

18104364D

SENATE BILL NO. 883

Offered January 18, 2018

A *BILL to amend and reenact §§ 2.2-115, 3.2-3108, 15.2-4905, 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, 58.1-422.2, and 58.1-461 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-958.2:01, relating to income tax; modification for certain companies and subtraction for their employees; local grants.*

Patrons—Stanley, Carrico, Chafin and Lewis; Delegates: Campbell, Morefield, Adams, L.R., Aird, Bell, Richard P., Boysko, Davis, Edmunds, Filler-Corn, Freitas, Hodges, Hurst, Jones, J.C., Keam, Kilgore, Marshall, Pogge, Reid, Sullivan and Watts

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-115, 3.2-3108, 15.2-4905, 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, 58.1-422.2, and 58.1-461 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-958.2:01 as follows:

§ 2.2-115. Commonwealth's Development Opportunity Fund.

A. As used in this section, unless the context requires otherwise:

"New job" means employment of an indefinite duration, created as the direct result of the private investment, for which the firm pays the wages and standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the employee's time a week for the entire normal year of the firm's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year.

Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth to the location of the economic development project, positions with suppliers, and multiplier or spin-off jobs shall not qualify as new jobs. The term "new job" shall include positions with contractors provided that all requirements included within the definition of the term are met.

"Prevailing average wage" means that amount determined by the Virginia Employment Commission to be the average wage paid workers in the city or county of the Commonwealth where the economic development project is located. The prevailing average wage shall be determined without regard to any fringe benefits.

"Private investment" means the private investment required under this section.

B. There is created the Commonwealth's Development Opportunity Fund (the Fund) to be used by the Governor to attract economic development prospects and secure the expansion of existing industry in the Commonwealth. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. The Governor shall report to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance as funds are awarded in accordance with this section.

C. Funds shall be awarded from the Fund by the Governor as grants or loans to political subdivisions and to any eligible company, as defined in § 58.1-405, to pay all or a portion of such company's applicable estimated tax, as defined in § 58.1-405. The criteria for making such grants or loans shall include (i) job creation, (ii) private capital investment, and (iii) anticipated additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and jobs created; however, none of the preceding criteria shall apply to grants or loans to eligible companies to pay the applicable estimated tax. Loans shall be approved by the Governor and made in accordance with guidelines established by the Virginia Economic Development Partnership and approved by the Comptroller. Loans shall be interest-free unless otherwise determined by the Governor and shall be repaid to the Fund. The Governor may establish the interest rate to be charged; otherwise, any interest charged shall be at market rates as determined by the State Treasurer and shall be indicative of the duration of the loan. The Virginia Economic Development Partnership shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

Beginning with the five fiscal years from fiscal year 2006-2007 through fiscal year 2010-2011, and for every five fiscal years' period thereafter, in general, no less than one-third of the moneys appropriated to the Fund in every such five-year period shall be awarded to counties and cities having an annual average unemployment rate that is greater than the final statewide average unemployment rate

INTRODUCED

SB883

for the calendar year that immediately precedes the calendar year of the award. However, if such one-third requirement will not be met because economic development prospects in such counties and cities are unable to fulfill the applicable minimum private investment and new jobs requirements set forth in this section, then any funds remaining in the Fund at the end of the five-year period that would have otherwise been awarded to such counties and cities shall be made available for awards in the next five fiscal years' period.

D. Funds may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction or build-out of publicly or privately owned buildings; training; or grants or loans to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly relating to any of the foregoing. However, in no case shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for any rental, lease, license, or other contractual right to the use of any property.

It shall be the policy of the Commonwealth that moneys in the Fund shall not be used for any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality, unless the procedures set forth in § 30-310 are followed. The Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall, pursuant to § 30-310, submit such projects to the MEI Project Approval Commission established pursuant to § 30-309.

