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SENATE BILL NO. 1544

Offered January 26, 2009

A BILL to amend and reenact §§ 58.1-322 and 58.1-344.3 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 22.1 a chapter numbered 16.1, consisting of sections numbered 22.1-335.1 through 22.1-335.8, relating to the Autism Tuition Assistance Grant Program and taxation of grants thereunder.

Patrons—Stosch and Newman; Delegate: O'Bannon

Unanimous consent to introduce

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-322 and 58.1-344.3 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 22.1 a chapter numbered 16.1, consisting of sections numbered 22.1-335.1 through 22.1-335.8, as follows:

CHAPTER 16.1.

AUTISM TUITION ASSISTANCE GRANT PROGRAM.

§ 22.1-335.1. Autism Tuition Assistance Grant Program; established.

There is hereby established the Autism Tuition Assistance Grant Program (Grant Program) to provide tuition assistance grants on behalf of eligible students for whom individualized educational programs have been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA) as amended, regulations promulgated pursuant to IDEA, and regulations of the Board of Education. Such grants shall be used for tuition at an eligible private school, as defined in § 22.1-335.4, of the parent's choice.

For the purposes of the Grant Program, "eligible students" are students identified as autistic as prescribed by the Board of Education in its Regulations Governing Special Education Programs for Children with Disabilities in Virginia.

§ 22.1-335.2. Grant Program; eligibility.

A. The parent of an eligible student may request of the Superintendent of Public Instruction a tuition assistance grant for the student to enroll in and attend an eligible private school, as defined in § 22.1-335.4. When such a request is received by the Superintendent of Public Instruction, a tuition assistance grant shall be issued on behalf of the eligible student upon satisfaction of the following conditions:

1. The student has attended a public school in the Commonwealth and has received special education services from a public school for at least one year prior to the request of a grant;

2. Prior to the beginning of the initial school year for which the grant is requested, the parent has obtained acceptance for admission of the student to a private school that is eligible to participate in the Grant Program pursuant to § 22.1-335.4;

3. The parent has executed and submitted to the division superintendent a written statement acknowledging that the public school has implemented an individualized educational program that is reasonably calculated to provide educational benefit in accordance with the federal IDEA as amended, regulations promulgated pursuant to IDEA, and regulations of the Board of Education; and

4. The parent has notified the division superintendent of his request to the Superintendent of Public Instruction for a tuition assistance grant at least 60 days prior to the beginning of the school year in which the first grant payment is sought. Such notice shall be transmitted through a communication sent directly to the division superintendent either in writing or through electronic means.

B. The grant may be awarded annually until the student returns to a public school or is no longer eligible for special education services. However, at any time, the student's parent may remove the student from the private school of attendance and place the student in another private school that is eligible for the Grant Program pursuant to § 22.1-335.4. The parents of a student receiving a grant shall provide transportation for the student, at the parent's expense, to and from the private school and school-related activities.

§ 22.1-335.3. School division; obligations.

A. Upon receiving a notification from a parent concerning a request for a grant, a division superintendent shall in a timely fashion notify the parent of the student of all options of which the school division is aware and that are available pursuant to this chapter and may offer the student's parent an opportunity to enroll the student in another public school or program within the division.

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59 *B. The parent may choose, as an alternative, to request enrollment of his student in a division where*
60 *the student is not a resident and transport the student at the parent's expense to a public school in an*
61 *adjacent school division that has available space and an existing program with services required by the*
62 *student's individualized educational program. Any school division agreeing to enroll a student under the*
63 *provisions of this subsection shall not charge tuition; however, the school division shall report the*
64 *student in fall membership and shall receive payment for the student in accordance with the provisions*
65 *of the appropriation act.*

66 *§ 22.1-335.4. Private schools; eligibility.*

67 *Any nonsectarian Virginia private school may be eligible to participate in the Grant Program so*
68 *long as such school:*

