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HOUSE BILL NO. 5004

Offered March 19, 2004

A BILL to amend and reenact §§ 58.1-302, 58.1-391, 58.1-392, 58.1-400, 58.1-402, 58.1-441, 58.1-901, 58.1-902, and 58.1-1001 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 58.1-390.1, 58.1-390.2, and 58.1-393.1, by adding in Article 9 of Chapter 3 of Title 58.1 sections numbered 58.1-394.1, 58.1-394.2, and 58.1-395, and to amend the Code of Virginia by repealing Chapter 9 (§ 58.1-900 et seq.) of Title 58.1, relating to taxation of pass-through entities, estates, corporations, and cigarettes.

Patron—Watts

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-302, 58.1-391, 58.1-392, 58.1-400, 58.1-402, 58.1-441, 58.1-901, 58.1-902, and 58.1-1001 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 58.1-390.1, 58.1-390.2, and 58.1-393.1, and by adding in Article 9 of Chapter 3 of Title 58.1 sections numbered 58.1-394.1, 58.1-394.2, and 58.1-395 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~~ 80 percent of the voting stock of the other or others or (ii) at least ~~eighty~~ 80 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 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

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59 property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.
60 "Individual" means all natural persons whether married or unmarried and fiduciaries acting for
61 natural persons, but not fiduciaries acting for trusts or estates.

62 *"Intangible expenses and costs" means:*

63 1. *Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or*
64 *indirect acquisition, use, maintenance or management, ownership, sale, exchange, lease, transfer, or any*
65 *other disposition of intangible property to the extent such amounts are allowed as deductions or costs in*
66 *determining taxable income;*

67 2. *Losses related to or incurred in connection directly or indirectly with factoring transactions or*
68 *discounting transactions;*

69 3. *Royalty, patent, technical and copyright fees;*

70 4. *Licensing fees; and*

71 5. *Other similar expenses and costs.*

72 *"Intangible property" means patents, patent applications, trade names, trademarks, service marks,*
73 *copyrights and similar types of intangible assets, as well as money.*

74 *"Interest expenses and costs" means amounts directly or indirectly allowed as deductions under*
75 *Section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal*
76 *Revenue Code to the extent such expenses and costs are directly or indirectly for, related to, or in*
77 *connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale,*
78 *exchange, lease, transfer, or disposition of intangible property.*

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

80 *"Related entity" means:*

81 1. *A stockholder who is an individual, or a member of the stockholder's family enumerated in Section*
82 *318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own,*
83 *directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of*
84 *the taxpayer's outstanding stock;*

85 2. *A stockholder, or a stockholder's partnership, limited liability company, estate, trust or*
86 *corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates,*
87 *trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least*
88 *50 percent of the value of the taxpayer's outstanding stock; or*

89 3. *A corporation, or a party related to the corporation in a manner that would require an attribution*
90 *of stock from the corporation to the party or from the party to the corporation under the attribution*
91 *rules of Section 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially*
92 *or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution*
93 *rules of Section 318 of the Internal Revenue Code shall apply for purposes of determining whether the*
94 *ownership requirements of this subdivision have been met.*

95 *"Related member" means a person that, with respect to the taxpayer during all or any portion of the*
96 *taxable year, is a related entity, a component member as defined in Section 1563(b) of the Internal*
97 *Revenue Code, or is a person to or from whom there is attribution of stock ownership in accordance*
98 *with Section 1563(e) of the Internal Revenue Code.*

99 *"Resident" applies only to natural persons and includes, for the purpose of determining liability for*
100 *the taxes imposed by this chapter upon the income of any taxable year every person domiciled in*
101 *Virginia at any time during the taxable year and every other person who, for an aggregate of more than*
102 *183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in*
103 *Virginia or not. The word "resident" shall not include any member of the United States Congress who is*
104 *domiciled in another state.*

105 *"Resident estate or trust" means:*

106 1. *The estate of a decedent who at his death was domiciled in the Commonwealth;*

107 2. *A trust created by will of a decedent who at his death was domiciled in the Commonwealth;*

108 3. *A trust created by or consisting of property of a person domiciled in the Commonwealth; or*

109 4. *A trust or estate which is being administered in the Commonwealth.*

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

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

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

117 *"Virginia fiduciary adjustment" means the net amount of the applicable modifications described in*
118 *§ 58.1-322 (including subsection E thereof if the estate or trust is a beneficiary of another estate or trust)*
119 *which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment*
120 *shall not include the modification in subsection D of § 58.1-322, except that the amount of state income*

taxes excluded from federal taxable income shall be included. The fiduciary adjustment shall also include the modification in subsection D of § 58.1-322, regarding the deduction for the purchase of a prepaid tuition contract or contribution to a savings trust account.

