

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~23 VAC 10-110-150. Excess cost recovery.~~

~~A. In general. The purpose of the adjustments described by this section is to phase in the federal Accelerated Cost Recovery System (ACRS). All taxpayers must make an addition on their Virginia income tax returns for taxable years 1982 and thereafter which is equal to 30% of the ACRS deduction claimed on their federal income tax returns. For taxable years 1984 and thereafter a subtraction is allowed which is equal to a percentage of the ACRS additions made by the taxpayer in the taxpayer's Virginia income tax returns.~~

~~B. Addition.~~

~~1. Any taxpayer claiming a deduction for ACRS on the federal return is required to add 30% of the federal ACRS deduction to Virginia taxable income. The addition is required regardless of the location of the property and regardless of the recovery method elected under ACRS.~~

~~2. The addition is equal to 30% of the ACRS deduction except that no addition shall be made for any federal deduction claimed with respect to property not used to produce Virginia taxable income (such as foreign source income).~~

~~3. The following refers to items on federal form 4562, Depreciation and Amortization for 1984.~~

~~a. No addition is required for the deduction under the election to expense recovery property. IRC §179.~~

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~~b. The addition is required for all recovery property (3-year, 5-year, 10-year, 15-year public utility, 15-year real property--low income housing, 15-year real property other than low income housing, 18-year real property) regardless of recovery period or method used or year placed in service.~~

~~c. No addition is required for property subject to IRC §168(e)(2) election to use a method not based on a term of years.~~

~~d. No addition is required for depreciation or amortization of non-recovery property.~~

~~4. Partnerships, estates, trusts and electing small business corporations (Subchapter S) report the ACRS addition on their Virginia returns. The ACRS addition is included in the additions and subtractions reported to each partner, beneficiary and shareholder in accordance with the distributive share for the taxable year.~~

~~5. When less than 100% of a taxpayer's income is from Virginia sources the addition is made as follows:~~

~~a. Resident individuals add 30% of the federal ACRS deduction regardless of where the property is located. No deduction, exclusion, exemption or proration of the addition is allowed except with respect to property used to produce foreign source income.~~

~~b. Nonresident individuals add 30% of the federal ACRS deduction in the same manner as resident individuals. The addition will be adjusted by the percentage of Virginia income in the computation of Virginia taxable income.~~

~~c. Part-year residents add 30% of only the portion of the federal ACRS deduction earned while a resident of Virginia. The federal ACRS deduction shall be prorated~~

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~~based on the number of days of residence regardless of when the property is acquired or where the property is located.~~

~~d. Corporations add 30% of the federal ACRS deduction. Those corporations eligible to allocate and apportion income will adjust the ACRS addition as part of apportionment computations.~~

~~e. Partnerships, electing small business corporations (Subchapter S corporations), estates and trusts add 30% of the federal ACRS deduction. If a partnership, electing small business corporation, estate or trust has income from sources in Virginia and other states, and has partners, shareholders or beneficiaries who are not residents of Virginia, then the nonresident's share of the additions and subtractions shall be determined in accordance with generally accepted accounting principles.~~

~~C. Subtraction. For taxable years beginning on or after January 1, 1984, taxpayers may subtract a portion of the ACRS additions made in the taxpayer's Virginia income tax returns for 1982 and thereafter. The subtraction is computed as follows:~~

~~1. The ACRS additions for all taxable years beginning and during calendar years 1982 and 1983 are totaled. Twenty percent (20%) of this total may be subtracted in the first taxable year beginning on or after January 1, 1984, and in each of the four succeeding taxable years.~~

~~2. The ACRS additions for the two taxable years beginning on or after January 1, 1984 are totaled. Twenty percent (20%) of this total may be subtracted in the third taxable year beginning after January 1, 1984, and in each of the four succeeding taxable years.~~

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~~3. This addition and subtraction cycle continues indefinitely. Thus, additions made in the third and fourth taxable years beginning after January 1, 1984 will be subtracted in the fifth through the ninth taxable years; additions made in the fifth and sixth taxable years will be subtracted in the seventh through the eleventh taxable years.~~

~~4. Short taxable years beginning after January 1, 1984, are treated as ordinary taxable years. However, the first biennium, calendar years 1982 and 1983, includes all taxable years beginning during 1982 and 1983.~~

~~5. Example. Corporation A was organized on January 20, 1982, and filed its first tax return electing a taxable year ending June 30, 1982. In 1986 A was acquired by another corporation and filed a short year return for the period July 1, 1986, to December 31, 1986, in order to be included in the acquiring corporation's consolidated federal return. A continued to file a separate Virginia return. The first biennium contains three taxable years beginning January 20, 1982, July 1, 1982, and July 1, 1983. The ACRS additions for these three years total \$900, twenty percent of which (\$180) will be subtracted in taxable years ending on June 30, 1985, June 30, 1986, December 31, 1986, December 31, 1987, and December 31, 1988. The ACRS additions for the second biennium (taxable years ending on June 30, 1985, and June 30, 1986) total \$600, twenty percent of which (\$120) will be subtracted in taxable years ending December 31, 1986, December 31, 1987, December 31, 1988, December 31, 1989, and December 31, 1990.~~

