

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.3370 Sales Factor (IITA Section 304)

TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.3370 Sales Factor (IITA Section 304)

- a) In general.
 - 1) IITA Section 1501(a)(21) defines the term "sales" to mean all gross receipts of the person not allocated under IITA Sections 301, 302 and 303. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the person, the term "sales" means all gross receipts derived by the person from transactions and activity in the regular course of his or her trade or business. The following are rules for determining "sales" in various situations, except in instances in which an alternative method of determining the sales factor is prescribed in Section 100.3380. If the determination prescribed by this section does not clearly reflect the taxpayer's business activities in Illinois (for taxable years ending before December 31, 2008) or the market for the taxpayer's goods, services or other sources of income in Illinois (for taxable years ending on or after December 31, 2008), the taxpayer may request the use of an alternative method of apportionment under Section 100.3390.
 - A) In the case of a person engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of those goods or products (or other property of a kind which would properly be included in the inventory of the person if on hand at the close of the tax period) held by the person primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges attendant to those sales. Federal and state excise taxes (including sales taxes) shall be included as part of the receipts if the taxes are passed on to the buyer or included as part of the selling price of the product.
 - B) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.
 - C) In the case of a person engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, "sales" includes the gross receipts from the performance of those services,

including fees, commissions and similar items.

- D) In the case of a person engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease or licensing of the use of the property.
 - E) In the case of a person engaged in the sale, assignment or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.
 - F) If a person derives receipts from the sale of equipment used in its business, those receipts constitute "sales". For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.
- 2) The following gross receipts are not included in the sales factor:
- A) For taxable years ending on or after December 31, 1995, *dividends; amounts included under 26 USC 78; and Subpart F income* are excluded from the sales factor under IITA Section 304(a)(3)(D).
 - B) Gross receipts that are excluded from or deducted in the computation of federal taxable income or federal adjusted gross income, and that are not added back in the computation of base income. For example, in years ending prior to December 31, 1995, dividends received from a domestic corporation are excluded from the sales factor to the extent the taxpayer is allowed a deduction under 26 USC 243 with respect to those dividends.
 - C) Gross receipts that are subtracted from federal taxable income or federal adjusted gross income in the computation of base income or that are eliminated in the computation of taxable income in the case of a unitary business group under Section 100.5270(b)(1). Examples of gross receipts excluded from the sales factor under this provision include:
 - i) Interest on federal obligations subtracted under IITA Section 203(a)(2)(N), (b)(2)(J), (c)(2)(K) or (d)(2)(G).
 - ii) For taxable years ending prior to December 31, 1995, dividends included in federal taxable income or federal adjusted gross income are excluded from the sales factor if eliminated in combination or to the extent subtracted under IITA Section 203(a)(2)(J), (a)(2)(K), (b)(2)(K), (b)(2)(L), (b)(2)(O), (c)(2)(M), (c)(2)(O), (d)(2)(K) or (d)(2)(M).
 - D) Gross receipts that are excluded from or deducted in the computation of federal taxable income or federal adjusted gross income, but are added back in the computation of base income, are included in the sales factor unless subtracted or eliminated in combination. For example:
 - i) Interest on state obligations excluded from federal taxable income or adjusted gross income under 26 USC 103 and added back in the

computation of base income under IITA Section 203(a)(2)(A), (b)(2)(A), (c)(2)(A) or (d)(2)(A) is included in the sales factor except in the case of interest on certain Illinois obligations that is exempt from Illinois Income Tax. (See 86 Ill. Adm. Code 100.2470(f).)

