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HOUSE BILL NO. 799

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A BILL to amend and reenact §§ 58.1-322, 58.1-339.4, and 58.1-402 of the Code of Virginia, relating to income tax subtractions and tax credits for investments in technology businesses.

Patrons—Bell, John J., Davis and Murphy

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-322, 58.1-339.4, 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 [Repealed.]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

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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, but before January 1, 2015, the gain
103 derived from the sale or exchange of real property or the sale or exchange of an easement to real
104 property which results in the real property or the easement thereto being devoted to open-space use, as
105 that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a
106 subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating
107 land for its preservation shall be allowed for three years following the year in which the subtraction is
108 taken.

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

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

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

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

120 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 (i) its principal office or facility in the Commonwealth and ~~less~~ (ii) *no more than \$3 million in annual revenues or no more than 50 full-time employees* 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, 2020. 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.

For purposes of this subdivision, "full-time employee" means the same as that term is defined under § 58.1-339.4.

36. For taxable years beginning on and after January 1, 2014, any income of an account holder for

182 the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's
183 first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55
184 and (ii) interest income or other income for federal income tax purposes attributable to such person's
185 first-time home buyer savings account.

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

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

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

202 37. For taxable years beginning on or after January 1, 2015, any income for the taxable year
203 attributable to the discharge of a student loan solely by reason of the student's death. For purposes of
204 this subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal
205 Revenue Code.

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

208 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
209 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
210 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
211 on such federal return and increased by an amount which, when added to the amount deducted under
212 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
213 such purposes at a rate of 18 cents per mile; or

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

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

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

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

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

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

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

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

243 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.

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

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

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

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

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

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

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

357 H. Notwithstanding any other provision of law, the income from any disposition of real property
358 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or
359 business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after
360 January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method
361 described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer
362 disposition of the property has been made on or before the due date prescribed by law (including
363 extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in
364 which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or
365 conditions established by the Department, which shall be set forth in guidelines developed by the
366 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.).

§ 58.1-339.4. Qualified equity and subordinated debt investments tax credit.

A. As used in this section:

"Commercialization investment" means a qualified investment in a qualified business that was created to commercialize research developed at or in partnership with an institution of higher education.

"Cybersecurity business" means a business that is engaged primarily in the development of innovative and proprietary cybersecurity technology.

"Cybersecurity technology" means products or goods intended to detect or prevent activity intended to result in unauthorized access to, exfiltration of, manipulation of, or impairment to the integrity, confidentiality, or availability of an information system or information stored on or transiting an information system.

"Equity" means common stock or preferred stock, regardless of class or series, of a corporation; a partnership interest in a limited partnership; or a membership interest in a limited liability company, which is not required or subject to an option on the part of the taxpayer to be redeemed by the issuer within three years from the date of issuance.

"Full-time employee" means an employee in an employment position of an indefinite duration requiring a minimum of 35 hours of the employee's time a week for the entire normal year of the qualified business's operations, which "normal year" shall consist of at least 48 weeks, or an employment position of indefinite duration that requires a minimum of 35 hours of the employee's time a week for the portion of the year in which the employee was initially hired by, or transferred to, the qualified business. "Full-time employee" does not include an employee in a temporary position.

"Qualified business" means a business which (i) has annual gross revenues of no more than \$3 million in its most recent fiscal year or no more than 50 full-time employees for such year, (ii) has its principal office or facility in the Commonwealth, (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, (iv) has not obtained during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments (not including commercial loans from chartered banking or savings and loan institutions), and (v) is primarily engaged, or is primarily organized to engage, in the fields of advanced computing, advanced materials, advanced manufacturing, agricultural technologies, biotechnology, electronic device technology, energy, environmental technology, information technology, medical device technology, nanotechnology, or any similar technology-related field determined by regulation by the Department of Taxation to fall under the purview of this section.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt; however, an investment shall not be qualified if the taxpayer who holds such investment, or any of such taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance; (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person; and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. For taxable years beginning on or after January 1, 1999, a taxpayer shall be allowed a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-360 in an amount equal to 50 percent of such taxpayer's qualified investments during such taxable year. No credit shall be allowed to any taxpayer that has committed capital under management in excess of \$10 million and engages in the business of making debt or equity investments in private businesses, or to any taxpayer that is allocated a credit as a partner, shareholder, member or owner of an entity that engages in such business.

C. The amount of any credit attributable to a qualified investment by a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, as the case may be, as they may determine.

D. The aggregate amount of the credit for each taxpayer shall not exceed the lesser of (i) the tax imposed for such taxable year or (ii) \$50,000. Any credit not usable for the taxable year in which the credit was allowed may be, to the extent usable, carried over for the next 15 succeeding taxable years or until the total amount of the tax credit has been taken, whichever occurs first.

E. The amount of tax credits available under this section for a calendar year shall be \$5 million 2017 and for each calendar year thereafter shall be \$7.5 million.