69 *1. Holds a current unrestricted license to operate as a school for students with disabilities pursuant*
70 *to Chapter 16 (§ 22.1-319 et seq.);*

71 *2. Employs teachers having qualifications in compliance with regulations promulgated by the Board*
72 *of Education pursuant to Chapter 16 (§ 22.1-319 et seq.);*

73 *3. Demonstrates fiscal soundness by having been in operation for at least one year or by having*
74 *provided the Board of Education with a (i) statement by a certified public accountant confirming that*
75 *the private school is insured and the owner or owners have sufficient capital or credit to operate the*
76 *school for the upcoming year serving the number of students anticipated with expected revenues from*
77 *tuition and other sources that may be reasonably expected; or (ii) surety bond or letter of credit for the*
78 *amount equal to the grant funds for any quarter;*

79 *4. Complies with the antidiscrimination provisions of 42 U.S.C. § 2000d;*

80 *5. Meets state and local health and safety laws and codes;*

81 *6. Applies to the Board of Education to receive tuition assistance grants for the education of students*
82 *with autism, specifying grade levels and services that the private school has available for students with*
83 *autism who are participating in the program;*

84 *7. Adheres to the tenets of its published disciplinary procedures prior to expulsion of a student*
85 *admitted to the school in accordance with the provisions of this chapter;*

86 *8. Agrees to provide the services prescribed in each participating student's individualized education*
87 *program; and*

88 *9. Agrees to retain any student enrolled pursuant to the grant until completion of the relevant school*
89 *year, unless the student is unable to attend because of illness or unless the school excuses the student*
90 *for other good cause, as defined in the Board of Education regulations.*

91 *§ 22.1-335.5. Program participants; obligations.*

92 *A. Any parent who requests a grant on behalf of an eligible student is exercising the parental option*
93 *of placing the student in a private school and thus shall select the private school and apply for the*
94 *admission of the student.*

95 *B. The parent shall request the grant from the Superintendent of Public Instruction at least 60 days*
96 *prior to the beginning of the school year in which the first grant payment is sought.*

97 *C. The parent of a student participating in the Grant Program shall comply fully with the private*
98 *school's parental involvement requirements, unless excused by the school for illness or other good*
99 *cause.*

100 *D. The parent may request that the student participating in the Grant Program take relevant*
101 *Standards of Learning tests. However, the parent shall be responsible for transporting the student to the*
102 *assessment site designated by the school division. The student's scores on such tests and assessments*
103 *shall not be counted in the accreditation of any school in the school division.*

104 *E. Grants awarded pursuant to this chapter shall be disbursed pursuant to the provisions of the*
105 *appropriation act.*

106 *F. Failure to comply with the provisions of this chapter shall constitute a forfeiture of the grant.*

107 *§ 22.1-335.6. Funding.*

108 *The amount of the grant for an eligible student shall be calculated in accordance with the*
109 *appropriation act and shall not exceed \$20,000 per year, but under no circumstances may an eligible*
110 *student receive more than \$80,000 of total assistance under the Grant Program. Additionally, any*
111 *assistance received from mandated health insurance coverage for autism shall be taken into account*
112 *when determining the grant amount for each student in order that each student receives no more than*
113 *\$20,000 per year.*

114 *§ 22.1-335.7. Liability.*

115 *Nothing in this chapter shall give rise to any liability on the part of the Commonwealth or any local*
116 *school board based on the award or use of an award from the Grant Program.*

117 *§ 22.1-335.8. Board of Education to promulgate regulations.*

118 *The Board of Education shall promulgate regulations pursuant to the Administrative Process Act*
119 *(§ 2.2-4000 et seq.) to administer the Grant Program and aid local school divisions and private schools*
120 *in the Grant Program's implementation. The Board's regulations shall include, but not be limited to:*

1. Contract provisions requiring private schools that enroll Grant Program participants to agree, prior to receipt of the grant on behalf of the student, to enroll and retain the student until completion of the relevant school year, unless the student is unable to attend because of illness or the school excuses the student for other good cause as defined in the Board's regulations.

