



TAXPAYERS'
FEDERATION
— OF ILLINOIS —

Illinois Income Tax Potpourri

GILTI/NCTI, Finnigan, Removal of
Certain Add Back Safe Harbor
Exceptions, PTE Sourcing, Manuf
Credit, Amnesty

Public Act 104-0006 change - The dividend received deduction for Global Intangible Low-Taxed Income (GILTI) is limited to 50% of the amount recognized

GILTI / NCTI Illinois Modifications

- Illinois change in deduction for GILTI
 - **Global Intangible Low-Taxed Income (GILTI)**
 - Illinois P.A. 104-0006 (House Bill 2755, enacted June 16, 2025), effective for tax years ending on or after December 31, 2025, changes Illinois from using the “foreign dividend / deemed dividend” subtraction modification for GILTI (amount based on DRD percentages and ownership percentages) to taxing 50% of GILTI, regardless of ownership percentage, along with maintaining the 100% addback for IRC 250 deductions (see following slide)
 - IITA 203(b)(2)(O): “For taxable years ending on or after December 31, 2025, 50% of the amount of **global intangible low-taxed income** received or deemed received or paid or deemed paid under Section 951A of the Internal Revenue Code.”
- OBBBA change from taxing GILTI to NCTI
 - **Net CFC Tested Income (NCTI)**
 - OBBBA P.L. 119-21 (enacted July 4, 2025) changed IRC 951A(a): “In general. Each person who is a United States shareholder of any controlled foreign corporation for any taxable year of such United States shareholder shall include in gross income such shareholder's ~~global intangible low-taxed income~~ **net CFC tested income** for such taxable year.”



GILTI / NCTI Change per OBBBA

GILTI (through TYB 12/31/2025)

- GILTI: aggregate tested income and losses of CFCs
 - 10% * qualified business asset investment (QBAI), minus interest expense taken into account in determining net CFC tested income
- GILTI deduction: Section 250 allows a U.S. shareholder a deduction for GILTI at 50% deduction (FY2018–FY2025) and scheduled for 37.5% (FY2026/forward), resulting in the following effective tax rates on GILTI (using the 21% corporate tax rate)
 - 10.5% (FY2018–FY2025)
 - 13.125% (FY2026/forward)
- FDII deduction: 37.5% allowable deduction from qualified income (TY2017-25)
- FTC: Allows for an 80% foreign tax credit

NCTI (starting TYB 1/1/2026)

- NCTI: aggregate tested income and losses of CFCs
- Interest allocation methodology used for computing NCTI different than for GILTI
- NCTI Deduction: Section 250 allows a U.S. shareholder a deduction for NCTI at 40% deduction, resulting in a 12.6% effective tax rate on NCTI (using the 21% corporate tax rate)
- FDDEI deduction: 33.34% allowable deduction on adjusted base
- FTC: Allows for an 90% foreign tax credit



