

**ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS**

RPMG INC.,)	
Petitioner,)	
)	
v.)	Case No. 14-TT-149
)	
THE ILLINOIS DEPARTMENT OF REVENUE,)	Chief Judge James M. Conway
Respondent.)	

**RESPONDENT’S MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS II,
III, AND IV**

Now comes the Respondent, the Illinois Department of Revenue (“Department”), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and moves this Honorable Court for entry of summary judgment pursuant to 735 ILCS 5/2-1005. In support of said motion, Department states as follows:

1. RPMG, Inc. (“Petitioner”) is incorporated in Minnesota with its principal business address in Minnesota. Petitioner markets ethanol, distiller’s grain, corn oil, and corn syrup.
2. Renewable Products Marketing Group LLC (“Parent”) is a Minnesota limited liability company. Parent wholly owns Petitioner. Parent markets ethanol, distiller’s grain, and corn oil.
3. On its Illinois Corporate Income and Replacement Tax Returns (“Returns”) for the tax years ending September 30, 2008 and September 30, 2009 (“Years in Issue”), Petitioner calculated its income tax liability without regard to Parent’s Illinois apportionment factor or income.

4. The Department audited Petitioner's Returns for the Years in Issue. The Department concluded that Petitioner and Parent were engaged in a unitary business relationship and therefore combined their income for purposes of Illinois income tax. Combining Petitioner with Parent resulted in a deficiency for the Years in Issue.

5. On or about June 2, 2014, the Department issued two Notices of Deficiency ("Notices") to Petitioner for the two Years in Issue, in the amounts of \$40,171.88 and \$17,339.06, respectively.

6. On or about August 1, 2014, Petitioner timely filed a four-count Petition against the Department in protest of the Notices. On September 3, 2014, Department timely filed its Answer.

7. The Department herein moves for summary judgment against Petition Counts II, III, and IV.

I. The Illinois Taxpayer Bill of Rights neither imposes the duty upon Department that Petitioner alleges nor grants the right claimed by Petitioner.

8. Petitioner in Count II states "[u]nder the Illinois Taxpayer Bill of Rights, it is the Department's responsibility to give taxpayers 'correct and complete information to help [taxpayers] comply with the tax laws in Illinois.'" Petition, ¶ 29.

9. This language does not exist in the Illinois Taxpayer Bill of Rights. *See* 20 ILCS 2520/1 *et seq.* Indeed, there is no language remotely close to the language proffered in the Petition.

10. Building on the mysterious language, Petitioner concludes that "the combination of Petitioner with its partnership parent *violates the requirements in the Taxpayer Bill of Rights . . .*" Petition, ¶ 36 (emphasis added).

11. The essence of Petitioner's claim is that the Department failed to provide adequate guidance for filing a separate unitary return beyond the examples contained in the regulation and Schedule UB instructions.

12. However, this Tribunal cannot impose such a duty on the Department when none is required by the Taxpayer Bill of Rights. Nor is it reasonable to expect the Department to anticipate every conceivable business scenario in drafting its regulations and instructions.

13. Indeed, when a taxpayer needs additional guidance because its situation varies from the directions provided by the regulations and instructions, the taxpayer may request a private letter ruling. *See* 2 Ill. Admin. Code § 1200.110(a) ("Private letter rulings are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation.").

14. The Taxpayer Bill of Rights does not relieve the Petitioner of its clear responsibility to file a return reflecting the uncontroverted fact that it conducts a unitary business with its partnership parent. *See* 2008 Schedule UB Instructions ("Corporations (other than Subchapter S corporations) that are members of the same unitary business group **must** file as one taxpayer (including all eligible members) for purposes of any original return, extension, claim for refund, collection, payment, amended return, and determination of the combined Illinois tax liability.") (emphasis in the original).

15. Accordingly, no triable issue of fact exists, and the Department is entitled to judgment in its favor as a matter of law.

WHEREFORE, Respondent requests that this court enter summary judgment on Count II in favor of Respondent and against Petitioner.

II. Section 304(f) does not entitle Petitioner to alternative treatment of its income.

16. Petitioner alleges in Count III that it “is entitled to alternative treatment of its income” under 35 ILCS 5/304(f). Petition, ¶ 42.

17. Section 304(f) provides “[i]f the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not . . . fairly represent the extent of a person’s business activity in this State . . . the person may petition for, or the Director may, without a petition, permit or require,” an alternative apportionment formula. 35 ILCS 5/304(f).

18. Furthermore, the Department has adopted procedures delineating how a taxpayer may petition the Director for alternative apportionment, and those “are the *exclusive means* by which a taxpayer may petition for an alternative apportionment formula.” 86 Ill. Admin. Code § 100.3390(b) (emphasis added).

19. “Pursuant to Section 304(f), the Director has *sole and exclusive authority* to grant a petition for an alternative apportionment formula.” *Id.*, (emphasis added).

20. To be clear, 304(f) does not “entitle” a taxpayer to alternative treatment. Rather, 304(f) is a mechanism enabling taxpayers to request the Department to permit the use of an alternative apportionment method. *See* 86 Ill. Admin. Code § 100.3390(e)(1)-(3).

21. Neither Petitioner nor Parent, either individually or collectively, availed themselves of the designated procedures for requesting alternative apportionment. Instead, Petitioner initially raised the issue post-audit in the Petition.

22. However, “alternative apportionment may not be raised in a protest to a notice of deficiency if such petition could have been submitted under [§ 100.3390] (e)(1) or (e)(2).” *Id.*, at (e)(3).

23. In sum, as a direct result of the audit and resulting Notices of Deficiency, Petitioner now attempts to leapfrog the Director's sole and exclusive authority to grant alternative treatment of its income, and instead asks this Tribunal to do so. Petitioner failed to exercise, let alone exhaust any, administrative remedies and is now prohibited from doing so.

