

14102075D

**HOUSE BILL NO. 435**

Offered January 8, 2014

Prefiled January 4, 2014

*A BILL to amend and reenact §§ 58.1-322, 58.1-402, 58.1-3509, and 58.1-3706 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:11 and by adding in Chapter 35 of Title 58.1 an article numbered 2.1, consisting of a section numbered 58.1-3508.6, relating to local license, machinery and tools, and merchants' capital taxes; establishing refundable income tax credits for such taxes and setting maximum local tax rates.*

Patron—LeMunyon

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-322, 58.1-402, 58.1-3509, and 58.1-3706 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:11 and by adding in Chapter 35 of Title 58.1 an article numbered 2.1, consisting of a section numbered 58.1-3508.6, 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.

10. *For taxable years beginning on or after January 1, 2014, but before January 1, 2019, to the extent subtracted or deducted as a business expense in computing federal adjusted gross income for the taxable year there shall be added any (i) business machinery and tools tax, (ii) merchants' capital tax, (iii) local license tax or fee, or (iv) severance license tax for which credit is allowed under § 58.1-439.12:11. The addition to federal adjusted gross income shall be for the full amount of such taxes or fees for which credit is allowed, notwithstanding that the tax credit percentage under § 58.1-439.12:11 is 33 percent. For purposes of this subdivision, "business machinery and tools tax," "merchants' capital tax," "local license tax or fee," and "severance license tax" mean the same as those terms are defined in § 58.1-439.12:11.*

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

INTRODUCED

HB435

59 income taxation solely pursuant to § 86 of the Internal Revenue Code.

60 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed  
61 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on  
62 the basis of permanent and total disability and who is a qualified individual as defined in § 22(b)(2) of  
63 the Internal Revenue Code; however, any person who claims a deduction under subdivision D 5 may not  
64 also claim a subtraction under this subdivision.

65 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as  
66 defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction  
67 under subdivision D 5 may not also claim a subtraction under this subdivision.

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

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

72 7, 8. [Repealed.]

73 9. [Expired.]

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

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

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

86 13. [Repealed.]

87 14. [Expired.]

88 15, 16. [Repealed.]

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

95 18. [Repealed.]

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

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

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

113 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or  
114 exchange of real property or the sale or exchange of an easement to real property which results in the  
115 real property or the easement thereto being devoted to open-space use, as that term is defined in  
116 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in  
117 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation  
118 shall be allowed for three years following the year in which the subtraction is taken.

119 23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic  
120 pay for military service personnel on extended active duty for periods in excess of 90 days; however,

the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds \$30,000.

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

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

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

27. Effective for all taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999, by (a) tobacco farmers; (b) any person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the 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 provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed only for that portion of the death benefit payment that is included in federal adjusted gross income.

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. 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, 2015. 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.

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 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 18 cents per mile; or

b. Three thousand dollars for single individuals and \$6,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) for taxable years beginning on and after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. 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 \$900 for taxable years beginning on and after January 1, 2005, but before January 1, 2008; and \$930 for taxable years beginning on and after January 1, 2008, for each personal exemption allowable to the taxpayer for federal income tax purposes.

b. 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 in the amount of \$800.

The additional deduction for blind or aged taxpayers allowed under this subdivision 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 § 63.2-908, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. a. For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000 for individuals born on or before January 1, 1939.

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

For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any 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, as amended.

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. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to \$4,000 per prepaid tuition contract or savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a savings trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$4,000 per contract or savings trust account. 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. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or savings trust account, including, but not limited to, carryover and recapture of deductions.

b. 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.

c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000 per 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 or 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, for taxable years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on or after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such taxable year for long-term health care insurance premiums paid by him.

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

305 donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal  
306 Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation  
307 is made or the taxable year in which the 12-month period expires.

308 14. For taxable years beginning on or after January 1, 2013, the amount an individual age 66 or  
309 older with earned income of at least \$20,000 for the year and federal adjusted gross income not in  
310 excess of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy  
311 covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers  
312 may claim a deduction for such premiums under federal income tax laws. "Earned income" means the  
313 same as that term is defined in § 32(c) of the Internal Revenue Code of 1954, as amended or  
314 renumbered. The deduction shall not be allowed for any portion of such premiums paid for which the  
315 individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed  
316 a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax  
317 credit or any income tax credit pursuant to this chapter.

