WEST VIRGINIA CODE: §11-13S-3

§11-13S-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) “Eligible taxpayer” means an industrial taxpayer who purchases new property for the purpose of industrial expansion or for the purpose of industrial revitalization of an existing industrial facility in this state.

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

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

(4) “Industrial revitalization” or “revitalization” means capital investment in an industrial facility located in this state to 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.

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

(6) “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 System code number of 31, 32, or 33. For purposes of this article, manufacturing also includes the processing of raw natural gas or oil to recover or extract liquid hydrocarbons, which is classified under North American Industry Classification System code number 211130. This definition does not mean or include any other processes or activities classified, categorized, grouped, or identified under North American Industry Classification System code number 211130.

(7) “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, 2003, 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

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allowable in determining the federal income tax liability 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 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.

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

(9) "Taxpayer" means any person subject to any of the taxes imposed by §11-13A-1 *et seq*., §11-21-1 *et seq*., or §11-24-1 *et seq*. of this code, or any combination of those articles of this

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chapter.

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