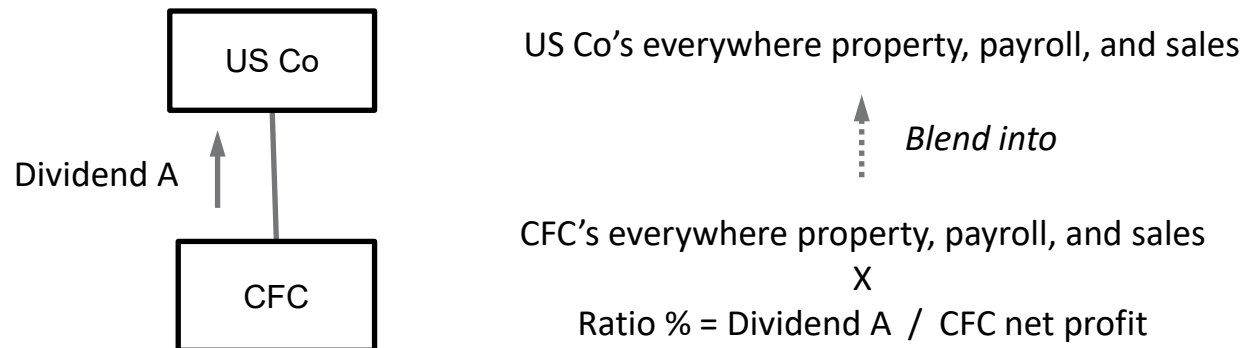
IRC 250 Illinois Modifications

- IRC 250 modifications
 - IITA 203(b)(2)(E-18) for taxable years beginning after December 31, 2018, an amount equal to the deduction allowed under Section 250(a)(1)(A) of the Internal Revenue Code for the taxable year
 - IRC 250(a)(1)(A) changes from the FDII (Foreign-Derived Intangible Income) deduction to FDDEI (Foreign-Derived Deduction-Eligible Income) deduction for tax years beginning after December 31, 2025
 - IITA 203(b)(2)(E-19) for taxable years ending on or after June 30, 2021, an amount equal to the deduction allowed under Section 250(a)(1)(B)(i) of the Internal Revenue Code for the taxable year...”
 - IRC 250(a)(1)(B)(i) changes from the GILTI deduction to NCTI deduction for tax years beginning after December 31, 2025



GILTI / NCTI and Apportionment

- Illinois statutes and regulations
 - For IITA 304(a) filers, explicitly addresses exclusion of dividends, Subpart F income, and IRC 78 but does not specifically address GILTI or NCTI
- Augusta Formula
 - *Du Pont De Nemours v. State Tax Assessor*, 675 A.2d 82 (1996), Supreme Judicial Court of Maine.
 - Greater of:
 - Worldwide (WW) apportionment factors, multiplied by WW income (i.e., WW combined reporting)
 - Statutory apportionment formula factors using water's-edge (WE) combined reporting, multiplied by Apportionable income minus dividends received from unitary foreign affiliates
- Detroit Formula
 - *Conoco, Inc. v. Taxation & Revenue Dept.*, 931 P.2d 730 (1996), Supreme Court of New Mexico



GILTI / NCTI – What to Expect?

- Increase in Illinois tax
- Impact to 2025 quarterly estimates/provisions
- Potential future legislation to address the One Big Beautiful Bill Act which converts GILTI to NCTI (effective for tax years beginning after 12/31/25)
- Overall conformity issues across all states to consider?



Public Act 104-0006 change – Illinois changes from the *Joyce* to *Finnigan* Method.

Joyce to Finnigan – What's Changing?

- For tax years ending on or after Dec. 31, 2025, Illinois changes from the *Joyce* to the *Finnigan* method in determining the sales of the entities in a combined group that are included for apportionment purposes.
- *Joyce* method → The determination of whether a unitary member included on the combined return is taxable in a state is made on a separate company basis.
 - Only includes Illinois-sourced sales from group members with nexus in Illinois.
 - The unitary group of corporations calculates its apportionment by dividing the combined Illinois sales of the members with nexus in Illinois by the total combined sales of the unitary business group everywhere.
- *Finnigan* method → unitary group of corporations is determined to be taxable in a state if any member of the unitary group is subject to tax in that state.
 - Includes all Illinois sourced sales from all members of a unitary group regardless of nexus.
 - The unitary corporation calculates its apportionment by dividing the Illinois sales of the members by the total combined sales of the unitary business group everywhere.



Joyce to Finnigan – What to Expect?

- Increase to the amount of income some combined groups are required to apportion to Illinois.
- Affect application of throwout and throwback rules.
- Expanded definition of taxpayer?



Public Act 104-0006 change – Removal of Safe Harbor exceptions from the 80/20 company addback provisions for interest and intangible expense

80/20 Related Party Addback Provision

- Existing Illinois law requires an addback for certain interest and intangible expenses paid or accrued to a related foreign party, that would be a member of the taxpayer's unitary business group but for the fact that its businesses activity outside the US is 80% or more of its total business activity (an 80/20 company) provided one of various statutory addback exceptions didn't apply.
- For tax years ending on or after December 31, 2025, certain addback exceptions were repealed.