§ 58.1-390.1. Definitions.

The following words and terms, when used in this article, shall have the following meanings unless the context clearly indicates otherwise:

"Pass-through entity" means any entity, including a limited partnership, a limited liability partnership, a general partnership, a limited liability company, a professional limited liability company, a business trust or a Subchapter S corporation, that is recognized as a separate entity for federal income tax purposes, in which the partners, members or shareholders report their share of the income, gains, losses, deductions and credits from the entity on their federal income tax returns.

"Owner" means any individual or entity who is treated as a partner, member, or shareholder of a pass-through entity for federal income tax purposes.

§ 58.1-390.2. Taxation of pass-through entities.

Except as provided for in this article, owners of pass-through entities shall be liable for tax under this chapter only in their separate or individual capacities.

§ 58.1-391. Virginia taxable income of owners of a pass-through entity.

A. In determining Virginia taxable income of a ~~partner~~ *an owner of a pass-through entity*, any modification described in § 58.1-322 ~~which that~~ relates to an item of ~~partnership~~ *pass-through entity* income, gain, loss or deduction shall be made in accordance with the ~~partner's~~ *owner's* distributive share, for federal income tax purposes, of the item to which the modification relates. Where a ~~partner's~~ *an owner's* distributive share of any such item is not included in any category of income, gain, loss or deduction required to be taken into account separately for federal income tax purposes, the ~~partner's~~ *owner's* distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of ~~partnership~~ *pass-through entity* taxable income or loss.

B. Each item of ~~partnership~~ *pass-through entity* income, gain, loss or deduction shall have the same character for a ~~partner~~ *an owner* under this chapter as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a ~~partner~~ *an owner* as if realized directly from the source from which realized by the ~~partnership~~ *pass-through entity* or incurred in the same manner by the ~~partnership~~ *pass-through entity*.

C. Where a ~~partner's~~ *an owner's* distributive shares of an item of ~~partnership~~ *pass-through entity* income, gain, loss or deduction is determined for federal income tax purposes by special provision in the ~~partnership~~ *pass-through entity* agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this chapter, the ~~partner's~~ *owner's* distributive share of such item, and any modification required with respect thereto, shall be determined as if the ~~partnership~~ *pass-through entity* agreement made no special provision with respect to such item.

§ 58.1-392. Reports by pass-through entities.

No report shall be required to be filed with the Department of Taxation by any partnership organized under the laws of the Commonwealth or having income from Virginia sources. However, the Tax Commissioner shall have the authority to promulgate regulations requiring that partnerships furnish copies of federal partnership returns and attached schedules or any other information which he deems necessary. In promulgating such regulations, the Tax Commissioner may prescribe the imposition of a penalty in the amount of \$100 for failure to comply, within a reasonable time, to the request for information as set forth therein.

A. Every pass-through entity doing business in Virginia, or having income from Virginia sources, shall make a return to the Department of Taxation on or before the fifteenth day of the fourth month following the close of its taxable year. Such returns shall be made and filed in the manner prescribed by the Department.

B. The return of a pass-through entity shall be signed by any one of the owners. An owner's name signed on the return shall be prima facie evidence that such owner is authorized to sign the return on behalf of the pass-through entity.

C. The Tax Commissioner may establish an income threshold for the filing of returns by pass-through entities and their owners. Pass-through entities and owners with income below this threshold shall not be required to file a return.

D. Receivers, trustees in dissolution, trustees in bankruptcy, and assignees operating the property or business of pass-through entities must make and file returns of income for such pass-through entities. If a receiver has full custody of and control over the business or property of a pass-through entity, he shall be deemed to be operating such business or property, whether he is engaged in carrying on the business for which the pass-through entity was organized or only in marshaling, selling, or disposing of its assets for purposes of liquidation.

E. Pass-through entities may be required to file the return using an electronic medium prescribed by

182 the Tax Commissioner. The Tax Commissioner shall establish a minimum number of owners for the
183 electronic filing requirement. Waivers shall be granted only if the Tax Commissioner finds that the
184 requirement creates an unreasonable burden on the pass-through entity. All requests for waivers must be
185 submitted to the Tax Commissioner in writing. Pass-through entities that have fewer than the established
186 minimum number of owners may, at such pass-through entity's option, file such annual return on such
187 prescribed electronic medium in lieu of filing the annual return on paper.

188 § 58.1-393.1. Extension of time for filing return by pass-through entity.

