

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 58.1-322 and 58.1-402 of the Code of Virginia, relating to income tax
2 exemptions for spaceflight activities in Virginia.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That §§ 58.1-322 and 58.1-402 of the Code of Virginia are amended and reenacted as follows:**

5 § 58.1-322. Virginia taxable income of residents.

6 A. The Virginia taxable income of a resident individual means his federal adjusted gross income
7 for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United
8 States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications
9 specified in this section.

10 B. To the extent excluded from federal adjusted gross income, there shall be added:

11 1. Interest, less related expenses to the extent not deducted in determining federal income, on
12 obligations of any state other than Virginia, or of a political subdivision of any such other state unless
13 created by compact or agreement to which Virginia is a party;

14 2. Interest or dividends, less related expenses to the extent not deducted in determining federal
15 taxable income, on obligations or securities of any authority, commission or instrumentality of the
16 United States, which the laws of the United States exempt from federal income tax but not from state
17 income taxes;

18 3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

19 4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum
20 distribution allowance and any amount excludable for federal income tax purposes that is excluded from
21 federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions
22 under § 402 of the Internal Revenue Code; and

23 5 through 8. —Repealed.]

24 9. The amount required to be included in income for the purpose of computing the partial tax on
25 an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

26 C. To the extent included in federal adjusted gross income, there shall be subtracted:

27 1. Income derived from obligations, or on the sale or exchange of obligations, of the United
28 States and on obligations or securities of any authority, commission or instrumentality of the United
29 States to the extent exempt from state income taxes under the laws of the United States including, but
30 not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of
31 federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

32 2. Income derived from obligations, or on the sale or exchange of obligations of this
33 Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

34 3. —Repealed.]

35 4. Benefits received under Title II of the Social Security Act and other benefits subject to federal
36 income taxation solely pursuant to § 86 of the Internal Revenue Code.

37 4a. Through December 31, 2000, the same amount used in computing the federal credit allowed
38 under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on
39 the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of
40 the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of
41 subsection D of this section may not also claim a subtraction under this subdivision.

42 4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income,
43 as defined in § 22 (c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a
44 deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under this
45 subdivision.

46 5. The amount of any refund or credit for overpayment of income taxes imposed by the
47 Commonwealth or any other taxing jurisdiction.

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

50 7, 8. —Repealed.]

51 9. —Expired.]

52 10. Any amount included therein less than \$600 from a prize awarded by the State Lottery
53 Department.

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

58 12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for
59 information provided to a law-enforcement official or agency, or to a nonprofit corporation created
60 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of
61 perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee
62 of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which
63 the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

64 13. —Repealed.]

65 14. —Expired.]

66 15, 16. —Repealed.]

67 17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research
68 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
69 deducted, on account of the provisions of § 280C (c) of the Internal Revenue Code and which shall be
70 available to partners, shareholders of S corporations, and members of limited liability companies to the
71 extent and in the same manner as other deductions may pass through to such partners, shareholders, and
72 members.

73 18. For taxable years beginning on or after January 1, 1995, all military pay and allowances, not
74 otherwise subtracted under this subsection, earned for any month during any part of which such member
75 performed military service in any part of the former Yugoslavia, including the air space above such
76 location or any waters subject to related naval operations, in support of Operation JOINT ENDEAVOR

77 as part of the NATO Peace Keeping Force. Such subtraction shall be available until the taxpayer
78 completes such service.

79 19. For taxable years beginning on and after January 1, 1996, any income received during the
80 taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401
81 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the
82 Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code,
83 or any federal government retirement program, the contributions to which were deductible from the
84 taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program
85 were subject to taxation under the income tax in another state.

86 20. For taxable years beginning on and after January 1, 1997, any income attributable to a
87 distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the
88 Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The
89 subtraction for any income attributable to a refund shall be limited to income attributable to a refund in
90 the event of a beneficiary's death, disability, or receipt of a scholarship.

