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HOUSE BILL NO. 578

Offered January 19, 2000

A BILL to amend and reenact §§ 58.1-322 and 58.1-402 of the Code of Virginia, relating to Virginia taxable income of residents and corporations.

Patrons—Phillips, Johnson, Kilgore, Stump and Tate

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-322 and 58.1-402 of the Code of Virginia are amended and reenacted as follows:**

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in this section.

B. To the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes which is excluded from federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions under § 402 of the Internal Revenue Code;

5. through 7. [Repealed.]

8. For taxable years beginning on and after January 1, 1990, and before January 1, 1994, any amount of self-employment tax deduction under § 164 (f) of the Internal Revenue Code; and

9. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

C. To the extent included in federal adjusted gross income, there shall be subtracted:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of this Commonwealth.

3. [Repealed.]

4. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4a. A deduction equal to the amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age sixty-five who qualified for such retirement on the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of the Internal Revenue Code; however, any person who claims a subtraction under subdivision 5 of subsection D of this section may not also claim a deduction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280 C (a) of the Internal Revenue Code.

7. Any amount included therein which is foreign source income as defined in § 58.1-302.

8. For taxable years beginning after December 31, 1983, the available portion of total excess cost recovery as defined in former § 58.1-323 B and for taxable years beginning after December 31, 1987, the excess cost recovery amount specified in § 58.1-323.1 B.

9. [Expired.]

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HB578

60 10. Any amount included therein less than \$600 from a prize awarded by the State Lottery
61 Department.

62 11. The wages or salaries received by any person for active and inactive service in the National
63 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from thirty-nine
64 calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the
65 ranks of O3 and below shall be entitled to the deductions specified herein.

66 12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for
67 information provided to a law-enforcement official or agency, or to a nonprofit corporation created
68 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of
69 perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee
70 of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which
71 the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

72 13. [Repealed.]

73 14. (Expires for taxable years beginning on and after January 1, 2004.) The amount of any qualified
74 agricultural contribution as determined in § 58.1-322.2.

75 15. [Repealed.]

76 16. The amounts of self-employment tax required to be added in computing Virginia taxable income
77 for taxable years beginning on and after January 1, 1990, but before January 1, 1994, pursuant to
78 subdivision B 8 of this section, as follows:

79 a. For taxable years beginning on and after January 1, 1994, and before January 1, 1995, the amount
80 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after
81 January 1, 1990, and before January 1, 1991;

82 b. For taxable years beginning on and after January 1, 1995, and before January 1, 1996, the amount
83 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after
84 January 1, 1991, and before January 1, 1992;

85 c. For taxable years beginning on and after January 1, 1996, and before January 1, 1997, the amount
86 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after
87 January 1, 1992, and before January 1, 1993;

88 d. For taxable years beginning on and after January 1, 1997, and before January 1, 1998, the amount
89 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after
90 January 1, 1993, and before January 1, 1994, and any amount of self-employment tax required to be
91 added back for taxable years beginning on and after January 1, 1990, and before January 1, 1994, which
92 was not subtracted in those taxable years.

93 17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research
94 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
95 deducted, on account of the provisions of § 280 C (c) of the Internal Revenue Code and which shall be
96 available to partners, shareholders of S corporations, and members of limited liability companies to the
97 extent and in the same manner as other deductions may pass through to such partners, shareholders, and
98 members.

99 18. For taxable years beginning on or after January 1, 1995, all military pay and allowances, not
100 otherwise subtracted under this subsection, earned for any month during any part of which such member
101 performed military service in any part of the former Yugoslavia, including the air space above such
102 location or any waters subject to related naval operations, in support of Operation JOINT ENDEAVOR
103 as part of the NATO Peace Keeping Force. Such subtraction shall be available until the taxpayer
104 completes such service.

105 19. For taxable years beginning on and after January 1, 1996, any income received during the taxable
106 year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the
107 Internal Revenue Code, an individual retirement account or annuity established under § 408 of the
108 Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code,
109 or any federal government retirement program, the contributions to which were deductible from the
110 taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or
111 program were subject to taxation under the income tax in another state.

112 20. For taxable years beginning on and after January 1, 1997, any income attributable to a
113 distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the
114 Virginia Higher Education Tuition Trust Fund, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of
115 Title 23. The subtraction for any income attributable to a refund shall be limited to income attributable
116 to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

117 21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the
118 extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted
119 under this section, earned by military personnel while serving by order of the President of the United
120 States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated
121 as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than thirty years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

23. (Delayed effective date) Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic pay for military service personnel on extended active duty for periods in excess of ninety days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds \$30,000.

