WEST VIRGINIA CODE: §11-23-3

§11-23-3. Meaning of terms; specific terms defined.

(a) General. -- When used in this article, or in the administration of this article, terms defined in this section shall have the meanings ascribed to them herein 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) Business income. -- The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer's regular trade or business operations.

(2) Capital. -- The term "capital" of a taxpayer shall mean:

(A) Corporations. -- In the case of a corporation, except an electing small business corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120, prepared following generally accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year:

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) The amount of retained earnings, appropriated and unappropriated; and

(iv) Less the cost of treasury stock.

(B) S Corporations. -- In the case of an electing small business corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120S, prepared following generally accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year:

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) Retained earnings, appropriated and unappropriated;

(iv) The amount of shareholders' undistributed taxable income;

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(v) The amount of the accumulated adjustments account;

(vi) The amount of the other adjustments account; and

(vii) Less the cost of treasury stock.

(C) Partnerships. -- In the case of a partnership, the average of the beginning and ending year balances of the value of partner's capital accounts from Schedule L of Federal Form 1065, prepared following accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year.

(D) Additional items in capital. -- The term "capital" for purposes of this article shall include such adjustments thereto as the Tax Commissioner deems necessary to properly reflect capital and such additional items from the accounts of the taxpayer as the Tax Commissioner may by regulation prescribe, which fairly represent the net equity of the taxpayer as defined in accordance with generally accepted accounting principles.

(E) Allowance for certain government obligations and obligations secured by residential property. -- As to both corporations and partnerships, capital shall be multiplied by a fraction equal to one minus a fraction:

(i) The numerator of which is the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120 or Federal Form 1065) of the following:

(I) Obligations and securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy;

(II) Obligations of this state and any political subdivision of this state;

(III) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(IV) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(ii) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer as shown on Schedule L of Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships, Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service.

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(3) Commercial domicile. -- The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed: Provided, That the commercial domicile of a financial organization, which is subject to regulation as such, shall be at the place designated as its principal office with its regulating authority.

(4) Commissioner or Tax Commissioner. -- The terms "commissioner" or "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his delegate.

(5) Compensation. -- The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Corporation. -- The term "corporation" includes any corporations, S corporation, joint-stock company and any association or other organization which is taxable as a corporation under federal income tax laws or the income tax laws of this state.

(7) Delegate. -- The term "delegate" in the phrase "or his delegate", when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department 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 regulations promulgated thereunder.

(8) Doing business. -- The term "doing business" means any activity of a corporation or partnership which enjoys the benefits and protection of the government and laws of this state, except the activity of agriculture and farming, which shall mean the production of food, fiber and woodland products (but not timbering activity) by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by persons other than the producer thereof.

The activity of agriculture and farming shall mean such activity, as above defined, occurring on not less than five acres of land and the improvements thereon, used in the production of the aforementioned activities, and shall mean the production of at least $1,000 of products per annum through the conduct of such principal business activities as set forth in section ten, article one-a, chapter eleven of this code.

(9) Domestic corporation. -- The term "domestic corporation" means a corporation organized under the laws of this state, and certain corporations organized under the laws of the state of Virginia before June 20, 1863. Every other corporation is a foreign corporation.

(10) Federal Form 1120. -- The term "Federal Form 1120" means the annual federal income tax return of any corporation made pursuant to the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to

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the taxable income of a corporation, and filed with the federal Internal Revenue Service. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(11) Federal Form 1065. -- The term "Federal Form 1065" means the annual federal income tax return of a partnership made pursuant to Section 6031 of the United States Internal Revenue Code of 1986, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a partnership, and filed with the federal Internal Revenue Service.

