

SENATE BILL NO. 346

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 9, 2022)

(Patron Prior to Substitute--Senator Barker)

A BILL to amend and reenact § 58.1-416 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-422.4, relating to income tax; property information and analytics firms.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-416 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-422.4 as follows:

§ 58.1-416. When certain other sales deemed in the Commonwealth.

A. Sales, other than sales of tangible personal property, are in the Commonwealth if:

- 1. The income-producing activity is performed in the Commonwealth; or
- 2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.

B. 1. For debt buyers, as defined in § 58.1-422.3, sales, other than sales of tangible personal property, are in the Commonwealth if they consist of money recovered on debt that a debt buyer collected from a person who is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth. Such rule shall apply regardless of the location of a debt buyer's business.

2. For property information and analytics firms, as defined in § 58.1-422.4, that meet the requirements set forth in § 58.1-422.4, sales of services are in the Commonwealth if they are income derived from transactions with a customer or client who receives the benefit of the services in the Commonwealth. Such rule shall apply regardless of the location of a property information and analytics firm's business operations.

27 C. The taxes under this article on the sales described under subsection B are imposed to the
28 maximum extent permitted under the Constitutions of Virginia and the United States and federal law. For
29 the collection of such taxes on such sales, it is the intent of the General Assembly that the Tax
30 Commissioner and the Department assert the taxpayer's nexus with the Commonwealth to the maximum
31 extent permitted under the Constitutions of Virginia and the United States and federal law.

32 D. If necessary information is not available to the taxpayer to determine whether a sale other than
33 a sale of tangible personal property is in the Commonwealth pursuant to the provisions of subsections B
34 and C, the taxpayer may estimate the dollar value or portion of such sale in the Commonwealth, provided
35 that the taxpayer can demonstrate to the satisfaction of the Tax Commissioner that (i) the estimate has
36 been undertaken in good faith, (ii) the estimate is a reasonable approximation of the dollar value or portion
37 of such sale in the Commonwealth, and (iii) in using an estimate the taxpayer did not have as a principal
38 purpose the avoidance of any tax due under this article. The Department may implement procedures for
39 obtaining its approval to use an estimate. The Department shall adopt remedies and corrective procedures
40 for cases in which the Department has determined that the sourcing rules for sales other than sales of
41 tangible personal property have been abused by the taxpayer, which may include reliance on the location
42 of income-producing activity and direct costs of performance as described in subsection A.

43 **§ 58.1-422.4. Property information and analytics firms.**

44 A. As used in this section:

45 "Authority" means the Virginia Economic Development Partnership Authority.

46 "Eligible city" means the City of Richmond.

47 "Memorandum of understanding" means a performance agreement or related document entered
48 into by a property information and analytics firm and the Authority on or after December 1, 2021, but
49 before August 1, 2022, that sets forth the requirements for capital investments and the creation of new
50 full-time jobs by such property information and analytics firm.

51 "Property information and analytics firm" means an entity and its affiliated entities that as of
52 January 1, 2022, is primarily a commercial real estate information and analytics firm with a location in an
53 eligible city and that between January 1, 2022, and January 1, 2029, is expected to (i) make or cause to be

54 made a capital investment in an eligible city of at least \$460.5 million and (ii) create 1,984 new jobs with
55 average annual wages of at least \$85,604 per job.

56 B. 1. For taxable years beginning on or after January 1, 2022, but before January 1, 2029, a property
57 information and analytics firm shall be subject to the provisions of subdivision B 2 of § 58.1-416 only if
58 the Authority certifies to the Department that it has at least 1,000 full-time employees as of January 1,
59 2022, in an eligible city, subject to the terms and conditions of the memorandum of understanding.

60 2. For taxable years beginning on or after January 1, 2029, a property information and analytics
61 firm shall be subject to the provisions of subdivision B 2 of § 58.1-416 only if the Authority certifies to
62 the Department that it has at least 2,785 full-time employees as of January 1, 2029, in an eligible city, and
63 from January 1, 2022, through December 31, 2028, has made or caused to be made a capital investment
64 for its facilities in that eligible city of at least \$460.5 million. Once the Authority certifies a property
65 information and analytics firm has met the job and capital investment requirements set forth in this
66 subdivision, no additional certifications shall be required and the property information and analytics firm
67 shall continue to be subject to the provisions of subdivision B 2 of § 58.1-416 in all future taxable years.

68 C. The General Assembly finds that the growth of property information and analytics firms,
69 including the capital investment and new jobs spurred by such growth, is essential to the continued fiscal
70 health of the Commonwealth. Accordingly, the provisions of subsections A and B relating to capital
71 investment and new jobs are integral to the purpose of this section. If any provision of this section is for
72 any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that
73 provision shall not be deemed severable.

