

HOUSE BILL NO. 137  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Finance  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Delegate Feggans)

*A BILL to amend and reenact § 58.1-322.02 of the Code of Virginia, relating to individual income tax; subtractions; military benefits.*

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

**1. That § 58.1-322.02 of the Code of Virginia is amended and reenacted as follows:**

## § 58.1-322.02. Virginia taxable income; subtractions.

11 In computing Virginia taxable income pursuant to § 58.1-322, to the extent included in federal adjusted  
12 gross income, there shall be subtracted:

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

18        2. Income derived from obligations, or on the sale or exchange of obligations, of the Commonwealth or of  
19        any political subdivision or instrumentality of the Commonwealth.

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

22       4. Up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code;  
23       however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also claim a  
24       subtraction under this subdivision.

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

27       6. The amount of wages or salaries eligible for the federal Work Opportunity Credit which was not  
28        claimed for federal tax purposes under the provisions of § 280G(b) of the Internal Revenue Code.

<sup>28</sup> An amount included there in less than \$600 from a gift awarded by the Virginia Lottery.

<sup>39</sup> The wages or salaries received by any person for active and inactive service in the National Guard of

31 the Commonwealth of Virginia, (i) for taxable years beginning before January 1, 2023, not to exceed the  
32 amount of income derived from 39 calendar days of such service or \$3,000, whichever amount is less;  
33 however, only those persons in the ranks of O3 and below shall be entitled to the subtractions specified in this  
34 clause, and (ii) for taxable years beginning on or after January 1, 2023, not to exceed the amount of income  
35 derived from 39 calendar days of such service or \$5,500, whichever amount is less; however, only those  
36 persons in the ranks of O6 and below shall be entitled to the subtractions specified in this clause.

37 9. Amounts received by an individual, not to exceed \$1,000 for taxable years beginning on or before  
38 December 31, 2019, and \$5,000 for taxable years beginning on or after January 1, 2020, as a reward for  
39 information provided to a law-enforcement official or agency, or to a nonprofit corporation created  
40 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of  
41 perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an employee of,  
42 or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the  
43 reward was paid, or any person who is compensated for the investigation of crimes or accidents.

44 10. The amount of "qualified research expenses" or "basic research expenses" eligible for deduction for  
45 federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal  
46 Revenue Code and which shall be available to partners, shareholders of S corporations, and members of  
47 limited liability companies to the extent and in the same manner as other deductions may pass through to  
48 such partners, shareholders, and members.

49 11. Any income received during the taxable year derived from a qualified pension, profit-sharing, or stock  
50 bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity  
51 established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of  
52 the Internal Revenue Code, or any federal government retirement program, the contributions to which were  
53 deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such  
54 plan or program were subject to taxation under the income tax in another state.

55 12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or  
56 savings trust account with the Commonwealth Savers Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.)  
57 of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to  
58 a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

59 13. All military pay and allowances, to the extent included in federal adjusted gross income and not

60 otherwise subtracted, deducted, or exempted under this section, earned by military personnel while serving by  
61 order of the President of the United States with the consent of Congress in a combat zone or qualified  
62 hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal  
63 Revenue Code.

64 14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange of real  
65 property or the sale or exchange of an easement to real property which results in the real property or the  
66 easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time  
67 not less than 30 years. To the extent that a subtraction is taken in accordance with this subdivision, no tax  
68 credit under this chapter for donating land for its preservation shall be allowed for three years following the  
69 year in which the subtraction is taken.

70 15. Fifteen thousand dollars of military basic pay for military service personnel on extended active duty  
71 for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the  
72 amount by which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if such  
73 military basic pay amount is equal to or exceeds \$30,000.

74 16. The first \$15,000 of salary for each federal and state employee whose total annual salary from all  
75 employment for the taxable year is \$15,000 or less.

76 17. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

77 18. a. Any amount received as military retirement income by an individual awarded the Congressional  
78 Medal of Honor.

