**Section 100.9700 Unitary Business Group Defined** **(IITA Section 1501)**

a) Scope

This Section is designed to clarify the meaning of IITA Section 1501(a)(27), defining "unitary business group". This definition became effective for tax years ending on or after December 31, 1982.

b) Persons Required to Use Combined Apportionment

Any person subject to Illinois income taxation may be a member of a unitary business group and required to use combined apportionment under IITA Section 304(e). Only corporations (other than subchapter S corporations) who are members of a unitary business group are required to file combined returns under IITA Section 502(e). For the treatment of certain partners and partnerships engaged in a unitary business, see Section 100.3380(d). Every member of a unitary business group who is neither a corporation required to join in a combined return nor a partnership excluded from combined apportionment under Section 100.3380 shall determine the Illinois portion of its business income pursuant to IITA Section 304(e) by computing the combined business income of the unitary business group in the manner prescribed in Section 100.5270(a), and apportioning that unitary business income to Illinois using the combined everywhere apportionment factors of the unitary business group and that person's own Illinois apportionment factors. If one or more other members of the unitary business group have taxable years different from the taxable year of the taxpayer filing the return, that taxpayer shall compute the combined business income of the group for its taxable year by including the incomes of the members using a different taxable year in the manner prescribed by Section 100.5265.

c) The 80/20 U.S. Business Activity Test for Prospective Members of a Unitary Business Group

The factors to be used in determining whether 80% or more of a person's business activity is conducted outside the United States shall be gross figures without eliminations premised on the person's membership in any unitary business group. However, the factors should relate to the common taxable year, as defined in Section 100.5265, of the unitary business group of which the person being tested could become a member were the person's business activity found to be less than 80% outside the United States. The factors to be used are as follows:

1) persons who apportion business income under IITA Section 304(a) shall use property and payroll;

2) persons who apportion business income under IITA Section 304(b), (c) or (d) will use the respective factors prescribed in those provisions.

A) For taxable years ending prior to December 31, 2017, *the phrase "United States" as used in IITA Section 1501(a)(27)* *includes* *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. For taxable years ending on or after December 31, 2017, the phrase "United States", as used in IITA Section 1501(a)(27), 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*. (IITA Section 1501(a)(27)(B)) Areas over which the United States has asserted jurisdiction and claimed exclusive rights with respect to the exploration for or exploitation of natural resources include the outer continental shelf. (See IRC section 638 and 43 USC 1331.)

B) Mechanically, the computation of the 80/20 U.S. business activity test involves the formation of one or two fractions, as the case may be, and the subsequent averaging of those fractions to arrive at an overall U.S. business activity in relation to world-wide business activity. The numerators of the fractions shall represent U.S. property, U.S. payroll, U.S. revenue miles or other transportation company factors, insurance premiums on property or risk in the U.S., or financial organization business income from sources within the U.S.; the respective denominators shall be world-wide figures.

C) In the case of a person who would be a member of a unitary business group for only part of a taxable year if less than 80% of its business activities were conducted outside the United States, the 80/20 U.S. business activity test shall be applied only to that part of the person's taxable year for which the prospective member otherwise qualifies for membership in the unitary business group. If that person is a corporation and is a prospective member of a unitary business group required to file combined returns under IITA Section 502(f), the 80/20 U.S. business activity test shall be applied only to that part of the combined group's common taxable year for which that person otherwise qualifies for membership in the combined group.

d) Taxpayers Using Different Apportionment Formulas under IITA Section 304

1) Prior to December 31, 2017

A) For taxable years ending prior to December 31, 2017, only taxpayers who use the same apportionment formula under IITA Section 304 may be members of the same unitary business group. As a consequence:

i) a corporation required to use the three factor apportionment formula of IITA Section 304(a) cannot be a member of the same unitary group as a corporation required to use the one factor apportionment formula of IITA Section 304(c); and

ii) a corporation required to use the one factor apportionment formula of IITA Section 304(c) cannot be a member of the same unitary business group as a corporation required to use the one factor apportionment formula of IITA Section 304(b).