91 21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to
92 the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted
93 under this section, earned by military personnel while serving by order of the President of the United
94 States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated
95 as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

96 22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
97 exchange of real property or the sale or exchange of an easement to real property which results in the
98 real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-
99 3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with
100 this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed
101 for three years following the year in which the subtraction is taken.

102 23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military
103 basic pay for military service personnel on extended active duty for periods in excess of 90 days;

104 however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's
105 military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is
106 equal to or exceeds \$30,000.

107 24. Effective for all taxable years beginning on and after January 1, 2000, the first \$15,000 of
108 salary for each federal and state employee whose total annual salary from all employment for the taxable
109 year is \$15,000 or less.

110 25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

111 26. For taxable years beginning on and after January 1, 2001, any amount received as military
112 retirement income by an individual awarded the Congressional Medal of Honor.

113 27. Effective for all taxable years beginning on and after January 1, 1999, income received as a
114 result of (i) the "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco
115 Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant
116 to 7 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farmers; (b) any
117 person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural
118 Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or
119 allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18
120 of § 58.1-402.

121 28. For taxable years beginning on and after January 1, 2000, items of income attributable to,
122 derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an
123 individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other
124 consideration received by a victim or target of Nazi persecution to compensate such individual for
125 performing labor against his will under the threat of death, during World War II and its prelude and
126 direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with
127 the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II
128 and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this
129 subdivision shall only apply to an individual who was the first recipient of such items of income and

130 who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of
131 such victim.

132 "Victim or target of Nazi persecution" means any individual persecuted or targeted for
133 persecution by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of
134 any act or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct
135 aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi
136 persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during
137 World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include any
138 individual forced into labor against his will, under the threat of death, during World War II and its
139 prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi
140 Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any
141 other neutral European country or area in Europe under the influence or threat of Nazi invasion.

142 29. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of
143 the Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7
144 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:

145 a. If the payment is received in installment payments pursuant to 7 C.F.R. § 1412.807(a) (2), then
146 the entire gain recognized may be subtracted.

147 b. If the payment is received in a single payment pursuant to 7 C.F.R. § 1412.807(a) (3), then 20
148 percent of the recognized gain may be subtracted. The taxpayer may then deduct an equal amount in
149 each of the four succeeding taxable years.

150 30. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
151 2005, the indemnification payments received by contract poultry growers and table egg producers from
152 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
153 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
154 poultry who contract with poultry growers qualify for this subtraction.

155 31. Effective for all taxable years beginning on or after January 1, 2001, the military death
156 gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in

157 the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction
158 amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal
159 gross income in accordance with § 134 of the Internal Revenue Code.

160 32. Effective for all taxable years beginning on or after January 1, 2007, the death benefit
161 payments from an annuity contract that are received by a beneficiary of such contract and are subject to
162 federal income taxation.

163 33. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale
164 of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services
165 intended to provide individuals the training or experience of a launch, without performing an actual
166 launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia
167 or originate from an airport or spaceport in Virginia.

168 34. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of
169 resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the
170 Commercial Orbital Transportation Services division of the National Aeronautics and Space
171 Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or
172 spaceport in Virginia.

173 D. In computing Virginia taxable income there shall be deducted from Virginia adjusted gross
174 income as defined in § 58.1-321:

175 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
176 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
177 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
178 on such federal return and increased by an amount which, when added to the amount deducted under §
179 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such
180 purposes at a rate of 18 cents per mile; or

181 b. Three thousand dollars for single individuals for taxable years beginning on and after January
182 1, 1989; \$5,000 for married persons (one-half of such amounts in the case of a married individual filing
183 a separate return) for taxable years beginning on and after January 1, 1989, but before January 1, 2005;

184 and \$6,000 for married persons (one-half of such amounts in the case of a married individual filing a
185 separate return) for taxable years beginning on and after January 1, 2005; provided that the taxpayer has
186 not itemized deductions for the taxable year on his federal income tax return. For purposes of this
187 section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year
188 may compute the deduction only with respect to earned income.

