WEST VIRGINIA CODE: §11-13LL-3

§11-13LL-3. Definitions.

(a) Any term used in this article has the meaning ascribed by this section 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) “Combined group” means a combined group as defined in §11-24-3a of this code and all members of a combined return in this state.

(2) “Defined benefit” means money payments, emoluments, rights, benefits, asset transfers and any other form of disbursement or outlay derived from a defined benefit plan as defined in 26 USC §414, or 29 USC §1002.

(3) “Eligible certificate holder” means an eligible taxpayer certified as a qualified labor intensive heavy industrial manufacturing project.

(4) “Eligible taxpayer” means an industrial taxpayer who purchases property for the purpose of industrial expansion or for the purpose of industrial revitalization in this state.

(5) “Employee benefits” means payments by a taxpayer for a full-time employee for: health insurance; life insurance; dental insurance; vision insurance; defined benefits; or as contributions to a qualified cash or deferred compensation arrangement within the meaning of Section 401(k) of the Internal Revenue Code or similar qualified plans.

(6) “Flow-through entity,” “conduit entity,” or “pass through entity” means an S Corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term “flow-through entity,” “conduit entity,” or “pass through entity” includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 USC §78l: *Provided*, That a publicly traded partnership as defined in section 7704 of the Internal Revenue Code having equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 USC §78l, that is treated as a C corporation for federal income tax purposes, shall be treated as a corporation taxable under §11-24-1 *et seq.* of this code.

(7) “Full-time employee” means an employee employed in the state for at least an average of 140 hours per month during employment with an average hourly wage including employee benefits of more than 200 percent of the prevailing federal minimum wage. The prevailing federal minimum wage shall be the federal minimum wage effective as of the date of certification of a taxpayer as a qualified labor intensive heavy industrial manufacturing

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project.

(8) “Industrial expansion” means capital investment in a new or expanded industrial facility in this state.

(9) “Industrial facility” means any factory, mill, plant, refinery, warehouse, building, or complex of buildings located within this state, including the land on which foregoing is located, and all machinery, equipment, and other real and tangible personal property located at or associated with the facility used in connection with the operation of the manufacturing business.

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

(11) “Industrial taxpayer” means any taxpayer who is primarily engaged in a manufacturing business.

(12) “Qualified labor intensive heavy industrial manufacturing project” means a project certified as a qualified labor intensive heavy industrial manufacturing project by a duly authorized representative of the West Virginia Department of Economic Development on or after January 1, 2022 in which the taxpayer is expected to:

(A) Invest at least $2 billion in property purchased for manufacturing investment and placed in service or put in use at an industrial facility in this state;

(B) Hire at least 500 full-time employees during the period beginning with the date of the first property purchased for manufacturing investment in this state and ending within 36 months after the taxable year in which at least $2 billion in property purchased for manufacturing investment is placed in service or put in use at an industrial facility in this state; and

(C) Meets the definition of manufacturing under this article.

Upon certification by the West Virginia Department of Economic Development, as a qualified labor intensive heavy industrial manufacturing project, an eligible taxpayer may begin claiming the credits allowable by this article. If an eligible certificate holder fails to meet the requirements of subdivision (12), subsection (b) of this section within 72 months of certification, the taxpayer shall increase its tax liability for the current taxable year by an amount equal to the amount of credit which was used pursuant to this article to reduce any tax liability in earlier years.

(13) “Manufacturing” means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification

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System code number of 31, 32, or 33. For purposes of this article, manufacturing also includes the processing and separation of gases including into compressed, liquid and solid forms.

(14) "Person" means includes any natural person, corporation or partnership or flow-through entity.

(15) "Property purchased for manufacturing investment" means real property, and improvements thereto, and tangible personal property but only if the property was constructed or purchased on or after January 1, 2022, for use as a component part of a new, expanded, or revitalized industrial facility. This term includes only that tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the federal income tax liability (per United States Federal income tax laws in effect as of December 31, 2021) of the industrial taxpayer, that 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 10 years or longer, if used as a component part of a new or expanded industrial facility, is included within this definition.

(A) "Property purchased for manufacturing investment" does not include:

(i) 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;

(ii) Motor vehicles licensed by the Division of Motor Vehicles;

(iii) Airplanes;

(iv) Off-premises transportation equipment;

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

(vi) 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 or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(B) Purchases or acquisitions of land or depreciable property qualify as purchases of property purchased for manufacturing investment for purposes of this article only if:

(i) 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 1986, as defined in §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The Tax

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Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under section 1014(e) of the United States Internal Revenue Code of 1986.

(16) "Qualified manufacturing investment" means that amount determined under §11-13LL-5 of this code as qualified manufacturing investment.

(17) "Taxpayer" means any person subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, or any combination of those articles of this chapter. The term "taxpayer" includes owners of a flow-through entity, the owners of which receive conduit income from the flow-through entity, on which income owners are required to pay the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, or any combination of those articles. For purposes of this article, reference to the term "taxpayer" also includes the flow-through entity acting on behalf of, or in the stead of, such owners.

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