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HOUSE BILL NO. 1749

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A BILL to amend and reenact § 58.1-322 of the Code of Virginia, relating to taxable income of Virginia residents; deduction for charitable contributions.

Patron—Purkey

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-322 of the Code of Virginia is 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 [Repealed.]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. Through December 31, 2000 the same 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 deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under this subdivision.

4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as defined in § 22 (c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of subsection D of this section may not also claim a subtraction 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 § 280C (a) of the Internal Revenue Code.

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

60 8. [Repealed.]

61 9. [Expired.]

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

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

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

74 13. [Repealed.]

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

77 15. [Repealed.]

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

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

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

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

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

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

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

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

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

119 21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the
120 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 - See notes) 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 - See notes) 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 - See notes) Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

26. For taxable years beginning on and after January 1, 2001, any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.

27. Effective for all taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement," as defined in § 9-380; (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farmers; (b) any person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

28. 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, widow, widower, or child or stepchild of such victim.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

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

182 the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For
183 purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for
184 the taxable year may compute the deduction only with respect to earned income.

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

190 b. An additional deduction of \$200 for taxable years beginning January 1, 1987, through December
191 31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The
192 additional deduction for blind or aged taxpayers allowed under this subdivision and the additional
193 personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be
194 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income
195 tax purposes.

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

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

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

209 Effective for the taxable year beginning January 1, 1994, a deduction in the amount of \$12,944 for
210 taxpayers age sixty-five or older, or \$6,472 for taxpayers age sixty-two through sixty-four. Effective for
211 the taxable year beginning January 1, 1995, a deduction in the amount of \$10,000 for taxpayers age
212 sixty-five or older, or \$5,000 for taxpayers age sixty-two through sixty-four. Effective for all taxable
213 years beginning on or after January 1, 1996, a deduction in the amount of \$12,000 for taxpayers age
214 sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four.

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

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

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

242 b. (Effective for taxable years beginning on and after January 1, 1996.) The amount paid for a
243 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.

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

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

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

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

11. *For taxable years beginning on and after January 1, 2002, the amount of charitable contributions made by an individual for which a deduction is not taken for federal income tax purposes because such amount exceeds fifty percent of the individual's federal adjusted gross income.*

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

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