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SENATE BILL NO. 1473

Offered January 21, 2011

A BILL to amend and reenact §§ 58.1-322 and 58.1-402 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9 of Title 2.2 a section numbered 2.2-904.3, relating to Department of Business Assistance; job retraining accounts; tax exemptions.

Patrons—Lucas, Barker, Colgan, Deeds, Edwards, Herring, Houck, Howell, Locke, Marsden, Marsh, McEachin, Northam, Puckett, Puller, Reynolds, Saslaw, Ticer and Whipple

Referred to Committee on Finance

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 and that the Code of Virginia is amended by adding a section numbered 2.2-904.3 as follows:

§ 2.2-904.3. Job Retraining Account Program.

A. As used in this section, "job retraining expenses" means tuition and costs associated with postsecondary education, including career and technical training, to gain skills necessary to create and retain employability in the job market.

B. There is created within the Department a Job Retraining Account Program. The Department shall develop such rules and regulations as may be necessary to establish and administer the provisions of this section.

C. The Department shall allow an individual to establish a trust or savings account to be used for job retraining expenses. The Department shall administer the accounts, and the individual named on the account shall be the owner and beneficiary of the account.

D. The Department shall allow the employers of individual account owners to make matching contributions to the individual's account. Employers making matching contributions shall be eligible for a tax exemption pursuant to § 58.1-322 or 58.1-402, as applicable.

§ 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.

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58 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
59 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on
60 the basis of permanent and total disability and who is a qualified individual as defined in § 22(b) (2) of
61 the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of
62 subsection D of this section may not also claim a subtraction under this subdivision.

63 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as
64 defined in § 22(c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a
65 deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under
66 this subdivision.

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

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

71 7, 8. [Repealed.]

72 9. [Expired.]

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

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

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

85 13. [Repealed.]

86 14. [Expired.]

87 15, 16. [Repealed.]

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

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

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

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

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

117 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
118 exchange of real property or the sale or exchange of an easement to real property which results in the
119 real property or the easement thereto being devoted to open-space use, as that term is defined in

120 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
121 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
122 shall be allowed for three years following the year in which the subtraction is taken.

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

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

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

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

134 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
135 result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; (ii) the National Tobacco
136 Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant
137 to 7 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farmers; (b) any
138 person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural
139 Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or
140 allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18
141 of § 58.1-402.

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

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

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

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

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

171 30. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
172 2005, the indemnification payments received by contract poultry growers and table egg producers from
173 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
174 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
175 poultry who contract with poultry growers qualify for this subtraction.

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

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

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

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

194 35. (See Editor's note) For taxable years beginning on or after January 1, 2011, any income taxed as
195 a long-term capital gain for federal income tax purposes, or any income taxed as investment services
196 partnership interest income (otherwise known as investment partnership carried interest income) for
197 federal income tax purposes. To qualify for a subtraction under this subdivision, such income shall be
198 attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other
199 technology business approved by the Secretary of Technology, provided the business has its principal
200 office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year
201 prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made
202 between the dates of April 1, 2010, and June 30, 2013. No taxpayer who has claimed a tax credit for an
203 investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this
204 subdivision for an investment in the same business.

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

207 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
208 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
209 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
210 on such federal return and increased by an amount which, when added to the amount deducted under
211 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
212 such purposes at a rate of 18 cents per mile; or

213 b. Three thousand dollars for single individuals for taxable years beginning on and after January 1,
214 1989; \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a
215 separate return) for taxable years beginning on and after January 1, 1989, but before January 1, 2005;
216 and \$6,000 for married persons (one-half of such amounts in the case of a married individual filing a
217 separate return) for taxable years beginning on and after January 1, 2005; provided that the taxpayer has
218 not itemized deductions for the taxable year on his federal income tax return. For purposes of this
219 section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year
220 may compute the deduction only with respect to earned income.

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

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

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

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

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

237 5. a. Effective for all taxable years beginning on or after January 1, 1996, but before January 1,
238 2004, a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age
239 62 through 64.