189 A. Whenever any pass-through entity has been allowed or granted an extension of time within which
190 to file any federal report of its income for any taxable year, the due date for the filing of the report or
191 return required by this article shall be extended to the date six months after such due date, or 30 days
192 after the extended date for filing the federal report, whichever is later.

193 B. In addition, the Department may grant an extension or extensions of time not to exceed a
194 maximum of six months beyond the due date required by this article for filing such pass-through entity
195 return.

196 § 58.1-394.1. Failure of pass-through entity to make a return.

197 A. Any pass-through entity that fails to file a return required by this article within the time required
198 shall be liable for a penalty of \$200 if the failure is for not more than one month, with an additional
199 \$200 for each additional month or fraction thereof during which such failure to file continues, not
200 exceeding six months in the aggregate. In no case, however, shall the penalty be less than \$200.

201 B. If any pass-through entity's failure to file a return required by this article exceeds six months, the
202 Department shall assess a penalty of six percent of the total amount of Virginia taxable income derived
203 by its owners from the pass-through entity for the taxable year. The Department may determine such
204 penalty from any information in its possession. The penalty assessed pursuant to this subsection shall be
205 reduced by the penalty assessed pursuant to subsection A and any tax paid by the owners on their share
206 of income from the pass-through entity for the taxable year.

207 C. The penalties set forth in this subsection shall be assessed and collected by the Department in the
208 manner provided for the assessment and collection of taxes under this chapter or in a civil action, at the
209 instance of the Department. In addition, such pass-through entity shall be compellable by mandamus to
210 file such return.

211 § 58.1-394.2. Fraudulent returns, etc., of pass-through entities; penalty.

212 A. Any officer or owner of any pass-through entity who makes a fraudulent return or statement with
213 the intent of assisting or facilitating the evasion of the payment of the taxes prescribed by this chapter
214 by the pass-through entity or an owner shall be liable for a penalty of not more than \$1,000, to be
215 assessed and collected in the manner provided for the assessment and collection of taxes under this
216 chapter or in a civil action, at the instance of the Department.

217 B. In addition to other penalties provided by law, any officer or owner of a pass-through entity who
218 makes a fraudulent return or statement with the intent of assisting or facilitating the evasion of the
219 payment of the taxes prescribed by this chapter by the pass-through entity or an owner, or who willfully
220 fails or refuses to make a return required by this chapter at the time or times required by law shall be
221 guilty of a Class 1 misdemeanor. A prosecution under this section shall be commenced within five years
222 next after the commission of the offense.

223 § 58.1-395. Nonresident owners.

224 Pass-through entities may make written application to the Tax Commissioner for permission to file a
225 statement of combined pass-through entity income attributable to nonresident owners and thereby relieve
226 nonresident owners from filing individual nonresident returns. The application must state the reasons for
227 seeking such permission. The Tax Commissioner, in his sole discretion, may, for good cause, grant
228 permission to file a combined nonresident return upon such terms as he may determine.

229 § 58.1-400. Imposition of tax.

230 A tax at the rate of ~~six~~ seven percent is hereby annually imposed on the Virginia taxable income for
231 each taxable year of every corporation organized under the laws of the Commonwealth and every
232 foreign corporation having income from Virginia sources.

233 § 58.1-402. Virginia taxable income.

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

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

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

242 1. Interest, less related expenses to the extent not deducted in determining federal taxable income, on
243 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.

8. *a. For taxable years beginning on or after January 1, 2004, the amount of any interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the interest expenses and costs and intangible expenses and costs if one of the following applies:*

1. The corresponding item of income received by the related member is subject to a tax based on or measured by net income imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government, or

2. The corporation can establish to the satisfaction of the Tax Commissioner that the interest expenses and costs and intangible expenses and costs meet both of the following: (i) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and (ii) the transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

b. Nothing in this subdivision shall be construed to limit or negate the Department's authority under § 58.1-446.

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, 50 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.

9. [Repealed.]

10. The amount of any dividends received from corporations in which the taxpaying corporation owns 50 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

305 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
306 deducted, on account of the provisions of § 280C (c) of the Internal Revenue Code.

307 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
308 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
309 (§ 22.1-175.1 et seq.) of Title 22.1.

310 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
311 exchange of real property or the sale or exchange of an easement to real property which results in the
312 real property or the easement thereto being devoted to open-space use, as that term is defined in
313 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
314 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
315 shall be allowed for three years following the year in which the subtraction is taken.

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

318 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
319 "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower Settlement
320 Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part
321 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farming businesses; (b) any business
322 holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural
323 Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota
324 allotment.