24. (Delayed effective date) Effective for all taxable years beginning on and after January 1, 2000, the first \$15,000 of salary for each federal and state employee whose annual salary is \$15,000 or less.

25. (Delayed effective date) Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

26. *Effective for all taxable years beginning on and after January 1, 1999, income received by tobacco growers whether or not they own the land on which the tobacco is grown and tobacco quota owners or holders as a result of the "Master Settlement Agreement" as defined in § 3.1-336.1, but only to the extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402. For purposes of this subdivision a "tobacco quota owner or holder means any person who owns or holds a tobacco farm marketing quota or farm acreage allotment established under the Agricultural Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).*

D. In computing Virginia taxable income there shall be deducted from federal adjusted gross income:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of eighteen cents per mile; or

b. Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987; \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); and \$3,000 for single individuals for taxable years beginning on and after January 1, 1989; provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through December 31, 1987, and \$800 for taxable years beginning on and after January 1, 1988, for each personal exemption allowable to the taxpayer for federal income tax purposes. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption.

b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through December 31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The additional deduction for blind or aged taxpayers allowed under this subdivision and the additional personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. Effective for all taxable years beginning on and after January 1, 1990, a deduction in the amount of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four, less any amount received pursuant to the (i) Social Security Act or (ii) Railroad Retirement Act and treated for federal income tax purposes as equivalent to social security. Beginning in taxable year 1992 through taxable year 1993, the \$12,000 and \$6,000 deduction amounts shall be indexed annually in each such taxable year by an amount equivalent to the most recent percentage increase in the social security wage base.

Effective for the taxable year beginning January 1, 1994, a deduction in the amount of \$12,944 for

183 taxpayers age sixty-five or older, or \$6,472 for taxpayers age sixty-two through sixty-four. Effective for
184 the taxable year beginning January 1, 1995, a deduction in the amount of \$10,000 for taxpayers age
185 sixty-five or older, or \$5,000 for taxpayers age sixty-two through sixty-four. Effective for all taxable
186 years beginning on or after January 1, 1996, a deduction in the amount of \$12,000 for taxpayers age
187 sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four.

188 Beginning in taxable year 1995, the deductions under this subdivision shall not be reduced by any
189 amount received pursuant to the (i) Social Security Act or (ii) Railroad Retirement Act and treated for
190 federal income tax purposes as equivalent to social security.

191 6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee
192 for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed
193 for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal
194 income tax return.

195 7. a. (Effective for taxable years beginning on and after January 1, 1996.) A deduction shall be
196 allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a
197 prepaid tuition contract or savings trust account entered into with the Virginia Higher Education Tuition
198 Trust Fund, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7
199 c, the amount deducted on any individual income tax return in any taxable year shall be limited to
200 \$2,000 per prepaid tuition contract or savings trust account. No deduction shall be allowed pursuant to
201 this section if such payments or contributions are deducted on the purchaser's or contributor's federal
202 income tax return. If the purchase price or annual contribution to a savings trust account exceeds
203 \$2,000, the remainder may be carried forward and subtracted in future taxable years until the purchase
204 price or savings trust contribution has been fully deducted; however, except as provided in subdivision 7
205 c, in no event shall the amount deducted in any taxable year exceed \$2,000 per contract or savings trust
206 account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any
207 deduction taken hereunder shall be subject to recapture in the taxable year or years in which
208 distributions or refunds are made for any reason other than (i) to pay qualified higher education
209 expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or
210 receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor"
211 means the person shown as such on the records of the Virginia Higher Education Tuition Trust Fund as
212 of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract
213 or savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a
214 prepaid tuition contract or savings trust account, including, but not limited to, carryover and recapture of
215 deductions.

216 b. (Effective for taxable years beginning on and after January 1, 1996.) The amount paid for a
217 prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January
218 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject
219 to the limitations set out in subdivision 7 a.