79 b. For taxable years beginning on and after January 1, 2022, but before January 1, 2023, up to \$10,000 of  
80 military benefits; and for taxable years beginning on and after January 1, 2023, but before January 1, 2024,  
81 up to \$20,000 of military benefits.

82 c. For taxable years beginning on and after January 1, 2024, but before January 1, 2025, up to \$30,000 of  
83 military benefits; and for taxable years beginning on and after January 1, 2025, up to \$40,000 of military  
84 benefits. *Beginning in taxable year 2026 and for each taxable year thereafter, the amount of military benefits*  
85 *that may be subtracted pursuant to this subdivision shall be adjusted annually based on the greater of (i) the*  
86 *change in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as*  
87 *published by the Bureau of Labor Statistics of the U.S. Department of Labor for the previous year or (ii) zero.*

88 d. For purposes of subdivisions b and c, "military benefits" means any (i) military retirement income  
89 received for service in the Armed Forces of the United States, (ii) qualified military benefits received

90 pursuant to § 134 of the Internal Revenue Code, (iii) benefits paid to the surviving spouse of a veteran of the  
91 Armed Forces of the United States under the Survivor Benefit Plan program established by the U.S.  
92 Department of Defense, and (iv) military benefits paid to the surviving spouse of a veteran of the Armed  
93 Forces of the United States. The subtraction allowed by subdivision b shall be allowed only for military  
94 benefits received by an individual age 55 or older. The subtraction allowed by subdivision c shall be allowed  
95 for military benefits received by an individual of any age. No subtraction shall be allowed pursuant to  
96 subdivisions b and c if a credit, exemption, subtraction, or deduction is claimed for the same income pursuant  
97 to subdivision a or any other provision of Virginia or federal law.

98 19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from, hidden  
99 from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages,  
100 reparations, or other consideration received by a victim or target of Nazi persecution to compensate such  
101 individual for performing labor against his will under the threat of death, during World War II and its prelude  
102 and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the  
103 proceeds from the sale of assets stolen from, hidden from, or otherwise lost to, during World War II and its  
104 prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall  
105 only apply to an individual who was the first recipient of such items of income and who was a victim or  
106 target of Nazi persecution, or a spouse, surviving spouse, or child or stepchild of such victim.

107 As used in this subdivision:

108 "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European  
109 countries allied with Nazi Germany, or any other neutral European country or area in Europe under the  
110 influence or threat of Nazi invasion.

111 "Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the  
112 Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or omission in  
113 any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath, (iii) transactions  
114 with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution, or (v) the holding of  
115 such assets by entities or persons in the Swiss Confederation during World War II and its prelude and  
116 aftermath. A "victim or target of Nazi persecution" also includes any individual forced into labor against his  
117 will, under the threat of death, during World War II and its prelude and direct aftermath.

118 20. The military death gratuity payment made after September 11, 2001, to the survivor of deceased

119 military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the subtraction  
120 amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross  
121 income in accordance with § 134 of the Internal Revenue Code.

122 21. The death benefit payments from an annuity contract that are received by a beneficiary of such  
123 contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an  
124 insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this  
125 subdivision shall be allowed only for that portion of the death benefit payment that is included in federal  
126 adjusted gross income.

127 22. Any gain recognized from the sale of launch services to space flight participants, as defined in 49  
128 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of a  
129 launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch  
130 services must be performed in Virginia or originate from an airport or spaceport in Virginia.

131 23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49  
132 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National  
133 Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched  
134 from an airport or spaceport in Virginia.

135 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as  
136 investment services partnership interest income (otherwise known as investment partnership carried interest  
137 income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income  
138 shall be attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other  
139 technology business approved by the Secretary of Administration, provided that the business has its principal  
140 office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to  
141 the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the  
142 dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a  
143 "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an  
144 investment in the same business.

145 25. For taxable years beginning on and after January 1, 2014, any income of an account holder for the  
146 taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's first-time  
147 home buyer savings account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36 and (ii) interest  
148 income or other income for federal income tax purposes attributable to such person's first-time home buyer

149 savings account.

