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HOUSE BILL NO. 1155

Offered January 16, 2012

A BILL to amend and reenact §§ 58.1-322 and 58.1-360 of the Code of Virginia, relating to taxes on the income of, and tax deductions for contributions to, certain trusts established for disabled individuals.

Patrons—Filler-Corn, Bulova, McClellan, Plum, Surovell, Toscano and Watts

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-322 and 58.1-360 of the Code of Virginia are amended and reenacted 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 that 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; and

5 through 8. [Repealed.]

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. Income derived from obligations, or on the sale or exchange of 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. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of the 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. Through December 31, 2000, the same amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age 65 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 deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under this subdivision.

4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of subsection D of this section may not also claim a subtraction 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 § 280C(a) of the Internal Revenue Code.

7, 8. [Repealed.]

9. [Expired.]

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

61 11. The wages or salaries received by any person for active and inactive service in the National
62 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar
63 days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of
64 O3 and below shall be entitled to the deductions specified herein.

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

71 13. [Repealed.]

72 14. [Expired.]

73 15, 16. [Repealed.]

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

80 18. [Repealed.]

81 19. For taxable years beginning on and after January 1, 1996, any income received during the taxable
82 year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the
83 Internal Revenue Code, an individual retirement account or annuity established under § 408 of the
84 Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code,
85 or any federal government retirement program, the contributions to which were deductible from the
86 taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or
87 program were subject to taxation under the income tax in another state.

88 20. For taxable years beginning on and after January 1, 1997, any income attributable to a
89 distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the
90 Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The
91 subtraction for any income attributable to a refund shall be limited to income attributable to a refund in
92 the event of a beneficiary's death, disability, or receipt of a scholarship.

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

98 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
99 exchange of real property or the sale or exchange of an easement to real property which results in the
100 real property or the easement thereto being devoted to open-space use, as that term is defined in
101 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
102 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
103 shall be allowed for three years following the year in which the subtraction is taken.

104 23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic
105 pay for military service personnel on extended active duty for periods in excess of 90 days; however,
106 the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military
107 basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or
108 exceeds \$30,000.

109 24. Effective for all taxable years beginning on and after January 1, 2000, the first \$15,000 of salary
110 for each federal and state employee whose total annual salary from all employment for the taxable year
111 is \$15,000 or less.

112 25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

113 26. For taxable years beginning on and after January 1, 2001, any amount received as military
114 retirement income by an individual awarded the Congressional Medal of Honor.

115 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
116 result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco
117 Grower Settlement Trust dated July 19, 1999, by (a) tobacco farmers; (b) any person holding a tobacco
118 marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or
119 (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the
120 extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

28. For taxable years beginning on and after January 1, 2000, items of income attributable to, derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of such victim.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

29, 30. [Repealed.]

31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

32. Effective for all taxable years beginning on or after January 1, 2007, the death benefit payments from an annuity contract that are received by a beneficiary of such contract and are subject to federal income taxation.

33. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

34. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

35. (See Editor's note) For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided the business has its principal office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2013. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

36. For taxable years beginning on or after January 1, 2012, income of (i) a third party supplemental needs trust described under Program Operations Manual System (POMS) Section: SI 01120.200 of the U.S. Social Security Administration, the property of which trust is not considered a resource for Supplemental Security Income purposes, or (ii) a trust described under 42 U.S.C. § 1396p(d)(4)(A) or § 1396p(d)(4)(C).

D. In computing Virginia taxable income there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:

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

182 on such federal return and increased by an amount which, when added to the amount deducted under
183 § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for
184 such purposes at a rate of 18 cents per mile; or

185 b. Three thousand dollars for single individuals and \$6,000 for married persons (one-half of such
186 amounts in the case of a married individual filing a separate return) for taxable years beginning on and
187 after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his
188 federal income tax return. For purposes of this section, any person who may be claimed as a dependent
189 on another taxpayer's return for the taxable year may compute the deduction only with respect to earned
190 income.

191 2. a. A deduction in the amount of \$900 for taxable years beginning on and after January 1, 2005,
192 but before January 1, 2008; and \$930 for taxable years beginning on and after January 1, 2008, for each
193 personal exemption allowable to the taxpayer for federal income tax purposes.

194 b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined
195 under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the
196 amount of \$800.