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

242 c. For taxable years beginning January 1, 2004, but before January 1, 2005, a deduction in the

- 243 amount of \$6,000 for individuals born on or between January 2, 1940, and January 1, 1942.
- 244 d. For taxable years beginning January 1, 2005, but before January 1, 2006, a deduction in the
- 245 amount of \$6,000 for individuals born on or between January 2, 1941, and January 1, 1942.
- 246 e. For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000
- 247 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be
- 248 reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000
- 249 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the
- 250 deduction will be reduced by \$1 for every \$1 the total combined adjusted federal adjusted gross income
- 251 of both spouses exceeds \$75,000.
- 252 f. For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal
- 253 adjusted gross income minus any benefits received under Title II of the Social Security Act and other
- 254 benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as
- 255 amended.
- 256 6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee
- 257 for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed
- 258 for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal
- 259 income tax return.
- 260 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
- 261 during the taxable year for a prepaid tuition contract or savings trust account entered into with the
- 262 Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as
- 263 provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable
- 264 year shall be limited to \$4,000 per prepaid tuition contract or savings trust account. No deduction shall
- 265 be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or
- 266 contributor's federal income tax return. If the purchase price or annual contribution to a savings trust
- 267 account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years
- 268 until the purchase price or savings trust contribution has been fully deducted; however, except as
- 269 provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$4,000
- 270 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained
- 271 in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in
- 272 which distributions or refunds are made for any reason other than (i) to pay qualified higher education
- 273 expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or
- 274 receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor"
- 275 means the person shown as such on the records of the Virginia College Savings Plan as of December 31
- 276 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust
- 277 account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition
- 278 contract or savings trust account, including, but not limited to, carryover and recapture of deductions.
- 279 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January
- 280 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
- 281 1998, and shall be subject to the limitations set out in subdivision 7 a.
- 282 c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained
- 283 age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000 per
- 284 prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed a
- 285 deduction for the full amount paid for the contract or contributed to a savings trust account, less any
- 286 amounts previously deducted. If a prepaid tuition contract was purchased by such taxpayer during
- 287 taxable years beginning on or after January 1, 1996, but before January 1, 1998, such taxpayer may take
- 288 the deduction for the full amount paid during such years, less any amounts previously deducted with
- 289 respect to such payments, in taxable year 1999 or by filing an amended return for taxable year 1998.
- 290 8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually
- 291 contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in
- 292 Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for
- 293 such amount on his federal income tax return.
- 294 9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the
- 295 tuition costs incurred by an individual employed as a primary or secondary school teacher licensed
- 296 pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses
- 297 that are required as a condition of employment; however, the deduction provided by this subsection shall
- 298 be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has
- 299 not claimed a deduction for the payment of such tuition costs on his federal income tax return.
- 300 10. For taxable years beginning on and after January 1, 2000, the amount an individual pays
- 301 annually in premiums for long-term health care insurance, provided the individual has not claimed a
- 302 deduction for federal income tax purposes, or a credit under § 58.1-339.11.
- 303 11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of

304 quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation
305 Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant
306 to subsection D of § 58.1-402, as follows:

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

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

313 12. For taxable years beginning on and after January 1, 2007, an amount equal to 20% of the sum
314 paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.) of this title, not to exceed \$500 in each
315 taxable year, in purchasing for his own use the following items of tangible personal property: (i) any
316 clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed
317 the applicable energy star efficiency requirements developed by the United States Environmental
318 Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates
319 electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than
320 35%, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a
321 coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat
322 pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a
323 heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at
324 least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least
325 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any
326 advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired
327 furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

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

334 14. *For taxable years beginning on or after January 1, 2012, the amount of any matching*
335 *contribution made by an employer to an employee's job retraining account pursuant to § 2.2-904.3, to*
336 *the extent that the contributions is included in federal taxable income.*

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

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

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

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

358 H. Notwithstanding any other provision of law, the income from any disposition of real property
359 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or
360 business, as defined in § 453(l) (1) (B) of the Internal Revenue Code, of property made on or after
361 January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method
362 described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer
363 disposition of the property has been made on or before the due date prescribed by law (including
364 extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in
365 which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or

366 conditions established by the Department, which shall be set forth in guidelines developed by the
 367 Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of
 368 such income under certain circumstances. The development of the guidelines shall be exempt from the
 369 Administrative Process Act (§ 2.2-4000 et seq.).

