

**HB3086**



**99TH GENERAL ASSEMBLY**

**State of Illinois**

**2015 and 2016**

**HB3086**

by Rep. John E. Bradley

**SYNOPSIS AS INTRODUCED:**

35 ILCS 5/1501

from Ch. 120, par. 15-1501

Amends the Illinois Income Tax Act. Provides that the voting power or value of the beneficial interest or shares of a real estate investment trust does not include any voting power or value of beneficial interest or or shares in a real estate investment trust held directly or indirectly in a segregated asset account by a life insurance company for the benefit of persons who are immune or exempt from taxation under subtitle A of the Internal Revenue Code.

LRB099 10675 HLH 30934 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          (D) For the purposes of this item (1.5), the voting  
16          power or value of the beneficial interest or shares of  
17          a real estate investment trust does not include any  
18          voting power or value of beneficial interest or shares  
19          in a real estate investment trust held directly or  
20          indirectly in a segregated asset account by a life  
21          insurance company (as described in Section 817 of the  
22          Internal Revenue Code) to the extent such voting power  
23          or value is for the benefit of entities or persons who  
24          are either immune from taxation or exempt from taxation  
25          under subtitle A of the Internal Revenue Code. The  
26          changes to this item (1.5) made by this amendatory Act

1           of the 99th General Assembly are declarative of  
2           existing law and do not change the substantive  
3           operation of this item (1.5).

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

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

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

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

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

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

23          (8) Financial organization.

24                 (A) The term "financial organization" means any  
25                 bank, bank holding company, trust company, savings  
26                 bank, industrial bank, land bank, safe deposit

1 company, private banker, savings and loan association,  
2 building and loan association, credit union, currency  
3 exchange, cooperative bank, small loan company, sales  
4 finance company, investment company, or any person  
5 which is owned by a bank or bank holding company. For  
6 the purpose of this Section a "person" will include  
7 only those persons which a bank holding company may  
8 acquire and hold an interest in, directly or  
9 indirectly, under the provisions of the Bank Holding  
10 Company Act of 1956 (12 U.S.C. 1841, et seq.), except  
11 where interests in any person must be disposed of  
12 within certain required time limits under the Bank  
13 Holding Company Act of 1956.

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

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

24 (i) A person primarily engaged in one or more  
25 of the following businesses: the business of  
26 purchasing customer receivables, the business of



1 making loans upon the security of customer  
2 receivables, the business of making loans for the  
3 express purpose of funding purchases of tangible  
4 personal property or services by the borrower, or  
5 the business of finance leasing. For purposes of  
6 this item (i), "customer receivable" means:

7 (a) a retail installment contract or  
8 retail charge agreement within the meaning of  
9 the Sales Finance Agency Act, the Retail  
10 Installment Sales Act, or the Motor Vehicle  
11 Retail Installment Sales Act;

12 (b) an installment, charge, credit, or  
13 similar contract or agreement arising from the  
14 sale of tangible personal property or services  
15 in a transaction involving a deferred payment  
16 price payable in one or more installments  
17 subsequent to the sale; or

18 (c) the outstanding balance of a contract  
19 or agreement described in provisions (a) or (b)  
20 of this item (i).

21 A customer receivable need not provide for  
22 payment of interest on deferred payments. A sales  
23 finance company may purchase a customer receivable  
24 from, or make a loan secured by a customer  
25 receivable to, the seller in the original  
26 transaction or to a person who purchased the

1 customer receivable directly or indirectly from  
2 that seller.

