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HOUSE BILL NO. 1394

Offered January 16, 2024

A BILL to amend and reenact § 58.1-322.02 of the Code of Virginia, relating to income tax subtraction; unlawful discrimination.

 Patron—Watts

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 58.1-322.02 of the Code of Virginia is 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, (i) for taxable years beginning before January 1, 2023, 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 subtractions specified in this clause, and (ii) for taxable years beginning on or after January 1, 2023, not to exceed the amount of income derived from 39 calendar days of such service or \$5,500, whichever amount is less; however, only those persons in the ranks of O6 and below shall be entitled to the subtractions specified in this clause.

9. Amounts received by an individual, not to exceed \$1,000 for taxable years beginning on or before December 31, 2019, and \$5,000 for taxable years beginning on or after January 1, 2020, 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.

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59 12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract
60 or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7
61 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be
62 limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a
63 scholarship.

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

69 14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange
70 of real property or the sale or exchange of an easement to real property which results in the real
71 property or the easement thereto being devoted to open-space use, as that term is defined in §
72 58.1-3230, for a period of time not less than 30 years. To the extent that a subtraction is taken in
73 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
74 shall be allowed for three years following the year in which the subtraction is taken.

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

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

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

82 18. a. Any amount received as military retirement income by an individual awarded the
83 Congressional Medal of Honor.

84 b. For taxable years beginning on and after January 1, 2022, but before January 1, 2023, up to
85 \$10,000 of military benefits; and for taxable years beginning on and after January 1, 2023, but before
86 January 1, 2024, up to \$20,000 of military benefits.

87 c. For taxable years beginning on and after January 1, 2024, but before January 1, 2025, up to
88 \$30,000 of military benefits; and for taxable years beginning on and after January 1, 2025, up to
89 \$40,000 of military benefits.

90 d. For purposes of subdivisions b and c, "military benefits" means any (i) military retirement income
91 received for service in the Armed Forces of the United States, (ii) qualified military benefits received
92 pursuant to § 134 of the Internal Revenue Code, (iii) benefits paid to the surviving spouse of a veteran
93 of the Armed Forces of the United States under the Survivor Benefit Plan program established by the
94 U.S. Department of Defense, and (iv) military benefits paid to the surviving spouse of a veteran of the
95 Armed Forces of the United States. The subtraction allowed by subdivision b shall be allowed only for
96 military benefits received by an individual age 55 or older. The subtraction allowed by subdivision c
97 shall be allowed for military benefits received by an individual of any age. No subtraction shall be
98 allowed pursuant to subdivisions b and c if a credit, exemption, subtraction, or deduction is claimed for
99 the same income pursuant to subdivision a or any other provision of Virginia or federal law.

100 19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from,
101 hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii)
102 damages, reparations, or other consideration received by a victim or target of Nazi persecution to
103 compensate such individual for performing labor against his will under the threat of death, during World
104 War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such
105 items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost
106 to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The
107 provisions of this subdivision shall only apply to an individual who was the first recipient of such items
108 of income and who was a victim or target of Nazi persecution, or a spouse, surviving spouse, or child
109 or stepchild of such victim.

110 As used in this subdivision:

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

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

direct aftermath.

20. 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 10 U.S.C. Chapter 75; 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.

21. 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.

22. 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 with 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. 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. 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 Administration, provided that 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.

25. 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 12 (§ 36-171 et seq.) of Title 36 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 § 36-174. 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 12 (§ 36-171 et seq.) of Title 36 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 § 36-171.

26. For taxable years beginning on and 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.

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

b. As used in this subdivision 27:

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

187 "Virginia venture capital account" means an investment fund that has been certified by the
188 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital
189 account, the operator of the investment fund shall register the investment fund with the Department prior
190 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed
191 to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one
192 investor who has at least four years of professional experience in venture capital investment or
193 substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to,
194 an undergraduate degree from an accredited college or university in economics, finance, or a similar
195 field of study. The Department may require an investment fund to provide documentation of the
196 investor's training, education, or experience as deemed necessary by the Department to determine
197 substantial equivalency. If the Department determines that the investment fund employs at least one
198 investor with the experience set forth herein, the Department shall certify the investment fund as a
199 Virginia venture capital account at such time as the investment fund actually invests at least 50 percent
200 of the capital committed to its fund in qualified portfolio companies.

201 28. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a
202 subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before
203 December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by a
204 family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for
205 a taxpayer who has claimed a subtraction under subdivision 24 or 27 or a tax credit under § 58.1-339.4
206 for the same investment.

207 b. As used in this subdivision 28:

208 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of
209 § 2.2-115.

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

212 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.
213 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be
214 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department
215 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in
216 Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double
217 distressed. If the Department determines that the trust satisfies the preceding criteria, the Department
218 shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests
219 at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in
220 localities that are distressed or double distressed.

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

223 30. For taxable years beginning before January 1, 2021, up to \$100,000 of all grant funds received
224 by the taxpayer under the Rebuild Virginia program established by the Governor and administered by
225 the Department of Small Business and Supplier Diversity.

226 31. For taxable years beginning on and after January 1, 2022, any compensation for wrongful
227 incarceration awarded pursuant to the procedures established under Article 18.2 (§ 8.01-195.10 et seq.)
228 of Chapter 3 of Title 8.01.

229 32. a. *For taxable years beginning on and after January 1, 2024, any amount received by a claimant
230 for noneconomic damages as a result of unlawful discrimination.*

231 b. *For purposes of this subdivision 32:*

232 "Lost pay" means wages, salary, or other compensation attributable to services performed, or that
233 would have been performed but for a claimed violation of law, as an employee, a former employee, or a
234 prospective employee.

235 "Noneconomic damages" means amounts received by a claimant in satisfaction of a claim of
236 unlawful discrimination, other than compensation for lost pay or punitive damages. "Noneconomic
237 damages" includes amounts received as a result of a claim of unlawful discrimination (i) from a
238 judgment or other order or by settlement and (ii) whether payable in a lump sum or periodic payments.

239 "Unlawful discrimination" means the same as defined in 26 U.S.C. § 62(e).