- ii) Gross receipts from intercompany transactions between two corporate members of a federal consolidated group, the taxable income on which is deferred under 26 CFR 1.1502-13, will be included in the sales factor of the recipient unless subtracted under a provision of IITA Section 203 or eliminated in combination of the two corporations as members of a unitary business group.
- E) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this State the income of the person's trade or business. (See 86 Ill. Adm. Code 100.3380(c).)
- F) For taxable years ending on or after December 31, 1999, *gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property may be included in the sales factor only if gross receipts from licenses, sales, or other dispositions of these items comprise more than 50% of the taxpayer's total gross receipts included in gross income during the tax year and during each of the 2 immediately preceding tax years; provided that, when a taxpayer is a member of a unitary business group, the determination shall be made on the basis of the gross receipts of the entire unitary business group.* (IITA Section 304(a)(3)(B-2) For purposes of this Section:
- i) "Gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property" include amounts received as damages or settlements from claims of infringement.
 - ii) "Gross receipts from the licensing, sale, or other disposition of a patent" include only amounts received from a person using the patent in the production, fabrication, manufacturing, or other processing of a product or from a person producing, fabricating or manufacturing a product subject to the patent.
 - iii) "Gross receipts from the licensing, sale, or other disposition of a copyright" include only amounts received by the taxpayer from a person engaged in printing or other publication of the material protected by the copyright, which are governed by Section 100.3373. The term does not include gross receipts from broadcasting within the meaning of IITA Section 304(a)(3)(B-7) or from publishing or advertising within the meaning of IITA Section 304(a)(3)(C-5)(iv).
 - iv) If a taxpayer has been in existence less than three taxable years, its gross receipts from the licensing, sale, or other disposition of

patents, copyrights, trademarks or similar items of intangible personal property will be included in its sales factor if those gross receipts comprise more than 50% of its total gross receipts during each taxable year of its existence.

- v) "Patent" means a patent issued under 35 USC 151.
 - vi) "Copyright" means a copyright registered or eligible for registration under 17 USC 408.
 - vii) "Trademark" means a trademark registered or eligible for registration under 15 USC 1051.
 - viii) A "similar item" means an item of intellectual property that is registered or otherwise enforceable under a law equivalent to 35 USC 151, 17 USC 408 or 15 USC 1051 or that is otherwise recognized in the country under whose law the sale or license agreement would be enforced, or under which an infringement claim would be brought.
- 3) In filing returns with this State, if the person departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the person shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the person with all states to which the person reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the person shall disclose in its return to this State the nature and extent of the variance.
- 4) For taxable years ending prior to December 31, 2008, sales of electricity are sales other than sales of tangible personal property sourced under IITA Section 304(a)(3)(C). For taxable years ending on or after December 31, 2008, and prior to July 16, 2009, sales of electricity are sales of service sourced under IITA Section 304(a)(3)(C-5)(iv). For taxable years ending after July 15, 2009, sales of electricity are sales of tangible personal property sourced under IITA Section 304(a)(3)(B). (See *Exelon Corp. v. Department of Revenue*, 234 Ill 2d 266 (2009).)
- b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the person from transactions and activity in the regular course of its trade or business, except receipts excluded under 86 Ill. Adm. Code 100.3380(c).
 - c) Numerator. The numerator of the sales factor shall include the gross receipts attributable to this State and derived by the person from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to those gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.
- 1) Sales of Tangible Personal Property in this State
- A) Gross receipts from the sales of tangible personal property (except sales

to the United States Government) (see subsection (c)(2)) are in this State:

- i) if the property is delivered or shipped to a purchaser within this State regardless of the f.o.b. (free on board) point or other conditions of sale; or
- ii) if the property is shipped from an office, store, warehouse, factory or other place of storage in this State and the taxpayer is not taxable in the state of the purchaser. However, premises owned or leased by a person who has independently contracted with the taxpayer for the printing of newspapers, periodicals or books shall not be deemed to be an office, store, warehouse, factory or other place of storage.

- B) Property shall be deemed to be delivered or shipped to a purchaser within this State if the recipient is located in this State, even though the property is ordered from outside this State.

EXAMPLE: A corporation, with inventory in State A, sold \$100,000 of its products to a purchaser having branch stores in several states including this State. The order for the purchase was placed by the purchaser's central purchasing department located in State B. \$25,000 of the purchase order was shipped directly to purchaser's branch store in this State. The branch store in this State is the "purchaser within this State" with respect to \$25,000 of the corporation's sales.

- C) Property is delivered or shipped to a purchaser within this State if the shipment terminates in this State, even though the property is subsequently transferred by the purchaser to another state.

EXAMPLE: A corporation makes a sale to a purchaser who maintains a central warehouse in this State at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the corporation's products shipped to the purchaser's warehouse in this State is property "delivered or shipped to a purchaser within this State".

- D) The term "purchaser within this State" shall include the ultimate recipient of the property if the person in this State, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this State.

EXAMPLE: A corporation in this State sold merchandise to a purchaser in State A. The corporation directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this State pursuant to purchaser's instructions. The sale by the corporation is "in this State".

