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HOUSE BILL NO. 222**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance
on February 7, 2018)

(Patron Prior to Substitute—Delegate Morefield)

A *BILL to amend and reenact §§ 58.1-322.02, 58.1-405, 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, and 58.1-422.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-958.2:01 and 58.1-405.1, relating to income tax; modification for certain companies and individual income tax subtraction for their employees; local grants.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-322.02, 58.1-405, 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, and 58.1-422.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-958.2:01 and 58.1-405.1 as follows:

§ 15.2-958.2:01. Grants for certain corporations and pass-through entities.

A. The counties and cities listed in subsection B may give grants or loans to any eligible company, as defined in § 58.1-405.1.

B. The counties and cities that may give grants pursuant to subsection A are:

1. The Counties of Bland, Buchanan, Carroll, Dickenson, Giles, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Wise, and Wythe and the Cities of Bristol, Galax, and Norton;

2. The Counties of Amelia, Appomattox, Buckingham, Charlotte, Cumberland, Halifax, Henry, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, and Prince Edward and the Cities of Danville and Martinsville;

3. The Counties of Accomack, Caroline, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland; and

4. The City of Petersburg.

§ 58.1-322.02. Virginia taxable income; subtractions.

In computing Virginia taxable income pursuant to § 58.1-322, 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 the Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

3. 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.

4. 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 5 of § 58.1-322.03 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 Work Opportunity Credit which was not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

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

8. 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 in this subdivision.

9. 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 subdivision 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.

10. 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

60 Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and
61 members of limited liability companies to the extent and in the same manner as other deductions may
62 pass through to such partners, shareholders, and members.

63 11. Any income received during the taxable year derived from a qualified pension, profit-sharing, or
64 stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account
65 or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as
66 defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the
67 contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the
68 extent the contributions to such plan or program were subject to taxation under the income tax in
69 another state.

70 12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract
71 or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7
72 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be
73 limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a
74 scholarship.

75 13. All military pay and allowances, to the extent included in federal adjusted gross income and not
76 otherwise subtracted, deducted, or exempted under this section, earned by military personnel while
77 serving by order of the President of the United States with the consent of Congress in a combat zone or
78 qualified hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112
79 of the Internal Revenue Code.

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

86 15. Fifteen thousand dollars of military basic pay for military service personnel on extended active
87 duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar
88 by the amount by which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero
89 if such military basic pay amount is equal to or exceeds \$30,000.

90 16. The first \$15,000 of salary for each federal and state employee whose total annual salary from all
91 employment for the taxable year is \$15,000 or less.

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

93 18. Any amount received as military retirement income by an individual awarded the Congressional
94 Medal of Honor.

95 19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from,
96 hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii)
97 damages, reparations, or other consideration received by a victim or target of Nazi persecution to
98 compensate such individual for performing labor against his will under the threat of death, during World
99 War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such
100 items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost
101 to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The
102 provisions of this subdivision shall only apply to an individual who was the first recipient of such items
103 of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or
104 stepchild of such victim.

105 As used in this subdivision:

106 "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those
107 European countries allied with Nazi Germany, or any other neutral European country or area in Europe
108 under the influence or threat of Nazi invasion.

109 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by
110 the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or
111 omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath,
112 (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution,
113 or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II
114 and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual
115 forced into labor against his will, under the threat of death, during World War II and its prelude and
116 direct aftermath.

117 20. The military death gratuity payment made after September 11, 2001, to the survivor of deceased
118 military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the subtraction
119 amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal
120 gross income in accordance with § 134 of the Internal Revenue Code.

121 21. 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.

22. 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 with 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.

23. 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.

24. 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 that 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, 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.

25. 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.

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

27. a. Income, including investment services partnership interest income (otherwise known as investment partnership carried interest income), attributable to an investment in a Virginia venture capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision for an investment in a company that is owned or operated by a family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision 24 or a tax credit under § 58.1-339.4 for the same investment.

b. As used in this subdivision 27:

"Qualified portfolio company" means a company that (i) has its principal place of business in the Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or service other than the management or investment of capital; and (iii) provides equity in the company to the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company" does not include a company that is an individual or sole proprietorship.

