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SENATE BILL NO. 346

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 58.1-408 and 58.1-416 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-422.4, relating to income tax; property analytics firms; apportionment and sourcing.

Patron—Barker

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-408 and 58.1-416 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-422.4 as follows:

§ 58.1-408. What income apportioned and how.

A. The Virginia taxable income of any corporation, except those subject to the provisions of § 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, 58.1-422.2, ~~or~~ 58.1-422.3, *or* 58.1-422.4, excluding income allocable under § 58.1-407, shall be apportioned to the Commonwealth by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor, plus twice the sales factor, and the denominator of which is four; however, where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.

B. Any eligible company, as defined in § 58.1-405.1, may subtract from the numerator of the corresponding factor the value of its (i) property acquired in any qualified locality or qualified localities, as defined in § 58.1-405.1, on or after January 1, 2018, but before January 1, 2025; (ii) payroll attributable to jobs created on or after January 1, 2018, but before January 1, 2025, in any qualified locality or qualified localities; and (iii) sales in the Commonwealth during the taxable year. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years, except for any year in which the eligible company's (a) total, cumulative new capital investment falls below the applicable initial threshold or (b) number of new jobs falls below the applicable initial threshold.

§ 58.1-416. When certain other sales deemed in the Commonwealth.

A. Sales, other than sales of tangible personal property, are in the Commonwealth if:

1. The income-producing activity is performed in the Commonwealth; or

2. The income-producing activity is performed both in and outside the Commonwealth and a greater proportion of the income-producing activity is performed in the Commonwealth than in any other state, based on costs of performance.

B. 1. For debt buyers, as defined in § 58.1-422.3, sales, other than sales of tangible personal property, are in the Commonwealth if they consist of money recovered on debt that a debt buyer collected from a person who is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth. Such rule shall apply regardless of the location of a debt buyer's business.

2. For property analytics firms, as defined in § 58.1-422.4, and that meet the requirements set forth in subsection C of § 58.1-422.4, sales, other than sales of tangible personal property, are in the Commonwealth if they consist of income derived from transactions with a customer or client that is a resident of the Commonwealth or an entity that has its commercial domicile in the Commonwealth. Such rule shall apply regardless of the location of a property analytics firm's business.

C. The taxes under this article on the sales described under subsection B are imposed to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law. For the collection of such taxes on such sales, it is the intent of the General Assembly that the Tax Commissioner and the Department assert the taxpayer's nexus with the Commonwealth to the maximum extent permitted under the Constitutions of Virginia and the United States and federal law.

D. If necessary information is not available to the taxpayer to determine whether a sale other than a sale of tangible personal property is in the Commonwealth pursuant to the provisions of subsections B and C, the taxpayer may estimate the dollar value or portion of such sale in the Commonwealth, provided that the taxpayer can demonstrate to the satisfaction of the Tax Commissioner that (i) the estimate has been undertaken in good faith, (ii) the estimate is a reasonable approximation of the dollar value or portion of such sale in the Commonwealth, and (iii) in using an estimate the taxpayer did not

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SB346

59 have as a principal purpose the avoidance of any tax due under this article. The Department may
60 implement procedures for obtaining its approval to use an estimate. The Department shall adopt
61 remedies and corrective procedures for cases in which the Department has determined that the sourcing
62 rules for sales other than sales of tangible personal property have been abused by the taxpayer, which
63 may include reliance on the location of income-producing activity and direct costs of performance as
64 described in subsection A.

65 **§ 58.1-422.4. Property analytics firms; apportionment.**

66 A. As used in this section, "property analytics firm" means an entity and its affiliated entities that
67 primarily is a commercial real estate information and analytics firm and that meets the requirements of
68 subsection C.

69 B. For taxable years beginning on and after January 1, 2022, the Virginia taxable income of a
70 property analytics firm, excluding income allocable under § 58.1-407, shall be apportioned within and
71 without the Commonwealth by multiplying such income by the sales factor. For a property analytics
72 firm, only income derived from a transaction with a person who is a resident of the Commonwealth or
73 an entity that has its commercial domicile in the Commonwealth shall be apportioned to the
74 Commonwealth for income tax purposes.

75 C. 1. A firm shall qualify as a property analytics firm only if it meets the following criteria:

76 a. For taxable years beginning on and after January 1, 2022, but before January 1, 2024, such firm
77 as of January 1, 2022, has at least 1,000 full-time employees in a locality within the Commonwealth
78 that serves as the Virginia capital.

79 b. For taxable years beginning on and after January 1, 2024, but before January 1, 2029, such firm
80 as of January 1, 2024, has at least 1,348 full-time employees in a locality within the Commonwealth
81 that serves as the Virginia capital, and from January 1, 2022, through December 31, 2023, has made or
82 caused to be made a capital investment for its facilities in that locality of at least \$209 million.

83 c. For taxable years beginning on and after January 1, 2029, such firm as of January 1, 2029, has
84 at least 2,785 full-time employees in a locality within the Commonwealth that serves as the Virginia
85 capital, and from January 1, 2022, through December 31, 2028, has made or caused to be made a
86 capital investment for its facilities in that locality of at least \$414 million.

87 2. This section shall not apply to a taxpayer unless it enters into a memorandum of understanding
88 with the Virginia Economic Development Partnership Authority on or after December 1, 2021, but
89 before August 1, 2022, that contains provisions regarding the commitment of the property analytics firm
90 to make or cause to be made on or after December 1, 2021, a new capital investment in the
91 Commonwealth, and to create and maintain new jobs in the Commonwealth, all in the furtherance of its
92 business. The apportionment formula under this section shall apply to such taxpayer for all taxable
93 years beginning on or after January 1, 2022.

94 D. The General Assembly finds that the growth of property analytics firms, including the capital
95 investment and new jobs spurred by such growth, is essential to the continued fiscal health of the
96 Commonwealth. In this modern economy, states often compete for analytics and research companies.
97 Accordingly, the provisions of subsections A, B, and C relating to capital investment and new jobs are
98 integral to the purpose of this section. If any provision of this section is for any reason held to be
99 invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall not
100 be deemed severable.

101 2. That the Department of Taxation shall develop and make publicly available guidelines
102 implementing the provisions of this act. In developing such guidelines, the Department of Taxation
103 shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the
104 Code of Virginia) for guidelines promulgated on or before December 31, 2023, but shall cooperate
105 with and seek the counsel of interested groups and shall not promulgate any guidelines,
106 preliminary or final, without first seeking such counsel and conducting a public hearing.
107 Preliminary guidelines shall be promulgated and made publicly available no later than December
108 31, 2022, and final guidelines shall be promulgated and made publicly available no later than
109 December 31, 2023. After December 31, 2023, the guidelines shall be subject to the Administrative
110 Process Act and accorded the weight of regulations under § 58.1-205 of the Code of Virginia.