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SENATE BILL NO. 698

Offered January 24, 2000

A BILL to amend and reenact §§ 58.1-302 and 58.1-322 of the Code of Virginia, relating to subtractions from individual income taxes for reparation payments to victims or targets of Nazi persecution.

Patrons—Ticer, Barry, Colgan, Couric, Edwards, Howell, Martin, Miller, Y.B. and Saslaw; Delegates: Baskerville, Darner, Diamonstein, Grayson, Hull, Moran and Plum

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-302 and 58.1-322 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-302. Definitions.**

For the purpose of this chapter and unless otherwise required by the context:

"Affiliated" means two or more corporations subject to Virginia income taxes whose relationship to each other is such that (i) one corporation owns at least eighty percent of the voting stock of the other or others or (ii) at least eighty percent of the voting stock of two or more corporations is owned by the same interests.

"Compensation" means wages, salaries, commissions and any other form of remuneration paid or accrued to employees for personal services.

"Corporation" includes associations, joint stock companies and insurance companies.

"Domicile" means the permanent place of residence of a taxpayer and the place to which he intends to return even though he may actually reside elsewhere. In determining domicile, consideration may be given to the applicant's expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for federal income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the applicant, motor vehicle and other personal property registration, residence for purposes of voting as proven by registration to vote, if any, and such other factors as may reasonably be deemed necessary to determine the person's domicile.

"Foreign source income" means:

1. Interest, other than interest derived from sources within the United States;
2. Dividends, other than dividends derived from sources within the United States;
3. Rents, royalties, license, and technical fees from property located or services performed without the United States or from any interest in such property, including rents, royalties, or fees for the use of or the privilege of using without the United States any patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like properties;
4. Gains, profits, or other income from the sale of intangible or real property located without the United States; and

5. The amount of an individual's share of net income attributable to a foreign source qualified business unit of an electing small business corporation (S corporation). For purposes of this subsection, qualified business unit shall be defined by § 989 of the Internal Revenue Code, and the source of such income shall be determined in accordance with §§ 861, 862 and 987 of the Internal Revenue Code.

In determining the source of "foreign source income," the provisions of §§ 861, 862, and 863 of the Internal Revenue Code shall be applied except as specifically provided in ~~subsection~~ *subdivision 5* above.

"Income and deductions from Virginia sources" includes:

1. Items of income, gain, loss and deduction attributable to:
 - a. The ownership of any interest in real or tangible personal property in Virginia;
 - b. A business, trade, profession or occupation carried on in Virginia; or
 - c. Prizes paid by the Virginia Lottery Department, and gambling winnings from wagers placed or paid at a location in Virginia.

2. Income from intangible personal property, including annuities, dividends, interest, royalties and gains from the disposition of intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.

"Individual" means all natural persons whether married or unmarried and fiduciaries acting for natural persons, but not fiduciaries acting for trusts or estates.

"Nonresident estate or trust" means an estate or trust which is not a resident estate or trust.

"Resident" applies only to natural persons and includes, for the purpose of determining liability for

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60 the taxes imposed by this chapter upon the income of any taxable year every person domiciled in
61 Virginia at any time during the taxable year and every other person who, for an aggregate of more than
62 183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in
63 Virginia or not. The word "resident" shall not include any member of the United States Congress who is
64 domiciled in another state.

65 "Resident estate or trust" means:

- 66 1. The estate of a decedent who at his death was domiciled in the Commonwealth;
- 67 2. A trust created by will of a decedent who at his death was domiciled in the Commonwealth;
- 68 3. A trust created by or consisting of property of a person domiciled in the Commonwealth; or
- 69 4. A trust or estate which is being administered in the Commonwealth.

70 "Sales" means all gross receipts of the corporation not allocated under § 58.1-407, except the sale or
71 other disposition of intangible property shall include only the net gain realized from the transaction.

72 "State" means for purposes of Article 10 of this chapter any state of the United States, the District of
73 Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any
74 foreign country.

75 "Trust" or "estate" means a trust or estate, or a fiduciary thereof, which is required to file a fiduciary
76 income tax return under the laws of the United States.

77 "*Victim or target of Nazi persecution*" means any individual persecuted or targeted for persecution
78 by the Nazi regime because of race, religion, ethnicity, sexual orientation, national origin, or physical
79 or mental disability or handicap, whether or not such person was actually a member of any of the
80 foregoing enumerated groups or because such person assisted or allegedly assisted any of the foregoing
81 groups, who had assets stolen from, hidden from or otherwise lost as a result of any act or omission in
82 any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct aftermath; (iii)
83 transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi persecution; or
84 (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II
85 and its prelude and aftermath. A victim or target of Nazi persecution shall also include any individual
86 forced into labor against his will, under the threat of death, during World War II and its prelude and
87 direct aftermath. As used in this section, "Nazi regime" means the country of Nazi Germany, areas
88 occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral
89 European country or area in Europe under the influence or threat of Nazi invasion.

90 "Virginia fiduciary adjustment" means the net amount of the applicable modifications described in
91 § 58.1-322 (including subsection E thereof if the estate or trust is a beneficiary of another estate or trust)
92 which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment
93 shall not include the modification in subsection D of § 58.1-322, except that the amount of state income
94 taxes excluded from federal taxable income shall be included.

95 § 58.1-322. Virginia taxable income of residents.

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

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

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

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

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

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

113 5. through 7. [Repealed.]

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

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

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

119 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
120 and on obligations or securities of any authority, commission or instrumentality of the United States to
121 the extent exempt from state income taxes under the laws of the United States including, but not limited

122 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,
123 interest on equipment purchase contracts, or interest on other normal business transactions.

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

126 3. [Repealed.]

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

129 4a. A deduction equal to the amount used in computing the federal credit allowed under § 22 of the
130 Internal Revenue Code by a retiree under age sixty-five who qualified for such retirement on the basis
131 of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of the
132 Internal Revenue Code; however, any person who claims a subtraction under subdivision 5 of subsection
133 D of this section may not also claim a deduction under this subdivision.

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

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

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

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

142 9. [Expired.]

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

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

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

155 13. [Repealed.]

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

158 15. [Repealed.]

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

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

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

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

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

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

182 18. For taxable years beginning on or after January 1, 1995, all military pay and allowances, not

otherwise subtracted under this subsection, earned for any month during any part of which such member performed military service in any part of the former Yugoslavia, including the air space above such location or any waters subject to related naval operations, in support of Operation JOINT ENDEAVOR as part of the NATO Peace Keeping Force. Such subtraction shall be available until the taxpayer completes such service.

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

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

21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated 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. *For taxable years beginning on and after January 1, 2000, items of income attributable to, derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an individual who was a victim or target of Nazi persecution; or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse or a descendant of such victim.*

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

Beginning in taxable year 1995, the deductions under this subdivision shall not be reduced by 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.

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

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

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

306 c. (Effective for taxable years beginning on and after January 1, 1998.) A purchaser of a prepaid
307 tuition contract who has attained age seventy shall not be subject to the limitation that the amount of the
308 deduction not exceed \$2,000 per contract in any taxable year. Such taxpayer shall be allowed a
309 deduction for the full amount paid for the contract, less any amounts previously deducted. If a prepaid
310 tuition contract was purchased by such taxpayer during taxable years beginning on or after January 1,
311 1996, but before January 1, 1998, such taxpayer may take the deduction for the full amount paid during
312 such years, less any amounts previously deducted with respect to such payments, in taxable year 1999 or
313 by filing an amended return for taxable year 1998.

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

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

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

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

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