WEST VIRGINIA CODE: §11-13R-3

§11-13R-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. --

(1) "Base amount" means:

(A) The average annual combined qualified research and development expenditure for the three taxable years immediately preceding the taxable year for which a credit is claimed under this article;

(B) For a taxpayer that has filed a tax return under article twenty-three of this chapter for fewer than three but at least one prior taxable year, determined on the basis of all filings by the taxpayer's controlled group, the base amount is the average annual combined qualified research and development expenditure for the number of immediately preceding taxable years, other than short taxable years, during which the taxpayer has filed a tax return under article twenty-three of this chapter; or

(C) For a taxpayer that has not filed a tax return under article twenty-three of this chapter for at least one taxable year, determined on the basis of all filings by the taxpayer's controlled group, the base amount is zero.

(2) "Commissioner" and "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia or his or her delegate.

(3) "Controlled group" means a controlled group as defined by section 1563 of the Internal Revenue Code of 1986, as amended.

(4) "Corporation" means any corporation, limited liability company, 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.

(5) "Delegate" in the phrase "or his or her delegate," when used in reference to the Tax Commissioner, means any officer or employee of the State 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.

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(6) "Eligible taxpayer" means any person that is subject to the tax imposed by article twenty-three or article twenty-four of this chapter that is engaged in qualified research and development that has paid or incurred investment in qualified research and development credit property or that has paid or incurred qualified research and development expenses as defined in section four of this article. In the case of a sole proprietorship subject to neither the tax imposed by article twenty-three nor the tax imposed by article twenty-four, the term "eligible taxpayer" means any sole proprietor who is subject to the tax imposed by article twenty-one of this chapter and who is engaged in qualified research and development that has paid or incurred investment in qualified research and development credit property or that has paid or incurred qualified research and development expenses as defined in section four of this article.

(7) "Partnership" 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 such a syndicate, group, pool, joint venture or other organization.

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

(9) "Qualified research and development credit property" means depreciable property purchased for the conduct of qualified research and development.

(10) "Research and development" means systematic scientific, engineering or technological study and investigation in a field of knowledge in the physical, computer or software sciences often involving the formulation of hypotheses and experimentation for the purpose of revealing new facts, theories or principles or increasing scientific knowledge which may reveal the basis for new or enhanced products, equipment or manufacturing processes.

(A) Research and development includes, but is not limited to, design, refinement and testing of prototypes of new or improved products or equipment or the design, refinement and testing of manufacturing processes before commercial sales relating thereto have begun. For purposes of this section, commercial sales includes, but is not limited to, sales of prototypes or sales for market testing.

(B) Research and development does not include:

(i) Market research;

(ii) Sales research;

(iii) Efficiency surveys;

(iv) Consumer surveys;

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(v) Product market testing;

(vi) Product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability;

(vii) The ordinary testing or inspection of materials or products for quality control;

(viii) Management studies;

(ix) Advertising;

(x) Promotions;

(xi) The acquisition of another's patent, model, production or process or investigation or evaluation of the value or investment potential related thereto;

(xii) Research in connection with literary, historical or similar activities;

(xiii) Research in the social sciences, economics, humanities or psychology and other nontechnical activities; and

(xiv) The providing of sales services or any other service, whether technical service or nontechnical service.

(11) "Related person" means:

(A) A corporation, limited liability company, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer;

(C) A corporation, limited liability company, partnership, association or trust controlled by an individual, corporation, partnership, association or trust 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 entitled 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 is determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code of 1986, as amended, other than

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paragraph (3) of that section. (12) "Taxpayer" means any person subject to the tax imposed by article twenty-three or twenty-four of this chapter or both. In the case of a sole proprietorship subject to neither the tax imposed by article twenty-three nor the tax imposed by article twenty-four, the term "taxpayer" means any sole proprietor who is subject to the tax imposed by article twenty-one of this chapter. (13) "This code" means the Code of West Virginia, 1931, as amended.

(14) "This state" means the State of West Virginia.

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