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SENATE BILL NO. 346

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations)

(Patron Prior to Substitute—Senator Barker)

Senate Amendments in [] - February 14, 2022

A BILL to amend and reenact § 58.1-416 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-422.4, relating to income tax; property information and analytics firms.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-416 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-422.4 as follows:

§ 58.1-416. When certain other sales deemed in the Commonwealth.

A. Sales, other than sales of tangible personal property, are in the Commonwealth if:

1. The income-producing activity is performed in the Commonwealth; or

2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.

B. 1. For debt buyers, as defined in § 58.1-422.3, sales, other than sales of tangible personal property, are in the Commonwealth if they consist of money recovered on debt that a debt buyer collected from a person who is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth. Such rule shall apply regardless of the location of a debt buyer's business.

2. For property information and analytics firms, as defined in § 58.1-422.4, that meet the requirements set forth in § 58.1-422.4, sales of services are in the Commonwealth if they are income derived from transactions with a customer or client who receives the benefit of the services in the Commonwealth. Such rule shall apply regardless of the location of a property information and analytics firm's business operations.

C. The taxes under this article on the sales described under subsection B are imposed to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law. For the collection of such taxes on such sales, it is the intent of the General Assembly that the Tax Commissioner and the Department assert the taxpayer's nexus with the Commonwealth to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law.

D. If necessary information is not available to the taxpayer to determine whether a sale other than a sale of tangible personal property is in the Commonwealth pursuant to the provisions of subsections B and C, the taxpayer may estimate the dollar value or portion of such sale in the Commonwealth, provided that the taxpayer can demonstrate to the satisfaction of the Tax Commissioner that (i) the estimate has been undertaken in good faith, (ii) the estimate is a reasonable approximation of the dollar value or portion of such sale in the Commonwealth, and (iii) in using an estimate the taxpayer did not have as a principal purpose the avoidance of any tax due under this article. The Department may implement procedures for obtaining its approval to use an estimate. The Department shall adopt remedies and corrective procedures for cases in which the Department has determined that the sourcing rules for sales other than sales of tangible personal property have been abused by the taxpayer, which may include reliance on the location of income-producing activity and direct costs of performance as described in subsection A.

§ 58.1-422.4. Property information and analytics firms.

A. As used in this section:

"Authority" means the Virginia Economic Development Partnership Authority.

"Eligible city" means the City of Richmond.

"Memorandum of understanding" means a performance agreement or related document entered into by a property information and analytics firm and the Authority on or after December 1, 2021, but before August 1, 2022, that sets forth the requirements for capital investments and the creation of new full-time jobs by such property information and analytics firm.

"Property information and analytics firm" means an entity and its affiliated entities that as of January 1, 2022, is primarily a commercial real estate information and analytics firm with a location in an eligible city and that between January 1, 2022, and January 1, 2029, is expected to (i) make or cause to be made a capital investment in an eligible city of at least \$460.5 million and (ii) create 1,984 new jobs with average annual wages of at least \$85,604 per job.

B. 1. For taxable years beginning on or after January 1, 2022, but before January 1, 2029, a property information and analytics firm shall be subject to the provisions of subdivision B 2 of

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60 § 58.1-416 only if the Authority certifies to the Department that it has at least 1,000 full-time employees
61 as of January 1, 2022, in an eligible city, subject to the terms and conditions of the memorandum of
62 understanding.

63 2. For taxable years beginning on or after January 1, 2029, a property information and analytics
64 firm shall be subject to the provisions of subdivision B 2 of § 58.1-416 only if the Authority certifies to
65 the Department that it has at least 2,785 full-time employees as of January 1, 2029, in an eligible city,
66 and from January 1, 2022, through December 31, 2028, has made or caused to be made a capital
67 investment for its facilities in that eligible city of at least \$460.5 million. Once the Authority certifies a
68 property information and analytics firm has met the job and capital investment requirements set forth in
69 this subdivision, no additional certifications shall be required and the property information and
70 analytics firm shall continue to be subject to the provisions of subdivision B 2 of § 58.1-416 in all future
71 taxable years.

72 C. The General Assembly finds that the growth of property information and analytics firms, including
73 the capital investment and new jobs spurred by such growth, is essential to the continued fiscal health
74 of the Commonwealth. Accordingly, the provisions of subsections A and B relating to capital investment
75 and new jobs are integral to the purpose of this section. If any provision of this section is for any
76 reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that
77 provision shall not be deemed severable.

