

SENATE BILL NO. 528

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 10, 2022)

(Patrons Prior to Substitute--Senators Reeves, McDougle [SB 381], and Chase [SB 586])

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

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.

27 6. The amount of wages or salaries eligible for the federal Work Opportunity Credit which was
28 not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

29 7. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.

30 8. The wages or salaries received by any person for active and inactive service in the National
31 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar
32 days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3
33 and below shall be entitled to the deductions specified in this subdivision.

34 9. Amounts received by an individual, not to exceed \$1,000 for taxable years beginning on or
35 before December 31, 2019, and \$5,000 for taxable years beginning on or after January 1, 2020, as a reward
36 for information provided to a law-enforcement official or agency, or to a nonprofit corporation created
37 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of
38 perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an employee
39 of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which
40 the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

41 10. The amount of "qualified research expenses" or "basic research expenses" eligible for
42 deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c)
43 of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and
44 members of limited liability companies to the extent and in the same manner as other deductions may pass
45 through to such partners, shareholders, and members.

46 11. Any income received during the taxable year derived from a qualified pension, profit-sharing,
47 or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account
48 or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined
49 by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions
50 to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the
51 contributions to such plan or program were subject to taxation under the income tax in another state.

52 12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract
53 or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-

54 700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income
55 attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

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

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

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

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

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

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

76 b. For taxable years beginning on and after January 1, 2022, but before January 1, 2023, up to
77 \$5,000 of military benefits received by a person 60 years of age or older; for taxable years beginning on
78 and after January 1, 2023, but before January 1, 2024, up to \$10,000 of military benefits received by a
79 person 60 years of age or older; for taxable years beginning on and after January 1, 2024, but before
80 January 1, 2025, up to \$15,000 of military benefits received by a person 60 years of age or older; and for

81 taxable years on and after January 1, 2025, up to \$20,000 of military benefits received by a person 60
82 years of age or older. For purposes of this subdivision b, "military benefits" means any (i) military
83 retirement income received for service in the Armed Forces of the United States, (ii) qualified military
84 benefits received pursuant to § 134 of the Internal Revenue Code, (iii) benefits paid to the surviving spouse
85 of a veteran of the Armed Forces of the United States under the Survivor Benefit Plan program established
86 by the U.S. Department of Defense, and (iv) military benefits paid to the surviving spouse of a veteran of
87 the Armed Forces of the United States. No subtraction shall be allowed pursuant to this subdivision b if a
88 credit, exemption, subtraction, or deduction is claimed for the same income pursuant to subdivision a or
89 any other provision of Virginia or federal law.

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

100 As used in this subdivision:

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

104 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution
105 by the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or
106 omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath,
107 (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution,

108 or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II
109 and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual forced
110 into labor against his will, under the threat of death, during World War II and its prelude and direct
111 aftermath.

112 20. The military death gratuity payment made after September 11, 2001, to the survivor of
113 deceased military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the
114 subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from
115 his federal gross income in accordance with § 134 of the Internal Revenue Code.

116 21. The death benefit payments from an annuity contract that are received by a beneficiary of such
117 contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an
118 insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under
119 this subdivision shall be allowed only for that portion of the death benefit payment that is included in
120 federal adjusted gross income.

121 22. Any gain recognized from the sale of launch services to space flight participants, as defined in
122 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of a
123 launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch
124 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

125 23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined
126 in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the
127 National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8,
128 and launched from an airport or spaceport in Virginia.

129 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income
130 taxed as investment services partnership interest income (otherwise known as investment partnership
131 carried interest income) for federal income tax purposes. To qualify for a subtraction under this
132 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in §
133 58.1-339.4, or in any other technology business approved by the Secretary of Administration, provided
134 that the business has its principal office or facility in the Commonwealth and less than \$3 million in annual

135 revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the
136 investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has
137 claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the
138 subtraction under this subdivision for an investment in the same business.

139 25. For taxable years beginning on and after January 1, 2014, any income of an account holder for
140 the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's
141 first-time home buyer savings account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36
142 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-
143 time home buyer savings account.

144 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction
145 taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or
146 funds withdrawn from the first-time home buyer savings account were used for any purpose other than
147 the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 36-174. The
148 amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used
149 for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for
150 other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of
151 the withdrawal to the total balance in the account at such time.

152 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i)
153 withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the
154 account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101
155 through 1330; or (iii) transferred from an account established pursuant to Chapter 12 (§ 36-171 et seq.) of
156 Title 36 into another account established pursuant to such chapter for the benefit of another qualified
157 beneficiary.

158 For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings
159 account," and "qualified beneficiary" mean the same as those terms are defined in § 36-171.

160 26. For taxable years beginning on and after January 1, 2015, any income for the taxable year
161 attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this

162 subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal Revenue
163 Code.

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

171 b. As used in this subdivision 27:

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

177 "Virginia venture capital account" means an investment fund that has been certified by the
178 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital
179 account, the operator of the investment fund shall register the investment fund with the Department prior
180 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed
181 to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one
182 investor who has at least four years of professional experience in venture capital investment or
183 substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to,
184 an undergraduate degree from an accredited college or university in economics, finance, or a similar field
185 of study. The Department may require an investment fund to provide documentation of the investor's
186 training, education, or experience as deemed necessary by the Department to determine substantial
187 equivalency. If the Department determines that the investment fund employs at least one investor with the
188 experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital

189 account at such time as the investment fund actually invests at least 50 percent of the capital committed
190 to its fund in qualified portfolio companies.

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

197 b. As used in this subdivision 28:

198 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of §
199 2.2-115.

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

202 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.
203 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be
204 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department
205 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia
206 and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If
207 the Department determines that the trust satisfies the preceding criteria, the Department shall certify the
208 trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent
209 of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed
210 or double distressed.

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

213 30. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to
214 \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by
215 the Governor and administered by the Department of Small Business and Supplier Diversity.

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