

SENATE BILL NO. 564

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on _____)

(Patron Prior to Substitute--Senator Hackworth)

A BILL to amend and reenact § 58.1-322.02 of the Code of Virginia, relating to individual income tax subtraction; certain double distressed localities.

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, (i) for taxable years beginning before January 1, 2023, not to
32 exceed the amount of income derived from 39 calendar days of such service or \$3,000, whichever amount
33 is less; however, only those persons in the ranks of O3 and below shall be entitled to the subtractions
34 specified in this clause, and (ii) for taxable years beginning on or after January 1, 2023, not to exceed the
35 amount of income derived from 39 calendar days of such service or \$5,500, whichever amount is less;
36 however, only those persons in the ranks of O6 and below shall be entitled to the subtractions specified in
37 this clause.

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

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

50 11. Any income received during the taxable year derived from a qualified pension, profit-sharing,
51 or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account
52 or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined
53 by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions

54 to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the
55 contributions to such plan or program were subject to taxation under the income tax in another state.

56 12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract
57 or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-
58 700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income
59 attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

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

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

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

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

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

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

80 b. For taxable years beginning on and after January 1, 2022, but before January 1, 2023, up to
81 \$10,000 of military benefits; and for taxable years beginning on and after January 1, 2023, but before
82 January 1, 2024, up to \$20,000 of military benefits.

83 c. For taxable years beginning on and after January 1, 2024, but before January 1, 2025, up to
84 \$30,000 of military benefits; and for taxable years beginning on and after January 1, 2025, up to \$40,000
85 of military benefits.

86 d. For purposes of subdivisions b and c, "military benefits" means any (i) military retirement
87 income received for service in the Armed Forces of the United States, (ii) qualified military benefits
88 received pursuant to § 134 of the Internal Revenue Code, (iii) benefits paid to the surviving spouse of a
89 veteran of the Armed Forces of the United States under the Survivor Benefit Plan program established by
90 the U.S. Department of Defense, and (iv) military benefits paid to the surviving spouse of a veteran of the
91 Armed Forces of the United States. The subtraction allowed by subdivision b shall be allowed only for
92 military benefits received by an individual age 55 or older. The subtraction allowed by subdivision c shall
93 be allowed for military benefits received by an individual of any age. No subtraction shall be allowed
94 pursuant to subdivisions b and c if a credit, exemption, subtraction, or deduction is claimed for the same
95 income pursuant to subdivision a or any other provision of Virginia or federal law.

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

106 As used in this subdivision:

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

110 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution
111 by the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or
112 omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath,
113 (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution,
114 or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II
115 and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual forced
116 into labor against his will, under the threat of death, during World War II and its prelude and direct
117 aftermath.

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

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

127 22. Any gain recognized from the sale of launch services to space flight participants, as defined in
128 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of a
129 launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch
130 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

131 23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined
132 in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the

133 National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8,
134 and launched from an airport or spaceport in Virginia.

135 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income
136 taxed as investment services partnership interest income (otherwise known as investment partnership
137 carried interest income) for federal income tax purposes. To qualify for a subtraction under this
138 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in §
139 58.1-339.4, or in any other technology business approved by the Secretary of Administration, provided
140 that the business has its principal office or facility in the Commonwealth and less than \$3 million in annual
141 revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the
142 investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has
143 claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the
144 subtraction under this subdivision for an investment in the same business.

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

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

158 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i)
159 withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the

160 account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101
161 through 1330; or (iii) transferred from an account established pursuant to Chapter 12 (§ 36-171 et seq.) of
162 Title 36 into another account established pursuant to such chapter for the benefit of another qualified
163 beneficiary.

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

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

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

177 b. As used in this subdivision 27:

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

183 "Virginia venture capital account" means an investment fund that has been certified by the
184 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital
185 account, the operator of the investment fund shall register the investment fund with the Department prior
186 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed

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

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

203 b. As used in this subdivision 28:

204 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of §
205 2.2-115.

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

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

214 trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent
215 of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed
216 or double distressed.

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

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

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

225 32. a. For taxable years beginning on and after January 1, 2025, but before January 1, 2026, up to
226 \$5,000 of income received by a resident of an eligible double distressed locality; for taxable years
227 beginning on and after January 1, 2026, but before January 1, 2027, up to \$10,000 of income received by
228 a resident of an eligible double distressed locality; and for taxable years beginning on and after January 1,
229 2027, but before January 1, 2030, up to \$15,000 of income received by a resident of an eligible double
230 distressed locality.

231 b. For purposes of subdivision a, "eligible double distressed locality" means a locality (i) in
232 Planning District 1, 2, 3, 13, 15, or 19; (ii) with an annual unemployment rate for the most recent calendar
233 year for which such data is available as of December 31, 2023, that is greater than the final statewide
234 average unemployment rate for that calendar year; (iii) with a poverty rate for the most recent calendar
235 year for which such data is available as of December 31, 2023, that exceeds the statewide average poverty
236 rate for that calendar year; and (iv) that experienced an aggregate population loss of at least 9.8 percent
237 during the 10-year period ending December 31, 2023, based on the population estimates made by the
238 Weldon Cooper Center for Public Service of the University of Virginia. No subtraction shall be allowed
239 pursuant to subdivision a if a credit, exemption, subtraction, or deduction is claimed for the same income
240 pursuant to any other provision of Virginia or federal law.

241 c. The Tax Commissioner shall develop guidelines for claiming the subtraction provided by
242 subdivision a. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§
243 2.2-4000 et seq.) and shall, among other things, specify all localities that meet the "eligible double
244 distressed locality" definition in subdivision b.

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