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HOUSE BILL NO. 2086

Offered January 7, 2019

A BILL to amend and reenact §§ 58.1-301, 58.1-322.03, 58.1-339.8, and 63.2-527 of the Code of Virginia, relating to income tax; conformity; increase in standard deduction; refundable income tax credit for low-income taxpayers; emergency.

Patrons—Watts, Kory and Toscano

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-301, 58.1-322.03, 58.1-339.8, and 63.2-527 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-301. Conformity to Internal Revenue Code.

A. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.

B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as they existed on ~~February 9~~ *December 31*, 2018, except for:

1. The special depreciation allowance for certain property provided for under §§ 168(k), 168(l), 168(m), 1400L, and 1400N of the Internal Revenue Code;

2. The carry-back of certain net operating losses for five years under § 172(b)(1)(H) of the Internal Revenue Code;

3. The original issue discount on applicable high yield discount obligations under § 163(e)(5)(F) of the Internal Revenue Code;

4. The deferral of certain income under § 108(i) of the Internal Revenue Code. For Virginia income tax purposes, income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument" (as defined under § 108(i) of the Internal Revenue Code) reacquired in the taxable year shall be fully included in the taxpayer's Virginia taxable income for the taxable year, unless the taxpayer elects to include such income in the taxpayer's Virginia taxable income ratably over a three-taxable-year period beginning with taxable year 2009 for transactions completed in taxable year 2009, or over a three-taxable-year period beginning with taxable year 2010 for transactions completed in taxable year 2010 on or before April 21, 2010. For purposes of such election, all other provisions of § 108(i) of the Internal Revenue Code shall apply mutatis mutandis. No other deferral shall be allowed for income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument"; *and*

5. ~~The amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code for taxable years beginning on or after January 1, 2010. For Virginia income tax purposes, two-thirds of the amount deducted pursuant to § 199 of the Internal Revenue Code for federal income tax purposes during the taxable year may be deducted for Virginia income tax purposes for taxable years beginning on and after January 1, 2010. For taxable years beginning on and after January 1, 2013, the entire amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code may be deducted for Virginia income tax purposes;~~

~~6. The provisions of the Tax Cuts and Jobs Act (the Act) enacted December 22, 2017, as Public Law 115-97, provided, however, that this exception shall not apply to the following:~~

~~a. Treatment of certain individuals performing services in the Sinai Peninsula of Egypt pursuant to § 11026 of the Act;~~

~~b. Relief for 2016 disaster areas pursuant to § 11028 of the Act;~~

~~c. Any other provision of the Act that affects the computation of federal adjusted gross income of individuals or federal taxable income of corporations for taxable years beginning after December 31, 2016, and before January 1, 2018, other than the temporary reduction in the medical expense deduction floor pursuant to § 11027 of the Act; and~~

~~7. The provisions of the Bipartisan Budget Act of 2018 enacted February 9, 2018, as Public Law 115-123, that affect any taxable year other than a taxable year beginning after December 31, 2016, and before January 1, 2018~~

For taxable years beginning on and after January 1, 2018, but before January 1, 2026, the provisions of § 11046 of the Tax Cuts and Jobs Act, P.L. 115-97, related to the suspension of the *overall limitation of itemized deductions.*

The Department of Taxation is hereby authorized to develop procedures or guidelines for implementation of the provisions of this section, which procedures or guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-322.03. Virginia taxable income; deductions.

In computing Virginia taxable income pursuant to § 58.1-322, 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 that, 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), provided~~ *Provided* that the taxpayer has not itemized deductions for the taxable year on his federal income tax return*: (i) for taxable years beginning before January 1, 2018, and on and after January 1, 2026, $3,000 for single individuals and $6,000 for married persons (one-half of such amount in the case of a married individual filing a separate return); (ii) for taxable years beginning on and after January 1, 2018, but before January 1, 2019, $4,500 for single individuals and $9,000 for married persons (one-half of such amount in the case of a married individual filing a separate return); and (iii) for taxable years beginning on and after January 1, 2019, but before January 1, 2026, an amount equal to the deductions set forth in clause (ii), adjusted each year by the percentage, if any, by which the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as published by the U.S. Department of Labor or any successor index, for the most recent calendar year differs from the C-CPI-U published at the close of the 12-month period ending on December 31, 2018. In no case shall the amount of the adjusted deduction be less than the amounts set forth in clause (ii)*. 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 $930 for each personal exemption allowable to the taxpayer for federal income tax purposes.

b. 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 that the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. a. A deduction in the amount of $12,000 for individuals born on or before January 1, 1939.

b. 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 shall be reduced by $1 for every $1 that 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. 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 college savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided in subdivision b, the amount deducted on any individual income tax return in any taxable year shall be limited to $4,000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant to this subdivision 7 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 college savings trust account exceeds $4,000, the remainder may be carried forward and subtracted in

future taxable years until the purchase price or college savings trust contribution has been fully deducted; however, except as provided in subdivision b, in no event shall the amount deducted in any taxable year exceed $4,000 per contract or college 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, "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 college savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or college savings trust account, including, but not limited to, carryover and recapture of deductions.

b. A purchaser of a prepaid tuition contract or contributor to a college 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 college 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 college savings trust account, less any amounts previously deducted.

8. 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 that the individual has not claimed a deduction for such amount on his federal income tax return.

9. 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 subdivision 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. The amount an individual pays annually in premiums for long-term health care insurance, provided that 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 and 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. 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 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. 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 U.S. Environmental Protection Agency and the U.S. 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. 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 that the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period

expires.

