

**REPORT OF THE
VIRGINIA CODE COMMISSION**

Identification of Tax Preferences Outside of Title 58.1

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 4

**COMMONWEALTH OF VIRGINIA
RICHMOND
2007**



COMMONWEALTH of VIRGINIA

DELEGATE R. STEVEN LANDES
CHAIRMAN

SENATOR JOHN S. EDWARDS
VICE CHAIRMAN

VIRGINIA CODE COMMISSION

General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591
FAX (804) 692-0625

December 29, 2006

TO: The Honorable Tim Kaine, Governor of Virginia and Members of the General Assembly of Virginia

The Virginia Code Commission is pleased to transmit its report regarding the study of tax preferences located in the Code of Virginia outside of Title 58.1 (Taxation) in accordance with Senate Joint Resolution No. 308 (2005).

Two tax credits were identified as residing outside of Title 58.1. Legislation is recommended to place the substantive provisions of the low-income housing tax credit and the Neighborhood Assistance Act tax credit statutes into Title 58.1 of the Code of Virginia.

Respectfully submitted

A handwritten signature in black ink, appearing to read "E.M. Miller, Jr.", written over a horizontal line.

E.M. Miller, Jr.
Secretary, Virginia Code Commission

PREFACE

Authority

Senate Joint Resolution No. 308 of the 2005 Session of the Virginia General Assembly directed the Virginia Code Commission to identify tax preferences in the Code of Virginia residing outside of Title 58.1 (Taxation) and make recommendations to the General Assembly concerning legislation that might be enacted to create cross references in Title 58.1 for these preferences or to more easily identify all tax preferences by users of the Code of Virginia.

Commission Members

R. Steven Landes, *Chairman*
John S. Edwards, *Vice-Chairman*
Robert Hurt
Ryan T. McDougale
Robert L. Calhoun
Thomas M. Moncure, Jr.
S. Bernard Goodwyn
James F. Almand
Frank S. Ferguson
E. M. Miller, Jr.

Commission Staff

Jane D. Chaffin, Registrar of Regulations, Division of Legislative Services

Staff Assigned to Report

Mark Vucci, Senior Attorney, Division of Legislative Services

TABLE OF CONTENTS

Executive Summary	iv
Identification of Tax Preferences Outside of Title 58.1	1
Appendix A – Senate Joint Resolution No. 308 (2005)	A-1
Appendix B – Proposed Legislation	B-1

EXECUTIVE SUMMARY

Senate Joint Resolution 308 of the 2005 Session of the General Assembly directed the Virginia Code Commission to identify tax preferences in the Code of Virginia residing outside of Title 58.1 (Taxation) and make recommendations to the General Assembly concerning legislation that might be enacted to create cross references in Title 58.1 for these preferences or to more easily identify all tax preferences by users of the Code of Virginia.

Two tax credits were identified outside of Title 58.1. As a result of this finding, the Virginia Code Commission recommended legislation to move the substantive provisions of the low-income housing tax credit and the Neighborhood Assistance Act tax credit statutes into Title 58.1 of the Code of Virginia. For the low-income housing tax credit, the legislation consolidates the tax credit provisions into § 58.1-435 and provides a cross reference to the tax credit in § 36-55.63. Proposed legislation moves the Neighborhood Assistance Act tax credit from Title 63.2 (Welfare) to Title 58.1 (Taxation) and provides a cross reference to the tax credit program in § 63.2-2002 of the Code of Virginia.

IDENTIFICATION OF TAX PREFERENCES OUTSIDE OF TITLE 58.1

Title 58.1 of the Code of Virginia establishes the general tax structure for the Commonwealth and sets forth numerous tax preferences such as deductions, subtractions, credits, exclusions, and exemptions that may be claimed by certain individuals and businesses. Senate Joint Resolution No. 308 (SJR 308) of the 2005 Session of the General Assembly directed the Virginia Code Commission to identify tax preferences in the Code of Virginia residing outside of Title 58.1 and make recommendations to the General Assembly concerning legislation that might be enacted to create cross references in Title 58.1 for these preferences or to more easily identify all tax preferences by users of the Code of Virginia.