Addback Exception Removal

- For taxable years ending on or after December 31, 2025, the only Safe Harbor exceptions allowed when calculating related-party expenses additions on Schedule 80/20 are:
 - An item of interest or intangible expenses paid, accrued, or incurred, directly or indirectly, to a person if:
 - the person paid, accrued, or incurred the interest and intangible expense to another person that is not a related member, and
 - the transaction did not have the principal purpose of avoiding taxes, and is paid pursuant to a contract or agreement that reflects arm's length rates and terms.
 - An amount of interest or intangible expenses paid, accrued, or incurred directly or indirectly, to a person if the taxpayer establishes by clear and convincing evidence that the adjustments are unreasonable.
 - An amount of interest or intangible expense paid, accrued, or incurred directly or indirectly, to a person that would not be included due to an agreement in writing between the taxpayer and the Director of the IL DOR.



Addback Exception Removal

- Notably, for taxable years ending on or after December 31, 2025, the following add-back exceptions have been removed:
 - Subject to tax exception – An item of interest or intangible expenses paid, accrued, or incurred, directly or indirectly, to a person who is subject in a foreign country or state, other than a state which requires mandatory unitary reporting, to a tax on or measured by net income.
 - Not for purposes of tax avoidance exception – The taxpayer can establish, based on clear and convincing evidence, that the interest paid, accrued, or incurred relates to a contract or agreement entered into at arm's length rates and terms and the principal purpose for the payment is not federal or Illinois tax avoidance.



Addback Exception Removal – What to Expect?

- Additional discussions regarding the expenses paid to affiliates
- Potential increase to IL tax
- Impact to 2025 quarterly estimates/provisions
- How to interpret if the adjustments are “unreasonable”?
 - Will more guidance be coming?



Public Act 104-0006 change - Pass-through Entity (PTE) capital gains apportionment changes

Passthrough Sale - IITA 303 Nonbusiness Income

Article 3 of the Illinois Income Tax Act, Allocation and Apportionment of Base Income

— 35 ILCS 5/303: Non-Business Income Of Persons Other Than Residents

— Allocated income

- (a) In general. Any item of capital gain or loss, and any item of income from rents or royalties from real or tangible personal property, interest, dividends, and patent or copyright royalties, and prizes awarded under the Illinois Lottery Law, to the extent such item constitutes nonbusiness income, together with any item of deduction directly allocable thereto, shall be allocated by any person other than a resident as provided in this Section.
- (b) Capital gains and losses.
 - (3) Intangibles. Capital gains and losses from sales or exchanges of intangible personal property are allocable to this State if the taxpayer had its commercial domicile in this State at the time of such sale or exchange.
 - ***(4) Pass-through entities. Gains and losses from sales or exchanges of shares in a Subchapter S corporation or from an interest in a partnership, other than an investment partnership as defined in paragraph (11.5) of subsection (a) of Section 1501, are allocable to this State if the pass-through entity is taxable in this State, and those gains and losses shall be allocated in proportion to the average of the pass-through entity's Illinois apportionment factor computed under Section 304 in the year of the sale or exchange and the 2 tax years immediately preceding the year of the sale or exchange.***
 - *If the pass-through entity was not in existence during both of the preceding 2 years, then only the years in which the pass-through entity was in existence shall be considered when computing the average.*



Passthrough Sale - IITA 304 Business Income

Article 3 of the Illinois Income Tax Act, Allocation and Apportionment of Base Income

