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SENATE BILL NO. 473

Offered January 22, 1996

A BILL to amend and reenact § 58.1-322 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-322.3, relating to an individual income tax deduction for qualified higher education tuition expenses.

Patrons—Stolle, Bolling, Hawkins, Martin, Miller, K.G., Newman, Norment, Quayle, Schrock and Williams

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-322 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding § 58.1-322.3 as follows:

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in this section.

B. To the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal 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 Virginia 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. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes which is excluded from federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions under § 402 of the Internal Revenue Code;

5. through 7. [Repealed.]

8. For taxable years beginning on and after January 1, 1990, and before January 1, 1994, any amount of self-employment tax deduction under § 164 (f) of the Internal Revenue Code; and

9. 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.

C. To the extent included in federal adjusted gross income, there shall be subtracted:

1. Interest or dividends on 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. Interest on obligations of this Commonwealth or of any political subdivision or instrumentality of this Commonwealth.

3. [Repealed.]

4. 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.

4a. A deduction equal to the amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age sixty-five who qualified for such retirement on the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of the Internal Revenue Code; however, any person who claims a subtraction under subdivision 5 of subsection D of this section may not also claim a deduction 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 Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280 C (a) of the Internal Revenue Code.

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

8. For taxable years beginning after December 31, 1983, the available portion of total excess cost

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60 recovery as defined in former § 58.1-323 B and for taxable years beginning after December 31, 1987,
61 the excess cost recovery amount specified in § 58.1-323.1 B.

62 9. [Expired.]

63 10. Any amount included therein less than \$600 from a prize awarded by the State Lottery
64 Department.

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

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

75 13. [Repealed.]

76 14. (Expires for taxable years beginning on and after January 1, 1999.) The amount of any qualified
77 agricultural contribution as determined in § 58.1-322.2.

78 15. [Repealed.]

79 16. The amounts of self-employment tax required to be added in computing Virginia taxable income
80 for taxable years beginning on and after January 1, 1990, but before January 1, 1994, pursuant to
81 subdivision B 8 of this section, as follows:

82 a. For taxable years beginning on and after January 1, 1994, and before January 1, 1995, the amount
83 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after
84 January 1, 1990, and before January 1, 1991;

85 b. For taxable years beginning on and after January 1, 1995, and before January 1, 1996, the amount
86 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after
87 January 1, 1991, and before January 1, 1992;

88 c. For taxable years beginning on and after January 1, 1996, and before January 1, 1997, the amount
89 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after
90 January 1, 1992, and before January 1, 1993;

91 d. For taxable years beginning on and after January 1, 1997, and before January 1, 1998, the amount
92 of self-employment tax added to federal adjusted gross income in taxable years beginning on and after
93 January 1, 1993, and before January 1, 1994, and any amount of self-employment tax required to be
94 added back for taxable years beginning on and after January 1, 1990, and before January 1, 1994, which
95 was not subtracted in those taxable years.

96 17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research
97 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
98 deducted, on account of the provisions of § 280 C (c) of the Internal Revenue Code and which shall be
99 available to partners, shareholders of S corporations, and members of limited liability companies to the
100 extent and in the same manner as other deductions may pass through to such partners, shareholders, and
101 members.

102 D. In computing Virginia taxable income there shall be deducted from federal adjusted gross income:

103 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
104 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
105 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
106 on such federal return and increased by an amount which, when added to the amount deducted under
107 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
108 such purposes at a rate of eighteen cents per mile; or

109 b. Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987;
110 \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for
111 married persons (one-half of such amounts in the case of a married individual filing a separate return);
112 and \$3,000 for single individuals for taxable years beginning on and after January 1, 1989; provided that
113 the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For
114 purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for
115 the taxable year may compute the deduction only with respect to earned income.

116 2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through
117 December 31, 1987, and \$800 for taxable years beginning on and after January 1, 1988, for each
118 personal exemption allowable to the taxpayer for federal income tax purposes. For taxable years
119 beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the
120 Internal Revenue Code shall be entitled to an additional personal exemption.

121 b. An additional deduction of \$200 for taxable years beginning January 1, 1987 through December

31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The additional deduction for blind or aged taxpayers allowed under this subdivision and the additional personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

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

4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. Effective for all taxable years beginning on and after January 1, 1990, a deduction in the amount of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four, less any amount received pursuant to the (i) Social Security Act or (ii) Railroad Retirement Act and treated for federal income tax purposes as equivalent to social security. Beginning in taxable year 1992 through taxable year 1993, the \$12,000 and \$6,000 deduction amounts shall be indexed annually in each such taxable year by an amount equivalent to the most recent percentage increase in the social security wage base.

Effective for the taxable year beginning January 1, 1994, a deduction in the amount of \$12,944 for taxpayers age sixty-five or older, or \$6,472 for taxpayers age sixty-two through sixty-four. Effective for the taxable year beginning January 1, 1995, a deduction in the amount of \$10,000 for taxpayers age sixty-five or older, or \$5,000 for taxpayers age sixty-two through sixty-four. Effective for all taxable years beginning on or after January 1, 1996, a deduction in the amount of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through sixty-four.

Beginning in taxable year 1995, the deduction under this subdivision shall not be reduced by any amount received pursuant to the (i) Social Security Act or (ii) Railroad Retirement Act and treated for federal income tax purposes as equivalent to social security.

6. Effective for all taxable years beginning on and after January 1, 1998, a deduction in the amount of any qualified higher education tuition expense as determined in § 58.1-322.3.

E. There shall be added to or subtracted from federal adjusted gross income (as the case may be) the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

§ 58.1-322.3. *Qualified higher education tuition expense.*

A. For purposes of determining the amount to be deducted pursuant to subdivision 6 of subsection D of § 58.1-322, pertaining to Virginia taxable income, "qualified higher education tuition expense" means an amount equal to the cost of tuition (i) incurred by any member of the taxpayer's immediate family for his enrollment in an eligible degree program at an institution of higher education during the taxable year and (ii) paid by the taxpayer to such institution in the same taxable year; however, the qualified higher education tuition expense for any member of the taxpayer's immediate family in any taxable year shall not exceed the median tuition amount. Tuition paid by a taxpayer shall not constitute qualified higher education tuition expense to the extent the taxpayer is reimbursed therefor by the taxpayer's employer or other person.

B. As used in this section:

"Eligible degree program" means a curriculum or course of study in a discipline specialty that leads to an associate or baccalaureate degree from an institution of higher education.

"Institution of higher education" means (i) any two- or four-year private institution of higher education within the Commonwealth approved to confer degrees pursuant to Chapter 21 (§ 23-265 et seq.) of Title 23 or (ii) any state-supported institution named in § 23-9.5.

"Median tuition amount" means the median of the tuition imposed for one year of full-time enrollment at the state-supported institutions named in § 23-9.5 for the most recent calendar year for which such median has been calculated by the State Council of Higher Education.

"Member of the taxpayer's immediate family" means the taxpayer, the taxpayer's spouse, and any child of the taxpayer claimed as a dependent on the taxpayer's return for the taxable year.

"Tuition" means the quarter, semester, or term charges imposed by any institution of higher education, excluding required instructional fees and auxiliary enterprise fees. Tuition shall not include charges for room, board, textbooks, or other expenses.

C. The State Council of Higher Education shall calculate the median tuition amount for each year as may be requested by the Department.