Division of Legislative Services staff conducted a thorough review of the Code of Virginia to identify tax preferences located outside of Title 58.1 (Taxation). Two tax credits were identified – the Neighborhood Assistance Act tax credit, which resides in Chapter 20 (§ 63.2-2000) of Title 63.2 of the Code of Virginia, and the low-income housing tax credit currently residing in § 36-55.63 of the Code of Virginia. The Neighborhood Assistance Act tax credit is designed to provide funding for municipal and tax exempt organizations by providing tax credits primarily to corporations and individuals making contributions and donating services to these entities. The Neighborhood Assistance Act tax credit is fixed at 45 percent of the value of the contribution or donated services. The Neighborhood Assistance Act tax credit may be carried forward up to five years following the year of the contribution or donation of services. The Virginia low-income housing tax credit is available for qualified housing units placed in service on or after January 1, 1998, in accordance with § 36-55.63 of the Code of Virginia, and provides tax credits primarily to corporations and individuals placing low-income housing units in service. The state tax credit for each project is based on a percentage of the federal tax credit allowed and claimed for the project. The low-income housing tax credit also may be carried forward for five years.

Staff findings related to SJR 308 were reported to the Virginia Code Commission at its September 20, 2006, meeting. Legislation was recommended and presented to add in Title 58.1 cross references to both the low-income housing tax credit established under § 36-55.63 (Housing) and the Neighborhood Assistance Act tax credit established in Title 63.2 (Welfare). Provisions were added to clarify that these sections did not create duplicate tax credits.

After receiving staff recommendations, the Code Commission voted to move the low-income housing tax credit and the Neighborhood Assistance Act tax credit provisions into Title 58.1 (Taxation) with a cross reference to these credits in Titles 36 (Housing) and 63.2 (Welfare), respectively. Staff was asked to prepare the requested legislation and present it to the Code Commission at a future meeting.

At the Code Commission's November 9, 2006, meeting, staff presented legislation that placed the substantive provisions of the low-income housing tax credit and the Neighborhood Assistance Act tax credit statutes into Title 58.1 of the Code of Virginia. For the low-income housing tax credit, the legislation consolidates the tax credit provisions into § 58.1-435 and provides a cross reference to the tax credit in § 36-55.63. Proposed legislation moves the Neighborhood Assistance Act tax credit from Title 63.2 (Welfare) to Title 58.1 (Taxation) and provides a cross reference to the tax credit program in § 63.2-2002 of the Code of Virginia. The Commission approved the proposed legislation.

APPENDIX A
SENATE JOINT RESOLUTION NO. 308 (2005)

SENATE JOINT RESOLUTION NO. 308

Directing the Virginia Code Commission to identify tax preferences outside of Title 58.1 in the Code of Virginia. Report.

Agreed to by the Senate, February 25, 2005
Agreed to by the House of Delegates, February 24, 2005

WHEREAS, Title 58.1 of the Code of Virginia establishes a general tax structure for the Commonwealth and sets forth numerous tax preferences such as deductions, subtractions, credits, exclusions, and exemptions that may be claimed by certain individuals and businesses; and

WHEREAS, other tax preferences exist elsewhere throughout the Code of Virginia; and

WHEREAS, identifying and comprehending the scope of all tax preferences in the Code of Virginia becomes difficult when not all such preferences are located in Title 58.1, the title dedicated to taxation in the Commonwealth; and

WHEREAS, the Virginia Code Commission is charged with maintaining a Code of the general and permanent statutes of the Commonwealth; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia Code Commission be directed to identify tax preferences outside of Title 58.1 in the Code of Virginia. In identifying the preferences, the Virginia Code Commission shall also make recommendations to the General Assembly concerning legislation that might be enacted to create cross-references in Title 58.1 for these preferences or to more easily identify all tax preferences by users of the Code of Virginia.

The Virginia Code Commission shall submit to the Division of Legislative Automated Systems an executive summary and a report detailing the recommendations directed by this resolution no later than December 1, 2006. The executive summary and report shall be submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

APPENDIX B PROPOSED LEGISLATION

Low-income housing credit; consolidation of Code sections. Consolidates provisions of the low-income housing tax credit currently appearing in Titles 36 (Housing) and 58.1 (Taxation). The bill would consolidate the tax credit provisions into § 58.1-435 and provide a cross-reference to the tax credit in § 36-55.63.

