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SENATE BILL NO. 1384

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 14, 2011)

(Patron Prior to Substitute—Senator Colgan)

A *BILL to amend and reenact § 58.1-301 of the Code of Virginia, relating to conformity of the Commonwealth's tax system with the federal Internal Revenue Code.*

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 ~~January 22~~ *December 31*, 2010, 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 2009 shall be fully included in the taxpayer's Virginia taxable income for *the* taxable year 2009, unless the taxpayer elects to include such income in the taxpayer's Virginia taxable income ratably over a 3-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) 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. The amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code for taxable years beginning on or after January 1, 2010. For Virginia income tax purposes, two-thirds of the amount deducted pursuant to § 199 of the Internal Revenue Code for federal income tax purposes during the taxable year may be deducted for Virginia income tax purposes for taxable years beginning on and after January 1, 2010; *and*

6. For taxable years beginning on or after January 1, ~~2010~~ *2011*, the provisions of § 32(b)(3) of the Internal Revenue Code relating to the earned income tax credit; *and*

7. ~~For taxable years beginning on or after January 1, 2010, the deduction for qualified motor vehicle taxes pursuant to § 164(a)(6) of the Internal Revenue Code.~~

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 modifications to subdivisions B 6 and B7 of § 58.1-301 shall be retroactive to taxable years beginning on and after January 1, 2010.

3. That the third enactment of Chapter 874 of the Acts of Assembly of 2010 is repealed and that § 4-12.00 of such act shall not be applicable with respect to the conflict between the third enactment of such act and the provisions of this act, and that the provisions of this act shall prevail over any conflict with the third enactment of Chapter 874 of the Acts of Assembly of 2010.

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