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~~ACRS~~ ~~ACRS~~

~~Taxable Addition~~ ~~Subtraction~~

~~Year~~ ~~On Va.~~ ~~Total for~~ ~~On Va.~~

~~Ended~~ ~~Return~~ ~~Biennium~~ ~~Return~~

~~6/30/82~~ ~~300~~ ~~None~~

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6/30/83 300 None

6/30/84 300 900 None

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6/30/85 300 ————— 180

6/30/86 300 — 600 ————— 180

12/31/86 210 ————— 180

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_____ +120 300

12/31/87 300 510 180

_____ +120 300

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~~12/31/88 300 180~~

~~_____ +120 _____~~

~~_____ +102 402 _____~~

~~-----~~

~~12/31/89 300 600 120~~

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_____ +102 222

12/31/90 300 _____ 120 _____

_____ +102 _____

_____ +120 342

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~~D. Special situations.~~

~~1. Additions. For taxable years beginning during 1982 and 1983, any taxable entity filing a federal return in which an ACRS deduction is claimed must add 30% of such deduction in computing Virginia taxable income. No subtraction may be claimed in 1982 and 1983 returns regardless of the taxpayer's situation.~~

~~2. Additions by other taxpayers.~~

~~a. Except for those situations set forth below, a taxpayer may claim a subtraction for only those ACRS additions made by the taxpayer. For this purpose a partner, beneficiary or shareholder is NOT deemed to have made ACRS additions reported by partnerships, estates, trusts and electing small business corporations (Subchapter S corporation). A partner, for example, may claim an ACRS subtraction only to the extent that it is included in the partner's distributive share of the income, loss, additions and subtractions for the taxable year. No adjustments are required due to any changes in the partner's ownership interest between the time the ACRS addition is made by the partnership and the time the ACRS subtraction is claimed by the partnership.~~

~~b. Any taxpayer (other than a surviving spouse) claiming a subtraction based upon ACRS additions made by any other taxable entity must attach to the return a statement~~

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~~setting forth the name and taxpayer I.D. No. of such other taxable entity, details of the ACRS additions and previous subtractions claimed by such other taxable entity, an explanation of the relationship between the taxpayer and such other taxable entity and a statement signed by the taxpayer to the effect that the subtraction claimed has not, and will not, be claimed by any other person on any other return, including the final return of such other taxable entity.~~

~~c. A corporation may claim a subtraction based upon ACRS additions made by another corporation if there has been a merger or other form of reorganization and the corporation claiming the subtraction would be allowed under federal law to claim a net operating loss deduction based upon a net operating loss incurred by the corporation which made the ACRS additions, assuming such corporation had incurred a net operating loss.~~

~~d. A surviving spouse may claim a subtraction based upon ACRS additions made by the decedent and the surviving spouse on a joint or combined Virginia income tax return.~~

~~The statement referred to in paragraph (b) above is not required.~~

~~3. When less than 100% of a taxpayer's income is from Virginia sources the subtraction is claimed in the same manner as additions. See subsection A 5 above.~~

~~23 VAC 10-110-160. Excess cost recovery; definitions.~~

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The following words and terms, when used in ~~23 VAC 10-110-160 through 23 VAC 10-110-167~~, shall have the following meanings unless the context clearly indicates otherwise:

~~"ACRS addition" means an excess cost recovery addition actually reported under §58-151.013(b)(6) (prior to the recodification of Title 58), §58.1-322 B 6 (for individuals) and §58.1-402 B 3 (for corporations) of the Code of Virginia, on any return filed for a taxable year beginning between January 1, 1982, and December 31, 1987.~~

~~"ACRS subtraction" means an excess cost recovery subtraction allowable under §58-151.013(c)(10) (prior to the recodification of Title 58), §58.1-322 C 8 (for individuals) and §58.1-402 C 9 (for corporations) of the Code of Virginia, for any taxable year beginning after December 31, 1983, but before January 1, 1988, regardless of whether or not a return was filed to claim the allowable subtraction.~~

~~"Corporation" means any person or entity subject to tax or required to file a return under Article 10, Chapter 3 (§58.1-400 et seq.) of Title 58.1 of the Code of Virginia.~~

~~"Individual" means any natural person, married or unmarried, who is subject to taxation or required to file a return under Article 2 of Chapter 3 (§58.1-300 et seq.) of Title 58.1 of the Code of Virginia.~~

~~"Outstanding balance of excess cost recovery" means the amount equal to the difference between:~~

- ~~1. The sum of the ACRS additions actually reported on Virginia returns filed for taxable years beginning on and after January 1, 1982, and before January 1, 1988; and~~

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~~2. The sum of the ACRS subtractions allowed or allowable on Virginia returns, regardless of whether or not a Virginia return was actually filed, for taxable years beginning on and after January 1, 1984, and before January 1, 1988.~~

~~"Post-1987 ACRS subtraction" means the portion of the outstanding balance of excess cost recovery which may be subtracted by individuals on returns for taxable years beginning on or after January 1, 1988, and before January 1, 1990, or by corporations on returns for taxable years beginning on or after January 1, 1988, and before January 1, 1993.~~

~~23 VAC 10-110-161. Excess cost recovery; purpose.~~

~~A. Generally. The Virginia Tax Reform Act of 1987 added §58.1-323.1 of the Code of Virginia which phases out the excess cost recovery program through the allowance of post-1987 subtractions effective for taxable years beginning on and after January 1, 1988. In 1988 §58.1-323.1 was amended to permit a refund if a final federal and Virginia return was filed for a taxable year beginning prior to January 1, 1988. This regulation sets forth the rules applicable to both individual and corporate taxpayers. In most cases the outstanding balance of excess cost recovery may be recouped through annual post-1987 subtractions over a two year period for individual taxpayers and a five year period for corporate taxpayers (see 23 VAC 10-110-163). Generally, if a taxpayer has insufficient income to benefit from a subtraction in a particular year, all or part of the subtraction may be carried over to the next year (see 23 VAC 10-110-164). A taxpayer~~