A BILL to amend and reenact §§ 36-55.63 and 58.1-435 of the Code of Virginia, relating to the low-income housing credit.

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-55.63 and 58.1-435 of the Code of Virginia are amended and reenacted as follows:

§ 36-55.63. Low-income housing credit.

~~A. Any person shall be entitled to a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); or Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 for any five taxable years in which a federal low-income housing credit is allowed for low-income housing units placed in service on or after January 1, 1998, provided such person qualified for and claimed the low-income housing credit on the federal income tax return filed for the taxable year, and meets the qualifications established by the Board of Housing and Community Development for claiming such credit on the applicable Virginia tax return.~~

~~B.—The Board of Housing and Community Development shall, consistent with the provisions, terms, and conditions set forth under § 58.1-435, issue regulations establishing the amount of the low-income housing credit allowable for the low-income housing credit provided under such section, the taxable year or years in which such credit may be taken by the taxpayer, and the terms and conditions for qualifying for such credit. ~~The Virginia low-income housing credit amount shall be a percentage of the federal low-income tax credit claimed for the taxable year; however, the specific percentage shall be determined by the Board. If the low-income housing credit claimed on the person's federal tax return was calculated on a period of less than twelve months, the Board may nevertheless calculate the Virginia low-income housing credit amount on the basis of a twelve-month period for the taxable year.~~~~

~~C.—The Department of Housing and Community Development shall administer the approval of low-income housing credits. TheAs provided under § 58.1-435, the total maximum amount of low-income housing credits which may be approved by the Board in any calendar year shall be \$500,000. ~~Credits granted to a partnership, limited liability company or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Board.~~~~

~~D. If any person qualifies in a taxable year for the Virginia low-income housing credit, and in a subsequent taxable year is subject to the credit recapture provisions for federal income tax purposes, such person shall similarly be subject to a credit recapture amount on the Virginia tax return for which the applicable Virginia low-income housing credit was applied or used. The~~

~~Board shall promulgate regulations establishing the terms and conditions for computing the credit recapture amount for the applicable Virginia tax return.~~

~~E. To claim the credit authorized under this section, the taxpayer shall apply to the Department of Housing and Community Development to determine the credit amount allowable for the taxable year. The Department shall certify to the Department of Taxation or the State Corporation Commission, as applicable, that such person qualified for the Virginia low income housing credit amount claimed on the applicable tax return for the taxable year. The taxpayer shall attach the certification form to the Virginia tax return filed with the Department of Taxation or the State Corporation Commission, as applicable. The Department of Housing and Community Development shall also provide the Department of Taxation or the State Corporation Commission, as applicable, with credit recapture amounts and any other information it may require relating to the credit claimed by the taxpayer.~~

~~§ 58.1-435. Low-income housing credit.~~

~~A. Any person shall be entitled to a credit against the tax imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); or Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 in the amount certified to the Department or the State Corporation Commission, as applicable, pursuant to ~~§ 36-55.63~~ subsection F for any five taxable years, as such years are determined by the Board of Housing and Community Development, in which a federal low-income housing credit is allowed for low-income housing units placed in service on or after January 1, 1998, provided such person qualified for and claimed the low-income housing credit on the federal income tax return filed for the taxable year, and meets the qualifications established by the Board for claiming such credit on the applicable Virginia tax return. ~~Credits granted to a partnership, limited liability company or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Board of Housing and Community Development.~~~~

~~B. Any person claiming a credit pursuant to subsection A shall be subject to recapture of the credit pursuant to § 36-55.63. Any credit recapture shall be assessed and collected in the same manner as a tax attributable to a change in federal taxable income within the meaning of § 58.1-311. The Board of Housing and Community Development shall issue regulations establishing the amount of the low-income housing credit allowable, the taxable year or years in which such credit may be taken by the taxpayer, and the terms and conditions for qualifying for such credit. The Virginia low-income housing credit amount shall be a percentage of the federal low-income tax credit claimed for the taxable year; however, the specific percentage shall be determined by the Board. If the low-income housing credit claimed on the person's federal tax return was calculated on a period of less than 12 months, the Board may nevertheless calculate the Virginia low-income housing credit amount on the basis of a 12-month period for the taxable year.~~

~~C. The Department of Housing and Community Development shall administer the approval of low-income housing credits. The total maximum amount of low-income housing credits which may be approved by the Board of Housing and Community Development in any calendar year shall be \$500,000. Credits granted to a partnership, limited liability company or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the~~

partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Board.

