WEST VIRGINIA CODE: §5b-2E-3

§5B-2E-3. Definitions.

As used in this article, unless the context clearly indicates otherwise:

(1) "Agreement" means a tourism development agreement entered into, pursuant to section six of this article, between the department and an approved company with respect to a project.

(2) "Approved company" means any eligible company approved by the department pursuant to section five of this article seeking to undertake a project.

(3) "Approved costs" means:

(a) Included costs:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons and material persons in connection with the acquisition, construction, equipping or installation of a project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, or installation of a project which is not paid by the vendor, supplier, delivery person, contractor or otherwise provided;

(iv) All costs of architectural and engineering services, including, but not limited to: Estimates, plans and specifications, preliminary investigations and supervision of acquisition, construction, e quipping and installation of a project, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping or installation of a project;

(v) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping or installation of a project;

(vi) All costs required for the installation of utilities, including, but not limited to: Water, sewer, sewer treatment, gas, electricity, communications and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons; and

(vii) All other costs comparable with those described in this subdivision;

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(b) Excluded costs. — The term "approved costs" does not include any portion of the cost required to be paid for the acquisition, construction, equipping or installation of a portion of a project that is financed with state grants or for which the eligible taxpayer elects to qualify for other state tax credits, including, but not limited to, those provided by article thirteen-q, chapter eleven of this code. The exclusion of certain costs of a project under this paragraph (b) does not disqualify the remainder of the costs of the project.

(4) "Base tax revenue amount" means the average monthly amount of consumer sales and service tax collected by an approved company, based on the twelve-month period ending immediately prior to the opening of a new tourism development project for business or a tourism development expansion project, as certified by the State Tax Commissioner.

(5) “Department” means the West Virginia Department of Economic Development as provided in article two of this chapter.

(6) "Crafts and products center" means a facility primarily devoted to the display, promotion and sale of West Virginia products and at which a minimum of eighty percent of the sales occurring at the facility are of West Virginia arts, crafts or agricultural products.

(7) "Eligible company" means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or any other entity operating or intending to operate a project, whether owned or leased, within the state that meets the standards required by the department. An eligible company may operate or intend to operate directly or indirectly through a lessee or management company.

(8) "Ineligible company" means any West Virginia pari-mutuel racing facility licensed to operate multiple video lottery machines as authorized by article twenty-two-a, chapter twenty-nine of this code or any limited lottery retailer holding a valid license issued under article seven, chapter sixty of this code.

(9) "Entertainment destination center" means a facility containing a minimum of two hundred thousand square feet of building space adjacent or complementary to an existing tourism attraction, an approved project, or a major convention facility and which provides a variety of entertainment and leisure options that contain at least one major theme restaurant and at least three additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent of total gross area, as defined in the application, available for lease and other retail stores shall occupy no more than forty percent of the total gross area available for lease.

(10) "Final approval" means the action taken by the Secretary of the department qualifying the eligible company to receive the tax credits provided in this article.

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(11) "Project" means a tourism development project and/or a tourism development expansion project administered in accordance with the provisions of this article.

(12) "Qualified professional services destination facility" means a facility with a minimum qualified investment, as defined in this article, of not less than $80 million physically located in this state and adjacent or complementary to a historic resort hotel, which primarily furnishes and provides personal or professional services, or both types of services, to individuals who primarily are residents of another state or foreign county.

(13) "State agency" means any state administrative body, agency, department, division, board, commission or institution exercising any function of the state that is not a municipal corporation or political subdivision.

(14) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a West Virginia crafts and products center, or an entertainment destination center or a qualified professional services destination facility. A project or tourism attraction does not include any of the following:

(A) Lodging facility, unless:

(i) The facility constitutes a portion of a project and represents less than fifty percent of the total approved cost of the project, or the facility is to be located on recreational property owned or leased by the state or federal government and the facility has received prior approval from the appropriate state or federal agency;

(ii) The facility involves the substantial reconstruction, restoration, or rehabilitation of a structure that is listed individually in the national register of historic places or is located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district and the substantial reconstruction, rehabilitation, or restoration project has been approved in advance by the state historic preservation officer; or

(iii) The facility involves the construction, reconstruction, restoration, rehabilitation or upgrade of a full-service lodging facility or the reconstruction, restoration, rehabilitation or upgrade of an existing structure into a full-service lodging facility having not less than five hundred guest rooms, with construction, reconstruction, restoration, rehabilitation or upgrade costs exceeding ten million dollars;

(B) A facility that is primarily devoted to the retail sale of goods, other than an entertainment destination center, a West Virginia crafts and products center or a project where the sale of goods is a secondary and subordinate component of the project; and

(C) A recreational facility that does not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the project or existing attraction.

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(15) "Tourism development project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years; the design, construction, and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, installation of a tourism attraction, including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons.

(16) "Tourism development expansion project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years; the design, construction, equipping, and installation of additions, betterments, and improvements to facilities necessary or desirable for the expansion of an existing tourism attraction including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extension to the boundaries of real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons.

(17) "Tourism development project tax credit" means the tourism development project tax credit allowed by section seven of this article.

(18) "Tourism development expansion project tax credit" means the tourism development expansion project tax credit allowed by section seven-a of this article.

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