189 2. a. A deduction in the amount of \$800 for taxable years beginning on and after January 1, 1988,
190 but before January 1, 2005; \$900 for taxable years beginning on and after January 1, 2005, but before
191 January 1, 2008; and \$930 for taxable years beginning on and after January 1, 2008, for each personal
192 exemption allowable to the taxpayer for federal income tax purposes.

193 b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as
194 defined under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption
195 in the amount of \$800.

196 The additional deduction for blind or aged taxpayers allowed under this subdivision shall be
197 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income
198 tax purposes.

199 3. A deduction equal to the amount of employment-related expenses upon which the federal
200 credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care
201 services necessary for gainful employment.

202 4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home
203 under permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim
204 the child as a personal exemption under § 151 of the Internal Revenue Code.

205 5. a. Effective for all taxable years beginning on or after January 1, 1996, but before January 1,
206 2004, a deduction in the amount of \$12,000 for taxpayers age 65 or older, or \$6,000 for taxpayers age 62
207 through 64.

208 b. For taxable years beginning on and after January 1, 2004, a deduction in the amount of
209 \$12,000 for individuals born on or before January 1, 1939.

210 c. For taxable years beginning January 1, 2004, but before January 1, 2005, a deduction in the
211 amount of \$6,000 for individuals born on or between January 2, 1940, and January 1, 1942.

212 d. For taxable years beginning January 1, 2005, but before January 1, 2006, a deduction in the
213 amount of \$6,000 for individuals born on or between January 2, 1941, and January 1, 1942.

214 e. For taxable years beginning on and after January 1, 2004, a deduction in the amount of
215 \$12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall
216 be reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds
217 \$50,000 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately,
218 the deduction will be reduced by \$1 for every \$1 the total combined adjusted federal adjusted gross
219 income of both spouses exceeds \$75,000.

220 f. For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal
221 adjusted gross income minus any benefits received under Title II of the Social Security Act and other
222 benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as
223 amended.

224 6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a
225 fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not
226 reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on
227 his federal income tax return.

228 7. a. (Applicable to taxable years beginning before January 1, 2009) A deduction shall be
229 allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a
230 prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan,
231 pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the
232 amount deducted on any individual income tax return in any taxable year shall be limited to \$2,000 per
233 prepaid tuition contract or savings trust account. No deduction shall be allowed pursuant to this section
234 if such payments or contributions are deducted on the purchaser's or contributor's federal income tax
235 return. If the purchase price or annual contribution to a savings trust account exceeds \$2,000, the
236 remainder may be carried forward and subtracted in future taxable years until the purchase price or

237 savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no
238 event shall the amount deducted in any taxable year exceed \$2,000 per contract or savings trust account.
239 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken
240 hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are
241 made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the
242 Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the
243 purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on
244 the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a
245 transfer of ownership of a prepaid tuition contract or savings trust account, the transferee shall succeed
246 to the transferor's tax attributes associated with a prepaid tuition contract or savings trust account,
247 including, but not limited to, carryover and recapture of deductions.

248 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after
249 January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after
250 January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

251 c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has
252 attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$2,000
253 per prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed
254 a deduction for the full amount paid for the contract or contributed to a savings trust account, less any
255 amounts previously deducted. If a prepaid tuition contract was purchased by such taxpayer during
256 taxable years beginning on or after January 1, 1996, but before January 1, 1998, such taxpayer may take
257 the deduction for the full amount paid during such years, less any amounts previously deducted with
258 respect to such payments, in taxable year 1999 or by filing an amended return for taxable year 1998.