- E) When property being shipped by a seller from the state of origin to a

consignee in another state is diverted while en route to a purchaser in this State, the sales are in this State.

EXAMPLE: Corporation X, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in this State in which state Corporation X is subject to tax. The sale by the corporation is attributed to this State.

- F) If the person is not taxable in the state of the purchaser, the sale is attributed to this State if the property is shipped from an office, store, warehouse, factory, or other place of storage in this State (subject to the exception noted in (c)(1)(A)(ii)).

EXAMPLE: A corporation has its head office and factory in State A. It maintains a branch office and inventory in this State. The corporation's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in this State for approval and are filled by shipment from the inventory in this State. Since the corporation is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to this State, the state from which the merchandise was shipped.

- 2) Sales of tangible personal property to the United States Government in this State. Gross receipts from the sales of tangible personal property to the United States Government are in this State if the property is shipped from an office, store, warehouse, factory, or other place of storage in this State. For the purposes of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of the contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

A) EXAMPLE A: A corporation contracts with General Services Administration to deliver X number of trucks which were paid for by the United States Government. The sale is a sale to the United States Government.

B) EXAMPLE B: A corporation as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a component of a rocket for \$1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

- 3) For taxable years ending on or after December 31, 1999, *gross receipts from the licensing, sale, or other disposition of a patent, copyright, trademark, or similar item of intangible personal property* that are not excluded from the sales factor under subsection (a)(2)(F) are included in the numerator of the sales factor *to the extent the item is utilized in this State during the year the gross receipts are included in gross income.* (IITA Section 304(a)(3)(B-1)) For purposes of this subsection (c)(3):

- A) *A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If a patent is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts of the licensee or purchaser from sales or leases of items produced, fabricated, manufactured, or processed within that state using the patent and of patented items produced within that state, divided by the total of the gross receipts for all states in which the patent is utilized. (IITA Section 304(a)(3)(B-1)(ii)(I))*
- B) *A copyright is utilized in a state to the extent that printing or other publication originates in the state. Printing or other publication originates at the place at which the licensee of the copyright incorporates the copyrighted material into the physical medium by which it will be delivered to the purchaser of the material or, if the copyrighted material is delivered to the purchaser without use of a physical medium, the place at which delivery of the copyrighted material to the person purchasing the material from the licensee originates. If a copyright is utilized in more than one state, the extent to which it is utilized in any one state shall be a fraction equal to the gross receipts from sales or licenses of materials printed or published in that state divided by the total of the gross receipts for all states in which the copyright is utilized. (IITA Section 304(a)(3)(B-1)(ii)(II))*
- C) *Trademarks and other items of intangible personal property governed by this subsection (c)(3) are utilized in the state in which the commercial domicile of the licensee or purchaser is located. (IITA Section 304(a)(3)(B-1)(ii)(III))*
- D) *If the place of utilization of an item of property under subsection (c)(3)(A), (B) or (C) cannot be determined from the taxpayer's books and records or from the books and records of any person related to the taxpayer within the meaning of 26 USC 267(b), the gross receipts attributable to that item shall be excluded from both the numerator and the denominator of the sales factor. (IITA Section 304(a)(3)(B-1)(iii))*
- 4) *For taxable years ending on or after December 31, 2013, gross receipts from winnings under the Illinois Lottery Law [20 ILCS 1605] and from the assignment of a prize under Section 13-1 of the Illinois Lottery Law are received in this State. (IITA Section 304(a)(3)(B-8))*
- 5) *For taxable years ending prior to December 31, 2008, gross receipts from transactions not governed by the provisions of subsection (c)(1), (2), (3) or (4) and, for taxable years ending on or after December 31, 2008, from transactions involving intangible personal property when the taxpayer is not a dealer with respect to the intangible personal property, are attributed to this State if the income producing activity that gave rise to the receipts is performed wholly within this State. Also, gross receipts are attributed to this State if, with respect to a particular item of income, the income producing activity is performed in this State, based on costs of performance.*

