WEST VIRGINIA CODE: §11-15A-1

§11-15A-1. Definitions.

(a) General. -(When used in this article and article fifteen of this chapter, terms defined in subsection (b) of this section have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature:

(b) Definitions. —

(1) "Affiliated person" means a person that, with respect to another person:

(A) Has an ownership interest of more than five percent, whether direct or indirect, in the other person; or

(B) Is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

(2) "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of direct or indirect economic gain, benefit or advantage, and includes any purposeful revenue generating activity in this state;

(3) "Consumer" means any person purchasing tangible personal property, custom software or a taxable service from a retailer as defined in §11-15A-1(b)(23), or from a seller as defined in §11-15B-2 of this code;

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(5) "Fiat currency" means government-issued currency that is designated as legal tender in its country of issuance through government decree, regulation, or law;

(6) "Lease" includes rental, hire and license;

(7) "Marketplace" includes any means by which any marketplace seller sells or offers for sale tangible personal property, custom software, or services, for delivery into this state, regardless of whether the marketplace seller has a physical presence in this state;

(8) "Marketplace facilitator" means a person that contracts with one or more sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller’s products through a physical or electronic marketplace operated by the person, and engages:

WV Legislature

(A) Directly, or indirectly, through one or more affiliated persons, in any of the following:

(i) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;

(ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;

(iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or

(iv) Software development or research and development activities related to any of the activities described in §11-15A-1(b)(7)(B) of this code, if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(B) In any of the following activities with respect to the seller's products:

(i) Payment processing services;

(ii) Fulfillment or storage services;

(iii) Listing products for sale;

(iv) Setting prices;

(v) Branding sales as those of the marketplace facilitator;

(vi) Order taking;

(vii) Advertising or promotion; or

(viii) Providing customer service or accepting or assisting with returns or exchanges.

(C) This term does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle payment transactions between two parties.

(9) "Marketplace seller" means a seller that makes retail sales through any physical or electronic marketplaces operated by a marketplace facilitator or directly resulting from a referral by a referrer, regardless of whether the seller is required to be registered with the Tax Commissioner as provided in §11-12-1 et seq. of this code.

(10) "Newspaper" means a paper that is printed and distributed usually daily or weekly and that contains news, articles of opinion, features, and advertising.

(11) "Person" includes any individual, firm, partnership, joint venture, joint stock company,

WV Legislature

association, public or private corporation, limited liability company, limited liability partnership, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other group or combination acting as a unit, and the plural as well as the singular number;

(12) "Platform" means an electronic or physical medium, including, but not limited to, a website or catalog, operated by a referrer.

(13) "Product" has the same meaning as provided in §11-15B-15 of this code.

(14) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

(15) "Purchase price" means the measure subject to the tax imposed by this article and has the same meaning as sales price;

(16) "Purchaser" means any consumer who purchases or leases a product or service sourced to this state under §11-15B-1 et seq. of this code.

(17) "Referral" means the transfer by a referrer of a potential customer to a marketplace seller who advertises or lists products for sale on the referrer’s platform.

(18) (A) "Referrer" means a person, other than a person engaging in the business of printing a newspaper or publishing a newspaper as defined in §11-15A-1(b)(10) of this code, who contracts or otherwise agrees with a seller to list or advertise for sale one or more items in any medium, including a website or catalog; receives a commission, fee, or other consideration from the seller for the listing or advertisement; transfers, via telephone, internet link, or other means, a purchaser to a seller or an affiliated person to complete the sale; and does not collect receipts from the purchasers for the transaction.

(B) "Referrer" does not include a person that:

(i) Provides internet advertising services; and

(ii) Does not ever provide either the marketplace seller’s shipping terms or advertise whether a marketplace seller charges sales and use taxes.

(19) "Related person" has the same meaning prescribed by section 267 or 707(b) of the Internal Revenue Code, as defined in §11-21-9 of this code.

(20) "Remote seller" means any seller, other than a marketplace facilitator or referrer, who does not have a physical presence in this state that, through a platform, sells tangible personal property or services to persons in this state, the sale or use of which is subject to the tax imposed by this article. The term does not include an employee who in the ordinary scope of employment renders services to his or her employer in exchange for wages and

WV Legislature

salaries.

(21) "Resident" means any person that resides, is located, has a place of business, or is conducting business in West Virginia;

(22) "Retail sale" and "sale" have the same meaning as provided in §11-15B-1 et seq. of this code.