2. A requirement that the private school notify the division superintendent of the school division where the student resides of the effective date on which the student's attendance will be terminated or the date on which the student was excused, and that the private school shall reimburse the Commonwealth for the grant. The amount of the reimbursement shall be prorated according to the time remaining in the school year.

3. A process for verifying the student's initial admission and continued enrollment and attendance at the private school.

4. A process for determining a student's eligibility and approving grants in order to ensure that each participating student meets the statutory and regulatory requirements.

§ 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

182 Department.

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

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

193 13. [Repealed.]

194 14. —Expired.]

195 15, 16. [Repealed.]

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

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

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

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

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

225 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
226 exchange of real property or the sale or exchange of an easement to real property which results in the
227 real property or the easement thereto being devoted to open-space use, as that term is defined in
228 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
229 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
230 shall be allowed for three years following the year in which the subtraction is taken.

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

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

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

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

242 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
243 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.

32. Effective for all taxable years beginning on or after January 1, 2007, the death benefit payments from an annuity contract that are received by a beneficiary of such contract and are subject to federal income taxation.

33. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

34. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

35. For taxable years beginning on or after January 1, 2009, income of a parent from grants paid under the Autism Tuition Assistance Grant Program (§ 22.1-335.1 et seq.) for the education of a child who is an eligible student under the Grant Program.

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

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

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

2. a. A deduction in the amount of \$800 for taxable years beginning on and after January 1, 1988, but before January 1, 2005; \$900 for taxable years beginning on and after January 1, 2005, but before January 1, 2008; and \$930 for taxable years beginning on and after January 1, 2008, for each personal exemption allowable to the taxpayer for federal income tax purposes.

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

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

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

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

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

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

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

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

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

f. For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any 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, as amended.

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

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to \$4,000 per prepaid tuition contract or savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a savings trust

account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$4,000 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 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 \$4,000 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.

11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

a. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.

b. If the payment is received in a single payment, then 10% of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

12. For taxable years beginning on and after January 1, 2007, an amount equal to 20% of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.) of this title, not to exceed \$500 in each taxable year, in purchasing for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35%, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

13. For taxable years beginning on or after January 1, 2007, the lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such donation, provided the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

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.

G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the income or gain of such electing small business corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or deductions of such electing small business corporation (S corporation).

Effective for all taxable years beginning on or after January 1, 2007, to the extent excluded from federal adjusted gross income, there shall be added to federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the value of any distribution paid or distributed to the shareholder by such electing small business corporation (S corporation).

§ 58.1-344.3. Voluntary contributions of refunds requirements.

A. 1. For taxable years beginning on and after January 1, 2005, all entities entitled to voluntary contributions of tax refunds listed in subsections B and C must have received at least \$10,000 in contributions in each of the three previous taxable years for which there is complete data and in which such entity was listed on the individual income tax return.

2. In the event that an entity listed in subsections B and C does not satisfy the requirement in subdivision 1 of this subsection, such entity shall no longer be listed on the individual income tax return.

3. a. The entities listed in subdivisions B 21 and B 22 as well as any other entities in subsections B and C added subsequent to the 2004 Session of the General Assembly shall not appear on the individual income tax return until their addition to the individual income tax return results in a maximum of 25 contributions listed on the return. Such contributions shall be added in the order that they are listed in subsections B and C.

b. Each entity added to the income tax return shall appear on the return for at least three consecutive taxable years before the requirement in subdivision 1 of this subsection is applied to such entity.

4. The Department of Taxation shall report annually by the first day of each General Assembly Regular Session to the chairmen of the House and Senate Finance Committees the amounts collected for each entity listed under subsections B and C for the three most recent taxable years for which there is complete data. Such report shall also identify the entities, if any, that will be removed from the individual income tax return because they have failed the requirements in subdivision 1 of this subsection, the entities that will remain on the individual income tax return, and the entities, if any, that will be added to the individual income tax return.

