DEPARTMENT OF TAXATION
2026 Fiscal Impact Statement

1. **Patron** Elizabeth B. Bennett-Parker

2. **Bill Number** HB 378
   House of Origin:
   x **Introduced**
   ____ **Substitute**
   ____ **Engrossed**

   Second House:
   ____ **In Committee**
   ____ **Substitute**
   ____ **Enrolled**

3. **Committee** House Finance

4. **Title** Net Investment Income Tax

5. **Summary/Purpose:**

   This bill would impose a 3.8 percent tax on individuals, estates, and trusts equal to the lesser of a taxpayer's net investment income or the amount by which federal modified adjusted gross income exceeds $500,000. This tax would be in addition to Virginia's current income tax, which has a top marginal rate of 5.75 percent. Therefore, this bill could result in an up to 9.55 percent combined tax rate on such income.

   For part-year residents, nonresidents, estates, and trusts, the tax is apportioned based on the portion of net investment income allocable to Virginia.

   This bill would be effective for taxable years beginning on and after January 1, 2027.

6. **Budget amendment necessary:** Yes.
   Item(s): 261 and 263 Department of Taxation

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

   7a. Expenditure Impact:

Fiscal Year	*Dollars*	*Positions*	*Fund*
2026-27	$40,214	0	GF
2027-28	$502,426	2	GF
2028-29	$186,702	2	GF
2029-30	$188,501	2	GF
2030-31	$190,337	2	GF
2031-32	$122,409	2	GF

8. **Fiscal implications:**

   Administrative Costs

   The Department of Taxation ("the Department") would incur estimated expenditures as shown above. Such costs would primarily consist of updating the Department's systems to implement the new tax and two new full-time employees to administer it.

Because of the implementation and release schedule for the Integrated Revenue Management System ("IRMS") replacement project, this legislation will not be impacted by such project if enacted during the 2026 Regular Session of the General Assembly. For more information on the new system implementation releases, see the 2025 Status Report on the Replacement of the Integrated Revenue Management System (IRMS).

Revenue Impact

This bill would have an unknown positive General Fund revenue impact beginning in Fiscal Year 2027.

Based upon an Institute on Taxation and Economic Policy ("ITEP") October 30, 2025 analysis of a state-level tax modeled on the federal 3.8 percent Net Investment Income Tax, the Department was able to develop the following speculative revenue estimates of approximately $475 million in Fiscal Year 2027 and approximately $960 million per year in Fiscal Year 2028 and after.

These speculative estimates assume the federal NIIT thresholds of $200,000 for single individuals and $250,000 for joint individuals. However, the actual revenue impact of this bill would likely be less because the bill's single $500,000 threshold is materially higher than the federal NIIT thresholds, which narrows the affected taxpayer pool and reduces the base to which the 3.8 percent applies. Therefore, the actual positive revenue impact of this bill is unknown.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

Because §58.1-301 of the Code of Virginia defines the meaning of Internal Revenue Code unless a different meaning is clearly required, the Department suggests the following clarifying technical amendments:

Line 35, after "*Internal Revenue Code*"
Insert: "*in this section*"

Line 36, after "*January 1, 2026*"
Insert: ", *notwithstanding the date specified in § 58.1-301*"

11. Other comments:

Purpose and Structure of the Federal Net Investment Income Tax

The federal Net Investment Income Tax ("NIIT") was enacted as part of the Health Care and Education Reconciliation Act of 2010 to help fund the expansion of health coverage under the Affordable Care Act. The NIIT was designed to broaden the tax base for Medicare by requiring individuals with significant passive and capital income to share in the cost of expanded health care.

The NIIT imposes a 3.8 percent NIIT on certain individuals, estates, and trusts with income above specified thresholds. For individuals, the tax applies to the lesser of (i) net investment income or (ii) modified adjusted gross income ("MAGI") in excess of a threshold ($200,000 for single filers and $250,000 for joint filers). For estates and trusts, the tax applies to undistributed net investment income above the top income tax bracket threshold, which for the 2026 tax year is $16,000. Net investment income generally includes interest, dividends, annuities, royalties, rents, passive business income, and net gains from the disposition of property, reduced by properly allocable deductions.