B) The proper method for determining unitary business group memberships under IITA Section 1501(a)(27) is:

i) first, to identify all entities that are related through common ownership and engaged in either horizontally or vertically integrated enterprises with the requisite exercise of strong centralized management; and

ii) second, to create from the population of entities thus identified:

• one unitary business group composed of entities required to apportion under IITA Section 304(a);

• one unitary business group composed of entities required to apportion under IITA Section 304(b);

• one unitary business group composed of entities required to apportion under IITA Section 304(c);

• one unitary business group composed of entities required to apportion under IITA Section 304(c-1); and

• one unitary business group composed of entities required to apportion under IITA Section 304(d).

2) After December 31, 2017

For taxable years ending on or after December 31, 2017, all taxpayers may be included in the same unitary business group without regard to the apportionment formula used by any of the taxpayers under IITA Section 304.

 EXAMPLE: For the taxable year ending December 31, 2016, Corporation A owns all of the outstanding common stock of Corporations B and C. Corporations B and C each own 30% of the outstanding common stock of Corporation D. Corporation D owns 60% of the outstanding common stock of Corporation E. Corporation A is a mining company operating exclusively in Illinois. Corporation D is a manufacturing company with factories in Illinois and Indiana. Corporation C is an insurance company earning premiums for insuring property and risks located in Illinois and Indiana. Corporation B is an air freight company and Corporation E is a trucking company, both operating nationwide. In their relationships to one another, the five companies: are *steps in a vertically structured enterprise or process*  (see subsection (h)(1)(A)) and are *functionally integrated through the exercise of strong centralized management* (IITA Section 1501(a)(27)(A)(2)). As a result of these facts, Corporations A and D, which would apportion business income using the formula in IITA Section 304(a), shall constitute one unitary business group; Corporations B and E, which would apportion business income using the transportation company formula in IITA Section 304(d), shall constitute a second unitary business group; and Corporation C shall compute its liability on a non-combined apportionment basis using the insurance company formula in IITA Section 304(b).

3) For purposes of applying the transition from the provisions in subsection (d)(1) to those in subsection (d)(2), the relevant taxable year is the common taxable year under Section 100.5265 of the unitary business group that would result from combining taxpayers using different apportionment formulas.

EXAMPLE 1: Prior to 2017, Subgroup A (comprised of financial organizations that apportion their business income under IITA Section 304(c)) and Subgroup B (comprised of corporations that apportion their business income under IITA Section 304(a)) were separate unitary business groups that each filed its own combined return. Subgroup A used a calendar taxable year and Subgroup B used a taxable year ending June 30. For 2017 and subsequent years, the two subgroups will be a single unitary business group as the result of the repeal of the prohibition against including in one unitary business group taxpayers who use different apportionment formulas. If the common taxable year of the unitary business group comprised of the two subgroups will be the calendar year, the revised law will first apply for the taxable year ending December 31, 2017. The unitary business group will file a single combined return for the taxable year ending December 31, 2017 and include in its combined income the income of Subgroup B for the period from July 1, 2017 through December 31, 2017, as provided in Section 100.5265(f).

EXAMPLE 2: Assuming the same facts as in Example 1, except that the common taxable year of the unitary business group comprised of the two subgroups will be the June 30 year, the revised law will first apply for the taxable year ending June 30, 2018. Subgroup A will file its own combined return for its taxable year ending December 31, 2017. The unitary business group comprised of both subgroups will file a single combined return for the taxable year ending June 30, 2018, and include in its combined income the income of Subgroup A for the period from January 1, 2018 through June 30, 2018, as provided in Section 100.5265(f).