- A) **Income Producing Activity Defined.** The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the person in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a person, such as those conducted on its behalf by an independent contractor. The mere holding of intangible personal property is not, of itself, an income producing activity. Accordingly, the income producing activity includes but is not limited to the following:
- i) The rendering of personal services by employees or the utilization of tangible and intangible property by the person in performing a service.
 - ii) The sale, rental, leasing, licensing or other use of real property.
 - iii) The rental, leasing, licensing or other use of tangible personal property.
 - iv) The sale, licensing or other use of intangible personal property.
- B) **Costs of Performance Defined.** The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the person.
- C) **Application.** Receipts sourced under this subsection (c)(5) in respect to a particular income producing activity are in this State if:
- i) the income producing activity is performed wholly within this State; or
 - ii) the income producing activity is performed both in and outside this State and, based on costs of performance, a greater proportion of the income producing activity is performed in this State than without this State (for taxable years ending prior to December 31, 2008) or a greater proportion of the income-producing activity of the taxpayer is performed within this State than in any other state (for taxable years ending on or after December 31, 2008).
- D) **Special Rules.** The following are special rules for determining when receipts from the income producing activities described below are in this State.
- i) Gross receipts from the sale, lease, rental or licensing of real property are in this State if the real property is located in this State.
 - ii) Gross receipts from the rental, lease, or licensing of tangible personal property are in this State if the property is located in this State. The principal cost of performance in a rental, leasing or licensing transaction is the depreciation or amortization of the tangible personal property, and the depreciation or amortization

expense is incurred in the state in which the tangible personal property is located. The rental, lease, licensing or other use of tangible personal property in this State is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this State during the rental, lease or licensing period, gross receipts attributable to this State shall be measured by the ratio which the time the property was physically present or was used in this State bears to the total time or use of the property everywhere during that period.

EXAMPLE: Corporation X is the owner of 10 railroad cars. During the year, the total of the days each railroad car was present in this State was 50 days. The receipts attributable to the use of each of the railroad cars in this State are a separate item of income. Total receipts attributable to this State shall be determined as follows:

$$(10 \times 50) / 3650 \times \text{Total Receipts}$$

- iii) Gross receipts for the performance of personal services are attributable to this State to the extent those services are performed partly within and partly without this State, the gross receipts for the performance of those services shall be attributable to this State only if a greater portion of the services were performed in this State, based on costs of performance. Where services are performed partly within and partly without this State and the services performed in each state constitute a separate income producing activity, the gross receipts for the performance of services attributable to this State shall be measured by the ratio that the time spent in performing the services in this State bears to the total time spent in performing the services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to the gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

EXAMPLE 1: Corporation X, a road show, gave theatrical performances at various locations in State X and in this State during the tax period. All gross receipts from performances given in this State are attributed to this State.

EXAMPLE 2: A public opinion survey corporation conducted a poll by its employees in State X and in this State for the sum of \$9,000. The project required 600 man hours to obtain the basic data and prepare the survey report. Two hundred of the 600 man hours were expended in this State. The receipts attributable to this State are \$3,000, calculated as follows:

200/600 x \$9,000

- 6) For taxable years ending on or after December 31, 2008, gross receipts from transactions not governed by the provisions of subsection (c)(1), (2), (3) or (4) are in this State if any of the following criteria are met.
- A) *Sales from the sale or lease of real property are in this State if the property is located in this State. (IITA Section 304(a)(3)(C-5)(i))*
- B) *Sales from the lease or rental of tangible personal property are in this State if the property is located in this State during the rental period. Sales from the lease or rental of tangible personal property that is characteristically moving property, including, but not limited to, motor vehicles, rolling stock, aircraft, vessels, or mobile equipment, are in this State to the extent that the property is used in this State. (IITA Section 304(a)(3)(C-5)(ii))*
- C) *In the case of interest, net gains (but not less than zero) and other items of income from intangible personal property, the sale is in this State if:*
- i) *in the case of a taxpayer who:*
- is a dealer in the item of intangible personal property within the meaning of 26 USC 475, the income or gain is received from a customer in this State. A taxpayer is a dealer with respect to an item of intangible personal property if the taxpayer is a dealer with respect to the item under 26 USC 475(c)(1), or would be a dealer with respect to the item under 26 USC 475(c)(1) if the item were a security as defined under 26 USC 475(c)(2). For purposes of this subsection (c)(6)(C)(i), a customer is in this State if the customer is an individual, trust or estate who is a resident of this State and, for all other customers, if the customer's commercial domicile is in this State. Unless the dealer has actual knowledge of the residence or commercial domicile of a customer during a taxable year, the customer shall be deemed to be a customer in this State if the billing address of the customer, as shown in the records of the dealer, is in this State. A dealer shall treat the person with whom it engages in a transaction as the customer, even when that person is acting on behalf of a third party, unless the dealer has actual knowledge of the party on whose behalf the person is acting. If a taxpayer is a dealer with respect to an item of intangible personal property and recognizes gain or loss with respect to that item other than in connection with a transaction with a customer (for example, unrealized gain or loss from marking the item to market under 26 USC 475), that gain or loss shall be excluded from the numerator and denominator of the sales factor (IITA Section 304(a)(3)(C-5)(iii)(a)) or*