150 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction taken  
151 under this subdivision shall be subject to recapture in the taxable year or years in which moneys or funds  
152 withdrawn from the first-time home buyer savings account were used for any purpose other than the payment  
153 of eligible costs by or on behalf of a qualified beneficiary, as provided under § 36-174. The amount subject to  
154 recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the  
155 payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the  
156 payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to  
157 the total balance in the account at such time.

158 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i) withdrawn by  
159 reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the account pursuant  
160 to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330; or (iii)  
161 transferred from an account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36 into another  
162 account established pursuant to such chapter for the benefit of another qualified beneficiary.

163 For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings  
164 account," and "qualified beneficiary" mean the same as those terms are defined in § 36-171.

165 26. For taxable years beginning on and after January 1, 2015, any income for the taxable year attributable  
166 to the discharge of a student loan solely by reason of the student's death. For purposes of this subdivision,  
167 "student loan" means the same as that term is defined under § 108(f) of the Internal Revenue Code.

168 27. a. Income, including investment services partnership interest income (otherwise known as investment  
169 partnership carried interest income), attributable to an investment in a Virginia venture capital account. To  
170 qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2018, but  
171 before December 31, 2023. No subtraction shall be allowed under this subdivision for an investment in a  
172 company that is owned or operated by a family member or an affiliate of the taxpayer. No subtraction shall be  
173 allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision 24 or a tax  
174 credit under § 58.1-339.4 for the same investment.

175 b. As used in this subdivision 27:

176 "Qualified portfolio company" means a company that (i) has its principal place of business in the  
177 Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or  
178 service other than the management or investment of capital; and (iii) provides equity in the company to the

179 Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company" does not  
180 include a company that is an individual or sole proprietorship.

181 "Virginia venture capital account" means an investment fund that has been certified by the Department as  
182 a Virginia venture capital account. In order to be certified as a Virginia venture capital account, the operator  
183 of the investment fund shall register the investment fund with the Department prior to December 31, 2023, (i)  
184 indicating that it intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio  
185 companies and (ii) providing documentation that it employs at least one investor who has at least four years  
186 of professional experience in venture capital investment or substantially equivalent experience. "Substantially  
187 equivalent experience" includes, but is not limited to, an undergraduate degree from an accredited college or  
188 university in economics, finance, or a similar field of study. The Department may require an investment fund  
189 to provide documentation of the investor's training, education, or experience as deemed necessary by the  
190 Department to determine substantial equivalency. If the Department determines that the investment fund  
191 employs at least one investor with the experience set forth herein, the Department shall certify the investment  
192 fund as a Virginia venture capital account at such time as the investment fund actually invests at least 50  
193 percent of the capital committed to its fund in qualified portfolio companies.

194 28. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a  
195 subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before  
196 December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by a family  
197 member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer  
198 who has claimed a subtraction under subdivision 24 or 27 or a tax credit under § 58.1-339.4 for the same  
199 investment.

200 b. As used in this subdivision 28:

201 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of  
202 § 2.2-115.

203 "Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3 of  
204 § 2.2-115.

205 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C. § 856,  
206 that has been certified by the Department as a Virginia real estate investment trust. In order to be certified as  
207 a Virginia real estate investment trust, the trustee shall register the trust with the Department prior to  
208 December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia and at

209 least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If the  
210 Department determines that the trust satisfies the preceding criteria, the Department shall certify the trust as a  
211 Virginia real estate investment trust at such time as the trust actually invests at least 90 percent of trust funds  
212 in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double  
213 distressed.

214 29. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of real  
215 property by condemnation proceedings.

216 30. For taxable years beginning before January 1, 2021, up to \$100,000 of all grant funds received by the  
217 taxpayer under the Rebuild Virginia program established by the Governor and administered by the  
218 Department of Small Business and Supplier Diversity.

219 31. For taxable years beginning on and after January 1, 2022, any compensation for wrongful  
220 incarceration awarded pursuant to the procedures established under Article 18.2 (§ 8.01-195.10 et seq.) of  
221 Chapter 3 of Title 8.01.