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SENATE BILL NO. 276

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 28, 2006)

(Patron Prior to Substitute—Senator Whipple)

A *BILL to amend and reenact §§ 58.1-322 and 58.1-402 of the Code of Virginia, relating to a subtraction from income of the gain on sales of certain real property.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-322 and 58.1-402 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in this section.

B. To the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes 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 [Repealed.]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.]

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

11. The wages or salaries received by any person for active and inactive service in the National

60 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar
61 days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of
62 O3 and below shall be entitled to the deductions specified herein.

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

69 13. [Repealed.]

70 14. [Expired.]

71 15, 16. [Repealed.]

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

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

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

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

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

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

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

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

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

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

118 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
119 result of (i) the "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco
120 Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant
121 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.

32. For taxable years beginning on or after January 1, 2007, 50% of the recognized gain resulting from the sale of an apartment building or apartment complex that has at least 20% of the units rented to persons whose income is determined to be less than 50% of the area median income, provided that the sale (i) is made to an organization composed of the existing tenants of the building or complex, or a majority of them, or to a nonprofit corporation qualified as a § 501(c)(3) organization under the Internal Revenue Code and (ii) includes a provision contractually binding the purchaser to preserve the occupancy level of the building or complex or portion thereof for a period of at least 15 years to at least 20% of the units being rented to persons whose income is determined to be less than 50% of the area median income.

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,

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. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
229 during the taxable year for a prepaid tuition contract or savings trust account entered into with the
230 Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as
231 provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable
232 year shall be limited to \$2,000 per prepaid tuition contract or savings trust account. No deduction shall
233 be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or
234 contributor's federal income tax return. If the purchase price or annual contribution to a savings trust
235 account exceeds \$2,000, the remainder may be carried forward and subtracted in future taxable years
236 until the purchase price or savings trust contribution has been fully deducted; however, except as
237 provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$2,000
238 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained
239 in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in
240 which distributions or refunds are made for any reason other than (i) to pay qualified higher education
241 expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or
242 receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor"
243 means the person shown as such on the records of the Virginia College Savings Plan as of December 31
244 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust

account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or savings trust account, including, but not limited to, carryover and recapture of deductions.

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

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.

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

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

§ 58.1-402. Virginia taxable income.

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

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

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

1. Interest, less related expenses to the extent not deducted in determining federal taxable income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which the Commonwealth is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. [Repealed.]

4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by the Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

5. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

6. The amount of employee stock ownership credit carry-over deducted by the corporation in computing federal taxable income under § 404 (i) of the Internal Revenue Code;

7. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code;

8. a. For taxable years beginning on and after January 1, 2004, the amount of any 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 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 or capital imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government;

(2) The related member derives at least one-third of its gross revenues from the licensing of intangible property to parties who are not related members, and the transaction giving rise to the expenses and costs between the corporation and the related member was made at rates and terms comparable to the rates and terms of agreements that the related member has entered into with parties who are not related members for the licensing of intangible property; or

(3) The corporation can establish to the satisfaction of the Tax Commissioner that the 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 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. A corporation required to add to its federal taxable income intangible expenses and costs pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article for such taxable year including tax upon any amount of intangible expenses and costs required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the transaction or transactions between the corporation and a related member or members that resulted in the corporation's taxable income being increased, as required under subdivision a, for such intangible expenses and costs.

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member or members resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner shall permit the corporation to file an amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and costs without making the adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under § 58.1-446;

9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest 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, if:

(1) The related member has substantial business operations relating to interest-generating activities, in which the related member pays expenses for at least five full-time employees who maintain, manage, defend or are otherwise responsible for operations or administration relating to the interest-generating activities; and

(2) The interest expenses and costs are not directly or indirectly for, related to or in connection with the direct or indirect acquisition, maintenance, management, sale, exchange, or disposition of intangible property; and

(3) The transaction giving rise to the expenses and costs between the corporation and the related

member has a valid business purpose other than the avoidance or reduction of taxation and payments between the parties are made at arm's length rates and terms; and

(4) One of the following applies:

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

(ii) Payments arise pursuant to a pre-existing contract entered into when the parties were not related members provided the payments continue to be made at arm's length rates and terms;

(iii) The related member engages in transactions with parties other than related members that generate revenue in excess of \$2 million annually; or

(iv) The transaction giving rise to the interest payments between the corporation and a related member was done at arm's length rates and terms and meets any of the following: (a) the related member uses funds that are borrowed from a party other than a related member or that are paid, incurred or passed-through to a person who is not a related member; (b) the debt is part of a regular and systematic funds management or portfolio investment activity conducted by the related member, whereby the funds of two or more related members are aggregated for the purpose of achieving economies of scale, the internal financing of the active business operations of members, or the benefit of centralized management of funds; (c) financing the expansion of the business operations; or (d) restructuring the debt of related members, or the pass-through of acquisition-related indebtedness to related members.

b. A corporation required to add to its federal taxable income interest expenses and costs pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article for such taxable year including tax upon any amount of interest expenses and costs required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the transaction or transactions between the corporation and a related member or members that resulted in the corporation's taxable income being increased, as required under subdivision a, for such interest expenses and costs.

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member or members resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than the avoidance or reduction of the tax due under this chapter and that the related payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall permit the corporation to file an amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter and that the related payments between the parties were made at arm's length rates and terms. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related interest expenses and costs without making the adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under § 58.1-446.

d. For purposes of subdivision B 9:

"Arm's length rates and terms" means that (i) two or more related members enter into a written agreement for the transaction, (ii) such agreement is of a duration and contains payment terms substantially similar to those that the related member would be able to obtain from an unrelated entity, (iii) the interest is at or below the applicable federal rate compounded annually for debt instruments under § 1274(d) of the Internal Revenue Code that was in effect at the time of the agreement, and (iv)

the borrower or payor adheres to the payment terms of the agreement governing the transaction or any amendments thereto.

"Valid business purpose" means one or more business purposes that alone or in combination constitute the motivation for some business activity or transaction, which activity or transaction improves, apart from tax effects, the economic position of the taxpayer, as further defined by regulation.

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, 13. [Expired.]

14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C (c) of the Internal Revenue Code.

15. For taxable years beginning on or after January 1, 2000, the total amount 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.

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

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

18. For 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 farming businesses; (b) any business holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

19. 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.

20. 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.

21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses and costs or interest expenses and costs added to the federal taxable income of a corporation pursuant to subdivision B 8 or B 9 shall be subtracted from the federal taxable income of the related member that received such amount if such related member is subject to Virginia income tax on the same amount.

22. *For taxable years beginning on or after January 1, 2007, 50% of the recognized gain resulting from the sale of an apartment building or apartment complex that has at least 20% of the units rented to persons whose income is determined to be less than 50% of the area median income, provided that the sale (i) is made to an organization composed of the existing tenants of the building or complex, or a majority of them, or to a nonprofit corporation qualified as a § 501(c)(3) organization under the Internal Revenue Code and (ii) includes a provision contractually binding the purchaser to preserve the occupancy level of the building or complex or portion thereof for a period of at least 15 years to at least 20% of the units being rented to persons whose income is determined to be less than 50% of the area median income.*

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