- is not a dealer with respect to the item of *intangible* personal property, if the *income-producing activity of the taxpayer is performed in this State or, if the income-producing activity of the taxpayer is performed both within and without this State, if a greater proportion of the income-producing activity of the taxpayer is performed within this State than in any other state, based on performance costs.* (IITA Section 304(a)(3)(C-5)(iii)(b)) (See subsection (c)(5) of this Section.)
- ii) For purposes of this subsection (c)(6)(C), an item of "intangible personal property" includes only an item that can ordinarily be resold or otherwise reconveyed by the person acquiring the item from the taxpayer, and does not include any obligation of the taxpayer to make any payment, perform any act, or otherwise provide anything of value to another person.

EXAMPLE 1. A ticket to attend a sporting event would not be an item of intangible personal property for the owner of the stadium who issues the ticket and is obliged to grant admission to the holder of the ticket. Rather, the sale of the ticket is a prepayment for a service to be provided. However, the ticket would be an item of intangible personal property in the hands of the original purchaser or any subsequent purchaser of the ticket, and a ticket broker engaged in the business of buying and reselling tickets would be a dealer with respect to the ticket.

EXAMPLE 2. A taxpayer selling canned computer software is selling intangible personal property. (First National Bank of Springfield v. Dept. of Revenue, 85 Ill.2d 84 (1981)) If the taxpayer sells software to customers in the ordinary course of its business, it is a dealer with respect to those sales. In contrast, a taxpayer providing programming or maintenance services to its customers is selling services rather than intangible personal property.

EXAMPLE 3. A taxpayer administers a "rewards program" for a group of unrelated businesses. Under the program, a customer of one business can earn discounts or rebates on products and services provided by any of the businesses. As each customer earns rewards, measured in "units", from one of the businesses, that business pays a specified amount per unit to the taxpayer. When a customer uses units earned in the program to purchase products or services at a discount from a participating business, the taxpayer pays that business a specified amount per unit used by the customer. Rebates may be paid to the customer directly by the taxpayer or by one of the businesses, which is then reimbursed by the taxpayer. To the extent payments made to the taxpayer by businesses awarding units exceed the payments the taxpayer must make for discounts and rebates, the excess is payment for operating the program. The units awarded are obligations of the taxpayer to make payments to the business providing products or

services at a discount or to pay rebates. Accordingly, payments received by taxpayer from the participating businesses for units awarded are not income from sales of intangible personal property by the taxpayer.

D) *Sales of services are in this State if the services are received in this State.*
(IITA Section 304(a)(3)(C-5)(iv))

i) **General Rule.** Gross receipts from services are assigned to the numerator of the sales factor to the extent that the receipts may be attributed to services received in Illinois.

ii) A contract that involves the provision of a service by the taxpayer and the use of property of the taxpayer by the service recipient shall be treated as a sale of service unless the contract is properly treated as a lease of property under 26 USC 7701(e)(1), taking into account all relevant factors, including whether:

- the service recipient is in physical possession of the property;
- the service recipient controls the property;
- the service recipient has a significant economic or possessory interest in the property;
- the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract;
- the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient; and
- the total contract price does not substantially exceed the rental value of the property for the contract period.

EXAMPLE: A taxpayer selling access to an online database or applications software, and who is required to perform regular update services to the database or software, retains control over the contents of the database or software, and provides access to the same database or software to multiple customers is not selling or licensing an item of intangible personal property to its customers, but rather is providing a service.

iii) Services received in this State include, but are not limited to:

- When the subject matter of the service is an item of tangible personal property, the service is received in this State if possession of the property is restored to the recipient of the service under the principles in subsection (c)(1) for determining whether a sale of that property is in this State.