B. Subject to the provisions of subsection A, the following entities entitled to voluntary contributions shall appear on the individual income tax return and are eligible to receive tax refund contributions of not less than \$1:

1. Nongame wildlife voluntary contribution.

a. All moneys contributed shall be used for the conservation and management of endangered species and other nongame wildlife. "Nongame wildlife" includes protected wildlife, endangered and threatened wildlife, aquatic wildlife, specialized habitat wildlife both terrestrial and aquatic, and mollusks, crustaceans, and other invertebrates under the jurisdiction of the Board of Game and Inland Fisheries.

b. All moneys shall be deposited into a special fund known as the Game Protection Fund and which shall be accounted for as a separate part thereof to be designated as the Nongame Cash Fund. All moneys so deposited in the Nongame Cash Fund shall be used by the Commission of Game and Inland Fisheries for the purposes set forth herein.

2. Open space recreation and conservation voluntary contribution.

a. All moneys contributed shall be used by the Department of Conservation and Recreation to acquire land for recreational purposes and preserve natural areas; to develop, maintain, and improve state park sites and facilities; and to provide funds to local public bodies pursuant to the Virginia Outdoor Fund Grants Program.

b. All moneys shall be deposited into a special fund known as the Open Space Recreation and Conservation Fund. The moneys in the fund shall be allocated one-half to the Department of Conservation and Recreation for the purposes stated in subdivision 2 a of this subsection and one-half to local public bodies pursuant to the Virginia Outdoor Fund Grants Program.

3. Voluntary contribution to political party.

All moneys contributed shall be paid to the State Central Committee of any party that meets the definition of a political party under § 24.2-101 as of July 1 of the previous taxable year. The maximum contribution allowable under this subdivision shall be \$25. In the case of a joint return of husband and wife, each spouse may designate that the maximum contribution allowable be paid.

4. United States Olympic Committee voluntary contribution.

All moneys contributed shall be paid to the United States Olympic Committee.

5. Housing program voluntary contribution.

a. All moneys contributed shall be used by the Department of Housing and Community Development to provide assistance for emergency, transitional, and permanent housing for the homeless; and to provide assistance to housing for the low-income elderly for the physically or mentally disabled.

b. All moneys shall be deposited into a special fund known as the Virginia Tax Check-off for Housing Fund. All moneys deposited in the fund shall be used by the Department of Housing and Community Development for the purposes set forth in this subdivision. Funds made available to the Virginia Tax Check-off for Housing Fund may supplement but shall not supplant activities of the Virginia Housing Partnership Revolving Fund established pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36 or those of the Virginia Housing Development Authority.

6. Voluntary contributions to the Department for the Aging.

a. All moneys contributed shall be used by the Department for the Aging for the enhancement of transportation services for the elderly and disabled.

b. All moneys shall be deposited into a special fund known as the Transportation Services for the Elderly and Disabled Fund. All moneys so deposited in the fund shall be used by the Department for the Aging for the enhancement of transportation services for the elderly and disabled. The Department for the Aging shall conduct an annual audit of the moneys received pursuant to this subdivision and shall provide an evaluation of all programs funded pursuant to this subdivision annually to the Secretary of Health and Human Resources.

7. Voluntary contribution to the Community Policing Fund.

a. All moneys contributed shall be used to provide grants to local law-enforcement agencies for the purchase of equipment or the support of services, as approved by the Criminal Justice Services Board, relating to community policing.

b. All moneys shall be deposited into a special fund known as the Community Policing Fund. All moneys deposited in such fund shall be used by the Department of Criminal Justice Services for the purposes set forth herein.

8. Voluntary contribution to promote the arts.

All moneys contributed shall be used by the Virginia Arts Foundation to assist the Virginia Commission for the Arts in its statutory responsibility of promoting the arts in the Commonwealth. All moneys shall be deposited into a special fund known as the Virginia Arts Foundation Fund.

