WEST VIRGINIA CODE: §11-13E-2

§11-13E-2. Definitions.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in article thirteen or thirteen-a of this chapter, 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) "Coal loading facility" means any building or structure specifically designed and solely used to transfer coal from a coal processing or preparation facility, or from a coal storage facility, or both, or from any means of transportation, to any means of rail or barge transportation used to move coal, including such land as is directly associated with and solely used for the coal loading facility, and including any device or combination of machinery and equipment that is directly associated with and solely used for the loading of coal. This definition applies only when the transfer is to any means of rail or barge transportation and specifically excludes the transfer to any other form of transportation. This may include, but is not limited to, the coal loading tipple, conveyors, coal storage facilities, weighing equipment and rail trackage, if they are directly associated with and solely used for the loading of coal. In no event may the eligible investment in a coal loading facility, for purposes of this credit, include the cost of any coal processing, preparation, blending or sizing facility or equipment, or any combination thereof, even though physically a part of the coal loading facility, and even though such coal processing, preparation, blending or sizing facility or equipment, or any combination thereof, is necessary or essential to the loading of commercially usable or marketable coal.

(2) "Eligible taxpayer" means any person subject to tax under article thirteen, thirteen-a or twenty-three of this chapter who purchases real or personal property, or a combination thereof, for the purpose of building or constructing a new or expanded coal loading facility in this state, or who revitalizes an existing coal loading facility located in this state, and upon completion, operates the new or expanded or revitalized coal loading facility: Provided, That on and after July 1, 1987, the phrase "subject to tax under article thirteen of this chapter" shall mean "subject to tax under article thirteen-a or twenty-three of this chapter."

(3) "Revitalization" means capital investment in a coal loading facility located in this state to replace or modernize buildings, structures, equipment, machinery and other tangible personal property directly associated with and solely used in the operation of a coal loading facility, including the acquisition of any real property directly associated with and solely used in the operation of a revitalized coal loading facility.

(4) Subject to subdivision (5) below, "property purchased for a coal loading facility" means real property and improvements thereto and tangible personal property, but only if such real or personal property is constructed or purchased for use as a component part of a new or

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expanded coal loading facility, or the revitalization of an existing coal loading facility 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 due 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 term of ten years or longer, if used as a component part of a coal loading facility, shall be included within this definition.

(5) "Property purchased for a coal loading facility" shall not include:

(A) Property which qualifies or was qualified for credit under articles thirteen-c or thirteen-d of this chapter;

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

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

(D) Airplanes;

(E) Off-premise transportation equipment;

(F) Property which is primarily used outside this state;

(G) Property purchased prior to April 1, 1983; and

(H) Property which is acquired incident to the purchase of the stock or assets of a taxpayer which property was or had been used by the seller in his business in this state, or which property was previously designated "property purchased for industrial expansion" or "property purchased for industrial revitalization" under article thirteen-d of this chapter and used to qualify for the tax credit provided by either of said articles.

(6) 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.

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