

VIRGINIA ACTS OF ASSEMBLY -- 2023 RECONVENED SESSION

CHAPTER 772

An Act to amend and reenact § 58.1-301 of the Code of Virginia, relating to conformity of the Commonwealth's taxation system with the Internal Revenue Code; emergency.

[H 1595]

Approved April 12, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-301 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-301. Conformity to Internal Revenue Code.

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

B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as they existed on December 31, ~~2021~~ 2022, except for:

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

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

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

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

5. For taxable years beginning on and after January 1, 2019, the suspension of the overall limitation on itemized deductions under § 68(f) of the Internal Revenue Code;

6. For taxable years beginning on and after January 1, 2017, but before January 1, 2018, and for taxable years beginning on and after January 1, 2019, the 7.5 percent of federal adjusted gross income threshold set forth in § 213(a) of the Internal Revenue Code that is used for purposes of computing the deduction allowed for expenses for medical care pursuant to § 213 of the Internal Revenue Code. For such taxable years, the threshold utilized for Virginia income tax purposes to compute the deduction allowed for expenses for medical care pursuant to § 213 of the Internal Revenue Code shall be 10 percent of federal adjusted gross income;

7. The provisions of §§ 2303(a) and 2303(b) of the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (2020), related to the net operating loss limitation and carryback;

8. The provisions of § 2304(a) of the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (2020), related to a loss limitation applicable to taxpayers other than corporations;

9. The provisions of § 2306 of the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (2020), related to the limitation on business interest; and

10. For taxable years beginning before January 1, 2021, the provisions of §§ 276(a), 276(b)(2), 276(b)(3), 278(a)(2), 278(a)(3), 278(b)(2), 278(b)(3), 278(c)(2), 278(c)(3), 278(d)(2), and 278(d)(3) of the federal Consolidated Appropriations Act, P.L. 116-260 (2020), and §§ 9673(2), 9673(3), 9672(2), and 9672(3) of the federal American Rescue Plan Act, P.L. 117-2 (2021) related to deductions, tax attributes, and basis increases for certain loan forgiveness and other business financial assistance.

The Department of Taxation is hereby authorized to develop procedures or guidelines for implementation of the provisions of this section, which procedures or guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2. That the provisions of Chapters 6 and 18 of the Acts of Assembly of 2022, Special Session I, shall become effective upon passage of this act.

3. That the provisions of this act shall prevail over any conflicting provisions of the second

enactment of Chapter 2 of the Acts of Assembly of 2022, Special Session I, and § 4-13.00 of Chapter 2 of the Acts of Assembly of 2022, Special Session I, shall not be applicable with respect to any such conflict.

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