E. 1. a. Except as provided in this subdivision, no grant or loan shall be awarded from the Fund unless the project involves a minimum private investment of \$5 million and creates at least 50 new jobs for which the average wage, excluding fringe benefits, is no less than the prevailing average wage. For projects, including but not limited to projects involving emerging technologies, for which the average wage of the new jobs created, excluding fringe benefits, is at least twice the prevailing average wage for that locality or region, the Governor shall have the discretion to require no less than one-half the number of new jobs as set forth for that locality in this subdivision.

b. Notwithstanding the provisions of subdivision a, a grant or loan may be awarded from the Fund if the project involves a minimum private investment of \$100 million and creates at least 25 new jobs for which the average wage, excluding fringe benefits, is no less than the prevailing average wage.

2. Notwithstanding the provisions of subdivision 1 a, in localities (i) with an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year or (ii) with a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year, a grant or loan may be awarded from the Fund pursuant to subdivision 1 a if the project involves a minimum private investment of \$2.5 million and creates at least 25 new jobs for which the average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average wage.

3. Notwithstanding the provisions of subdivisions 1 a and 2, in localities (i) with an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) with a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year, a grant or loan may be awarded from the Fund pursuant to such subdivisions if the project involves a minimum private investment of \$1.5 million and creates at least 15 new jobs for which the average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average wage.

4. For projects that are eligible under subdivision 2 or 3, the average wage of the new jobs, excluding fringe benefits, shall be no less than 85 percent of the prevailing average wage. In addition, for projects in such localities, the Governor may award a grant or loan for a project paying less than 85 percent of the prevailing average wage but still providing customary employee benefits, only after the Secretary of Commerce and Trade has made a written finding that the economic circumstances in the area are sufficiently distressed (i.e., high unemployment or underemployment and negative economic forecasts) that assistance to the locality to attract the project is nonetheless justified. However, the minimum private investment and number of new jobs required to be created as set forth in this subsection shall still be a condition of eligibility for an award from the Fund. Such written finding shall promptly be provided to the chairs of the Senate Committee on Finance and the House Committee on Appropriations.

5. *Notwithstanding any other restriction in this subdivision, the Governor may award a grant or loan to any eligible company, as defined in § 58.1-405, to pay all or a portion of such company's applicable estimated tax, as defined in § 58.1-405.*

F. 1. The Virginia Economic Development Partnership shall assist the Governor in developing

objective guidelines and criteria that shall be used in awarding grants or making loans from the Fund. The guidelines may require that as a condition of receiving any grant or loan incentive that is based on employment goals, a recipient company must provide copies of employer quarterly payroll reports that have been provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal. The guidelines may include a requirement for the affected locality or localities to provide matching funds which may be cash or in-kind, at the discretion of the Governor. The guidelines and criteria shall include provisions for geographic diversity and a cap on the amount of funds to be provided to any individual project. At the discretion of the Governor, this cap may be waived for qualifying projects of regional or statewide interest. In developing the guidelines and criteria, the Virginia Economic Development Partnership shall use the measure for Fiscal Stress published by the Commission on Local Government of the Department of Housing and Community Development for the locality in which the project is located or will be located as one method of determining the amount of assistance a locality shall receive from the Fund.

2. a. Notwithstanding any provision in this section or in the guidelines, each political subdivision that receives a grant or loan from the Fund shall enter into a contract with each business beneficiary of funds from the Fund. A person or entity shall be a business beneficiary of funds from the Fund if grant or loan moneys awarded from the Fund by the Governor are paid to a political subdivision and (i) subsequently distributed by the political subdivision to the person or entity or (ii) used by the political subdivision for the benefit of the person or entity but never distributed to the person or entity.

b. The contract between the political subdivision and the business beneficiary shall provide in detail (i) the fair market value of all funds that the Commonwealth has committed to provide, (ii) the fair market value of all matching funds (or in-kind match) that the political subdivision has agreed to provide, (iii) how funds committed by the Commonwealth (including but not limited to funds from the Fund committed by the Governor) and funds that the political subdivision has agreed to provide are to be spent, (iv) the minimum private investment to be made and the number of new jobs to be created agreed to by the business beneficiary, (v) the average wage (excluding fringe benefits) agreed to be paid in the new jobs, (vi) the prevailing average wage, and (vii) the formula, means, or processes agreed to be used for measuring compliance with the minimum private investment and new jobs requirements, including consideration of any layoffs instituted by the business beneficiary over the course of the period covered by the contract.