EXAMPLE 1. A customer returns a computer to the manufacturer for repair. The manufacturer performs the repairs in Indiana and ships the computer to the customer's Illinois address. The service is received in this State.

EXAMPLE 2. Individual purchases clothing from Merchant at a store in this State, using a credit card issued by Bank A pursuant to a licensing agreement with Credit Card Company. Credit Card Company is not a financial organization required to apportion its business income under Section 100.3405. Bank A remits the purchase price to Credit Card Company, which deposits the purchase price with Merchant's bank, minus a fee or discount. All fees and discounts earned by Credit Card Company in connection with this purchase are for services received in this State.

- When the subject matter of the service is an item of real property, the service is received in the state in which the real property is located.

EXAMPLE 3. Individual purchases a parcel of land in Illinois and constructs a house on the parcel. Services performed at an architect's office in Wisconsin regarding the design and construction of the house are received in this State.

- When the service is performed on or with respect to the person of an individual (for example, medical treatment services), the service is received in the state in which the individual is located at the time the service is performed.
- Services performed by a taxpayer that are directly connected to or in support of services received in this State are also services received in this State.

EXAMPLE 4. Individual purchases automobile repair services from Automobile Dealership at its facility located in this State, using a credit card issued by Bank A pursuant to a licensing agreement with Credit Card Company. Bank A remits the purchase price to Credit Card Company, which deposits the purchase price with Automobile Dealership's bank, minus a fee or discount. All fees and discounts earned by Credit Card Company in connection with this purchase are for services received in this State.

EXAMPLE 5. Services performed by an investment fund on behalf of an investor are received in this State if the investor resides in this State (in the case of an individual) or has its ordering or billing address in this State (for other investors). In the case of services provided by Taxpayer to or on behalf

of the investment fund that are directly connected with services provided separately to the investors, such as preparation of communications and statements to investors, and allocations of earnings and distributions to investors, the service is also received in this State to the extent the investors reside (or have their ordering or billing address) in this State. Accordingly, receipts of Taxpayer for these services are allocated to this State on the basis of the ratio of: the average of the outstanding shares in the fund owned by shareholders, partners or other investors residing (or having their ordering or billing address) within this State at the beginning and end of each taxable year of the taxpayer; and the average of the total number of outstanding shares in the fund at the beginning and end of each year. Residence or ordering or billing address of the shareholder, partner or other investor is determined by the mailing address in the records of the investment fund or the taxpayer. Services provided to an investment fund that are not directly connected to or in support of services provided separately to investors, such as brokerage services or investment advising, are not received by the customer at the location of its investors.

iv) Special Rules

- Under IITA Section 304(a)(3)(C-5)(iv), *if the state where the services are received is not readily determinable, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business, or, if the ordering office cannot be determined, at the office of the customer to which the services are billed.* If the service is provided to an individual who provides a residential address as the place from which the services are ordered or to which the services are billed, rather than an office address, the residential address shall be used. For purposes of this provision, the state where services are received is not readily determinable if the facts necessary to make the determination are not contained in the books and records of the taxpayer or any person related to the taxpayer within the meaning of 26 USC 267(b) or if the available facts would allow reasonable persons to reach different determinations of the state in which the services were received.
- Under IITA Section 304(a)(3)(C-5)(iv), *if the services are provided to a corporation, partnership, or trust and the services are received in a state in which the corporation, partnership, or trust does not maintain a fixed place of business (as defined in Section 100.3405(b)(1)), the services shall be deemed to be received at the location of the office of the customer from which the services were*

ordered in the regular course of the customer's trade or business, or, if the ordering office cannot be determined, at the office of the customer to which the services are billed. For purposes of this provision, in the case of services performed by the taxpayer as a subcontractor or as an agent acting on behalf of a principal, if either the contractor or principal has a fixed place of business in the state in which the services are received or the customer of the contractor or principal either is an individual or has a fixed place of business in the state in which the services are received, the service will be treated as received in a state in which the customer of the taxpayer has a fixed place of business.

- Under IITA Section 304(a)(3)(C-5)(iv), *if the taxpayer is not taxable in the state in which the services are received or deemed to be received, the gross receipts attributed to those services must be excluded from both the numerator and denominator of the sales factor.* (See Section 100.3200 for guidance on determining when a taxpayer is taxable in another state.)

(Source: Amended at 41 Ill. Reg. 10662, effective August 3, 2017)

