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SENATE BILL NO. 769

Offered January 12, 2005

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A BILL to amend and reenact § 58.1-322 of the Code of Virginia, relating to individual income tax deductions for purchases and contributions under qualified tuition programs.

 Patron—Bell

 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 that 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; and

5. through 8. [Repealed.]

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~~ *the* Commonwealth or of any political subdivision or instrumentality of ~~this~~ *the* 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 65 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, 8. [Repealed.]

9. [Expired.]

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

61 11. The wages or salaries received by any person for active and inactive service in the National
62 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar
63 days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of
64 O3 and below shall be entitled to the deductions specified herein.

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

71 13. [Repealed.]

72 14. [Expired.]

73 15, 16. [Repealed.]

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

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

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

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

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

103 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
104 exchange of real property or the sale or exchange of an easement to real property which results in the
105 real property or the easement thereto being devoted to open-space use, as that term is defined in
106 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
107 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
108 shall be allowed for three years following the year in which the subtraction is taken.

109 23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic
110 pay for military service personnel on extended active duty for periods in excess of 90 days; however,
111 the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military
112 basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or
113 exceeds \$30,000.

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

116 25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

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

119 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
120 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. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of the Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:

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

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

30. 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.

31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

D. In computing Virginia taxable income there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:

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 18 cents per mile; or

b. Three thousand dollars for single individuals for taxable years beginning on and after January 1, 1989; \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) for taxable years beginning on and after January 1, 1989, but before January 1, 2005; and \$6,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) for taxable years beginning on and after January 1, 2005; 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.

182 2. (For effective date - see Editor's note) a. A deduction in the amount of \$800 for taxable years
183 beginning on and after January 1, 1988, but before January 1, 2006, and \$900 for taxable years
184 beginning on and after January 1, 2006, for each personal exemption allowable to the taxpayer for
185 federal income tax purposes.

186 b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined
187 under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the
188 amount of \$800.

189 The additional deduction for blind or aged taxpayers allowed under this subdivision shall be
190 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income
191 tax purposes.

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

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

198 5. a. Effective for all taxable years beginning on or after January 1, 1996, but before January 1,
199 2004, a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age
200 62 through 64.

201 b. For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000
202 for individuals born on or before January 1, 1939.

203 c. For taxable years beginning January 1, 2004, but before January 1, 2005, a deduction in the
204 amount of \$6,000 for individuals born on or between January 2, 1940, and January 1, 1942.

205 d. For taxable years beginning January 1, 2005, but before January 1, 2006, a deduction in the
206 amount of \$6,000 for individuals born on or between January 2, 1941, and January 1, 1942.

207 e. For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000
208 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be
209 reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000
210 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the
211 deduction will be reduced by \$1 for every \$1 the total combined adjusted federal adjusted gross income
212 of both spouses exceeds \$75,000.

213 f. For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal
214 adjusted gross income minus any benefits received under Title II of the Social Security Act and other
215 benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as
216 amended.

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

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

240 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January
241 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
242 1998, and shall be subject to the limitations set out in subdivision 7 a.

243 c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained

age 70 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.

d. For taxable years beginning on or after January 1, 2005, a deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year to a qualified tuition program (as defined under § 529 of the United States Internal Revenue Code of 1986, as amended or renumbered, or successor provision) other than a prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan (§ 23-38.75 et seq.). Except as provided in this subdivision, the amount deducted on any individual income tax return in any taxable year shall be limited to \$2,000 per designated beneficiary. No deduction shall be allowed pursuant to this subdivision if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the annual payment or contribution under the qualified tuition program exceeds \$2,000 for a designated beneficiary, the remainder may be carried forward and subtracted in future taxable years until the total payments or contributions have been fully deducted. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken pursuant to this subdivision 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 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 qualified tuition program as of December 31 of the taxable year. In the case of a transfer of ownership of a contract or account under such qualified tuition program, the transferee shall succeed to the transferor's tax attributes associated with the contract or account, including, but not limited to, carryover and recapture of deductions.

A purchaser or contributor to a qualified tuition program, other than a program entered into with the Virginia College Savings Plan, who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$2,000 per designated beneficiary in any taxable year. A taxpayer aged 70 or older shall be allowed a deduction for the full amount paid under a contract or contributed to an account on or after January 1, 2005, under the qualified tuition program.

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 20 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.

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.