24. Accordingly, no triable issue of fact exists, and the Department is entitled to judgment in its favor as a matter of law.

WHEREFORE, the Respondent requests that this court enter summary judgment on Count III in favor of the Respondent and against Petitioner.

III. Double interest under the Tax Amnesty Act is not synonymous with a penalty and may not be abated due to reasonable cause.

25. Petitioner alleges in Count IV that "because Petitioner acted with reasonable cause, double interest should be abated as it is equivalent to a penalty for failure to timely pay a tax liability." Petition, ¶ 59. While Petitioner's argument is creative, ultimately it reaches too far.

26. Generally, Public Law 96-1435 amended the Tax Delinquency Amnesty Act ("Amnesty Act"), providing an additional period for the amnesty program beginning October 1, 2010 and ending on November 8, 2010 ("Amnesty Program"). See 35 ILCS 745/10. Further, Public Law 96-1435 amended the Uniform Penalty and Interest Act (the "UPIA"), providing that taxpayers eligible for amnesty who chose not to participate in the Amnesty Program are subject to interest imposed at twice the statutory rate. 35 ILCS 735/3-2(g). The UPIA also provides that penalties will be imposed at twice the statutory rate. 35 ILCS 735/3-3(j).

27. Noteworthy is the fact that the UPIA addresses double interest in § 3.2 while a double penalty is addressed separately in § 3.3.

28. Generally, the UPIA provides for the abatement of penalties when taxpayers have acted with reasonable cause. *See* 35 ILCS 735/3-8. Specifically, “penalties imposed under the provisions of *Sections 3-3, 3-4, 3-5, and 3-7.5* of this Act shall not apply if the taxpayer shows that his failure to file a return or pay a tax . . . was due to reasonable cause. *Id.*, (emphasis added).

29. Absent from the statute is § 3.2, under which the Department imposed double interest upon Petitioner. Thus, the legislature chose not to include double interest (§ 3.2) as a candidate for abatement due to reasonable cause.

30. Given that double interest was imposed, and that the reasonable cause provision only applies, in relevant part, to the imposition of a penalty, Petitioner creatively argues that the “double interest should be abated as it is equivalent to a penalty for failure to timely pay a tax liability.” Petition, ¶ 59. In other words, Petitioner is acknowledging that the § 3.8 reasonable cause provision does not apply to the § 3.2 double interest at issue.

31. Moreover, Petitioner admits, and the Department agrees, that Petitioner “was eligible to participate in the tax [A]mnesty [Program].” Petition, ¶ 53. Petitioner chose not to participate.

32. Penalties and interest are not interchangeable; one is not “in essence”, as claimed by Petitioner, equivalent to the other. The double interest provisions are a sanction for failing to participate in the Amnesty Program, not a penalty within the meaning of the UPIA for failure to properly report and pay tax. Nevertheless, Petitioner has not alleged any facts to demonstrate what reasonable cause resulted in its failure to participate in the Amnesty Program.

33. Accordingly, no triable issue of fact exists, and the Department is entitled to judgment in its favor as a matter of law.

WHEREFORE, the Respondent requests that this court enter summary judgment on Count IV in favor of the Respondent and against Petitioner.

Respectfully Submitted,

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Exhibit A:
2008 Schedule UB Instructions

**What is new?**

- The film tax credit has been extended to include tax years **ending on or after December 31, 2008**.
- **Fiscal year filers only:** For tax years **ending on or after January 1, 2009**, the Replacement Tax Investment credit is set to expire. Therefore, assets placed in service after on or after January 1, 2009 may not be included on Form IL-477.
- For tax years **ending on or after December 31, 2007**, the Employee Child Care Tax Credit has been amended to reinstate the credit for 30 percent of the start-up costs to provide a child care facility. See Illinois Schedule 1299-D Instructions for more information.
- The Ex-Felons Jobs Credit and the Veterans Jobs Credit are in effect for tax years **beginning on or after January 1, 2007**. See Schedule 1299-D Instructions for more information.

General Information**What is the purpose of this schedule?**

The purpose of Illinois Schedule UB is to enable a unitary business group to determine the amount of its unitary business income that is attributable to Illinois. A unitary business group's business income includes all income that may be apportioned by formula among the states in which the group is doing business without violating the Constitution of the United States. All income is business income unless it is clearly attributable to one state and is earned or received through activities totally unrelated to any business the group is conducting in more than one state. The amount of unitary business income, however, must be computed starting with combined Illinois base income or its equivalent.

What is a unitary business group?

The term "unitary business group" means a group of persons related through common ownership whose business activities are integrated with, dependent upon, and contribute to each other. In the case of a corporation, common ownership is defined as the direct or indirect ownership or control of more than 50 percent of the outstanding voting stock. The statutory definition further provides that a unitary business group cannot include any person whose business activity outside of the United States is 80 percent or more of its total business activity (the "80/20" rule).

A 80/20 rule — To determine what percentage of your business activity is conducted outside the United States, you must use the same apportionment formula you use to determine how much business income is allocable to Illinois. However, if you use the single sales factor formula to apportion your business income, you must use only your payroll and property factors (computed in the same manner as in effect for tax years ending prior to December 31, 2000) and disregard the sales factor. See Section E of Specific Instructions. For purposes of the 80/20 rule, gross figures without eliminations will be used to determine the relevant apportionment factors of property, payroll, etc.

B Vertical and horizontal integration — Unitary business activity can ordinarily be illustrated where the activities of the members are

- steps in a vertically-structured enterprise or process such as the steps involved in the production of natural resources, which may include exploration, mining, refining, and marketing (vertical); or
- in the same general line of business such as manufacturing, wholesaling, retailing, insurance, transportation, and finance (horizontal);

and in either instance, the members are functionally integrated through the exercise of strong centralized management. For example, authority over such matters as purchasing, financing, tax compliance, product line, personnel, marketing, and capital investment is not left to each member.

