WEST VIRGINIA CODE: §5B-12-2

§5B-12-2. 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 purposes of this article, the term:

"Affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control with another entity. An entity is controlled by another entity if the controlling entity holds, directly or indirectly, the majority of voting or ownership interest in the controlled entity or has control over day-to-day operations of the controlled entity by contract or by law.

"Applicable percentage" means zero percent for the first two credit allowance dates, and 15 percent for the next four credit allowance dates.

"Capital investment" means any equity investment in a growth fund by a growth investor which:

(A) Is acquired after the effective date of this article at its original issuance solely in exchange for cash;

(B) Has 100 percent of its cash purchase price used by the growth fund to make qualified investments in eligible businesses located in this state by the third anniversary of the initial credit allowance date; and

(C) Is designated by the growth fund as a capital investment under this article and is certified by the department under the provisions of §5B-12-3 of this code.

(D) This term shall include any capital investment that does not meet the criteria provided under paragraph (A) of this subdivision, if such investment was a capital investment in the hands of a prior holder.

"Credit allowance date" means the date on which the department certifies a growth fund's capital investment and each of the five anniversary dates of such date thereafter.

"Department" means the West Virginia Department of Commerce.

"Eligible business" means a business that, at the time of the initial qualified investment in the business has fewer than 250 employees and has its principal business operations in West Virginia: *Provided*, That any business which is classified as an eligible business at the time of the initial investment in such business by a growth fund shall remain classified as an eligible business and may receive follow-on investments from any growth fund, and such follow-on

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investments shall be qualified investments even though such business may not meet the definition of an eligible business at the time of such follow-on investment.

"Growth fund" means an entity certified by the department under the provisions of §5B-12-3 of this code and is a person who has developed a business plan to invest in business concerns in this state under this article and has successfully solicited one or more growth investors to make capital investments in the growth fund under this article in support of the plan.

"Growth investor" means any entity that makes a capital investment in a growth fund.

"Principal business operations" means the location where at least 60 percent of a business's employees work or the location where employees who are paid at least 60 percent of such business's payroll work. A business that has agreed to relocate employees using the proceeds of a qualified investment to establish its principal business operations in a new location shall be deemed to have its principal business operations in such new location if it satisfied the requirements of this subdivision no later than 180 days after receiving a qualified investment.

"Purchase price" means the amount paid to the growth fund that issues a capital investment which shall not exceed the amount of capital investment authority certified under the provisions of §5B-12-3 of this code.

"Qualified investment" means any investment in an eligible business or any loan to an eligible business with a stated maturity date of at least one year after the date of issuance, excluding revolving lines of credit and senior-secured debt unless the chief executive or similar officer of the eligible business certifies that the eligible business sought and was denied similar financing from a depository institution, by a growth fund: *Provided*, That with respect to any one eligible business, the maximum amount of investments made in such business by one or more growth funds, on a collective basis with all of the businesses' affiliates, with the proceeds of the capital investments, shall be the greater of 20 percent of the growth fund's capital investment authority or $7.5 million, exclusive of investments made with repaid or redeemed investments or interest or profits realized thereon.

"Senior-secured debt" means any loan that is secured by a first mortgage on real estate with a loan-to-value ratio of less than 80 percent.

"State tax liability" means the tax imposed by §33-314, §33-3-14a, §33-3-16, or §33-3-17 of this code, or any other insurance premium or retaliatory tax imposed on an insurance company by the state: *Provided*, That if the tax liability imposed under these sections is eliminated or reduced, the term "state tax liability" shall also include any tax liability imposed by this state on an insurance company or other person that had premium tax liability under the laws of this state for the purpose of making up tax revenue lost by the state as a result of the elimination or reduction of the taxes imposed under said sections: *Provided, however*, That no provision of this article may be construed or operate to reduce

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distributions or allocations otherwise required to be made for purposes other than for deposit in the general revenue fund, if applicable, under §33-3-14, §33-3-14a, §33-3-14d, §33-3-14e, and §33-3-33 of this code. An insurance company claiming a credit against state premium tax or retaliatory tax shall not be required to pay any additional premium tax, retaliatory tax, fee, charge, or other penalty or tax imposed on an insurer as a result of applying for or claiming the credit authorized by this article. The credit may fully offset any retaliatory tax imposed by this state.

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