ED. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year may be carried over for credit until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the Department of Housing and Community Development has certified the amount of such tax credit pursuant to ~~§ 36-55.63~~ subsection F. No credit shall be carried back to a preceding taxable year. If a taxpayer who is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. If any person qualifies in a taxable year for the Virginia low-income housing credit, and in a subsequent taxable year is subject to the credit recapture provisions for federal income tax purposes, such person shall similarly be subject to a credit recapture amount on the Virginia tax return for which the applicable Virginia low-income housing credit was applied or used. Any credit recapture shall be assessed and collected in the same manner as a tax attributable to a change in federal taxable income within the meaning of § 58.1-311. The Board of Housing and Community Development shall promulgate regulations establishing the terms and conditions for computing the credit recapture amount for the applicable Virginia tax return.

F. To claim the credit authorized under this section, the taxpayer shall apply to the Department of Housing and Community Development to determine the credit amount allowable for the taxable year. The Department shall certify to the Department of Taxation or the State Corporation Commission, as applicable, that such person qualified for the Virginia low-income housing credit amount claimed on the applicable tax return for the taxable year. The taxpayer shall attach the certification form to the Virginia tax return filed with the Department of Taxation or the State Corporation Commission, as applicable. The Department of Housing and Community Development shall also provide the Department of Taxation or the State Corporation Commission, as applicable, with credit recapture amounts and any other information it may require relating to the credit claimed by the taxpayer.

2. That the provisions of this act shall become effective for taxable years beginning on or after January 1, 2007.

3. That the provisions of this act shall in no way affect any low-income housing tax credit (or the potential credit recapture thereof) certified by the Department of Housing and Community Development to the Department of Taxation or the State Corporation Commission in taxable years beginning prior to January 1, 2007.

4. That the total combined amount of low-income housing tax credits which may be approved by the Board of Housing and Community Development in calendar year 2007 under §§ 36-55.63 and 58.1-435 of the Code of Virginia shall not exceed \$500,000.

#

Neighborhood Assistance Act tax credit. Moves the Neighborhood Assistance Act Tax Credit program from Title 63.2 [Welfare (Social Services)] to Title 58.1 (Taxation) and provides a cross-reference to the tax credit program in Title 63.2 (§ 63.2-2002).

A BILL to amend and reenact § 63.2-2002 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.2, consisting of sections numbered 58.1-439.18 through 58.1-439.24, and to repeal §§ 63.2-2000, 63.2-2001, and 63.2-2003 through 63.2-2006, relating to the Neighborhood Assistance Act tax credit.

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-2002 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 13.2, consisting of sections numbered 58.1-439.18 through 58.1-439.24, as follows:

Article 13.2.

Neighborhood Assistance Act Tax Credit.

§ 58.1-439.18. Definitions.

As used in this article:

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of this title.

"Commissioner of the State Department of Social Services" means the Commissioner of the State Department of Social Services or his designee.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to impoverished people.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholarship assistance to an individual who is impoverished.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of impoverished people.

"Impoverished people" means people in Virginia approved as such by the State Board of Social Services. Such approval shall be made on the basis of generally recognized low-income criteria used by federal and state agencies.

"Job training" means any type of instruction to an individual who is impoverished that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance for impoverished people, and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501 (c) (3) and 501 (c) (4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § 36-3.

"Professional services" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, and attorneys-at-law.

§ 58.1-439.19. Public policy; business firms; donations.

It is hereby declared to be public policy of the Commonwealth to encourage business firms to make donations to neighborhood organizations for the benefit of impoverished people.

§ 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs.

A. Any neighborhood organization may submit a proposal to the Commissioner of the State Department of Social Services requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization. The proposal shall set forth the program to be conducted by the neighborhood organization, the impoverished people to be assisted, the estimated amount to be donated to the program and the plans for implementing the program.

