

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

[S 226]

Approved

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 [Repealed.]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.]

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

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

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

67 13. [Repealed.]

68 14. [Expired.]

69 15, 16. [Repealed.]

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

76 18. [Repealed.]

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

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

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

94 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
95 exchange of real property or the sale or exchange of an easement to real property which results in the
96 real property or the easement thereto being devoted to open-space use, as that term is defined in
97 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
98 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
99 shall be allowed for three years following the year in which the subtraction is taken.

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

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

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

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

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

117 28. For taxable years beginning on and after January 1, 2000, items of income attributable to,

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

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

138 29, 30. [Repealed.]

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

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

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

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

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

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

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

176 b. Three thousand dollars for single individuals and \$6,000 for married persons (one-half of such
 177 amounts in the case of a married individual filing a separate return) for taxable years beginning on and
 178 after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his

179 federal income tax return. For purposes of this section, any person who may be claimed as a dependent
180 on another taxpayer's return for the taxable year may compute the deduction only with respect to earned
181 income.

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

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

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

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

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

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

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

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

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

229 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January
230 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
231 1998, and shall be subject to the limitations set out in subdivision 7 a.

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

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

240 such amount on his federal income tax return.

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

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

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

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

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

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

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

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

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

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

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

301 corporation (S corporation).

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

314 § 58.1-402. Virginia taxable income.

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

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

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

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

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

330 3. [Repealed.]

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

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

335 6. [Repealed.]

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

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

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

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

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

358 b. A corporation required to add to its federal taxable income intangible expenses and costs pursuant
 359 to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the
 360 taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this
 361 article for such taxable year including tax upon any amount of intangible expenses and costs required to

362 be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the
 363 transaction or transactions between the corporation and a related member or members that resulted in the
 364 corporation's taxable income being increased, as required under subdivision a, for such intangible
 365 expenses and costs.

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

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

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

390 c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under
 391 § 58.1-446;

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

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

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

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

407 (4) One of the following applies:

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

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

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

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

423 debt of related members, or the pass-through of acquisition-related indebtedness to related members.

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

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

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

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

458 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under
459 § 58.1-446.

460 d. For purposes of subdivision B 9:

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

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

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

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

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

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

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

- 484 (1) Any REIT that is not treated as a Captive REIT;
- 485 (2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT
- 486 subsidiary of a Captive REIT;
- 487 (3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed
- 488 Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or
- 489 value of the beneficial interests or shares of such trust; and
- 490 (4) Any Qualified Foreign Entity.
- 491 c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of
- 492 the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in
- 493 determining the ownership of stock, assets, or net profits of any person.
- 494 d. For purposes of subdivision B 10:
- 495 "Listed Australian Property Trust" means an Australian unit trust registered as a Management
- 496 Investment Scheme, pursuant to the Australian Corporations Act, in which the principal class of units is
- 497 listed on a recognized stock exchange in Australia and is regularly traded on an established securities
- 498 market.
- 499 "Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the
- 500 laws of the United States and that satisfies all of the following criteria:
- 501 (1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented
- 502 by real estate assets, as defined in § 856(c)(5)(B) of the Internal Revenue Code, thereby including shares
- 503 or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government
- 504 securities;
- 505 (2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt
- 506 from entity level tax;
- 507 (3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed
- 508 in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial
- 509 interest;
- 510 (4) The shares or certificates of beneficial interest of such entity are regularly traded on an
- 511 established securities market or, if not so traded, not more than 10 percent of the voting power or value
- 512 in such entity is held directly, indirectly, or constructively by a single entity or individual; and
- 513 (5) The entity is organized in a country that has a tax treaty with the United States.
- 514 C. There shall be subtracted to the extent included in and not otherwise subtracted from federal
- 515 taxable income:
- 516 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
- 517 and on obligations or securities of any authority, commission or instrumentality of the United States to
- 518 the extent exempt from state income taxes under the laws of the United States including, but not limited
- 519 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,
- 520 interest on equipment purchase contracts, or interest on other normal business transactions.
- 521 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth
- 522 or of any political subdivision or instrumentality of this Commonwealth.
- 523 3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the
- 524 Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding
- 525 year, or the last year in which such corporation has income, under the provisions of the income tax laws
- 526 of the Commonwealth.
- 527 4. The amount of any refund or credit for overpayment of income taxes imposed by this
- 528 Commonwealth or any other taxing jurisdiction.
- 529 5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue
- 530 Code (foreign dividend gross-up).
- 531 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
- 532 deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.
- 533 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F
- 534 income).
- 535 8. Any amount included therein which is foreign source income as defined in § 58.1-302.
- 536 9. [Repealed.]
- 537 10. The amount of any dividends received from corporations in which the taxpaying corporation
- 538 owns 50 percent or more of the voting stock.
- 539 11. [Repealed.]
- 540 12, 13. [Expired.]
- 541 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research
- 542 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
- 543 deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code.
- 544 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in

545 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
546 (§ 22.1-175.1 et seq.) of Title 22.1.

547 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
548 exchange of real property or the sale or exchange of an easement to real property which results in the
549 real property or the easement thereto being devoted to open-space use, as that term is defined in
550 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
551 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
552 shall be allowed for three years following the year in which the subtraction is taken.

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

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

560 19, 20. [Repealed.]

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

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

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

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

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

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

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

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

597 F. Notwithstanding any other provision of law, the income from any disposition of real property
598 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or
599 business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after
600 January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method
601 described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer
602 disposition of the property has been made on or before the due date prescribed by law (including
603 extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in
604 which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or
605 conditions established by the Department, which shall be set forth in guidelines developed by the

606 Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of
607 such income under certain circumstances. The development of the guidelines shall be exempt from the
608 Administrative Process Act (§ 2.2-4000 et seq.).