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HOUSE BILL NO. 289

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 58.1-302, 58.1-320, and 58.1-322.03 of the Code of Virginia, relating to income tax; indexing brackets and exemptions.

 Patron—McNamara

 Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-302, 58.1-320, and 58.1-322.03 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-302. Definitions.

For the purpose of this chapter and unless otherwise required by the context:

"Affiliated" means two or more corporations subject to Virginia income taxes whose relationship to each other is such that (i) one corporation owns at least 80 percent of the voting stock of the other or others or (ii) at least 80 percent of the voting stock of two or more corporations is owned by the same interests.

"Compensation" means wages, salaries, commissions and any other form of remuneration paid or accrued to employees for personal services.

"Corporation" includes associations, joint stock companies and insurance companies.

"Domicile" means the permanent place of residence of a taxpayer and the place to which he intends to return even though he may actually reside elsewhere. In determining domicile, consideration may be given to the applicant's expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, business pursuits, employment, income sources, residence for federal income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the applicant, motor vehicle and other personal property registration, residence for purposes of voting as proven by registration to vote, if any, and such other factors as may reasonably be deemed necessary to determine the person's domicile.

"Foreign source income" means:

1. Interest, other than interest derived from sources within the United States;
2. Dividends, other than dividends derived from sources within the United States;
3. Rents, royalties, license, and technical fees from property located or services performed without the United States or from any interest in such property, including rents, royalties, or fees for the use of or the privilege of using without the United States any patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like properties;
4. Gains, profits, or other income from the sale of intangible or real property located without the United States; and

5. The amount of an individual's share of net income attributable to a foreign source qualified business unit of an electing small business corporation (S corporation). For purposes of this subsection, qualified business unit shall be defined by § 989 of the Internal Revenue Code, and the source of such income shall be determined in accordance with §§ 861, 862 and 987 of the Internal Revenue Code.

In determining the source of "foreign source income," the provisions of §§ 861, 862, and 863 of the Internal Revenue Code shall be applied except as specifically provided in subsection 5 above.

"Income and deductions from Virginia sources" includes:

1. Items of income, gain, loss and deduction attributable to:
 - a. The ownership of any interest in real or tangible personal property in Virginia;
 - b. A business, trade, profession or occupation carried on in Virginia; or
 - c. Prizes paid by the Virginia Lottery Department, and gambling winnings from wagers placed or paid at a location in Virginia.

2. Income from intangible personal property, including annuities, dividends, interest, royalties and gains from the disposition of intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.

"Income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this chapter or any claim for refund of tax. For purposes of the preceding sentence, the preparation for compensation of any portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim for refund. A person shall not be an "income tax return preparer" merely because the person:

- 59 1. Furnishes typing, reproducing, or other mechanical assistance;
60 2. Prepares a return or claim for refund of the employer (or of an officer or employee of the
61 employer) by whom he is regularly and continuously employed;
62 3. Prepares as a fiduciary a return or claim for refund for any person; or
63 4. Prepares an application for correction of an erroneous assessment or a protective claim for refund
64 for a taxpayer in response to any assessment pursuant to § 58.1-1812 issued to the taxpayer or in
65 response to any waiver pursuant to § 58.1-101 or 58.1-220 after the commencement of an audit of the
66 taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly
67 affects the tax liability of such taxpayer.

68 *"Indexing ratio" means the percentage, if any, by which the Chained Consumer Price Index for All*
69 *Urban Consumers (C-CPI-U), as published by the U.S. Department of Labor or any successor index, for*
70 *the most recent calendar year exceeds the C-CPI-U published at the close of the 12-month period*
71 *ending on December 31, 2021. If the percentage is less than zero, the indexing ratio shall be zero.*

72 "Individual" means all natural persons whether married or unmarried and fiduciaries acting for
73 natural persons, but not fiduciaries acting for trusts or estates.

74 "Intangible expenses and costs" means:

75 1. Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or
76 indirect acquisition, use, maintenance or management, ownership, sale, exchange, lease, transfer, or any
77 other disposition of intangible property to the extent such amounts are allowed as deductions or costs in
78 determining taxable income;

79 2. Losses related to or incurred in connection directly or indirectly with factoring transactions or
80 discounting transactions;

81 3. Royalty, patent, technical and copyright fees;

82 4. Licensing fees; and

83 5. Other similar expenses and costs.

84 "Intangible property" means patents, patent applications, trade names, trademarks, service marks,
85 copyrights and similar types of intangible assets.

86 "Interest expenses and costs" means amounts directly or indirectly allowed as deductions under § 163
87 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue
88 Code to the extent such expenses and costs are directly or indirectly for, related to, or in connection
89 with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, lease,
90 transfer, or disposition of intangible property.