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

§ 58.1-339.8. Income tax credit for low-income taxpayers.

A. As used in this section, unless the context requires otherwise:

"Family Virginia adjusted gross income" means the combined Virginia adjusted gross income of an individual, the individual's spouse, and any person claimed as a dependent on the individual's or his spouse's income tax return for the taxable year.

"Household" means an individual or, in the case of married persons, an individual and his spouse, regardless of whether or not the individual and his spouse file combined or separate Virginia individual income tax returns.

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Virginia adjusted gross income" has the same meaning as the term is defined in § 58.1-321.

B. 1. For taxable years beginning on and after January 1, 2000, any individual or persons filing a joint return whose family Virginia adjusted gross income does not exceed 100 percent of the poverty guideline amount corresponding to a household of an equal number of persons as listed in the poverty guidelines published during such taxable year, shall be allowed a credit against the tax levied pursuant to § 58.1-320 in an amount equal to $300 each for the individual, the individual's spouse, and any person claimed as a dependent on the individual's or married persons' income tax return for the taxable year. For any taxable year in which a husband and wife file separate Virginia income tax returns, the credit provided under this section shall be allowed against the tax for only one of such two tax returns. Additionally, the credit provided under this section shall not be allowed against such tax of a dependent of the individual or of married persons.

2. For taxable years beginning on and after January 1, 2006, any individual or married persons, eligible for a tax credit pursuant to § 32 of the Internal Revenue Code, may for the taxable year, in lieu of the credit authorized under subdivision B 1, claim a credit against the tax imposed pursuant to § 58.1-320 in an amount equal to 20 percent of the credit claimed by the individual or married persons for federal individual income taxes pursuant to § 32 of the Internal Revenue Code for the taxable year. In no case shall a household be allowed a credit pursuant to this subdivision and subdivision B 1 for the same taxable year.

~~For purpose of this subdivision, "household" means an individual and in the case of married persons, the individual and his spouse regardless of whether or not the individual and his spouse file combined or separate Virginia individual income tax returns.~~

C. *1.* The amount of the credit provided pursuant to ~~subsection~~ *subdivision* B *1* for any taxable year shall not exceed the individual's or married persons' Virginia income tax liability.

2. For taxable years beginning before January 1, 2018, the amount of credit provided pursuant to subdivision B 2 shall not exceed the individual's or married persons' Virginia income tax liability.

3. a. For taxable years beginning on and after January 1, 2018, a portion of the credit provided pursuant to subdivision B 2 in excess of the individual's or married persons' Virginia income tax liability shall be refundable as specified in subdivisions b through l. The refundable portion of the credit provided pursuant to this subdivision 3 shall be claimed on the Virginia income tax return and redeemed by the Tax Commissioner. The refundable portion of the credit provided pursuant to subdivision B 2 shall be as follows:

b. For taxable years beginning on and after January 1, 2018, but before January 1, 2019, 50 percent of such credit.

c. For taxable years beginning on and after January 1, 2019, but before January 1, 2020, 55 percent of such credit.

d. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, 60 percent of such credit.

e. For taxable years beginning on and after January 1, 2021, but before January 1, 2022, 65 percent of such credit.

f. For taxable years beginning on and after January 1, 2022, but before January 1, 2023, 70 percent *of such credit.*

g. For taxable years beginning on and after January 1, 2023, but before January 1, 2024, 75 percent of such credit.

h. For taxable years beginning on and after January 1, 2024, but before January 1, 2025, 80 percent of such credit.

i. For taxable years beginning on and after January 1, 2025, but before January 1, 2026, 85 percent of such credit.

j. For taxable years beginning on and after January 1, 2026, but before January 1, 2027, 90 percent of such credit.

k. For taxable years beginning on and after January 1, 2027, but before January 1, 2028, 95 percent of such credit.

l. For taxable years beginning on and after January 1, 2028, 100 percent of such credit.

D. Notwithstanding any other provision of this section, no credit shall be allowed pursuant to subsection B in any taxable year in which the individual, the individual's spouse, or both, or any person claimed as a dependent on such individual's or married persons' income tax return, claims one or any combination of the following on his or their income tax return for such taxable year:

1. The subtraction under subdivision 8 of § 58.1-322.02;

2. The subtraction under subdivision 15 of § 58.1-322.02;

3. The subtraction under subdivision 16 of § 58.1-322.02;

4. The deduction for the additional personal exemption for blind or aged taxpayers under subdivision 2 b of § 58.1-322.03; or

5. The deduction under subdivision 5 of § 58.1-322.03.

§ 63.2-527. Notice of earned income tax credit.

The Department shall provide notice regarding the availability of the federal earned income tax credit authorized in § 32 of the Internal Revenue Code and the state ~~earned~~ income tax credit *for low-income taxpayers* authorized in ~~subdivision B 2 of~~ § 58.1-339.8 to all recipients of Temporary Assistance for Needy Families pursuant to Chapter 6 (§ 63.2-600 et seq.), food stamps pursuant to § 63.2-801, or medical assistance pursuant to § 32.1-325 who had earned income in the prior tax year based on information available through the Virginia Employment Commission and, according to information made available by the Virginia Department of Taxation, either did not file federal or state income taxes or filed taxes and did not claim the federal or state earned income tax credit. Notice shall be distributed to recipients annually and shall include information on the qualifying income levels, the amount of credit available, the process for applying for the credit, and the availability of assistance in applying for the credit.

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

3. That the provisions of this act amending § 58.1-301 of the Code of Virginia shall be effective only for taxable years beginning on and after January 1, 2018.

INTRODUCED

HB2086