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

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

323 G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in  
324 federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a  
325 shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise  
326 tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year  
327 begins, the shareholder's allocable share of the income or gain of such electing small business  
328 corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal  
329 adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S  
330 corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for  
331 the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or  
332 deductions of such electing small business corporation (S corporation).

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

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

351 **§ 58.1-402. Virginia taxable income.**

352 A. For purposes of this article, Virginia taxable income for a taxable year means the federal taxable  
353 income and any other income taxable to the corporation under federal law for such year of a corporation  
354 adjusted as provided in subsections B, C, D, and E.

355 For a regulated investment company and a real estate investment trust, such term means the  
356 "investment company taxable income" and "real estate investment trust taxable income," respectively, to  
357 which shall be added in each case any amount of capital gains and any other income taxable to the  
358 corporation under federal law which shall be further adjusted as provided in subsections B, C, D, and E.

359 B. There shall be added to the extent excluded from federal taxable income:

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

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

3. [Repealed.]

4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by the Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

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

6. [Repealed.]

7. 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;

8. a. For taxable years beginning on and after January 1, 2004, the amount of any intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the intangible expenses and costs if one of the following applies:

(1) The corresponding item of income received by the related member is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government;

(2) The related member derives at least one-third of its gross revenues from the licensing of intangible property to parties who are not related members, and the transaction giving rise to the expenses and costs between the corporation and the related member was made at rates and terms comparable to the rates and terms of agreements that the related member has entered into with parties who are not related members for the licensing of intangible property; or

(3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible expenses and costs meet both of the following: (i) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and (ii) the transaction giving rise to the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

b. A corporation required to add to its federal taxable income intangible expenses and costs pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article for such taxable year including tax upon any amount of intangible expenses and costs required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the transaction or transactions between the corporation and a related member or members that resulted in the corporation's taxable income being increased, as required under subdivision a, for such intangible expenses and costs.

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member or members resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner shall permit the corporation to file an amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and costs without making the adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under

428 § 58.1-446;

429 9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses  
430 and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with  
431 one or more direct or indirect transactions with one or more related members to the extent such  
432 expenses and costs were deductible or deducted in computing federal taxable income for Virginia  
433 purposes. This addition shall not be required for any portion of the interest expenses and costs, if:

434 (1) The related member has substantial business operations relating to interest-generating activities, in  
435 which the related member pays expenses for at least five full-time employees who maintain, manage,  
436 defend or are otherwise responsible for operations or administration relating to the interest-generating  
437 activities; and

438 (2) The interest expenses and costs are not directly or indirectly for, related to or in connection with  
439 the direct or indirect acquisition, maintenance, management, sale, exchange, or disposition of intangible  
440 property; and

441 (3) The transaction giving rise to the expenses and costs between the corporation and the related  
442 member has a valid business purpose other than the avoidance or reduction of taxation and payments  
443 between the parties are made at arm's length rates and terms; and

444 (4) One of the following applies:

445 (i) The corresponding item of income received by the related member is subject to a tax based on or  
446 measured by net income or capital imposed by Virginia, another state, or a foreign government that has  
447 entered into a comprehensive tax treaty with the United States government;

448 (ii) Payments arise pursuant to a pre-existing contract entered into when the parties were not related  
449 members provided the payments continue to be made at arm's length rates and terms;

450 (iii) The related member engages in transactions with parties other than related members that  
451 generate revenue in excess of \$2 million annually; or

452 (iv) The transaction giving rise to the interest payments between the corporation and a related  
453 member was done at arm's length rates and terms and meets any of the following: (a) the related  
454 member uses funds that are borrowed from a party other than a related member or that are paid,  
455 incurred or passed-through to a person who is not a related member; (b) the debt is part of a regular and  
456 systematic funds management or portfolio investment activity conducted by the related member, whereby  
457 the funds of two or more related members are aggregated for the purpose of achieving economies of  
458 scale, the internal financing of the active business operations of members, or the benefit of centralized  
459 management of funds; (c) financing the expansion of the business operations; or (d) restructuring the  
460 debt of related members, or the pass-through of acquisition-related indebtedness to related members.