(12) Fiduciary. -- The term "fiduciary" means, and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(13) Financial organization. -- The term "financial organization" means:

(A) A holding company or a subsidiary thereof. As used in this section "holding company" means a corporation registered under the federal bank holding company act of 1956 or registered as a savings and loan holding company other than a diversified savings and loan holding company (as defined in section 408(a)(1)(F) of the federal national housing act (12 U.S.C. 1730(a)(1)(F));

(B) A regulated financial corporation or a subsidiary thereof. As used in this section "regulated financial corporation" means:

(1) An institution, the deposits, shares or accounts of which are insured under the federal deposit insurance act, or by the federal savings and loan insurance corporation;

(2) An institution that is a member of a federal home loan bank;

(3) Any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits;

(4) A credit union incorporated and organized under the laws of this state;

(5) A production credit association organized under 12 U.S.C. 2071;

(6) A corporation organized under 12 U.S.C. 611 through 631 (an edge act corporation); or

(7) A federal or state agency or branch of a foreign bank (as defined in 12 U.S.C. 3101); or

(C) A corporation which derives more than fifty percent of its gross business income from one or more of the following activities:

(1) Making, acquiring, selling or servicing loans or extensions of credit. Loans and

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extensions of credit include:

(I) Secured or unsecured consumer loans;

(II) Installment obligations;

(III) Mortgages or other loans secured by real estate or tangible personal property;

(IV) Credit card loans;

(V) Secured and unsecured commercial loans of any type; and

(VI) Loans arising in factoring.

(2) Leasing or acting as an agent, broker or advisor in connection with leasing real and personal property that is the economic equivalent of an extension of credit (as defined by the Federal Reserve Board in 12 C.F.R. 225.25(b)(5)).

(3) Operating a credit card business.

(4) Rendering estate or trust services.

(5) Receiving, maintaining or otherwise handling deposits.

(6) Engaging in any other activity with an economic effect comparable to those activities described in item (1), (2), (3), (4) or (5) of this subparagraph.

(14) Fiscal year. -- The term "fiscal year" means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(15) Includes and including. -- The terms "includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(16) Parent and subsidiary corporations. -- A corporation which owns on average during the taxable year more than fifty percent of the stock of all classes of another corporation is defined to be the "parent corporation" and the corporation which is so owned by the parent is defined to be a "subsidiary corporation".

(17) Partnership and partner. -- The term "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 or an unincorporated organization which under Section 761 of the Internal Revenue Code of 1986, as amended, and is not treated as a partnership for the taxable year for federal income tax purposes. The term "partner" includes a member

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in such a syndicate, group, pool, joint venture or other unincorporated organization which is a partnership.

(18) Person. -- The term "person" includes any corporation or partnership.

(19) Pro forma return. -- The term "pro forma return" when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of a consolidated group.

(20) Sales. -- The term "sales" means all gross receipts of the taxpayer that are "business income", as defined in this section.

(21) State. -- The term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any foreign country or political subdivision thereof.

(22) Stock. -- The term "stock" includes shares in a corporation, association or joint-stock company. It shall not include nonvoting stock which is limited and preferred as to dividends, or treasury stock. "Stock owned by a corporation" shall include stock owned directly by such corporation and stock which is subject to an option to acquire stock.

(23) Taxable year. -- The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year (short taxable year) under the provisions of this article, or under regulations promulgated by the Tax Commissioner, the period for which such return is made.

(24) Taxable in another state. -- The term "taxable in another state" for purposes of apportionment under this article, means a taxpayer who:

(A) Is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or

(B) Would be subject to a net income tax if such other state imposed such a tax.

(25) Taxpayer. -- The term "taxpayer" means any person (as defined in this section) subject to the tax imposed by this article.

(26) This code. -- The term "this code" means the Code of West Virginia, 1931, as amended.

(27) This state. -- The term "this state" means the State of West Virginia.

(28) Treasury stock. -- The term "treasury stock" means shares of a corporation which have been issued and have been subsequently acquired by and belong to such corporation, and have not been canceled or restored to the status of authorized but unissued shares. Treasury stock is deemed to be issued shares, but not outstanding shares.

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