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~~who files a final federal and Virginia return may claim an immediate subtraction for the unrecovered outstanding balance of excess cost recovery (see 23 VAC 10-110-165). If at a conclusion of the applicable subtraction period (1989 for individuals and 1992 for corporations), or after filing a final federal and Virginia return, the taxpayer still has not recouped the outstanding balance of excess cost recovery, the taxpayer may qualify to file an application for a refund (see 23 VAC 10-110-166).~~

~~B. Exclusive method. Effective for taxable years beginning on and after January 1, 1988, the post-1987 subtractions and refunds allowable under this regulation shall be the exclusive means of recovering the outstanding balance of excess cost recovery.~~

~~23 VAC 10-110-162. Excess cost recovery; computation of the outstanding balance of excess cost recovery.~~

~~A. Generally. A taxpayer's outstanding balance of excess cost recovery is computed only with respect to ACRS additions attributable to federal ACRS deductions on property owned directly by the taxpayer or deemed to be owned by the taxpayer for federal income tax purposes, and ACRS subtractions attributable to such ACRS additions. For the treatment of ACRS additions and ACRS subtractions passed through from a conduit entity see 23 VAC 10-110-163 D.~~

~~B. Computation.~~

~~1. The outstanding balance of excess cost recovery includes the sum of ACRS additions actually reported on a Virginia return for taxable years beginning on and after~~

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~~January 1, 1982, and before January 1, 1988. If no Virginia return was filed for a taxable year then no ACRS addition with respect to such taxable year may be included in the outstanding balance of excess cost recovery.~~

~~2. For most taxpayers the information necessary to compute the "outstanding balance of excess cost recovery" can be found on the Form 302 included with the Virginia returns for taxable years 1986 and 1987.~~

~~a. The "ACRS additions" for taxable years 1982, 1983, 1984, and 1985 can be found in Column B of part II of the Form 302 attached to the 1986 and 1987 return.~~

~~b. The "ACRS additions" for taxable years 1986 and 1987 can be found in Part I of the Form 302 attached to the 1986 and 1987 return, respectively.~~

~~3. The outstanding balance of excess cost recovery is reduced by the sum of ACRS subtractions which would have been allowable with respect to each biennium's ACRS additions, whether or not a return was actually filed claiming an ACRS subtraction in each taxable year beginning on and after January 1, 1984, and before January 1, 1988.~~

~~a. The ACRS subtractions which would have been allowable with respect to the first biennium, 1982/1983, are the sum of the ACRS additions actually reported on a Virginia return for all taxable years beginning on and after January 1, 1982, and before January 1, 1984, multiplied by 80% (the percentage allowed or allowable in the four taxable years following the close of the 1982/1983 biennium, i.e., 20% X 4) or by 100% (see subdivision (2) of this subdivision).~~

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~~(1) The number of taxable years included in the first biennium may be one, two, or more, depending upon when the taxpayer was required to file a Virginia return and whether returns for short taxable years were filed during the period.~~

~~(2) If one or more returns for a short taxable year were filed for a period beginning after the close of the 1982/1983 biennium the percentage allowed or allowable may be 100% for the first biennium (20% X 5).~~

~~b. The ACRS subtractions which would have been allowable with respect to the second biennium, 1984/1985, are the sum of the ACRS additions actually reported on a Virginia return for the first two taxable years beginning on and after January 1, 1984, multiplied by 40% (the percentage allowed or allowable in the two taxable years following the close of the 1984/1985 biennium, i.e., 20% X 2).~~

~~(1) The number of taxable years included in the second biennium will be two unless the taxpayer did not file a return or only filed one Virginia return during the period beginning after January 1, 1984.~~

~~(2) The percentage allowed or allowable may be more or less than 40% if one or more returns for a short taxable year were filed for a period beginning on and after January 1, 1984, or if the taxpayer was not required to file a Virginia return for a period beginning before January 1, 1985.~~

~~(3) For example: If a calendar year taxpayer first became subject to Virginia income tax in 1985, there would be no ACRS subtractions with respect to the first biennium because no returns were filed in 1982 and 1983, therefore, no ACRS additions were~~

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~~reported. The ACRS subtractions with respect to the second biennium would be based on ACRS additions reported on the 1985 and 1986 Virginia returns multiplied by 20% (i.e., 20% X 1, the number of taxable years beginning after the close of the second biennium and before January 1, 1988).~~

~~c. The ACRS subtractions which would have been allowable with respect to the third biennium, 1986/1987, will be zero unless one or more returns for a short taxable year were filed for a period beginning on and after January 1, 1984.~~

~~23 VAC 10-110-163. Excess cost recovery; post-1987 ACRS subtractions.~~

~~A. Generally.~~

~~1. Except as otherwise provided in 23 VAC 10-110-164 through 23 VAC 10-110-167, the outstanding balance of excess cost recovery as computed in 23 VAC 10-110-162 shall be claimed as post-1987 ACRS subtractions on returns filed for taxable years beginning on and after January 1, 1988, as set forth in this section.~~