The contract shall state the date by which the agreed upon private investment and new job requirements shall be met by the business beneficiary of funds from the Fund and may provide for the political subdivision to grant up to a 15-month extension of such date if deemed appropriate by the political subdivision subsequent to the execution of the contract. Any extension of such date granted by the political subdivision shall be in writing and promptly delivered to the business beneficiary, and the political subdivision shall simultaneously provide a copy of the extension to the Virginia Economic Development Partnership.

The contract shall provide that if the private investment and new job contractual requirements are not met by the expiration of the date stipulated in the contract, including any extension granted by the political subdivision, the business beneficiary shall be liable to the political subdivision for repayment of a portion of the funds provided under the contract. The contract shall include a formula for purposes of determining the portion of such funds to be repaid. The formula shall, in part, be based upon the fair market value of all funds that have been provided by the Commonwealth and the political subdivision and the extent to which the business beneficiary has met the private investment and new job contractual requirements. Any such funds repaid to the political subdivision that relate to the award from the Commonwealth's Development Opportunity Fund shall promptly be paid over by the political subdivision to the Commonwealth by payment remitted to the State Treasurer. Upon receipt by the State Treasurer of such payment, the Comptroller shall deposit such repaid funds into the Commonwealth's Development Opportunity Fund.

c. The contract shall be amended to reflect changes in the funds committed by the Commonwealth or agreed to be provided by the political subdivision.

d. Notwithstanding any provision in this section or in the guidelines, whenever layoffs instituted by a business beneficiary over the course of the period covered by a contract cause the net total number of the new jobs created to be fewer than the number agreed to, then the business beneficiary shall return the portion of any funds received pursuant to the repayment formula established by the contract.

3. Notwithstanding any provision in this section or in the guidelines, prior to executing any such contract with a business beneficiary, the political subdivision shall provide a copy of the proposed contract to the Attorney General. The Attorney General shall review the proposed contract (i) for enforceability as to its provisions and (ii) to ensure that it is in appropriate legal form. The Attorney General shall provide any written suggestions to the political subdivision within seven days of his receipt of the copy of the contract. The Attorney General's suggestions shall be limited to the

180 enforceability of the contract's provisions and the legal form of the contract.

181 4. Notwithstanding any provision in this section or in the guidelines, a political subdivision shall not
182 expend, distribute, pledge, use as security, or otherwise use any award from the Fund unless and until
183 such contract as described herein is executed with the business beneficiary.

184 G. Within the 30 days immediately following June 30 and December 30 of each year, the Governor
185 shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the
186 Senate Committee on Finance which shall include, but is not limited to, the following information
187 regarding grants and loans awarded from the Fund during the immediately preceding six-month period
188 for economic development projects: the name of the company that is the business beneficiary of the
189 grant or loan and the type of business in which it engages; the location (county, city, or town) of the
190 project; the amount of the grant or loan committed from the Fund and the amount of all other funds
191 committed by the Commonwealth from other sources and the purpose for which such grants, loans, or
192 other funds will be used; the amount of all moneys or funds agreed to be provided by political
193 subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created
194 by the business beneficiary; the amount of investment in the project agreed to be made by the business
195 beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average
196 wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

197 H. The Governor shall provide grants and commitments from the Fund in an amount not to exceed
198 the dollar amount contained in the Fund. If the Governor commits funds for years beyond the fiscal
199 years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the
200 funds the Governor has committed, and the funds shall remain in the Fund for those future fiscal years.
201 No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are
202 currently available in the Fund.

203 I. On a quarterly basis, the Virginia Economic Development Partnership shall notify the Governor,
204 his campaign committee, and his political action committee of awards from the Fund made in the prior
205 quarter. Within 18 months of the date of each award from the Fund, the Governor, his campaign
206 committee, and his political action committee shall submit to the Virginia Conflict of Interest and Ethics
207 Advisory Council established in § 30-355 a report listing any contribution, gift, or other item with a
208 value greater than \$100 provided by the business beneficiary of such award to the Governor, his
209 campaign committee, or his political action committee, respectively, during (i) the period in which the
210 business beneficiary's application for such award was pending and (ii) the one-year period immediately
211 after any such award was made.