74 **2. That the Department of Taxation shall develop and make publicly available guidelines**
75 **implementing the provisions of this act. In developing such guidelines, the Department of Taxation**
76 **shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the**
77 **Code of Virginia) for guidelines promulgated on or before December 31, 2023, but shall cooperate**
78 **with and seek the counsel of interested groups and shall not promulgate any guidelines, preliminary**
79 **or final, without first seeking such counsel and conducting a public hearing. Preliminary guidelines**
80 **shall be promulgated and made publicly available no later than December 31, 2022, and final**

81 guidelines shall be promulgated and made publicly available no later than December 31, 2023. After
82 December 31, 2023, the guidelines shall be subject to the Administrative Process Act and accorded
83 the weight of regulations under § 58.1-205 of the Code of Virginia.

84 3. That for taxable years beginning on and after January 1, 2022, but before January 1, 2032, any
85 property information and analytics firm, as defined in § 58.1-422.4 of the Code of Virginia, as
86 created by this act, that apportions its income pursuant to subdivision B 2 of § 58.1-416 of the Code
87 of Virginia, as amended by this act, shall include with its income tax return information regarding
88 market-based sourcing for services under this act as compared to cost of performance, including
89 the amounts of the property, payroll, and sales factors under both methods; the apportionment
90 percentages under both methods; and the amount of tax calculated under both methods. The
91 Department of Taxation shall use such information to compute an estimate of the fiscal savings to
92 such firms. Notwithstanding any provision of § 58.1-3 of the Code of Virginia or any other law, the
93 Department may provide to the Virginia Economic Development Partnership Authority and the
94 Secretaries of Commerce and Trade and Finance such information as may be necessary to facilitate
95 the purposes of this act. In addition and notwithstanding any provision of § 58.1-3 of the Code of
96 Virginia or any other law, the Department of Taxation shall, upon request, report to the Chairmen
97 of the House Committee on Appropriations and the Senate Committee on Finance and
98 Appropriations the number of returns processed for property information and analytics firms that
99 used market-based sourcing for services under this act and the annual estimated revenue impact of
100 market-based sourcing as compared with cost of performance.

101 4. That the memorandum of understanding, as defined in § 58.1-422.4 of the Code of Virginia, as
102 created by this act, shall include provisions that require the property information and analytics firm
103 (the Firm) to report annually to the Secretaries of Commerce and Trade and Finance beginning
104 January 1, 2023, such information as is necessary to demonstrate the Firm is in compliance with the
105 performance criteria set forth in the memorandum of understanding. The annual report shall
106 contain information regarding the new jobs created and new capital investments made by the Firm
107 to satisfy the performance criteria, the anticipated liability of the Firm notwithstanding the

108 provisions of this act related to the apportionment of its income, the anticipated liability of the Firm
109 pursuant to the apportionment formula under this act, and other such financial information as the
110 Virginia Economic Development Partnership Authority or the Secretaries of Commerce and Trade
111 and Finance deem necessary to demonstrate that the Firm will be able to fulfill the obligations of
112 the memorandum of understanding regarding repayment of the benefit of the apportionment
113 formula under this act should it fail to meet the terms and conditions of the memorandum of
114 understanding.

115 5. That the memorandum of understanding, as defined in § 58.1-422.4 of the Code of Virginia, as
116 created by this act, shall contain a provision that should the property information and analytics
117 firm (the Firm) be out of substantial compliance with the performance criteria set forth in the
118 memorandum of understanding for three consecutive years, then the memorandum of
119 understanding shall terminate, and the Firm shall repay the benefits received under this act
120 proportional to the failure to create new jobs and make new investments as outlined in the terms
121 and conditions. If the memorandum is terminated pursuant to this enactment and such provision,
122 the Secretary of Finance shall notify the Department of Taxation, and the Firm shall henceforth be
123 subject to the apportionment formula set forth in § 58.1-408 of the Code of Virginia.

124 6. Any person to whom tax information is divulged pursuant to this act shall be subject to the
125 prohibitions and penalties set forth in § 58.1-3 as though he were a tax official.

126 7. That the provisions of this act shall not become effective until a memorandum of
127 understanding, as defined in § 58.1-422.4 of the Code of Virginia, is signed. If such memorandum
128 of understanding is not signed by August 1, 2022, the provisions of subsection B 2 of § 58.1-416 shall
129 not be applicable in any taxable year beginning on or after January 1, 2023.

130 8. That the Virginia Economic Development Partnership Authority shall provide, upon signature,
131 a copy of any memorandum of understanding, as defined in § 58.1-422.4 of the Code of Virginia, as
132 created by this act, to the Chairmen of the MEI Project Approval Commission, the House
133 Committee on Appropriations, and the Senate Committee on Finance and Appropriations. The

134 provisions of this act shall expire if copies of such memorandum are not delivered within seven days
135 of signature.

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