"Virginia venture capital account" means an investment fund that has been certified by the

183 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital
184 account, the operator of the investment fund shall register the investment fund with the Department prior
185 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed
186 to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one
187 investor who has at least four years of professional experience in venture capital investment or
188 substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to,
189 an undergraduate degree from an accredited college or university in economics, finance, or a similar
190 field of study. The Department may require an investment fund to provide documentation of the
191 investor's training, education, or experience as deemed necessary by the Department to determine
192 substantial equivalency. If the Department determines that the investment fund employs at least one
193 investor with the experience set forth herein, the Department shall certify the investment fund as a
194 Virginia venture capital account at such time as the investment fund actually invests at least 50 percent
195 of the capital committed to its fund in qualified portfolio companies.

196 28. *For taxable years beginning on and after January 1, 2018, up to \$250,000 of compensation, as*
197 *defined in § 58.1-302, received during the taxable year by an employee whose job is located in a*
198 *qualified locality as defined in § 58.1-405.1 from an eligible company as defined in § 58.1-405.1 that*
199 *apportions its income pursuant to the provisions of § 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420,*
200 *58.1-422, 58.1-422.1, or 58.1-422.2, as applicable. A taxpayer claiming a subtraction under this*
201 *subdivision shall be entitled to such subtraction for the taxable year in which the eligible company first*
202 *elects to apportion its income and for nine subsequent, consecutive taxable years.*

203 **§ 58.1-405. Corporations transacting or conducting entire business within this Commonwealth.**

204 If A. Except as provided in § 58.1-405.1, if the entire business of the corporation is transacted or
205 conducted within the Commonwealth, the tax imposed by this chapter shall be upon the entire Virginia
206 taxable income of such corporation for each taxable year; however, if such corporation is certified by
207 the Virginia Economic Development Partnership Authority as an eligible company pursuant to
208 § 58.1-405.1, it may elect to (i) apportion its income between qualified localities, as defined in
209 § 58.1-405.1, and other localities in the Commonwealth and (ii) utilize any modification for which it
210 may be eligible pursuant to the provisions of § 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420,
211 58.1-422, 58.1-422.1, or 58.1-422.2, as applicable. The entire business of the corporation shall be
212 deemed to have been transacted or conducted within the Commonwealth if such corporation is not
213 subject in any other state to a net income tax, a franchise tax measured by net income, or a franchise
214 tax for the privilege of doing business.

215 **§ 58.1-405.1. Eligibility of companies for apportionment modification; certification by the Virginia**
216 **Economic Development Partnership Authority.**

217 A. For purposes of this section:

218 "Authority" means the Virginia Economic Development Partnership Authority.

219 "Eligible company" means a corporation or pass-through entity, as defined in § 58.1-390.1, that does
220 not have any existing property or payroll in Virginia as of January 1, 2018, and on or after January 1,
221 2018, but before January 1, 2029, (i) either (a) spends at least \$5 million on new capital investment in
222 a qualified locality or qualified localities and creates at least 10 new jobs in a qualified locality or
223 qualified localities or (b) creates at least 50 new jobs in a qualified locality or qualified localities; (ii)
224 is a traded-sector company; and (iii) is certified by the Authority as generating a positive fiscal impact
225 pursuant to subsection B.

226 "New capital investment" means real property acquired in a qualified locality or qualified localities
227 on or after January 1, 2018, but before January 1, 2029, and any improvements to real property in a
228 qualified locality or qualified localities on or after January 1, 2018, but before January 1, 2029.

229 "New job" means a permanent, full-time position of indefinite duration that pays at least twice the
230 minimum wage, as defined in the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), and that requires a
231 minimum of (i) 35 hours of an employee's time a week for the entire normal year of the eligible
232 company's operations, which normal year shall consist of at least 48 weeks, or (ii) 1,680 hours per
233 year.

234 "Qualified development site" means real property that is in a locality adjacent to a qualified locality
235 and, before January 1, 2018, either (i) was owned or partly owned by a qualified locality or an
236 industrial development authority of which a qualified locality is a member or (ii) was owned or partly
237 owned by a locality or industrial development authority, was leased to a private party, and was subject
238 to a revenue-sharing agreement providing that a portion of the revenues from the lease would be
239 distributed to a qualified locality. "Qualified development site" does not include real property that is not
240 owned by the Commonwealth or a political subdivision thereof.

