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HOUSE BILL NO. 1741

Offered January 14, 2015

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A *BILL to amend and reenact §§ 58.1-322 and 58.1-402 of the Code of Virginia, relating to the income tax subtraction for long-term capital gains attributable to investments in certain technology businesses.*

Patrons—Hugo, Filler-Corn, LeMunyon and Minchew

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-322 and 58.1-402 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-322. Virginia taxable income of residents.

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

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

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

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

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

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

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 [Repealed.]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, 2014, any loss for the taxable year that was deducted as a capital loss for federal income tax purposes by an account holder attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55. For purposes of this subdivision, "account holder" 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 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 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 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

INTRODUCED

HB1741

59 Commonwealth or any other taxing jurisdiction.

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

62 7, 8. [Repealed.]

63 9. [Expired.]

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

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

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

75 13. [Repealed.]

76 14. [Expired.]

77 15, 16. [Repealed.]

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

84 18. [Repealed.]

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

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

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

102 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
103 exchange of real property or the sale or exchange of an easement to real property which results in the
104 real property or the easement thereto being devoted to open-space use, as that term is defined in
105 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
106 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
107 shall be allowed for three years following the year in which the subtraction is taken.

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

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

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

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

119 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
120 result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco

121 Grower Settlement Trust dated July 19, 1999, by (a) tobacco farmers; (b) any person holding a tobacco
122 marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or
123 (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the
124 extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

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

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

146 29, 30. [Repealed.]

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

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

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

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

167 35. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital
168 gain for federal income tax purposes, or any income taxed as investment services partnership interest
169 income (otherwise known as investment partnership carried interest income) for federal income tax
170 purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an
171 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business
172 approved by the Secretary of Technology, provided the business has its principal office or facility in the
173 Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To
174 qualify for a subtraction under this subdivision, the investment shall be made between the dates of April
175 1, 2010, and June 30, ~~2015~~ 2017. No taxpayer who has claimed a tax credit for an investment in a
176 "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an
177 investment in the same business.

178 36. For taxable years beginning on and after January 1, 2014, any income of an account holder for
179 the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's
180 first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55
181 and (ii) interest income or other income for federal income tax purposes attributable to such person's

182 first-time home buyer savings account.

183 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction
184 taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys
185 or funds withdrawn from the first-time home buyer savings account were used for any purpose other
186 than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under
187 § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable
188 year that was used for other than the payment of eligible costs, computed by multiplying the amount
189 withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in
190 the account at the time of the withdrawal to the total balance in the account at such time.

191 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i)
192 withdrawn by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the
193 account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101
194 through 1330, or (iii) transferred from an account established pursuant to Chapter 32 (§ 55-555 et seq.)
195 of Title 55 into another account established pursuant to such chapter for the benefit of another qualified
196 beneficiary.

197 For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings
198 account," and "qualified beneficiary" mean the same as those terms are defined in § 55-555.

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

201 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
202 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
203 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
204 on such federal return and increased by an amount which, when added to the amount deducted under
205 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
206 such purposes at a rate of 18 cents per mile; or

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

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

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

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

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

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

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

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

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

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

243 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed

244 during the taxable year for a prepaid tuition contract or savings trust account entered into with the
 245 Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as
 246 provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable
 247 year shall be limited to \$4,000 per prepaid tuition contract or savings trust account. No deduction shall
 248 be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or
 249 contributor's federal income tax return. If the purchase price or annual contribution to a savings trust
 250 account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years
 251 until the purchase price or savings trust contribution has been fully deducted; however, except as
 252 provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$4,000
 253 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained
 254 in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years
 255 in which distributions or refunds are made for any reason other than (i) to pay qualified higher
 256 education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death,
 257 disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or
 258 "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of
 259 December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or
 260 savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a
 261 prepaid tuition contract or savings trust account, including, but not limited to, carryover and recapture of
 262 deductions.

263 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January
 264 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
 265 1998, and shall be subject to the limitations set out in subdivision 7 a.

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

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

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

281 10. For taxable years beginning on or after January 1, 2000, the amount an individual pays annually
 282 in premiums for long-term health care insurance, provided the individual has not claimed a deduction for
 283 federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under
 284 § 58.1-339.11. For taxable years beginning on or after January 1, 2014, no such deduction for long-term
 285 health care insurance premiums paid by the individual during the taxable year shall be allowed if the
 286 individual has claimed a federal income tax deduction for such taxable year for long-term health care
 287 insurance premiums paid by him.