91 "Nonresident estate or trust" means an estate or trust which is not a resident estate or trust.

92 "Related entity" means:

93 1. A stockholder who is an individual, or a member of the stockholder's family enumerated in § 318
94 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own,
95 directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the
96 taxpayer's outstanding stock;

97 2. A stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation,
98 if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and
99 corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent
100 of the value of the taxpayer's outstanding stock; or

101 3. A corporation, or a party related to the corporation in a manner that would require an attribution
102 of stock from the corporation to the party or from the party to the corporation under the attribution rules
103 of § 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially or
104 constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution
105 rules of § 318 of the Internal Revenue Code shall apply for purposes of determining whether the
106 ownership requirements of this subdivision have been met.

107 "Related member" means a person that, with respect to the taxpayer during all or any portion of the
108 taxable year, is a related entity, a component member as defined in § 1563(b) of the Internal Revenue
109 Code, or is a person to or from whom there is attribution of stock ownership in accordance with
110 § 1563(e) of the Internal Revenue Code.

111 "Resident" applies only to natural persons and includes, for the purpose of determining liability for
112 the taxes imposed by this chapter upon the income of any taxable year every person domiciled in
113 Virginia at any time during the taxable year and every other person who, for an aggregate of more than
114 183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in
115 Virginia or not. The word "resident" shall not include any member of the United States Congress who is
116 domiciled in another state.

117 "Resident estate or trust" means:

118 1. The estate of a decedent who at his death was domiciled in the Commonwealth;

119 2. A trust created by will of a decedent who at his death was domiciled in the Commonwealth; or

120 3. A trust created by or consisting of property of a person domiciled in the Commonwealth.

"Sales" means all gross receipts of the corporation not allocated under § 58.1-407, except the sale or other disposition of intangible property shall include only the net gain realized from the transaction.

"State," for purposes of Article 10 (§ 58.1-400 et seq.), means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country.

"Trust" or "estate" means a trust or estate, or a fiduciary thereof, which is required to file a fiduciary income tax return under the laws of the United States.

"Virginia fiduciary adjustment" means the net amount of the applicable modifications described in §§ 58.1-322.01, 58.1-322.02, and 58.1-322.04 (including subdivision 1 of § 58.1-322.04 if the estate or trust is a beneficiary of another estate or trust) which relate to items of income, gain, loss or deduction of an estate or trust. The fiduciary adjustment shall not include the modification in § 58.1-322.03, except that the amount of state income taxes excluded from federal taxable income shall be included. The fiduciary adjustment shall also include the modification in subdivision 7 of § 58.1-322.03 regarding the deduction for the purchase of a prepaid tuition contract or contribution to a savings trust account.

§ 58.1-320. Imposition of tax.

A tax is hereby annually imposed on the Virginia taxable income for each taxable year of every individual as follows:

~~Two~~ For taxable years beginning before January 1, 2022, two percent on income not exceeding in excess of \$3,000;

For taxable years beginning on and after January 1, 2022, two percent on income not in excess of \$3,000 adjusted each year by the indexing ratio;

~~Three~~ For taxable years beginning before January 1, 2022, three percent on income in excess of \$3,000, but not in excess of \$5,000;

Five percent on income in excess of \$5,000, but not in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five percent on income in excess of \$5,000 but not in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five percent on income in excess of \$5,000 but not in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989;

For taxable years beginning on and after January 1, 2022, three percent on income in excess of \$3,000 but not in excess of \$5,000, adjusted each year by the indexing ratio;

~~Five~~ For taxable years beginning before January 1, 2022, five percent on income in excess of \$5,000 but not in excess of \$17,000 for taxable years beginning January 1, 1990;

Five and three-quarters percent on income in excess of \$12,000 for taxable years beginning before January 1, 1987;

Five and three-quarters percent on income in excess of \$14,000 for taxable years beginning January 1, 1987, through December 31, 1987;

Five and three-quarters percent on income in excess of \$15,000 for taxable years beginning January 1, 1988, through December 31, 1988;

Five and three-quarters percent on income in excess of \$16,000 for taxable years beginning January 1, 1989, through December 31, 1989; and

For taxable years beginning on and after January 1, 2022, five percent on income in excess of \$5,000 but not in excess of \$17,000, adjusted each year by the indexing ratio;

~~Five and three-quarters~~ For taxable years beginning before January 1, 2022, five and three-quarters percent on income in excess of \$17,000 for taxable years beginning on and after January 1, 1990; and

For taxable years beginning on and after January 1, 2022, five and three-quarters percent on income in excess of \$17,000, adjusted each year by the indexing ratio.