325 19. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
326 2005, the indemnification payments received by contract poultry growers and table egg producers from
327 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
328 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
329 poultry who contract with poultry growers qualify for this subtraction.

330 20. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of the
331 Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7
332 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:

333 a. If the payment is received in installment payments pursuant to 7 C.F.R. § 1412.807(a)(2), then the
334 entire gain recognized may be subtracted.

335 b. If the payment is received in a single payment pursuant to 7 C.F.R. § 1412.807(a)(3), then 20
336 percent of the recognized gain may be subtracted. The taxpayer may then deduct an equal amount in
337 each of the four succeeding taxable years.

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

340 § 58.1-441. Reports by corporations.

341 A. Every corporation organized under the laws of the Commonwealth, or having income from
342 Virginia sources, *other than a Subchapter S corporation subject to the return filing requirements of*
343 *§ 58.1-392*, shall make a report to the Department on or before the fifteenth day of the fourth month
344 following the close of its taxable year. Such reports shall be made on forms prescribed by the
345 Department and shall contain such information, including the gross receipts from any business carried on
346 in the Commonwealth and a depreciation schedule of property used in such trade or business, as may be
347 necessary for the proper enforcement of this chapter and be accompanied by a copy of any federal tax
348 return or report filed for such taxable year. The Department shall not require any nonprofit organization
349 created exclusively to assist a law-enforcement official or agency in apprehending and convicting
350 perpetrators of crimes, to report on such returns, or otherwise, the names of individuals or amounts paid
351 to such individuals by the organization for providing information about certain crimes.

352 Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property or
353 business of corporations must make returns of income for such corporations. If a receiver has full
354 custody of and control over the business or property of a corporation, he shall be deemed to be
355 operating such business or property, whether he is engaged in carrying on the business for which the
356 corporation was organized or only in marshaling, selling, or disposing of its assets for purposes of
357 liquidation.

358 B. Notwithstanding the provisions of subsection A, every organization to whom subdivision 5 of
359 § 58.1-401 applies, and having unrelated business taxable income or other taxable income, shall make a
360 report to the Department on or before the fifteenth day of the sixth month following the close of the
361 organization's taxable year.

362 § 58.1-901. Definitions.

363 As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

364 "Decedent" means a deceased person.

365 "Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011
366 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision,

in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full advantage of such credit as the laws of the United States may allow. In no event, however, shall such amount be less than the federal credit allowable by § 2011 of the Internal Revenue Code as it existed on January 1, 1978.

"Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Interest in a closely held business" means an "interest in a closely held business" as defined in § 6166 of the United States Internal Revenue Code of 1986, as amended or renumbered, or the successor provision of the laws of the United States.

"Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his death.

"Personal representative" means the personal representative of the estate of the decedent, appointed, qualified and acting within the Commonwealth, or, if there is no personal representative appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of the Virginia gross estate of the decedent.

"Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

"State" means any state, territory or possession of the United States and the District of Columbia.

"Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Value" means "value" as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

"Working farm" means an interest in a closely held business that operates as an active trade or business for agricultural purposes.

Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be or become effective at any time or from time to time.

§ 58.1-902. Tax on transfer of taxable estate of residents; amounts; credit; property of resident defined.

A. 1. For deaths occurring before January 1, 2006, A a tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident, subject, where applicable, to the credit provided for in subsection B.

2. For deaths occurring on or after January 1, 2006, a tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident whose gross estate exceeds \$10 million, subject, where applicable, to the credit provided for in subsection B. However, no tax shall be imposed on a gross estate if the majority of the assets of the total estate are an interest in a closely held business or a working farm.

B. If the real and tangible personal property of a resident is located outside of the Commonwealth and is subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States relating to federal estate taxes, the amount of tax due under this section shall be credited with the lesser of:

1. The amount of the death tax paid the other state and credited against the federal estate tax; or
2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state or states have jurisdiction to the same extent to which Virginia would exert jurisdiction under this chapter with respect to the residents of such other state or states and the denominator of which is the value of the decedent's gross estate.

C. Property of a resident includes:

1. Real property situated in the Commonwealth of Virginia;
2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and
3. Intangible personal property owned by the resident regardless of where it is located.

§ 58.1-1001. Tax levied; rate.

In addition to all other taxes now imposed by law, every person within this Commonwealth who sells, stores or receives cigarettes made of tobacco or any substitute thereof, for the purpose of distribution to any person within this Commonwealth, shall pay to this Commonwealth an excise tax of ~~one and one-quarter mills on each such cigarette~~ *twenty-five cents per pack of cigarettes*.