212 **§ 3.2-3108. Distribution of Fund.**

213 A. The Fund shall be distributed by the Commission for the following purposes:

214 1. The stimulation of economic growth and development in tobacco-dependent communities in an
215 equitable manner throughout the Southside and Southwest regions of the Commonwealth, to assist such
216 communities in reducing their dependency on, or finding alternative uses for, tobacco and
217 tobacco-related business; and

218 2. Scientific research performed at one of the Commonwealth's National Cancer Institute-designated
219 research institutes designed to advance the treatment and prevention of cancers that directly impact the
220 citizens of tobacco-dependent communities throughout the Southside and Southwest regions of the
221 Commonwealth.

222 3. *Unless otherwise prohibited by law, to pay all or a portion of the applicable estimated tax, as*
223 *defined in § 58.1-405, of any eligible company, as defined in § 58.1-405.*

224 B. The Commission may require that as a condition of receiving any grant or loan incentive that is
225 based on employment goals, a recipient company must provide copies of employer quarterly payroll
226 reports provided to the Virginia Employment Commission to verify the employment status of any
227 position included in the employment goal.

228 The Commission shall require that each project have an accountability matrix. For an economic
229 development program, the matrix shall be based on return on investment, jobs, wages, and capital
230 investment. For a scholarship program, the matrix shall be based on attainment of bachelor's degrees,
231 credentials, or jobs. For a health care program, the matrix shall be based on health care outcomes. For
232 an agriculture or forestry program, the matrix shall be based on jobs, capital investment, amount of
233 Virginia-grown agricultural and forestal products used by the project, projected impact on agricultural
234 and forestal producers, and a return on investment analysis.

235 The Commission shall require each applicant to provide with its application (i) baseline figures, (ii)
236 explicit and quantified outcome expectations, (iii) the method used to calculate outcome expectations,
237 (iv) details on the timing of the expected outcomes, and (v) a specific link to economic revitalization
238 and the Strategic Plan.

239 The Commission shall require that as a condition of receiving any grant or loan incentive each
240 project (a) demonstrate how it will address low employment levels, per capita income, educational
241 attainment, or other workforce indicators; (b) be consistent with the Strategic Plan; and (c) receive a

written recommendation as to its financial viability and feasibility from the Manager pursuant to subdivision A 9 of § 3.2-3103.

§ 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.

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

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

2. The Counties of Carroll, Grayson, Henry, Halifax, Patrick, and Pittsylvania and the Cities of Danville, Galax, and Martinsville; and

3. The City of Petersburg.

§ 15.2-4905. Powers of authority.

The authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

2. To adopt and use a corporate seal and to alter the same at pleasure;

3. To enter into contracts; however, any written contract of the authority shall contain provisions addressing the issue of whether attorney's fees shall be recoverable by the prevailing party in the event the contract is subject to litigation;

4. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more authority facilities including all real and personal properties which the board of directors of the authority may deem necessary in connection therewith and regardless of whether any such facilities shall then be in existence;

5. To lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration;

6. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;

7. To issue its bonds for the purpose of carrying out any of its powers including specifically, but without intending to limit any power conferred by this section or this chapter, the issuance of bonds to provide long-term financing of any pollution control facility, whether any such facility was constructed prior to or after the enactment hereof or the receipt of a commitment from an authority to undertake financing pursuant hereto, unless the major part of the proceeds of such bonds will be used to redeem any prior long-term financing of such facility other than financings pursuant to this chapter or any similar law;

8. As security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or from any part thereof or from any loans made by the authority;

9. To employ and pay compensation to such employees and agents, including attorneys, and real estate brokers whether engaged by the authority or otherwise, as the board of directors shall deem necessary in carrying on the business of the authority;

