

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.9750 Corporation, Subchapter S Corporation, Partnership and Trust Defined (IITA Section 1501)
--

TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.9750 Corporation, Subchapter S Corporation, Partnership and Trust Defined (IITA Section 1501)

- a) In general. IITA Section 102 provides that, *except as otherwise expressly provided or clearly appearing from the context, any term used in the IITA shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.*

- b) Corporations. *The term "corporation" includes associations, joint stock companies, insurance companies and cooperatives. Any entity, including a limited liability company formed under the Illinois Limited Liability Company Act [805 ILCS 180], shall be treated as a corporation if it is so classified for federal income tax purposes. (IITA Section 1501(a)(4))*
 - 1) 26 USC 7701(a)(3) defines "corporation" to include *associations, joint stock companies, and insurance companies*. This definition is identical to the definition in IITA Section 1501(a)(4), except that the IITA definition includes cooperatives. Accordingly, any entity treated as a corporation for federal income tax purposes must be treated as a corporation for all purposes of the IITA, and no entity (other than a cooperative) that is not treated as a corporation for federal income tax purposes may be treated as a corporation for purposes of the IITA. Thus, any entity electing to be taxed as a corporation under 26 CFR 301.7701(a) is a corporation for all purposes of the IITA, and any entity that elects not to be treated as a corporation separate and distinct from its owners is not a corporation separate and distinct from its owners. For example:
 - A) An entity that has elected to be disregarded as an entity separate from its corporate owner for any federal income tax purpose pursuant to 26 CFR 301.7701-3(a) and its corporate owner are a single corporation for the equivalent purpose of the IITA.

 - B) An entity eligible to elect treatment as a corporation under 26 CFR 301.7701-3(a) is deemed to have elected to be treated as a corporation if it elects to be treated as a real estate investment trust (REIT) under IITA Section 856(c)(1). (See 26 CFR 301.7701(c)(1)(v)(B).) Pursuant to 26 USC 856(i), the separate existence of a qualified REIT subsidiary is ignored, and its assets, liabilities and other items are deemed to belong to

the REIT that owns the subsidiary. Accordingly, a REIT and its qualified REIT subsidiaries are a single corporation for all purposes of the IITA.

- 2) An entity that, despite its uninterrupted existence, is treated as a new corporation for purposes of the Internal Revenue Code shall also be treated as a new corporation separate and distinct from its deemed predecessor, for all purposes of the IITA. For example:
 - A) An entity that has elected to be disregarded as an entity separate from its corporate owner for any federal income tax purpose pursuant to 26 CFR 301.7701-3(a), and subsequently elects to be taxed as a corporation, is treated under 26 CFR 301.7701-3(g)(1)(iv) as a new corporation to which the assets of the entity were transferred by the corporate owner in exchange for the stock of the new corporation. Accordingly, prior to the date of the subsequent election, the entity and its corporate owner are a single corporation for the equivalent purpose of the IITA, while after that election the two entities will be separate corporations.
 - B) A corporation that is treated as two separate corporations (as a corporation that has sold all of its assets and as a new corporation that has purchased all of the assets) pursuant to 26 USC 338 is similarly treated as two separate corporations, one in existence before the 26 USC 338 transaction and one in existence subsequent to the transaction, for all purposes of the IITA.
 - 3) Prior to January 1, 2009, an election to be disregarded under 26 CFR 301.7701-3(a) meant that the owner of the entity would be treated as the employer of the entity's employees for purposes of withholding. For wages paid on or after January 1, 2009, the election to be disregarded does not apply to the entity's duty to withhold federal income tax from employees. (See 26 CFR 301.7701-2(c)(2)(iv) and (e)(5).) Accordingly, an entity that has elected to be disregarded and its owner are treated as a single entity for purposes of computing the federal and Illinois income tax liability of the owner, but the entity will be treated as a corporation separate from its owner for purposes of federal and Illinois obligations to withhold tax from wages paid to employees on or after January 1, 2009.
- c) Subchapter S Corporations. *The term "subchapter S corporation" means a corporation for which there is in effect an election under section 1362 of the Internal Revenue Code, or for which there is a federal election to opt out of the provisions of the Subchapter S Revision Act of 1982 and have applied instead the prior federal subchapter S rules as in effect on July 1, 1982.* (IITA Section 1501(a)(28))
- 1) Any corporation that has elected subchapter S corporation status for federal income tax purposes is automatically a subchapter S corporation for purposes of the IITA until its status as a subchapter S corporation is terminated for federal income tax purposes. No separate election is required.
 - 2) Under 26 USC 1361(b)(3), the separate existence of a "qualified subchapter S subsidiary" is disregarded and the assets, liabilities and other items of the qualified subchapter S subsidiary are attributed to the parent subchapter S corporation. Accordingly, for all purposes of the IITA, a subchapter S corporation

and its qualified subchapter S subsidiaries shall be treated as a single subchapter S corporation.

- d) Partnerships. The term "partnership" *includes a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of the IITA, a trust or estate or a corporation.* (IITA Section 1501(a)(16))
- 1) 26 USC 761 provides that the term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not, within the meaning of this Title 26, a corporation or a trust or estate. This definition is essentially identical to the definition in (IITA Section 1501(a)(16)). Also, IITA Section 1501(a)(16) provides that *any entity, including a limited liability company formed under the Illinois Limited Liability Company Act, shall be treated as a partnership if it is so classified for federal income tax purposes.* Accordingly, every entity treated as a partnership for federal income tax purposes is a partnership for purposes of the IITA, and no entity that is not treated as a partnership for federal income tax purposes is a partnership for purposes of the IITA. For example:
 - A) An entity that elects to be treated as a partnership for federal income tax purposes under 26 CFR 301.7701(a) is a partnership for purposes of the IITA.
 - B) An entity that makes an election under 26 USC 761(a) to not be treated as a partnership is not a partnership for purposes of the IITA.
 - C) If a partnership is treated as a continuation of another partnership pursuant to 26 CFR 1.708-1(b)(2), those partnerships are a single, continuing partnership for all purposes of the IITA.
 - 2) As amended by Public Act 91-913, IITA Section 1501(a)(16) provides that *the term "partnership" does not include a syndicate, group, pool, joint venture or other unincorporated organization established for the sole purpose of playing the Illinois State Lottery.* Accordingly, notwithstanding any other provisions of this Section, an entity established for the sole purpose of playing the Illinois State Lottery is not a partnership for purposes of the IITA.
 - 3) Under IITA Section 1501(a)(16), any member of an entity treated as a partnership shall be treated as a partner. Accordingly, any reference in the IITA to a partner refers the owners or members of any entity treated as a partnership.
- e) Trusts. The term "trust" is not defined in the IITA. However, pursuant to IITA Section 102, any entity treated as a trust for federal income tax purposes under 26 CFR 301.7701-4 is a trust for all purposes of the IITA. An entity that has elected to be treated as part of an estate under 26 USC 645 is not a trust, but is part of the estate for all purposes of the IITA. Similarly, a trust whose assets, activities and income are treated as belonging to its grantor for federal income tax purposes under the "grantor trust" provisions of 26 USC 671 is not treated as a trust for Illinois income tax purposes.

(Source: Amended at 34 Ill. Reg. 12891, effective August 19, 2010)