§ 58.1-322.03. Virginia taxable income; deductions.

In computing Virginia taxable income pursuant to § 58.1-322, there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:

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

b. Provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return: (i) for taxable years beginning before January 1, 2019, and on and after January 1, 2026, \$3,000 for single individuals and \$6,000 for married persons (one-half of such amounts in the case of a

182 married individual filing a separate return) and (ii) for taxable years beginning on and after January 1,
183 2019, but before January 1, 2026, \$4,500 for single individuals and \$9,000 for married persons (one-half
184 of such amounts in the case of a married individual filing a separate return). For purposes of this
185 section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year
186 may compute the deduction only with respect to earned income.

187 2. a. A deduction in the amount of \$930 for each personal exemption allowable to the taxpayer for
188 federal income tax purposes. *For taxable years beginning on and after January 1, 2022, such amount*
189 *shall be adjusted each year by the indexing ratio.*

190 b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be
191 entitled to an additional personal exemption in the amount of \$800. *For taxable years beginning on and*
192 *after January 1, 2022, such amount shall be adjusted each year by the indexing ratio.*

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

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

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

202 5. a. A deduction in the amount of \$12,000 for individuals born on or before January 1, 1939.

203 b. A deduction in the amount of \$12,000 for individuals born after January 1, 1939, who have
204 attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted
205 federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers.
206 For married taxpayers filing separately, the deduction shall be reduced by \$1 for every \$1 that the total
207 combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.

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

211 6. The amount an individual pays as a fee for an initial screening to become a possible bone marrow
212 donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a
213 deduction for the payment of such fee on his federal income tax return.

214 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
215 during the taxable year for a prepaid tuition contract or college savings trust account entered into with
216 the Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as
217 provided in subdivision b, the amount deducted on any individual income tax return in any taxable year
218 shall be limited to \$4,000 per prepaid tuition contract or college savings trust account. No deduction
219 shall be allowed pursuant to this subdivision 7 if such payments or contributions are deducted on the
220 purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a
221 college savings trust account exceeds \$4,000, the remainder may be carried forward and subtracted in
222 future taxable years until the purchase price or college savings trust contribution has been fully
223 deducted; however, except as provided in subdivision b, in no event shall the amount deducted in any
224 taxable year exceed \$4,000 per contract or college savings trust account. Notwithstanding the statute of
225 limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to
226 recapture in the taxable year or years in which distributions or refunds are made for any reason other
227 than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or
228 (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision,
229 "purchaser" or "contributor" means the person shown as such on the records of the Virginia College
230 Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid
231 tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax
232 attributes associated with a prepaid tuition contract or college savings trust account, including, but not
233 limited to, carryover and recapture of deductions.

234 b. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who has
235 attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000
236 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be
237 allowed a deduction for the full amount paid for the contract or contributed to a college savings trust
238 account, less any amounts previously deducted.

239 8. The total amount an individual actually contributed in funds to the Virginia Public School
240 Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1,
241 provided that the individual has not claimed a deduction for such amount on his federal income tax
242 return.

243 9. An amount equal to 20 percent of the tuition costs incurred by an individual employed as a

primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subdivision shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. The amount an individual pays annually in premiums for long-term health care insurance, provided that the individual has not claimed a deduction for federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on and after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such taxable year for long-term health care insurance premiums paid by him.

11. Contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

a. If the payment is received in installment payments, then the recognized gain may be subtracted in the taxable year immediately following the year in which the installment payment is received.

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

12. An amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.), not to exceed \$500 in each taxable year, in purchasing for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the U.S. Environmental Protection Agency and the U.S. Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

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

14. For taxable years beginning on and after January 1, 2013, the amount an individual age 66 or older with earned income of at least \$20,000 for the year and federal adjusted gross income not in excess of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a deduction for such premiums under federal income tax laws. As used in this subdivision, "earned income" means the same as that term is defined in § 32(c) of the Internal Revenue Code. The deduction shall not be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to this chapter.

15. For taxable years beginning on and after January 1, 2018, 20 percent of business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For purposes of this subdivision, "business interest" means the same as that term is defined under § 163(j) of the Internal Revenue Code.

16. For taxable years beginning on and after January 1, 2019, the actual amount of real and personal property taxes imposed by the Commonwealth or any other taxing jurisdiction not otherwise deducted solely on account of the dollar limitation imposed on individual deductions by § 164(b)(6)(B) of the Internal Revenue Code.

17. For taxable years beginning on and after January 1, 2020, but before January 1, 2021, up to \$100,000 of the amount that is not deductible when computing federal adjusted gross income solely on account of the portion of subdivision B 10 of § 58.1-301 related to Paycheck Protection Program loans.