e) Common Ownership

In the case of a corporation, common ownership means direct or indirect control or ownership of more than 50% of the corporation's outstanding voting stock. In the case of any other entity, common ownership means direct or indirect ownership of an interest sufficient to exercise control over the activities of the entity. For example, ownership of a general partnership interest gives the partner the authority to act on behalf of the partnership and bind the partnership, regardless of actual ownership share. (See Section 9 of the Uniform Partnership Act [805 ILCS 205/9]). Accordingly, a general partner in any partnership has an interest in the partnership sufficient to establish common ownership. Insofar as corporations are concerned, a person has direct ownership of the outstanding voting stock of the corporation to the extent that person owns the stock, and indirect control to the extent that person owns the voting stock of a another corporation that itself owns stock in the first corporation. Any combination of direct and indirect control or ownership aggregating more than 50% will suffice to qualify the corporation whose stock is owned for membership in the unitary business group if the other tests unrelated to ownership are met.

EXAMPLE 1: Corporation A owns 60% of the outstanding voting stock of Corporation B that, in turn, owns 60% of the outstanding voting stock of Corporation C. There is common ownership of Corporations A, B and C by reason of Corporation A's direct ownership of more than 50% of the outstanding voting stock of Corporation B and indirect control of more than 50% of the outstanding voting stock of Corporation C.

EXAMPLE 2: Corporation A owns 60% of the outstanding voting stock of Corporation B and 60% of the outstanding voting stock of Corporation C. Corporations B and C in turn each own 30% of the outstanding voting stock of Corporation D. Corporations A, B, C and D are all under common ownership by reason of Corporation A's direct ownership of more than 50% of the outstanding voting stock of Corporations B and C and by reason of Corporation A's indirect control of more than 50% of the outstanding voting stock of Corporation D.

EXAMPLE 3: Corporation A owns 60% of the outstanding voting stock of Corporation B and 40% of the outstanding voting stock of Corporation C. Corporations B and C each in turn own 30% of the outstanding voting stock of Corporation D. Corporations A and B are under common ownership by reason of Corporation A's direct ownership of more than 50% of the outstanding voting stock of Corporation B, but neither Corporations C or D are under common ownership with Corporations A and B because neither Corporation A nor Corporation B has direct or indirect control or ownership of more than 50% of the outstanding voting stock of Corporations C or D.

EXAMPLE 4: Corporation A owns 60% of the outstanding voting stock of Corporation B and 40% of the outstanding voting stock of Corporation C. Corporation B owns 30% of the outstanding voting stock of Corporation D and Corporation C owns 60% of the outstanding voting stock of Corporation D. Corporations A and B are under common ownership by reason of the fact that Corporation A owns more than 50% of the outstanding voting stock of Corporation B, and Corporations C and D are under separate common ownership by reason of the fact that Corporation C owns more than 50% of the outstanding voting stock of Corporation D.

f) Attribution of Stock Ownership Among Certain Persons

For the purpose of IITA Section 1501(a)(27), a person shall be considered to have indirect control over any stock that that person is considered as owning under IRC section 318(a).

EXAMPLE: Strictly as an investment, Mr. X and his wife, Mrs. X, each individually own 30% of the outstanding voting stock of Corporation A and 30% of the outstanding voting stock of Corporation B. Corporations A and B are under common ownership within the meaning of Section 1501(a)(27) and, assuming that they meet the other requirements of IITA Section 1501(a)(27), they will be members of the same unitary business group. The common ownership stems from the fact that, under IRC section 318(a)(1), the stock holdings of Mr. X are imputed to his wife and vice versa. Note that it is not necessary in order for Corporations A and B to be members of a unitary business group that the "person" in whom the common ownership is embodied also be a member of the unitary business group.

