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SENATE BILL NO. 1256

Offered January 9, 2019

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A BILL to amend and reenact §§ 58.1-322.02 and 58.1-402 of the Code of Virginia, relating to Virginia taxable income; subtraction for gain from taking by eminent domain.

Patron—Ruff

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-322.02 and 58.1-402 of the Code of Virginia are amended and reenacted as follows: § 58.1-322.02. Virginia taxable income; subtractions.

In computing Virginia taxable income pursuant to § 58.1-322, 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 the Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

3. 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.

4. Up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also claim a subtraction under this subdivision.

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

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

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

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

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

10. The amount of "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 and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

11. Any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a

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59 scholarship.

60 13. All military pay and allowances, to the extent included in federal adjusted gross income and not  
61 otherwise subtracted, deducted, or exempted under this section, earned by military personnel while  
62 serving by order of the President of the United States with the consent of Congress in a combat zone or  
63 qualified hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112  
64 of the Internal Revenue Code.

65 14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange  
66 of real property or the sale or exchange of an easement to real property which results in the real  
67 property or the easement thereto being devoted to open-space use, as that term is defined in §  
68 58.1-3230, for a period of time not less than 30 years. To the extent that a subtraction is taken in  
69 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation  
70 shall be allowed for three years following the year in which the subtraction is taken.

71 15. Fifteen thousand dollars of military basic pay for military service personnel on extended active  
72 duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar  
73 by the amount by which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero  
74 if such military basic pay amount is equal to or exceeds \$30,000.

75 16. The first \$15,000 of salary for each federal and state employee whose total annual salary from all  
76 employment for the taxable year is \$15,000 or less.

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

78 18. Any amount received as military retirement income by an individual awarded the Congressional  
79 Medal of Honor.

80 19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from,  
81 hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii)  
82 damages, reparations, or other consideration received by a victim or target of Nazi persecution to  
83 compensate such individual for performing labor against his will under the threat of death, during World  
84 War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such  
85 items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost  
86 to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The  
87 provisions of this subdivision shall only apply to an individual who was the first recipient of such items  
88 of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or  
89 stepchild of such victim.

90 As used in this subdivision:

91 "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those  
92 European countries allied with Nazi Germany, or any other neutral European country or area in Europe  
93 under the influence or threat of Nazi invasion.

94 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by  
95 the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or  
96 omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath,  
97 (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution,  
98 or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II  
99 and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual  
100 forced into labor against his will, under the threat of death, during World War II and its prelude and  
101 direct aftermath.

102 20. The military death gratuity payment made after September 11, 2001, to the survivor of deceased  
103 military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the subtraction  
104 amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal  
105 gross income in accordance with § 134 of the Internal Revenue Code.

106 21. The death benefit payments from an annuity contract that are received by a beneficiary of such  
107 contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an  
108 insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under  
109 this subdivision shall be allowed only for that portion of the death benefit payment that is included in  
110 federal adjusted gross income.

111 22. Any gain recognized from the sale of launch services to space flight participants, as defined in  
112 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of  
113 a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch  
114 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

115 23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined  
116 in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the  
117 National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8,  
118 and launched from an airport or spaceport in Virginia.

119 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income  
120 taxed as investment services partnership interest income (otherwise known as investment partnership

121 carried interest income) for federal income tax purposes. To qualify for a subtraction under this  
 122 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in  
 123 § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided  
 124 that the business has its principal office or facility in the Commonwealth and less than \$3 million in  
 125 annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this  
 126 subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No  
 127 taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4  
 128 shall be eligible for the subtraction under this subdivision for an investment in the same business.

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

134 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction  
 135 taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys  
 136 or funds withdrawn from the first-time home buyer savings account were used for any purpose other  
 137 than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under  
 138 § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable  
 139 year that was used for other than the payment of eligible costs, computed by multiplying the amount  
 140 withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in  
 141 the account at the time of the withdrawal to the total balance in the account at such time.

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

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

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

154 27. a. Income, including investment services partnership interest income (otherwise known as  
 155 investment partnership carried interest income), attributable to an investment in a Virginia venture  
 156 capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or  
 157 after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this  
 158 subdivision for an investment in a company that is owned or operated by a family member or an  
 159 affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has  
 160 claimed a subtraction under subdivision 24 or a tax credit under § 58.1-339.4 for the same investment.

161 b. As used in this subdivision 27:

162 "Qualified portfolio company" means a company that (i) has its principal place of business in the  
 163 Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or  
 164 service other than the management or investment of capital; and (iii) provides equity in the company to  
 165 the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company"  
 166 does not include a company that is an individual or sole proprietorship.