197 The additional deduction for blind or aged taxpayers allowed under this subdivision shall be
198 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income
199 tax purposes.

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

203 4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under
204 permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child
205 as a personal exemption under § 151 of the Internal Revenue Code.

206 5. For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000
207 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be
208 reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000
209 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the
210 deduction will be reduced by \$1 for every \$1 the total combined adjusted federal adjusted gross income
211 of both spouses exceeds \$75,000.

212 For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted
213 gross income minus any benefits received under Title II of the Social Security Act and other benefits
214 subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.

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

219 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
220 during the taxable year for a prepaid tuition contract or savings trust account entered into with the
221 Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as
222 provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable
223 year shall be limited to \$4,000 per prepaid tuition contract or savings trust account. No deduction shall
224 be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or
225 contributor's federal income tax return. If the purchase price or annual contribution to a savings trust
226 account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years
227 until the purchase price or savings trust contribution has been fully deducted; however, except as
228 provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$4,000
229 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained
230 in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in
231 which distributions or refunds are made for any reason other than (i) to pay qualified higher education
232 expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or
233 receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor"
234 means the person shown as such on the records of the Virginia College Savings Plan as of December 31
235 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust
236 account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition
237 contract or savings trust account, including, but not limited to, carryover and recapture of deductions.

238 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January
239 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
240 1998, and shall be subject to the limitations set out in subdivision 7 a.

241 c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained
242 age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000 per
243 prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed a

deduction for the full amount paid for the contract or contributed to a savings trust account, less any amounts previously deducted.

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.

9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subsection shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. For taxable years beginning on and after January 1, 2000, the amount an individual pays annually in premiums for long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes, or a credit under § 58.1-339.11.

11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

a. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.

b. If the payment is received in a single payment, then 10 percent of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

12. For taxable years beginning on and after January 1, 2007, an amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.), not to exceed \$500 in each taxable year, in purchasing for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

13. For taxable years beginning on or after January 1, 2007, the lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such donation, provided the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

14. For taxable years beginning on or after January 1, 2012, the lesser of \$2,000 or the total fair market value of contributions made by the individual during the taxable year to (i) a third party supplemental needs trust described under Program Operations Manual System (POMS) Section: SI 01120.200 of the U.S. Social Security Administration, the property of which trust is not considered a resource for Supplemental Security Income purposes, or (ii) a trust described under 42 U.S.C. § 1396p(d)(4)(A) or § 1396p(d)(4)(C).

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.

G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year

305 begins, the shareholder's allocable share of the income or gain of such electing small business
306 corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal
307 adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S
308 corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for
309 the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or
310 deductions of such electing small business corporation (S corporation).

311 Effective for all taxable years beginning on or after January 1, 2007, to the extent excluded from
312 federal adjusted gross income, there shall be added to federal adjusted gross income by a shareholder of
313 an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed
314 under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the
315 value of any distribution paid or distributed to the shareholder by such electing small business
316 corporation (S corporation).

317 H. Notwithstanding any other provision of law, the income from any disposition of real property
318 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or
319 business, as defined in § 453(l) (1) (B) of the Internal Revenue Code, of property made on or after
320 January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method
321 described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer
322 disposition of the property has been made on or before the due date prescribed by law (including
323 extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in
324 which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or
325 conditions established by the Department, which shall be set forth in guidelines developed by the
326 Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of
327 such income under certain circumstances. The development of the guidelines shall be exempt from the
328 Administrative Process Act (§ 2.2-4000 et seq.).

329 § 58.1-360. Imposition of tax.

330 A tax is hereby annually imposed, at the rates prescribed by § 58.1-320 for individuals, on the
331 Virginia taxable income for each taxable year of every estate and trust. *However, for taxable years*
332 *beginning on or after January 1, 2012, no tax shall be imposed on the Virginia taxable income of (i) a*
333 *third party supplemental needs trust described under Program Operations Manual System (POMS)*
334 *Section: SI 01120.200 of the U.S. Social Security Administration, the property of which trust is not*
335 *considered a resource for Supplemental Security Income purposes, or (ii) a trust described under 42*
336 *U.S.C. § 1396p(d)(4)(A) or § 1396p(d)(4)(C).*