WEST VIRGINIA CODE: §11-13J-3

§11-13J-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. —

"Affiliate" includes all business entities which are affiliates of each other when either directly or indirectly:

(A) One business entity controls or has the power to control the other business entity; or

(B) A third party or third parties control or have the power to control both affiliates. In determining whether business entities are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

"Capacity building" means to generally enhance the capacity of the community to achieve improvements and to obtain the community services described in subparagraphs (i) through (v), inclusive, of the definition of that term, as set forth in this subsection. Capacity building includes, but is not limited to, improvement of the means, or capacity, to:

(i) Access, obtain and use private, charitable and governmental assistance programs, administrative assistance and private, charitable and governmental resources or funds;

(ii) Fulfill legal, bureaucratic and administrative requirements and qualifications for accessing assistance, resources or funds; and

(iii) Attract and direct political and community attention to needs of the community for the purpose of increasing access to and use of assistance, resources or funds for a given purpose, goal or need.

"Commissioner or Tax Commissioner" are used interchangeably in this article and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

"Community services" means services, provided at no charge whatsoever, of:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

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(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens; without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or

(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

“Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

“Community-based” means:

(i) The project is to be managed locally, without national, state, multistate or international affiliations;

(ii) The project will benefit local citizens in the immediate geographic area where the project is to operate; and

(iii) The sponsor of the project is a local entity, rather than a statewide, national or international organization or an affiliate of a statewide, national or international organization.

“Corporation” means any corporation, joint-stock company or association and any business conducted by a trustee or trustees in which interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

“Crime prevention” means any activity which aids in the reduction of crime.

“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 Division 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.

“Direct need programs” means a program, organization or community endowment that serve persons whose annual income is no more than 125 percent of the federal poverty level with

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self-reliance and independence from government assistance as its primary objective.

“Director or Director of the West Virginia Development Office” means the Director of the West Virginia Development Office.

“Economically disadvantaged area” means any region of the state with a poverty rate greater than the average statewide poverty rate as determined by the U. S. Census Bureau’s most recently published data.

“Economically disadvantaged citizen” means a natural person, who during the current taxable year has, or during the immediately preceding taxable year had, an annual gross personal income not exceeding one hundred twenty-five percent of the federal designated poverty level for personal incomes, and who is a domiciliary and resident of this state.

“Education” means any type of scholastic instruction to, or scholarship by, an individual that enables that individual to prepare for better life opportunities. Education does not include courses in physical training, physical conditioning, physical education, sports training, sports camps and similar training or conditioning courses, except for physical therapy prescribed by a physician or other person licensed to prescribe courses of medical treatment under this code.

“Eligible contribution” consists of:

(A)(i) Cash;

(ii) Tangible personal property, valued at its fair market value;

(iii) Real property, valued at its fair market value;

(iv) In-kind professional services, valued at seventy-five percent of fair market value; and

(v) Publicly traded common or preferred stock representing ownership in a corporation, valued at its fair market value in accordance with the regulations of the Internal Revenue Service: Provided, That contributed stock shall be sold by the project transferee within one hundred eighty days of its receipt.

(B) For purposes of this definition, the value of in-kind professional services will not qualify as an eligible contribution unless the services are:

(i) Reasonably priced and valued, and reasonably necessary services customarily and normally provided by the contributor in the normal course of business to customers, clients or patients other than those encompassed by the project plan;

(ii) Not reimbursable, in whole or in part, from sources other than the tax credit provided under this article; and

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(iii) Services which are not available without cost elsewhere in the community;

(C) "Professional services" means only those services provided directly by a physician licensed to practice in this state, those services provided directly by a dentist licensed to practice in this state, those services provided directly by a lawyer licensed to practice in this state, those services provided directly by a registered nurse, licensed practical nurse, dental hygienist or other health care professional licensed to practice in this state, those services provided directly by a certified public accountant or public accountant licensed to practice in this state, and those services provided directly by an architect licensed to practice in this state;

(D) Minimum contribution. — No contribution of cash, stock, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value of less than $500 qualifies as an eligible contribution;

(E) Maximum contribution. — No contribution of cash, stock, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value in excess of $200,000 qualifies as an eligible contribution; and

(F) Limitations. — Not more than twenty-five percent of total eligible contributions to a certified project may be in-kind contributions. Not more than twenty-five percent of total eligible contributions made by any taxpayer to any certified project may be in-kind contributions.

