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HOUSE BILL NO. 110

Offered January 13, 2016

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A BILL to amend and reenact §§ 58.1-322 and 58.1-402 of the Code of Virginia, relating to Virginia taxable income; add back of deduction or subtraction for certain expenses or payments incurred on behalf of employees employed pursuant to an H-1B visa.

Patron—Cole

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-322 and 58.1-402 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;

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 [Repealed.]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; ~~and~~

10. For taxable years beginning on and after January 1, 2014, any loss for the taxable year that was deducted as a capital loss for federal income tax purposes by an account holder attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55. For purposes of this subdivision, "account holder" and "first-time home buyer savings account" mean the same as those terms are defined in § 55-555; *and*

11. *For taxable years beginning on or after January 1, 2016, wages, salaries, and other benefits paid or incurred by a sole proprietor or a pass-through entity as defined under § 58.1-390.1 on behalf of employees employed pursuant to an H-1B visa granted by U. S. Citizenship and Immigration Services. The amount added to federal adjusted gross income shall equal the amount of such wages, salaries, and other benefits deducted or subtracted for the taxable year in computing the net income of such sole proprietorship or pass-through entity. However, in the case of a pass-through entity, the amount added to federal adjusted gross income by the individual shall be (i) a proportional amount based on his ownership share or interest in such entity or (ii) in accordance with a written agreement of the owners of the pass-through entity, provided that the aggregate amount of such wages, salaries, and other benefits deducted or subtracted for the taxable year in computing the net income of the pass-through entity is added back to income for the taxable year for Virginia income tax purposes.*

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.]

INTRODUCED

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

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

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

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

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

73 7, 8. [Repealed.]

74 9. [Expired.]

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

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, but before January 1, 2015, the gain
114 derived from the sale or exchange of real property or the sale or exchange of an easement to real
115 property which results in the real property or the easement thereto being devoted to open-space use, as
116 that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a
117 subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating
118 land for its preservation shall be allowed for three years following the year in which the subtraction is
119 taken.

120 23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic

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, 2020. 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 and after January 1, 2014, any income of an account holder for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.

Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or funds withdrawn from the first-time home buyer savings account were used for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to the total balance in the account at such time.

However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330, or (iii) transferred from an account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 into another account established pursuant to such chapter for the benefit of another qualified beneficiary.

For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings account," and "qualified beneficiary" mean the same as those terms are defined in § 55-555.

37. For taxable years beginning on or after January 1, 2015, any income for the taxable year attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal Revenue Code.

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.

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

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

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

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

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

279 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January
280 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1,
281 1998, and shall be subject to the limitations set out in subdivision 7 a.

282 c. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who has
283 attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000
284 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be
285 allowed a deduction for the full amount paid for the contract or contributed to a college savings trust
286 account, less any amounts previously deducted.

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

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

297 10. For taxable years beginning on or after January 1, 2000, the amount an individual pays annually
298 in premiums for long-term health care insurance, provided the individual has not claimed a deduction for
299 federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under
300 § 58.1-339.11. For taxable years beginning on or after January 1, 2014, no such deduction for long-term
301 health care insurance premiums paid by the individual during the taxable year shall be allowed if the
302 individual has claimed a federal income tax deduction for such taxable year for long-term health care
303 insurance premiums paid by him.

304 11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of

305 quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation
306 Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant
307 to subsection D of § 58.1-402, as follows:

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

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

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

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

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

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

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

350 G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in
351 federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a
352 shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise
353 tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year
354 begins, the shareholder's allocable share of the income or gain of such electing small business
355 corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal
356 adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S
357 corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for
358 the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or
359 deductions of such electing small business corporation (S corporation).

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

366 H. 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.).

§ 58.1-402. Virginia taxable income.

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

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

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

1. Interest, less related expenses to the extent not deducted in determining federal taxable 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 the Commonwealth 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. [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 § 58.1-446;

9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest 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 interest expenses and costs, if:

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

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

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

(4) One of the following applies:

(i) 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;

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

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

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

b. A corporation required to add to its federal taxable income interest 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 interest 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 interest 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 and that the related payments between the parties were made at arm's length rates and terms, 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 and that the related payments between the parties were made at arm's length rates and terms. 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 interest 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 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;

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

554 (4) Any Qualified Foreign Entity.

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

558 d. For purposes of subdivision B 10:

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

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

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

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

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

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

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

578 *11. For taxable years beginning on or after January 1, 2016, wages, salaries, and other benefits*
579 *paid or incurred by the corporation on behalf of its employees employed pursuant to an H-1B visa*
580 *granted by U. S. Citizenship and Immigration Services, to the extent that such wages, salaries, and*
581 *other benefits were deducted or subtracted for the taxable year in computing federal taxable income.*

582 *In addition, in the case of a pass-through entity as defined under § 58.1-390.1 that is owned in*
583 *whole or in part by the corporation, there shall also be added in computing the Virginia taxable income*
584 *of the corporation an amount that is (i) equal to a proportional amount of such wages, salaries, and*
585 *other benefits paid or incurred by the pass-through entity based on the corporation's ownership share or*
586 *interest in such entity or (ii) in accordance with a written agreement of the owners of the pass-through*
587 *entity, provided that the aggregate amount of such wages, salaries, and other benefits deducted or*
588 *subtracted for the taxable year in computing the net income of the pass-through entity is added back to*
589 *income for the taxable year for Virginia income tax purposes.*

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

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

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

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

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

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

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

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

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

612 9. [Repealed.]

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

11. [Repealed.]

12, 13. [Expired.]

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

15. For taxable years beginning on or after January 1, 2000, the total amount 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.

16. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

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

18. For 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 farming businesses; (b) any business holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

19, 20. [Repealed.]

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

22. 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.

23. 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.

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, 2020. 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. 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.

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

686 **2. That the Tax Commissioner shall develop and make publicly available guidelines implementing**
687 **the provisions of this act. Such guidelines shall be exempt from the provisions of the**
688 **Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).**