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SENATE BILL NO. 591

Offered January 8, 2020

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A BILL to amend and reenact §§ 2.2-115, 58.1-322.03, and 58.1-402 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-609.14, relating to tax and economic development incentives for gasification facilities and pyrolysis facilities.

Patron—Hanger

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-115, 58.1-322.03, and 58.1-402 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-609.14 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. 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. 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 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.

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

68 It shall be the policy of the Commonwealth that moneys in the Fund shall not be used for any
69 economic development project in which a business relocates or expands its operations in one or more
70 Virginia localities and simultaneously closes its operations or substantially reduces the number of its
71 employees in another Virginia locality, unless the procedures set forth in § 30-310 are followed. The
72 Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall, pursuant
73 to § 30-310, submit such projects to the MEI Project Approval Commission established pursuant to §
74 30-309.

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

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

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

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

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

111 F. 1. The Virginia Economic Development Partnership shall assist the Governor in developing
112 objective guidelines and criteria that shall be used in awarding grants or making loans from the Fund.
113 The guidelines may require that as a condition of receiving any grant or loan incentive that is based on
114 employment goals, a recipient company must provide copies of employer quarterly payroll reports that
115 have been provided to the Virginia Employment Commission to verify the employment status of any
116 position included in the employment goal. The guidelines may include a requirement for the affected
117 locality or localities to provide matching funds which may be cash or in-kind, at the discretion of the
118 Governor. The guidelines and criteria shall include provisions for geographic diversity and a cap on the
119 amount of funds to be provided to any individual project. At the discretion of the Governor, this cap
120 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 the Commonwealth, through the Virginia Economic Development Partnership Authority as its agent, and 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, the Commonwealth, 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 and the Commonwealth to grant up to a 15-month extension of such date if deemed appropriate by the political subdivision and the Commonwealth 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 and the Commonwealth, the business beneficiary shall be liable to the political subdivision and the Commonwealth for repayment of a portion of the funds provided by the political subdivision under the contract and liable to the Commonwealth for repayment of a portion of the funds provided from the Commonwealth's Development Opportunity Fund. 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. All such funds repaid to the political subdivision or the Commonwealth that relate to the award from the Commonwealth's Development Opportunity Fund shall promptly be 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 enforceability of the contract's provisions and the legal form of the contract.

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

G. Within the 30 days immediately following June 30 and December 30 of each year, the Governor shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance which shall include, but is not limited to, the following information

182 regarding grants and loans awarded from the Fund during the immediately preceding six-month period
183 for economic development projects: the name of the company that is the business beneficiary of the
184 grant or loan and the type of business in which it engages; the location (county, city, or town) of the
185 project; the amount of the grant or loan committed from the Fund and the amount of all other funds
186 committed by the Commonwealth from other sources and the purpose for which such grants, loans, or
187 other funds will be used; the amount of all moneys or funds agreed to be provided by political
188 subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created
189 by the business beneficiary; the amount of investment in the project agreed to be made by the business
190 beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average
191 wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

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

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

207 J. 1. Notwithstanding any provision of this section, the Governor may give grants or loans to any
208 eligible company, as defined in § 58.1-405.1, provided that such company shall be required to distribute
209 at least half of such grant or loan to its employees in jobs located in a qualified locality, as defined in
210 § 58.1-405.1. If the Governor gives a grant or loan pursuant to this subsection, it shall not be required to
211 meet other provisions in this section, including provisions, restrictions, and procedural requirements
212 related to job creation, investment, local matching funds, or contracts with business beneficiaries.

213 2. The grant or loan shall not exceed \$2,000 per new job, as defined in § 58.1-405.1; however, the
214 Governor may give a new grant or loan each year to the same eligible company.

215 3. An eligible company's eligibility for or receipt of a grant or loan pursuant to this subsection shall
216 not prevent it from receiving any other grant or loan for which it may be qualified pursuant to this
217 section.

