WEST VIRGINIA CODE: §11-13BB-3

§11-13BB-3. Definitions.

(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purposes of this article, the term:

(1) "Certified eligible safety property" means eligible safety property in which an eligible taxpayer has made qualified investment for which credit has been certified under this article.

(2) "Coal mining company" means:

(A) A person subject to tax imposed on the severance of coal by section three, article thirteen-a of this chapter; or

(B) A person working as a contract miner of coal, mining coal in this state, under contract with a person subject to tax imposed on the severance of coal by section three, article thirteen-a of this chapter.

(3) "Director" means the Director of the Office of Miners' Health, Safety and Training or West Virginia Office of Miners' Health, Safety and Training established under article one, chapter twenty two-a of this code.

(4) "Eligible safety property" means safety technology equipment that, at the time of acquisition, is on the list of approved innovative mine safety technology: Provided, That eligible safety property includes proximity detection systems and cameras used on continuous mining machines and underground haulage equipment and machine mounted methane monitors required by section forty-three, article two, chapter twenty-two-a of this code.

(5) "Eligible taxpayer" means a coal mining company that purchases eligible safety property.

(6) "List of approved innovative mine safety technology" means the list required to be compiled and maintained by the Board of Coal Mine Health and Safety and approved and published by the director under this article: Provided, That proximity detection systems, cameras and underground safety shelters and the refurbishing thereof shall qualify and be on the list whether required or not.

(7) "Office of Miners' Health, Safety and Training" or "West Virginia Office of Miners' Health, Safety and Training" means the Office of Miners' Health, Safety and Training established under article one, chapter twenty two-a of this code.

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(8) “Person” includes any corporation, limited liability company or partnership.

(9) “Qualified investment” means the eligible taxpayer’s investment in eligible safety property pursuant to a qualified purchase as qualified and limited by section six of this article.

(10) “Qualified purchase” means and includes only acquisitions of eligible safety property for use in this state.

(A) A lease of eligible safety property may constitute a qualified purchase if the lease was entered into and became effective at a time when the equipment is on the list of approved innovative mine safety technology and if the primary term of the lease for the eligible safety property is five years or more. Leases having a primary term of less than five years do not qualify.

(B) “Qualified purchase” does not include:

(i) Purchases or leases of realty or any cost for, or related to, the construction of a building, facility or structure attached to realty;

(ii) Purchases or leases of property not exclusively used in West Virginia;

(iii) Repair costs including materials used in the repair unless, for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(iv) Motor vehicles licensed by the Division of Motor Vehicles;

(v) Clothing;

(vi) Airplanes;

(vii) Off-premises transportation equipment;

(viii) Leases of tangible personal property having a primary term of less than five years;

(ix) Property that is used outside this state; and

(x) Property that is acquired incident to the purchase of the stock or assets of an industrial taxpayer that was or had been used by the seller in his or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(C) Acquisitions, including leases, of eligible safety property may constitute qualified purchases for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707(b) of the United

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States Internal Revenue Code of 1986, as amended;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group but the Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(11) “Safety technology” means depreciable tangible personal property and equipment, other than clothing, principally designed to directly minimize workplace injuries and fatalities in coal mines.

(12) “Taxpayer” means a person subject to any of the taxes imposed by article thirteen-a, twenty-three or twenty-four of this chapter.

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