

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 100 Section .3420 Apportionment of Business Income of Insurance Companies (IITA Section 304(b))</b>
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**TITLE 86: REVENUE**

**PART 100  
INCOME TAX**

**SUBPART H: BASE INCOME OF TRUSTS AND ESTATES**

**Section 100.3420 Apportionment of Business Income of Insurance Companies (IITA Section 304(b))**

- a) In General. Except as otherwise provided in this Section, *business income of an insurance company for a taxable year shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance upon property or risk in this State, and the denominator of which is the direct premiums written for insurance upon property or risk everywhere.* [IITA Section 304(b)(1)]
  
- b) Insurance Company. For purposes of the IITA, an "insurance company" means any taxpayer properly treated as an insurance company for purposes of federal income taxation under subchapter L of the Internal Revenue Code (IRC sections 801 through 848). (See IITA Section 102.) No other taxpayer may be treated as an insurance company for purposes of the IITA.
  
- c) Direct Premiums Written. *"Direct premiums written" means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Illinois Director of Insurance in the form approved by the National Convention of Insurance Commissioners (currently known as the National Association of Insurance Commissioners) or such other form as may be prescribed in lieu of the National Association of Insurance Commissioners form.*
  - 1) The apportionment factor shall take into account only those receipts that are included in either "gross premiums written" under IRC section 832(b)(4)(A) or "gross amount of premiums" under IRC section 803(a)(1)(A). Only receipts that are included in federal taxable income of the taxpayer, and that are not subtracted in the computation of base income under a provision of Section 203 of the IITA, may be included in the apportionment factor. (See *Continental Illinois National Bank and Trust Company of Chicago v. Lenckos*, 102 Ill.2d 210 (1984).)
  - 2) Only direct premiums written for insurance, assessments against mutual policyholders and consideration for annuity contracts that include elements of insurance are included in the apportionment factor. Other receipts are excluded from the apportionment factor, even if included in net income.
  - 3) Examples of receipts that are excluded from the apportionment factor include:

- A) Interest, dividends and other income from investments.
  - B) Gains or losses from the adjustment of reserves, salvage or subrogation.
  - C) Deposit-type funds. This is due to the fact that deposit-type funds involve no insurance risk and are therefore reported separately from premiums, assessments and annuity considerations on the annual report.
  - D) Premiums on which State income taxes are prohibited by federal law.
- 4) Premiums rebated or repaid to policyholders and reported as negative amounts on the annual statement are treated as negative amounts in the computation of the apportionment factor. However, neither the numerator nor the denominator of the apportionment factor may be reduced below zero.
- d) Insurance on Property or Risk in this State. A direct premium is written for insurance upon property or risk in this State and included in the numerator of the apportionment factor if it is allocated to this State in the annual statement filed by the insurance company with the Director of Insurance. If an insurance company does not file an annual statement with the Director of Insurance or if any direct premiums written by an insurance company are not allocated to a specific state on its annual statement, that insurance company shall include in the numerator of its apportionment factor the direct premiums written for insurance on property or risk in this State, determined in accordance with the determination of gross taxable premium written under Section 409(1) of the Illinois Insurance Code [215 ILCS 5/409(1)], provided that the determination shall be made without allowing the exceptions in that Section 409(1) for premiums on annuities, premiums on which State premium taxes are prohibited by federal law, premiums paid by the State for Medicaid eligible insureds, premiums paid for health care services included as an element of tuition charges at any university or college owned and operated by the State of Illinois, premiums on group insurance contracts under the State Employees Group Insurance Act of 1971 [5 ILCS 375], or premiums for deferred compensation plans for employees of the State, units of local government or school districts.
- e) Reinsurance. *If the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the business income of such company shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the sum of direct premiums written for insurance upon property or risk in this State, plus premiums written for reinsurance accepted in respect of property or risk in this State, and the denominator of which is the sum of direct premiums written for insurance upon property or risk everywhere, plus premiums written for reinsurance accepted in respect of property or risk everywhere.* (IITA Section 304(b)(2))
- 1) The principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by the taxpayer for a taxable year if the premiums written for reinsurance accepted that would be includable in the denominator of the apportionment fraction for the taxable year under this subsection (e) exceed the direct premiums written for insurance that would be includable in the denominator of the apportionment fraction under this subsection (e).

- 2) Property or risk in this State. An insurance company may determine the amount of *premiums written for reinsurance accepted in respect of property or risk in this State* by consideration of each premium written, or the premiums may, *at the election of the company, be determined on the basis of:*
- A) *the proportion which premiums written for reinsurance accepted from companies commercially domiciled in Illinois bears to premiums written for reinsurance accepted from all sources; or*
  - B) *the proportion which the sum of the direct premiums written for insurance upon property or risk in this State by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by each such ceding company for the taxable year.*
- 3) The election to determine the portion of reinsurance premiums accepted in respect of property or risk in this State for a particular tax year, by consideration of each premium written or by either of the alternative methods outlined in subsection (e)(2), shall be made by using the chosen method on the taxpayer's return for the taxable year. For taxable years ending prior to December 31, 2011, the election may be made or changed at any time. *The election made by a company for its first taxable year ending on or after December 31, 2011 is binding for that company for that taxable year and for all subsequent taxable years, and may be altered only with the written permission of the Department, which shall not be unreasonably withheld.* (IITA Section 304(b)(2))
- A) A request for permission to alter an election shall be submitted to the Department as a request for a private letter ruling under 2 Ill. Adm. Code 1200.110, and permission to alter an election shall be granted by private letter ruling. Requests may be made for the change to take effect for a taxable year ending prior to the date the request is filed, provided that the request shall be granted only if the statute of limitations for assessment of additional tax is open for that taxable year and every subsequent taxable year as of the date the Department responds to the request. The taxpayer and the Department may agree in writing to extend the statute of limitations under IITA Section 905(f) in order to allow the Department time to process the request.
  - B) If permission to alter an election is denied, the taxpayer may challenge the denial by filing its return for each taxable year to which the requested alteration was to apply and for which a return has not been filed, using the previously-elected method, and:
    - i) paying the excess of its tax liability shown on the return over the liability that would be shown using the requested method under protest pursuant to Section 2a.1 of the State Officers and Employees Money Disposition Act [30 ILCS 230/2a.1] and filing a complaint as provided in that Act; or
    - ii) by filing a refund claim for that taxable year and any subsequent year for which a return has been filed, using the method requested and filing a protest with the Department or a petition with the Illinois Independent Tax Tribunal in response to a denial of the claim.

(Source: Amended at 42 Ill. Reg. 17852, effective September 24, 2018)