10. To exercise all powers expressly given the authority by the governing body of the locality which established the authority and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the authority's affairs;

11. To appoint an industrial advisory committee or similar committee or committees to advise the authority, consisting of such number of persons as it may deem advisable. Such persons may be compensated such amount per regular, special, or committee meeting as may be approved by the appointing authority, not to exceed \$50 per meeting day, and may be reimbursed for necessary traveling and other expenses incurred while on the business of the authority;

12. To borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial

assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed; and

13. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority which have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor. An authority may also be permitted to forgive loans or other obligations if it is deemed to further economic development. The word "revenues" as used in this subdivision includes contributions, grants and other financial assistance, as set out in subdivision 12.

The authority shall not have power to operate any facility as a business other than as lessor and shall not have the power to operate any single or multi-family housing facilities. However, the authority shall have the power to apply for, establish, operate and maintain a foreign-trade zone in accordance with the provisions of Chapter 14 (§ 62.1-159 et seq.) of Title 62.1. Any meeting held by the board of directors at which formal action is taken shall be open to the public.

If a locality has created an industrial development authority pursuant to this chapter or any other provision of law, no other such authority, not created by such locality, shall finance facilities, except pollution control facilities, within the boundaries of such locality, unless the governing body of such locality in which the facilities are located or are proposed to be located, concurs with the inducement resolution adopted by the authority, and shows such concurrence in a duly adopted resolution. Notwithstanding the foregoing, nothing contained herein shall be deemed to invalidate or otherwise impair any existing financing by an authority or the financing of any facilities for which application has been made to an authority prior to July 1, 1981.

14. To award loans or grants to any eligible company, as defined in § 58.1-405, to pay all or a portion of such company's applicable estimated tax, as defined in § 58.1-405.

§ 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 scholarship.

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

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

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

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

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

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

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

As used in this subdivision:

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

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

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

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

426 this subdivision shall be allowed only for that portion of the death benefit payment that is included in
427 federal adjusted gross income.

428 22. Any gain recognized from the sale of launch services to space flight participants, as defined in
429 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of
430 a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch
431 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

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

436 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income
437 taxed as investment services partnership interest income (otherwise known as investment partnership
438 carried interest income) for federal income tax purposes. To qualify for a subtraction under this
439 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in
440 § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided
441 that the business has its principal office or facility in the Commonwealth and less than \$3 million in
442 annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this
443 subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No
444 taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4
445 shall be eligible for the subtraction under this subdivision for an investment in the same business.

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

451 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction
452 taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys
453 or funds withdrawn from the first-time home buyer savings account were used for any purpose other
454 than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under
455 § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable
456 year that was used for other than the payment of eligible costs, computed by multiplying the amount
457 withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in
458 the account at the time of the withdrawal to the total balance in the account at such time.

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

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

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

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

478 b. As used in this subdivision 27:

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

484 "Virginia venture capital account" means an investment fund that has been certified by the
485 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital
486 account, the operator of the investment fund shall register the investment fund with the Department prior
487 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. For taxable years beginning on and after January 1, 2018, up to \$250,000 of compensation, as defined in § 58.1-302, received during the taxable year by an employee from an eligible company, as defined in § 58.1-405, that apportions 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. A taxpayer claiming a subtraction under this subdivision shall be entitled to such subtraction for the taxable year in which the eligible company first elects to apportion its income and for nine subsequent, consecutive taxable years.

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

A. Except as provided in subsection B, if the entire business of the corporation is transacted or conducted within the Commonwealth, the tax imposed by this chapter shall be upon the entire Virginia taxable income of such corporation for each taxable year; however, if such corporation qualifies as an eligible company pursuant to subsection B, it may elect to (i) apportion its income between qualified localities and other localities in the Commonwealth and (ii) utilize any modification for which it may be eligible 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. The entire business of the corporation shall be deemed to have been transacted or conducted within the Commonwealth if such corporation is not subject in any other state to a net income tax, a franchise tax measured by net income, or a franchise tax for the privilege of doing business.

B. 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; however, the Department may deny any taxpayer status as an eligible 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.