~~2. A taxpayer's post-1987 ACRS subtraction for a taxable year is the sum of:~~

~~a. The post-1987 ACRS subtraction computed as set forth in this section with respect to the outstanding balance of excess cost recovery attributable to federal ACRS deductions on property owned directly by the taxpayer or deemed to be owned by the taxpayer for federal income tax purposes, and~~

~~b. The post-1987 ACRS subtraction computed as set forth in this section with respect to the outstanding balance of excess cost recovery computed in accordance with 23 VAC~~

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~~10-110-162 B by a conduit entity and passed through to the taxpayer in accordance with subsection D of this section.~~

~~B. Individuals.~~

~~1. 1988. For the taxable year beginning in 1988 the post-1987 ACRS subtraction is equal to two-thirds of the outstanding balance of excess cost recovery.~~

~~2. 1989. For the taxable year beginning in 1989 the post-1987 ACRS subtraction is equal to one-third of the outstanding balance of excess cost recovery.~~

~~3. 1990 and after. If a post-1987 subtraction is included in the Virginia modifications distributed by an S corporation, partnership, estate or trust for its fiscal year ending after December 31, 1989, the individual may elect to include such amounts in the individual's subtractions for the taxable year, or may claim a refund under 23 VAC 10-110-166.~~

~~C. Corporations.~~

~~1. 1988. For the taxable year beginning in 1988 the post-1987 ACRS subtraction is equal to 10% of the outstanding balance of excess cost recovery.~~

~~2. 1989. For the taxable year beginning in 1989 the post-1987 ACRS subtraction is equal to 10% of the outstanding balance of excess cost recovery.~~

~~3. 1990. For the taxable year beginning in 1990 the post-1987 ACRS subtraction is equal to 30% of the outstanding balance of excess cost recovery.~~

~~4. 1991. For the taxable year beginning 1991 the post-1987 ACRS subtraction is equal to 30% of the outstanding balance of excess cost recovery.~~

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~~5. 1992. For the taxable year beginning 1992 the post-1987 ACRS subtraction is equal to 20% of the outstanding balance of excess cost recovery.~~

~~D. Conduit entities.~~

~~1. A conduit entity (estate, trust, partnership and S corporation) shall compute its outstanding balance of excess cost recovery in accordance with 23 VAC 10-110-162 B.~~

~~2. In each taxable year beginning on and after January 1, 1988, and before January 1, 1990, a conduit entity shall compute the post-1987 ACRS subtraction in accordance with with subsection B of this section relating to individuals without regard to whether or not the beneficiary, fiduciary, partner or shareholder is an individual, and shall provide each beneficiary, partner or shareholder with sufficient information to report the appropriate post-1987 ACRS subtraction.~~

~~3. If a conduit entity files a short year return for the fiscal year ended December 31, 1987, in order to change its taxable year to a calendar year, each beneficiary, partner, or shareholder may, in certain circumstances, elect to spread the income from the conduit entity's short taxable year over four taxable years for federal income tax purposes. If such an election is made:~~

~~a. One-quarter of the conduit entity's Virginia modifications for the short taxable year (including the ACRS addition and ACRS subtraction) must be included in the 1987 Virginia taxable income of the beneficiary, partner, or shareholder;~~

~~b. One-quarter of the conduit entity's Virginia modifications for the short taxable year (excluding the ACRS addition and ACRS subtraction) must be included in the Virginia~~

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~~taxable income of the beneficiary, partner, or shareholder in each of the three following taxable years; and~~

~~c. The beneficiary, partner, or shareholder shall adjust the the post-1987 ACRS subtraction passed through from the conduit entity in each taxable year as follows: (i) For 1988, by subtracting one-half of the conduit entity's 1987 ACRS addition and adding one-half of the conduit entity's 1987 ACRS subtraction; (ii) For 1989, by subtracting one-quarter of the conduit entity's 1987 ACRS addition and adding one-quarter of the conduit entity's 1987 ACRS subtraction.~~

~~d. Example. An S corporation was formed in July 1985 and elected a fiscal year ending June 30. It reported and passed through ACRS additions of \$200 in each of its F.Y.E. 6/30/86 and 6/30/87. There were no other Virginia additions or subtractions. The S corporation filed a short-year return for F.Y.E. 12/31/87 reporting an ACRS addition of \$100 and an ACRS subtraction of \$80. The sole shareholder of the S corporation elected to spread the short-year income over four years for federal purposes, reporting only \$25 and \$20 of the short-year ACRS additions and subtractions in 1987. In 1988 the S corporation passed through a post-1987 subtraction of \$280 ($\frac{23}{100}$ of \$500 - \$80). Because of the shareholder's election the \$280 must be reduced by $\frac{1}{2}$ of the F.Y.E. 12/31/87 addition ($\frac{1}{2}$ of 100 = 50) and increased by $\frac{1}{2}$ of the F.Y.E. 12/31/87 subtraction ($\frac{1}{2}$ of 80 = 40) for a net modification of \$270. The net effect of these modifications is represented in the following table:~~

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~~_____ Total _____ Reported in Shareholder's _____~~

~~Description of _____ Passed _____ Virginia Return For _____~~

~~Modification _____ Through 1986 1987 1988 1989~~

~~F.Y.E. 6/30/86 _____~~

~~_____ ACRS Addition 200 200 _____~~

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~~F.Y.E. 6/30/87~~ _____

~~ACRS Addition 200 200~~ _____

~~F.Y.E. 12/31/87~~ _____

~~ACRS Addition 100 25 50 25~~ _____

~~F.Y.E. 12/31/87~~ _____

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~~ACRS Subtract. (80) (20) (40) (20)~~

