WEST VIRGINIA CODE: §11-13L-2

§11-13L-2. 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 the context in which the term is used.

(b) Terms defined.

(1) "Affiliate" means and includes all persons, as defined in this section, which are affiliates of each other when either directly or indirectly:

(A) One person controls or has the power to control the other, or

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

(2) "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of West Virginia, or the Tax Commissioner's delegate.

(3) "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.

(4) "Delegate", when used in reference to the Tax Commissioner, means any officer or employee of the Tax Division of the Department of Tax and 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.

(5) "Eligible taxpayer" means any person subject to the tax prescribed by section two-e, article thirteen of this chapter that had at least one qualified employee on January 1, 1996. "Eligible taxpayer" also means and includes those members of an affiliated group of taxpayers engaged in a unitary business, in which one or more members of the affiliated group is a person subject to the tax prescribed by section two-e, article thirteen of this chapter that had at least one qualified employee on January 1,1996. Affiliates not engaged in the unitary business with an affiliated group member subject to the tax prescribed by section two-e, article thirteen of this chapter that had at least one qualified employee on January 1, 1996, do not qualify as eligible taxpayers.

(6) "Full-time employee" means an employee who works, is on a work site, on paid vacation leave or other paid leave, in the aggregate, at least one thousand five hundred hours per

WV Legislature

year.

(7) "Natural person" or "individual" means a human being.

(8) "New job" means a full-time employment position held by a West Virginia resident domiciled in this state which did not exist in this state with any employer prior to the taxpayer's current taxable year.

(9) "Partnership" and "partner" means and 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.

(10) "Person" means and includes any natural person, corporation, limited liability company or partnership.

(11) "Qualified employee" means a West Virginia resident domiciled in this state who is a full-time employee of a taxpayer.

(12) "Related entity", "related person", "entity related to" or "person related to" 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) of the United States Internal Revenue Code, as amended: Provided, That paragraph (3) of section 267(c) of the United States Internal Revenue Code shall not apply.

(13) "Tax year" or "taxable year" means the tax year of the taxpayer for federal income tax

WV Legislature

purposes.

(14) "Taxpayer" means any person subject to the tax prescribed by section two-e, article thirteen of this chapter.

(15) "Unitary business" means a business structured so that the operations of the business segments of a corporation, including segments consisting of members of an affiliated group of commonly owned and controlled corporations or entities, contribute to or depend on each other in such a way as to result in functional integration between business segments in engaging in the natural gas business. "Unitary natural gas business" includes business segments involved in the exploration, development, purchase, transportation, storage, marketing, distribution and sale of natural gas and distribution and sale of heavier hydrocarbons, such as propane, and such business segments or affiliates which provide services supporting any of the foregoing natural gas business activities. Where the taxpayer asserts that business segments are unitary, the taxpayer has the burden of proof.

WV Legislature