

HOUSE BILL NO. 1006

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance

on February 2, 2022)

(Patron Prior to Substitute--Delegate Brewer)

A BILL to amend and reenact §§ 58.1-322.03 and 58.1-402 of the Code of Virginia, relating to Virginia taxable income; corporations; deductions; business interest.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-322.03 and 58.1-402 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-322.03. Virginia taxable income; deductions.

In computing Virginia taxable income pursuant to § 58.1-322, there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount that, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or

b. Provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return: (i) for taxable years beginning before January 1, 2019, and on and after January 1, 2026, \$3,000 for single individuals and \$6,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) and (ii) for taxable years beginning on and after January 1, 2019, but before January 1, 2026, \$4,500 for single individuals and \$9,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return). For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

27 2. a. A deduction in the amount of \$930 for each personal exemption allowable to the taxpayer for
28 federal income tax purposes.

29 b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be
30 entitled to an additional personal exemption in the amount of \$800.

31 The additional deduction for blind or aged taxpayers allowed under this subdivision shall be
32 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income
33 tax purposes.

34 3. A deduction equal to the amount of employment-related expenses upon which the federal credit
35 is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services
36 necessary for gainful employment.

37 4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home
38 under permanent foster care placement as defined in § 63.2-908, provided that the taxpayer can also claim
39 the child as a personal exemption under § 151 of the Internal Revenue Code.

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

41 b. A deduction in the amount of \$12,000 for individuals born after January 1, 1939, who have
42 attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted
43 federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers. For
44 married taxpayers filing separately, the deduction shall be reduced by \$1 for every \$1 that the total
45 combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.

46 For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal
47 adjusted gross income minus any benefits received under Title II of the Social Security Act and other
48 benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as
49 amended.

50 6. The amount an individual pays as a fee for an initial screening to become a possible bone marrow
51 donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction
52 for the payment of such fee on his federal income tax return.

53 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
54 during the taxable year for a prepaid tuition contract or college savings trust account entered into with the
55 Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided
56 in subdivision b, the amount deducted on any individual income tax return in any taxable year shall be
57 limited to \$4,000 per prepaid tuition contract or college savings trust account. No deduction shall be
58 allowed pursuant to this subdivision 7 if such payments or contributions are deducted on the purchaser's
59 or contributor's federal income tax return. If the purchase price or annual contribution to a college savings
60 trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years
61 until the purchase price or college savings trust contribution has been fully deducted; however, except as
62 provided in subdivision b, in no event shall the amount deducted in any taxable year exceed \$4,000 per
63 contract or college savings trust account. Notwithstanding the statute of limitations on assessments
64 contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year
65 or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher
66 education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death,
67 disability, or receipt of a scholarship. For the purposes of this subdivision, "purchaser" or "contributor"
68 means the person shown as such on the records of the Virginia College Savings Plan as of December 31
69 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings
70 trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition
71 contract or college savings trust account, including, but not limited to, carryover and recapture of
72 deductions.

73 b. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who
74 has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000
75 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be
76 allowed a deduction for the full amount paid for the contract or contributed to a college savings trust
77 account, less any amounts previously deducted.

78 8. The total amount an individual actually contributed in funds to the Virginia Public School
79 Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1,
80 provided that the individual has not claimed a deduction for such amount on his federal income tax return.

81 9. An amount equal to 20 percent of the tuition costs incurred by an individual employed as a
82 primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1
83 to attend continuing teacher education courses that are required as a condition of employment; however,
84 the deduction provided by this subdivision shall be available only if (i) the individual is not reimbursed
85 for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition
86 costs on his federal income tax return.

87 10. The amount an individual pays annually in premiums for long-term health care insurance,
88 provided that the individual has not claimed a deduction for federal income tax purposes, or, for taxable
89 years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on and
90 after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the
91 individual during the taxable year shall be allowed if the individual has claimed a federal income tax
92 deduction for such taxable year for long-term health care insurance premiums paid by him.

93 11. Contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses,
94 as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such
95 payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

96 a. If the payment is received in installment payments, then the recognized gain may be subtracted
97 in the taxable year immediately following the year in which the installment payment is received.

98 b. If the payment is received in a single payment, then 10 percent of the recognized gain may be
99 subtracted in the taxable year immediately following the year in which the single payment is received.

100 The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

101 12. An amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-
102 600 et seq.), not to exceed \$500 in each taxable year, in purchasing for his own use the following items of
103 tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size
104 refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the U.S.

105 Environmental Protection Agency and the U.S. Department of Energy; (ii) any fuel cell that (a) generates
106 electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than
107 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a
108 coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat
109 pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a
110 heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least
111 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5;
112 (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced
113 oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace
114 with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

115 13. The lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living
116 tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12
117 months of such donation, provided that the donor has not taken a medical deduction in accordance with
118 the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in
119 the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

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

130 15. For taxable years beginning on and after January 1, 2018, but before January 1, 2022, 20
131 percent of business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code.

