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SENATE BILL NO. 1034

Offered January 20, 1999

A BILL to amend and reenact §§ 58.1-320, 58.1-321, and 58.1-322 of the Code of Virginia, relating to the individual income tax.

Patrons—Couric, Colgan, Gartlan, Hawkins, Houck, Howell, Lambert, Lucas, Miller, K.G., Mims, Puckett, Reynolds, Saslaw, Stosch, Trumbo and Walker; Delegates: Brink, Keating, Van Yahres and Watts

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-320, 58.1-321, and 58.1-322 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-320. Imposition of tax.

A. A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every individual for taxable years beginning January 1, 1990, through December 31, 1999, as follows:

Two percent on income not exceeding \$3,000;

Three percent on income in excess of \$3,000, but not in excess of \$5,000;

Five percent on income in excess of \$5,000, but not in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five percent on income in excess of \$5,000 but not in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989;

Five percent on income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning January 1, 1990;

Five and three-quarters percent on income in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five and three-quarters percent on income in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five and three-quarters percent on income in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five and three-quarters percent on income in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989; and

Five and three-quarters percent on income in excess of \$17,000 for taxable years beginning on and after January 1, 1990.

B. For taxable years beginning on and after January 1, 2000, the \$3,000, \$5,000, and \$17,000 bracket amounts stated in subsection A shall be adjusted every calendar year to an amount determined by the Tax Commissioner to reflect the annual rate of change in the preceding year in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor.

§ 58.1-321. Exemptions and exclusions.

A. No tax levied pursuant to § 58.1-320 is imposed, nor any return required to be filed by:

1. A single individual where the Virginia adjusted gross income for such taxable year is less than \$3,000 for taxable years beginning before January 1, 1987; and less than \$5,000, provided that for taxable years beginning on and after January 1, 1987 2000, such amount shall be adjusted every calendar year to an amount determined by the Tax Commissioner to reflect the annual rate of change in the preceding year in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor; and

2. An individual and spouse if their combined Virginia adjusted gross income for such taxable year is less than \$3,000 for taxable years beginning before January 1, 1987; and less than \$8,000, provided that for taxable years beginning on and after January 1, 1987 (or one-half of such amount in the case of a married individual filing a separate return) 2000, such amount shall be adjusted every calendar year to an amount determined by the Tax Commissioner to reflect the annual rate of change in the preceding year in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as

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60 *published by the Bureau of Labor Statistics of the United States Department of Labor. In the case of a*
61 *married individual filing a separate return, the limit shall be one-half of such amount.*

62 For the purposes of this section "Virginia adjusted gross income" means federal adjusted gross
63 income for the taxable years with the modifications specified in § 58.1-322 B, § 58.1-322 C and the
64 additional deductions allowed under § 58.1-322 D 2 b and D 5.

65 B. Persons in the armed forces of the United States stationed on military or naval reservations within
66 Virginia who are not domiciled in Virginia shall not be held liable to income taxation for compensation
67 received from military or naval service.

68 § 58.1-322. Virginia taxable income of residents.

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

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

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

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

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

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

86 5. through 7. [Repealed.]

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

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

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

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

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

99 3. [Repealed.]

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

102 4a. A deduction equal to the amount used in computing the federal credit allowed under § 22 of the
103 Internal Revenue Code by a retiree under age sixty-five who qualified for such retirement on the basis
104 of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of the
105 Internal Revenue Code; however, any person who claims a subtraction under subdivision 5 of subsection
106 D of this section may not also claim a deduction under this subdivision.

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

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

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

112 8. For taxable years beginning after December 31, 1983, the available portion of total excess cost
113 recovery as defined in former § 58.1-323 B and for taxable years beginning after December 31, 1987,
114 the excess cost recovery amount specified in § 58.1-323.1 B.

115 9. [Expired.]

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

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

12. 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 provision 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.

13. [Repealed.]

14. (Expires for taxable years beginning on and after January 1, 2004.) The amount of any qualified agricultural contribution as determined in § 58.1-322.2.

15. [Repealed.]

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

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

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

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

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

17. For taxable years beginning on and after January 1, 1995, 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 § 280 C (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.

18. For taxable years beginning on or after January 1, 1995, all military pay and allowances, not otherwise subtracted under this subsection, earned for any month during any part of which such member performed military service in any part of the former Yugoslavia, including the air space above such location or any waters subject to related naval operations, in support of Operation JOINT ENDEAVOR as part of the NATO Peace Keeping Force. Such subtraction shall be available until the taxpayer completes such service.

19. For taxable years beginning on and after January 1, 1996, 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.

20. For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract with the Virginia Higher Education Tuition Trust Fund, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. 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.

21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

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

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under

§ 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of eighteen cents per mile; or

b. ~~Two~~ Five thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987; \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); and \$3,000 for single individuals, for taxable years beginning on and after January 1, 1989, through December 31, 1999; provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. *For taxable years beginning on and after January 1, 2000, the \$5,000 and \$3,000 standard deduction amounts shall be adjusted every calendar year to an amount determined by the Tax Commissioner to reflect the annual rate of change in the preceding year in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor.* For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through December 31, 1987, and \$800 for taxable years beginning on and after January 1, 1988, through December 31, 1999, for each personal exemption allowable to the taxpayer for federal income tax purposes. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption. *For taxable years beginning on and after January 1, 2000, the \$800 personal exemption amount shall be adjusted every calendar year to an amount determined by the Tax Commissioner to reflect the annual rate of change in the preceding year in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor.*

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. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. (Effective for taxable years beginning on and after January 1, 1996.) A deduction shall be allowed to the purchaser for the amount paid during the taxable year for a prepaid tuition contract entered into with the Virginia Higher Education Tuition Trust Fund, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The amount deducted on any individual income tax return in any taxable year shall be limited to \$2,000 per prepaid tuition contract. No deduction shall be allowed pursuant to this section if such payments are deducted on the purchaser's federal income tax return. The deduction allowed

under this section shall not be transferable. If the purchase price exceeds \$2,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price has been fully deducted; however, in no event shall the amount deducted in any taxable year exceed \$2,000 per contract. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship.

b. (Effective for taxable years beginning on and after January 1, 1996.) The amount paid for a prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for such amount on his federal income tax return.

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.