B. The State Board of Social Services is hereby authorized to adopt regulations for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations. Such regulations shall contain a requirement that an annual audit be provided by the neighborhood organization as a prerequisite for approval. Such regulations shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. The regulations shall also provide that at least 10 percent of the available amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood organizations not receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs requested by such neighborhood organizations is less than 10 percent of the available amount of tax credits, the unallocated portion of such 10 percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations.

C. If the Commissioner of the State Department of Social Services approves a proposal submitted by a neighborhood organization, the organization shall make the allocated tax credit amounts available to business firms making donations to the approved program. A neighborhood organization shall not assign or transfer an allocation of tax credits to another neighborhood organization without the approval of the Commissioner of the State Department of Social Services.

D. The total amount of tax credits granted for programs approved under this article for each fiscal year shall not exceed \$8 million; however, \$2,750,000 shall be allocated to education programs conducted by neighborhood organizations. Such allocation of tax credits to education programs shall constitute the minimum amount of tax credits to be allocated to education programs. However, if the amount of tax credits requested by neighborhood organizations for qualified education programs is less than \$2,750,000, the balance of such amount shall be

allocated to other types of qualified programs. Tax credits shall not be authorized after fiscal year 2009.

§ 58.1-439.21. Tax credit; amount; limitation; carry over.

A. The Commissioner of the State Department of Social Services shall certify to the Department of Taxation, or in the case of business firms subject to a tax under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of this title, to the State Corporation Commission, the applicability of the tax credit provided herein for a business firm.

B. A business firm shall be eligible for a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of this title, in an amount equal to 45 percent of the value of the money, property, professional services, and contracting services donated by the business firm during its taxable year to neighborhood organizations for programs approved pursuant to § 58.1-439.20. No tax credit of less than \$400 shall be granted for any donation, and a business firm shall not be allowed a tax credit in excess of \$175,000 per taxable year. No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A tax credit shall be issued by the Commissioner of the State Department of Social Services to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20. The certification shall identify the type and value of the donation received and the business firm making the donation. A business firm shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved project are available.

§ 58.1-439.22. Donations of professional services.

A. A sole proprietor, partnership or limited liability company engaged in the business of providing professional services shall be eligible for a tax credit under this article based on the time spent by the proprietor or a partner or member, respectively, who renders professional services to a program which has received an allocation of tax credits from the Commissioner of the State Department of Social Services. The value of the professional services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$125 per hour.

B. A business firm shall be eligible for a tax credit under this article for the time spent by a salaried employee who renders professional services to an approved program. The value of the professional services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering professional services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered professional services to the approved program.

C. Notwithstanding any provision of this article limiting eligibility for tax credits to business firms, physicians, chiropractors, dentists, nurses, nurse practitioners, physician assistants, optometrists, dental hygienists, professional counselors, clinical social workers, clinical psychologists, marriage and family therapists, physical therapists, and pharmacists licensed pursuant to Title 54.1 who provide health care services within the scope of their licensure, without charge, to patients of a clinic operated by an organization that has received an allocation of tax credits from the Commissioner of the State Department of Social Services and such clinic is organized in whole or in part for the delivery of health care services without charge, or to a clinic operated not for profit providing health care services for charges not exceeding those set forth in a scale prescribed by the State Board of Health pursuant to § 32.1-11 for charges to be paid by persons based upon ability to pay, shall be eligible for a tax credit pursuant to § 58.1-439.21 based on the time spent in providing health care services to patients of such clinic, regardless of where the services are delivered. The value of such services, for purposes of determining the amount of the tax credit allowable, rendered by the physician, chiropractor, dentist, nurse, nurse practitioner, physician assistant, optometrist, dental hygienist, professional counselor, clinical social worker, clinical psychologist, marriage and family therapist, physical therapist, or pharmacist, shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$125 per hour.

§ 58.1-439.23. Donations of contracting services.

A. A sole proprietor, partnership or limited liability company engaged in the business of providing contracting services shall be eligible for a tax credit under this article based on the time spent by the proprietor or a partner or member, respectively, who renders contracting services to a program which has received an allocation of tax credits from the Commissioner of the State Department of Social Services. The value of the contracting services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$50 per hour.