3 (ii) A corporation meeting each of the  
4 following criteria:

5 (a) the corporation must be a member of an  
6 "affiliated group" within the meaning of  
7 Section 1504(a) of the Internal Revenue Code,  
8 determined without regard to Section 1504(b)  
9 of the Internal Revenue Code;

10 (b) more than 50% of the gross income of  
11 the corporation for the taxable year must be  
12 interest income derived from qualifying loans.  
13 A "qualifying loan" is a loan made to a member  
14 of the corporation's affiliated group that  
15 originates customer receivables (within the  
16 meaning of item (i)) or to whom customer  
17 receivables originated by a member of the  
18 affiliated group have been transferred, to the  
19 extent the average outstanding balance of  
20 loans from that corporation to members of its  
21 affiliated group during the taxable year do not  
22 exceed the limitation amount for that  
23 corporation. The "limitation amount" for a  
24 corporation is the average outstanding  
25 balances during the taxable year of customer  
26 receivables (within the meaning of item (i))

1 originated by all members of the affiliated  
2 group. If the average outstanding balances of  
3 the loans made by a corporation to members of  
4 its affiliated group exceed the limitation  
5 amount, the interest income of that  
6 corporation from qualifying loans shall be  
7 equal to its interest income from loans to  
8 members of its affiliated groups times a  
9 fraction equal to the limitation amount  
10 divided by the average outstanding balances of  
11 the loans made by that corporation to members  
12 of its affiliated group;

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

22 (d) more than 50% of all interest-bearing  
23 obligations of the affiliated group payable to  
24 persons outside the group determined in  
25 accordance with generally accepted accounting  
26 principles must be obligations of the

1                   corporation.

2                   This amendatory Act of the 91st General Assembly is  
3                   declaratory of existing law.

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

17                  (E) For all tax years beginning on or before  
18                  December 31, 1996, a taxpayer that falls within the  
19                  definition of a "financial organization" under  
20                  subparagraphs (B) or (C) of this paragraph, but who  
21                  does not fall within the definition of a "financial  
22                  organization" under the Proposed Regulations issued by  
23                  the Department of Revenue on July 19, 1996, may  
24                  irrevocably elect to apply the Proposed Regulations  
25                  for all of those years as though the Proposed  
26                  Regulations had been lawfully promulgated, adopted,

1 and in effect for all of those years. For purposes of  
2 applying subparagraphs (B) or (C) of this paragraph to  
3 all of those years, the election allowed by this  
4 subparagraph applies only to the taxpayer making the  
5 election and to those members of the taxpayer's unitary  
6 business group who are ordinarily required to  
7 apportion business income under the same subsection of  
8 Section 304 of this Act as the taxpayer making the  
9 election. No election allowed by this subparagraph  
10 shall be made under a claim filed under subsection (d)  
11 of Section 909 more than 30 days after the effective  
12 date of this amendatory Act of 1996.

13 (F) Finance Leases. For purposes of this  
14 subsection, a finance lease shall be treated as a loan  
15 or other extension of credit, rather than as a lease,  
16 regardless of how the transaction is characterized for  
17 any other purpose, including the purposes of any  
18 regulatory agency to which the lessor is subject. A  
19 finance lease is any transaction in the form of a lease  
20 in which the lessee is treated as the owner of the  
21 leased asset entitled to any deduction for  
22 depreciation allowed under Section 167 of the Internal  
23 Revenue Code.

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

1           (9.5) Fixed place of business. The term "fixed place of  
2 business" has the same meaning as that term is given in  
3 Section 864 of the Internal Revenue Code and the related  
4 Treasury regulations.

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

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

13           (11.5) Investment partnership.

14           (A) The term "investment partnership" means any  
15 entity that is treated as a partnership for federal  
16 income tax purposes that meets the following  
17 requirements:

18                   (i) no less than 90% of the partnership's cost  
19 of its total assets consists of qualifying  
20 investment securities, deposits at banks or other  
21 financial institutions, and office space and  
22 equipment reasonably necessary to carry on its  
23 activities as an investment partnership;

24                   (ii) no less than 90% of its gross income  
25 consists of interest, dividends, and gains from  
26 the sale or exchange of qualifying investment

1 securities; and

2 (iii) the partnership is not a dealer in  
3 qualifying investment securities.

