

18103580D

HOUSE BILL NO. 365

Offered January 10, 2018

Prefiled January 5, 2018

A BILL to amend and reenact §§ 58.1-322.02 and 58.1-402 of the Code of Virginia, relating to income tax subtraction; Virginia real estate investment trust income.

Patrons—Rush and Murphy

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-322.02 and 58.1-402 of the Code of Virginia are amended and reenacted as follows:

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

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

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

INTRODUCED

HB365

59 scholarship.

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

65 14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange
66 of real property or the sale or exchange of an easement to real property which results in the real
67 property or the easement thereto being devoted to open-space use, as that term is defined in §
68 58.1-3230, for a period of time not less than 30 years. To the extent that a subtraction is taken in
69 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
70 shall be allowed for three years following the year in which the subtraction is taken.

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

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

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

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

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

90 As used in this subdivision:

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

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

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

106 21. The death benefit payments from an annuity contract that are received by a beneficiary of such
107 contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an
108 insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under
109 this subdivision shall be allowed only for that portion of the death benefit payment that is included in
110 federal adjusted gross income.

111 22. Any gain recognized from the sale of launch services to space flight participants, as defined in
112 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of
113 a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch
114 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

115 23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined
116 in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the
117 National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8,
118 and launched from an airport or spaceport in Virginia.

119 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income
120 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 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital account, the operator of the investment fund shall register the investment fund with the Department prior to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to, an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study. The Department may require an investment fund to provide documentation of the investor's training, education, or experience as deemed necessary by the Department to determine substantial equivalency. If the Department determines that the investment fund employs at least one investor with the experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital account at such time as the investment fund actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies.

28. a. *Income attributable to an investment in a Virginia real estate investment trust. To qualify for a*

182 subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before
183 December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by a
184 family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for
185 a taxpayer who has claimed a subtraction under subdivision 24 or 27 or a tax credit under §
186 58.1-339.4 for the same investment.

187 b. As used in this subdivision 28:

188 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of
189 § 2.2-115.

190 "Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3
191 of § 2.2-115.

192 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.
193 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to
194 be certified as a Virginia real estate investment trust, the trustee shall register the trust with the
195 Department prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust
196 funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or
197 double distressed. If the Department determines that the trust satisfies the preceding criteria, the
198 Department shall certify the trust as a Virginia real estate investment trust at such time as the trust
199 actually invests at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in
200 real estate in localities that are distressed or double distressed.

201 **§ 58.1-402. Virginia taxable income.**

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

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

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

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

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

217 3. [Repealed.]

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

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

222 6. [Repealed.]

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

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

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

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

239 (3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible
240 expenses and costs meet both of the following: (i) the related member during the same taxable year
241 directly or indirectly paid, accrued or incurred such portion to a person who is not a related member,
242 and (ii) the transaction giving rise to the intangible expenses and costs between the corporation and the
243 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 entered into a comprehensive tax treaty with the United States government;

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

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

(iv) The transaction giving rise to the interest payments between the corporation and a related member was done at arm's length rates and terms and meets any of the following: (a) the related member uses funds that are borrowed from a party other than a related member or that are paid,

305 incurred or passed-through to a person who is not a related member; (b) the debt is part of a regular and
306 systematic funds management or portfolio investment activity conducted by the related member, whereby
307 the funds of two or more related members are aggregated for the purpose of achieving economies of
308 scale, the internal financing of the active business operations of members, or the benefit of centralized
309 management of funds; (c) financing the expansion of the business operations; or (d) restructuring the
310 debt of related members, or the pass-through of acquisition-related indebtedness to related members.

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

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

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

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

345 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under
346 § 58.1-446.

347 d. For purposes of subdivision B 9:

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

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

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

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

362 (2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at
363 any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a
364 single entity that is (i) a corporation or an association taxable as a corporation under the Internal
365 Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal
366 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.

e. For taxable years beginning on or after January 1, 2016, for purposes of subdivision B 10, any voting power or value of the beneficial interests or shares in a REIT that is held in a segregated asset account of a life insurance corporation as described in § 817 of the Internal Revenue Code shall not be taken into consideration when determining if such REIT is a Captive REIT.

11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.

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.

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

428 income).

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

430 9. [Repealed.]

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

433 11. [Repealed.]

434 12, 13. [Expired.]

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

438 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
439 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
440 (§ 22.1-175.1 et seq.) of Title 22.1.

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

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

450 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
451 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower
452 Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a
453 tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of
454 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

455 19, 20. [Repealed.]

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

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

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

470 24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital
471 gain for federal income tax purposes, or any income taxed as investment services partnership interest
472 income (otherwise known as investment partnership carried interest income) for federal income tax
473 purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an
474 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business
475 approved by the Secretary of Technology, provided the business has its principal office or facility in the
476 Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To
477 qualify for a subtraction under this subdivision, the investment must be made between the dates of April
478 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified
479 business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an
480 investment in the same business.

481 25. a. Income, including investment services partnership interest income (otherwise known as
482 investment partnership carried interest income), attributable to an investment in a Virginia venture
483 capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or
484 after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this
485 subdivision for an investment in a company that is owned or operated by an affiliate of the taxpayer. No
486 subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under
487 subdivision C 24 for the same investment.

488 b. As used in this subdivision 25:

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

26. a. *Income attributable to an investment in a Virginia real estate investment trust. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 or 27 for the same investment.*

b. *As used in this subdivision 26:*

"Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of § 2.2-115.

"Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3 of § 2.2-115.

"Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C. § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If the Department determines that the trust satisfies the preceding criteria, the Department shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed.

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

1. 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.

2. 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.

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

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

2. That prior to December 31, 2018, the Department of Taxation shall promulgate regulations in

551 accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia)
552 establishing procedures implementing the provisions of this act relating to the registration and
553 certification of a real estate investment trust as a Virginia real estate investment trust.
554 3. That the Department of Taxation shall report annually by November 1 of each year to the
555 Chairmen of the House Committee on Appropriations and the Senate Committee on Finance
556 regarding the number of registrations and certifications of Virginia real estate investment trusts.