WEST VIRGINIA CODE: §11-21A-1

§11-21A-1. Definitions.

The following definitions apply for the purposes of this article:

(1) "Administrative adjustment request" means an administrative adjustment request filed by a partnership under I.R.C. § 6227.

(2) "Audited partnership" means a partnership subject to a federal adjustment resulting from a partnership level audit resulting in a federal adjustment.

(3) "C corporation" means any corporation that is taxed separately from its owners for federal income tax purposes and included a pass-through entity that elects to be treated as a corporation for federal income tax purposes.

(4) "Composite return partner" means a partner in a partnership that was required to be included in a West Virginia composite income tax return filed pursuant to §11-21-51a of this code in the reviewed year.

(5) "Corporate partner" means a partner that is subject to tax under §11-24-1 et seq. of this code.

(6) "Date of each final federal determination" means the date on which each adjustment or resolution resulting from an Internal Revenue Service (IRS) examination is assessed pursuant to I.R.C. § 6203.

(7) "Direct partner" means a partner that holds an interest directly in a partnership or pass-through entity.

(8) "Entity" means any person that is not an individual.

(9) "Exempt partner" means a partner that is exempt from taxation under §11-21-1 et seq. or §11-24-1 et seq. of this code except on unrelated business taxable income.

(10) "Federal adjustment" means a change to an item or amount determined under the Internal Revenue Code that is used by a taxpayer to compute West Virginia tax owed whether that change results from action by the IRS, including a partnership level audit, or the filing of an amended federal return, federal refund claim, or an administrative adjustment request by the taxpayer. A federal adjustment is positive to the extent that it increases state taxable income as determined under §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, and is negative to the extent that it decreases state taxable income as determined under §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable.

(11) "Federal adjustments report" includes methods or forms required by the Tax

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Commissioner for use by a taxpayer to report federal adjustments, including an amended West Virginia tax return, information return, or a uniform multistate report.

(12) "Federal election for alternative payment" refers to the election described in I.R.C. § 6226, relating to the alternative to payment of the imputed underpayment by partnership.

(13) "Federal partnership representative" means the person the partnership designates, for the taxable year, as the partnership's representative, or the person the IRS has appointed to act as the federal partnership representative pursuant to I.R.C. § 6223(a).

(14) "Final determination date" means the following:

(A) Except as provided in §11-21A-1(14)(B) and (C) of this code, if the federal adjustment arises from an IRS audit, or other action by the IRS, the final determination date is the first day on which no federal adjustments arising from that audit, or other action remain to be finally determined, whether by IRS decision with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the IRS and the taxpayer, the final determination date is the date on which the last party signed the agreement.

(B) For federal adjustments arising from an IRS audit or by other action of the IRS, if the taxpayer was included in a combined report filed under §11-24-13a of this code, the final determination date means the first day on which no related federal adjustments arising from that audit remain to be finally determined, as described in §11-21A-1(14)(A) of this code for the entire group.

(C) If the federal adjustment results from filing an amended federal return, a federal refund claim, or an administrative adjustment request, or if a federal adjustment reported is on an amended federal return or other similar report filed pursuant to I.R.C. § 6225(c), the final determination date is the day on which the amended return, refund claim, or administrative adjustment request or other similar report was filed.

(15) "Final federal adjustment" means a federal adjustment after the final determination date for that federal adjustment has passed.

(16) "Indirect partner" means a partner in a partnership or other pass-through entity that itself holds an indirect interest directly, or through another indirect partner, in a partnership or other pass-through entity.

(17) "Interest" in an entity means an ownership or beneficial interest in an entity.

(18) "Internal Revenue Code" or "I.R.C." means the Internal Revenue Code of 1986, as codified at 26 United States Code (U.S.C.) Section 1, et seq., as defined in §11-21-9 or §11-24-3 of this code, as applicable, for the taxable year, and any applicable regulations as promulgated by the United States Department of the Treasury.

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(19) "Internal Revenue Service" or "IRS" means the Internal Revenue Service of the United States Department of the Treasury.

(20) "Nonresident partner" means an individual, trust or estate partner that is not a resident as defined in §11-21-7 of this code.

(21) "Partner" means a person that holds an interest directly or indirectly in a partnership or other pass-through entity.

(22) "Partnership" means an entity subject to taxation under Subchapter K of the Internal Revenue Code.

(23) "Partnership adjustment" means any adjustment to a partnership-related item.