B. A business firm shall be eligible for a tax credit under this article for the time spent by a salaried employee who renders contracting services to an approved program. The value of the contracting services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering contracting services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered contracting services to the approved program.

§ 58.1-439.24. Donations by individuals.

For purposes of this section, the term "individual" means the same as that term is defined in § 58.1-302, but excluding any individual included in the definition of a "business firm" as such term is defined in § 58.1-439.18.

A. Notwithstanding any provision of this article limiting eligibility for tax credits, an individual making a monetary donation to a neighborhood organization approved under this article shall be eligible for a credit against taxes imposed by § 58.1-320 as provided in this section.

B. Notwithstanding any provision of this article specifying the amount of a tax credit, a tax credit issued to an individual making a monetary donation to an approved project shall be equal to 45 percent of such monetary donation; however, tax credits shall not be issued for any monetary donation less than \$500 in a taxable year and no more than \$50,000 in tax credit shall be issued to an individual or to married persons in a taxable year.

C. An individual shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization approved under this article are available.

D. The amount of credit allowed pursuant to this section, if such credit has been issued by the State Department of Social Services, shall not exceed the tax imposed pursuant to § 58.1-320 for such taxable year. Any credit not usable for the taxable year may be carried over for credit against the individual's income taxes until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the tax credit has been issued to such individual. If an individual that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such individual shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. A tax credit shall be issued by the Commissioner of the State Department of Social Services to an individual only upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20. The certification shall identify the amount of the monetary donation received and the individual making the donation.

F. The tax credit allowed pursuant to this section shall be taken by the individual only to the extent he has not claimed a deduction for such amount on his federal income tax return.

§ 63.2-2002. Neighborhood Assistance Act.

~~A. Any neighborhood organization may submit a proposal to the Commissioner requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization. The proposal shall set forth the program to be conducted by the neighborhood organization, the impoverished people to be assisted, the estimated amount to be donated to the program and the plans for implementing the program.~~

~~B. The Board is hereby authorized to adopt regulations for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations consistent with the provisions, terms, and conditions of the Neighborhood Assistance Act Tax Credit (§ 58.1-439.18 et seq.). Such regulations shall contain a requirement that an annual audit be provided by the neighborhood organization as a prerequisite for approval. Such regulations shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. The regulations shall also provide that at least 10 percent of the available amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood organizations not receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs requested by such neighborhood organizations is less than 10 percent of the available amount of tax credits, the unallocated portion of such 10 percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations. The Commissioner shall administer the Neighborhood Assistance Act Tax Credit program.~~

~~C. If the Commissioner approves a proposal submitted by a neighborhood organization, the organization shall make the allocated tax credit amounts available to business firms making donations to the approved program. A neighborhood organization shall not assign or transfer an allocation of tax credits to another neighborhood organization without the approval of the Commissioner.~~

~~D. The~~As provided in § 58.1-439.20, the total amount of tax credits granted for programs approved under ~~this chapter~~ the Neighborhood Assistance Act Tax Credit for each fiscal year shall not exceed \$8 million; however, \$2,750,000 shall be allocated to "education" programs conducted by "neighborhood organizations" as such terms are defined in § 58.1-439.18. Such allocation of tax credits to education programs shall constitute the minimum amount of tax credits to be allocated to education programs. However, if the amount of tax credits requested by neighborhood organizations for qualified education programs is less than \$2,750,000, the balance of such amount shall be allocated to other types of qualified programs. ~~Tax credits shall not be authorized after fiscal year 2009.~~

2. That the provisions of this act shall become effective for taxable years beginning on or after January 1, 2007.

3. That the provisions of this act shall in no way affect any tax credit issued under the Neighborhood Assistance Act (§ 63.2-2000 et seq.) of the Code of Virginia by the Commissioner of the State Department of Social Services in taxable years beginning prior to January 1, 2007.

4. That §§ 63.2-2000, 63.2-2001, and 63.2-2003 through 63.2-2006 of the Code of Virginia are repealed for taxable years beginning on or after January 1, 2007.

#