~~Post-1987 ACRS _____~~

~~Subtraction (420) (280) (140)~~

~~Net Modifications 0 200 205 (270) (135)~~

~~E. Short taxable year.~~

~~1. If there is more than one taxable year beginning on or after January 1, 1988, because of a taxable year of less than 12 months, the allowable portion of the subtraction shall be prorated between all taxable years which begin in the same calendar year. The~~

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~~proration will be based on the number of months in each taxable year divided by the total number of months in all taxable years beginning during the calendar year.~~

~~2. Example. XYZ, Inc. files on a calendar year basis. On December 21, 1987, XYZ, Inc. is acquired by Holding, Inc., which files its returns on the basis of a fiscal year ending on September 30. In order to be included in a consolidated return with Holding, Inc., XYZ, Inc. files two returns for taxable years beginning in 1988 — a short-year return for the period January 1, 1988, through September 30, 1988, (nine months) and a return for the period October 1, 1988, through September 30, 1989, (12 months). Because there are two taxable years beginning in 1988, which cover a total of 21 months, the post-1987 ACRS subtraction for 1988 (10% of the outstanding balance of excess cost recovery) must be prorated between the nine-month taxable year and the 12-month taxable year as follows:~~

~~— Taxable year 1/1/88 - 9/30/88: $10\% \times 9/21 = 4.29\%$~~

~~— Taxable year 10/1/88 - 9/30/89: $10\% \times 12/21 = 5.71\%$~~

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~~_____ Total subtractions for 1988 = 10.00%~~

~~F. Former S corporation.~~

~~1. If an S corporation becomes taxable under subchapter C of the I.R.C., its post-1987 ACRS subtraction for taxable years after termination of the election shall be the amount by which:~~

~~a. The total post-1987 ACRS subtractions for the current and all prior taxable years computed under subsection C of this section relating to corporations, exceeds~~

~~b. The total post-1987 ACRS subtractions which were actually passed through to beneficiaries, partners and shareholders by the former S corporation or which were claimed by the corporation after it ceased to qualify as an S corporation.~~

~~2. Example. An S corporation is acquired by another corporation as of the first day of 1989, thereby terminating its status as an S corporation for 1989. Two-thirds of the outstanding balance of excess cost recovery was passed through to the former S corporation's shareholders in 1988. The remaining one-third will be subtracted as follows:~~

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~~Post-1987 ACRS Subtraction 1989 1990 1991 1992~~

1. Percent allowable for _____

~~current years 20% 50% 80% 100%~~

2. Percent previously passed _____

~~through or allowed 66.7% 66.7% 66.7% 80%~~

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~~3. Percent allowable for _____~~

~~_____ current year (L. 1 minus _____~~

~~_____ L.2, but not less than 0) 0.0% 0.0% 13.3% 20%~~

~~3. If a corporation makes a valid election to be taxed under subchapter S of the I.R.C. after 1987, any post-1987 ACRS subtraction which has not been used by the corporation shall be passed through to its shareholders in accordance with subsection D of this section. However, if the election is made for a taxable year beginning on and after January 1, 1990, no amount shall be passed through to the shareholder under subsection D of this section, but the corporation shall be eligible to apply for a refund under 23 VAC 10-110-166.~~

~~23 VAC 10-110-164. Excess cost recovery; carryover of unused subtractions.~~

~~A. Individuals.~~

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~~1. Any individual who has insufficient income to offset the full amount of the post-1987 ACRS subtraction shall add the amount not offset to the amount allowable for the following taxable year. No amount may be subtracted under this paragraph in any taxable year beginning on or after January 1, 1990. An individual who has not recovered the full amount of the outstanding balance of excess cost recovery under this section or under 23 VAC 10-110-163 on his income tax returns filed for taxable years 1988 and 1989, may qualify to file an application for a refund under 23 VAC 10-110-166.~~

~~2. The portion of any post-1987 ACRS subtraction available for carryover is the lesser of:~~

~~a. The amount by which Virginia taxable income is less than zero, or~~

~~b. The post-1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.~~

~~3. A taxpayer may not elect to claim less than the allowable post-1987 ACRS subtraction in any year in order to take advantage of a credit, or for any other reason.~~

~~4. Example.~~

~~a. Taxpayer A, an individual filing on a calendar year, has an outstanding balance of excess cost recovery equal to \$9,000 after taxable year 1987. For calendar year 1988 he is single with federal adjusted gross income of \$12,350 and Virginia itemized deductions of \$7,250. For Virginia income tax purposes, he has no additions to federal adjusted gross income and he has no subtractions from federal adjusted gross income~~

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~~other than his post-1987 ACRS subtraction. His carryover from taxable year 1988 to 1989 is \$1,700, which is computed in the following manner:~~

~~Federal Adjusted Gross Income ————— \$12,350~~

~~Va. Personal Exemption ————— - 800~~

~~Va. Itemized Deductions ————— - 7,250~~

~~Post-1987 ACRS Subtraction —————~~

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~~(\$9,000 x 2/3) ----- 6,000~~