(24) "Partnership level audit" means an examination by the IRS at the partnership level pursuant to Subchapter C of Title 26, Subtitle F, Chapter 63 of the I.R.C., as enacted by the Bipartisan Budget Act of 2015, Public Law 114-74, which results in federal adjustments.

(25) "Partnership-related item" means:

(A) Any item or amount with respect to the partnership (without regard to whether or not the item or amount appears on the partnership's return and including an imputed underpayment and any item or amount relating to any transaction with, basis in, or liability of, the partnership) which is relevant (determined without regard to this article) in determining the tax liability of any person under §11-21-1 et seq. or §11-24-1 et seq. of this code; and

(B) Any partner's distributive share of any item of amount described in paragraph (A) of this subdivision.

(26) "Pass-through entity" means any partnership or other business entity that is not subject to tax under §11-24-1 et seq., imposing tax on C corporations or other entities taxable as a corporation.

(27) "Person" means and includes, but is not limited to, any individual, firm, partnership, limited partnership, copartnership, limited liability company, other pass-through entity, joint venture, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, any other group or combination acting as a unit, and also any officer, employee or member of any of the foregoing who, as an officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of §11-21-1 et seq., §11-21A-1 et seq., or §11-24-1 et seq. of this code.

(28) "Publicly traded partnership" means either of the following:

(A) A publicly traded partnership within the meaning of I.R.C. § 7704; or

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(B) Any other partnership where more than 10 percent of the profits or capital interest is owned directly or indirectly by a partnership described in §11-21A-1(28)(A) of this code.

(29) "Reallocation adjustment" means a federal adjustment resulting from a partnership level audit, or an administrative adjustment request, that changes the shares of one or more items of partnership income, gain, loss, expense or credit allocated to direct partners. A positive reallocation adjustment means the portion of a reallocation adjustment that would increase federal taxable income for one or more direct partners, and a negative reallocation adjustment means the portion of a reallocation adjustment that would decrease federal income for one or more direct partners pursuant to regulations under I.R.C. § 6225.

(30) "Resident partner" means an individual, trust, or estate partner that has his or her domicile in this state or is a resident of this state for tax purposes, as defined in §11-21-7 of this code, for the relevant period.

(31) "Reviewed year" means the taxable year of a partnership that is subject to a partnership level audit from which federal adjustments arise.

(32) "S corporation" means a corporation or pass-through entity that makes a valid election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code.

(33) "State imputed underpayment" means the netting of all final adjustments to partnership-related items at the entity level for the reviewed year (excluding any reallocations of income, expenses, gains, and losses among partners), apportioned and allocated to West Virginia at the entity level, and multiplied by the applicable West Virginia income tax rate(s) set forth in §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, for the taxable year.

(34) "State partnership adjustment report" means a form prescribed by Tax Commissioner that identifies the partnership’s direct partners, each partner’s share of adjustments to partnership-related items, and any reallocations of income, expenses, gains, and losses among such partners, that arise directly or indirectly from a partnership level audit.

(35) "State partnership audit" means an examination by the Tax Commissioner at the partnership or pass-through entity level which results in adjustments to partnership or pass-through entity related items or reallocations of income, expenses, gains, losses, credits, and other attributes among the partners for the reviewed year.

(36) "State partnership representative" means the person the partnership designates to be the partnership’s representative for West Virginia tax purposes for the reviewed year pursuant to §11-21A-3 of this code and shall be the federal partnership representative in absence of the partnership designating a West Virginia partnership representative.

(37) "Subsequent affected year" means a tax year subsequent to the reviewed year in which a federal adjustment arising from an audit of that reviewed year affects the West Virginia

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income tax owed by a taxpayer.

(38) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or his or her delegate, as provided in §11-1-1 of this code.

(39) "Taxpayer" means any person subject to the tax imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, unless the context clearly indicates otherwise, including a partnership subject to a partnership level audit or a partnership that has made an administrative adjustment request, as well as a tiered partner of that partnership.

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

(41) "Tiered partner" means any partner that is a partnership or other pass-through entity.

(42) "Tiered partnership" means any partnership or other pass-through entity that has one or more tiered partners.

(43) "Unrelated business taxable income" has the same meaning as defined in I.R.C. § 512.

(44) "West Virginia tax" means the tax imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, plus interest and additions to tax imposed pursuant to §11-10-1 et seq. of this code.

(45) "Withholding partner" means a partner in a partnership for whom the partnership was required to withhold West Virginia tax pursuant to §11-21-71a of this code or administrative authority for the reviewed year.

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