78 2. That the Department of Taxation shall develop and make publicly available guidelines
79 implementing the provisions of this act. In developing such guidelines, the Department of Taxation
80 shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the
81 Code of Virginia) for guidelines promulgated on or before December 31, 2023, but shall cooperate
82 with and seek the counsel of interested groups and shall not promulgate any guidelines,
83 preliminary or final, without first seeking such counsel and conducting a public hearing.
84 Preliminary guidelines shall be promulgated and made publicly available no later than December
85 31, 2022, and final guidelines shall be promulgated and made publicly available no later than
86 December 31, 2023. After December 31, 2023, the guidelines shall be subject to the Administrative
87 Process Act and accorded the weight of regulations under § 58.1-205 of the Code of Virginia.

88 3. That for taxable years beginning on and after January 1, 2022, but before January 1, 2032, any
89 property information and analytics firm, as defined in § 58.1-422.4 of the Code of Virginia, as
90 created by this act, that apportions its income pursuant to subdivision B 2 of § 58.1-416 of the
91 Code of Virginia, as amended by this act, shall include with its income tax return information
92 regarding market-based sourcing for services under this act as compared to cost of performance,
93 including the amounts of the property, payroll, and sales factors under both methods; the
94 apportionment percentages under both methods; and the amount of tax calculated under both
95 methods. The Department of Taxation shall use such information to compute an estimate of the
96 fiscal savings to such firms. Notwithstanding any provision of § 58.1-3 of the Code of Virginia or
97 any other law, the Department may provide to the Virginia Economic Development Partnership
98 Authority and the Secretaries of Commerce and Trade and Finance such information as may be
99 necessary to facilitate the purposes of this act. In addition and notwithstanding any provision of
100 § 58.1-3 of the Code of Virginia or any other law, the Department of Taxation shall, upon request,
101 report to the Chairmen of the House Committee on Appropriations and the Senate Committee on
102 Finance and Appropriations the number of returns processed for property information and
103 analytics firms that used market-based sourcing for services under this act and the annual
104 estimated revenue impact of market-based sourcing as compared with cost of performance.

105 4. That the memorandum of understanding, as defined in § 58.1-422.4 of the Code of Virginia, as
106 created by this act, shall include provisions that require the property information and analytics
107 firm (the Firm) to report annually to the Secretaries of Commerce and Trade and Finance
108 beginning January 1, 2023, such information as is necessary to demonstrate the Firm is in
109 compliance with the performance criteria set forth in the memorandum of understanding. The
110 annual report shall contain information regarding the new jobs created and new capital
111 investments made by the Firm to satisfy the performance criteria, the anticipated liability of the
112 Firm notwithstanding the provisions of this act related to the apportionment of its income, the
113 anticipated liability of the Firm pursuant to the apportionment formula under this act, and other
114 such financial information as the Virginia Economic Development Partnership Authority or the
115 Secretaries of Commerce and Trade and Finance deem necessary to demonstrate that the Firm
116 will be able to fulfill the obligations of the memorandum of understanding regarding repayment of
117 the benefit of the apportionment formula under this act should it fail to meet the terms and
118 conditions of the memorandum of understanding.

119 5. That the memorandum of understanding, as defined in § 58.1-422.4 of the Code of Virginia, as
120 created by this act, shall contain a provision that should the property information and analytics
121 firm (the Firm) be out of substantial compliance with the performance criteria set forth in the

122 memorandum of understanding for three consecutive years, then the memorandum of
123 understanding shall terminate, and the Firm shall repay the benefits received under this act
124 proportional to the failure to create new jobs and make new investments as outlined in the terms
125 and conditions. If the memorandum is terminated pursuant to this enactment and such provision,
126 the Secretary of Finance shall notify the Department of Taxation, and the Firm shall henceforth
127 be subject to the apportionment formula [set forth in ~~§ 58.1-408~~ without the use of subdivision B
128 2 of § 58.1-416] of the Code of Virginia.

129 6. Any person to whom tax information is divulged pursuant to this act shall be subject to the
130 prohibitions and penalties set forth in § 58.1-3 as though he were a tax official.

131 7. That the provisions of this act shall not become effective until a memorandum of understanding,
132 as defined in § 58.1-422.4 of the Code of Virginia, is signed. If such memorandum of
133 understanding is not signed by August 1, 2022, the provisions of subsection B 2 of § 58.1-416 shall
134 not be applicable in any taxable year beginning on or after January 1, 2023.

135 8. That the Virginia Economic Development Partnership Authority shall provide, upon signature, a
136 copy of any memorandum of understanding, as defined in § 58.1-422.4 of the Code of Virginia, as
137 created by this act, to the Chairmen of the MEI Project Approval Commission, the House
138 Committee on Appropriations, and the Senate Committee on Finance and Appropriations. The
139 provisions of this act shall expire if copies of such memorandum are not delivered within seven
140 days of signature.

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