4 (B) For purposes of this paragraph (11.5), the term  
5 "qualifying investment securities" includes all of the  
6 following:

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

10 (ii) bonds, debentures, and other debt  
11 securities;

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

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

18 (v) repurchase agreements and loan  
19 participations;

20 (vi) foreign currency exchange contracts and  
21 forward and futures contracts on foreign  
22 currencies;

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

1 (viii) options for the purchase or sale of any  
2 of the securities, currencies, contracts, or  
3 financial instruments described in items (i) to  
4 (vii), inclusive;

5 (ix) regulated futures contracts;

6 (x) commodities (not described in Section  
7 1221(a)(1) of the Internal Revenue Code) or  
8 futures, forwards, and options with respect to  
9 such commodities, provided, however, that any item  
10 of a physical commodity to which title is actually  
11 acquired in the partnership's capacity as a dealer  
12 in such commodity shall not be a qualifying  
13 investment security;

14 (xi) derivatives; and

15 (xii) a partnership interest in another  
16 partnership that is an investment partnership.

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

21 (A) arithmetic errors or incorrect computations on  
22 the return or supporting schedules;

23 (B) entries on the wrong lines;

24 (C) omission of required supporting forms or  
25 schedules or the omission of the information in whole  
26 or in part called for thereon; and



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

5 (13) Nonbusiness income. The term "nonbusiness income"  
6 means all income other than business income or  
7 compensation.

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

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

14 (16) Partnership and partner. The term "partnership"  
15 includes a syndicate, group, pool, joint venture or other  
16 unincorporated organization, through or by means of which  
17 any business, financial operation, or venture is carried  
18 on, and which is not, within the meaning of this Act, a  
19 trust or estate or a corporation; and the term "partner"  
20 includes a member in such syndicate, group, pool, joint  
21 venture or organization.

22 The term "partnership" includes any entity, including  
23 a limited liability company formed under the Illinois  
24 Limited Liability Company Act, classified as a partnership  
25 for federal income tax purposes.

26 The term "partnership" does not include a syndicate,

1 group, pool, joint venture, or other unincorporated  
2 organization established for the sole purpose of playing  
3 the Illinois State Lottery.

4 (17) Part-year resident. The term "part-year resident"  
5 means an individual who became a resident during the  
6 taxable year or ceased to be a resident during the taxable  
7 year. Under Section 1501(a)(20)(A)(i) residence commences  
8 with presence in this State for other than a temporary or  
9 transitory purpose and ceases with absence from this State  
10 for other than a temporary or transitory purpose. Under  
11 Section 1501(a)(20)(A)(ii) residence commences with the  
12 establishment of domicile in this State and ceases with the  
13 establishment of domicile in another State.

14 (18) Person. The term "person" shall be construed to  
15 mean and include an individual, a trust, estate,  
16 partnership, association, firm, company, corporation,  
17 limited liability company, or fiduciary. For purposes of  
18 Section 1301 and 1302 of this Act, a "person" means (i) an  
19 individual, (ii) a corporation, (iii) an officer, agent, or  
20 employee of a corporation, (iv) a member, agent or employee  
21 of a partnership, or (v) a member, manager, employee,  
22 officer, director, or agent of a limited liability company  
23 who in such capacity commits an offense specified in  
24 Section 1301 and 1302.

25 (18A) Records. The term "records" includes all data  
26 maintained by the taxpayer, whether on paper, microfilm,

1 microfiche, or any type of machine-sensible data  
2 compilation.

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

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

6 (A) an individual (i) who is in this State for  
7 other than a temporary or transitory purpose during the  
8 taxable year; or (ii) who is domiciled in this State  
9 but is absent from the State for a temporary or  
10 transitory purpose during the taxable year;

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

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

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

21 (21) Sales. The term "sales" means all gross receipts  
22 of the taxpayer not allocated under Sections 301, 302 and  
23 303.

24 (22) State. The term "state" when applied to a  
25 jurisdiction other than this State means any state of the  
26 United States, the District of Columbia, the Commonwealth

1 of Puerto Rico, any Territory or Possession of the United  
2 States, and any foreign country, or any political  
3 subdivision of any of the foregoing. For purposes of the  
4 foreign tax credit under Section 601, the term "state"  
5 means any state of the United States, the District of  
6 Columbia, the Commonwealth of Puerto Rico, and any  
7 territory or possession of the United States, or any  
8 political subdivision of any of the foregoing, effective  
9 for tax years ending on or after December 31, 1989.

