

# WEST VIRGINIA CODE: §11-13Y-2

## §11-13Y-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 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 manufacturing business that is subject to the tax imposed under article twenty-three or twenty-four of this chapter, or both: Provided, That taxpayers owning property assessed by the board of Public Works are not eligible taxpayers for purposes of this article. "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 imposed under article twenty-three or article twenty-four of this chapter, or both. Affiliates not engaged in the unitary business do not qualify as eligible taxpayers.

(6) "Manufacturing business" means any business primarily engaged in 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 thirty-one, thirty-two or thirty-

three that also paid ad valorem property tax on manufacturing inventory to one or more West Virginia counties during the taxable year.

(7) "Manufacturing inventory" means and is limited to raw materials, goods in process and finished goods of a business primarily engaged in 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 thirty-one, thirty-two or thirty-three.

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

(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) "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), Section 267(c) of the United States Internal Revenue Code shall not apply.

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

(13) "Taxpayer" means any person subject to the tax imposed under article twenty-three or twenty-four of this chapter, or both.

(14) "Unitary business" means a unitary business as defined in section three-a, article twenty-four of this chapter.

WV Legislature