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HOUSE BILL NO. 1407

Offered January 17, 2024

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

Patrons—Fowler and Cherry

Committee Referral Pending

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.

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

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

8. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, (i) for taxable years beginning before January 1, 2023, not to exceed the amount of income derived from 39 calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the subtractions specified in this clause, and (ii) for taxable years beginning on or after January 1, 2023, not to exceed the amount of income derived from 39 calendar days of such service or \$5,500, whichever amount is less; however, only those persons in the ranks of O6 and below shall be entitled to the subtractions specified in this clause.

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

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

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

12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-700 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 not
61 otherwise subtracted, deducted, or exempted under this section, earned by military personnel while serving by
62 order of the President of the United States with the consent of Congress in a combat zone or qualified
63 hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal
64 Revenue Code.

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

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

80 b. For taxable years beginning on and after January 1, 2022, but before January 1, 2023, up to \$10,000 of
81 military benefits; and for taxable years beginning on and after January 1, 2023, but before January 1, 2024,
82 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 \$30,000 of
84 military benefits; and for taxable years beginning on and after January 1, 2025, up to \$40,000 of military
85 benefits.

86 d. For purposes of subdivisions b and c, "military benefits" means any (i) ~~military~~ retirement income
87 received for service in the ~~Armed Forces~~ *uniformed services* of the United States *as such term is defined in 5*
88 *U.S.C. § 2101*, (ii) qualified military benefits received pursuant to § 134 of the Internal Revenue Code, (iii)
89 benefits paid to the surviving spouse of a veteran of the Armed Forces of the United States under the Survivor
90 Benefit Plan program established by the U.S. Department of Defense, and (iv) ~~military benefits~~ *retirement*
91 *income* paid to the surviving spouse of a veteran of the ~~Armed Forces~~ *uniformed services* of the United States
92 *for such veteran's service*. The subtraction allowed by subdivision b shall be allowed only for military
93 benefits received by an individual age 55 or older. The subtraction allowed by subdivision c shall be allowed
94 for military benefits received by an individual of any age. No subtraction shall be allowed pursuant to
95 subdivisions b and c if a credit, exemption, subtraction, or deduction is claimed for the same income pursuant
96 to subdivision a or any other provision of Virginia or federal law.

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

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

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

120 income in accordance with § 134 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

174 b. As used in this subdivision 27:

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

180 "Virginia venture capital account" means an investment fund that has been certified by the Department as

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

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

199 b. As used in this subdivision 28:

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

201 .
202 "Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3 of §
203 2.2-115.

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

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

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

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