220 c. (Effective for taxable years beginning on and after January 1, 1998.) A purchaser of a prepaid
221 tuition contract who has attained age seventy shall not be subject to the limitation that the amount of the
222 deduction not exceed \$2,000 per contract in any taxable year. Such taxpayer shall be allowed a
223 deduction for the full amount paid for the contract, less any amounts previously deducted. If a prepaid
224 tuition contract was purchased by such taxpayer during taxable years beginning on or after January 1,
225 1996, but before January 1, 1998, such taxpayer may take the deduction for the full amount paid during
226 such years, less any amounts previously deducted with respect to such payments, in taxable year 1999 or
227 by filing an amended return for taxable year 1998.

228 8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually
229 contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in
230 Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for
231 such amount on his federal income tax return.

232 9. For taxable years beginning on and after January 1, 1999, an amount equal to twenty percent of
233 the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed
234 pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses
235 that are required as a condition of employment; however, the deduction provided by this subsection shall
236 be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has
237 not claimed a deduction for the payment of such tuition costs on his federal income tax return.

238 10. For taxable years beginning on and after January 1, 2000, the amount an individual pays
239 annually in premiums for long term health care insurance, provided the individual has not claimed a
240 deduction for federal income tax purposes.

241 E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the
242 individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined
243 under § 58.1-361.

244 F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as

transitional modifications.

§ 58.1-402. Virginia taxable income.

A. For purposes of this article, Virginia taxable income for a taxable year means the federal taxable income and any other income taxable to the corporation under federal law for such year of a corporation adjusted as provided in subsections B, C and D.

For a regulated investment company and a real estate investment trust, such term means the "investment company taxable income" and "real estate investment trust taxable income," respectively, to which shall be added in each case any amount of capital gains and any other income taxable to the corporation under federal law which shall be further adjusted as provided in subsections B, C and D.

B. There shall be added to the extent excluded from federal taxable income:

1. Interest, less related expenses to the extent not deducted in determining federal taxable income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which the Commonwealth is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. [Repealed.]

4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by the Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

5. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

6. The amount of employee stock ownership credit carry-over deducted by the corporation in computing federal taxable income under § 404 (i) of the Internal Revenue Code;

7. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

C. There shall be subtracted to the extent included in and not otherwise subtracted from federal taxable income:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of this Commonwealth.

3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the Internal Revenue Code, fifty percent or more of the income of which was assessable for the preceding year, or the last year in which such corporation has income, under the provisions of the income tax laws of the Commonwealth.

4. The amount of any refund or credit for overpayment of income taxes imposed by this Commonwealth or any other taxing jurisdiction.

5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue Code (foreign dividend gross-up).

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280 C (a) of the Internal Revenue Code.

7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F income).

8. Any amount included therein which is foreign source income as defined in § 58.1-302.

9. For taxable years beginning after December 31, 1983, the available portion of total excess cost recovery as defined in former § 58.1-323 B and for taxable years beginning after December 31, 1987, the excess cost recovery amount specified in § 58.1-323.1 C.

10. The amount of any dividends received from corporations in which the taxpaying corporation owns fifty percent or more of the voting stock.

11. [Repealed.]

12. [Expired.]

13. (Expires for taxable years beginning on and after January 1, 2004.) The amount of any qualified agricultural contribution as determined in § 58.1-322.2.

14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280 C (c) of the Internal Revenue Code.

15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in

306 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
307 (§ 22.1-175.1 et seq.) of Title 22.1.

308 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
309 exchange of real property or the sale or exchange of an easement to real property which results in the
310 real property or the easement thereto being devoted to open-space use, as that term is defined in
311 § 58.1-3230, for a period of time not less than thirty years. To the extent a subtraction is taken in
312 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
313 shall be allowed for three years following the year in which the subtraction is taken.

314 17. For taxable years beginning on and after January 1, 2001, any amount included therein with
315 respect to § 58.1-440.1.

316 18. *For taxable years beginning on and after January 1, 1999, income received by tobacco growing*
317 *businesses whether or not the businesses own the land on which the tobacco is grown and tobacco*
318 *quota owner or holder businesses as a result of the "Master Settlement Agreement" as defined in*
319 *§ 3.1-336.1. For purposes of this subdivision, a "tobacco quota owner or holder business" is any*
320 *business which is the owner or holder of a tobacco farm marketing quota or farm acreage allotment*
321 *established under the Agricultural Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).*

322 D. Adjustments to federal taxable income shall be made to reflect the transitional modifications
323 provided in § 58.1-315.

324 **2. That an emergency exists and this act is in force from its passage.**