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**HOUSE BILL NO. 1868**

Offered January 9, 2013

Prefiled January 8, 2013

*A BILL to amend and reenact § 58.1-322 of the Code of Virginia and to amend the Code of Virginia by adding in Title 55 a chapter numbered 32, consisting of sections numbered 55-555 through 55-561, relating to the establishment of first-time home buyer savings accounts for the purchase of single-family residences; individual income tax deductions for cash contributions to such accounts and exempting the earnings on such accounts from taxation.*

Patrons—Greason, Comstock, Ramadan, Byron, Crockett-Stark, Garrett, Peace and Rust

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That § 58.1-322 of the Code is Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 55 a chapter numbered 32, consisting of sections numbered 55-555 through 55-561, 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 [Repealed.]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; *and*

10. *For taxable years beginning on and after January 1, 2013, (i) any funds withdrawn in the taxable year by an account holder from his first-time home buyer savings account for any purpose other than eligible costs, as provided under subdivision A 1 of § 55-558, or (ii) the value of any money or funds remaining in a first-time home buyer savings account on December 31 of the tenth year following the year in which the account was established by the account holder, as provided under subdivision A 2 of § 55-558. The additions under clauses (i) and (ii) shall include any related penalty imposed and withheld pursuant to subsection A of § 55-558. For purposes of this subdivision, "account holder," "eligible costs," and "first-time home buyer savings account" mean the same as those terms are defined in § 55-555.*

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

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59 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on  
60 the basis of permanent and total disability and who is a qualified individual as defined in § 22(b)(2) of  
61 the Internal Revenue Code; however, any person who claims a deduction under subdivision D 5 may not  
62 also claim a subtraction under this subdivision.

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

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

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

70 7, 8. [Repealed.]

71 9. [Expired.]

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

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

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

84 13. [Repealed.]

85 14. [Expired.]

86 15, 16. [Repealed.]

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

93 18. [Repealed.]

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

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

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

111 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or  
112 exchange of real property or the sale or exchange of an easement to real property which results in the  
113 real property or the easement thereto being devoted to open-space use, as that term is defined in  
114 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in  
115 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation  
116 shall be allowed for three years following the year in which the subtraction is taken.

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

exceeds \$30,000.

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

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

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

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

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

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

29, 30. [Repealed.]

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

32. Effective for all taxable years beginning on or after January 1, 2007, the death benefit payments from an annuity contract that are received by a beneficiary of such contract provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed only for that portion of the death benefit payment that is included in federal adjusted gross income.

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

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

35. (See Editor's note) For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided the business has its principal

office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2015. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

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

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

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

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

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

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

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

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

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

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

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

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

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to \$4,000 per prepaid tuition contract or savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a savings trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$4,000 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education

expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or savings trust account, including, but not limited to, carryover and recapture of deductions.

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

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

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

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

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

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

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

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

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

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

14. For taxable years beginning on and after January 1, 2013, but prior to January 1, 2014, the amount an account holder contributes in cash during the taxable year to his first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55, but not to exceed

305 \$13,000 per savings account for the taxable year. For taxable years beginning on and after January 1,  
306 2014, the \$13,000 maximum deduction per savings account shall be increased annually by the same  
307 amount that the federal annual exclusion for gifts pursuant to § 2503(b) of the Internal Revenue Code  
308 increases for the year. For purposes of this subdivision, "account holder" and "first-time home buyer  
309 savings account" mean the same as those terms are defined in § 55-555.

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

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

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

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

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

343 1. For taxable years beginning on and after January 1, 2013, there shall be added to the federal  
344 adjusted gross income of an account holder any loss for the taxable year that is a capital loss for  
345 federal income tax purposes that is attributable to a decrease in the value of an investment contained in  
346 such person's first-time home buyers savings account established pursuant to Chapter 32 (§ 55-555 et  
347 seq.) of Title 55.

348 2. For taxable years beginning on and after January 1, 2013, there shall be subtracted from the  
349 federal adjusted gross income of an account holder any income for the taxable year that is (i) taxed as  
350 a capital gain for federal income tax purposes and that is attributable to an increase in the value of an  
351 investment contained in such person's first-time home buyers savings account established pursuant to  
352 Chapter 32 (§ 55-555 et seq.) of Title 55 and (ii) interest income or other income earned with regard to  
353 funds contained in such person's first-time home buyers savings account.

354 3. For purposes of this subsection, "account holder" and "first-time home buyer savings account"  
355 mean the same as those terms are defined in § 55-555.

#### 356 CHAPTER 32.

#### 357 FIRST-TIME HOME BUYER SAVINGS ACCOUNTS ACT.

#### 358 § 55-555. Definitions.

359 As used in this chapter, unless the context requires otherwise:

360 "Account administrator" means (i) a state or federally chartered bank, savings and loan association,  
361 credit union, or trust company; (ii) a person licensed as a certified public accountant pursuant to  
362 Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1; or (iii) the account holder.

363 "Account holder" means an individual who is a resident of the Commonwealth and who establishes,  
364 individually or jointly, a first-time home buyer savings account. A married person filing separately for  
365 individual income tax purposes under Title 58.1 may be an account holder if the account is established  
366 separately from the person's spouse. Married persons filing jointly for individual income tax purposes

under Title 58.1 are considered as the account holder.

"Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary.

"First-time home buyer savings account" or "account" means an account established with an account administrator in the Commonwealth pursuant to this chapter.

"Qualified beneficiary" means an individual who resides in the Commonwealth who (i) has never owned or purchased under contract for deed, either individually or jointly, a single-family residence in the Commonwealth or outside of the Commonwealth, (ii) is designated as the beneficiary of a first-time home buyer savings account, and (iii) may apply moneys or funds held in such account for eligible costs.