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

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

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

298 12. For taxable years beginning on and after January 1, 2007, an amount equal to 20 percent of the
 299 sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.), not to exceed \$500 in each taxable
 300 year, in purchasing for his own use the following items of tangible personal property: (i) any clothes
 301 washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the
 302 applicable energy star efficiency requirements developed by the United States Environmental Protection
 303 Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using
 304 an electrochemical process, (b) has an electricity-only generation efficiency greater than 35 percent, and

305 (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of
306 performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot
307 water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating
308 system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0;
309 (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii)
310 any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced
311 oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace
312 with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

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

319 14. For taxable years beginning on or after January 1, 2013, the amount an individual age 66 or
320 older with earned income of at least \$20,000 for the year and federal adjusted gross income not in
321 excess of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy
322 covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers
323 may claim a deduction for such premiums under federal income tax laws. "Earned income" means the
324 same as that term is defined in § 32(c) of the Internal Revenue Code of 1954, as amended or
325 renumbered. The deduction shall not be allowed for any portion of such premiums paid for which the
326 individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed
327 a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax
328 credit or any income tax credit pursuant to this chapter.

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

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

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

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

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

362 **§ 58.1-402. Virginia taxable income.**

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

366 For a regulated investment company and a real estate investment trust, such term means the

367 "investment company taxable income" and "real estate investment trust taxable income," respectively, to
 368 which shall be added in each case any amount of capital gains and any other income taxable to the
 369 corporation under federal law which shall be further adjusted as provided in subsections B, C, D, and E.

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

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

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

378 3. [Repealed.]

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

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

383 6. [Repealed.]

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

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

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

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

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

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

414 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
 415 convincing evidence, that the transaction or transactions between the corporation and a related member
 416 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business
 417 purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner
 418 shall permit the corporation to file an amended return. For purposes of such amended return, the
 419 requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is
 420 satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance
 421 or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation
 422 within one year of the written permission granted by the Tax Commissioner and any refund of the tax
 423 imposed under this article shall include interest at a rate equal to the rate of interest established under
 424 § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of
 425 such amended return, any related member of the corporation that subtracted from taxable income
 426 amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on
 427 that portion of such amounts for which the corporation has filed an amended return pursuant to this

428 subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he
429 has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation
430 in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and
431 costs without making the adjustment under subdivision a.

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

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

438 c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under
439 § 58.1-446;

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

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

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

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

455 (4) One of the following applies:

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

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

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

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

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

480 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
481 convincing evidence, that the transaction or transactions between the corporation and a related member
482 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business
483 purpose other than the avoidance or reduction of the tax due under this chapter and that the related
484 payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall
485 permit the corporation to file an amended return. For purposes of such amended return, the requirements
486 of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has
487 identified) that the transaction had a valid business purpose other than the avoidance or reduction of the
488 tax due under this chapter and that the related payments between the parties were made at arm's length
489 rates and terms. Such amended return shall be filed by the corporation within one year of the written

590 permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall
 591 include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall
 592 accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related
 593 member of the corporation that subtracted from taxable income amounts received pursuant to subdivision
 594 C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the
 595 corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions
 596 identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing
 597 evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent
 598 taxable years to deduct the related interest expenses and costs without making the adjustment under
 599 subdivision a.

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

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

506 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under
 507 § 58.1-446.

508 d. For purposes of subdivision B 9:

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

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

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

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

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

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

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

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

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

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

538 (4) Any Qualified Foreign Entity.

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

542 d. For purposes of subdivision B 10:

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

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

549 (1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented
 550 by real estate assets, as defined in § 856(c)(5)(B) of the Internal Revenue Code, thereby including shares

551 or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government
552 securities;

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

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

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

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

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

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

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

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

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

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

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

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

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

584 9. [Repealed.]

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

587 11. [Repealed.]

588 12, 13. [Expired.]

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

592 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
593 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
594 (§ 22.1-175.1 et seq.) of Title 22.1.

595 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
596 exchange of real property or the sale or exchange of an easement to real property which results in the
597 real property or the easement thereto being devoted to open-space use, as that term is defined in
598 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
599 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
600 shall be allowed for three years following the year in which the subtraction is taken.

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

603 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
604 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower
605 Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a
606 tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of
607 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

608 19, 20. [Repealed.]

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

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

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

623 24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital
 624 gain for federal income tax purposes, or any income taxed as investment services partnership interest
 625 income (otherwise known as investment partnership carried interest income) for federal income tax
 626 purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an
 627 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business
 628 approved by the Secretary of Technology, provided the business has its principal office or facility in the
 629 Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To
 630 qualify for a subtraction under this subdivision, the investment must be made between the dates of April
 631 1, 2010, and June 30, ~~2015~~ 2017. No taxpayer who has claimed a tax credit for an investment in a
 632 "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an
 633 investment in the same business.

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

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

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

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

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

657 **2. That beginning in 2015 the Department of Taxation shall record on an annual basis using the**
 658 **most recent taxable year data available the fiscal savings from the long-term capital gain and**
 659 **investment services partnership interest income subtraction accruing to (i) individuals pursuant to**
 660 **subdivision C 35 of § 58.1-322 of the Code of Virginia and (ii) corporations pursuant to**
 661 **subdivision C 24 of § 58.1-402 of the Code of Virginia. The Department shall also record the**
 662 **number of individual income tax returns and corporate income tax returns on which the**
 663 **subtraction was claimed. The Department shall report such information to the Governor, any**
 664 **member of the General Assembly, or other person upon request.**