259 7. a. (Applicable to taxable years beginning on or after January 1, 2009) A deduction shall be
260 allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a
261 prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan,
262 pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the
263 amount deducted on any individual income tax return in any taxable year shall be limited to \$4,000 per

264 prepaid tuition contract or savings trust account. No deduction shall be allowed pursuant to this section
265 if such payments or contributions are deducted on the purchaser's or contributor's federal income tax
266 return. If the purchase price or annual contribution to a savings trust account exceeds \$4,000, the
267 remainder may be carried forward and subtracted in future taxable years until the purchase price or
268 savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no
269 event shall the amount deducted in any taxable year exceed \$4,000 per contract or savings trust account.
270 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken
271 hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are
272 made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the
273 Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the
274 purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on
275 the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a
276 transfer of ownership of a prepaid tuition contract or savings trust account, the transferee shall succeed
277 to the transferor's tax attributes associated with a prepaid tuition contract or savings trust account,
278 including, but not limited to, carryover and recapture of deductions.

279 b. The amount paid for a prepaid tuition contract during taxable years beginning on or after
280 January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after
281 January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

282 c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has
283 attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000
284 per prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed
285 a deduction for the full amount paid for the contract or contributed to a savings trust account, less any
286 amounts previously deducted. If a prepaid tuition contract was purchased by such taxpayer during
287 taxable years beginning on or after January 1, 1996, but before January 1, 1998, such taxpayer may take
288 the deduction for the full amount paid during such years, less any amounts previously deducted with
289 respect to such payments, in taxable year 1999 or by filing an amended return for taxable year 1998.

290 8. For taxable years beginning on and after January 1, 2000, the total amount an individual
291 actually contributed in funds to the Virginia Public School Construction Grants Program and Fund,
292 established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a
293 deduction for such amount on his federal income tax return.

294 9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the
295 tuition costs incurred by an individual employed as a primary or secondary school teacher licensed
296 pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses
297 that are required as a condition of employment; however, the deduction provided by this subsection shall
298 be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has
299 not claimed a deduction for the payment of such tuition costs on his federal income tax return.

300 10. For taxable years beginning on and after January 1, 2000, the amount an individual pays
301 annually in premiums for long-term health care insurance, provided the individual has not claimed a
302 deduction for federal income tax purposes, or a credit under § 58.1-339.11.

303 11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of
304 quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation
305 Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant
306 to subsection D of § 58.1-402, as follows:

307 a. If the payment is received in installment payments, then the recognized gain, including any
308 gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the
309 year in which the installment payment is received.

310 b. If the payment is received in a single payment, then 10% of the recognized gain may be
311 subtracted in the taxable year immediately following the year in which the single payment is received.
312 The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

313 12. For taxable years beginning on and after January 1, 2007, an amount equal to 20% of the sum
314 paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.) of this title, not to exceed \$500 in each
315 taxable year, in purchasing for his own use the following items of tangible personal property: (i) any
316 clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed

317 the applicable energy star efficiency requirements developed by the United States Environmental
318 Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates
319 electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than
320 35%, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a
321 coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat
322 pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a
323 heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at
324 least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least
325 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any
326 advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired
327 furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

328 13. For taxable years beginning on or after January 1, 2007, the lesser of \$5,000 or the amount
329 actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket
330 expenses directly related to the donation that arose within 12 months of such donation, provided the
331 donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal
332 Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation
333 is made or the taxable year in which the 12-month period expires.

334 E. There shall be added to or subtracted from federal adjusted gross income, as the case may be,
335 the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment
336 determined under § 58.1-361.

337 F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as
338 transitional modifications.

339 G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in
340 federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a
341 shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise
342 tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year
343 begins, the shareholder's allocable share of the income or gain of such electing small business

344 corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal
345 adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S
346 corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for
347 the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or
348 deductions of such electing small business corporation (S corporation).

349 Effective for all taxable years beginning on or after January 1, 2007, to the extent excluded from
350 federal adjusted gross income, there shall be added to federal adjusted gross income by a shareholder of
351 an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed
352 under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the value
353 of any distribution paid or distributed to the shareholder by such electing small business corporation (S
354 corporation).

