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SENATE BILL NO. 1276

Offered January 8, 2025

Prefiled January 8, 2025

A BILL to amend and reenact § 58.1-322.03 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 1.2, consisting of a section numbered 40.1-28.13, relating to labor and employment; portable benefit accounts; income tax; deduction.

Patron—DeSteph

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-322.03 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 40.1 an article numbered 1.2, consisting of a section numbered 40.1-28.13 as follows:

Article 1.2.

Portable Benefit Accounts.

§ 40.1-28.13. Portable benefit accounts.

A. For purposes of this section:

"Independent contractor" means a person hired or contracted to perform work as an independent contractor as determined by the most recent version of the guidelines published by the Internal Revenue Service, including its interpretation of common law doctrine on independent contractors and any regulations that the Internal Revenue Service has promulgated regarding determining whether an employee is an independent contractor, including 26 C.F.R. § 31.3121(d)-1.

"Portable benefit account" means an account offered through and administered by a bank, credit union, or other depository institution that provides for the payment of (i) health insurance premiums, copays, deductibles, coinsurance, or other costs related to maintaining health insurance coverage; (ii) coverage for or the direct purchase of prescription drugs; (iii) fees or costs related to a health care sharing ministry arrangement; (iv) fees or costs related to a direct primary care agreement; or (v) other health care costs related to insurance coverage, alternative care, or direct-pay or cash-pay services that is assigned to an individual beneficiary and is not associated with a specific employer or hiring party.

B. An individual who is a resident of the Commonwealth and has worked, been hired, or contracted as an independent contractor during the current tax year may open and contribute to a portable benefit account for the use of the individual, the individual's spouse, and any dependents in the household. Distributions from a portable benefit account shall be limited to those items specified in the definition of a portable benefit account. The beneficiary of a portable benefit account shall retain ownership and control of the account in the event that the work or contract has been completed or otherwise terminated. The individual may continue to make contributions to such account and take distributions from such account regardless of the individual's status as an independent contractor.

§ 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 married individual filing a separate return); (ii) for taxable years beginning on and after January 1, 2019, but before January 1, 2022, \$4,500 for single individuals and \$9,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); (iii) for taxable years beginning on and after January 1, 2022, but before January 1, 2024, \$8,000 for single individuals and \$16,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return); and (iv) for taxable years beginning on and after January 1, 2024, but before January 1, 2026, \$8,500 for single individuals and \$17,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return). For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the

59 taxable year may compute the deduction only with respect to earned income.

60 2. a. A deduction in the amount of \$930 for each personal exemption allowable to the taxpayer for federal
61 income tax purposes.

62 b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be entitled to
63 an additional personal exemption in the amount of \$800.

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

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

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

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

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

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

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

84 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed
85 during the taxable year for a prepaid tuition contract or college savings trust account entered into with the
86 Commonwealth Savers Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided in
87 subdivision b, the amount deducted on any individual income tax return in any taxable year shall be limited to
88 \$4,000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant
89 to this subdivision 7 if such payments or contributions are deducted on the purchaser's or contributor's federal
90 income tax return. If the purchase price or annual contribution to a college savings trust account exceeds
91 \$4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price
92 or college savings trust contribution has been fully deducted; however, except as provided in subdivision b, in
93 no event shall the amount deducted in any taxable year exceed \$4,000 per contract or college savings trust
94 account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction
95 taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are
96 made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the
97 Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes
98 of this subdivision, "purchaser" or "contributor" means the person shown as such on the records of the
99 Commonwealth Savers Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a
100 prepaid tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax
101 attributes associated with a prepaid tuition contract or college savings trust account, including, but not limited to
102 to, carryover and recapture of deductions.

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

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

111 9. An amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or
112 secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend
113 continuing teacher education courses that are required as a condition of employment; however, the deduction
114 provided by this subdivision shall be available only if (i) the individual is not reimbursed for such tuition
115 costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal
116 income tax return.

117 10. The amount an individual pays annually in premiums for long-term health care insurance, provided
118 that the individual has not claimed a deduction for federal income tax purposes, or, for taxable years
119 beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on and after

120 January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual
 121 during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such
 122 taxable year for long-term health care insurance premiums paid by him.

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

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

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

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

145 13. The lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living tissue
 146 for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such
 147 donation, provided that the donor has not taken a medical deduction in accordance with the provisions of §
 148 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in
 149 which the donation is made or the taxable year in which the 12-month period expires.

150 14. For taxable years beginning on and after January 1, 2013, the amount an individual age 66 or older
 151 with earned income of at least \$20,000 for the year and federal adjusted gross income not in excess of
 152 \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the
 153 individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a
 154 deduction for such premiums under federal income tax laws. As used in this subdivision, "earned income"
 155 means the same as that term is defined in § 32(c) of the Internal Revenue Code. The deduction shall not be
 156 allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b) claimed
 157 a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another provision
 158 of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to this chapter.

159 15. Business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code:

160 a. For taxable years beginning on and after January 1, 2018, but before January 1, 2022, 20 percent of
 161 such disallowed business interest;

162 b. For taxable years beginning on and after January 1, 2022, but before January 1, 2024, 30 percent of
 163 such disallowed business interest;

164 c. For taxable years beginning on and after January 2, 2024, 50 percent of such disallowed business
 165 interest.

166 For purposes of subdivision 15, "business interest" means the same as that term is defined under § 163(j)
 167 of the Internal Revenue Code.

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

172 17. For taxable years beginning before January 1, 2021, up to \$100,000 of the amount that is not
 173 deductible when computing federal adjusted gross income solely on account of the portion of subdivision B
 174 10 of § 58.1-301 related to Paycheck Protection Program loans.

175 18. For taxable years beginning on and after January 1, 2022, but before January 1, 2025, the lesser of
 176 \$500 or the actual amount paid or incurred for eligible educator qualifying expenses. For purposes of this
 177 subdivision, "eligible educator" means an individual who for at least 900 hours during the taxable year in
 178 which the credit under this section is claimed served as a teacher licensed pursuant to Chapter 15 (§
 179 22.1-289.1 et seq.) of Title 22.1, instructor, student counselor, principal, special needs personnel, or student
 180 aide serving accredited public or private primary and secondary school students in Virginia, and "qualifying

181 expenses" means 100 percent of the amount paid or incurred by an eligible educator during the taxable year
182 for participation in professional development courses and the purchase of books, supplies, computer
183 equipment (including related software and services), other educational and teaching equipment, and
184 supplementary materials used directly in that individual's service to students as an eligible educator, provided
185 that such purchases were neither reimbursed nor claimed as a deduction on the eligible educator's federal
186 income tax return for such taxable year.

187 *19. For taxable years beginning on or after January 1, 2025, but before January 1, 2027, the amount of*
188 *the contributions made to a portable benefit account by an independent contractor, as those terms are*
189 *defined in § 40.1-28.13, for income earned for work done as an independent contractor during the taxable*
190 *year. The Department shall prorate such deduction among taxpayers who properly claim it to prevent*
191 *revenue loss as a result of the deduction from exceeding \$5 million.*