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SENATE BILL NO. 965

Offered January 14, 2020

A BILL to amend and reenact § 58.1-322.02 of the Code of Virginia, relating to Virginia taxable income; subtraction for certain active duty military income.

Patron—Peake

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

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

§ 58.1-322.02. Virginia taxable income; subtractions.

In computing Virginia taxable income pursuant to § 58.1-322, to the extent included in federal adjusted gross income, there shall be subtracted:

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

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

3. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4. Up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also claim a subtraction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

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

7. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.

8. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified in this subdivision.

9. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

10. The amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

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

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

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

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

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

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

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

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

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

89 As used in this subdivision:

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

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

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

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

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

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

118 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income
119 taxed as investment services partnership interest income (otherwise known as investment partnership
120 carried interest income) for federal income tax purposes. To qualify for a subtraction under this

121 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in
 122 § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided
 123 that the business has its principal office or facility in the Commonwealth and less than \$3 million in
 124 annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this
 125 subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No
 126 taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4
 127 shall be eligible for the subtraction under this subdivision for an investment in the same business.

128 25. For taxable years beginning on and after January 1, 2014, any income of an account holder for
 129 the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's
 130 first-time home buyer savings account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36
 131 and (ii) interest income or other income for federal income tax purposes attributable to such person's
 132 first-time home buyer savings account.

133 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction
 134 taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys
 135 or funds withdrawn from the first-time home buyer savings account were used for any purpose other
 136 than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under
 137 § 36-174. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable
 138 year that was used for other than the payment of eligible costs, computed by multiplying the amount
 139 withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in
 140 the account at the time of the withdrawal to the total balance in the account at such time.

141 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i)
 142 withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the
 143 account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101
 144 through 1330; or (iii) transferred from an account established pursuant to Chapter 12 (§ 36-171 et seq.)
 145 of Title 36 into another account established pursuant to such chapter for the benefit of another qualified
 146 beneficiary.

147 For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings
 148 account," and "qualified beneficiary" mean the same as those terms are defined in § 36-171.

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

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

160 b. As used in this subdivision 27:

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

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

180 28. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a
 181 subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before

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

186 b. As used in this subdivision 28:

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

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

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

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

202 30. *For taxable years beginning on and after January 1, 2020, any income received for service as an*
203 *active duty member of the United States Armed Forces, the United States Armed Forces Reserves, or the*
204 *Virginia National Guard while such member is deployed outside the United States. To the extent that a*
205 *subtraction or deduction for such income is taken pursuant to other provisions of this section or §*
206 *58.1-322.03 or 58.1-322.04, no subtraction shall be taken pursuant to this subdivision.*