

WEST VIRGINIA CODE: §11-13D-2

§11-13D-2. Definitions.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context of its use or by definition in this article.

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

(1) "Eligible investment" means that amount determined under either section four of this article, for investment in a new or expanded or revitalized industrial facility, or under section five of this article, in the case of an eligible research and development project, under section five-a for a qualified housing development project, or under section five-b for a management information services facility.

(2) Eligible taxpayer.

(A) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial expansion, or for the purpose of revitalizing an existing industrial facility in this state; or a taxpayer who purchases property or services, or both, for the purpose of conducting an eligible research and development project in this state or for the purpose of constructing a qualified housing development project in this state.

(B) An eligible taxpayer for purposes of the management information services facility credit means a taxpayer fulfilling the requirements of paragraph (C) or (D) of this subdivision which has purchased, or leased, and placed into service or use in a management information services facility, qualified investment, as defined under section five-b of this article, of \$2 million or more over a time period of not more than three hundred sixty-five consecutive days and which operates such management information services facility, without regard to whether such taxpayer is an industrial taxpayer or engages in an industrial business or operates an industrial facility as herein defined.

(C) An eligible taxpayer for purposes of the management information services facility credit is a person or entity which had no operations and owned or leased no property in West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia, and which is not a successor in business to any person or entity which had operations or owned or leased property in West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia.

A person or entity shall not constitute an eligible taxpayer for purposes of the management information services facility credit if any related person (as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended) had operations or owned or leased property in

West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia or if any such related person is a successor in business to any person or entity which had operations or owned or leased property in West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia.

(D) Notwithstanding paragraph (C) of this subdivision, a person, entity, successor in business which would otherwise not constitute an eligible taxpayer under paragraph (C) of this subdivision may nevertheless constitute an eligible taxpayer for purposes of this management information services facility credit if such person, entity, successor places qualified investment into service or use in West Virginia for the purpose of establishing in this state a management information services facility that is new to West Virginia and which services do not include any management information services previously conducted by such person, entity, successor, or a related person (as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended) in West Virginia, or if such person, entity or successor places qualified investment into service or use in West Virginia in a management information services facility for the purpose of consolidating or relocating significant existing national, regional or international management information services operations in West Virginia, and such consolidation or relocation results in the placement of at least \$2 million of qualified investment into service or use in West Virginia within the time periods described in paragraph (B) of this subdivision, and such consolidation or relocation results in the relocation of significant management information services operations into West Virginia which did not previously exist in West Virginia, and the taxpayer otherwise constitutes an eligible taxpayer under such paragraph (B). For purposes of this section, the term "regional" means an area including more than one state or portions of more than one state of the United States.

(3) "Eligible research and development project" means a research and development project engaged in or conducted within this state, by a person who is engaged in this state in the business of producing natural resources or in an industrial business when such research and development project is conducted for purposes relating to the technical, economic, financial, engineering or marketing aspects of expanding markets for, and increasing sales of, this state's natural resource products, or industrial products, or both.

(4) "Industrial business" means any privilege taxable under section two-b or two-m, article thirteen of this chapter, and includes a manufacturing service taxable under section two-h of said article: Provided, That on and after July 1, 1987, the term "industrial business" shall mean the business of manufacturing, compounding or preparing tangible personal property for sale, profit or commercial use, the business of generating electric power, and the business of providing a manufacturing service, which were taxable, respectively, under sections two-b, two-m and two-h, article thirteen of this chapter, on January 1, 1985.

(5) "Industrial facility" means any factory, mill, plant, refinery, warehouse, buildings or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within

such facility used in connection with the operation of such facility in an industrial business.

(6) "Industrial revitalization" means capital investment in an industrial facility located in this state to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with the operation of such facility in an industrial business of the taxpayer, including the acquisition of any real property necessary to the industrial revitalization.

(7) "Industrial expansion" means capital investment in a new or expanded industrial facility in this state.

(8) "Industrial taxpayer" means any person subject to business and occupation taxes under article thirteen of this chapter, exercising any privilege taxable under section two-b or two-m of said article thirteen, or providing a manufacturing service taxable under section two-h of said article thirteen: Provided, That on and after July 1, 1987, "industrial taxpayer" shall mean any person subject to tax under section two-m, article thirteen of this chapter; or any person subject to tax under article thirteen-a or twenty-three of this chapter engaging in any activity that was taxable under section two-b, article thirteen of this chapter, on January 1, 1985; or any person taxable under article twenty-three of this chapter providing a manufacturing service that was taxable under section two-h, article thirteen of this chapter on January 1, 1985.

(9) "Management information services facility" means a building, or any part thereof, or a complex of buildings, or any part thereof, including the machinery and equipment located therein, that is exclusively dedicated to providing management information services to the owner or operator thereof or to another person.