370 § 58.1-402. Virginia taxable income.

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

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

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

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

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

386 3. [Repealed.]

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

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

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

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

395 8. a. For taxable years beginning on and after January 1, 2004, the amount of any intangible
 396 expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or
 397 indirectly with one or more direct or indirect transactions with one or more related members to the
 398 extent such expenses and costs were deductible or deducted in computing federal taxable income for
 399 Virginia purposes. This addition shall not be required for any portion of the intangible expenses and
 400 costs if one of the following applies:

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

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

409 (3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible
 410 expenses and costs meet both of the following: (i) the related member during the same taxable year
 411 directly or indirectly paid, accrued or incurred such portion to a person who is not a related member,
 412 and (ii) the transaction giving rise to the intangible expenses and costs between the corporation and the
 413 related member did not have as a principal purpose the avoidance of any portion of the tax due under
 414 this chapter.

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

423 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
 424 convincing evidence, that the transaction or transactions between the corporation and a related member
 425 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business
 426 purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner

427 shall permit the corporation to file an amended return. For purposes of such amended return, the
428 requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is
429 satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance
430 or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation
431 within one year of the written permission granted by the Tax Commissioner and any refund of the tax
432 imposed under this article shall include interest at a rate equal to the rate of interest established under
433 § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of
434 such amended return, any related member of the corporation that subtracted from taxable income
435 amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on
436 that portion of such amounts for which the corporation has filed an amended return pursuant to this
437 subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he
438 has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation
439 in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and
440 costs without making the adjustment under subdivision a.

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

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

447 c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under
448 § 58.1-446;

449 9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses
450 and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with
451 one or more direct or indirect transactions with one or more related members to the extent such
452 expenses and costs were deductible or deducted in computing federal taxable income for Virginia
453 purposes. This addition shall not be required for any portion of the interest expenses and costs, if:

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

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

461 (3) The transaction giving rise to the expenses and costs between the corporation and the related
462 member has a valid business purpose other than the avoidance or reduction of taxation and payments
463 between the parties are made at arm's length rates and terms; and

464 (4) One of the following applies:

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

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

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

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

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

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

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

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

515 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under
 516 § 58.1-446.

517 d. For purposes of subdivision B 9:

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

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

528 10. a. (See Editor's note) For taxable years beginning on and after January 1, 2009, the amount of
 529 dividends deductible under §§ 561 and 857 of the Internal Revenue Code by a Captive Real Estate
 530 Investment Trust (REIT). For purposes of this subdivision, a REIT is a Captive REIT if:

531 (1) It is not regularly traded on an established securities market;

532 (2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at
 533 any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a
 534 single entity that is (i) a corporation or an association taxable as a corporation under the Internal
 535 Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal
 536 Revenue Code; and

537 (3) More than 25% of its income consists of rents from real property as defined in § 856(d) of the
 538 Internal Revenue Code.

539 b. For purposes of applying the ownership test of subdivision 10 a (2), the following entities shall
 540 not be considered a corporation or an association taxable as a corporation:

541 (1) Any REIT that is not treated as a Captive REIT;

542 (2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT
 543 subsidiary of a Captive REIT;

544 (3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed
 545 Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or
 546 value of the beneficial interests or shares of such trust; and

547 (4) Any Qualified Foreign Entity.

548 c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of
 549 the Internal Revenue Code, as modified by § 856(d) (5) of the Internal Revenue Code, shall apply in

550 determining the ownership of stock, assets, or net profits of any person.

551 d. For purposes of subdivision B 10:

552 "Listed Australian Property Trust" means an Australian unit trust registered as a Management
553 Investment Scheme, pursuant to the Australian Corporations Act, in which the principal class of units is
554 listed on a recognized stock exchange in Australia and is regularly traded on an established securities
555 market.