241 "Qualified locality" means (i) the County of Bland, Buchanan, Carroll, Dickenson, Giles, Grayson,
242 Lee, Russell, Scott, Smyth, Tazewell, Wise, or Wythe or the City of Bristol, Galax, or Norton; (ii) the
243 County of Amelia, Appomattox, Buckingham, Charlotte, Cumberland, Halifax, Henry, Lunenburg,
244 Mecklenburg, Nottoway, Patrick, Pittsylvania, or Prince Edward or the City of Danville or Martinsville;

(iii) the County of Accomack, Caroline, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, or Westmoreland; or (iv) the City of Petersburg. "Qualified locality" includes a qualified development site.

"Traded-sector company" means a company that directly or indirectly derives more than 50 percent of its revenue from out-of-state sources.

B. 1. The Authority shall determine whether a company will generate a positive fiscal impact based on the following factors: (i) job creation; (ii) private capital investment; and (iii) anticipated additional state and local tax revenue. The Authority also shall consider the additional revenue the Commonwealth likely would expend in and for the localities if the economy in the localities continues to erode. In making its determination, the Authority shall consult with the Department regarding the revenue impact of certifying such company. The Authority shall certify a company only if it determines such company will generate a positive fiscal impact.

2. The Authority shall deny certification to any company if it determines such taxpayer has engaged in a merger, acquisition, similar business combination, name change, change in business form, or other transaction the sole purpose of which is to obtain status as an eligible company.

3. Any certification issued pursuant to subdivision B 1 shall be subject to annual renewal.

C. Any eligible company may elect to apportion its income pursuant to the provisions of § 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, or 58.1-422.2, as applicable.

§ 58.1-408. What income apportioned and how.

A. The Virginia taxable income of any corporation, except those subject to the provisions of § 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, or 58.1-422.2, excluding income allocable under § 58.1-407, shall be apportioned to the Commonwealth by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor, plus twice the sales factor, and the denominator of which is four; however, where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.

B. Any eligible company, as defined in § 58.1-405.1, may subtract the value of its property acquired in any qualified locality or qualified localities, as defined in § 58.1-405.1, on or after January 1, 2018, and payroll attributable to jobs created on or after January 1, 2018, in any of such localities, from the numerator of the corresponding factor. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the nine subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.

§ 58.1-417. Motor carriers; apportionment.

A. Motor carriers of property or passengers shall apportion their net apportionable income to this Commonwealth by the use of the ratio of vehicle miles in this Commonwealth to total vehicle miles of the corporation everywhere. For the purposes of this section the words "vehicle miles" in the case of motor carriers of property shall mean miles traveled by vehicles (whether owned or operated by the corporation) hauling property for a charge or traveling on a scheduled route. In the case of motor carriers of passengers the same shall mean miles traveled by vehicles (whether owned or operated by the corporation) carrying passengers for a fare or traveling on a scheduled route.

B. The provisions of subsection A shall not be applicable to a carrier:

1. Which neither owns nor rents real or tangible personal property within this Commonwealth, except vehicles, which has made no pick-ups or deliveries within this Commonwealth, and which has traveled less than 50,000 vehicle miles in this Commonwealth in the taxable year; or

2. Which neither owns nor rents any real or tangible personal property within this Commonwealth, except vehicles, and which makes no more than twelve round trips into this Commonwealth during a taxable year.

The mileage traveled under 50,000 miles or the mileage traveled in such round trips, however, may not represent more than 5 percent of the total miles annually traveled in all states by such carrier.

C. Any eligible company, as defined in § 58.1-405.1, may subtract its vehicle miles traveled in any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subsection A. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the nine subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.

§ 58.1-418. Financial corporations; apportionment.

A. The Virginia taxable income of a financial corporation, as defined herein, excluding income

allocable under § 58.1-407, shall be apportioned within and without this Commonwealth in the ratio that the business within this Commonwealth is to the total business of the corporation. Business within this Commonwealth shall be based on cost of performance in the Commonwealth over cost of performance everywhere.