9. Voluntary contribution to the Historic Resources Fund.

All moneys contributed shall be deposited in the Historic Resources Fund established pursuant to § 10.1-2202.1.

10. Voluntary contribution to the Virginia Foundation for the Humanities and Public Policy.

All moneys contributed shall be paid to the Virginia Foundation for the Humanities and Public Policy. All moneys shall be deposited into a special fund known as the Virginia Humanities Fund.

11. Voluntary contribution to the Center for Governmental Studies.

All moneys contributed shall be paid to the Center for Governmental Studies, a public service and research center of the University of Virginia. All moneys shall be deposited into a special fund known as the Governmental Studies Fund.

12. Voluntary contribution to the Law and Economics Center.

All moneys contributed shall be paid to the Law and Economics Center, a public service and research center of George Mason University. All moneys shall be deposited into a special fund known as the Law and Economics Fund.

13. Voluntary contribution to Children of America Finding Hope.

All moneys contributed shall be used by Children of America Finding Hope (CAFH) in its programs

551 which are designed to reach children with emotional and physical needs.

552 14. Voluntary contribution to 4-H Educational Centers.

553 All moneys contributed shall be used by the 4-H Educational Centers throughout the Commonwealth
554 for their (i) educational, leadership, and camping programs and (ii) operational and capital costs. The
555 State Treasurer shall pay the moneys to the Virginia 4-H Foundation in Blacksburg, Virginia.

556 15. Voluntary contribution to promote organ and tissue donation.

557 a. All moneys contributed shall be used by the Virginia Transplant Council to assist in its statutory
558 responsibility of promoting and coordinating educational and informational activities as related to the
559 organ, tissue, and eye donation process and transplantation in the Commonwealth of Virginia.

560 b. All moneys shall be deposited into a special fund known as the Virginia Transplant Council
561 Education Fund. All moneys deposited in such fund shall be used by the Virginia Transplant Council for
562 the purposes set forth herein.

563 16. Voluntary contributions to the Virginia War Memorial Foundation and the National D-Day
564 Memorial Foundation.

565 All moneys contributed shall be used by the Virginia War Memorial Foundation and the National
566 D-Day Memorial Foundation in their work through each of their respective memorials. The State
567 Treasurer shall divide the moneys into two equal portions and pay one portion to the Virginia War
568 Memorial Foundation and the other portion to the National D-Day Memorial Foundation.

569 17. Voluntary contribution to the Virginia Federation of Humane Societies.

570 All moneys contributed shall be paid to the Virginia Federation of Humane Societies to assist in its
571 mission of saving, caring for, and finding homes for homeless animals.

572 18. Voluntary contribution to the Tuition Assistance Grant Fund.

573 a. All moneys contributed shall be paid to the Tuition Assistance Grant Fund for use in providing
574 monetary assistance to residents of the Commonwealth who are enrolled in undergraduate or graduate
575 programs in private Virginia colleges.

576 b. All moneys shall be deposited into a special fund known as the Tuition Assistance Grant Fund.
577 All moneys so deposited in the Fund shall be administered by the State Council of Higher Education for
578 Virginia in accordance with and for the purposes provided under the Tuition Assistance Grant Act
579 (§ 23-38.11 et seq.).

580 19. Voluntary contribution to the Spay and Neuter Fund.

581 All moneys contributed shall be paid to the Spay and Neuter Fund for use by localities in the
582 Commonwealth for providing low-cost spay and neuter surgeries through direct provision or contract or
583 each locality may make the funds available to any private, nonprofit sterilization program for dogs and
584 cats in such locality. The Tax Commissioner shall determine annually the total amounts designated on
585 all returns from each locality in the Commonwealth, based upon the locality that each filer who makes a
586 voluntary contribution to the Fund lists as his permanent address. The State Treasurer shall pay the
587 appropriate amount to each respective locality.

588 20. Voluntary contribution to the Virginia Commission for the Arts.

