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SENATE BILL NO. 264

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 58.1-322 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 23-38.81:01, relating to the Virginia College Savings Plan.

 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 and that the Code of Virginia is amended by adding a section numbered 23-38.81:01 as follows:

§ 23-38.81:01. Sales of prepaid tuition contracts; ending date.

Notwithstanding any provision in this chapter, the Board shall not enter into any prepaid tuition contract on or after July 1, 2008. However, subsequent to such date, the Board shall continue to be authorized to make modifications to prepaid tuition contracts that were entered into prior to July 1, 2008, to reflect changes in qualified beneficiaries or other changes that require a modification to such contracts.

§ 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

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59 this subdivision.

60 5. The amount of any refund or credit for overpayment of income taxes imposed by the
61 Commonwealth or any other taxing jurisdiction.

62 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
63 deducted for federal purposes on account of the provisions of § 280C (a) of the Internal Revenue Code.

64 7, 8. [Repealed.]

65 9. [Expired.]

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

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

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

78 13. [Repealed.]

79 14. [Expired.]

80 15, 16. [Repealed.]

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

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

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

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

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

110 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
111 exchange of real property or the sale or exchange of an easement to real property which results in the
112 real property or the easement thereto being devoted to open-space use, as that term is defined in
113 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
114 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
115 shall be allowed for three years following the year in which the subtraction is taken.

116 23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic
117 pay for military service personnel on extended active duty for periods in excess of 90 days; however,
118 the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military
119 basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or
120 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 total annual salary from all employment for the taxable year 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. 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

182 b. Three thousand dollars for single individuals for taxable years beginning on and after January 1,
183 1989; \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a
184 separate return) for taxable years beginning on and after January 1, 1989, but before January 1, 2005;
185 and \$6,000 for married persons (one-half of such amounts in the case of a married individual filing a
186 separate return) for taxable years beginning on and after January 1, 2005; provided that the taxpayer has
187 not itemized deductions for the taxable year on his federal income tax return. For purposes of this
188 section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year
189 may compute the deduction only with respect to earned income.

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

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

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

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

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

205 5. a. Effective for all taxable years beginning on or after January 1, 1996, but before January 1,
206 2004, a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age
207 62 through 64.

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

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

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

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

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

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

228 7. a. *For purposes of this subdivision, the "maximum annual deduction" means \$2,000 for taxable*
229 *years beginning before January 1, 2006; \$3,000 for taxable years beginning on or after January 1,*
230 *2006, but before January 1, 2008; and \$4,000 for taxable years beginning on or after January 1, 2008.*
231 *The maximum annual deduction shall apply to each individual prepaid tuition contract or savings trust*
232 *account entered into with the Virginia College Savings Plan.*

233 ab. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
234 during the taxable year for a prepaid tuition contract or savings trust account entered into with the
235 Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as
236 provided in subdivision 7 ed, the amount deducted on any individual income tax return in any taxable
237 year shall be limited to ~~\$2,000~~ *the maximum annual deduction* per prepaid tuition contract or savings
238 trust account. No deduction shall be allowed pursuant to this section if such payments or contributions
239 are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual
240 contribution to a savings trust account exceeds ~~\$2,000~~ *the maximum annual deduction*, the remainder
241 may be carried forward and subtracted in future taxable years until the purchase price or savings trust
242 contribution has been fully deducted; however, except as provided in subdivision 7 ed, in no event shall
243 the amount deducted in any taxable year *per contract or savings trust account* exceed ~~\$2,000~~ *per*

244 ~~contract or savings trust account~~ *the maximum annual deduction*. Notwithstanding the statute of
245 limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to
246 recapture in the taxable year or years in which distributions or refunds are made for any reason other
247 than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or
248 (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision,
249 the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia
250 College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a
251 prepaid tuition contract or savings trust account, the transferee shall succeed to the transferor's tax
252 attributes associated with a prepaid tuition contract or savings trust account, including, but not limited
253 to, carryover and recapture of deductions.

254 *bc.* The amount paid for a prepaid tuition contract during taxable years beginning on or after January
255 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
256 1998, and shall be subject to the limitations set out in subdivision 7 *ab*.

257 *ed.* A purchaser of a prepaid tuition contract or contributor to a savings trust account who has
258 attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$2,000
259 *the maximum annual deduction* per prepaid tuition contract or savings trust account in any taxable year.
260 Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a
261 savings trust account, less any amounts previously deducted. If a prepaid tuition contract was purchased
262 by such taxpayer during taxable years beginning on or after January 1, 1996, but before January 1,
263 1998, such taxpayer may take the deduction for the full amount paid during such years, less any
264 amounts previously deducted with respect to such payments, in taxable year 1999 or by filing an
265 amended return for taxable year 1998.

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

270 9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the
271 tuition costs incurred by an individual employed as a primary or secondary school teacher licensed
272 pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses
273 that are required as a condition of employment; however, the deduction provided by this subsection shall
274 be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has
275 not claimed a deduction for the payment of such tuition costs on his federal income tax return.

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

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

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