218 K. *Notwithstanding any provision of this section, the Governor may give grants or loans for any*
219 *economic development project to construct a gasification facility or pyrolysis facility, as such terms are*
220 *defined in § 58.1-609.14, provided that such project involves a minimum private investment of \$1.5*
221 *million and creates at least 15 new jobs for which the average wage, excluding fringe benefits, is no*
222 *less than 85 percent of the prevailing average wage.*

223 **§ 58.1-322.03. Virginia taxable income; deductions.**

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

226 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
227 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
228 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
229 on such federal return and increased by an amount that, when added to the amount deducted under
230 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
231 such purposes at a rate of 18 cents per mile; or

232 b. Provided that the taxpayer has not itemized deductions for the taxable year on his federal income
233 tax return: (i) for taxable years beginning before January 1, 2019, and on and after January 1, 2026,
234 \$3,000 for single individuals and \$6,000 for married persons (one-half of such amounts in the case of a
235 married individual filing a separate return) and (ii) for taxable years beginning on and after January 1,
236 2019, but before January 1, 2026, \$4,500 for single individuals and \$9,000 for married persons (one-half
237 of such amounts in the case of a married individual filing a separate return). For purposes of this
238 section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year
239 may compute the deduction only with respect to earned income.

240 2. a. A deduction in the amount of \$930 for each personal exemption allowable to the taxpayer for
241 federal income tax purposes.

242 b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be
243 entitled to an additional personal exemption in the amount of \$800.

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

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

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

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

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

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

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

265 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
266 during the taxable year for a prepaid tuition contract or college savings trust account entered into with
267 the Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as
268 provided in subdivision b, the amount deducted on any individual income tax return in any taxable year
269 shall be limited to \$4,000 per prepaid tuition contract or college savings trust account. No deduction
270 shall be allowed pursuant to this subdivision 7 if such payments or contributions are deducted on the
271 purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a
272 college savings trust account exceeds \$4,000, the remainder may be carried forward and subtracted in
273 future taxable years until the purchase price or college savings trust contribution has been fully
274 deducted; however, except as provided in subdivision b, in no event shall the amount deducted in any
275 taxable year exceed \$4,000 per contract or college savings trust account. Notwithstanding the statute of
276 limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to
277 recapture in the taxable year or years in which distributions or refunds are made for any reason other
278 than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or
279 (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision,
280 "purchaser" or "contributor" means the person shown as such on the records of the Virginia College
281 Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid
282 tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax
283 attributes associated with a prepaid tuition contract or college savings trust account, including, but not
284 limited to, carryover and recapture of deductions.

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

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

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

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

deduction for such taxable year for long-term health care insurance premiums paid by him.

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

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

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

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

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

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

15. For taxable years beginning on and after January 1, 2018, 20 percent of business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For purposes of this subdivision, "business interest" means the same as that term is defined under § 163(j) of the Internal Revenue Code.

16. For taxable years beginning on and after January 1, 2019, the actual amount of real and personal property taxes imposed by the Commonwealth or any other taxing jurisdiction not otherwise deducted solely on account of the dollar limitation imposed on individual deductions by § 164(b)(6)(B) of the Internal Revenue Code.

17. *For taxable years beginning on and after January 1, 2020, any income for the taxable year attributable to the ownership and operation of a gasification facility or pyrolysis facility, as such terms are defined in § 58.1-609.14, provided that such facility shall be entitled to a subtraction pursuant to this subdivision only during its startup period, as defined in § 58.1-609.14.*

§ 58.1-402. Virginia taxable income.

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

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

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

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

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

3. [Repealed.]

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

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

6. [Repealed.]

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

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

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

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

(3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible expenses and costs meet both of the following: (i) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and (ii) the transaction giving rise to the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

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

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

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

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

434 c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under
435 § 58.1-446;

436 9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses
437 and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with
438 one or more direct or indirect transactions with one or more related members to the extent such
439 expenses and costs were deductible or deducted in computing federal taxable income for Virginia
440 purposes. This addition shall not be required for any portion of the interest expenses and costs, if:

441 (1) The related member has substantial business operations relating to interest-generating activities, in
442 which the related member pays expenses for at least five full-time employees who maintain, manage,
443 defend or are otherwise responsible for operations or administration relating to the interest-generating
444 activities; and