C Apportionment method — Persons employing different single-factor formulas cannot be included in the same unitary business group; but two or more insurance companies may constitute a unitary business group, as may two or more financial organizations or transportation companies. See Form IL-1120 Instructions to compute the apportionment formula.

D Holding companies — A holding company should generally be treated as unitary with one or more subsidiaries if

- it is unitary in operations with one or more of the subsidiaries (*i.e.*, operating-holding company); or
- it holds, directly or indirectly, the capital stock of two or more subsidiaries which are conducting unitary operations; or
- filing of a separate return would distort the business income attributable to Illinois of the controlled group.

E Foreign corporations — A foreign corporation that is a member of a unitary business group shall only include in the combined income of the group the amount of federal taxable income described in Internal Revenue Code (IRC), Sections 881 through 885, rather than its worldwide federal taxable income equivalent. The foreign corporation's U.S. domestic "everywhere" factor should be used in the "everywhere" denominator, rather than its worldwide "everywhere" factor. A foreign sales corporation (FSC) that is a member of a unitary business group shall only include in the combined income of the group the amount of federal taxable income described in IRC Sections 921 through 927.

F Unitary filers that derive business income solely from Illinois — Unitary business groups composed exclusively of members that derive business income solely from Illinois are required to file as a unitary group. Unitary returns filed by such a group that report a business loss must also include a completed Schedule UB so the combined loss can be prorated in accordance with regulations for purposes of carryover to separate return years. The factor formula information from Step 4 of Illinois Schedule UB is necessary in order to divide the Illinois loss among the unitary group members.

G Partnerships — Partnerships are not included in Schedule UB. If you have a partnership that is a member of the

unitary business group, see the instructions for the Schedule K-1-P(1), Partnerships and S Corporations Instructions.

Who is the designated agent and controlling corporation?

The designated agent is a member of the unitary business group that **must** be an Illinois taxpayer and authorized to file the combined return as the agent for the other members. The controlling corporation is the corporation that directly or indirectly owns a controlling interest in all the members of the unitary business group. If the controlling corporation is a member of the group and an Illinois taxpayer, it **must** be the designated agent. If the controlling corporation cannot be the designated agent, the group must select an Illinois taxpayer member to be the designated agent. The designated agent must remain the same every year, unless the designated agent ceases to be a member of the group or the controlling corporation becomes the designated agent. Designation of the agent is made in Step 1 of Illinois Schedule UB.

What are the filing requirements?

A — Illinois combined unitary returns

Corporations (other than Subchapter S corporations) that are members of the same unitary business group **must** file as one taxpayer (including all eligible members) for purposes of any original return, extension, claim for refund, collection, payment, amended return, and determination of the combined Illinois tax liability. The group is required to file a combined unitary return (one Form IL-1120).

Subchapter S corporation members of a unitary business group do not file as part of the combined return, but file a separate unitary return (Form IL-1120-ST, Small Business Corporation Replacement Tax Return) apportioning their unitary business income.

For more information regarding combined return filers, see Illinois Income Tax Regulations, Sections 100.5200 through 100.5280.

B — Illinois separate unitary returns

Illinois taxpayers that are S corporations and other non-corporate members of a unitary business group are still required to file Illinois separate unitary returns, as well as make separate tentative tax payments, separate estimated tax payments, separate claims for refunds, and separate amended returns. However, the unitary business group (including subchapter S corporation and non-corporate members) must complete only one Illinois Schedule UB and include a copy with each return filed.

What if there are different accounting periods?

If the unitary business group members' accounting periods differ, the designated agent's accounting period must be used to determine the unitary group's business income.

Corporate members (other than Subchapter S corporations) of the unitary business group must file combined, even if their accounting periods differ. In determining the proper income to be included in the appropriate accounting period, a member may compute its proforma taxable income from its books and records for the common taxable year. As an alternative, a member may determine its income based on the number of months of its tax year that are within the common accounting period. For example, if one member uses a calendar year

and the common accounting period ends October 31, 2003, the member should include two-twelfths of its income from the year ended December 31, 2002, and ten-twelfths of its income from the year ended December 31, 2003. This method may be used only if the group's return may be timely filed after the member's taxable year ends. As another alternative, the group may include in its taxable income all of the taxable income of a member whose tax year ends within the group's tax year. Once one of these methods is used for a member, that member must continue to use that method unless the requirements of Illinois Income Tax Regulations, Section 100.5265(c) are met.

What if there are part-year members?

All part-year members are required to file as part of the unitary business group for the portion of the year the taxpayer is a member. For the remainder of the year, the member is required to file a separate non-unitary return. However, if the member belongs to another unitary business group during the remainder of the year, that member is required to file as part of that group, following the same instructions as above. For more information, see the Illinois Income Tax Regulations, Section 100.5270(f).

What if a domestic international sales corporation (DISC) or a foreign sales corporation (FSC) is a member of this unitary group?

A corporation that has elected to be, or is treated as a DISC for the taxable year under IRC Section 992, is not subject to the taxes imposed by IRC Subtitle A (except for the tax imposed on transfers to avoid income tax under Section 1491). Similarly, a DISC is not subject to the taxes imposed by the IITA and is not required to file an Illinois income tax return.

Consequently, even though a DISC may be a member of a unitary business group, only the actual and deemed distributions taxable to the DISC's shareholders for federal income tax purposes should be accounted for in determining Illinois income tax liability. Neither the portion of DISC income on which federal income tax is deferred for the tax year, nor the sales factor of the DISC should be accounted for in the computation of Illinois income tax liability of the unitary business group under the combined method of apportionment.