— 35 ILCS 5/304: Business Income Of Persons Other Than Residents

— Apportioned income – Sales Factor

- (iii) 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:
 - (a) in the case of a taxpayer who is a dealer in the item of intangible personal property within the meaning of Section 475 of the Internal Revenue Code, the income or gain is received from a customer in this State. For purposes of this subparagraph, 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; **or**
 - (a-5) *please see next slide*
 - (b) in all other cases, 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.
- 86 IAC 100.3380(c)(5): “...for taxable years ending on or after December 31, 2008, only net gains shall be included in the sales factor for sales sourced under IITA Section 304(a)(3)(C-5)(iii).”
- 86 IAC 100.3380(c)(2): “When gross receipts arise from an incidental or occasional sale of assets used in the regular course of the person's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant shall be excluded. Gross receipts from an incidental or occasional sale of stock in a subsidiary shall also be excluded.”



Passthrough Sale - IITA 304 Business Income

Article 3 of the Illinois Income Tax Act, Allocation and Apportionment of Base Income

— 35 ILCS 5/304: Business Income Of Persons Other Than Residents

— Apportioned income – Sales Factor

- (iii) 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:

- *(a-5) in the case of the sale or exchange of shares in a Subchapter S corporation or an interest in a partnership, other than an investment partnership as defined in paragraph (11.5) of subsection (a) of Section 1501, [if] the Subchapter S corporation or partnership was taxable in this State; for purposes of this subparagraph, the amount attributable to this State shall be determined in proportion to the average of the pass-through entity's Illinois apportionment factor computed under this Section in the year of the sale or exchange and the 2 tax years immediately preceding the year of the sale or exchange;*

- *if the pass-through entity was not in existence during both of the preceding 2 years, then only the years in which the pass-through entity was in existence shall be considered when computing the average.*



Illinois Credit for Taxes Paid (IL CFTP)

Sourcing comparability limitation for IL CFTP

- 35 ILCS 5/601(b)(3): Payment on due date of return
 - Amount payable - Foreign tax
 - “...the credit provided under this paragraph for tax paid to other states shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income that would be allocated or apportioned to other states if all other states had adopted the provisions in Article 3 of this Act [Allocation and Apportionment of Base Income] bears to the taxpayer's total base income subject to tax by this State for the taxable year...”
 - See 86 IAC 100.2197 for details
 - For a passthrough sale, the income “sourced to other states using IL rules” would be computed using the IL “lookthrough” sourcing approach

$$\text{IL CFTP limit} = \text{IL income tax} \times \frac{\text{IL income sourced to other states using IL rules}}{\text{Federal AGI +/- IL modifications (IL income)}}$$



Passthrough Sale - California OTA Decision

Buehler v. California FTB, California Office of Tax Appeals (OTA), 2023-OTA-215P (Feb. 28, 2023)

- The California OTA held that the tax paid to MA on partnership sale gain was not includable in CA resident Other State Tax Credit (CA OSTC / CFTP) computation
- CA OSTC includes a sourcing comparability limitation
 - RTC 18001(a)(1) – the OSTC shall be allowed only for net income taxes paid to the other state on “income derived from sources within that state”
 - “Income derived from sources within that state” shall be determined by applying California’s nonresident sourcing rules for determining income from sources within California
- Mr. Buehler argued that CA sourcing rules provided that a portion of the gain (50%) should be sourced to MA based on the partnership’s activity in that state, but the FTB argued the CA sourcing rules would not have sourced income to MA (the disagreement focused on which CA sourcing rule would apply)
- The OTA found that:
 - If he had been a nonresident, Mr. Buehler’s should not have applied the “lookthrough” sourcing approach that is in CA’s rules, instead using a rule focused on sourcing to the business situs of the intangible asset interest held (i.e., the interest in the partnership entity)
 - The partnership interest (intangible asset) that Mr. Buehler held did not acquire a business situs in MA
 - The CA rules that included “lookthrough” sourcing for partnership sales did not apply because Mr. Buehler was not unitary with this partnership



Passthrough Sale – Midwest Approaches

Certain other rules from Midwest states for individual sellers

— Indiana

- Ind. Code § 6-3-2-2(a)(5): “With regard to...nonresident persons, ‘adjusted gross income derived from sources within Indiana’...shall mean and include...other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.”
- Ind. Code § 6-3-2-2(f)(3)(E): “Receipts [for the sales factor]...are in this state if the taxpayer's market for the sales is in this state...all other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.”

