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**HOUSE BILL NO. 1851**

Offered January 9, 2019

Prefiled January 2, 2019

*A BILL to amend and reenact §§ 58.1-301, 58.1-320, 58.1-322.03, and 58.1-400 of the Code of Virginia, relating to Virginia income tax; emergency.*

\_\_\_\_\_  
Patron—Peace

\_\_\_\_\_  
Referred to Committee on Rules

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-301, 58.1-320, 58.1-322.03, and 58.1-400 of the Code of Virginia are amended and reenacted as follows:**

**§ 58.1-301. Conformity to Internal Revenue Code.**

A. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.

B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as they existed on February 9 December 31, 2018, except for:

1. The special depreciation allowance for certain property provided for under §§ 168(k), 168(l), 168(m), 1400L, and 1400N of the Internal Revenue Code;

2. The carry-back of certain net operating losses for five years under § 172(b)(1)(H) of the Internal Revenue Code;

3. The original issue discount on applicable high yield discount obligations under § 163(e)(5)(F) of the Internal Revenue Code;

4. The deferral of certain income under § 108(i) of the Internal Revenue Code. For Virginia income tax purposes, income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument" (as defined under § 108(i) of the Internal Revenue Code) reacquired in the taxable year shall be fully included in the taxpayer's Virginia taxable income for the taxable year, unless the taxpayer elects to include such income in the taxpayer's Virginia taxable income ratably over a three-taxable-year period beginning with taxable year 2009 for transactions completed in taxable year 2009, or over a three-taxable-year period beginning with taxable year 2010 for transactions completed in taxable year 2010 on or before April 21, 2010. For purposes of such election, all other provisions of § 108(i) of the Internal Revenue Code shall apply mutatis mutandis. No other deferral shall be allowed for income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument.";

5. The amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code for taxable years beginning on or after January 1, 2010. For Virginia income tax purposes, two-thirds of the amount deducted pursuant to § 199 of the Internal Revenue Code for federal income tax purposes during the taxable year may be deducted for Virginia income tax purposes for taxable years beginning on and after January 1, 2010. For taxable years beginning on and after January 1, 2013, the entire amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code may be deducted for Virginia income tax purposes;

6. The provisions of the Tax Cuts and Jobs Act (the Act) enacted December 22, 2017, as Public Law 115-97, provided, however, that this exception shall not apply to the following:

a. Treatment of certain individuals performing services in the Sinai Peninsula of Egypt pursuant to § 11026 of the Act;

b. Relief for 2016 disaster areas pursuant to § 11028 of the Act;

c. Any other provision of the Act that affects the computation of federal adjusted gross income of individuals or federal taxable income of corporations for taxable years beginning after December 31, 2016, and before January 1, 2018, other than the temporary reduction in the medical expense deduction floor pursuant to § 11027 of the Act; and

7. The provisions of the Bipartisan Budget Act of 2018 enacted February 9, 2018, as Public Law 115-123, that affect any taxable year other than a taxable year beginning after December 31, 2016, and before January 1, 2018.

The Department of Taxation is hereby authorized to develop procedures or guidelines for implementation of the provisions of this section, which procedures or guidelines shall be exempt from

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59 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

60 **§ 58.1-320. Imposition of tax.**

61 A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every  
62 individual as follows:

63 ~~Two~~ *For taxable years beginning before January 1, 2020, two percent on income not exceeding in*  
64 *excess of \$3,000;*

65 *For taxable years beginning on and after January 1, 2020, two percent on income not in excess of*  
66 *\$3,000 adjusted each year by the percentage, if any, by which the Chained Consumer Price Index for*  
67 *All Urban Consumers (C-CPI-U), as published by the U.S. Department of Labor or any successor index,*  
68 *for the most recent calendar year differs from the C-CPI-U published at the close of the 12-month*  
69 *period ending on December 31, 2019;*

70 ~~Three~~ *For taxable years beginning before January 1, 2020, three percent on income in excess of*  
71 *\$3,000, but not in excess of \$5,000;*

72 *For taxable years beginning on and after January 1, 2020, three percent on income in excess of*  
73 *\$3,000, but not in excess of \$5,000, adjusted each year by the percentage, if any, by which the Chained*  
74 *Consumer Price Index for All Urban Consumers (C-CPI-U), as published by the U.S. Department of*  
75 *Labor or any successor index, for the most recent calendar year differs from the C-CPI-U published at*  
76 *the close of the 12-month period ending on December 31, 2019;*

