WEST VIRGINIA CODE: §11-13O-2

§11-13O-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" includes any corporation, a joint-stock company and any association or other organization which is classified as a corporation under federal income tax law.

(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 a person who after June 30, 1998, begins manufacturing a value-added aluminum or polymer product at a new manufacturing facility located in this state, or begins manufacturing a new value-added aluminum or polymer product line at an existing manufacturing facility located in this state, which results in the creation of new jobs filled by full-time employees.

(6) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the service does not have control of the payment of wages for such services, the term ?employer" means the person having control of the payment of such wages.

(7) "Existing manufacturing facility" means a building which at anytime during the twelve

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months preceding the month in which manufacture of a value-added aluminum or polymer product begins was used by the taxpayer, or by a related person, to manufacture tangible personal property.

(8) "Full-time employee" means a permanent hourly employee of an eligible taxpayer, who is a West Virginia domiciled resident, and works in a new value-added aluminum or polymer product manufacturing facility in this state, or in a new value-added aluminum or polymer product line of an existing manufacturing facility in this state, more than eighteen hundred hours during the entire twelve-month period ending on the last day of the taxable year of the eligible employer, whether these hours are hours worked at the manufacturing facility, or include hours of employer paid vacation leave or other employer paid leave. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.

(9) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, of the United States.

(10) "Manufacturing facility" means any facility which is used in the manufacturing of tangible personal property (including processing resulting in a change in the condition of such property).

(11) "New value-added aluminum or polymer product line" means the manufacture of a value-added aluminum or polymer product in an existing manufacturing facility in this state that first begins manufacturing the new value-added aluminum or polymer product line after June 30, 1998.

(12) "New value-added aluminum product manufacturing facility" means a building that is primarily used by the eligible taxpayer to manufacture a value-added aluminum product that is first placed in service and used for that purpose by the eligible taxpayer after June 30, 1998. If the facility was used by the taxpayer, or by a related person, to manufacture tangible personal property at any time during the twelve months preceding the month in which the facility is first used by the taxpayer to manufacture a value-added aluminum or polymer product, the building is not a new value-added aluminum or polymer product manufacturing facility.

(13) "New job" means a job at a new value-added aluminum or polymer product manufacturing facility located in this state, or at a new value-added aluminum or polymer product line at an existing manufacturing facility located in this state, which did not exist in this state with any employer as of the first day of the second calendar month preceding the calendar month in which the new value-added aluminum or polymer product manufacturing facility begins to manufacture value-added aluminum or polymer products, or in which the new value-added aluminum or polymer product line begins to manufacture value-added aluminum or polymer products in an existing manufacturing facility located in this state, that is filled by a full-time employee of the eligible taxpayer.

(14) "Partnership" 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, which is classified as a partnership for federal income tax purposes for the taxable year.

(15) "Partner" includes a member in a syndicate, group, pool, joint venture or organization classified as a partnership for federal income tax purposes for the taxable year.

(16) "Part-time employee" means any employee who normally works twenty hours or less per week.

(17) "Seasonal employee" means an employee who normally works on a full-time basis less than five months in a year.

(18) "Temporary employee" means an employee performing services under a contractual arrangement with the employer of two years or less duration.

(19) "Person" means and includes an individual, a trust, estate, partnership, limited liability company, association, company or corporation.

(20) "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 subdivision (3) of this subsection, "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 Internal Revenue Code: Provided, That paragraph (3) of section 267(c) of the Internal Revenue Code shall not apply.

(21) "Tax year" or "taxable year," means the tax year of the taxpayer for federal income tax purposes.

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

(23) "Value-added aluminum or polymer product" means any product that adds to, increases or enhances the value of any raw, base or unimproved aluminum or polymer product through processes including, but not limited to, anodization, coating, fabrication, machining, molding, extraction, stamping and any other processing which adds value.

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