

WEST VIRGINIA CODE: §11-13C-3

§11-13C-3. Definitions.

(a) General. -- When used in this article, or in the administration of this article, terms defined in subsection (b) shall 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) Business. -- The term "business" means any activity taxable under article twelve-a or thirteen (or both) of this chapter, which is engaged in by any person in this state: Provided, That on and after July 1, 1987, the phrase "taxes imposed by article twelve-a or thirteen, (or both) of this chapter" shall mean "taxes imposed by article thirteen, thirteen-a, thirteen-b twenty-one, twenty-three and twenty-four of this chapter (or any one or combination of such articles of this chapter)."

(2) Business expansion. -- The term "business expansion" means capital investment in a new or expanded business facility in this state.

(3) Business facility. -- The term "business facility" means any factory, mining operation, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and personal property located at or within such facility, used in connection with the operation of such facility, in a business that is taxable in this state, and all site preparation and start-up costs of the taxpayer for the business facility which it capitalizes for federal income tax purposes.

(A) "Mining operation" means the place at which a person extracts ores or minerals from the ground. It includes both surface and underground mining operations.

(B) "Surface mine" means the surface of land upon which activities are conducted which disturb the natural surface of the land and result in the production of ores or minerals.

(C) "Underground mine" means the surface effects associated with the shafts, slopes, lifts or inclines connected with excavations penetrating seams or strata of minerals, and the equipment connected therewith which contribute to the mining, preparation or handling of ores or minerals.

(4) Commissioner or Tax Commissioner. -- The terms "commissioner" and "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his delegate.

(5) Compensation. -- The term "compensation" means wages, salaries, commissions and any

other form of remuneration paid to employees for personal services.

(6) Controlled group. -- The term "controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the other corporations.

(7) Corporation. -- The term "corporation" means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(8) Delegate. -- The term "delegate" in the phrase "or his delegate," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department 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.

(9) Eligible taxpayer. -- The term "eligible taxpayer" means any person subject to the taxes imposed by article twelve-a or thirteen (or both) of this chapter who makes qualified investment in a new or expanded business facility located in this state that results in the creation of at least fifty new jobs: Provided, That on and after July 1, 1987, the phrase "taxes imposed by article twelve-a or thirteen, (or both) of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a, thirteen-b twenty-one, twenty-three and twenty-four of this chapter (or any one or combination of such articles of this chapter). "Eligible taxpayer" shall also include an affiliated group of taxpayers if such group elects to file a consolidated corporation net income tax return under article twenty-four of this chapter.

(10) Expanded facility. -- The term "expanded facility" means any business facility (other than a new or replacement business facility) resulting from the acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property if such improvements or additions are purchased on or after March 1, 1985, but only to the extent of the taxpayer's qualified investment in such improvements or additions.

(11) Includes and including. -- The terms "includes" and "including," when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(12) New business facility. -- The term "new business facility" means a business facility which satisfies all the requirements of subparagraphs (A), (B), (C) and (D) of this subdivision.

(A) The facility is employed by the taxpayer in the conduct of a business the net income of which is taxable under article twenty-one or twenty-four of this chapter. Such facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only

activity with respect to such facility is to lease it to another person or persons.

(B) Such facility is purchased by, or leased to, the taxpayer and is placed in service or use on or after March 1, 1985.

(C) The facility was not acquired by the taxpayer from a related person. The Tax Commissioner can waive this requirement if the facility was acquired from a related party for its fair market value.

(D) Such facility was not in service or use during the ninety days immediately prior to transfer of the title to such facility, or to the commencement of the term of the lease of such facility, unless upon application of the taxpayer, setting forth good and sufficient cause, the Tax Commissioner consents to waiving this ninety-day period.

(13) **New employee.** -- The term "new employee" means a person residing and domiciled in this state, hired by the taxpayer to fill a position for a job in this state, which previously did not exist in the business enterprise in this state, prior to the date on which the taxpayer's qualified investment is placed in service or use in this state. In no case shall the new employees allowed for purposes of this credit exceed the total increase in the taxpayer's employment in this state. A person shall be deemed to be a "new employee" if such person's duties in connection with the operation of the business enterprise are on:

(A) A regular, full-time and permanent basis.

(1) "Full-time employment" means employment for at least one hundred twenty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

(2) "Permanent employment" does not include employment that is temporary or seasonal.

(B) A part-time basis, provided such person is customarily performing such duties at least twenty hours per week for at least six months during the taxable year.

(14) **New job.** -- The term "new job" means a job which did not exist in the business of the taxpayer in this state prior to the taxpayer's qualified investment being made, and which is filled by a new employee.

(15) **New property.** -- The term "new property" means:

(A) Property the construction, reconstruction or erection of which is completed on or after March 1, 1985, and placed in service or use after such date; and

(B) Property leased or acquired by the taxpayer that is placed in service or use in this state on or after March 1, 1985, if the original use of such property commences with the taxpayer and commences after such date.