Eligible taxpayer. —

(A) "Eligible taxpayer" means any person subject to the taxes imposed by article twenty-one, twenty-three or twenty-four of this chapter which makes an eligible contribution to a qualified charitable organization pursuant to the terms of a certified project plan for the purpose of providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education for individuals not employed by the contributing taxpayer or an affiliate of the contributing taxpayer or a person related to the contributing taxpayer;

(B) "Eligible taxpayer" also includes an affiliated group of taxpayers if the group elects to file a consolidated corporation net income tax return under article twenty-four of this chapter and if one or more affiliates included in the affiliated group would qualify as an eligible taxpayer under paragraph (A) of this subdivision.

"Emergency assistance" means the provision of basic needs including shelter, clothing, food, water, medical attention or supplies, personal safety, or funds to obtain these to an individual facing circumstances that prevent him or her from securing or maintaining these basic needs.

"Includes and including", when used in a definition contained in this article, shall not be

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considered to exclude other things otherwise within the meaning of the term defined.

“Job training” means instruction to an individual that enables the individual to acquire vocational skills to become employable or able to seek a higher grade of employment.

“Natural person or individual” means a human being. The terms “natural person” and “individual” do not mean, and specifically exclude, any corporation, limited liability company, partnership, joint venture, trust, organization, association, agency, governmental subdivision, syndicate, affiliate or affiliation, group, unit or any entity other than a human being.

“Neighborhood assistance” means either:

(A) Furnishing financial assistance, labor, material and technical advice to aid in the physical or economic improvement of any part or all of an economically disadvantaged area; or

(B) Furnishing technical advice to promote higher employment in an economically disadvantaged area.

“Neighborhood organization” means any organization:

(A) Which is performing community services, as defined in this section; and

(B) Which is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code.

“Partnership and partner” 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 a syndicate, group, pool, joint venture or organization.

“Person” includes any natural person, corporation, limited liability company or partnership.

“Project transferee” means any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person that receives an eligible contribution or part of an eligible contribution from an eligible taxpayer for the purpose of directly or indirectly providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education or other services or assistance pursuant to a project plan. The project transferee is typically the first entity or person receiving eligible contributions from eligible taxpayers under a project plan. However, in the case of eligible contributions of in-kind services or other eligible contributions or portions of those contributions made pursuant to a certified project plan directly to indigent, disadvantaged or needy persons, economically disadvantaged citizens or other persons or organizations under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other

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organization, entity or person as a certified project participant, the eligible contributions shall be considered to have been made to the entity, organization or person under whose sponsorship or auspices the eligible contributions are made, and that entity, organization or person is considered to be the project transferee with relation to those eligible contributions. The project transferee is the entity, organization or person that is liable under this article for payment of the project certification fee to the West Virginia Development Office. The term "project transferee" means and includes any considered project transferee, considered as such under the provisions of this article.

"Qualified charitable organization" means a neighborhood organization, as defined in this section, which is the sponsor of a project which has received certification by the Director of the West Virginia Development Office pursuant to the requirements of this article: Provided, That no organization may qualify as a qualified organization for purposes of this article if the organization is not registered with this state as required under the Solicitation of Charitable Funds Act.

"Related person" or "person related to" a stated taxpayer means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

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

For purposes of this article, "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 the corporation which entitles its owner 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 the 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), other than paragraph (3) of that section, of the United States Internal Revenue Code, as amended.

"State fiscal year" means a twelve-month period beginning on July 1 and ending on June 30.

"Taxpayer" means any person subject to the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter, or any one or combination of the articles of this chapter.

"Technical assistance" means:

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(A) Assistance in understanding, using and fulfilling the legal, bureaucratic and administrative requirements and qualifications which must be negotiated for the purpose of effectively accessing, obtaining and using private, charitable, not-for-profit or governmental assistance, resources or funds, and maximizing the value of the assistance, resources or fund;

(B) Assistance provided by any person holding a license under West Virginia law to practice any licensed profession or occupation, by which the person, in the practice of the profession or occupation, assists economically disadvantaged citizens or the persons in an economically disadvantaged area by:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or

(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

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