77 *Five percent on income in excess of \$5,000, but not in excess of \$12,000 for taxable years beginning*  
78 *before January 1, 1987;*

79 *Five percent on income in excess of \$5,000 but not in excess of \$14,000 for taxable years beginning*  
80 *January 1, 1987, through December 31, 1987;*

81 *Five percent on income in excess of \$5,000 but not in excess of \$15,000 for taxable years beginning*  
82 *January 1, 1988, through December 31, 1988;*

83 *Five percent on income in excess of \$5,000 but not in excess of \$16,000 for taxable years beginning*  
84 *January 1, 1989, through December 31, 1989;*

85 ~~Five~~ *For taxable years beginning before January 1, 2020, five percent on income in excess of \$5,000*  
86 *but not in excess of \$17,000 for taxable years beginning January 1, 1990;*

87 *For taxable years beginning on and after January 1, 2020, five percent on income in excess of*  
88 *\$5,000, but not in excess of \$17,000, adjusted each year by the percentage, if any, by which the*  
89 *Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as published by the U.S.*  
90 *Department of Labor or any successor index, for the most recent calendar year differs from the*  
91 *C-CPI-U published at the close of the 12-month period ending on December 31, 2019;*

92 *Five and three-quarters percent on income in excess of \$12,000 for taxable years beginning before*  
93 *January 1, 1987;*

94 *Five and three-quarters percent on income in excess of \$14,000 for taxable years beginning January*  
95 *1, 1987, through December 31, 1987;*

96 *Five and three-quarters percent on income in excess of \$15,000 for taxable years beginning January*  
97 *1, 1988, through December 31, 1988;*

98 *Five and three-quarters percent on income in excess of \$16,000 for taxable years beginning January*  
99 *1, 1989, through December 31, 1989; and*

100 *Five and three-quarters* ~~For taxable years beginning before January 1, 2020, five and three-quarters~~  
101 *percent on income in excess of \$17,000 for taxable years beginning on and after January 1, 1990; and*

102 *For taxable years beginning on and after January 1, 2020, five and three-quarters percent on income*  
103 *in excess of \$17,000, adjusted each year by the percentage, if any, by which the Chained Consumer*  
104 *Price Index for All Urban Consumers (C-CPI-U), as published by the U.S. Department of Labor or any*  
105 *successor index, for the most recent calendar year differs from the C-CPI-U published at the close of*  
106 *the 12-month period ending on December 31, 2019.*

107 **§ 58.1-322.03. Virginia taxable income; deductions.**

108 In computing Virginia taxable income pursuant to § 58.1-322, there shall be deducted from Virginia  
109 adjusted gross income as defined in § 58.1-321:

110 1. a. The amount allowable for itemized deductions for federal income tax purposes where the  
111 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the  
112 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted  
113 on such federal return and increased by an amount that, when added to the amount deducted under  
114 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for  
115 such purposes at a rate of 18 cents per mile; or

116 b. ~~Three thousand dollars~~ *Provided that the taxpayer has not itemized deductions for the taxable year*  
117 *on his federal income tax return, (i) for taxable years beginning before January 1, 2019, and on and*  
118 *after January 1, 2026, \$3,000 for single individuals and \$6,000 for married persons (one-half of such*  
119 *amounts in the case of a married individual filing a separate return); provided that the taxpayer has not*  
120 *itemized deductions for the taxable year on his federal income tax return; (ii) for taxable years*

beginning on and after January 1, 2019, but before January 1, 2020, \$6,000 for single individuals and \$12,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); and (iii) for taxable years beginning on and after January 1, 2020, but before January 1, 2026, an amount equal to the deductions set forth in clause (ii), adjusted each year by the percentage, if any, by which the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as published by the U.S. Department of Labor or any successor index, for the most recent calendar year differs from the C-CPI-U published at the close of the 12-month period ending on December 31, 2019. In no case shall the amount of the adjusted deduction be less than the amounts set forth in clause (ii).

For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of \$930 for each personal exemption allowable to the taxpayer for federal income tax purposes. For taxable years beginning on and after January 1, 2020, such amount shall be adjusted each year by the percentage, if any, by which the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as published by the U.S. Department of Labor or any successor index, for the most recent calendar year differs from the C-CPI-U published at the close of the 12-month period ending on December 31, 2019.

b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the amount of \$800. For taxable years beginning on and after January 1, 2020, such amount shall be adjusted each year by the percentage, if any, by which the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as published by the U.S. Department of Labor or any successor index, for the most recent calendar year differs from the C-CPI-U published at the close of the 12-month period ending on December 31, 2019.