461 b. A corporation required to add to its federal taxable income interest expenses and costs pursuant to  
462 subdivision a may petition the Tax Commissioner, after filing the related income tax return for the  
463 taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this  
464 article for such taxable year including tax upon any amount of interest expenses and costs required to be  
465 added to federal taxable income pursuant to subdivision a, to consider evidence relating to the  
466 transaction or transactions between the corporation and a related member or members that resulted in the  
467 corporation's taxable income being increased, as required under subdivision a, for such interest expenses  
468 and costs.

469 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and  
470 convincing evidence, that the transaction or transactions between the corporation and a related member  
471 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business  
472 purpose other than the avoidance or reduction of the tax due under this chapter and that the related  
473 payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall  
474 permit the corporation to file an amended return. For purposes of such amended return, the requirements  
475 of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has  
476 identified) that the transaction had a valid business purpose other than the avoidance or reduction of the  
477 tax due under this chapter and that the related payments between the parties were made at arm's length  
478 rates and terms. Such amended return shall be filed by the corporation within one year of the written  
479 permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall  
480 include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall  
481 accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related  
482 member of the corporation that subtracted from taxable income amounts received pursuant to subdivision  
483 C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the  
484 corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions  
485 identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing  
486 evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent  
487 taxable years to deduct the related interest expenses and costs without making the adjustment under  
488 subdivision a.

489 The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of



any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under § 58.1-446.

d. For purposes of subdivision B 9:

"Arm's-length rates and terms" means that (i) two or more related members enter into a written agreement for the transaction, (ii) such agreement is of a duration and contains payment terms substantially similar to those that the related member would be able to obtain from an unrelated entity, (iii) the interest is at or below the applicable federal rate compounded annually for debt instruments under § 1274(d) of the Internal Revenue Code that was in effect at the time of the agreement, and (iv) the borrower or payor adheres to the payment terms of the agreement governing the transaction or any amendments thereto.

"Valid business purpose" means one or more business purposes that alone or in combination constitute the motivation for some business activity or transaction, which activity or transaction improves, apart from tax effects, the economic position of the taxpayer, as further defined by regulation.

10. a. For taxable years beginning on and after January 1, 2009, the amount of dividends deductible under §§ 561 and 857 of the Internal Revenue Code by a Captive Real Estate Investment Trust (REIT). For purposes of this subdivision, a REIT is a Captive REIT if:

(1) It is not regularly traded on an established securities market;

(2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single entity that is (i) a corporation or an association taxable as a corporation under the Internal Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal Revenue Code; and

(3) More than 25 percent of its income consists of rents from real property as defined in § 856(d) of the Internal Revenue Code.

b. For purposes of applying the ownership test of subdivision 10 a (2), the following entities shall not be considered a corporation or an association taxable as a corporation:

(1) Any REIT that is not treated as a Captive REIT;

(2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT subsidiary of a Captive REIT;

(3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or value of the beneficial interests or shares of such trust; and

(4) Any Qualified Foreign Entity.

c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in determining the ownership of stock, assets, or net profits of any person.

d. For purposes of subdivision B 10:

"Listed Australian Property Trust" means an Australian unit trust registered as a Management Investment Scheme, pursuant to the Australian Corporations Act, in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market.

"Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the laws of the United States and that satisfies all of the following criteria:

(1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in § 856(c)(5)(B) of the Internal Revenue Code, thereby including shares or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government securities;

(2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt from entity level tax;

(3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;

(4) The shares or certificates of beneficial interest of such entity are regularly traded on an established securities market or, if not so traded, not more than 10 percent of the voting power or value in such entity is held directly, indirectly, or constructively by a single entity or individual; and

(5) The entity is organized in a country that has a tax treaty with the United States.

551 C. There shall be subtracted to the extent included in and not otherwise subtracted from federal  
552 taxable income:

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

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

560 3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the  
561 Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding  
562 year, or the last year in which such corporation has income, under the provisions of the income tax laws  
563 of the Commonwealth.