Comparison of the Proposed Virginia and Federal Net Investment Income Taxes (NIIT)

The most significant difference in the proposed net investment income tax under this bill and the federal NIIT is the amount of the MAGI threshold used to calculate the tax:

- Federal: $200,000 for single filers and $250,000 for joint filers
- Proposal: $500,000 for all taxpayers

The bill also modifies certain aspects of the tax base by excluding interest on U.S. obligations while including income from out-of-state bonds, gains excluded under Internal Revenue Code §§1202 and 1400Z-2, and income from incomplete gift non-grantor trust. Unlike the federal NIIT, this proposed state tax broadens the taxable base and aligns its scope with Virginia-specific income rules.

State Approaches to Net Investment Income- Related Taxes

The majority of states either tax investment income as part of their general income tax regimes without imposing a separate NIIT-style surtax or do not tax such income at all. However, Minnesota and Maryland have adopted distinct approaches to taxing high-income investment earnings.

Minnesota

Minnesota has enacted a state-level net investment income tax, effective for taxable years beginning in 2024. This tax imposes a 1 percent rate on net investment income exceeding $1 million for individuals, estates and trusts. Although modeled on the federal NIIT, Minnesota's tax establishes its own threshold and rate, includes exclusions for certain Minnesota agricultural property gains and interest from U.S. obligations, applies to residents and non-residents based on Minnesota-source income, and must be reported and paid separately from composite or pass-through entity taxes.

Maryland

In 2025, the Maryland General Assembly enacted legislation that imposes an additional 2 percent tax on net capital gains included in Maryland adjusted gross income for individuals with federal adjusted gross income exceeding $350,000, regardless of filing status. The tax applies to certain capital gains from fiduciaries and pass-through entities but does not apply to corporations. The surcharge is assessed in addition to the regular state income tax, excluding gains from qualifying primary residences sold less than $1.5

million, retirement accounts, certain agricultural and conservation-related property, specified business assets, and non-profit housing assets.

Proposed Legislation

This bill would impose a 3.8 percent tax on individuals, estates, and trusts equal to the lesser of a taxpayer's net investment income or the amount by which federal modified adjusted gross income exceeds $500,000. This tax would be in addition to Virginia's current income tax, which has a top marginal rate of 5.75 percent. Therefore, this bill could result in an up to 9.55 percent combined tax rate on such income.

Net investment income and federal modified adjusted gross income would be defined as they are under federal law, with adjustments to (i) exclude interest on U.S. obligations exempt from state tax, (ii) include interest on out-of-state municipal bonds, (iii) include certain gains normally excluded federally, such as those from qualified small business stock or Opportunity Zones, and (iv) for incomplete gift non-grantor trusts, attribute the trust's net investment income to the grantor.

Net investment income generally includes interest, dividends, annuities, royalties, rents, passive business income, and net gains from the disposition of property, reduced by properly allocable deductions

MAGI in the NIIT context, is generally defined as federal adjusted gross income ("FAGI") for regular income tax purposes adjusted by certain foreign earned income exclusions and deductions. For taxpayers who haven't excluded any foreign earned income, their MAGI is generally the same as their regular FAGI.

"Incomplete gift non-grantor trust" would mean a resident trust that is not a grantor trust that is defined in § 64.2-779.16 of the Virginia Code and with respect to which the grantor's transfer of assets is treated as an incomplete gift under § 2511-2 of the Internal Revenue Code.

All references to the "Internal Revenue Code" would mean the Internal Revenue Code of the United States as it existed and was in effect on January 1, 2026.

For part-year residents, nonresidents, estates, and trusts, the tax is apportioned based on the portion of net investment income allocable to Virginia.

This bill would be effective for taxable years beginning on and after January 1, 2027.

cc : Secretary of Finance

Date: 02/01/2026 SJH
HB378F161