355 § 58.1-402. Virginia taxable income.

356 A. For purposes of this article, Virginia taxable income for a taxable year means the federal
357 taxable income and any other income taxable to the corporation under federal law for such year of a
358 corporation adjusted as provided in subsections B, C, D, and E.

359 For a regulated investment company and a real estate investment trust, such term means the
360 "investment company taxable income" and "real estate investment trust taxable income," respectively, to
361 which shall be added in each case any amount of capital gains and any other income taxable to the
362 corporation under federal law which shall be further adjusted as provided in subsections B, C, D, and E.

363 B. There shall be added to the extent excluded from federal taxable income:

364 1. Interest, less related expenses to the extent not deducted in determining federal taxable
365 income, on obligations of any state other than Virginia, or of a political subdivision of any such other
366 state unless created by compact or agreement to which the Commonwealth is a party;

367 2. Interest or dividends, less related expenses to the extent not deducted in determining federal
368 taxable income, on obligations or securities of any authority, commission or instrumentality of the
369 United States, which the laws of the United States exempt from federal income tax but not from state
370 income taxes;

371 3. [Repealed.]

372 4. The amount of any net income taxes and other taxes, including franchise and excise taxes,
373 which are based on, measured by, or computed with reference to net income, imposed by the
374 Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable
375 income;

376 5. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

377 6. The amount of employee stock ownership credit carry-over deducted by the corporation in
378 computing federal taxable income under § 404 (i) of the Internal Revenue Code;

379 7. The amount required to be included in income for the purpose of computing the partial tax on
380 an accumulation distribution pursuant to § 667 of the Internal Revenue Code;

381 8. a. For taxable years beginning on and after January 1, 2004, the amount of any intangible
382 expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or
383 indirectly with one or more direct or indirect transactions with one or more related members to the
384 extent such expenses and costs were deductible or deducted in computing federal taxable income for
385 Virginia purposes. This addition shall not be required for any portion of the intangible expenses and
386 costs if one of the following applies:

387 (1) The corresponding item of income received by the related member is subject to a tax based
388 on or measured by net income or capital imposed by Virginia, another state, or a foreign government
389 that has entered into a comprehensive tax treaty with the United States government;

390 (2) The related member derives at least one-third of its gross revenues from the licensing of
391 intangible property to parties who are not related members, and the transaction giving rise to the
392 expenses and costs between the corporation and the related member was made at rates and terms
393 comparable to the rates and terms of agreements that the related member has entered into with parties
394 who are not related members for the licensing of intangible property; or

395 (3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible
396 expenses and costs meet both of the following: (i) the related member during the same taxable year
397 directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and

398 (ii) the transaction giving rise to the intangible expenses and costs between the corporation and the
399 related member did not have as a principal purpose the avoidance of any portion of the tax due under
400 this chapter.

401 b. A corporation required to add to its federal taxable income intangible expenses and costs
402 pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return
403 for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under
404 this article for such taxable year including tax upon any amount of intangible expenses and costs
405 required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to
406 the transaction or transactions between the corporation and a related member or members that resulted in
407 the corporation's taxable income being increased, as required under subdivision a, for such intangible
408 expenses and costs.

409 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
410 convincing evidence, that the transaction or transactions between the corporation and a related member
411 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business
412 purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner
413 shall permit the corporation to file an amended return. For purposes of such amended return, the
414 requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is
415 satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance
416 or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation
417 within one year of the written permission granted by the Tax Commissioner and any refund of the tax
418 imposed under this article shall include interest at a rate equal to the rate of interest established under §
419 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such
420 amended return, any related member of the corporation that subtracted from taxable income amounts
421 received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that
422 portion of such amounts for which the corporation has filed an amended return pursuant to this
423 subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he
424 has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation

425 in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and
426 costs without making the adjustment under subdivision a.