564 4. The amount of any refund or credit for overpayment of income taxes imposed by this  
565 Commonwealth or any other taxing jurisdiction.

566 5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue  
567 Code (foreign dividend gross-up).

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

570 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F  
571 income).

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

573 9. [Repealed.]

574 10. The amount of any dividends received from corporations in which the taxpaying corporation  
575 owns 50 percent or more of the voting stock.

576 11. [Repealed.]

577 12, 13. [Expired.]

578 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research  
579 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not  
580 deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code.

581 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in  
582 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1  
583 (§ 22.1-175.1 et seq.) of Title 22.1.

584 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or  
585 exchange of real property or the sale or exchange of an easement to real property which results in the  
586 real property or the easement thereto being devoted to open-space use, as that term is defined in  
587 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in  
588 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation  
589 shall be allowed for three years following the year in which the subtraction is taken.

590 17. For taxable years beginning on and after January 1, 2001, any amount included therein with  
591 respect to § 58.1-440.1.

592 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the  
593 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower  
594 Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a  
595 tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of  
596 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

597 19, 20. [Repealed.]

598 21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses and  
599 costs or interest expenses and costs added to the federal taxable income of a corporation pursuant to  
600 subdivision B 8 or B 9 shall be subtracted from the federal taxable income of the related member that  
601 received such amount if such related member is subject to Virginia income tax on the same amount.

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

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

612 24. 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 must 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 must be made between the dates of April 1, 2010, and June 30, 2015. 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.

25. For taxable years beginning on or after January 1, 2014, but before January 1, 2019, to the extent subtracted or deducted as a business expense in computing federal taxable income for the taxable year there shall be added any (i) business machinery and tools tax, (ii) merchants' capital tax, (iii) local license tax or fee, or (iv) severance license tax for which credit is allowed under § 58.1-439.12:11. The addition to federal taxable income shall be for the full amount of such taxes or fees for which credit is allowed, notwithstanding that the tax credit percentage under § 58.1-439.12:11 is 33 percent. For purposes of this subdivision, "business machinery and tools tax," "merchants' capital tax," "local license tax or fee," and "severance license tax" mean the same as those terms are defined in § 58.1-439.12:11.

D. For taxable years beginning on and after January 1, 2006, there shall be subtracted from federal taxable income contract payments to a producer of quota tobacco or a tobacco quota holder as provided under the American Jobs Creation Act of 2004 (P.L. 108-357) as follows:

1. 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.

2. 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.

E. Adjustments to federal taxable income shall be made to reflect the transitional modifications provided in § 58.1-315.

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

**§ 58.1-439.12:11. Tax credit for business machinery and tools, local license, merchants' capital, severance license taxes.**

A. As used in this section, unless the context requires a different meaning:

"Business machinery and tools tax" means any tax imposed by a county, city, or town on machinery and tools used in a business, regardless of whether such machinery and tools is taxed under Article 2 (§ 58.1-3507 et seq.) or as tangible personal property.

"License year" means the same as that term is defined under § 58.1-3700.1.

"Local license tax or fee" means any tax or fee imposed pursuant to Chapter 37 (§ 58.1-3700 et seq.).

"Merchants' capital tax" means any tax imposed pursuant to § 58.1-3509 or 58.1-3510.6.

"Severance license tax" means any tax imposed pursuant to Chapter 37.1 (§ 58.1-3740 et seq.).

"Tax year" means the 12-month period beginning in the calendar year for which personal property taxes are imposed by the county, city, or town.

B. For taxable years beginning on or after January 1, 2014, but before January 1, 2019, a business shall be allowed a refundable credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to 33 percent of the (i) business machinery and tools tax, (ii) local license tax or fee, (iii) merchants' capital tax, and (iv) severance license tax paid by the business during the taxable year.

Credit shall be allowed under this section solely for (a) business machinery and tools tax or merchants' capital tax for tax years 2014 through 2018, (b) a local license tax or fee paid for license years 2014 through 2018, and (c) a severance license tax imposed for coal that was severed from the

earth in calendar years 2014 through 2018. In no case shall credit be allowed under this section for any interest or penalty, including any penalty that is deemed under law as part of the tax due.

