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SENATE BILL NO. 226

Offered January 11, 2012

Prefiled January 10, 2012

A *BILL to amend and reenact §§ 58.1-322 and 58.1-402 of the Code of Virginia, relating to income tax; capital gains subtraction.*

Patron—Herring

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 as follows:**

§ 58.1-322. Virginia taxable income of residents.

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

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

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

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

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

4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes that is excluded from federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions under § 402 of the Internal Revenue Code; and

5 through 8. [Repealed.]

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

C. To the extent included in federal adjusted gross income, there shall be subtracted:

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

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

3. [Repealed.]

4. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4a. Through December 31, 2000, the same amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on the basis of permanent and total disability and who is a qualified individual as defined in § 22(b)(2) of the Internal Revenue Code; however, any person who claims a deduction under subdivision D 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 D 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.]

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

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

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

71 13. [Repealed.]

72 14. [Expired.]

73 15, 16. [Repealed.]

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

80 18. [Repealed.]

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

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

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

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

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

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

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

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

115 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
116 result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco
117 Grower Settlement Trust dated July 19, 1999, by (a) tobacco farmers; (b) any person holding a tobacco
118 marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or
119 (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the
120 extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

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

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

142 29, 30. [Repealed.]

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

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

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

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

161 35. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital
 162 gain for federal income tax purposes, or any income taxed as investment services partnership interest
 163 income (otherwise known as investment partnership carried interest income) for federal income tax
 164 purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an
 165 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business
 166 approved by the Secretary of Technology, provided the business has its principal office or facility in the
 167 Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To
 168 qualify for a subtraction under this subdivision, the investment shall be made between the dates of April
 169 1, 2010, and June 30, ~~2013~~ 2015. No taxpayer who has claimed a tax credit for an investment in a
 170 "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an
 171 investment in the same business.

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

174 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
 175 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
 176 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
 177 on such federal return and increased by an amount which, when added to the amount deducted under
 178 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
 179 such purposes at a rate of 18 cents per mile; or

180 b. Three thousand dollars for single individuals and \$6,000 for married persons (one-half of such
 181 amounts in the case of a married individual filing a separate return) for taxable years beginning on and

182 after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his
183 federal income tax return. For purposes of this section, any person who may be claimed as a dependent
184 on another taxpayer's return for the taxable year may compute the deduction only with respect to earned
185 income.

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

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

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

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

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

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

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

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

214 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
215 during the taxable year for a prepaid tuition contract or savings trust account entered into with the
216 Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as
217 provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable
218 year shall be limited to \$4,000 per prepaid tuition contract or savings trust account. No deduction shall
219 be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or
220 contributor's federal income tax return. If the purchase price or annual contribution to a savings trust
221 account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years
222 until the purchase price or savings trust contribution has been fully deducted; however, except as
223 provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$4,000
224 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained
225 in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in
226 which distributions or refunds are made for any reason other than (i) to pay qualified higher education
227 expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or
228 receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor"
229 means the person shown as such on the records of the Virginia College Savings Plan as of December 31
230 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust
231 account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition
232 contract or savings trust account, including, but not limited to, carryover and recapture of deductions.

233 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January
234 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
235 1998, and shall be subject to the limitations set out in subdivision 7 a.

236 c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained
237 age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000 per
238 prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed a
239 deduction for the full amount paid for the contract or contributed to a savings trust account, less any
240 amounts previously deducted.

241 8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually
242 contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in
243 Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for

244 such amount on his federal income tax return.

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

251 10. For taxable years beginning on and after January 1, 2000, the amount an individual pays
 252 annually in premiums for long-term health care insurance, provided the individual has not claimed a
 253 deduction for federal income tax purposes, or a credit under § 58.1-339.11.

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

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

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

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

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

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

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

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

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

305 corporation (S corporation).