132 For taxable years beginning on and after January 1, 2022, but before January 1, 2023, 40 percent of
133 business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For taxable
134 years beginning on and after January 1, 2023, 60 percent of business interest disallowed as a deduction
135 pursuant to § 163(j) of the Internal Revenue Code. For purposes of this subdivision, "business interest"
136 means the same as that term is defined under § 163(j) of the Internal Revenue Code.

137 16. For taxable years beginning on and after January 1, 2019, the actual amount of real and personal
138 property taxes imposed by the Commonwealth or any other taxing jurisdiction not otherwise deducted
139 solely on account of the dollar limitation imposed on individual deductions by § 164(b)(6)(B) of the
140 Internal Revenue Code.

141 17. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to
142 \$100,000 of the amount that is not deductible when computing federal adjusted gross income solely on
143 account of the portion of subdivision B 10 of § 58.1-301 related to Paycheck Protection Program loans.

144 **§ 58.1-402. Virginia taxable income.**

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

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

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

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

157 2. Interest or dividends, less related expenses to the extent not deducted in determining federal
158 taxable income, on obligations or securities of any authority, commission or instrumentality of the United

159 States, which the laws of the United States exempt from federal income tax but not from state income
160 taxes;

161 3. [Repealed.]

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

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

166 6. [Repealed.]

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

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

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

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

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

186 transaction giving rise to the intangible expenses and costs between the corporation and the related
187 member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

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

196 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
197 convincing evidence, that the transaction or transactions between the corporation and a related member or
198 members resulting in such increase in taxable income pursuant to subdivision a had a valid business
199 purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner
200 shall permit the corporation to file an amended return. For purposes of such amended return, the
201 requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is
202 satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or
203 reduction of the tax due under this chapter. Such amended return shall be filed by the corporation within
204 one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed
205 under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15
206 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended
207 return, any related member of the corporation that subtracted from taxable income amounts received
208 pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such
209 amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition,
210 for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear
211 and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns

212 for subsequent taxable years to deduct the related intangible expenses and costs without making the
213 adjustment under subdivision a.

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

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

220 c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under
221 § 58.1-446;

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

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

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

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

237 (4) One of the following applies:

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

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

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

245 (iv) The transaction giving rise to the interest payments between the corporation and a related
246 member was done at arm's length rates and terms and meets any of the following: (a) the related member
247 uses funds that are borrowed from a party other than a related member or that are paid, incurred or passed-
248 through to a person who is not a related member; (b) the debt is part of a regular and systematic funds
249 management or portfolio investment activity conducted by the related member, whereby the funds of two
250 or more related members are aggregated for the purpose of achieving economies of scale, the internal
251 financing of the active business operations of members, or the benefit of centralized management of funds;
252 (c) financing the expansion of the business operations; or (d) restructuring the debt of related members,
253 or the pass-through of acquisition-related indebtedness to related members.

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

261 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
262 convincing evidence, that the transaction or transactions between the corporation and a related member or
263 members resulting in such increase in taxable income pursuant to subdivision a had a valid business
264 purpose other than the avoidance or reduction of the tax due under this chapter and that the related

265 payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall
266 permit the corporation to file an amended return. For purposes of such amended return, the requirements
267 of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has
268 identified) that the transaction had a valid business purpose other than the avoidance or reduction of the
269 tax due under this chapter and that the related payments between the parties were made at arm's length
270 rates and terms. Such amended return shall be filed by the corporation within one year of the written
271 permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall
272 include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall
273 accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related
274 member of the corporation that subtracted from taxable income amounts received pursuant to subdivision
275 C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the
276 corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions
277 identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing
278 evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent
279 taxable years to deduct the related interest expenses and costs without making the adjustment under
280 subdivision a.

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

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

287 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under
288 § 58.1-446.

289 d. For purposes of subdivision B 9:

290 "Arm's-length rates and terms" means that (i) two or more related members enter into a written
291 agreement for the transaction, (ii) such agreement is of a duration and contains payment terms substantially

292 similar to those that the related member would be able to obtain from an unrelated entity, (iii) the interest
293 is at or below the applicable federal rate compounded annually for debt instruments under § 1274(d) of
294 the Internal Revenue Code that was in effect at the time of the agreement, and (iv) the borrower or payor
295 adheres to the payment terms of the agreement governing the transaction or any amendments thereto.

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

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

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

303 (2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at
304 any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single
305 entity that is (i) a corporation or an association taxable as a corporation under the Internal Revenue Code;
306 and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal Revenue Code; and

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

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

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

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

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

317 (4) Any Qualified Foreign Entity.

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

321 d. For purposes of subdivision B 10:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

366 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart
367 F income) or, for taxable years beginning on and after January 1, 2018, § 951A of the Internal Revenue
368 Code (Global Intangible Low-Taxed Income).

369 8. Any amount included therein which is foreign source income as defined in § 58.1-302.

370 9. [Repealed.]