C. In order to claim the credit established under this section, the taxpayer shall attach evidence of the payment of the business machinery and tools tax, merchants' capital tax, local license tax or fee, and severance license tax, as applicable, to the taxpayer's tax return filed with the Department.

D. If the amount of the credit exceeds the total amount of tax imposed upon the business for the taxable year by § 58.1-320 or 58.1-400, the excess shall be refunded by the Tax Commissioner. Tax credits shall be refunded by the Tax Commissioner on behalf of the Commonwealth for 100 percent of face value.

E. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

#### Article 2.1.

#### Maximum Tax on Machinery and Tools.

##### § 58.1-3508.6. Maximum tax on machinery and tools.

No rate or assessment ratio in any county, city, or town on any classification or subclassification of machinery and tools used in a business shall be greater than such rate and ratio applicable to such classification or subclassification as of January 1, 2014, regardless of whether such business machinery and tools is taxed under Article 2 (§ 58.1-3507 et seq.) or as tangible personal property.

##### § 58.1-3509. Merchants' capital subject to local taxation; rate limit.

The capital of merchants is segregated for local taxation only; however, no county, city, or town shall be required to impose a tax on such capital. However, no rate or assessment ratio in any county, city, or town for merchants' capital shall be greater than such rate and ratio as was in effect in such county, city, or town on January 1, 1978. Further, no rate or assessment ratio in any county, city, or town on any classification or subclassification of merchants' capital shall be greater than such rate and ratio applicable to such classification or subclassification as of January 1, 2014.

##### § 58.1-3706. Limitation on rate of license taxes.

A. Except as specifically provided in this section and except for the fee authorized in § 58.1-3703, no local license tax imposed pursuant to the provisions of this chapter, except §§ 58.1-3712, 58.1-3712.1, and 58.1-3713, or any other provision of this title or any charter, shall be imposed on any person whose gross receipts from a business, profession, or occupation subject to licensure are less than: (i) \$100,000 in any locality with a population greater than 50,000; or (ii) \$50,000 in any locality with a population of 25,000 but no more than 50,000. Any business with gross receipts of more than \$100,000, or \$50,000, as applicable, may be subject to the tax at a rate not to exceed the rate set forth below for the class of enterprise listed:

1. For contracting, and persons constructing for their own account for sale, sixteen cents per \$100 of gross receipts;

2. For retail sales, twenty cents per \$100 of gross receipts;

3. For financial, real estate and professional services, fifty-eight cents per \$100 of gross receipts; and

4. For repair, personal and business services, and all other businesses and occupations not specifically listed or excepted in this section, thirty-six cents per \$100 of gross receipts.

The rate limitations prescribed in this section shall not be applicable to license taxes on (i) wholesalers, which shall be governed by § 58.1-3716; (ii) public service companies, which shall be governed by § 58.1-3731; (iii) carnivals, circuses and speedways, which shall be governed by § 58.1-3728; (iv) fortune-tellers, which shall be governed by § 58.1-3726; (v) massage parlors; (vi) itinerant merchants or peddlers, which shall be governed by § 58.1-3717; (vii) permanent coliseums, arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public, which shall be governed by § 58.1-3729; (viii) savings institutions and credit unions, which shall be governed by § 58.1-3730; (ix) photographers, which shall be governed by § 58.1-3727; and (x) direct sellers, which shall be governed by § 58.1-3719.1.

B. Any county, city or town which had, on January 1, 1978, a license tax rate, for any of the categories listed in subsection A, higher than the maximum prescribed in subsection A may maintain a higher rate in such category, but no higher than the rate applicable on January 1, 1978, subject to the following conditions:

1. A locality may not increase a rate on any category which is at or above the maximum prescribed for such category in subsection A.

2. If a locality increases the rate on a category which is below the maximum, it shall apply all revenue generated by such increase to reduce the rate on a category or categories which are above such maximum.

