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HOUSE BILL NO. 2306

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance

on February 17, 2015)

(Patron Prior to Substitute—Delegate Filler-Corn)

A BILL to amend and reenact §§ 23-38.75, 23-38.76, 23-38.77, 23-38.80, 23-38.81, and 58.1-322 of the Code of Virginia, relating to establishing Achieving a Better Life Experience (ABLE) savings trust accounts to be administered by the Virginia College Savings Plan to assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-38.75, 23-38.76, 23-38.77, 23-38.80, 23-38.81, and 58.1-322 of the Code of Virginia are amended and reenacted as follows:

§ 23-38.75. Definitions.

As used in this chapter, unless the context requires a different meaning:

"ABLE savings trust account" means an account established pursuant to this chapter to assist individuals and families to save private funds to support individuals with disabilities to maintain health, independence, and quality of life, with such account used to apply distributions for qualified disability expenses for an eligible individual, both as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Board" means the Board of the Virginia College Savings Plan.

"College savings trust account" means an account established pursuant to this chapter to assist individuals and families to enhance the accessibility and affordability of higher education, with such account used to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Contributor" means a person who contributes money to a savings trust account established pursuant to this chapter on behalf of a qualified beneficiary and who is listed as the owner of the savings trust account.

"Plan" means the Virginia College Savings Plan.

"Prepaid tuition contract" means the contract entered into by the Board and a purchaser pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level by the purchaser for a qualified beneficiary to attend any two-year or four-year public institution of higher education in the Commonwealth to which the qualified beneficiary is admitted.

"Purchaser" means a person who makes or is obligated to make advance payments in accordance with a prepaid tuition contract and who is listed as the owner of the prepaid tuition contract.

"Qualified beneficiary" or "beneficiary" means (i) a resident of the Commonwealth, as determined by the Board, who is the beneficiary of a *prepaid tuition* contract and who may apply advance tuition payments to tuition as set forth in this chapter; (ii) a beneficiary of a *prepaid tuition* contract purchased by a resident of the Commonwealth, as determined by the Board, who may apply advance tuition payments to tuition as set forth in this chapter; or (iii) a beneficiary of a savings trust account established pursuant to this chapter.

"Savings trust account" means an ~~account established by a contributor pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law~~ *ABLE savings trust account or a college savings trust account.*

"Savings trust agreement" means the agreement entered into by the Board and a contributor establishing a savings trust account.

"Tuition" means the quarter, semester, or term charges imposed for undergraduate tuition by any two-year or four-year public institution of higher education in the Commonwealth and all mandatory fees required as a condition of enrollment of all students. A beneficiary may apply benefits under a prepaid tuition contract and distributions from a savings trust account toward graduate-level tuition and toward tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the Board in its sole discretion.

§ 23-38.76. Virginia College Savings Plan established; governing board; terms.

A. To enhance the accessibility and affordability of higher education for all citizens of the Commonwealth, there is hereby established as a body politic and corporate and an independent agency of the Commonwealth, the Virginia College Savings Plan (the Plan). ~~Moneys~~ *Certain moneys* of the

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Plan ~~shall be held in the state treasury in a special nonreverting fund (the Fund), which shall consist of~~ *that are contributions to savings trust accounts made pursuant to this chapter, except as otherwise authorized or provided in this chapter, shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or to the extent then permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. The savings program moneys in such accounts shall be paid out on checks, drafts payable on demand, electronic wire transfers, or other means authorized by officers or employees of the Plan.*

All other moneys of the Plan, including payments received pursuant to prepaid tuition contracts ~~or contributions to savings trust accounts made pursuant to this chapter~~, bequests, endowments ~~or~~, grants from the United States government~~,~~ *or* its agencies ~~and~~ *or* instrumentalities, and any other available sources of funds, public or private, *shall be first deposited in the state treasury in a special nonreverting fund (the Fund). Such moneys then shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or to the extent then permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. Benefits related to prepaid tuition contracts and Plan operating expenses shall be paid from the Fund*. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such funds shall remain in the Fund and be credited to it.

B. The Plan shall be administered by an 11-member Board, as follows: the Director of the State Council of Higher Education for Virginia or his designee; the Chancellor of the Virginia Community College System or his designee; the State Treasurer or his designee; the State Comptroller or his designee; and seven nonlegislative citizen members, four to be appointed by the Governor, one to be appointed by the Senate Committee on Rules and two to be appointed by the Speaker of the House of Delegates, with significant experience in finance, accounting, law, or investment management.

Appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be appointed to serve for or during more than two successive four-year terms, but after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Ex officio members of the Board shall serve terms coincident with their terms of office.

C. Members of the Board shall receive no compensation but shall be reimbursed for actual expenses incurred in the performance of their duties. The Board shall elect from its membership a chairman and a vice-chairman annually. A majority of the members of the Board shall constitute a quorum.

§ 23-38.77. Powers and duties of Board.