1. Of the amount of available credits, ~~one-half~~ one-third of the amount shall be allocated exclusively

428 for credits for commercialization investments. Such allocation of tax credits shall constitute the
429 minimum amount of tax credits to be allocated for commercialization investments. However, if the
430 amount of tax credits requested for commercialization investments is less than ~~one-half~~ one-third of the
431 total amount of credits available under this section, the balance of such credits shall be allocated for
432 qualified investments in any qualified business under this section; and

433 2. *One-third of the amount of available credits shall be allocated exclusively for qualified*
434 *investments in cybersecurity businesses. Such allocation of tax credits shall constitute the minimum*
435 *amount of tax credits to be allocated for investments in cybersecurity businesses. If the amount of tax*
436 *credits requested for investments in such businesses is less than one-third of the total amount of credits*
437 *available under this section, the balance of such credits shall be allocated for qualified investments in*
438 *any qualified business under this section.*

439 F. Unless the taxpayer transfers the equity received in connection with a qualified investment as a
440 result of (i) the liquidation of the qualified business issuing such equity, (ii) the merger, consolidation or
441 other acquisition of such business with or by a party not affiliated with such business, or (iii) the death
442 of the taxpayer, any taxpayer that fails to hold such equity for at least three full calendar years
443 following the calendar year for which a tax credit for a qualified investment is allocated pursuant to this
444 section shall forfeit both used and unused tax credits and in addition shall pay the Department of
445 Taxation interest on the total allowed credits at the rate of one percent per month, compounded monthly,
446 from the date the tax credits were allocated to the taxpayer. The Department of Taxation shall deposit
447 any amounts received under this subsection into the general fund of the Commonwealth.

448 G. Prior to December 31, 1998, the Department of Taxation shall promulgate regulations in
449 accordance with the Administrative Process Act (§ 2.2-4000 et seq.) (i) establishing procedures for
450 claiming the tax credit provided by this section and (ii) providing for the allocation of tax credits among
451 taxpayers requesting credits in the event the amount of credits for which requests are made exceeds the
452 available amount of credits in any one calendar year. Notwithstanding the foregoing, the Department of
453 Taxation shall permit an application for certification as a qualified business to be filed at any time
454 during the calendar year regardless of when the investment was made during the calendar year.

455 **§ 58.1-402. Virginia taxable income.**

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

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

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

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

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

471 3. [Repealed.]

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

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

476 6. [Repealed.]

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

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

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

488 (2) The related member derives at least one-third of its gross revenues from the licensing of
489 intangible property to parties who are not related members, and the transaction giving rise to the

expenses and costs between the corporation and the related member was made at rates and terms comparable to the rates and terms of agreements that the related member has entered into with parties who are not related members for the licensing of intangible property; or

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

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

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

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

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

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

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

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

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

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

(4) One of the following applies:

(i) The corresponding item of income received by the related member is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government that has

551 entered into a comprehensive tax treaty with the United States government;

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

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

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

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

573 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
574 convincing evidence, that the transaction or transactions between the corporation and a related member
575 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business
576 purpose other than the avoidance or reduction of the tax due under this chapter and that the related
577 payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall
578 permit the corporation to file an amended return. For purposes of such amended return, the requirements
579 of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has
580 identified) that the transaction had a valid business purpose other than the avoidance or reduction of the
581 tax due under this chapter and that the related payments between the parties were made at arm's length
582 rates and terms. Such amended return shall be filed by the corporation within one year of the written
583 permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall
584 include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall
585 accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related
586 member of the corporation that subtracted from taxable income amounts received pursuant to subdivision
587 C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the
588 corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions
589 identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing
590 evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent
591 taxable years to deduct the related interest expenses and costs without making the adjustment under
592 subdivision a.

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

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

599 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under
600 § 58.1-446.

601 d. For purposes of subdivision B 9:

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

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

612 10. a. For taxable years beginning on and after January 1, 2009, the amount of dividends deductible

under §§ 561 and 857 of the Internal Revenue Code by a Captive Real Estate Investment Trust (REIT). For purposes of this subdivision, a REIT is a Captive REIT if:

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

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

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

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

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

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

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

(4) Any Qualified Foreign Entity.

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

d. For purposes of subdivision B 10:

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

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

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

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

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

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

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

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

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 this Commonwealth.

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

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

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

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.

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

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

677 9. [Repealed.]

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

680 11. [Repealed.]

681 12, 13. [Expired.]

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

685 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
686 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
687 (§ 22.1-175.1 et seq.) of Title 22.1.

688 16. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain
689 derived from the sale or exchange of real property or the sale or exchange of an easement to real
690 property which results in the real property or the easement thereto being devoted to open-space use, as
691 that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a
692 subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating
693 land for its preservation shall be allowed for three years following the year in which the subtraction is
694 taken.

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

697 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
698 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower
699 Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a
700 tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of
701 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

702 19, 20. [Repealed.]

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

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

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

717 24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital
718 gain for federal income tax purposes, or any income taxed as investment services partnership interest
719 income (otherwise known as investment partnership carried interest income) for federal income tax
720 purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an
721 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business
722 approved by the Secretary of Technology, provided the business has (i) its principal office or facility in
723 the Commonwealth and less (ii) no more than \$3 million in annual revenues or no more than 50
724 full-time employees in the fiscal year prior to the investment. To qualify for a subtraction under this
725 subdivision, the investment must be made between the dates of April 1, 2010, and June 30, 2020. No
726 taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4
727 shall be eligible for the subtraction under this subdivision for an investment in the same business.

728 *For purposes of this subdivision, "full-time employee" means the same as that term is defined under*
729 *§ 58.1-339.4.*

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

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

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

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

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

753 **2. That the provisions of this act amending subsection E of § 58.1-339.4 of the Code of Virginia**
754 **shall become effective for calendar year 2017 and each calendar year thereafter. All other**
755 **amendments pursuant to the provisions of this act shall become effective for taxable years**
756 **beginning on or after January 1, 2016.**