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HOUSE BILL NO. 2355

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance)

(Patron Prior to Substitute—Delegate Jones, S.C.)

House Amendments in [] — February 4, 2019

A BILL to amend and reenact § 58.1-301 of the Code of Virginia, relating to conformity of the Commonwealth's taxation system with the Internal Revenue Code [÷ *emergency*].

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-301 of the Code of Virginia is 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"; and

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

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

3.] That the provisions of the first enactment of this act shall apply to taxable years beginning on and after January 1, 2018.

ENGROSSED

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60 [4 3.] That for fiscal years 2019 and 2020, any additional revenues generated as a result of the
61 temporary individual income tax provisions of the federal Tax Cuts and Jobs Act, P.L. 115-97
62 (2018), that expire before January 1, 2026, shall be transferred to a special nonreverting fund
63 hereby established and to be known as the Taxpayer Relief Fund. It is estimated that for fiscal
64 year 2019, such additional revenues shall total \$517.9 million and that for fiscal year 2020, such
65 additional revenues shall total \$434.4 million. Before August 1, 2019, the Department of Taxation
66 shall submit a plan, to be considered by the General Assembly during any special or regular
67 session beginning prior to January 8, 2020, to appropriate and refund such revenues to affected
68 taxpayers that experienced an increase in Virginia taxes as an indirect result of the provisions of
69 the federal Tax Cuts and Jobs Act. It is the intent of the General Assembly that any funds in the
70 Taxpayer Relief Fund shall be used only for the purpose of providing relief to affected taxpayers
71 in the Commonwealth as described in this enactment.