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

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

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

5. a. A deduction in the amount of \$12,000 for individuals born on or before January 1, 1939.

b. A deduction in the amount of \$12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the deduction shall be reduced by \$1 for every \$1 that the total combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.

For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.

6. The amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or college savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided in subdivision b, the amount deducted on any individual income tax return in any taxable year shall be limited to \$4,000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant to this subdivision 7 if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a college savings trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or college savings trust contribution has been fully deducted; however, except as provided in subdivision b, in no event shall the amount deducted in any taxable year exceed \$4,000 per contract or college savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax

182 attributes associated with a prepaid tuition contract or college savings trust account, including, but not  
183 limited to, carryover and recapture of deductions.

184 b. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who has  
185 attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000  
186 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be  
187 allowed a deduction for the full amount paid for the contract or contributed to a college savings trust  
188 account, less any amounts previously deducted.

189 8. The total amount an individual actually contributed in funds to the Virginia Public School  
190 Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1,  
191 provided that the individual has not claimed a deduction for such amount on his federal income tax  
192 return.

193 9. An amount equal to 20 percent of the tuition costs incurred by an individual employed as a  
194 primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1  
195 to attend continuing teacher education courses that are required as a condition of employment; however,  
196 the deduction provided by this subdivision shall be available only if (i) the individual is not reimbursed  
197 for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition  
198 costs on his federal income tax return.

199 10. The amount an individual pays annually in premiums for long-term health care insurance,  
200 provided that the individual has not claimed a deduction for federal income tax purposes, or, for taxable  
201 years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on  
202 and after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the  
203 individual during the taxable year shall be allowed if the individual has claimed a federal income tax  
204 deduction for such taxable year for long-term health care insurance premiums paid by him.

205 11. Contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as  
206 provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such  
207 payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

208 a. If the payment is received in installment payments, then the recognized gain may be subtracted in  
209 the taxable year immediately following the year in which the installment payment is received.

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

213 12. An amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6  
214 (§ 58.1-600 et seq.), not to exceed \$500 in each taxable year, in purchasing for his own use the  
215 following items of tangible personal property: (i) any clothes washers, room air conditioners,  
216 dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency  
217 requirements developed by the U.S. Environmental Protection Agency and the U.S. Department of  
218 Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an  
219 electricity-only generation efficiency greater than 35 percent, and (c) has a generating capacity of at least  
220 two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating  
221 and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of  
222 at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and  
223 a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a  
224 cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that  
225 has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual  
226 fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization  
227 rating of 85; and (x) programmable thermostats.

228 13. The lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living  
229 tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12  
230 months of such donation, provided that the donor has not taken a medical deduction in accordance with  
231 the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in  
232 the taxable year in which the donation is made or the taxable year in which the 12-month period  
233 expires.

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

**§ 58.1-400. Imposition of tax.**

A tax at the rate of six percent is hereby annually imposed on the Virginia taxable income for each taxable year of every corporation organized under the laws of the Commonwealth and every foreign corporation having income from Virginia sources. *The rate of the tax shall be as follows:*

- 1. For taxable years beginning before January 1, 2018, six percent;*
- 2. For taxable years beginning on and after January 1, 2018, but before January 1, 2019, five and one-half percent; and*
- 3. For taxable years beginning on and after January 1, 2019, five percent.*

**2. That an emergency exists and this act is in force from its passage.**

**3. That the provisions of this act amending § 58.1-301 of the Code of Virginia shall be effective only for taxable years beginning on and after January 1, 2018.**

**4. That any additional revenues generated by the federal Tax Cuts and Jobs Act, P.L. 115-97 (2018), in fiscal year 2019-2020, beyond those revenues necessary to offset the reduction in revenues resulting from the provisions of this act, shall be transferred to a special nonreverting fund hereby established and to be known as the Tax Policy Fund. The Governor shall submit, with his budget proposal submitted for the 2020-2022 biennium pursuant to § 2.2-1508 of the Code of Virginia, a plan to provide tax reform to Virginia taxpayers with revenues in the Tax Policy Fund.**