(10) "Management information services" means, and is limited to, data processing, data storage, data recovery and backup, programming recovery and backup, telecommunications, computation and computer processing, computer programming, electronic information, and data management activities, or any combination of such activities, when such activity, or activities, is not subject to regulation by the West Virginia Public Service Commission and such activity, or activities, is for the purpose of managing, planning for, organizing or operating, any industrial or commercial business, or any enterprise, facility or facilities of an industrial or commercial business, whether such industrial or commercial business or enterprise, facility or facilities of an industrial or commercial business is located within or without this state and without regard to whether such industrial or commercial business, or enterprise, facility or facilities of an industrial or commercial business is owned by the provider of the management information services or by a "related person", as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended.

(11) "Manufacturing service" means a privilege that would be taxable under section two-b, article thirteen of this chapter, if title to the raw materials used in the manufacturing process was vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(12) Subject to subdivision (15) below, "property purchased for an eligible research and development project" means real property, and improvements thereto, and tangible personal property, but only if such real or personal property is constructed or purchased on or after July 1, 1985, for use as a component part of an eligible research and development project which is located within this state on or after July 1, 1985. This term includes only tangible personal property with respect to which depreciation or amortization, in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax liability of the purchaser under article twenty-one or twenty-four of this chapter. Property acquired by written lease for a term of ten years or longer, if used as a component part of an eligible research and development project, shall be included within this definition.

(13) Subject to subdivision (15) below, "property purchased for industrial expansion" means real property, and improvements thereto, and tangible personal property, but only if such property was constructed, or purchased, on or after July 1, 1969, for use as a component part of a new or expanded industrial facility as defined in subdivision (5) of this subsection located within this state. This term includes only tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax liability of the industrial taxpayer under articles twenty-one or twenty-four of this chapter, and has a useful life, at the time such property is placed in service or use in this state, of four years or more. Property acquired by written lease, for a primary term of ten years or longer, if used as a component part of a new or expanded industrial facility, shall be included within this definition.

(14) Subject to subdivision (15) below, "property purchased for industrial revitalization" means real property, and improvements thereto, and new tangible personal property, but only if such property was constructed, or purchased, on or after July 1, 1981, for use as a component part of an ongoing industrial facility as defined in subdivision (5) of this subsection located within this state. This term includes only tangible personal property with respect to which depreciation is allowable in determining the personal income tax or corporation net income tax liability of the industrial taxpayer under article twenty-one or twenty-four of this chapter, and has a useful life at the time the property is placed in service or use in this state of four years or more. Property acquired by written lease for a primary term of ten years or longer, if used as a component part of an industrial revitalization, shall be included within this definition.

(15) "Property purchased for industrial expansion", "property purchased for industrial revitalization", "property purchased for an eligible research and development project", "property purchased for a qualified housing development project" and "property purchased or leased for a management information services facility" shall not include:

(A) 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;

(B) Motor vehicles licensed by the department of motor vehicles;

(C) Airplanes;

(D) Off-premise transportation equipment;

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

(F) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his industrial business in this state, or which property was previously designated "property purchased for industrial expansion", or "property purchased for industrial revitalization", or "property purchased for an eligible research and development project", or "property purchased for a qualified housing development project", and used to qualify for business and occupation tax credit for industrial expansion or revitalization, or for an eligible research and development project, or for a qualified housing development project, or property which was subject to or gave rise to the management information services facility credit in the hands of the transferor, except that successors in business shall have successor credit available pursuant to section seven of this article.

(16) Subject to subdivision (15) above, property purchased for a qualified housing development project means real property, and improvements thereto, and tangible personal property incorporated into real property, whether or not attached thereto, but only if such real or tangible personal property was constructed, or purchased, on or after July 1, 1986, for use as a component part of a housing development project, as defined in section five-a of this article, located within this state.

(17) Subject to subdivision (15) above, "property purchased or leased for a management information services facility" means tangible personal property purchased from a West Virginia vendor in West Virginia or leased through or from a West Virginia vendor for a primary lease term of three years or more. For purposes of this section the term "tangible personal property" shall include prewritten or "canned" computer software, "custom" software and computer programming services which result in the production of custom software: Provided, That the term "property purchased or leased for a management information services facility" shall not include:

- (A) Land or building or any part thereof whether leased or purchased;
- (B) Natural resources in place;
- (C) Property, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use;
- (D) Property purchased or leased or placed in service or use prior to April 1, 1991, or property purchased or leased or placed in service or use after March 31, 1993; or
- (E) Property purchased for use in a management information services facility when such property is not purchased for the purpose of either:

(i) Expanding an existing management information services facility in West Virginia pursuant to a relocation or consolidation of significant national, regional or international management information services operation to West Virginia; or

(ii) Establishing in this state a management information services facility that is new to West Virginia.

(18) Property shall be deemed to have been purchased prior to a specified date only if:

(A) 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 taxpayer prior to the specified date;

(B) 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 such date; or

(C) 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.

(19) "Taxpayer" means any person taxable under article thirteen of this chapter: Provided, That on and after July 1, 1987, "taxpayer" shall mean any person taxable under article thirteen, thirteen-a or twenty-three of this chapter.