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**HOUSE BILL NO. 786****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations  
on February 8, 2006)

(Patron Prior to Substitute—Delegate Landes)

*A BILL to amend and reenact § 58.1-322 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.11, relating to individual income tax deductions and credits for the cost of long-term care insurance premiums.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 58.1-322 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.11 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 [Repealed.]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 Commonwealth or of any political subdivision or instrumentality of 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.]

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

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

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

72 13. [Repealed.]

73 14. [Expired.]

74 15, 16. [Repealed.]

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

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

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

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

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

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

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

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

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

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

121 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a

122 result of (i) the "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco  
123 Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant  
124 to 7 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farmers; (b) any  
125 person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural  
126 Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or  
127 allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18  
128 of § 58.1-402.

129 28. For taxable years beginning on and after January 1, 2000, items of income attributable to,  
130 derived from or in any way related to (i) assets stolen from, hidden from, or otherwise lost by an  
131 individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other  
132 consideration received by a victim or target of Nazi persecution to compensate such individual for  
133 performing labor against his will under the threat of death, during World War II and its prelude and  
134 direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with  
135 the proceeds from the sale of assets stolen from, hidden from, or otherwise lost to, during World War II  
136 and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this  
137 subdivision shall only apply to an individual who was the first recipient of such items of income and  
138 who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of  
139 such victim.

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

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

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

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

158 30. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,  
159 2005, the indemnification payments received by contract poultry growers and table egg producers from  
160 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low  
161 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of  
162 poultry who contract with poultry growers qualify for this subtraction.

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

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

170 1. a. The amount allowable for itemized deductions for federal income tax purposes where the  
171 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the  
172 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted  
173 on such federal return and increased by an amount which, when added to the amount deducted under  
174 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for  
175 such purposes at a rate of 18 cents per mile; or

176 b. Three thousand dollars for single individuals for taxable years beginning on and after January 1,  
177 1989; \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a  
178 separate return) for taxable years beginning on and after January 1, 1989, but before January 1, 2005;  
179 and \$6,000 for married persons (one-half of such amounts in the case of a married individual filing a  
180 separate return) for taxable years beginning on and after January 1, 2005; provided that the taxpayer has  
181 not itemized deductions for the taxable year on his federal income tax return. For purposes of this  
182 section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year

183 may compute the deduction only with respect to earned income.

184 2. a. A deduction in the amount of \$800 for taxable years beginning on and after January 1, 1988,  
185 but before January 1, 2005, and \$900 for taxable years beginning on and after January 1, 2005, for each  
186 personal exemption allowable to the taxpayer for federal income tax purposes.

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

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

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

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

199 5. a. Effective for all taxable years beginning on or after January 1, 1996, but before January 1,  
200 2004, a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age  
201 62 through 64.

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

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

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

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

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

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

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

241 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January  
242 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,  
243 1998, and shall be subject to the limitations set out in subdivision 7 a.

244 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.

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, *or a credit under § 58.1-339.11.*

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.

*§ 58.1-339.11. Long-term care insurance tax credit.*

*A. For taxable years beginning on or after January 1, 2006, any individual shall be entitled to a credit against the tax levied pursuant to § 58.1-320 for certain long-term care insurance premiums paid by the individual during the taxable year pursuant to an insurance policy entered into on or after January 1, 2006. The amount of the credit for each taxable year shall equal 15% of the amount paid by the individual during the taxable year in long-term care insurance premiums for long-term care insurance coverage for himself, but in no event shall the total credits over the life of any policy exceed the amount of premiums paid for the first 12 months of coverage. For purposes of this section, "long-term care insurance premium" means the amount paid during a taxable year for any qualified long-term care insurance contract as defined in § 7702B(b) of the Internal Revenue Code, as amended, covering an individual.*

*B. If the amount of the credit as determined in subsection A exceeds the individual's income tax liability for the taxable year, the amount that exceeds such liability may be carried over for credit against the income taxes of such individual in the next five taxable years or until the full credit is used, whichever occurs first.*

*C. The credit described in this section shall not be claimed to the extent the individual has claimed a deduction for federal income tax purposes for long-term care insurance premiums for himself or a deduction under subdivision D 10 of § 58.1-322.*

*D. The Tax Commissioner shall establish guidelines regarding the information to include and the format for proof of payment. Such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).*