C. For purposes of this section:

"Applicable estimated tax" means (i) an eligible company's tax liability for the taxable year, calculated without the modification for eligible companies 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 and (ii) for each of the eligible company's employees that are eligible to claim a subtraction pursuant to subsection 28 of § 58.1-322.02, the amount that such company would have been required to withhold for such employee pursuant to subsection A of § 58.1-461.

"Eligible company" means a corporation or pass-through entity, as defined in § 58.1-390.1 that:

1. Does not have any existing property or payroll in Virginia as of January 1, 2018, and on or after January 1, 2018, but before January 1, 2029, either (i) spends at least \$5 million on new capital investment in a qualified locality or qualified localities and creates at least 10 new jobs in a qualified locality or qualified localities or (ii) creates at least 50 new jobs in a qualified locality or qualified localities; or

2. As of January 1, 2018, has property or payroll in a qualified locality or qualified localities and on or after January 1, 2018, but before January 1, 2029, either (i) spends at least \$5 million on new capital investment in a qualified locality or qualified localities and creates at least 10 new jobs in a qualified locality or qualified localities or (ii) creates at least 50 new jobs in a qualified locality or qualified localities; and remits to the Department the applicable estimated tax for each year in which it seeks to qualify as an eligible company.

"New job" means a permanent, full-time position of indefinite duration requiring a minimum of (i) 35 hours of an employee's time a week for the entire normal year of the eligible company's operations, which normal year shall consist of at least 48 weeks, or (ii) 1,680 hours per year.

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

"Qualified development site" means real property that is in a locality adjacent to a qualified locality and, before January 1, 2018, either (i) was owned or partly owned by a qualified locality or an industrial development authority of which a qualified locality is a member or (ii) was owned or partly owned by a locality or industrial development authority, was leased to a private party, and was subject

549 to a revenue-sharing agreement providing that a portion of the revenues from the lease would be
550 distributed to a qualified locality. "Qualified development site" does not include real property that is not
551 owned by the Commonwealth or a political subdivision thereof.

552 "Qualified locality" means (i) the County of Bland, Buchanan, Dickenson, Giles, Lee, Russell, Scott,
553 Smyth, Tazewell, Wise, or Wythe or the City of Bristol or Norton; (ii) the County of Carroll, Grayson,
554 Henry, Halifax, Patrick, or Pittsylvania or the City of Danville, Galax, or Martinsville; or (iii) the City
555 of Petersburg. "Qualified locality" includes a qualified development site.

556 **§ 58.1-408. What income apportioned and how.**

557 A. The Virginia taxable income of any corporation, except those subject to the provisions of
558 § 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
559 allocable under § 58.1-407, shall be apportioned to the Commonwealth by multiplying such income by a
560 fraction, the numerator of which is the property factor plus the payroll factor, plus twice the sales factor,
561 and the denominator of which is four; however, where the sales factor does not exist, the denominator
562 of the fraction shall be the number of existing factors and where the sales factor exists but the payroll
563 factor or the property factor does not exist, the denominator of the fraction shall be the number of
564 existing factors plus one.

565 B. Any eligible company, as defined in subsection C of § 58.1-405, may subtract the value of its
566 property acquired in any qualified locality or qualified localities, as defined in § 58.1-405, on or after
567 January 1, 2018, and payroll attributable to jobs created on or after January 1, 2018, in any of such
568 localities, from the numerator of the corresponding factor. Such eligible company may apportion its
569 income for the taxable year in which it first becomes eligible and for the nine subsequent, consecutive
570 taxable years, except for any year in which the eligible company's (i) total, cumulative new capital
571 investment falls below the applicable initial threshold or (ii) number of new jobs falls below the
572 applicable initial threshold.

573 **§ 58.1-417. Motor carriers; apportionment.**

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

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

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

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

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

590 C. Any eligible company, as defined in § 58.1-405, may subtract the value of its vehicle miles
591 traveled in any qualified locality or qualified localities, as defined in § 58.1-405, during the taxable year
592 from the numerator of the ratio in subsection A. Such eligible company may make such modification for
593 the taxable year in which it first becomes eligible and for the nine subsequent, consecutive taxable
594 years, except for any year in which the eligible company's (i) total, cumulative new capital investment
595 falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial
596 threshold.