371 10. The amount of any dividends received from corporations in which the taxpaying corporation
372 owns 50 percent or more of the voting stock.

373 11. [Repealed.]

374 12, 13. [Expired.]

375 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research
376 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
377 deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code.

378 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed
379 in funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
380 (§ 22.1-175.1 et seq.) of Title 22.1.

381 16. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain
382 derived from the sale or exchange of real property or the sale or exchange of an easement to real property
383 which results in the real property or the easement thereto being devoted to open-space use, as that term is
384 defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in
385 accordance with this subdivision, no tax credit under this chapter for donating land for its preservation
386 shall be allowed for three years following the year in which the subtraction is taken.

387 17. For taxable years beginning on and after January 1, 2001, any amount included therein with
388 respect to § 58.1-440.1.

389 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
390 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower
391 Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a
392 tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of
393 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

394 19, 20. [Repealed.]

395 21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses
396 and costs or interest expenses and costs added to the federal taxable income of a corporation pursuant to

397 subdivision B 8 or B 9 shall be subtracted from the federal taxable income of the related member that
398 received such amount if such related member is subject to Virginia income tax on the same amount.

399 22. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of
400 launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended
401 to provide individuals the training or experience of a launch, without performing an actual launch. To
402 qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate
403 from an airport or spaceport in Virginia.

404 23. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of
405 resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the
406 Commercial Orbital Transportation Services division of the National Aeronautics and Space
407 Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or
408 spaceport in Virginia.

409 24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term
410 capital gain for federal income tax purposes, or any income taxed as investment services partnership
411 interest income (otherwise known as investment partnership carried interest income) for federal income
412 tax purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an
413 investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business
414 approved by the Secretary of Administration, provided the business has its principal office or facility in
415 the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment.
416 To qualify for a subtraction under this subdivision, the investment must be made between the dates of
417 April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a
418 "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an
419 investment in the same business.

420 25. a. Income, including investment services partnership interest income (otherwise known as
421 investment partnership carried interest income), attributable to an investment in a Virginia venture capital
422 account. To qualify for a subtraction under this subdivision, the investment shall be made on or after
423 January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision

424 for an investment in a company that is owned or operated by an affiliate of the taxpayer. No subtraction
425 shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C
426 24 for the same investment.

427 b. As used in this subdivision 25:

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

433 "Virginia venture capital account" means an investment fund that has been certified by the
434 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital
435 account, the operator of the investment fund shall register the investment fund with the Department prior
436 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed
437 to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one
438 investor who has at least four years of professional experience in venture capital investment or
439 substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to,
440 an undergraduate degree from an accredited college or university in economics, finance, or a similar field
441 of study. The Department may require an investment fund to provide documentation of the investor's
442 training, education, or experience as deemed necessary by the Department to determine substantial
443 equivalency. If the Department determines that the investment fund employs at least one investor with the
444 experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital
445 account at such time as the investment fund actually invests at least 50 percent of the capital committed
446 to its fund in qualified portfolio companies.

447 26. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for
448 a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before
449 December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by an

450 affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has
451 claimed a subtraction under subdivision C 24 or 25 for the same investment.

452 b. As used in this subdivision 26:

453 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of §
454 2.2-115.

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

457 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.
458 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be
459 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department
460 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia
461 and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If
462 the Department determines that the trust satisfies the preceding criteria, the Department shall certify the
463 trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent
464 of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed
465 or double distressed.

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

468 28. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to
469 \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by
470 the Governor and administered by the Department of Small Business and Supplier Diversity.

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

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

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

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

482 F. Notwithstanding any other provision of law, the income from any disposition of real property
483 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or
484 business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after January
485 1, 2009, may, at the election of the taxpayer, be recognized under the installment method described under
486 § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the
487 property has been made on or before the due date prescribed by law (including extensions) for filing the
488 taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs,
489 and (ii) the dealer disposition is in accordance with restrictions or conditions established by the
490 Department, which shall be set forth in guidelines developed by the Department. Along with such
491 restrictions or conditions, the guidelines shall also address the recapture of such income under certain
492 circumstances. The development of the guidelines shall be exempt from the Administrative Process Act
493 (§ 2.2-4000 et seq.).

494 G. For taxable years beginning on and after January 1, 2018, but before January 1, 2022, there
495 shall be deducted to the extent included in and not otherwise subtracted from federal taxable income 20
496 percent of business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code.
497 For taxable years beginning on and after January 1, 2022, but before January 1, 2023, there shall be
498 deducted to the extent included in and not otherwise subtracted from federal taxable income 40 percent of
499 business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For taxable
500 years beginning on and after January 1, 2023, there shall be deducted to the extent included in and not
501 otherwise subtracted from federal taxable income 60 percent of business interest disallowed as a deduction
502 pursuant to § 163(j) of the Internal Revenue Code. For purposes of this subsection, "business interest"
503 means the same as that term is defined under § 163(j) of the Internal Revenue Code.