Corporate shareholders of a DISC should include in business income their actual and deemed distributions from the DISC, to the extent the distributions are federally taxed. To the extent that the DISC's activities are an integral part of the unitary business, the actual and deemed distributions should be included in the combined unitary business income. If a DISC meets the criteria for inclusion in the unitary business group, it must be listed under Step 1, Section A, of Illinois Schedule UB. However, computations for the DISC should not be required for Steps 2, 3, and 4 of Illinois Schedule UB. In conformity with the applicable provisions of the IRC, the other members of the unitary business group which are shareholders of the DISC should include such amounts in their respective federal taxable incomes (or equivalents) as are required to be included for federal income tax purposes.

Distributions from DISCs are treated in accordance with the federal rules pertaining to dividends, dividend exclusions, and dividend-received deductions for Illinois purposes.

An FSC is taxed by Illinois to the extent its nonexempt foreign trade income, investment income, and carrying charges (taxable for federal purposes) are allocable to Illinois.

Can a reasonable facsimile be used?

You must use a form that has been prescribed or approved by the Illinois Department of Revenue. Computer generated printouts are not acceptable, even if they are in the same format as the department forms. Computer generated forms from a department-approved software developer are acceptable. Failure to use department-approved forms may result in processing delays.

Specific Instructions

Use this Schedule UB to file unitary for tax years ending **on or after December 31, 2007**. Use Illinois Schedule UB with an earlier revision date to file unitary for tax years **ending prior to December 31, 2007**.

If you need additional forms or schedules,

- visit our web site at tax.illinois.gov
- call our 24-hour Forms Order Line at **1 800 356-6302**; or
- write to us at P.O. Box 19010, Springfield, Illinois 62794-9010.

Illinois Schedule UB must be attached to Form IL-1120, Form IL-1120-X, or, for all members who are S corporations, Form IL-1120-ST.

Note If the unitary business group consists of more than three members and additional space is needed, complete and attach additional copies of Illinois Schedule UB.

Step 1 — Provide your membership information

Write the name and FEIN of the designated agent. The designated agent must file the Illinois Schedule UB in this tax year and each succeeding year.

Write the name and FEIN of the designated agent that filed Illinois Schedule UB last year, if different from this year.

Write the name and FEIN of the controlling corporation if it is not the designated agent.

You must indicate whether the controlling corporation is a member of this unitary business group.

Note If your unitary business group consists solely of Subchapter S corporations (Form IL-1120-ST), write the name and FEIN of the member, who on a recurring basis, has the greatest Illinois tax liability. This member must file Illinois Schedule UB in this tax year and each succeeding year. All returns filed by other members of the group must provide the FEIN of the member that filed the Illinois Schedule UB. Space is provided below the name and address area on each return.

Section A — List all members

Note You may **not** substitute the Affiliations Schedule (U.S. Form 851) from a federal consolidated return for Section A.

Columns A, B, and C — List all members of the unitary business group, including name, FEIN, and tax year ending.

Column D — Check the line in this column if the member listed in Column A is required to file an Illinois income tax return for this tax year. For an explanation of who must file an Illinois income tax return, see the instructions for Form IL-1120 or Form IL-1120-ST, as appropriate.

For each member that is not required to file an Illinois income tax return, attach a separate statement listing

- the member's state of incorporation;
- the state of commercial domicile;
- total number of its employees during the year;
- the number of employees who were in Illinois on business during the year; and
- the cost price of real and tangible personal property, (including rental property at eight times the annual rent), everywhere and in Illinois.

Columns E and F — Check the line in these columns if they apply to the member listed in Column A for this tax year.

Column G — If any member of your unitary group is a foreign insurer, whose state or country of domicile imposes a retaliatory tax on insurers domiciled in Illinois, your unitary group may be entitled to a tax reduction. Check the line in this column if it applies to the member listed in Column A for this tax year, and attach a completed Illinois Schedule UB/INS, Tax for a Unitary Business Group with Foreign Insurer Members.

Column H — You must indicate the type of apportionment method used by this unitary business group. Use the following letters to indicate each member's apportionment method.

Note All members must use the same method. Any person who would be a member of your unitary business group, but uses another apportionment method, must file a separate unitary return with any other unitary members that use its apportionment method. If there are no other members using that method, the member must file a separate non-unitary return.

If your member's method is:	In Column H, write:
Single Sales	"S"
Financial Organization	"F"
Transportation Company	"T"
Insurance Company	"I"
Alternative Method, previously approved by the department	"A"

For more information about apportionment methods, see "Apportionment method" under "What is a unitary business group?"

Column I — If a member is an S corporation, place an X on that member's line in Column I.

Section B — List any mergers with members listed in Section B

Column A — Write the name and FEIN of the person who has merged with or liquidated into any member of this unitary group in this tax year. Include persons who were members of this unitary group before the merger or liquidation and persons who were acquired by the unitary group in a transaction in which they were merged or liquidated.

Column B — Write the name and FEIN of the member listed in Section A into whom this person merged or liquidated.

Section C — List all members who left the group during this tax year

Column A — Write the name and FEIN of any member who was a member of this unitary group last year and left the group during this tax year.

Column B — Provide the name and FEIN of the company to whom the member in Column A was sold, if applicable.

Section D — Attach a list of all persons excluded due to the 80/20 rule and all other persons not listed in Sections A through C.

First, attach a list of all persons excluded due to the 80/20 rule. Write the name, FEIN, and indicate whether this person is required to file an Illinois return.

