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**SENATE BILL NO. 1026**

Senate Amendments in [ ] — January 24, 2003

*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.*

Patron Prior to Engrossment—Senator Houck

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 [Repealed.]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. 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.

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

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59 8. [Repealed.]

60 9. [Expired.]

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

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

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

73 13. [Repealed.]

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

76 15. [Repealed.]

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

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

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

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

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

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

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

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

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

118 21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the  
119 extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted  
120 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. 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. 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. 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 § 3.1-1106; (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.

29. *Effective for all taxable years beginning on and after January 1, 2002, but before January 1, 2005, the indemnification payments received by contract poultry growers and table egg producers from the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of poultry who contract with poultry growers qualify for this subtraction.*

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

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

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

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

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

201 4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under  
202 permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child  
203 as a personal exemption under § 151 of the Internal Revenue Code.

204 5. Effective for all taxable years beginning on or after January 1, 1996, a deduction in the amount of  
205 \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four.

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

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

229 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January  
230 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,  
231 1998, and shall be subject to the limitations set out in subdivision 7 a.

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

240 8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually  
241 contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in  
242 Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for  
243 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~~ long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes.

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.

§ 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 § 280C (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.

305 9. [Repealed.]  
306 10. The amount of any dividends received from corporations in which the taxpaying corporation  
307 owns fifty percent or more of the voting stock.  
308 11. [Repealed.]  
309 12. [Expired.]  
310 13. (Expires for taxable years beginning on and after January 1, 2004.) The amount of any qualified  
311 agricultural contribution as determined in § 58.1-322.2.  
312 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research  
313 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not  
314 deducted, on account of the provisions of § 280C (c) of the Internal Revenue Code.  
315 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in  
316 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1  
317 (§ 22.1-175.1 et seq.) of Title 22.1.  
318 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or  
319 exchange of real property or the sale or exchange of an easement to real property which results in the  
320 real property or the easement thereto being devoted to open-space use, as that term is defined in  
321 § 58.1-3230, for a period of time not less than thirty years. To the extent a subtraction is taken in  
322 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation  
323 shall be allowed for three years following the year in which the subtraction is taken.  
324 17. For taxable years beginning on and after January 1, 2001, any amount included therein with  
325 respect to § 58.1-440.1.  
326 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the  
327 "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower Settlement  
328 Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part  
329 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farming businesses; (b) any business  
330 holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural  
331 Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota  
332 allotment.  
333 19. *Effective for all taxable years beginning on and after January 1, 2002, but before January 1,*  
334 *2005, the indemnification payments received by contract poultry growers and table egg producers from*  
335 *the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low*  
336 *pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of*  
337 *poultry who contract with poultry growers qualify for this subtraction.*  
338 D. Adjustments to federal taxable income shall be made to reflect the transitional modifications  
339 provided in § 58.1-315.  
340 [ 2. That an emergency exists and this act is in force from its passage. ]