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

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

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

24 (26) Income Tax Return Preparer.

25 (A) The term "income tax return preparer" means any  
26 person who prepares for compensation, or who employs

1 one or more persons to prepare for compensation, any  
2 return of tax imposed by this Act or any claim for  
3 refund of tax imposed by this Act. The preparation of a  
4 substantial portion of a return or claim for refund  
5 shall be treated as the preparation of that return or  
6 claim for refund.

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

9 (i) furnish typing, reproducing, or other  
10 mechanical assistance;

11 (ii) prepare returns or claims for refunds for  
12 the employer by whom he or she is regularly and  
13 continuously employed;

14 (iii) prepare as a fiduciary returns or claims  
15 for refunds for any person; or

16 (iv) prepare claims for refunds for a taxpayer  
17 in response to any notice of deficiency issued to  
18 that taxpayer or in response to any waiver of  
19 restriction after the commencement of an audit of  
20 that taxpayer or of another taxpayer if a  
21 determination in the audit of the other taxpayer  
22 directly or indirectly affects the tax liability  
23 of the taxpayer whose claims he or she is  
24 preparing.

25 (27) Unitary business group.

26 (A) The term "unitary business group" means a group

1 of persons related through common ownership whose  
2 business activities are integrated with, dependent  
3 upon and contribute to each other. The group will not  
4 include those members whose business activity outside  
5 the United States is 80% or more of any such member's  
6 total business activity; for purposes of this  
7 paragraph and clause (a)(3)(B)(ii) of Section 304,  
8 business activity within the United States shall be  
9 measured by means of the factors ordinarily applicable  
10 under subsections (a), (b), (c), (d), or (h) of Section  
11 304 except that, in the case of members ordinarily  
12 required to apportion business income by means of the 3  
13 factor formula of property, payroll and sales  
14 specified in subsection (a) of Section 304, including  
15 the formula as weighted in subsection (h) of Section  
16 304, such members shall not use the sales factor in the  
17 computation and the results of the property and payroll  
18 factor computations of subsection (a) of Section 304  
19 shall be divided by 2 (by one if either the property or  
20 payroll factor has a denominator of zero). The  
21 computation required by the preceding sentence shall,  
22 in each case, involve the division of the member's  
23 property, payroll, or revenue miles in the United  
24 States, insurance premiums on property or risk in the  
25 United States, or financial organization business  
26 income from sources within the United States, as the

1 case may be, by the respective worldwide figures for  
2 such items. Common ownership in the case of  
3 corporations is the direct or indirect control or  
4 ownership of more than 50% of the outstanding voting  
5 stock of the persons carrying on unitary business  
6 activity. Unitary business activity can ordinarily be  
7 illustrated where the activities of the members are:  
8 (1) in the same general line (such as manufacturing,  
9 wholesaling, retailing of tangible personal property,  
10 insurance, transportation or finance); or (2) are  
11 steps in a vertically structured enterprise or process  
12 (such as the steps involved in the production of  
13 natural resources, which might include exploration,  
14 mining, refining, and marketing); and, in either  
15 instance, the members are functionally integrated  
16 through the exercise of strong centralized management  
17 (where, for example, authority over such matters as  
18 purchasing, financing, tax compliance, product line,  
19 personnel, marketing and capital investment is not  
20 left to each member).

21 (B) In no event, shall any unitary business group  
22 include members which are ordinarily required to  
23 apportion business income under different subsections  
24 of Section 304 except that for tax years ending on or  
25 after December 31, 1987 this prohibition shall not  
26 apply to a holding company that would otherwise be a

1 member of a unitary business group with taxpayers that  
2 apportion business income under any of subsections  
3 (b), (c), (c-1), or (d) of Section 304. If a unitary  
4 business group would, but for the preceding sentence,  
5 include members that are ordinarily required to  
6 apportion business income under different subsections  
7 of Section 304, then for each subsection of Section 304  
8 for which there are two or more members, there shall be  
9 a separate unitary business group composed of such  
10 members. For purposes of the preceding two sentences, a  
11 member is "ordinarily required to apportion business  
12 income" under a particular subsection of Section 304 if  
13 it would be required to use the apportionment method  
14 prescribed by such subsection except for the fact that  
15 it derives business income solely from Illinois. As  
16 used in this paragraph, the phrase "United States"  
17 means only the 50 states and the District of Columbia,  
18 but does not include any territory or possession of the  
19 United States or any area over which the United States  
20 has asserted jurisdiction or claimed exclusive rights  
21 with respect to the exploration for or exploitation of  
22 natural resources.