167 "Virginia venture capital account" means an investment fund that has been certified by the  
 168 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital  
 169 account, the operator of the investment fund shall register the investment fund with the Department prior  
 170 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed  
 171 to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one  
 172 investor who has at least four years of professional experience in venture capital investment or  
 173 substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to,  
 174 an undergraduate degree from an accredited college or university in economics, finance, or a similar  
 175 field of study. The Department may require an investment fund to provide documentation of the  
 176 investor's training, education, or experience as deemed necessary by the Department to determine  
 177 substantial equivalency. If the Department determines that the investment fund employs at least one  
 178 investor with the experience set forth herein, the Department shall certify the investment fund as a  
 179 Virginia venture capital account at such time as the investment fund actually invests at least 50 percent  
 180 of the capital committed to its fund in qualified portfolio companies.

181 28. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a

182 subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before  
183 December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by a  
184 family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for  
185 a taxpayer who has claimed a subtraction under subdivision 24 or 27 or a tax credit under § 58.1-339.4  
186 for the same investment.

187 b. As used in this subdivision 28:

188 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of  
189 § 2.2-115.

190 "Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3  
191 of § 2.2-115.

192 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.  
193 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be  
194 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department  
195 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in  
196 Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double  
197 distressed. If the Department determines that the trust satisfies the preceding criteria, the Department  
198 shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests  
199 at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in  
200 localities that are distressed or double distressed.

201 29. *For taxable years beginning on and after January 1, 2019, any gain recognized from the taking*  
202 *of real property by condemnation proceedings.*

203 **§ 58.1-402. Virginia taxable income.**

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

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

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

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

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

219 3. [Repealed.]

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

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

224 6. [Repealed.]

225 7. The amount required to be included in income for the purpose of computing the partial tax on an  
226 accumulation distribution pursuant to § 667 of the Internal Revenue Code;

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

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

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

241 (3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible  
242 expenses and costs meet both of the following: (i) the related member during the same taxable year  
243 directly or indirectly paid, accrued or incurred such portion to a person who is not a related member,

244 and (ii) the transaction giving rise to the intangible expenses and costs between the corporation and the  
 245 related member did not have as a principal purpose the avoidance of any portion of the tax due under  
 246 this chapter.

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

255 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and  
 256 convincing evidence, that the transaction or transactions between the corporation and a related member  
 257 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business  
 258 purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner  
 259 shall permit the corporation to file an amended return. For purposes of such amended return, the  
 260 requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is  
 261 satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance  
 262 or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation  
 263 within one year of the written permission granted by the Tax Commissioner and any refund of the tax  
 264 imposed under this article shall include interest at a rate equal to the rate of interest established under  
 265 § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of  
 266 such amended return, any related member of the corporation that subtracted from taxable income  
 267 amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on  
 268 that portion of such amounts for which the corporation has filed an amended return pursuant to this  
 269 subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he  
 270 has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation  
 271 in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and  
 272 costs without making the adjustment under subdivision a.

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

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

279 c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under  
 280 § 58.1-446;

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

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

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

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

296 (4) One of the following applies:

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

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

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

304 (iv) The transaction giving rise to the interest payments between the corporation and a related

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

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

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

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

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

347 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under  
348 § 58.1-446.

349 d. For purposes of subdivision B 9:

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

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

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

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

364 (2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at  
365 any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a  
366 single entity that is (i) a corporation or an association taxable as a corporation under the Internal

367 Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal  
368 Revenue Code; and

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

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

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

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

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

379 (4) Any Qualified Foreign Entity.

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

383 d. For purposes of subdivision B 10:

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

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

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

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

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

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

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

403 e. For taxable years beginning on or after January 1, 2016, for purposes of subdivision B 10, any  
404 voting power or value of the beneficial interests or shares in a REIT that is held in a segregated asset  
405 account of a life insurance corporation as described in § 817 of the Internal Revenue Code shall not be  
406 taken into consideration when determining if such REIT is a Captive REIT.

407 11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed  
408 for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax  
409 deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.