(23) "Retailer" means and includes every person engaging in the business of selling, leasing or renting tangible personal property or custom software or furnishing a taxable service for use within the meaning of this article, or in the business of selling, at auction, tangible personal property or custom software owned by the person or others for use in this state: Provided, That when in the opinion of the Tax Commissioner it is necessary for the efficient administration of this article to regard any salespersons, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors, employers or persons, the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this article;

(24) "Retailer engaging in business in this state" or any like term, unless otherwise limited by federal statute, means and includes, but is not limited to:

(A) Any retailer having or maintaining, occupying or using, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent (by whatever name called) operating within this state under the authority of the retailer or its subsidiary, irrespective of whether the place of business or agent is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant §31D-15-1 et seq. of this code or §31E-14-1 et seq. of this code; or

(B) On and after January 1, 2014, any retailer that is related to, or part of a unitary business with, a person, entity or business that, without regard to whether the retailer is admitted to do business in this state pursuant to §31D-15-1 et seq. of this code or §31E-14-1 et seq. of this code, is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related entity, a related member or part of a unitary business, all as defined in §11-24-3a of this code;

(i) That, pursuant to an agreement with or in cooperation with the related retailer, maintains an office, distribution house, sales house, warehouse or other place of business in this state;

(ii) That performs services in this state in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business;

WV Legislature

(iii) That, by any agent, or representative (by whatever name called), or employee, performs services in this state in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business; or

(iv) That directly, or through or by an agent, representative or employee located in, or present in, this state, solicits business in this state for or on behalf of the retailer, or any related entity, related member or part of the unitary business.

(C) For purposes of paragraph (B) of this subdivision, the term "service" means and includes, but is not limited to, customer support services, help desk services, call center services, repair services, engineering services, installation service, assembly service, delivery service by means other than common carrier or the United States Postal Service, technical assistance services, the service of investigating, handling or otherwise assisting in resolving customer issues or complaints while in this state, the service of operating a mail order business or telephone, Internet or other remote order business from facilities located within this state, the service of operating a website or Internet-based business from a location within the state, or any other service.

(25) "Sale" means any transaction resulting in the purchase or lease of tangible personal property, custom software or a taxable service from a retailer;

(26) "Seller" means a retailer, and includes every person selling or leasing tangible personal property or custom software or furnishing a taxable service in a transaction that is subject to the tax imposed by this article;

(27) "Solicitor" means a person that directly or indirectly solicits business for a retailer.

(28) "Streamlined sales and use tax agreement" or "agreement", when used in this article, has the same meaning as when used in §11-15B-1 et seq., except when the context in which the word agreement is used clearly indicates that a different meaning is intended by the Legislature;

(29) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, water, gas, and prewritten computer software;

(30) "Tax commissioner" or "commissioner" means the State Tax Commissioner, or his or her delegate. The term "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 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 or rules promulgated for this article;

(31) "Taxpayer" includes any person within the meaning of this section, who is subject to a

WV Legislature

tax imposed by this article, whether acting for himself or herself or as a fiduciary; and

(32) "Use" means and includes:

(A) The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the result of a taxable service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or

(B) The use or enjoyment in this state of the result of a taxable service. As used in this subdivision, "enjoyment" includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the state for use thereafter solely outside this state.

(33)(A) "Virtual currency" means any type of digital unit that is used as a medium of exchange or a form of digitally stored value. "Virtual currency" shall be broadly construed to include digital units of exchange that (i) have a centralized repository or administrator; (ii) are decentralized and have no centralized repository or administrator; or (iii) may be created or obtained by computing or manufacturing effort.

(B) "Virtual currency" shall not be construed to include any of the following:

(i) Digital units that (I) are used solely within online gaming platforms, (II) have no market or application outside of those gaming platforms, (III) cannot be converted into, or redeemed for, fiat currency or virtual currency, and (IV) may or may not be redeemable for real-world goods, services, discounts, or purchases;

(ii) Digital units that can be redeemed for goods, services, discounts, or purchases as part of a customer affinity or rewards program with the issuer and/or other designated merchants or can be redeemed for digital units in another customer affinity or rewards program, but cannot be converted into, or redeemed for, fiat currency or virtual currency; or

(iii) Digital units used as part of prepaid cards.

(34) "West Virginia gross revenue" means gross receipts from all sales sourced to West Virginia, as provided in §11-15B-1 et seq. of this code, whether the sale is taxable or exempt from tax.

(c) Additional definitions. -(Other terms used in this article are defined in articles fifteen and

WV Legislature

fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen-a. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.

WV Legislature