23 (C) Holding companies.

24 (i) For purposes of this subparagraph, a  
25 "holding company" is a corporation (other than a  
26 corporation that is a financial organization under



1 paragraph (8) of this subsection (a) of Section  
2 1501 because it is a bank holding company under the  
3 provisions of the Bank Holding Company Act of 1956  
4 (12 U.S.C. 1841, et seq.) or because it is owned by  
5 a bank or a bank holding company) that owns a  
6 controlling interest in one or more other  
7 taxpayers ("controlled taxpayers"); that, during  
8 the period that includes the taxable year and the 2  
9 immediately preceding taxable years or, if the  
10 corporation was formed during the current or  
11 immediately preceding taxable year, the taxable  
12 years in which the corporation has been in  
13 existence, derived substantially all its gross  
14 income from dividends, interest, rents, royalties,  
15 fees or other charges received from controlled  
16 taxpayers for the provision of services, and gains  
17 on the sale or other disposition of interests in  
18 controlled taxpayers or in property leased or  
19 licensed to controlled taxpayers or used by the  
20 taxpayer in providing services to controlled  
21 taxpayers; and that incurs no substantial expenses  
22 other than expenses (including interest and other  
23 costs of borrowing) incurred in connection with  
24 the acquisition and holding of interests in  
25 controlled taxpayers and in the provision of  
26 services to controlled taxpayers or in the leasing

1 or licensing of property to controlled taxpayers.

2 (ii) The income of a holding company which is a  
3 member of more than one unitary business group  
4 shall be included in each unitary business group of  
5 which it is a member on a pro rata basis, by  
6 including in each unitary business group that  
7 portion of the base income of the holding company  
8 that bears the same proportion to the total base  
9 income of the holding company as the gross receipts  
10 of the unitary business group bears to the combined  
11 gross receipts of all unitary business groups (in  
12 both cases without regard to the holding company)  
13 or on any other reasonable basis, consistently  
14 applied.

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

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

1 (D) If including the base income and factors of a  
2 holding company in more than one unitary business group  
3 under subparagraph (C) does not fairly reflect the  
4 degree of integration between the holding company and  
5 one or more of the unitary business groups, the  
6 dependence of the holding company and one or more of  
7 the unitary business groups upon each other, or the  
8 contributions between the holding company and one or  
9 more of the unitary business groups, the holding  
10 company may petition the Director, under the  
11 procedures provided under Section 304(f), for  
12 permission to include all base income and factors of  
13 the holding company only with members of a unitary  
14 business group apportioning their business income  
15 under one subsection of subsections (a), (b), (c), or  
16 (d) of Section 304. If the petition is granted, the  
17 holding company shall be included in a unitary business  
18 group only with persons apportioning their business  
19 income under the selected subsection of Section 304  
20 until the Director grants a petition of the holding  
21 company either to be included in more than one unitary  
22 business group under subparagraph (C) or to include its  
23 base income and factors only with members of a unitary  
24 business group apportioning their business income  
25 under a different subsection of Section 304.

26 (E) If the unitary business group members'

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

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

22          (30) Foreign person. The term "foreign person" means  
23          any person who is a nonresident alien individual and any  
24          nonindividual entity, regardless of where created or  
25          organized, whose business activity outside the United  
26          States is 80% or more of the entity's total business

1 activity.

2 (b) Other definitions.

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

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

8 (B) Words importing the plural include the  
9 singular; and

10 (C) Words importing the masculine gender include  
11 the feminine as well.

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

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

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