445 (2) The interest expenses and costs are not directly or indirectly for, related to or in connection with
446 the direct or indirect acquisition, maintenance, management, sale, exchange, or disposition of intangible
447 property; and

448 (3) The transaction giving rise to the expenses and costs between the corporation and the related
449 member has a valid business purpose other than the avoidance or reduction of taxation and payments
450 between the parties are made at arm's length rates and terms; and

451 (4) One of the following applies:

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

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

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

459 (iv) The transaction giving rise to the interest payments between the corporation and a related
460 member was done at arm's length rates and terms and meets any of the following: (a) the related
461 member uses funds that are borrowed from a party other than a related member or that are paid,
462 incurred or passed-through to a person who is not a related member; (b) the debt is part of a regular and
463 systematic funds management or portfolio investment activity conducted by the related member, whereby
464 the funds of two or more related members are aggregated for the purpose of achieving economies of
465 scale, the internal financing of the active business operations of members, or the benefit of centralized
466 management of funds; (c) financing the expansion of the business operations; or (d) restructuring the
467 debt of related members, or the pass-through of acquisition-related indebtedness to related members.

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

476 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
477 convincing evidence, that the transaction or transactions between the corporation and a related member
478 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business
479 purpose other than the avoidance or reduction of the tax due under this chapter and that the related
480 payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall
481 permit the corporation to file an amended return. For purposes of such amended return, the requirements
482 of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has
483 identified) that the transaction had a valid business purpose other than the avoidance or reduction of the
484 tax due under this chapter and that the related payments between the parties were made at arm's length
485 rates and terms. Such amended return shall be filed by the corporation within one year of the written
486 permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall
487 include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall
488 accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related
489 member of the corporation that subtracted from taxable income amounts received pursuant to subdivision

C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related interest expenses and costs without making the adjustment under subdivision a.

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

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

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

d. For purposes of subdivision B 9:

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

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

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

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

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

(3) More than 25 percent of its income consists of rents from real property as defined in § 856(d) of the Internal Revenue Code.

b. For purposes of applying the ownership test of subdivision 10 a (2), the following entities shall not be considered a corporation or an association taxable as a corporation:

(1) Any REIT that is not treated as a Captive REIT;

(2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT subsidiary of a Captive REIT;

(3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or value of the beneficial interests or shares of such trust; and

(4) Any Qualified Foreign Entity.

c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in determining the ownership of stock, assets, or net profits of any person.

d. For purposes of subdivision B 10:

"Listed Australian Property Trust" means an Australian unit trust registered as a Management Investment Scheme, pursuant to the Australian Corporations Act, in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market.

"Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the laws of the United States and that satisfies all of the following criteria:

(1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in § 856(c)(5)(B) of the Internal Revenue Code, thereby including shares or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government securities;

(2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt from entity level tax;

551 (3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed
552 in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial
553 interest;

554 (4) The shares or certificates of beneficial interest of such entity are regularly traded on an
555 established securities market or, if not so traded, not more than 10 percent of the voting power or value
556 in such entity is held directly, indirectly, or constructively by a single entity or individual; and

557 (5) The entity is organized in a country that has a tax treaty with the United States.

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

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

565 C. There shall be subtracted to the extent included in and not otherwise subtracted from federal
566 taxable income:

567 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States
568 and on obligations or securities of any authority, commission or instrumentality of the United States to
569 the extent exempt from state income taxes under the laws of the United States including, but not limited
570 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,
571 interest on equipment purchase contracts, or interest on other normal business transactions.

572 2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth
573 or of any political subdivision or instrumentality of this Commonwealth.

574 3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the
575 Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding
576 year, or the last year in which such corporation has income, under the provisions of the income tax laws
577 of the Commonwealth.

578 4. The amount of any refund or credit for overpayment of income taxes imposed by this
579 Commonwealth or any other taxing jurisdiction.

580 5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue
581 Code (foreign dividend gross-up).

582 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not
583 deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

584 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F
585 income) or, for taxable years beginning on and after January 1, 2018, § 951A of the Internal Revenue
586 Code (Global Intangible Low-Taxed Income).