~~Va. Taxable Income ----- 1,700~~

~~b. Taxpayer A would be allowed to carryover \$1,700 of his post-1987 ACRS subtraction for 1988 to 1989 and add it to the post-1987 ACRS subtraction (\$3,000) otherwise allowable as a subtraction in 1989. Therefore, in 1989 Taxpayer A will have a total post-1987 ACRS subtraction of \$4,700 (\$1,700 carryover from 1988 + \$3,000 for 1989).~~

~~c. Taxpayer A may not claim a post-1987 ACRS subtraction of less than \$6,000 in 1988 (increasing the amount carried over to 1989) in order to take advantage of an energy income tax credit carried over from 1987 (which cannot be carried over to 1989).~~

~~B. Corporations.~~

~~1. Any corporation which has insufficient income to offset the full amount of the post-1987 ACRS subtraction shall add the amount not offset to the amount allowable for the following taxable year. No amount may be subtracted under this subdivision in any~~

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~~taxable year beginning on or after January 1, 1993. Any corporation that has not recovered the full amount of the outstanding balance of excess cost recovery under 23 VAC 10-110-163 or under this section on income tax returns filed for taxable years beginning on or after January 1, 1988, but before January 1, 1993, may qualify to file an application for a refund under 23 VAC 10-110-166.~~

~~2. The amount of the post-1987 ACRS subtraction available for carryover is the lesser of:~~

~~a. The amount by which Virginia taxable income is less than zero, or~~

~~b. The post-1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.~~

~~3. Example. ABC, Inc. has an outstanding balance of excess cost recovery equal to \$120,000 after taxable year 1987. Under 23 VAC 10-110-163 the allowable post-1987 ACRS subtraction is \$12,000 for 1988 and 1989, \$36,000 for 1990 and 1991, and \$24,000 for 1992. ABC has losses or income which are insufficient to absorb the full amount of the post-1987 ACRS subtractions in every year. The Virginia taxable income and carryover would be computed as follows:~~

Taxable year	1988	1989	1990	1991	1992
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23 VAC 10-110. INDIVIDUAL INCOME TAX

~~Taxable Income Before _____~~

~~Post-1987 ACRS Subtraction: 10,000 5,000 28,000 78,000 36,000~~

~~Post-1987 ACRS Subtractions _____~~

~~for current year: 12,000 12,000 36,000 36,000 24,000~~

~~from prior year: N/A 2,000 14,000 22,000 0~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

Taxable Income: ~~_____ -2,000 -19,000 -22,000 20,000 12,000~~

~~Post-1987 ACRS Subtraction _____~~

~~available for next year: 2,000 14,000 22,000 0 N/A~~

~~"N/A" means a carryover is not available to or from the taxable year.~~

~~C. Conduit entities. Estates, trusts, partnerships and S corporations do not carryover post-1987 ACRS subtractions under this section. Amounts distributed under subsection D of 23 VAC 10-110-163 may be carried over by the beneficiaries, partners or shareholders.~~

~~D. Nonresidents. If a nonresident has income from Virginia sources or is required to file a Virginia return the nonresident may claim a post-1987 ACRS subtraction and carryover unused amounts under this section.~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~23 VAC 10-110-165. Excess cost recovery; final return.~~

~~A. When any taxpayer has filed a final federal return due to the death of an individual or the dissolution of a partnership, estate, trust, or corporation, for a taxable year beginning on and after January 1, 1988, the taxpayer may claim the entire outstanding balance of excess cost recovery (less amounts already claimed as a post-1987 ACRS subtraction) on the final Virginia return.~~

~~1. Conduit entities. Amounts claimed on the final Virginia return of an estate, trust, partnership or S corporation shall be distributed in accordance with subsection D of 23 VAC 10-110-163.~~

~~2. Other taxpayers. If the taxpayer has insufficient income on the final Virginia return to offset the entire amount allowable under this subdivision, an application for the refund of unrecovered taxes paid on the outstanding balance of excess cost recovery may be filed under 23 VAC 10-110-166.~~

~~B. The fact that a taxpayer files a final Virginia return because an individual has moved from Virginia or a business has discontinued operations in Virginia shall not entitle the taxpayer to the immediate subtraction or refund allowed in subdivision A 1 of 23 VAC 10-110-166.~~

~~23 VAC 10-110-166. Excess cost recovery; application for refund.~~

~~A. Generally.~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~1. Any taxpayer who can demonstrate that the entire outstanding balance of the excess cost recovery as computed in 23 VAC 10-110-162 has not been recovered through post-1987 ACRS subtractions allowable under 23 VAC 10-110-163 or 23 VAC 10-110-164 by such taxpayer or any other taxpayer may apply for a refund of unrecovered taxes paid on the outstanding balance of excess cost recovery.~~

~~2. When any taxpayer has filed a final federal return due to the death of an individual or the dissolution of a partnership, estate, trust, or corporation, an application for the refund of unrecovered taxes paid on the outstanding balance of excess cost recovery may be filed by the person authorized to act on behalf of the deceased or dissolved taxpayer.~~

~~3. The fact that a taxpayer files a final Virginia return because an individual has moved from Virginia or a business has discontinued its operations in Virginia shall not entitle the taxpayer to apply for a refund under this section.~~

~~4. Estates, trusts, partnerships and S corporations shall not apply for a refund under this section except to the extent that the fiduciary of an estate or trust paid tax on undistributed income.~~

~~5. No refund shall be allowed under this section unless the taxpayer has income from Virginia sources or is required to file a Virginia return for each taxable year in which a subtraction is allowed under 23 VAC 10-110-163 or, if earlier, for each taxable year until a final federal return is filed.~~