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

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

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

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

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

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

427 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not

- 428 deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.  
429 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F  
430 income).
- 431 8. Any amount included therein which is foreign source income as defined in § 58.1-302.  
432 9. [Repealed.]
- 433 10. The amount of any dividends received from corporations in which the taxpaying corporation  
434 owns 50 percent or more of the voting stock.
- 435 11. [Repealed.]  
436 12, 13. [Expired.]
- 437 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research  
438 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not  
439 deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code.
- 440 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in  
441 funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1  
442 (§ 22.1-175.1 et seq.) of Title 22.1.
- 443 16. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain  
444 derived from the sale or exchange of real property or the sale or exchange of an easement to real  
445 property which results in the real property or the easement thereto being devoted to open-space use, as  
446 that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a  
447 subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating  
448 land for its preservation shall be allowed for three years following the year in which the subtraction is  
449 taken.
- 450 17. For taxable years beginning on and after January 1, 2001, any amount included therein with  
451 respect to § 58.1-440.1.
- 452 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the  
453 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower  
454 Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a  
455 tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of  
456 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.
- 457 19, 20. [Repealed.]
- 458 21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses and  
459 costs or interest expenses and costs added to the federal taxable income of a corporation pursuant to  
460 subdivision B 8 or B 9 shall be subtracted from the federal taxable income of the related member that  
461 received such amount if such related member is subject to Virginia income tax on the same amount.
- 462 22. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of  
463 launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended  
464 to provide individuals the training or experience of a launch, without performing an actual launch. To  
465 qualify for a deduction under this subdivision, launch services must be performed in Virginia or  
466 originate from an airport or spaceport in Virginia.
- 467 23. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of  
468 resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the  
469 Commercial Orbital Transportation Services division of the National Aeronautics and Space  
470 Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or  
471 spaceport in Virginia.
- 472 24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital  
473 gain for federal income tax purposes, or any income taxed as investment services partnership interest  
474 income (otherwise known as investment partnership carried interest income) for federal income tax  
475 purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an  
476 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business  
477 approved by the Secretary of Technology, provided the business has its principal office or facility in the  
478 Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To  
479 qualify for a subtraction under this subdivision, the investment must be made between the dates of April  
480 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified  
481 business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an  
482 investment in the same business.
- 483 25. a. Income, including investment services partnership interest income (otherwise known as  
484 investment partnership carried interest income), attributable to an investment in a Virginia venture  
485 capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or  
486 after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this  
487 subdivision for an investment in a company that is owned or operated by an affiliate of the taxpayer. No  
488 subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under  
489 subdivision C 24 for the same investment.

490 b. As used in this subdivision 25:

491 "Qualified portfolio company" means a company that (i) has its principal place of business in the  
 492 Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or  
 493 service other than the management or investment of capital; and (iii) provides equity in the company to  
 494 the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company"  
 495 does not include a company that is an individual or sole proprietorship.

496 "Virginia venture capital account" means an investment fund that has been certified by the  
 497 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital  
 498 account, the operator of the investment fund shall register the investment fund with the Department prior  
 499 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed  
 500 to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one  
 501 investor who has at least four years of professional experience in venture capital investment or  
 502 substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to,  
 503 an undergraduate degree from an accredited college or university in economics, finance, or a similar  
 504 field of study. The Department may require an investment fund to provide documentation of the  
 505 investor's training, education, or experience as deemed necessary by the Department to determine  
 506 substantial equivalency. If the Department determines that the investment fund employs at least one  
 507 investor with the experience set forth herein, the Department shall certify the investment fund as a  
 508 Virginia venture capital account at such time as the investment fund actually invests at least 50 percent  
 509 of the capital committed to its fund in qualified portfolio companies.

510 26. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a  
 511 subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before  
 512 December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by an  
 513 affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has  
 514 claimed a subtraction under subdivision C 24 or 25 for the same investment.

515 b. As used in this subdivision 26:

516 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of  
 517 § 2.2-115.

518 "Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3  
 519 of § 2.2-115.

520 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.  
 521 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be  
 522 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department  
 523 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in  
 524 Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double  
 525 distressed. If the Department determines that the trust satisfies the preceding criteria, the Department  
 526 shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests  
 527 at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in  
 528 localities that are distressed or double distressed.

529 27. *For taxable years beginning on and after January 1, 2019, any gain recognized from the taking*  
 530 *of real property by condemnation proceedings.*

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

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

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

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

542 F. Notwithstanding any other provision of law, the income from any disposition of real property  
 543 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or  
 544 business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after  
 545 January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method  
 546 described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer  
 547 disposition of the property has been made on or before the due date prescribed by law (including  
 548 extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in  
 549 which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or  
 550 conditions established by the Department, which shall be set forth in guidelines developed by the

**551** Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of  
**552** such income under certain circumstances. The development of the guidelines shall be exempt from the  
**553** Administrative Process Act (§ 2.2-4000 et seq.).