A unitary business group may not include any person whose business activity outside of the United States is 80 percent or more of its total business activity (the 80/20 rule). To determine whether a potential member is excluded by the 80/20 rule, you must use the factors normally required to use to apportion business income (under IITA, Section 304), with three exceptions. First, the numerator of each factor will include business activity in the U.S. (the 50 states and D.C.) rather than in Illinois alone. Second, if you use the single sales factor formula in IITA 304(a) to apportion your business income, you do not use the sales factor in applying the 80/20 rule. Instead, you must use only your payroll and property factors, computed in the same manner as these factors were computed for tax years ending prior to December 31, 2000. For example, if 85 percent of your property and 95 percent of your payroll is outside the United States, then 90 percent of your business activity is conducted outside the United States (85 percent plus 95 percent, divided by 2) and you cannot be included in a unitary business group even if 100 percent of your sales are made in the United States. Third, to determine the relevant apportionment factors, you should use gross figures without eliminations for transactions with other members of your group. Foreign corporations filing U.S. Form 1120F, will meet the 80/20 test because only their domestic property and payroll figures will be used in the “everywhere” denominators, rather than worldwide “everywhere” figures.

Line 1 — Write the total number of persons excluded.

Second, attach a list of all other persons and their FEINs, not listed in Sections A through C who control or are controlled by, directly or indirectly (through the ownership of more than 50 percent of their voting stock), a member of the unitary business group, but are either not unitary or use a different apportionment method than this group. Do not include any person that conducts 80 percent or more of its business activity outside the United States.

Line 2 — Write the total number of other persons.

Step 2 — Figure your federal taxable income or equivalent

Head of Columns A, B, and C — Write the FEIN for each member of the unitary group.

Columns A, B, and C — Complete Lines 1 through 30 for each member of the unitary business group listed in Step 1, Section A. Generally, these line amounts correspond to the line amounts from U.S. Form 1120. Use additional schedules, if necessary.

Computing federal taxable income (or net operating loss)

— All members of the unitary business group must include their federal taxable income or loss in Step 2.

Federal taxable income or loss in Step 2 means “separate taxable income” that would be computed by each member for purposes of a federal consolidated return and its supporting statements in accordance with IRS Regulations, Section

1.1502-12. For Illinois income tax purposes, the federal taxable income or loss of each member of the unitary business group is written on Line 30.

For S corporations, federal taxable income on Line 30 should equal the amount on Form IL-1120-ST, Step 3, Line 13.

Column D — Eliminations between group members and federal consolidated adjustments — Write any consolidating adjustments made in combining the amounts in Columns A, B, and C in Column D.

Column E — Combined totals — Write the combined total of Columns A, B, C, and D for each line. Combined taxable income (or combined NOL) should be determined by treating all members of the unitary business group as if they constitute a federal consolidated group and by applying the federal regulations for determining consolidated taxable income (see IRS Regulation, Section 1.1502-11) and consolidated NOL (see IRS Regulation, Section 1.1502-21(e)), but without applying the federal “separate return limitation year” or life-nonlife insurance company limitations.

Federal elections — In computing federal taxable income, each member is required to follow all elections it made (or which were made on its behalf) for federal income tax purposes.

Step 3 — Figure your combined business income

Generally, these items correspond to lines on Form IL-1120, Steps 2 and 3. For specific line information, see Form IL-1120 instructions. Schedules used to compute any amounts shown **must** be attached to Form IL-1120.

Head of Columns A, B, and C — Write the FEIN of each unitary group member included in Step 2.

Columns A, B, and C — Write the dollar amounts requested for each member of the unitary business group.

Column D — See specific instructions for Step 2, Column D — Eliminations between group members and federal consolidating adjustments.

Column E — Write the combined total of Columns A, B, C, and D for each line.

Line 1 — Write the federal taxable income or loss for Illinois purposes from Step 2, Column E, Line 30.

Special instructions for Lines 25 and 26

Line 25 — Write the amount of all nonbusiness income or loss from Illinois Schedule NB, Column A. Attach Illinois Schedule NB to Form IL-1120.

Note — For tax years beginning on or after January 1, 2003, the designated agent may make an election to treat all of the unitary group’s income other than compensation as business income. For more information on making this election see Form IL-1120, Specific Instructions for Step 4, Line 26. If the election is made, write “0” on Line 25.

Line 26 — Write the amount of all non-unitary business income or loss received from any partnership, trust, or estate of which the corporation is a partner or beneficiary.

Note — If the activities of the corporation and the activities of a partnership of which the corporation is a partner constitute a unitary business relationship, the corporation’s shares of the partnership’s business income or loss and factors must be included in the business income and factors of the corporation.



Any such income cannot be subtracted on Line 26. For further information, see Illinois Income Tax Regulations, Section 100.3380(d).

Step 4 — Figure your apportionment factor

Heads of Columns A, B, and C — Write the FEIN for each member included in Step 2.

Line 1 — Write the combined unitary business income or loss from Step 3, Column E, Line 28.

Note — For each Line, 2 through 8, add the amounts in Columns A, B, and C, and write the combined totals for each line in Column D.

Line 2 — Write each member's "everywhere" sales factor. Exclude any receipts eliminated in Column D of Steps 2 or 3.

Line 3 — Write each member's Illinois sales factor. Exclude any receipts eliminated in Column D of Steps 2 or 3.

Line 4 — For each column, divide the amount on Line 3 by the amount in Column D, Line 2.

Line 5 — For each column, multiply the amount on Line 4 by the amount in Column D, Line 1.

Line 6 — Write the amount of the member's nonbusiness income or loss that is allocable to Illinois. If an item of nonbusiness income or deduction allocable to Illinois by the member is eliminated in Column D of Steps 2 or 3, exclude that item in figuring the amount allocable to Illinois by that member on Line 6.

Line 7 — Write the member's share of the amount of business income or loss apportioned to Illinois by a partnership, trust, or estate.

