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SENATE BILL NO. 1405

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 25, 2023)

(Patron Prior to Substitute—Senator Barker)

A *BILL to amend and reenact § 58.1-301 of the Code of Virginia, relating to income tax; rolling conformity; report.*

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-301 of the Code of Virginia is 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 ~~December 31, 2021~~, 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";

5. For taxable years beginning on and after January 1, 2019, the suspension of the overall limitation on itemized deductions under § 68(f) of the Internal Revenue Code;

6. For taxable years beginning on and after January 1, 2017, but before January 1, 2018, and for taxable years beginning on and after January 1, 2019, the 7.5 percent of federal adjusted gross income threshold set forth in § 213(a) of the Internal Revenue Code that is used for purposes of computing the deduction allowed for expenses for medical care pursuant to § 213 of the Internal Revenue Code. For such taxable years, the threshold utilized for Virginia income tax purposes to compute the deduction allowed for expenses for medical care pursuant to § 213 of the Internal Revenue Code shall be 10 percent of federal adjusted gross income;

7. The provisions of §§ 2303(a) and 2303(b) of the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (2020), related to the net operating loss limitation and carryback;

8. The provisions of § 2304(a) of the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (2020), related to a loss limitation applicable to taxpayers other than corporations;

9. The provisions of § 2306 of the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (2020), related to the limitation on business interest; ~~and~~

10. For taxable years beginning before January 1, 2021, the provisions of §§ 276(a), 276(b)(2), 276(b)(3), 278(a)(2), 278(a)(3), 278(b)(2), 278(b)(3), 278(c)(2), 278(c)(3), 278(d)(2), and 278(d)(3) of the federal Consolidated Appropriations Act, P.L. 116-260 (2020), and §§ 9673(2), 9673(3), 9672(2), and 9672(3) of the federal American Rescue Plan Act, P.L. 117-2 (2021) related to deductions, tax attributes, and basis increases for certain loan forgiveness and other business financial assistance; *and*

11. *a. (1) Any amendment enacted on or after January 1, 2023, with a projected impact that would increase or decrease general fund revenues by greater than \$15 million in the fiscal year in which the amendment was enacted or any of the succeeding four fiscal years. The provisions of this subdivision shall not apply to any amendment to federal income tax law that is either subsequently adopted by the General Assembly or a federal tax extender as defined in subdivision b.*

60 (2) All amendments enacted on or after January 1, 2023, and occurring between adjournment sine
61 die of the previous regular session of the General Assembly and the first day of the subsequent regular
62 session of the General Assembly if the cumulative projected impact of such amendments would increase
63 or decrease general fund revenues by greater than \$75 million in the fiscal year in which the
64 amendments were enacted or any of the succeeding four fiscal years. The provisions of this subdivision
65 shall not apply to any amendment to federal income tax law that is (i) subsequently adopted by the
66 General Assembly, (ii) a federal tax extender as defined in subdivision b, or (iii) enacted before the date
67 on which the cumulative projected impact is met. However, any amendment conformed to pursuant to
68 clause (iii) shall be included in the calculation of the \$75 million threshold for purposes of determining
69 whether such threshold has been met.

70 (3) Beginning January 1, 2024, the threshold provided by subdivision (1) shall be adjusted annually
71 based on the preceding change in the Chained Consumer Price Index for All Urban Consumers
72 (C-CPI-U), as published by the Bureau of Labor Statistics for the U.S. Department of Labor or any
73 successor index for the previous year.

74 b. For purposes of this subdivision 11, "amendment" means a single amendment to federal income
75 tax law or a group of such amendments enacted in the same act of Congress that collectively surpass
76 the threshold impact, and "federal tax extender" means an amendment to federal tax law that extends
77 the expiration date of a federal tax provision to which Virginia conforms or has previously conformed.

78 c. The Secretary of Finance, in consultation with the Chairmen of the Senate Committee on Finance
79 and Appropriations and the House Committees on Appropriations and Finance, shall be responsible for
80 determining whether the criteria of subdivision a are met.

81 d. The Secretary of Finance shall annually provide a report on or before November 15 of each year
82 on the fiscal impact of amendments to federal income tax law occurring since the adjournment sine die
83 of the preceding regular session of the General Assembly to the Chairmen of the Senate Committee on
84 Finance and Appropriations and the House Committees on Appropriations and Finance. The Secretary
85 of Finance shall also provide updates to the same Chairmen on any further amendments to federal
86 income tax law occurring between submission of the required report and the first day of the subsequent
87 regular session of the General Assembly.

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