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**HOUSE BILL NO. 1407**

Offered January 17, 2024

*A BILL to amend and reenact § 58.1-322.02 of the Code of Virginia, relating to income tax subtraction; military retirement benefits; uniformed services.*

Patrons—Fowler, Cherry, Ennis and Green

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~~ *uniformed services* of the United States *as such term is defined*  
92 *in 5 U.S.C. § 2101*, (ii) qualified military benefits received pursuant to § 134 of the Internal Revenue  
93 Code, (iii) benefits paid to the surviving spouse of a veteran of the Armed Forces of the United States  
94 under the Survivor Benefit Plan program established by the U.S. Department of Defense, and (iv)  
95 ~~military benefits~~ *retirement income* paid to the surviving spouse of a veteran of the ~~Armed Forces~~  
96 *uniformed services* of the United States *for such veteran's service*. The subtraction allowed by  
97 subdivision b shall be allowed only for military benefits received by an individual age 55 or older. The  
98 subtraction allowed by subdivision c shall be allowed for military benefits received by an individual of  
99 any age. No subtraction shall be allowed pursuant to subdivisions b and c if a credit, exemption,  
100 subtraction, or deduction is claimed for the same income pursuant to subdivision a or any other  
101 provision of Virginia or federal law.

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

112 As used in this subdivision:

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

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

and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual 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

182 claimed a subtraction under subdivision 24 or a tax credit under § 58.1-339.4 for the same investment.

183 b. As used in this subdivision 27:

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

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

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

209 b. As used in this subdivision 28:

210 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of  
211 § 2.2-115.

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

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

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

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

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