~~B. Computation of the refund amount.~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~1. The refund shall be computed upon the amount of the outstanding balance of excess cost recovery which has not been recovered through post-1987 ACRS subtractions allowable under 23 VAC 10-110-163 or 23 VAC 10-110-164. This amount shall be multiplied by 5.75% (0.0575) in the case of an individual or by 6.0% (0.06) in the case of a corporation.~~

~~2. In no case shall the amount of refund allowed under this section exceed the amount of tax that was actually paid on the outstanding balance of excess cost recovery and not otherwise recovered through post-1987 ACRS subtractions. For the purpose of computing the limitation under this subdivision:~~

~~a. The refund shall be limited to the amount by which (i) the sum of the difference between the tax actually paid and the tax computed without the ACRS addition and ACRS subtraction for each taxable year beginning on and after January 1, 1982, and before January 1, 1988, exceeds (ii) the sum of the difference between the tax actually paid and the tax computed without the post-1987 ACRS subtraction for each taxable year beginning on and after January 1, 1988.~~

~~b. A beneficiary may include tax paid by an estate or trust with respect to a distribution of accumulated income.~~

~~c. A shareholder of an S corporation may include the distributive share of tax paid by the corporation in years before it elected S corporation status.~~

~~d. In the case of a net operating loss, a taxpayer may include either:~~

~~(1) Virginia income tax paid in the year of the loss (if any), or~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~(2) Virginia income tax paid in a year to which any portion of the loss year ACRS addition and ACRS subtraction may have been carried with a federal net operating loss deduction.~~

~~e. In the case of a corporation required to allocate and apportion its income for any taxable year in which an ACRS addition was reported the Virginia income tax paid for such year shall be the tax attributable to the ACRS addition (net of any allowable ACRS subtraction) after apportionment.~~

~~3. Examples.~~

~~a. Newco, Inc. is incorporated in 1986 and dissolved in 1988. Newco reports ACRS additions of \$1,000 on its 1986 return and \$1,500 on its 1987 return. Newco's outstanding balance of excess cost recovery is \$2,500, all of which is reported on the 1988 final return under 23VAC10-110-165. Since Newco only has sufficient income in 1988 to offset \$1,000 of the final post-1987 ACRS subtraction, Newco has \$1,500 of unrecovered outstanding balance of excess cost recovery eligible for a refund under subsection A of this section. The refund amount would be \$90 ($\$1,500 \times 6\%$) under subdivision B 1 of this section; however, under subdivision B 2 of this section the refund is limited to \$24 (the tax of \$60 actually paid in 1986 and 1987 attributable to the ACRS additions less the tax of \$36 attributable to the post-1987 subtraction in 1988). The calculation of the limitation is shown below:~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~_____ 1986 _____ 1987 _____ 1988 _____~~

~~_____~~

~~_____ With W/O With W/O With W/O _____~~

~~_____ ACRS ACRS ACRS ACRS ACRS ACRS _____~~

~~Income after other _____~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~Va. modifications 2,000 2,000 500 500 1,000 1,000~~

~~1,000 * 1,500 *~~

~~Post 1987 ACRS sub. 2,500 *~~

~~Va. taxable income 3,000 2,000 2,000 500 (1,500) 1,000~~

~~Apportionment factor 25% 25% 50% 50% 60% 60%~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

Income of a multistate ~~750~~ ~~500~~ ~~1,000~~ ~~250~~ ~~(900)~~ ~~600~~

Tax (6%) ~~45~~ ~~30~~ ~~60~~ ~~15~~ ~~0~~ ~~36~~

Difference (i.e., tax ~~_____~~

attributable to ACRS ~~_____~~

modifications) ~~15~~ ~~45~~ ~~(36)~~ ~~_____~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~FN* ACRS modification excluded to compute the limitation. _____~~

~~Therefore, the limitation on the refund is \$24 (15 + 45 - 36).~~

~~b. James Smith moved to Virginia in 1987 and was required to report an ACRS addition in the amount of \$6,000 on his 1987 return. His outstanding balance of excess cost recovery is \$6,000 which will be subtracted in 1988 and 1989. After filing his 1989 return, Mr. Smith still has \$2,000 of the outstanding balance of excess cost recovery which has not offset income and requests a refund in the amount of \$115 (2,000 X 0.0575). However Mr. Smith's refund is limited to \$66, (the tax of \$266 actually paid in 1987 attributable to the ACRS additions less the tax of \$200 attributable to the ACRS additions in 1988 and 1989). The calculation of the limitation is shown below:~~

~~_____ 1987 _____ 1988 _____ 1989 _____~~

~~_____~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~_____ With W/O With W/O With W/O~~

~~_____ ACRS ACRS ACRS ACRS ACRS ACRS~~

Federal Adj. Gross Income ~~6,000 6,000 17,000 17,000 3,800 3,800~~

Additions (except ACRS) ~~0 0 0 0~~ _____

Subtraction (except ACRS) ~~0 0 0 0~~ _____

23 VAC 10-110. INDIVIDUAL INCOME TAX

Va. Personal Exemption ~~700~~ ~~700~~ ~~800~~ ~~800~~ ~~800~~ ~~800~~

Va. Standard Deduction ~~2,000~~ ~~2,000~~ ~~2,700~~ ~~2,700~~ ~~3,000~~ ~~3,000~~