597 **§ 58.1-418. Financial corporations; apportionment.**

598 A. The Virginia taxable income of a financial corporation, as defined herein, excluding income
599 allocable under § 58.1-407, shall be apportioned within and without this Commonwealth in the ratio that
600 the business within this Commonwealth is to the total business of the corporation. Business within this
601 Commonwealth shall be based on cost of performance in the Commonwealth over cost of performance
602 everywhere.

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

- 608 1. Fees, commissions, other compensation for financial services rendered;
- 609 2. Gross profits from trading in stocks, bonds, or other securities;
- 610 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, may subtract the value of its business within any qualified locality or qualified localities, as defined in § 58.1-405, 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, may subtract the value of its business within any qualified locality or qualified localities, as defined in § 58.1-405, 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, may subtract the value of its revenue car miles traveled in any qualified locality or qualified localities, as defined in § 58.1-405, 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

672 industry.

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

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

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

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

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

696 "Manufacturing company" means a domestic or foreign corporation primarily engaged in activities
697 that, in accordance with the North American Industrial Classification System (NAICS), United States
698 Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sector
699 11, 31, 32, or 33.

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

706 *F. Any eligible company, as defined in § 58.1-405, that elects to apportion its income pursuant to*
707 *subsection A may subtract the value of its sales in any qualified locality or qualified localities, as*
708 *defined in § 58.1-405, during the taxable year from the numerator of the ratio in subdivision A 3. Such*
709 *eligible company may make such modification for the taxable year in which it first becomes eligible and*
710 *for the nine subsequent, consecutive taxable years, except for any year in which the eligible company's*
711 *(i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of*
712 *new jobs falls below the applicable initial threshold.*

713 **§ 58.1-422.1. Retail companies; apportionment.**

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

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

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

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

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

732 *C. Any eligible company, as defined in § 58.1-405, may subtract the value of its sales in any*
733 *qualified locality or qualified localities, as defined in § 58.1-405, 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.

C. Any eligible company, as defined in § 58.1-405, 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, 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.

§ 58.1-461. Requirement of withholding.

A. Every employer making payment of wages shall deduct and withhold with respect to the wages of each employee for each payroll period an amount determined as follows: Such amount which, if an equal amount was collected for each similar payroll period with respect to a similar amount of wages for each payroll period during an entire calendar year, would aggregate or approximate the income tax liability of such employee under this chapter after making allowance for the personal exemptions to which such employee could be entitled on the basis of his status during such payroll period and after making allowance for withholding purposes for a standard deduction from wages in accordance with the laws of the United States relating to federal income taxes and after making an allowance for any credit available to the employee as provided by § 58.1-332, and without making allowance for any other deductions. In determining the amount to be deducted and withheld under this article, the wages may, at the election of the employer, be computed to the nearest dollar.

An employer shall not be required to deduct any amount upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate, in such form and containing such other information as the Tax Commissioner may prescribe, furnished by the employee to the employer, certifying that the employee:

1. (i) ~~incurred~~ Incurred no liability for income tax imposed by this chapter for his preceding taxable year; and (ii) anticipates that he will incur no liability for income tax imposed by this chapter for his

795 current taxable year; or

796 2. *Anticipates that he will be entitled to a subtraction pursuant to subdivision 28 of § 58.1-322.02*
797 *on any payment of wages made to him from his employer for his current taxable year.*

798 *B. Any eligible company, as defined in § 58.1-405, that apportions its income pursuant to the*
799 *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,*
800 *as applicable, shall not deduct and withhold with respect to the wages of each employee of such*
801 *company that claims a subtraction pursuant to subsection 28 of § 58.1-322.02, unless such employee*
802 *and such company agree to additional withholding pursuant to § 58.1-466.*

803 **2. That the Department of Taxation shall promulgate guidelines implementing the provisions of**
804 **this act.**