

SENATE BILL NO. 528

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance

on February 23, 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; emergency.

**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 \$20,000 of military benefits; for taxable years beginning on and after January 1, 2023, but before January  
78 1, 2024, up to \$30,000 of military benefits; and for taxable years beginning on and after January 1, 2024,  
79 up to \$40,000 of military benefits. For purposes of this subdivision b, "military benefits" means any (i)  
80 military retirement income received for service in the Armed Forces of the United States (ii) qualified

81 military benefits received pursuant to § 134 of the Internal Revenue Code, (iii) benefits paid to the  
82 surviving spouse of a veteran of the Armed Forces of the United States under the Survivor Benefit Plan  
83 program established by the U.S. Department of Defense, and (iv) military benefits paid to the surviving  
84 spouse of a veteran of the Armed Forces of the United States. No subtraction shall be allowed pursuant to  
85 this subdivision b if a credit, exemption, subtraction, or deduction is claimed for the same income pursuant  
86 to subdivision a or any other provision of Virginia or federal law.

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

97           As used in this subdivision:

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

101           "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution  
102 by the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or  
103 omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath,  
104 (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution,  
105 or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II  
106 and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual forced

107 into labor against his will, under the threat of death, during World War II and its prelude and direct  
108 aftermath.

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

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

118 22. Any gain recognized from the sale of launch services to space flight participants, as defined in  
119 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of a  
120 launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch  
121 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

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

126 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income  
127 taxed as investment services partnership interest income (otherwise known as investment partnership  
128 carried interest income) for federal income tax purposes. To qualify for a subtraction under this  
129 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in §  
130 58.1-339.4, or in any other technology business approved by the Secretary of Administration, provided  
131 that the business has its principal office or facility in the Commonwealth and less than \$3 million in annual  
132 revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the  
133 investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has

134 claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the  
135 subtraction under this subdivision for an investment in the same business.

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

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

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

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

157 26. For taxable years beginning on and after January 1, 2015, any income for the taxable year  
158 attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this  
159 subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal Revenue  
160 Code.

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

168 b. As used in this subdivision 27:

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

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