427 The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of
428 any petition pursuant to this subdivision, to include costs necessary to secure outside experts in
429 evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this
430 subdivision upon payment of such fee.

431 No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision
432 shall be maintained in any court of this Commonwealth.

433 c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority
434 under § 58.1-446;

435 9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest
436 expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or
437 indirectly with one or more direct or indirect transactions with one or more related members to the
438 extent such expenses and costs were deductible or deducted in computing federal taxable income for
439 Virginia purposes. This addition shall not be required for any portion of the interest expenses and costs,
440 if:

441 (1) The related member has substantial business operations relating to interest-generating
442 activities, in which the related member pays expenses for at least five full-time employees who
443 maintain, manage, defend or are otherwise responsible for operations or administration relating to the
444 interest-generating activities; and

445 (2) The interest expenses and costs are not directly or indirectly for, related to or in connection
446 with the direct or indirect acquisition, maintenance, management, sale, exchange, or disposition of
447 intangible property; and

448 (3) The transaction giving rise to the expenses and costs between the corporation and the related
449 member has a valid business purpose other than the avoidance or reduction of taxation and payments
450 between the parties are made at arm's length rates and terms; and

451 (4) One of the following applies:

452 (i) The corresponding item of income received by the related member is subject to a tax based on
453 or measured by net income or capital imposed by Virginia, another state, or a foreign government that
454 has entered into a comprehensive tax treaty with the United States government;

455 (ii) Payments arise pursuant to a pre-existing contract entered into when the parties were not
456 related members provided the payments continue to be made at arm's length rates and terms;

457 (iii) The related member engages in transactions with parties other than related members that
458 generate revenue in excess of \$2 million annually; or

459 (iv) The transaction giving rise to the interest payments between the corporation and a related
460 member was done at arm's length rates and terms and meets any of the following: (a) the related member
461 uses funds that are borrowed from a party other than a related member or that are paid, incurred or
462 passed-through to a person who is not a related member; (b) the debt is part of a regular and systematic
463 funds management or portfolio investment activity conducted by the related member, whereby the funds
464 of two or more related members are aggregated for the purpose of achieving economies of scale, the
465 internal financing of the active business operations of members, or the benefit of centralized
466 management of funds; (c) financing the expansion of the business operations; or (d) restructuring the
467 debt of related members, or the pass-through of acquisition-related indebtedness to related members.

468 b. A corporation required to add to its federal taxable income interest expenses and costs
469 pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return
470 for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under
471 this article for such taxable year including tax upon any amount of interest expenses and costs required
472 to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the
473 transaction or transactions between the corporation and a related member or members that resulted in the
474 corporation's taxable income being increased, as required under subdivision a, for such interest expenses
475 and costs.

476 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and
477 convincing evidence, that the transaction or transactions between the corporation and a related member
478 or members resulting in such increase in taxable income pursuant to subdivision a had a valid business

479 purpose other than the avoidance or reduction of the tax due under this chapter and that the related
480 payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall
481 permit the corporation to file an amended return. For purposes of such amended return, the requirements
482 of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has
483 identified) that the transaction had a valid business purpose other than the avoidance or reduction of the
484 tax due under this chapter and that the related payments between the parties were made at arm's length
485 rates and terms. Such amended return shall be filed by the corporation within one year of the written
486 permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall
487 include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall
488 accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related
489 member of the corporation that subtracted from taxable income amounts received pursuant to
490 subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts
491 for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such
492 transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and
493 convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for
494 subsequent taxable years to deduct the related interest expenses and costs without making the adjustment
495 under subdivision a.

496 The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of
497 any petition pursuant to this subdivision, to include costs necessary to secure outside experts in
498 evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this
499 subdivision upon payment of such fee.

500 No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision
501 shall be maintained in any court of this Commonwealth.

502 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority
503 under § 58.1-446.