589 All moneys contributed shall be paid to the Virginia Commission for the Arts.

590 21. Voluntary contribution for the Office of Commonwealth Preparedness.

591 All moneys contributed shall be paid to the Department of Emergency Management for the Office of
592 Commonwealth Preparedness.

593 22. Voluntary contribution for the cancer centers in the Commonwealth.

594 All moneys contributed shall be paid equally to all entities in the Commonwealth that officially have
595 been designated as cancer centers by the National Cancer Institute.

596 23. Voluntary contribution to the Brown v. Board of Education Scholarship Program Fund.

597 a. All moneys contributed shall be paid to the Brown v. Board of Education Scholarship Program
598 Fund to support the work of and generate nonstate funds to maintain the Brown v. Board of Education
599 Scholarship Program.

600 b. All moneys shall be deposited into the Brown v. Board of Education Scholarship Program Fund as
601 established in § 30-231.4.

602 c. All moneys so deposited in the Fund shall be administered by the State Council of Higher
603 Education in accordance with and for the purposes provided in Chapter 34.1 (§ 30-231.01 et seq.) of
604 Title 30.

605 24. Voluntary contribution to the Martin Luther King, Jr. Living History and Public Policy Center.

606 All moneys contributed shall be paid to the Board of Trustees of the Martin Luther King, Jr. Living
607 History and Public Policy Center.

608 25. Voluntary contribution to the Virginia Caregivers Grant Fund.

609 All moneys contributed shall be paid to the Virginia Caregivers Grant Fund established pursuant to
610 § 63.2-2202.

611 26. Voluntary contribution to public library foundations.

612 All moneys contributed pursuant to this subdivision shall be deposited into the state treasury. The

Tax Commissioner shall determine annually the total amounts designated on all returns for each public library foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective public library foundation.

27. Voluntary contribution to Celebrating Special Children, Inc.

All moneys contributed shall be paid to Celebrating Special Children, Inc. and shall be deposited into a special fund known as the Celebrating Special Children, Inc. Fund.

28. Voluntary contributions to the Department for the Aging.

a. All moneys contributed shall be used by the Department for the Aging for providing Medicare Part D counseling to the elderly and disabled.

b. All moneys shall be deposited into a special fund known as the Medicare Part D Counseling Fund. All moneys so deposited shall be used by the Department for the Aging to provide counseling for the elderly and disabled concerning Medicare Part D. The Department for the Aging shall conduct an annual audit of the moneys received pursuant to this subdivision and shall provide an evaluation of all programs funded pursuant to the subdivision to the Secretary of Health and Human Resources.

29. Voluntary contribution to community foundations.

All moneys contributed pursuant to this subdivision shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on all returns for each community foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective community foundation. A "community foundation" shall be defined as any institution that meets the membership requirements for a community foundation established by the Council on Foundations.

30. Voluntary contribution to the Virginia Foundation for Community College Education.

a. All moneys contributed shall be paid to the Virginia Foundation for Community College Education for use in providing monetary assistance to Virginia residents who are enrolled in comprehensive community colleges in Virginia.

b. All moneys shall be deposited into a special fund known as the Virginia Foundation for Community College Education Fund. All moneys so deposited in the Fund shall be administered by the Virginia Foundation for Community College Education in accordance with and for the purposes provided under the Community College Incentive Scholarship Program (§ 23-220.2 et seq.).

31. Voluntary contribution to the Autism Tuition Assistance Grant Program.

All moneys contributed shall be deposited into a special fund known as the Autism Tuition Assistance Grant Program Fund, which Fund is hereby created in the state treasury. The moneys deposited into the Fund shall be used solely for grants awarded under the Autism Tuition Assistance Grant Program (§ 22.1-335.1 et seq.).