Line 8 — Write the total of Lines 5, 6, and 7. For any member of the unitary business group that is a subchapter S corporation, include this amount in Step 4, Column D, Line 9 of this Schedule UB.

Line 9 — Write the total income from Line 8 of any Subchapter S corporation that is a member of the unitary business group.

Line 10 — Subtract Line 9 from Line 8. Write the amount from Column D on Form IL-1120, Line 36.

Note — Complete Lines 11 through 13 **only** if Column D, Line 10 is negative. **Do not** include any amounts from subchapter S corporations.

Line 11 — Columns A through C — In each column, write the amount from Line 8 for each member that is not a subchapter S corporation. If the member is a subchapter S corporation **or** the amount on Line 8 is **positive**, write "0."

If the net income on Line 8 of every member of this unitary business group (other than a subchapter S corporation) is negative, skip Lines 11 and 12 and write the amount from Line 8 on Line 13.

Column D — Write the total of Columns A through C.

Line 12 — Columns A through C — For each column, divide the amount on Line 11 by the total amount on Line 11, Column D.

Column D — Write the total of Columns A through C. This amount must equal 100 percent.

Line 13 — Columns A through C — If the net income of Line 8 of every member of this unitary business group (other than a subchapter S corporation) is negative, write the amount from Schedule UB Instructions (R-12/08)

Line 8 of each member that is not a subchapter S corporation here. Otherwise, multiply Line 12 of each column by Line 10, Column D.

Column D — Write the total of Columns A through C. This amount must equal the amount on Line 10, Column D.

Specific instructions for completing Form IL-1120

The amounts to be transferred to Form IL-1120 should be taken from Illinois Schedule UB, Steps 2, 3, and 4, Column D. For specific line information, see Form IL-1120 instructions.

Note — You must complete **Step 1 of Form IL-1120** in its entirety

Step 2 of Form IL-1120

Lines 1 through 9 — Write the combined amounts from Step 3, Column E, Lines 1 through 9.

Step 3 of Form IL-1120

Lines 11 through 25 — Write combined amounts from Step 3, Column E, Lines 10 through 24.

Step 4 of Form IL-1120

Line 26 — Write the combined amount from Step 3, Column E, Line 25.

Line 27 — Write the combined amount from Step 3, Column E, Line 26.

Line 30 — Write the combined "net sales everywhere" amount from Step 4, Column D, Line 2.

Line 31 — Write the combined "net sales within Illinois" amount from Step 4, Column D, Line 3.

Lines 33, 34 and 35 — Write the combined amounts from Step 4, Column D, Lines 5, 6, and 7.

Step 5 of Form IL-1120

Step 5, Line 38 — Illinois Schedule UB/NLD must be completed and attached to Form IL-1120 to claim an Illinois net loss deduction. See instructions for Illinois Schedule UB/NLD, for limitations in the amount of loss that may be applied to each member of the unitary group.

Step 6 and Step 7 of Form IL-1120

Step 6, Lines 41 and 43, and Step 7, Lines 46 and 48 — The designated agent should compute any credit allowed or recaptured based on the combined activities of the eligible members and apply it against the combined liability of the eligible members. For more information, see Illinois Income Tax Regulations, Section 100.5270.

Note — You **must** make payments on a combined basis under the designated agent's FEIN.

If you have any foreign insurer members and you completed Illinois Schedule UB/INS, write the reduced tax amounts from that schedule.

Specific instructions for completing Form IL-1120-ST

Steps 2 and 3 of each separately filed Form IL-1120-ST must be completed showing only the Subchapter S corporation's separate-company items. The amounts on each member's Form IL-1120-ST, Lines 14 through 22 (less Line 20) and

Lines 23 through 34 (less Line 24), shall be the combined totals shown in Schedule UB, Step 3, Column E.

Note The modifications for Form IL-1120-ST Lines 20 and 24 are not included as modifications on the Schedule UB. The amount on Form IL-1120-ST, Lines 20 or 24 must be computed in the Illinois Schedule B, Column E Worksheet, found in the Form IL-1120-ST Instructions. Carry the combined total amounts from Schedule UB, Step 3, Column E for each line item of the Column E Worksheet.

Use the Line 20 and Line 24 amounts to compute the subchapter S corporation's base income on Form IL-1120-ST, Step 5, Line 36. Complete Form IL-1120-ST, Step 6 by subtracting on Line 37,

- the combined nonbusiness income of the entire unitary business group, minus the portion allocable to shareholders subject to replacement tax, and
- the amount received by the entire unitary business group from nonunitary partnerships, trusts, and estates, minus the portion allocable to shareholders subject to replacement tax.

On Form IL-1120-ST, Step 6, Line 41, include the everywhere sales amount from Schedule UB, Step 4, Column D, Line 2.

On Line 42 of Step 6 of Form IL-1120-ST, include only the subchapter S corporation's Illinois sales. On Form IL-1120-ST, Step 6, Lines 45 and 46, include only the nonbusiness income of the subchapter S corporation from partnerships, and the business income or loss apportionable to Illinois received by the subchapter S corporation from partnerships, minus the portion of those amounts allocable to shareholders subject to replacement tax.

Unitary members that are subchapter S corporations can use the line reference chart below to help complete 2007 Form IL-1120-ST.