B. "Financial corporation" means any corporation not exempted from the imposition of tax under the provisions of § 58.1-401, which derives more than seventy percent of its gross income from the classes of income enumerated in subdivisions 1 through 4 below, without reference to the state wherein such income is earned, including but not limited to small loan companies, sales finance companies, brokerage companies and investment companies:

1. Fees, commissions, other compensation for financial services rendered;
2. Gross profits from trading in stocks, bonds, or other securities;
3. Interest; and
4. Dividends received to the extent included in Virginia taxable income.

C. In computing the amounts referred to in subdivisions 1 through 4 of subsection B of this section, any amount received by a member of an affiliated group, determined under § 1504(a) of the Internal Revenue Code but without reference to whether any such corporation is an includable corporation under § 1504(b) of the Internal Revenue Code, from another member of such group shall be included only to the extent such amount exceeds expenses of the recipient directly related thereto.

D. Any eligible company, as defined in § 58.1-405.1, may subtract the value of its business within any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subsection A. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the nine subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.

§ 58.1-419. Construction corporations; apportionment.

A. Construction companies which have elected to report income on the completed contract basis shall apportion income within and without this Commonwealth in the ratio that the business within the Commonwealth is to the total business of the corporation.

B. All other construction corporations not reporting under the completed contract method shall determine Virginia taxable income by reference to §§ 58.1-406 through 58.1-416.

C. Any eligible company, as defined in § 58.1-405.1, may subtract the value of its business within any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subsection A. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the nine subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.

§ 58.1-420. Railway companies; apportionment.

A. Notwithstanding the provisions of § 58.1-408, railway companies shall determine their net apportionable income to the Commonwealth by multiplying the Virginia taxable income of such company, excluding the classes of income allocable under § 58.1-407, by the use of the ratio of revenue car miles in the Commonwealth to total revenue car miles of the company everywhere. For the purposes of this section, "revenue car mile" in the case of railway carriers of property or passengers means the movement of a unit of loaded car equipment a distance of one mile. The loaded car miles shall be determined in accordance with the Uniform System of Accounts for Railroad Companies of the Interstate Commerce Commission.

B. Any eligible company, as defined in § 58.1-405.1, may subtract its revenue car miles traveled in any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subsection A. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the nine subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.

§ 58.1-422. Manufacturing companies; apportionment.

A. For taxable years beginning on or after July 1, 2011, the Virginia taxable income of a manufacturing company, excluding income allocable under § 58.1-407, may be apportioned within and without the Commonwealth as provided in § 58.1-408 or as follows:

1. From July 1, 2011, until July 1, 2013, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does

not exist, the denominator of the fraction shall be the number of existing factors plus two;

2. From July 1, 2013, until July 1, 2014, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

3. From July 1, 2014, and thereafter, by multiplying such income by the sales factor.

B. If the taxpayer makes one or more of the elections described in subdivision A 1, A 2, or A 3, the taxpayer may not revoke the election for a period of three taxable years.

In addition, the taxpayer shall certify to the Department that the average weekly wage of its full-time employees is greater than the lower of the state or local average weekly wages for the taxpayer's industry.

C. If the average annual number of full-time employees of a manufacturing company for the first three taxable years (in which the manufacturing company used the alternative apportionment set forth in this section) is less than 90 percent of the base year employment, or the average wage of its full-time employees as certified by the taxpayer is not greater than the lower of the state or local average weekly wage, then the Department of Taxation shall assess the manufacturing company with additional taxes pursuant to this article computed as the difference between (i) the taxes that would have been due under the apportionment formula provided under § 58.1-408 for such three taxable years, minus (ii) the taxes due under the alternative apportionment provided under this section for such three taxable years. Interest shall accrue and shall be assessed on such additional taxes at the rate prescribed under § 58.1-15, with such interest accruing from the original due date for filing of the income tax return to the date of payment of such additional taxes.

Such additional taxes and interest are hereby imposed on manufacturing companies using the alternative apportionment set forth in this section.

