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HOUSE BILL NO. 261
Offered January 10, 2024
Prefiled January 5, 2024
A BILL to amend and reenact § 58.1-301 of the Code of Virginia, relating to income tax; rolling conformity.
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Patrons—McNamara and Watts
_____
Referred to Committee on Finance
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Be it enacted by the General Assembly of Virginia:
1. That § 58.1-301 of the Code of Virginia is amended and reenacted as follows:
    § 58.1-301. (Applicable to taxable years beginning on and after January 1, 2023) Conformity to Internal Revenue Code.
    A. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.
    B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, except for:
    1. The special depreciation allowance for certain property provided for under §§ 168(k), 168(l), 168(m), 1400L, and 1400N of the Internal Revenue Code;
    2. The carry-back of certain net operating losses for five years under § 172(b)(1)(H) of the Internal Revenue Code;
    3. The original issue discount on applicable high yield discount obligations under § 163(e)(5)(F) of the Internal Revenue Code;
    4. The deferral of certain income under § 108(i) of the Internal Revenue Code. For Virginia income tax purposes, income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument" (as defined under § 108(i) of the Internal Revenue Code) reacquired in the taxable year shall be fully included in the taxpayer's Virginia taxable income for the taxable year, unless the taxpayer elects to include such income in the taxpayer's Virginia taxable income ratably over a three-taxable-year period beginning with taxable year 2009 for transactions completed in taxable year 2009, or over a three-taxable-year period beginning with taxable year 2010 for transactions completed in taxable year 2010 on or before April 21, 2010. For purposes of such election, all other provisions of § 108(i) of the Internal Revenue Code shall apply mutatis mutandis. No other deferral shall be allowed for income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument";
    5. For taxable years beginning on and after January 1, 2019, the suspension of the overall limitation on itemized deductions under § 68(f) of the Internal Revenue Code;
    6. For taxable years beginning on and after January 1, 2017, but before January 1, 2018, and for taxable years beginning on and after January 1, 2019, the 7.5 percent of federal adjusted gross income threshold set forth in § 213(a) of the Internal Revenue Code that is used for purposes of computing the deduction allowed for expenses for medical care pursuant to § 213 of the Internal Revenue Code. For such taxable years, the threshold utilized for Virginia income tax purposes to compute the deduction allowed for expenses for medical care pursuant to § 213 of the Internal Revenue Code shall be 10 percent of federal adjusted gross income;
    7. The provisions of §§ 2303(a) and 2303(b) of the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (2020), related to the net operating loss limitation and carryback;
    8. The provisions of § 2304(a) of the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (2020), related to a loss limitation applicable to taxpayers other than corporations;
    9. The provisions of § 2306 of the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 (2020), related to the limitation on business interest;
    10. For taxable years beginning before January 1, 2021, the provisions of §§ 276(a), 276(b)(2), 276(b)(3), 278(a)(2), 278(a)(3), 278(b)(2), 278(b)(3), 278(c)(2), 278(c)(3), 278(d)(2), and 278(d)(3) of the federal Consolidated Appropriations Act, P.L. 116-260 (2020), and §§ 9672(2), 9672(3), 9673(2), and 9673(3) of the federal American Rescue Plan Act, P.L. 117-2 (2021) related to deductions, tax attributes, and basis increases for certain loan forgiveness and other business financial assistance; and
    11. a. (1) Any amendment enacted on or after January 1, 2023, with a projected impact that would increase or decrease general fund revenues by greater than $15 million in the fiscal year in which the amendment was enacted or any of the succeeding four fiscal years. The provisions of this subdivision shall not apply to any amendment to federal income tax law that is either subsequently adopted by the General Assembly or a federal tax extender as defined in subdivision b.

59   (2) All amendments enacted on or after January 1, 2023, and occurring between adjournment sine die of
60   the previous regular session of the General Assembly and the first day of the subsequent regular session of
61   the General Assembly if the cumulative projected impact of such amendments would increase or decrease
62   general fund revenues by greater than $75 million in the fiscal year in which the amendments were enacted or
63   any of the succeeding four fiscal years. The provisions of this subdivision shall not apply to any amendment
64   to federal income tax law that is (i) subsequently adopted by the General Assembly, (ii) a federal tax extender
65   as defined in subdivision b, ~~or~~ (iii) enacted before the date on which the cumulative projected impact is met*,*
66   *or (iv) an amendment to which Virginia does not conform pursuant to subdivision (1).* However, any
67   amendment conformed to pursuant to clause (iii) shall be included in the calculation of the $75 million
68   threshold for purposes of determining whether such threshold has been met. *Any amendment conformed to*
69   *pursuant to clause (iv) shall not be included in the calculation of the $75 million threshold for purposes of*
70   *determining whether such threshold has been met.*
71   (3) Beginning January 1, 2024, the threshold provided by subdivision (1) shall be adjusted annually based
72   on the preceding change in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), as
73   published by the Bureau of Labor Statistics for the U.S. Department of Labor or any successor index for the
74   previous year.
75   b. For purposes of this subdivision 11, "amendment" means a single amendment to federal income tax law
76   or a group of such amendments enacted in the same act of Congress that collectively surpass the threshold
77   impact, and "federal tax extender" means an amendment to federal tax law that extends the expiration date of
78   a federal tax provision to which Virginia conforms or has previously conformed.
79   c. The Secretary of Finance, in consultation with the Chairmen of the Senate Committee on Finance and
80   Appropriations and the House Committees on Appropriations and Finance, shall be responsible for
81   determining whether the criteria of subdivision a are met.
82   d. The Secretary of Finance shall annually provide a report on or before November 15 of each year on the
83   fiscal impact of amendments to federal income tax law occurring since the adjournment sine die of the
84   preceding regular session of the General Assembly to the Chairmen of the Senate Committee on Finance and
85   Appropriations and the House Committees on Appropriations and Finance. The Secretary of Finance shall
86   also provide updates to the same Chairmen on any further amendments to federal income tax law occurring
87   between submission of the required report and the first day of the subsequent regular session of the General
88   Assembly.
89   C. The Department of Taxation is hereby authorized to develop procedures or guidelines for
90   implementation of the provisions of this section, which procedures or guidelines shall be exempt from the
91   provisions of the Administrative Process Act (§ 2.2-4000 et seq.).