"Single-family residence" means an owner-occupied residence in the Commonwealth, including a manufactured home, trailer, or mobile home, that is an improvement to real property or a condominium unit that is owned by or that has been purchased under contract for deed by a person, individually or jointly.

**§ 55-556. Establishment of account.**

A first-time home buyer savings account may be established by an account holder pursuant to this chapter on behalf of a qualified beneficiary or beneficiaries in order to apply distributions from the account toward eligible costs.

**§ 55-557. Tax exemption; conditions.**

A. All interest or other income earned with regard to funds contained in an account shall be excluded from the federal adjusted gross income of the account holder in accordance with subdivision I 2 of § 58.1-322.

B. An account holder shall be allowed a deduction pursuant to subdivision D 14 of § 58.1-322 for the amount he contributes into his account, not to exceed \$13,000 per account for taxable years beginning on and after January 1, 2013, but before January 1, 2014. For taxable years beginning on and after January 1, 2014, the \$13,000 maximum deduction per account shall be increased annually by the same amount that the federal annual exclusion for gifts pursuant to § 2503(b) of the Internal Revenue Code increases for the year. The account holder shall not be allowed to contribute into any account during a taxable year more than the maximum amount for which a deduction is allowed for the year pursuant to subdivision D 14 of § 58.1-322.

The account holder shall be allowed to make contributions only to his account. Only cash may be contributed to an account.

C. There shall be no limitation on the amount of principal and interest or other income on the principal that may be retained within an account. An account holder shall be subject to income tax pursuant to subdivision I 1 of § 58.1-322 to the extent of any loss that is a capital loss for federal income tax purposes that is attributable to a decrease in the value of an investment contained in his account.

D. Within 30 days of being furnished proof of the death of the account holder, the account administrator, subject to the provisions of subdivision A 1 of § 55-558, shall distribute the principal and accumulated interest or other income in the account to the estate of the account holder or to a designated beneficiary, or as otherwise provided by law.

**§ 55-558. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.**

A. 1. If funds are withdrawn from a first-time home buyer savings account for any purpose other than eligible costs for the first-time purchase of a single-family residence by a qualified beneficiary, there shall be imposed a penalty equal to 10 percent of the amount so withdrawn. The account administrator shall withhold from the amount of the withdrawal and, on behalf of the account holder or his estate, pay as a penalty to the Department of Taxation 10 percent of the amount withdrawn. In addition, the account holder shall be subject to income tax as provided under subdivision B 10 of § 58.1-322 on the amounts withdrawn from the account for purposes other than for eligible costs, including funds withdrawn but withheld and paid as a penalty to the Department.

The provisions of this subdivision shall not apply in any case to which subdivision 2 is applicable.

2. The account holder shall use the funds in his account for the eligible costs related to the purchase of a single-family residence by a qualified beneficiary within 10 years following the year in which the account was established. A 10 percent penalty shall be imposed, withheld by the account administrator from the account, and paid to the Department of Taxation on the value of any money or funds remaining in the account on December 31 of the last year of the 10-year period. The value of such money and funds remaining in the account including the amount withheld as a penalty shall be subject to income tax as provided under subdivision B 10 of § 58.1-322.

B. No penalty shall be imposed pursuant to subsection A and no withdrawal from the account for other than eligible costs shall be subject to subdivision B 10 of § 58.1-322 if the withdrawal is (i) by

428 reason of the qualified beneficiary's death or disability or (ii) a disbursement of assets of the account by  
429 the account holder pursuant to a filing for protection under the United States Bankruptcy Code, 11  
430 U.S.C. §§ 101 through 1330.

431 **§ 55-559. Administration of account.**

432 A. An account administrator shall administer the first-time home buyer savings account from which  
433 the payment of eligible costs for the purchase of a single-family residence is made. The account  
434 administrator shall have a fiduciary duty to the person for whose benefit the account is administered.  
435 Except for reporting and remitting of penalties to the Department of Taxation, a financial institution  
436 shall administer a first-time home buyer savings account as a regular deposit. A financial institution  
437 shall not be responsible for the use or application of funds.

438 B. An account administrator may use funds held in a first-time home buyer savings account only for  
439 the purpose of paying the eligible costs of the account holder or paying the expenses of administering  
440 the account.

441 C. The account holder shall submit documentation of eligible costs paid or incurred to the account  
442 administrator, and the account administrator shall reimburse, or pay on behalf of, the account holder  
443 from the account holder's account such eligible costs paid or incurred. The burden of proving that a  
444 withdrawal from a first-time home buyer's savings account was made for eligible costs is upon the  
445 account holder and not upon the account administrator.

446 D. In the case of an account administrator who is also the account holder, the account administrator  
447 shall (i) not use funds held in an account to pay expenses of administering the account, except that a  
448 service fee may be deducted from the account by a financial institution or other holder of the account;  
449 (ii) maintain documentation of the segregation of funds in separate accounts and documentation of  
450 eligible costs for the purchase of a single-family residence; (iii) file reports as required by the  
451 Department of Taxation; and (iv) remit to the Department of Taxation any penalty imposed pursuant to  
452 subsection A of § 55-558.

453 **§ 55-560. False claims prohibited.**

454 A person who knowingly prepares or causes to be prepared a false claim, receipt, statement, or  
455 billing to justify the withdrawal of money or funds from a first-time home buyer savings account is  
456 guilty of a Class 1 misdemeanor.

457 **§ 55-561. Tax Commissioner to develop guidelines.**

458 The Tax Commissioner shall develop guidelines implementing the provisions of this chapter. Such  
459 guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).