If you need more information,

- visit our web site at tax.illinois.gov and view the Illinois Income Tax Regulations referenced in these instructions, or
- you may request these regulations by writing to:

Illinois Department of Revenue
Legal Services Office
Senior Counsel - Income Tax, 5-500
101 West Jefferson Street
Springfield, Illinois 62702

Line Reference Chart for Form IL-1120-ST

Schedule UB	Form IL-1120-ST	Schedule UB	Form IL-1120-ST
Step 3, Line 3, Column E	Step 4, Line 15		
Step 3, Line 4, Column E	Step 4, Line 16		
Step 3, Line 5, Column E	Step 4, Line 17		
Step 3, Line 6, Column E	Step 4, Line 18		
Step 3, Line 7, Column E	Step 4, Line 19		
Step 3, Line 8, Column E	Step 4, Line 21		
Step 3, Line 10, Column E	Step 5, Line 34*		
Step 3, Line 11, Column E	Step 5, Line 23	Step 3, Line 26, Column E (less any amounts allocable to shareholders subject to replacement tax)	Step 6, Line 38
Step 3, Line 12, Column E	Step 5, Line 26	Step 3, Line 27, Column E (less any amounts allocable to shareholders subject to replacement tax)	Step 6, Line 39
Step 3, Line 13, Column E	Step 5, Line 27	Step 3, Line 28, Column E (less any amounts allocable to shareholders subject to replacement tax)	Step 6, Line 40
Step 3, Line 14, Column E	Step 5, Line 28	Step 4, Line 2, Column D	Step 6, Line 41
Step 3, Line 15, Column E	Step 5, Line 29	Step 4, Line 3 (for each S Corporation's Illinois' sales)	Step 6, Line 42
Step 3, Line 16, Column E	Step 5, Line 30	Step 4, Line 4 (for each S corporation's apportionment factor)	Step 6, Line 43
Step 3, Line 17, Column E	Step 5, Line 34*	Step 4, Line 6 (for each S corporation's nonbusiness income or loss)	Step 6, Line 45
Step 3, Line 18, Column E	Step 5, Line 34*	Step 4, Line 7 (for each S corporation's non-unitary income from partnerships, trusts, and estates)	Step 6, Line 46
Step 3, Line 19, Column E	Step 5, Line 31		
Step 3, Line 20, Column E	Step 5, Line 32		
Step 3, Line 21, Column E	Step 5, Line 33		
Step 3, Line 22, Column E	Step 5, Line 34*		
Step 3, Line 25, Column E (less any amounts allocable to shareholders subject to replacement tax)	Step 6, Line 37		

Note Any amount that an S corporation would include on Form IL-1120-ST, Step 5, Line 25, "Expenses incurred in producing certain federally tax-exempt income," should be included on the Schedule UB, Step 3, Line 22, "Other subtractions."

* Write the portion from Form IL-1120-ST, Line 34 that corresponds with the line item indicated on Schedule UB.

Exhibit B:

86 Ill. Admin. Code § 100.3390

Joint Committee on Administrative Rules
ADMINISTRATIVE CODE

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE
PART 100 INCOME TAX
SECTION 100.3390 PETITIONS FOR ALTERNATIVE ALLOCATION OR
APPORTIONMENT (IITA SECTION 304(F))

Section 100.3390 Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))

- a) In general. IITA Section 304(f) provides that if the allocation and apportionment provisions of IITA Section 304(a) through (e) do not fairly represent the extent of the person's business activity in this State, the person may petition for or the Director may require, in respect of all or any part of the person's business activity, if reasonable:
- 1) separate accounting;
 - 2) the exclusion of any one or more of the factors;
 - 3) the inclusion of one or more additional factors which will fairly represent the person's business activity in this State; or
 - 4) the employment of any other method to effectuate an equitable allocation and apportionment of the person's income.
- b) The petition procedures provided in this Section are exclusive means by which a taxpayer may petition for an alternative apportionment formula. Any attempt to invoke an alternative apportionment formula by a method or procedure other than as specified in this Section shall not be considered a valid petition under IITA Section 304(f). Pursuant to Section 304(f), the Director has sole and exclusive authority to grant a petition for an alternative apportionment formula.
- c) Burden of Proof. A departure from the required apportionment method is allowed only where such methods do not accurately and fairly reflect business activity in Illinois. An alternative apportionment method may not be invoked, either by the Director or by a taxpayer, merely because it reaches a different apportionment percentage than the required statutory formula. However, if the application of the statutory formula will lead to a grossly distorted result in a particular case, a fair and accurate alternative method is appropriate. The party (the Director or the taxpayer) seeking to utilize an alternative apportionment method has the burden of going forward with the evidence and proving by clear and cogent evidence that the statutory formula results in the taxation of extraterritorial values and operates unreasonably and arbitrarily in attributing to Illinois a percentage of income which is out of all proportion to the business transacted in this State. In addition, the party

seeking to use an alternative apportionment formula must go forward with the evidence and prove that the proposed alternative apportionment method fairly and accurately apportions income to Illinois based upon business activity in this State.

- d) **Filing Procedure.** A petition for alternative apportionment must be clearly labeled "Petition for Alternative Allocation or Apportionment" and be supported by sufficient facts and information to allow the Director to determine whether the taxpayer has met the burden of proof required under subsection (b) above. A petition will be summarily rejected if its sole basis for support rests on the fact that an alternative method reaches a different apportionment percentage than the required statutory formula. Petitions must be submitted to:

Illinois Department of Revenue
Legal Services Bureau/Income Tax
101 W. Jefferson Street
Springfield IL 62794-9001

- e) **Timely Filed Petitions.** A taxpayer petition for use of a separate accounting method or any other alternative apportionment method will not be considered by the Director unless such petition has been timely filed. A taxpayer who petitions the Director for an alternative apportionment formula does so subject to the Department's right to verify, by audit of the taxpayer's return and supporting books and records within the applicable statute of limitations, the facts submitted as the basis of the petition. A petition for alternative allocation or apportionment is timely filed if the petition is filed:

- 1) 120 days prior to the due date of the tax return (including extensions) for which permission to use such alternative method is sought. A taxpayer who does not petition more than 120 days prior to the due date of the original return must file the return and pay tax according to the statutorily approved allocation or apportionment method.
- 2) as an attachment to a return amending an original return which was filed using the statutory allocation and apportionment rules. A taxpayer who has not filed a petition for alternative apportionment under subsection (e)(1) above, or whose subsection (e)(1) petition has been rejected, may thereafter file such petition with an amended return and the Department will consider the petition along with any other issues raised in the claim for refund pursuant to the procedures set forth at Section 100.9110 of this Part.
- 3) as part of a protest to a notice of deficiency issued as a result of the audit of the taxpayer's return and supporting books and records; provided that the audit adjustments being protested result in the need for the petition for alternative apportionment. Alternative apportionment may not be raised in a protest to a notice of deficiency if such petition could have been submitted under subsection (e)(1) or (e)(2) above (i.e., the petition for an alternative apportionment formula is not necessitated by the proposed adjustments made to the taxpayer's return during the course of the audit).

- f) **Consideration of Petitions**

- 1) After consideration of a petition for alternative apportionment under subsections (e)(1) or (e)(2) above, the Director will issue a ruling letter advising the taxpayer that the petition has been accepted, partially accepted or rejected.
 - 2) If the petition is partially accepted (i.e., where the Director finds that the taxpayer has established that apportionment relief is warranted but disagrees with the taxpayer's proposed alternative apportionment method) the Director shall so notify the taxpayer of the reasons for rejecting the proposed alternative apportionment formula. The taxpayer may then submit a modified alternative apportionment formula for the Director's approval, or protest the Director's rejection of the proposed alternative apportionment formula by requesting an administrative hearing on the matter.
 - 3) If a taxpayer's petition is rejected in its entirety, the Director will state the reasons for the rejection of the petition.
- g) **Appeal Procedures.** A denial of a petition for alternative apportionment which petition was submitted under subsections (e)(1) or (e)(2) above is not a final administrative decision and may be protested as provided herein. If the petition is submitted prior to the filing of the original return under subsection (e)(1) above, and is denied, the taxpayer must file and pay tax using the statutory formula. A taxpayer who has filed using the statutory formula after denial of a petition for alternative apportionment may file an amended return claiming a refund based upon the original petition. Additional information in support of the taxpayer's petition for alternative apportionment may be submitted for the Director's reconsideration at that time. If the claim for refund is denied, the taxpayer may file a protest pursuant to IITA Section 910 and request an administrative hearing solely on the issue of alternative apportionment or in addition to other issues raised in the claim for refund.
- h) **Bifurcated Administrative Hearings**
- 1) The taxpayer will have waived the right to raise alternative apportionment as an issue in the administrative hearing if taxpayer has not complied with procedures set forth in this Section.
 - 2) Where a protest to a notice of deficiency or a claim denial raises the issue of alternative apportionment in addition to other issues, the administrative hearing shall proceed in two distinct phases.
 - A) All issues other than the petition for alternative apportionment, which have properly been raised in the protest to the notice of deficiency or claim denial, shall be considered first. The ALJ shall conduct the hearing and the taxpayer shall present its case. The ALJ shall not accept any evidence with regard to alternative apportionment until the taxpayer and the Department have rested their case with regard to all other issues raised in the protest to the notice of deficiency or claim denial.

- B) When the taxpayer and the Department have rested with regard to all other issues raised in the protest of the notice of deficiency or claim denial, the ALJ shall conduct the hearing and the taxpayer shall present its case in support of its petition for alternative apportionment. Evidence allowed into the record with regard to all other issues raised in the protest of the notice of deficiency or claim denial shall be deemed to be allowed into the record with regard to the protest to the Director's denial of alternative apportionment and need not be resubmitted. However, on any issue as to which evidence has already been allowed with regard to the protest of the notice of deficiency or claim denial, the ALJ shall allow submission of additional evidence on the issue of alternative apportionment.
 - C) In such bifurcated hearings, the ALJ shall issue a two-part recommendation to the Director. The first part of the recommendation shall address all other issues raised in the protest of the notice of deficiency or claim denial and the second part of the recommendation shall be a determination of whether the taxpayer has met its burden of proof under subsection (b) above.
- i) Director's Decision
- 1) The Director will consider the ALJ's recommendation. If the Director agrees that the taxpayer has met his burden of proof under subsection (b) above and that the formula proposed by the taxpayer and recommended by the ALJ fairly and accurately apportions income to Illinois based upon the taxpayer's business activity in this State, the Director will accept the recommendation of the ALJ and it will become final.
 - 2) If the Director, after considering the ALJ's decision, agrees that the taxpayer has met its burden of proof under subsection (b) above, but finds that the proposed alternative apportionment formula does not fairly and accurately apportion income to Illinois based upon the taxpayer's business activity in this State, the Director's decision will so state and will provide an appropriate alternative apportionment formula. The Director's decision will be final for purpose of administrative review.
 - 3) If the Director finds that the taxpayer has not established by clear and cogent evidence that the statutory formula results in the taxation of extraterritorial values, and operates unreasonably and arbitrarily in attributing to Illinois a percentage of income which is out of all proportion to the business transacted in this State and also finds that the taxpayer's proposed alternative apportionment formula is not permissible, the Director shall issue his decision so stating. The taxpayer may seek administrative review of this final decision of the Director. If the court finds that the taxpayer has met the burden of proof under subsection (b) that an alternative apportionment formula is warranted but agrees with the Director that the alternative apportionment formula proposed by the taxpayer does not fairly and accurately reflect the taxpayer's business activities in this State, and the case is remanded to the Department, the Director shall provide an appropriate alternative apportionment formula. The designation of a formula by the

Director is a final administrative decision of the Department subject to administrative review by the court.

(Source: Added at 17 Ill. Reg. 19632, effective November 1, 1993)