C. Subject to the provisions of subsection A, the following voluntary contributions shall appear on the individual income tax return and are eligible to receive tax refund contributions or by making payment to the Department if the individual is not eligible to receive a tax refund pursuant to § 58.1-309 or if the amount of such tax refund is less than the amount of the voluntary contribution:

1. Voluntary contribution to the Family and Children's Trust Fund of Virginia.

All moneys contributed shall be paid to the Family and Children's Trust Fund of Virginia.

2. Voluntary Chesapeake Bay Restoration Contribution.

a. All moneys contributed shall be used to help fund Chesapeake Bay and its tributaries restoration activities in accordance with tributary plans developed pursuant to Article 7 (§ 2.2-215 et seq.) of Chapter 2 of Title 2.2.

b. The Tax Commissioner shall annually determine the total amount of voluntary contributions and shall report the same to the State Treasurer, who shall credit that amount to a special nonreverting fund to be administered by the Office of the Secretary of Natural Resources. All moneys so deposited shall be used for the purposes of providing grants for the implementation of tributary plans developed pursuant to Article 7 (§ 2.2-215 et seq.) of Chapter 2 of Title 2.2.

3. Voluntary Jamestown-Yorktown Foundation Contribution.

All moneys contributed shall be used by the Jamestown-Yorktown Foundation for the Jamestown 2007 quadricentennial celebration. All moneys shall be deposited into a special fund known as the Jamestown Quadricentennial Fund. This subdivision shall be effective for taxable years beginning before January 1, 2008.

4. State forests voluntary contribution.

a. All moneys contributed shall be used for the development and implementation of conservation and education initiatives in the state forests system.

b. All moneys shall be deposited into a special fund known as the State Forests System Fund, established pursuant to § 10.1-1119.1. All moneys so deposited in such fund shall be used by the State Forester for the purposes set forth herein.

5. Voluntary contributions to Uninsured Medical Catastrophe Fund.

674 All moneys contributed shall be paid to the Uninsured Medical Catastrophe Fund established
675 pursuant to § 32.1-324.2, such funds to be used for the treatment of Virginians sustaining uninsured
676 medical catastrophes.

677 6. Voluntary contribution to local school divisions.

678 a. All moneys contributed shall be used by a specified local public school foundation as created by
679 and for the purposes stated in § 22.1-212.2:2.

680 b. All moneys collected pursuant to subdivision 6 a of this subsection or through voluntary payments
681 by taxpayers designated for a local public school foundation over refundable amounts shall be deposited
682 into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on
683 all returns for each public school foundation and shall report the same to the State Treasurer. The State
684 Treasurer shall pay the appropriate amount to the respective public school foundation.

685 c. In order for a public school foundation to be eligible to receive contributions under this section,
686 school boards must notify the Department during the taxable year in which they want to participate prior
687 to the deadlines and according to procedures established by the Tax Commissioner.

688 7. Voluntary contribution to Home Energy Assistance Fund.

689 All moneys contributed shall be paid to the Home Energy Assistance Fund established pursuant to
690 § 63.2-805, such funds to be used to assist low-income Virginians in meeting seasonal residential energy
691 needs.

692 8. Voluntary contribution to the Virginia Military Family Relief Fund.

693 a. All moneys contributed shall be paid to the Virginia Military Family Relief Fund for use in
694 providing assistance to military service personnel on active duty and their families for living expenses
695 including, but not limited to, food, housing, utilities, and medical services.

696 b. All moneys shall be deposited into a special fund known as the Virginia Military Family Relief
697 Fund, established and administered pursuant to § 44-102.2.

698 D. Unless otherwise specified and subject to the requirements in § 58.1-344.2, all moneys collected
699 for each entity in subsections B and C shall be deposited into the state treasury. The Tax Commissioner
700 shall determine annually the total amount designated for each entity in subsections B and C on all
701 individual income tax returns and shall report the same to the State Treasurer, who shall credit that
702 amount to each entity's respective special fund.

703 **2. That the Board shall promulgate regulations to implement the provisions of this act to be**
704 **effective within 280 days of its enactment.**