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

588 9. [Repealed.]

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

591 11. [Repealed.]

592 12, 13. [Expired.]

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

596 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in
597 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
598 (§ 22.1-175.1 et seq.) of Title 22.1.

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

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

608 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
609 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower
610 Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a
611 tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of
612 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

19, 20. [Repealed.]

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

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

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

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

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

b. As used in this subdivision 25:

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

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

26. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 or 25 for the same investment.

b. As used in this subdivision 26:

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

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

676 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.
677 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be
678 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department
679 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in
680 Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double
681 distressed. If the Department determines that the trust satisfies the preceding criteria, the Department
682 shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests
683 at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in
684 localities that are distressed or double distressed.

685 27. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of
686 real property by condemnation proceedings.

687 28. *For taxable years beginning on and after January 1, 2020, any income for the taxable year*
688 *attributable to the ownership and operation of a gasification facility or pyrolysis facility, as such terms*
689 *are defined in § 58.1-609.14, provided that such facility shall be entitled to a subtraction pursuant to*
690 *this subdivision only during its startup period, as defined in § 58.1-609.14.*

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

694 1. If the payment is received in installment payments, then the recognized gain, including any gain
695 recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year
696 in which the installment payment is received.

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

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

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

714 G. For taxable years beginning on and after January 1, 2018, there shall be deducted to the extent
715 included in and not otherwise subtracted from federal taxable income 20 percent of business interest
716 disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For purposes of this
717 subsection, "business interest" means the same as that term is defined under § 163(j) of the Internal
718 Revenue Code.

719 **§ 58.1-609.14. Gasification and pyrolysis exemption.**

720 A. As used in this section:

721 "Eligible purchases" means (i) machinery, tools, and equipment, or repair parts therefor or
722 replacements thereof, fuel, power, energy, or supplies; (ii) post-use polymers; and (iii) recoverable
723 feedstock.

724 "Gasification" means a process through which recoverable feedstocks are heated and converted into
725 a fuel and gas mixture in an oxygen-deficient atmosphere and the mixture is then converted to crude oil,
726 diesel, gasoline, home heating oil, or other fuels; chemicals, waxes, lubricants, chemical feedstocks,
727 diesel and gasoline blendstocks, or other raw materials; or intermediate or final products that are
728 returned to the economic mainstream in the form of raw materials, products, or fuels.

729 "Gasification facility" means a facility that receives, separates, stores, and converts post-use
730 polymers and recoverable feedstocks using gasification.

731 "Post-use polymer" means a plastic polymer that (i) is derived from any industrial, commercial,
732 agricultural, or domestic activities; (ii) is used or is intended to be used to manufacture crude oil, fuels,
733 feedstocks, blendstocks, raw materials, or other intermediate products or final products using pyrolysis
734 or gasification; and (iii) may contain incidental contaminants or impurities, such as paper labels or
735 metal rings.

"Pyrolysis" means a process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed and are then cooled, condensed, and converted to crude oil, diesel, gasoline, home heating oil, or other fuels; chemicals, waxes, lubricants, chemical feedstocks, diesel and gasoline blendstocks, or other raw materials; or intermediate or final products that are returned to the economic mainstream in the form of raw materials, products, or fuels.

"Pyrolysis facility" means a facility that receives, separates, stores, and converts post-use polymers using pyrolysis.

"Recoverable feedstock" means one or more of the following materials derived from recoverable waste that has been processed so that it may be used as feedstock in a gasification facility: (i) post-use polymers or (ii) materials for which the U.S. Environmental Protection Agency has made a nonwaste determination pursuant to 40 C.F.R. 241.3(c), or has otherwise determined are not solid waste.

"Startup period" means the first five taxable years, for purposes of Article 2 (§ 58.1-320 et seq.) or 10 (§ 58.1-400 et seq.) of Chapter 3, that a gasification facility or pyrolysis facility is in operation.

B. Beginning January 1, 2020, all eligible purchases made by a gasification facility or pyrolysis facility during its startup period shall be exempt from all taxes imposed pursuant to this chapter, provided that the preponderance of their use is in gasification or pyrolysis, as applicable.