556 "Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the
557 laws of the United States and that satisfies all of the following criteria:

558 (1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented
559 by real estate assets, as defined in § 856(c) (5) (B) of the Internal Revenue Code, thereby including
560 shares or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government
561 securities;

562 (2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt
563 from entity level tax;

564 (3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed
565 in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial
566 interest;

567 (4) The shares or certificates of beneficial interest of such entity are regularly traded on an
568 established securities market or, if not so traded, not more than 10 percent of the voting power or value
569 in such entity is held directly, indirectly, or constructively by a single entity or individual; and

570 (5) The entity is organized in a country that has a tax treaty with the United States.

571 C. There shall be subtracted to the extent included in and not otherwise subtracted from federal
572 taxable income:

573 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
574 and on obligations or securities of any authority, commission or instrumentality of the United States to
575 the extent exempt from state income taxes under the laws of the United States including, but not limited
576 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,
577 interest on equipment purchase contracts, or interest on other normal business transactions.

578 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth
579 or of any political subdivision or instrumentality of this Commonwealth.

580 3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the
581 Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding
582 year, or the last year in which such corporation has income, under the provisions of the income tax laws
583 of the Commonwealth.

584 4. The amount of any refund or credit for overpayment of income taxes imposed by this
585 Commonwealth or any other taxing jurisdiction.

586 5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue
587 Code (foreign dividend gross-up).

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

590 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F
591 income).

592 8. Any amount included therein which is foreign source income as defined in § 58.1-302.

593 9. [Repealed.]

594 10. The amount of any dividends received from corporations in which the taxpaying corporation
595 owns 50 percent or more of the voting stock.

596 11. [Repealed.]

597 12, 13. [Expired.]

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

601 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
602 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
603 (§ 22.1-175.1 et seq.) of Title 22.1.

604 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
605 exchange of real property or the sale or exchange of an easement to real property which results in the
606 real property or the easement thereto being devoted to open-space use, as that term is defined in
607 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
608 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
609 shall be allowed for three years following the year in which the subtraction is taken.

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

612 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
 613 "Master Settlement Agreement," as defined in § 3.2-3100; (ii) the National Tobacco Grower Settlement
 614 Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part
 615 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farming businesses; (b) any business
 616 holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural
 617 Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota
 618 allotment.

619 19. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
 620 2005, the indemnification payments received by contract poultry growers and table egg producers from
 621 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
 622 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
 623 poultry who contract with poultry growers qualify for this subtraction.

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

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

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

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

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

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

646 24. (See Editor's note) For taxable years beginning on or after January 1, 2011, any income taxed as
 647 a long-term capital gain for federal income tax purposes, or any income taxed as investment services
 648 partnership interest income (otherwise known as investment partnership carried interest income) for
 649 federal income tax purposes. To qualify for a subtraction under this subdivision, such income must be
 650 attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other
 651 technology business approved by the Secretary of Technology, provided the business has its principal
 652 office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year
 653 prior to the investment. To qualify for a subtraction under this subdivision, the investment must be made
 654 between the dates of April 1, 2010, and June 30, 2013. No taxpayer who has claimed a tax credit for an
 655 investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this
 656 subdivision for an investment in the same business.

657 25. *For taxable years beginning on or after January 1, 2012, the amount of any matching*
 658 *contribution made by an employer to an employee's job retraining account pursuant to § 2.2-904.3.*

659 D. For taxable years beginning on and after January 1, 2006, there shall be subtracted from federal
 660 taxable income contract payments to a producer of quota tobacco or a tobacco quota holder as provided
 661 under the American Jobs Creation Act of 2004 (P.L. 108-357) as follows:

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

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

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

670 F. Notwithstanding any other provision of law, the income from any disposition of real property
 671 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or
 672 business, as defined in § 453(l) (1) (B) of the Internal Revenue Code, of property made on or after

673 January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method
674 described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer
675 disposition of the property has been made on or before the due date prescribed by law (including
676 extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in
677 which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or
678 conditions established by the Department, which shall be set forth in guidelines developed by the
679 Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of
680 such income under certain circumstances. The development of the guidelines shall be exempt from the
681 Administrative Process Act (§ 2.2-4000 et seq.).