

WEST VIRGINIA CODE: §11-13AA-3

§11-13AA-3. Definitions.

(a) General. -- When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) Terms defined. --

(1) "Agreement" means any agreement or contractual relationship entered into after the effective date of this section between a person developing patents in this state and either:

(A) A corporation established under the laws of this state that meet the requirements of section three, article twelve, chapter eighteen-b of this code; or

(B) A center for economic development and technological advancement created pursuant to section three, article twelve-a, chapter eighteen-b of this code.

(2) "Business activity" means all activities engaged in or caused to be engaged in by a person with the object of gain or economic benefit, direct or indirect. For purposes of this definition, the term "gain or economic benefit, direct or indirect" does not include income realized by any person in the form of wages, salary or income that is reported on federal form W-2.

(3) "Commercial use" means selling, licensing, leasing or otherwise making patents available to a third party for a price, fee, royalty, commission or other consideration called by whatever name. "Commercial use" also means, in the case of patents developed by the developer for the developer's own commercial use, the first use of the patents in a manufacturing or other business activity of the developer. "Commercial use" does not include any selling, licensing, leasing or otherwise making patents available to a third party when done by a broker or by any person who does not own the patent sold, licensed, leased or otherwise made available.

(4) "Commissioner" and "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia or his or her designee.

(5) "Copyright" means a copyright that is registered with the United States Copyright Office or with a similar office of a foreign country when the foreign copyright is recognized under federal law.

(6) "Delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the Tax Department of the Department of Revenue duly authorized by the Tax Commissioner directly, or indirectly, by one or more redelegations of authority to perform the functions mentioned or described in this article.

(7) "Development of a patent," "developing patents" or "development" means the act of inventing or discovering any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereto through significant investment of money, performance of research, or application of design or engineering expertise, which culminates in the issuance of a patent, as defined in this article.

(8) "Developer" means a person engaged in this state in developing patents for direct use in a manufacturing process or product and who has an agreement, as defined in this section, with Marshall University or West Virginia University.

(9) "Directly used in manufacturing process or product," and "direct use in manufacturing process or product" with reference to patents means application or incorporation of a patented process, machine, article of manufacture or composition of matter, in manufacturing operations or processes, or in manufactured products, in circumstances where United States or foreign patent laws require that the specific patent for the process, machine, article of manufacture or composition of matter be owned by the manufacturer, or purchased, leased, licensed or authorized by contract to be applied or incorporated in the manufacturing operation, processes or product, and where such lawful ownership, purchase, lease, license or contractual authorization is in effect.

(10) "Manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number of thirty-one, thirty-two or thirty-three.

(11) "Mask work" means a series of related images, however fixed or encoded:

(A) Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

(12) "Net profits" means West Virginia taxable income as determined for purposes of article twenty four of this chapter, before application of this credit and after application of all credits allowable under this chapter except this credit. In the case of taxpayers that are not subject to the tax imposed by article twenty-four, "net profits" means West Virginia taxable income as determined for purposes of article twenty-one of this chapter, before application of this credit and after application of all credits allowable under this chapter except this credit. In circumstances where net profit is not solely attributable to and the exclusive result of the direct use of a patent in a manufacturing process or product in this state, the taxpayer shall determine net profit solely attributable to and the exclusive result of the direct use of a patent in a manufacturing process or product in this state, and net profit for purposes of determining the amount of credit allowable under this article shall be the net profit solely attributable to and the exclusive result of the direct use of a patent in a manufacturing

process or product in this state.

(13) "Owner", when used in reference to a pass-through entity, means a person who owns an equity interest in the pass-through entity.

(14) "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, which is not a sole proprietorship, trust or estate, and which is treated as a partnership for federal income tax purposes for the taxable year.

(15) "Pass-through entity" means a partnership, limited liability company, small business corporation (S corporation) or other entity treated as a partnership for federal income tax purposes for the taxable year.

(16) "Patent" means a United States patent issued pursuant to 35 U.S.C. §101, et seq. or the Patent Cooperation Treaty done at Washington, on June 19, 1970 and is limited to plant patents, design patents and patents developed in this state for direct use in a manufacturing process or product, or both developed for use and directly used in a manufacturing process or product in this state. For purposes of this article, patents do not include copyrights, trademarks, mask works, trade secrets or any intellectual property that is not a patent.

(17) "Person" includes a natural person, corporation, limited liability company or partnership. A single member liability company that is treated as a disregarded entity for federal income tax purposes is be treated as a disregarded entity for purposes of this article.

(18) "Purchase" means a transaction under which title to an item is transferred for consideration, or a license or lease contract for at least three years is executed, regardless of whether title to the item is transferred at the end of the lease or license period.

(19) "Taxpayer" means any person subject to the tax imposed by article twenty-three or twenty-four of this chapter or to both taxes. In the case of a sole proprietorship that is not subject to either the tax imposed by article twenty-three or twenty-four of this chapter, the term "taxpayer" means a natural person who owns a disregarded entity and who is subject to the tax imposed by article twenty-one of this chapter on his or her income from business activity in this state, or any sole proprietor who is subject to the tax imposed by article twenty-one of this chapter.

(20) "Trademark" means any trademark, trade name, service mark or other identifying symbol or name that is registered with the United States Patent and Trademark Office or with a similar office of a foreign country when the foreign registration is recognized under federal law.

(21) "Trade secret" means information, including a formula, pattern, compilation, program device, method, technique or process, that:

(A) Derives independent economic value, actual or potential, from not being generally known

to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; and

(B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.