D. As used in this section, unless the context requires another meaning:

"Base year employment" means the average number of full-time employees employed by the manufacturing company in the Commonwealth in the taxable year that ended immediately prior to the first taxable year in which the manufacturing company used the alternative apportionment set forth in this section.

"Full-time employee" means an employee of a manufacturing company who is employed for an indefinite duration in the Commonwealth for which the standard fringe benefits are paid by the manufacturing company, for which employment requires a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such manufacturing company's operations, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year.

"Manufacturing company" means a domestic or foreign corporation primarily engaged in activities that, in accordance with the North American Industrial Classification System (NAICS), United States Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or 33.

E. The General Assembly of Virginia finds that job creation is essential to the continued fiscal health of the Commonwealth. In this modern economy, states often compete for quality manufacturing jobs. Accordingly, the provisions of this section relating to manufacturing companies that increase their employment in Virginia are integral to the purpose of the election allowed pursuant to this section. If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall not be deemed severable.

F. Any eligible company, as defined in § 58.1-405.1, that elects to apportion its income pursuant to subsection A may subtract the value of its sales in any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subdivision A 3. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the nine subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.

§ 58.1-422.1. Retail companies; apportionment.

A. For taxable years beginning on or after July 1, 2012, the Virginia taxable income of a retail company, excluding income allocable under § 58.1-407, shall be apportioned within and without the Commonwealth as follows:

1. From July 1, 2012, until July 1, 2014, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus two;

2. From July 1, 2014, until July 1, 2015, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

3. From July 1, 2015, and thereafter, by multiplying such income by the sales factor.

B. As used in this section, "retail company" means a domestic or foreign corporation primarily engaged in activities that, in accordance with the North American Industry Classification System (NAICS), United States Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sectors 44-45.

C. Any eligible company, as defined in § 58.1-405.1, may subtract the value of its sales in any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subdivision A 3. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the nine subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.

§ 58.1-422.2. Apportionment; taxpayers with enterprise data center operations.

A. For taxable years beginning on or after July 1, 2016, the Virginia taxable income of taxpayers with enterprise data center operations, excluding income allocable under § 58.1-407, shall be apportioned within and without the Commonwealth as follows:

1. From July 1, 2016, until July 1, 2017, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

2. From July 1, 2017, and thereafter, by multiplying such income by the sales factor.

B. As used in this section:

"Enterprise data center operations" means operations that (i) physically house information technology equipment such as servers, switches, routers, data storage devices, or related equipment; (ii) manage and process digital data and information to provide application services or management for data processing, such as web hosting, Internet, intranet, telecommunication, and information technology; (iii) are developed and owned by the taxpayer; and (iv) are operated by the taxpayer or any of its affiliates substantially for their own use.

C. The provisions of this section requiring an apportionment formula for taxpayers with enterprise data center operations shall apply only to taxpayers that have entered into a memorandum of understanding with the Virginia Economic Development Partnership Authority on or after July 1, 2015, to make a new capital investment of at least \$150 million in an enterprise data center in the Commonwealth on or after such date. The apportionment formula under this section shall apply to such taxpayers beginning with the taxable year for which the Virginia Economic Development Partnership Authority provides a written certification to the taxpayer that the new capital investment has been completed.

D. The General Assembly of Virginia finds that capital investment in data centers is essential to the continued fiscal health of the Commonwealth. In this modern economy, states often compete for quality data centers. Accordingly, the provisions of subsection C relating to capital investment in enterprise data centers are integral to the purpose of this section. If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall not be deemed severable.

E. Any eligible company, as defined in § 58.1-405.1, that apportions its income pursuant to this section may subtract the value of its sales in any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subdivision A 2. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the nine subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.

2. That the Virginia Economic Development Partnership Authority shall promulgate guidelines regarding the certification process described in subsection B of § 58.1-405.1 of the Code of Virginia, as created by this act, and that the Department of Taxation shall promulgate guidelines regarding the individual income subtraction for employees of eligible companies described in subdivision 28 of § 58.1-322.02 of the Code of Virginia, as amended by this act, and regarding the modifications to apportionment formulae described in §§ 58.1-405, 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, and 58.1-422.2 of the Code of Virginia, as amended by this

491 act.