(16) Original use. -- The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of the property by the taxpayer.

(17) Partnership and partner. -- 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 a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

(18) Person. -- The term "person" includes any natural person, corporation or partnership.

(19) Property purchased or leased for business expansion.

(A) Included property. -- Except as provided in subparagraph (B), the term "property purchased or leased for business expansion" means real property and improvements thereto, and tangible personal property, but only if such real or personal property was constructed, purchased, or leased and placed in service or use by the taxpayer, for use as a component part of a new or expanded business facility, as defined in this section, which is located within West Virginia. This term includes only:

(1) Real property and improvements thereto having a useful life of four or more years, placed in service or use on or after March 1, 1985, by the taxpayer.

(2) Real property and improvements thereto, or tangible personal property acquired by written lease having a primary term of ten or more years and placed in service or use by the taxpayer on or after March 1, 1985.

(3) Tangible personal property placed in service or use by the taxpayer on or after March 1, 1985, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business taxpayer under article twenty-one or twenty-four of this chapter, and which has a useful life at the time such property is placed in service or use in this state, of four or more years.

(4) Tangible personal property acquired by written lease having a primary term of four years or longer, that commenced and was executed by the parties thereto on or after February 1, 1986, if used as a component part of a new or expanded business facility, shall be included within this definition.

(5) Tangible personal property owned or leased, and used by the taxpayer at a business location outside this state which is moved into this state on or after February 1, 1986, for use as a component part of a new or expanded business facility located in this state: Provided, That if the property is owned, it must be depreciable or amortizable personal property for income tax purposes, and have a useful life of four or more years remaining at the time it is placed in service or use in this state, and if the property is leased, the primary term of the lease remaining at the time the leased property is placed in service or use in this

state, must be four or more years:

(B) Excluded property. -- The term "property purchased or leased for business expansion" shall not include:

(1) Property owned or leased by the taxpayer and for which credit was taken under article thirteen-c of this chapter prior to its repeal, on April 13, 1985, or under article thirteen-d or thirteen-e of this chapter;

(2) 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;

(3) Motor vehicles licensed by the department of motor vehicles: Provided, That such property, if purchased or leased on or after February 1, 1986, shall not be excluded by virtue of this clause (3);

(4) Airplanes;

(5) Off-premise transportation equipment: Provided, That such property, if purchased or leased on or after February 1, 1986, shall not be excluded by virtue of this clause (5);

(6) Property which is primarily used outside this state; and

(7) Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the Tax Commissioner consents to waiving this requirement.

(C) Purchase date. -- Property shall be deemed to have been purchased prior to a specified date only if:

(1) The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the purchase prior to the specified date;

(2) The machinery or equipment was owned by the taxpayer prior to the specified date or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the specified date; or

(3) In the case of leased property, there was a binding written lease or contract to lease identifiable property in effect prior to the specified date.

(20) Purchase. -- The term "purchase" means any acquisition of property, but only if:

(A) 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 States Internal Revenue Code of 1954, as amended, and in effect on January 1, 1985;

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

(C) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(1) In whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(2) Under Section 1014 (e) of the United States Internal Revenue Code of 1954, as amended, and in effect on January 1, 1985.

(21) Qualified activity. -- The term "qualified activity" means any business or other activity subject to the tax imposed by article twelve-a or thirteen (or both) of this chapter: Provided, That on and after July 1, 1987, the phrase "taxes imposed by article twelve-a or thirteen (or both) of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four of this chapter (or any one or combination of such articles of this chapter)."

(22) Related person. -- The term "related person" means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association or trust that is in control of the taxpayer;

(C) A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of subdivisions (20) and (22) of this section, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267 (c) of the United States Internal Revenue Code of 1954, as amended, other than paragraph (3) of such section.

(23) Replacement facility. -- The term "replacement facility" means any property (other than an expanded facility) that replaces or supersedes any other property located within this state that:

(A) The taxpayer or a related person used in or in connection with any activity for more than two years during the period of five consecutive years ending on the date the replacement or superseding property is placed in service by the taxpayer; or

(B) Is not used by the taxpayer or a related person in or in connection with any qualified activity for a continuous period of one year or more commencing with the date the replacement or superseding property is placed in service by the taxpayer.

(24) Taxpayer. -- The term "taxpayer" means any person subject to the tax imposed by article twelve-a or thirteen (or both) of this chapter: Provided, That on and after July 1, 1987, the phrase "taxes imposed by article twelve-a or thirteen (or both) of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four of this chapter (or any one or combination of such articles of this chapter)."

(25) This code. -- The term "this code" means the Code of West Virginia, 1931, as amended.

(26) This state. -- The term "this state" means the State of West Virginia.

(27) Used property. -- The term "used property" means property acquired after the twenty-eighth day of February, 1985, that is not "new property."