The Board shall administer the Plan established by this chapter and shall develop and implement programs for (i) the prepayment of undergraduate tuition, as defined in § 23-38.75, at a fixed, guaranteed level for application at a two-year or four-year public institution of higher education in the Commonwealth ~~and~~*;* (ii) contributions to *college* savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher education expenses at eligible educational institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law*; and (iii) contributions to ABLE savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified disability expenses for an eligible individual, both as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law*. In addition, the Board shall have the power and duty to:

1. Invest moneys in the Plan in any instruments, obligations, securities, or property deemed appropriate by the Board;

2. Develop requirements, procedures, and guidelines regarding prepaid tuition contracts and savings trust accounts, including, but not limited to, residency *and other eligibility* requirements; the number of participants in the Plan; the termination, withdrawal, or transfer of payments under a prepaid tuition contract or savings trust account; time limitations for the use of tuition benefits or savings trust account distributions; and payment schedules;

3. Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services *and contracts with other states to provide savings trust accounts for residents of contracting states*;

4. Procure insurance against any loss in connection with the Plan's property, assets, or activities and indemnifying Board members from personal loss or accountability from liability arising from any action or inaction as a Board member;

5. Make arrangements with two-year and four-year public institutions in the Commonwealth to fulfill obligations under prepaid tuition contracts and to apply *college* savings trust account distributions, including, but not limited to, payment from the Plan of the then actual in-state undergraduate tuition cost

on behalf of a qualified beneficiary of a prepaid tuition contract to the institution in which the beneficiary is admitted and enrolled and application of such benefits towards graduate-level tuition and towards tuition costs at such eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the Board in its sole discretion;

6. Develop and implement scholarship and/or matching grant programs, as the Board may deem appropriate, to further its goal of making higher education more affordable and accessible to all citizens of the Commonwealth;

7. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives;

8. Promulgate regulations and procedures and to perform any act or function consistent with the purposes of this chapter; and

9. Reimburse, at its option, all or part of the cost of employing legal counsel and such other costs as are demonstrated to have been reasonably necessary for the defense of any Board member, officer, or employee of the Plan upon the acquittal, dismissal of charges, nolle prosequi, or any other final disposition concluding the innocence of such member, officer or employee who is brought before any regulatory body, summoned before any grand jury, investigated by any law-enforcement agency, arrested, indicted, or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties which alleges a violation of state or federal securities laws. The Board shall provide for the payment of such legal fees and expenses out of funds appropriated or otherwise available to the Board.

§ 23-38.80. Standard of care; investment and administration of Plan.

A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of the Plan, the Board, and any person, investment manager, or committee to whom the Board delegates any of its investment authority, shall act as trustee and shall exercise the judgment of care under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but to the permanent disposition of funds, considering the probable income as well as the probable safety of their capital. If the annual accounting and audit required by § 23-38.85 reveal that there are insufficient funds to ensure the actuarial soundness of the Plan, the Board shall be authorized to adjust the terms of subsequent prepaid tuition contracts, arrange refunds for current purchasers to ensure actuarial soundness, or take such other action the Board deems appropriate.

B. The assets of the Plan shall be preserved, invested, and expended solely pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred or used by the Commonwealth for any other purpose. Within the standard prescribed in subsection A ~~of this section~~, the Board, and any person, investment manager, or committee to whom the Board delegates any of its investment authority, is authorized to acquire and retain every kind of property and every kind of investment, specifically including but not limited to (i) debentures and other corporate obligations of foreign or domestic corporations; (ii) common or preferred stocks traded on foreign or domestic stock exchanges; (iii) not less than all of the stock or 100 percent ownership of a corporation or other entity organized by the Board under the laws of the Commonwealth for the purposes of acquiring and retaining real property that the Board is authorized under this chapter to acquire and retain; and (iv) securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, as amended, including such investment companies or investment trusts which, in turn, invest in the securities of such investment companies or investment trusts, which persons of prudence, discretion, and intelligence acquire or retain for their own account. Within the limitations of the foregoing standard, the Board may retain property properly acquired, without time limitation and without regard to its suitability for original purchase. This section shall not be construed to prohibit the investment of the Plan, by purchase or otherwise, in bonds, notes, or other obligations of the Commonwealth or its agencies and instrumentalities.

All provisions of this subsection shall apply to the portion of the Plan assets attributable to savings trust account contributions and the earnings thereon.

C. The selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, ~~record-keeping~~ *recordkeeping*, or consulting services, shall be governed by the foregoing standard and shall not be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

D. No Board member nor any person, investment manager, or committee to whom the Board delegates any of its investment authority who acts within the standard of care set forth in subsection A shall be held personally liable for losses suffered by the Plan on investments made pursuant to this chapter.

E. To the extent necessary to lawfully administer the Plan and in order to comply with federal, state, and local tax reporting requirements, the Plan may obtain all necessary social security account or tax identification numbers *and such other data as the Plan deems necessary for such purposes, whether from a contributor or purchaser or from another state agency*.

§ 23-38.81. Prepaid tuition contracts and college and ABLE savings trust agreements; terms; termination; etc.

