapter S rules as in effect on July 1, 1982.

16 (30) Foreign person. The term "foreign person" means  
17 any person who is a nonresident alien individual and any  
18 nonindividual entity, regardless of where created or  
19 organized, whose business activity outside the United  
20 States is 80% or more of the entity's total business  
21 activity.

22 (b) Other definitions.

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

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

3 (B) Words importing the plural include the  
4 singular; and

5 (C) Words importing the masculine gender include  
6 the feminine as well.

7 (2) "Company" or "association" as including successors  
8 and assigns. The word "company" or "association", when used  
9 in reference to a corporation, shall be deemed to embrace  
10 the words "successors and assigns of such company or  
11 association", and in like manner as if these last-named  
12 words, or words of similar import, were expressed.

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

17 (Source: P.A. 96-641, eff. 8-24-09; 97-507, eff. 8-23-11;  
18 97-636, eff. 6-1-12.)

19 Section 10. The Limited Liability Company Act is amended by  
20 changing Section 50-10 as follows:

21 (805 ILCS 180/50-10)

22 Sec. 50-10. Fees.

23 (a) The Secretary of State shall charge and collect in  
24 accordance with the provisions of this Act and rules

1 promulgated under its authority all of the following:

2 (1) Fees for filing documents.

3 (2) Miscellaneous charges.

4 (3) Fees for the sale of lists of filings and for  
5 copies of any documents.

6 (b) The Secretary of State shall charge and collect for all  
7 of the following:

8 (1) Filing articles of organization (domestic),  
9 application for admission (foreign), and restated articles  
10 of organization (domestic), \$75 ~~\$500~~. Notwithstanding the  
11 foregoing, the fee for filing articles of organization  
12 (domestic), application for admission (foreign), and  
13 restated articles of organization (domestic) in connection  
14 with a limited liability company with ability to establish  
15 series pursuant to Section 37-40 of this Act is \$125 ~~\$750~~.

16 (2) Filing articles of amendment or an amended  
17 application for admission, \$150.

18 (3) Filing articles of dissolution or application for  
19 withdrawal, \$100.

20 (4) Filing an application to reserve a name, \$300.

21 (5) Filing a notice of cancellation of a reserved name,  
22 \$100.

23 (6) Filing a notice of a transfer of a reserved name,  
24 \$100.

25 (7) Registration of a name, \$300.

26 (8) Renewal of registration of a name, \$100.

1           (9) Filing an application for use of an assumed name  
2 under Section 1-20 of this Act, \$150 for each year or part  
3 thereof ending in 0 or 5, \$120 for each year or part  
4 thereof ending in 1 or 6, \$90 for each year or part thereof  
5 ending in 2 or 7, \$60 for each year or part thereof ending  
6 in 3 or 8, \$30 for each year or part thereof ending in 4 or  
7 9, and a renewal for each assumed name, \$150.

8           (10) Filing an application for change or cancellation  
9 of an assumed name, \$100.

10           (11) Filing an annual report of a limited liability  
11 company or foreign limited liability company, \$250, if  
12 filed as required by this Act, plus a penalty if  
13 delinquent. Notwithstanding the foregoing, the fee for  
14 filing an annual report of a limited liability company or  
15 foreign limited liability company with ability to  
16 establish series is \$250 plus \$50 for each series for which  
17 a certificate of designation has been filed pursuant to  
18 Section 37-40 of this Act and active on the last day of the  
19 third month preceding the company's anniversary month,  
20 plus a penalty if delinquent.

21           (12) Filing an application for reinstatement of a  
22 limited liability company or foreign limited liability  
23 company \$500.

24           (13) Filing Articles of Merger, \$100 plus \$50 for each  
25 party to the merger in excess of the first 2 parties.

26           (14) Filing an Agreement of Conversion or Statement of

1 Conversion, \$100.

2 (15) Filing a statement of change of address of  
3 registered office or change of registered agent, or both,  
4 or filing a statement of correction, \$25.

5 (16) Filing a petition for refund, \$15.

6 (17) Filing any other document, \$100.

7 (18) Filing a certificate of designation of a limited  
8 liability company with the ability to establish series  
9 pursuant to Section 37-40 of this Act, \$50.

10 (c) The Secretary of State shall charge and collect all of  
11 the following:

12 (1) For furnishing a copy or certified copy of any  
13 document, instrument, or paper relating to a limited  
14 liability company or foreign limited liability company, or  
15 for a certificate, \$25.

16 (2) For the transfer of information by computer process  
17 media to any purchaser, fees established by rule.

18 (Source: P.A. 97-839, eff. 7-20-12.)