g) Strong Centralized Management

Under IITA Section 1501(a)(27), no group of persons can be a unitary business group unless they are functionally integrated through the exercise of strong centralized management. It is this exercise of strong centralized management that is the primary indicator of mutual dependency, mutual contribution and mutual integration between persons that is necessary to constitute them members of the same unitary business group. The exercise of strong centralized management is deemed to exist when authority over such matters as purchasing, financing, tax compliance, product line, personnel, marketing and capital investment is not left to each member. Thus, some groups of persons may properly be considered as constituting a unitary business group under IITA Section 1501(a)(27) when the executive officers of one of the persons are normally involved in the operations of the other persons in the group and there are centralized units that perform for some or all of the persons functions that truly independent persons would perform for themselves. Note in this connection that neither the existence of central management authority, nor the exercise of that authority over any particular function (through centralized operations), is determinative in itself; the entire operations of the group must be examined in order to determine whether or not strong centralized management exists. A finding of "strong centralized management" is not supported merely by showing that the requisite ownership percentage exists or that there is some incidental economic benefit accruing to a group because the ownership improves its financial position. Only if both elements of strong centralized management, i.e., strong central management authority and the exercise of that authority through centralized operations, are present will persons be found to constitute a unitary business group under IITA Section 1501(a)(27). Finally, a finding of strong centralized management can be supported even though the authority resides in a person that is not a member of the group, provided that the authority is actually exercised by that person.

h) General Line of Business and Vertically Structured Enterprises

1) IITA Section 1501(a)(27) establishes that persons meeting all of the other tests for inclusion in a unitary business group, including common ownership, strong centralized management and comparability of apportionment method, will ordinarily be in one of the following relationships to one another:

A) in the same general line of business; or

B) steps in a vertically structured enterprise or process.

2) IITA Section 1501(a)(27) recites that two persons will ordinarily be considered to be in the same general line of business if they are both involved in one of the following activities:

A) manufacturing;

B) wholesaling;

C) retailing;

D) insurance;

E) transportation; or

F) finance.

3) IITA Section 1501(a)(27) does not contemplate that the list in subsection (h)(2) is exclusive. For example, two persons that are both involved in rendering services to the public would ordinarily be considered to be in the same general line of business. In this regard, a retailer that renders services that are incidental to its retail business will not be considered to be in the same general line of business as a person that is primarily a provider of that same type of service.

4) It is not a requirement of IITA Section 1501(a)(27) that the activities of the two persons in whichever category is applicable relate to the same product or product line in order for the two persons to be in the same general line of business.

5) Two persons are steps in a vertically structured enterprise or process under IITA Section 1501(a)(27) even though other persons who are also steps in that enterprise or process are not members of the same unitary business group because of the intervention of: the 80/20 U.S. business activity test or the rules stated in subsection (d), relating to the comparability of apportionment formulas of members of a unitary business group.

EXAMPLE: Corporation A manufactures furniture. Corporation C retails the furniture manufactured by Corporation A. Corporation B is a furniture finisher and wholesaler operating exclusively in Mexico that purchases Corporation A's unfinished furniture, applies the appropriate finishing materials in its Mexican plants, and sells the finished furniture to Corporation C. Corporations A and C are steps in a vertically structured enterprise and therefore can be members of the same unitary business group. They do not lose their status as steps in a vertically structured enterprise by reason of the fact that they never directly deal with one another since they both deal with Corporation B, which is also a step in the vertically structured enterprise and would be a member of the unitary business group if the other tests for a unitary business were met.

6) A person is not considered a step in a vertically structured enterprise or process unless it is connected to one or more other persons that are steps in the vertically structured enterprise or process by a flow of goods or services, including management services, to itself or from itself. However, if the flow of goods or service is present with respect to a particular person, that person's status as a step in the vertically structured enterprise or process does not depend on the relationship between the price at which this flow exists and the fair market price at which this flow would exist in an arm's length transaction.

EXAMPLE: Same facts as in the example in subsection (h)(5), except that Corporation A can establish that it sells its unfinished furniture to Corporation B at a fair market arm's length price and Corporation C can establish that it purchases the finished furniture from Corporation B at a fair market arm's length price. Even with their respective showings that the flow of furniture connecting them to Corporation B existed at an arm's length price, Corporations A and C are still steps in a vertically structured enterprise and can still be members of the same unitary business group.

(Source: Amended at 43 Ill. Reg. 10124, effective August 27, 2019)