A. Each prepaid tuition contract made pursuant to this chapter shall include the following terms and provisions:

1. The amount of payment or payments and the number of payments required from a purchaser on behalf of a qualified beneficiary;

2. The terms and conditions under which purchasers shall remit payments, including the dates of such payments;

3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;

4. The name and date of birth of the qualified beneficiary on whose behalf the contract is made;

5. Terms and conditions for a substitution for the qualified beneficiary originally named;

6. Terms and conditions for termination of the contract, including any refunds, withdrawals, or transfers of tuition prepayments, and the name of the person or persons entitled to terminate the contract;

7. The time period during which the qualified beneficiary must claim benefits from the Plan;

8. The number of credit hours or quarters, semesters, or terms contracted for by the purchaser;

9. All other rights and obligations of the purchaser and the trust; and

10. Any other terms and conditions which the Board deems necessary or appropriate, including those necessary to conform the contract with the requirements of Internal Revenue Code § 529, as amended, which specifies the requirements for qualified state tuition programs.

B. Each *college* savings trust agreement made pursuant to this chapter shall include the following terms and provisions:

1. The maximum and minimum contribution allowed on behalf of each qualified beneficiary for the payment of qualified higher education expenses at eligible institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law;

2. Provisions for withdrawals, refunds, transfers, and any penalties;

3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;

4. Terms and conditions for a substitution for the qualified beneficiary originally named;

5. Terms and conditions for termination of the account, including any refunds, withdrawals, or transfers, and applicable penalties, and the name of the person or persons entitled to terminate the account;

6. The time period during which the qualified beneficiary must use benefits from the savings trust account;

7. All other rights and obligations of the contributor and the Plan; and

8. Any other terms and conditions which the Board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

C. *Each ABLE savings trust agreement made pursuant to this chapter shall include the following terms and provisions:*

1. The maximum and minimum annual contribution and maximum account balance allowed on behalf of each qualified beneficiary for the payment of qualified disability expenses, as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law;

2. Provisions for withdrawals, refunds, transfers, return of excess contributions, and any penalties;

3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;

4. Terms and conditions for a substitution for the qualified beneficiary originally named;

5. Terms and conditions for termination of the account, including any transfers to the state upon the death of the qualified beneficiary, refunds, withdrawals, transfers, applicable penalties, and the name of the person or persons entitled to terminate the account;

6. The time period during which the qualified beneficiary must use benefits from the savings trust account;

7. All other rights and obligations of the contributor and the Plan; and

8. Any other terms and conditions that the Board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

D. In addition to the provisions required by subsection A ~~of this section~~, each prepaid tuition contract shall include provisions for the application of tuition prepayments (i) at accredited, nonprofit,

independent institutions of higher education located in Virginia, including actual interest and income earned on such prepayments and (ii) at public and at accredited, nonprofit, independent institutions of higher education located in other states, including principal and reasonable return on such principal as determined by the Board. Payments authorized for accredited, nonprofit, independent institutions located in Virginia may not exceed the projected highest payment made for tuition at a public institution of higher education in Virginia in the same academic year, less a fee to be determined by the Board. Payments authorized for public and for accredited, nonprofit, independent institutions of higher education located in other states may not exceed the projected average payment made for tuition at a public institution of higher education in Virginia in the same academic year, less a fee to be determined by the Board.

~~D.~~ *E.* All prepaid tuition contracts and savings trust agreements shall specifically provide that, if after a specified period of time the contract or savings trust agreement has not been terminated nor the qualified beneficiary's rights exercised, the Board, after making reasonable effort to contact the purchaser or contributor and the qualified beneficiary or their agents, shall report such unclaimed moneys to the State Treasurer pursuant to § 55-210.12.

~~E.~~ *F.* Notwithstanding any provision of law to the contrary, money in the Plan shall be exempt from creditor process and shall not be liable to attachment, garnishment, or other process, nor shall it be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any purchaser, contributor or beneficiary, *provided, however, that the state of residence of the beneficiary of an ABLE savings trust account shall be a creditor of such account in the event of the death of the beneficiary.*

~~F.~~ *G.* No contract or savings trust account shall be assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

~~G.~~ *H.* The Board's decision on any dispute, claim, or action arising out of or related to a prepaid tuition contract or savings trust agreement made or entered into pursuant to this chapter or benefits thereunder shall be considered a case decision as defined in § 2.2-4001 and all proceedings related thereto shall be conducted pursuant to Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. Judicial review shall be exclusively provided pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

§ 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 Commonwealth or any other taxing jurisdiction.

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

7, 8. [Repealed.]

9. [Expired.]

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

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

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

13. [Repealed.]

14. [Expired.]

15, 16. [Repealed.]

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

18. [Repealed.]

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

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

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

22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in

accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

23. Effective for all taxable years beginning on or after January 1, 2000, $15,000 of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military 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. 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.

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

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

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

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

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 *college* 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 *college* 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 *college* savings trust account exceeds $4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or *college* 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 *college* 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 *college* savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or *college* 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 *college* 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 *college* 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 *college* 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 or 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, for taxable years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on or after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such taxable year for long-term health care insurance premiums paid by him.

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

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

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

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

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

H. Notwithstanding any other provision of law, the income from any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or

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