504 d. For purposes of subdivision B 9:

505 "Arm's length rates and terms" means that (i) two or more related members enter into a written
506 agreement for the transaction, (ii) such agreement is of a duration and contains payment terms
507 substantially similar to those that the related member would be able to obtain from an unrelated entity,
508 (iii) the interest is at or below the applicable federal rate compounded annually for debt instruments
509 under § 1274(d) of the Internal Revenue Code that was in effect at the time of the agreement, and (iv)
510 the borrower or payor adheres to the payment terms of the agreement governing the transaction or any
511 amendments thereto.

512 "Valid business purpose" means one or more business purposes that alone or in combination
513 constitute the motivation for some business activity or transaction, which activity or transaction
514 improves, apart from tax effects, the economic position of the taxpayer, as further defined by regulation.

515 C. There shall be subtracted to the extent included in and not otherwise subtracted from federal
516 taxable income:

517 1. Income derived from obligations, or on the sale or exchange of obligations, of the United
518 States and on obligations or securities of any authority, commission or instrumentality of the United
519 States to the extent exempt from state income taxes under the laws of the United States including, but
520 not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of
521 federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

522 2. Income derived from obligations, or on the sale or exchange of obligations of this
523 Commonwealth or of any political subdivision or instrumentality of this Commonwealth.

524 3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of
525 the Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding
526 year, or the last year in which such corporation has income, under the provisions of the income tax laws
527 of the Commonwealth.

528 4. The amount of any refund or credit for overpayment of income taxes imposed by this
529 Commonwealth or any other taxing jurisdiction.

530 5. Any amount included therein by the operation of the provisions of § 78 of the Internal
531 Revenue Code (foreign dividend gross-up).

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

534 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart
535 F income).

536 8. Any amount included therein which is foreign source income as defined in § 58.1-302.

537 9. [Repealed.]

538 10. The amount of any dividends received from corporations in which the taxpaying corporation
539 owns 50 percent or more of the voting stock.

540 11. [Repealed.]

541 12, 13. [Expired.]

542 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research
543 expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not
544 deducted, on account of the provisions of § 280C (c) of the Internal Revenue Code.

545 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed
546 in funds to the Virginia Public School Construction Grants Program and Fund established in Chapter
547 11.1 (§ 22.1-175.1 et seq.) of Title 22.1.

548 16. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or
549 exchange of real property or the sale or exchange of an easement to real property which results in the
550 real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-
551 3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with
552 this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed
553 for three years following the year in which the subtraction is taken.

554 17. For taxable years beginning on and after January 1, 2001, any amount included therein with
555 respect to § 58.1-440.1.

556 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i)
557 the "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower
558 Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7

559 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farming businesses; (b)
560 any business holding a tobacco marketing quota, or tobacco farm acreage allotment, under the
561 Agricultural Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to
562 such a quota allotment.

563 19. Effective for all taxable years beginning on and after January 1, 2002, but before January 1,
564 2005, the indemnification payments received by contract poultry growers and table egg producers from
565 the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low
566 pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of
567 poultry who contract with poultry growers qualify for this subtraction.

568 20. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of
569 the Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7
570 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:

571 a. If the payment is received in installment payments pursuant to 7 C.F.R. § 1412.807(a) (2), then
572 the entire gain recognized may be subtracted.

573 b. If the payment is received in a single payment pursuant to 7 C.F.R. § 1412.807(a) (3), then 20
574 percent of the recognized gain may be subtracted. The taxpayer may then deduct an equal amount in
575 each of the four succeeding taxable years.

576 21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses
577 and costs or interest expenses and costs added to the federal taxable income of a corporation pursuant to
578 subdivision B 8 or B 9 shall be subtracted from the federal taxable income of the related member that
579 received such amount if such related member is subject to Virginia income tax on the same amount.

580 22. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale
581 of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services
582 intended to provide individuals the training or experience of a launch, without performing an actual
583 launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia
584 or originate from an airport or spaceport in Virginia.