— Iowa

- Iowa Admin. Code 701—302.16(9)(b) (422): “Capital gains from sales or exchanges of interests in partnerships. When a nonresident of Iowa sells or exchanges the individual's interest in a partnership, the nonresident is actually selling an intangible...In the situation where a partnership conducts business both in and out of Iowa, the capital gain from the sale or exchange of an interest in the partnership would be allocated or apportioned in and out of Iowa based upon the partnership's activities in and out of Iowa in the year of the sale or exchange.”

— Minnesota

- Minn. Stat. § 290.191(Subd.5)(i): “The sales factor includes all sales, gross earnings, or receipts received in the ordinary course of the business...Sales of intangible property are made within the state in which the property is used by the purchaser. If the property is used in more than one state, the sales must be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the sale must be excluded from both the numerator and the denominator of the sales factor. Intangible property is used in this state if the purchaser used the intangible property in the regular course of its business operations in this state.”
- Minn. Stat. § 290.17(Subd.2)(c): “The income of a taxpayer subject to the allocation rules that is not derived from the conduct of a trade or business...Gain on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in this state to the original cost of partnership tangible property everywhere, determined at the time of the sale. If more than 50 percent of the value of the partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the sales factor of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.”

— Wisconsin

- Wis. Stat. 71.04(1): “...income or loss derived...from the sale of similar intangible personal property, shall follow the residence of such persons...”
- Wis. Stat. 71.04(7)(f): “The following items are among those that are not included in ‘sales’ in this subsection...Gross receipts and gain or loss from the sale of intangible assets, except [gross receipts from the sale of inventory]...”



Passthrough Sale – Considerations/What to Expect?

- Negate previous sale/residency planning?
- Will more investment partnerships be used in sale/residency planning?
- Appears IL's position is this change applies to tax years ending on or after June 16, 2025
- Could be tax favorable or unfavorable
- Need to obtain apportionment factors
 - May be difficult if historically the income was allocated thru various tiers vs. apportioned
- New withholding obligations for Investment Partnerships selling non-investment partnership interest
- Occasional Sale implications on business income sales



Public Act 104-0006 – New Advanced Innovative Manufacturing for Illinois Tax Credit

Advancing Innovative Manufacturing for Illinois Tax Credit

- Establishes the Advancing Innovative Manufacturing credit (AIM)
 - Effective for tax years beginning on or after January 1, 2026
 - May provide an income tax credit from 3%-7% of qualified capital improvement expenses to eligible manufacturers based on amount of investment
 - Max 3% - \$10 million or more, but less than \$50 million
 - Max 5% - \$50 million or more, but less than \$100 million
 - Max 7% - \$100 million or more
 - Nonrefundable but can be carried forward up to 10 years
 - Capital improvement means the purchase, renovation, rehabilitation or construction of permanent tangible land, buildings, structures, equipment and furnishings at an approved project site in Illinois and expenditures for goods or services that are normally capitalized, including organizational costs and research and development costs incurred in Illinois
 - Applicants cannot also participate in IL EDGE or other major incentive credit programs so important to consider all options



Public Act 104-0006 - Tax Amnesty

Illinois Tax Amnesty Programs

Illinois tax amnesty programs established by House Bill 2755 (enacted June 16, 2025)

- Amnesty program period: October 1, 2025 - November 15, 2025
 - Taxes administered by the Department of Revenue
 - For tax periods ending after June 30, 2018, and prior to July 1, 2024
 - Franchise taxes administered by the Secretary of State
 - For tax periods ending after June 30, 2019, and prior to June 30, 2025



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