3. A locality shall lower rates on categories which are above the maximums prescribed in subsection A for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year thereafter, than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of revenue

received from all categories in tax year 1980, plus one-third of the amount, if any, by which such revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If in any tax year the amount of revenues received from all categories exceeds the revenue base for such year, the rates shall be adjusted as follows: The revenues of those categories with rates at or below the maximum shall be subtracted from the revenue base for such year. The resulting amount shall be allocated to the category or categories with rates above the maximum in a manner determined by the locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates shall be applicable to such category or categories for the second tax year following the year whose revenue was used to make the calculation.

C. Any person engaged in the short-term rental business as defined in § 58.1-3510.4 shall be classified in the category of retail sales for license tax rate purposes.

D. 1. Any person, firm, or corporation designated as the principal or prime contractor receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences shall be subject to a license tax rate not to exceed three cents per \$100 of such federal funds received in payment of such contracts upon documentation provided by such person, firm, or corporation to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

2. Any gross receipts properly reported to a Virginia locality, classified for license tax purposes by that locality in accordance with subdivision 1 of this subsection, and on which a license tax is due and paid, or which gross receipts defined by subdivision 1 of this subsection are properly reported to but exempted by a Virginia locality from taxation, shall not be subject to local license taxation by any other locality in the Commonwealth.

3. Notwithstanding the provisions of subdivision D 1, in any county operating under the county manager plan of government, the following shall govern the taxation of the licensees described in subdivision D 1. Persons, firms, or corporations designated as the principal or prime contractors receiving identifiable federal appropriations for research and development services as defined in § 31.205-18 (a) of the Federal Acquisition Regulation in the areas of (i) computer and electronic systems, (ii) computer software, (iii) applied sciences, (iv) economic and social sciences, and (v) electronic and physical sciences may be separately classified by any such county and subject to tax at a license tax rate not to exceed the limits set forth in subsections A through C above as to such federal funds received in payment of such contracts upon documentation provided by such persons, firms, or corporations to the local commissioner of revenue or finance officer confirming the applicability of this subsection.

E. In any case in which the Department of Mines, Minerals and Energy determines that the weekly U.S. Retail Gasoline price (regular grade) for PADD 1C (Petroleum Administration for Defense District - Lower Atlantic Region) has increased by 20% or greater in any one-week period over the immediately preceding one-week period and does not fall below the increased rate for at least 28 consecutive days immediately following the week of such increase, then, notwithstanding any tax rate on retailers imposed by the local ordinance, the gross receipts taxes on fuel sales of a gas retailer made in the following license year shall not exceed 110% of the gross receipts taxes on fuel sales made by such retailer in the license year of such increase. For license years beginning on or after January 1, 2006, every gas retailer shall maintain separate records for fuel sales and nonfuel sales and shall make such records available upon request by the local tax official.

The provisions of this subsection shall not apply to any person or entity (i) not conducting business as a gas retailer in the county, city, or town for the entire license year immediately preceding the license year of such increase or (ii) that was subject to a license fee in the county, city, or town pursuant to § 58.1-3703 for the license year immediately preceding the license year of such increase.

The Department of Mines, Minerals and Energy shall determine annually if such increase has occurred and remained in effect for such 28-day period.

*F. Notwithstanding any other provision of law, a locality shall not impose a fee pursuant to this chapter on any classification or subclassification of business in excess of the rate of the fee imposed by the locality on the classification or subclassification as of January 1, 2014. Nor shall a locality impose a tax pursuant to this chapter on any classification or subclassification of business in excess of the rate of the tax imposed by the locality on the classification or subclassification as of January 1, 2014. The provisions of this subsection shall not be construed or interpreted as prohibiting a locality from imposing a local license tax on the Virginia taxable income of a business pursuant to § 58.1-3702, provided that the tax shall not exceed the rate of tax imposed by the locality on the classification or subclassification of business as of January 1, 2014. Any locality that imposes a local license tax on*

797 *Virginia taxable income on or after January 1, 2014, may not thereafter impose such tax on gross*  
798 *receipts.*

799 **2. That the Department of Taxation shall develop and make publicly available guidelines**  
800 **implementing the provisions of this act. In developing such guidelines, the Department shall not be**  
801 **subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of**  
802 **Virginia).**