306 H. Notwithstanding any other provision of law, the income from any disposition of real property
307 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or
308 business, as defined in § 453(l) (1) (B) of the Internal Revenue Code, of property made on or after
309 January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method
310 described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer
311 disposition of the property has been made on or before the due date prescribed by law (including
312 extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in
313 which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or
314 conditions established by the Department, which shall be set forth in guidelines developed by the
315 Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of
316 such income under certain circumstances. The development of the guidelines shall be exempt from the
317 Administrative Process Act (§ 2.2-4000 et seq.).

318 § 58.1-402. Virginia taxable income.

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

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

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

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

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

334 3. [Repealed.]

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

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

339 6. [Repealed.]

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

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

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

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

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

362 b. A corporation required to add to its federal taxable income intangible expenses and costs pursuant
363 to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the
364 taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this
365 article for such taxable year including tax upon any amount of intangible expenses and costs required to
366 be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the

367 transaction or transactions between the corporation and a related member or members that resulted in the
 368 corporation's taxable income being increased, as required under subdivision a, for such intangible
 369 expenses and costs.

370 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
 371 convincing evidence, that the transaction or transactions between the corporation and a related member
 372 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business
 373 purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner
 374 shall permit the corporation to file an amended return. For purposes of such amended return, the
 375 requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is
 376 satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance
 377 or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation
 378 within one year of the written permission granted by the Tax Commissioner and any refund of the tax
 379 imposed under this article shall include interest at a rate equal to the rate of interest established under
 380 § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of
 381 such amended return, any related member of the corporation that subtracted from taxable income
 382 amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on
 383 that portion of such amounts for which the corporation has filed an amended return pursuant to this
 384 subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he
 385 has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation
 386 in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and
 387 costs without making the adjustment under subdivision a.

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

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

394 c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under
 395 § 58.1-446;

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

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

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

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

411 (4) One of the following applies:

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

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

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

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

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

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

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

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

462 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under
463 § 58.1-446.

464 d. For purposes of subdivision B 9:

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

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

475 10. a. For taxable years beginning on and after January 1, 2009, the amount of dividends deductible
476 under §§ 561 and 857 of the Internal Revenue Code by a Captive Real Estate Investment Trust (REIT).
477 For purposes of this subdivision, a REIT is a Captive REIT if:

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

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

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

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

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

489 (2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT

549 subsidiary of a Captive REIT;

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

553 (4) Any Qualified Foreign Entity.

554 c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of
555 the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in
556 determining the ownership of stock, assets, or net profits of any person.

557 d. For purposes of subdivision B 10:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

599 9. [Repealed.]

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

602 11. [Repealed.]

603 12, 13. [Expired.]

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

607 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
608 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
609 (§ 22.1-175.1 et seq.) of Title 22.1.

551 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
552 exchange of real property or the sale or exchange of an easement to real property which results in the
553 real property or the easement thereto being devoted to open-space use, as that term is defined in
554 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
555 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
556 shall be allowed for three years following the year in which the subtraction is taken.

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

559 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
560 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower
561 Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a
562 tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of
563 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

564 19, 20. [Repealed.]

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

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

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

579 24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital
580 gain for federal income tax purposes, or any income taxed as investment services partnership interest
581 income (otherwise known as investment partnership carried interest income) for federal income tax
582 purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an
583 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business
584 approved by the Secretary of Technology, provided the business has its principal office or facility in the
585 Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To
586 qualify for a subtraction under this subdivision, the investment must be made between the dates of April
587 1, 2010, and June 30, 2013 2015. No taxpayer who has claimed a tax credit for an investment in a
588 "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an
589 investment in the same business.

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

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

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

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

601 F. Notwithstanding any other provision of law, the income from any disposition of real property
602 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or
603 business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after
604 January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method
605 described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer
606 disposition of the property has been made on or before the due date prescribed by law (including
607 extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in
608 which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or
609 conditions established by the Department, which shall be set forth in guidelines developed by the
610 Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of
611 such income under certain circumstances. The development of the guidelines shall be exempt from the
612 Administrative Process Act (§ 2.2-4000 et seq.).