Taxable income before ACRS ~~3,300~~ ~~3,300~~ ~~13,500~~ ~~13,500~~ ~~0~~ ~~0~~

ACRS Addition ~~6,000~~ * _____

ACRS Subtraction _____

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~Post 1987 ACRS subtraction~~ ~~4,000~~ ~~*~~ ~~2,000~~ ~~*~~

~~Virginia taxable income~~ ~~9,300~~ ~~3,300~~ ~~9,500~~ ~~13,500~~ ~~(2,000)~~ ~~0~~

~~Tax~~ ~~335~~ ~~69~~ ~~345~~ ~~545~~ ~~0~~ ~~0~~

~~Difference (i.e., tax at~~ _____

~~tributable to ACRS mod.)~~ ~~266~~ ~~(200)~~ ~~0~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~FN* ACRS modification excluded to compute the limitation~~_____

~~Therefore, the limitation on the refund is \$66 (266 - 200 - 0).~~

~~C. When to file the application for refund.~~

~~1. The application for refund may be filed after filing final federal and Virginia income tax returns as provided in 23 VAC 10-110-165 or after filing the income tax return for the last taxable year specified under 23 VAC 10-110-163 for claiming a post-1987 ACRS subtraction.~~

~~2. An application for refund must be filed within three years of the applicable date.~~

~~a. In the case of a final federal and Virginia return due to the death or dissolution of a taxpayer, the applicable date is the later of July 1, 1988, for a final return for a period beginning before January 1, 1988, or the due date of the final return for a period beginning on or after January 1, 1988.~~

~~b. In the case of an application for refund of unrecovered taxes paid on the outstanding balance of excess cost recovery, the applicable date is the due date of the last return on which the taxpayer is entitled to claim a subtraction under 23 VAC 10-110-163 or 23 VAC 10-110-164. A calendar year individual may file such application after filing the income tax return for 1989. A calendar year corporation may file such application after filing the income tax return for 1992.~~

~~D. Form of application. Any application for refund of unrecovered taxes paid on the outstanding balance of excess cost recovery shall be filed by a letter to the Tax~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~Commissioner requesting the refund or by amended return. The letter shall provide sufficient documentation to demonstrate that the amount of refund requested does not exceed the amount specified in subdivision B 2 of this section (tax actually paid).~~

~~E. Accelerated application for refund. A corporation which would be entitled to file an application for a refund under this section may apply to the Tax Commissioner for permission to claim the refund in an earlier taxable year. The Tax Commissioner shall have the authority, at his discretion, to allow the refund to be claimed in an earlier taxable year if the taxpayer has demonstrated to the satisfaction of the Tax~~

~~Commissioner that:~~

- ~~1. The taxpayer has paid Virginia income tax with respect to its outstanding balance of excess cost recovery,~~
- ~~2. The taxpayer has not recovered any portion of the outstanding balance of excess cost recovery,~~
- ~~3. The taxpayer will be required to file a Virginia income tax return for each year in which a subtraction is allowable under 23 VAC 10-110-163 and 23 VAC 10-110-164,~~
- ~~4. The taxpayer can reasonably expect never to have any federal taxable income or Virginia taxable income to offset the subtractions allowable under 23 VAC 10-110-163 and 23 VAC 10-110-164, and~~
- ~~5. No other taxpayer may claim or has claimed a subtraction or a refund with respect to the taxpayer's outstanding balance of excess cost recovery by reason of 23 VAC 10-110-167 A (Successor entities) or 23 VAC 10-110-163 D (Conduit entities).~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~6. Example. A Real Estate Investment Trust (REIT) is required to distribute its income to shareholders and generally has no federal taxable income subject to tax. Because items of income and deduction do not have the same character in the hands of a REIT's shareholders, the ACRS modifications do not flow through to the shareholders. Therefore, a REIT can reasonably expect never to have any federal taxable income or Virginia taxable income to offset the subtractions allowable under 23 VAC 10-110-163 and 23 VAC 10-110-164, and would qualify for the immediate refund under this subsection.~~

~~F. Interest. No interest shall be paid on refunds made under this section.~~

~~23 VAC 10-110-167. Excess cost recovery; special rules.~~

~~A. Successor entities. In computing the outstanding balance of excess cost recovery a taxpayer may include ACRS additions and ACRS subtractions made by other taxpayers in the following situations:~~

- ~~1. A surviving spouse may include ACRS additions and ACRS subtractions made on a joint or combined Virginia return with the decedent.~~
- ~~2. A corporate taxpayer may include ACRS additions and ACRS subtractions made by another corporation if there has been a merger or other form of reorganization under the following conditions:~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~a. The taxpayer would be allowed under federal law to claim a net operating loss deduction based upon a net operating loss incurred by the other corporation, assuming such other corporation incurred a net operating loss.~~

~~b. A statement shall be attached to the return setting forth:~~

~~(1) The name and taxpayer I.D. No. of such other corporation,~~

~~(2) Details of the ACRS additions, ACRS subtractions and post-1987 ACRS subtractions claimed by such other corporation,~~

~~(3) An explanation of the relationship between the taxpayer and such other corporation, and~~

~~(4) A statement signed by the taxpayer to the effect that the post-1987 ACRS subtraction has not, and will not, be claimed by any other taxpayer on any other return, including the final return of such other corporation.~~

~~3. A successor entity which elects to include ACRS additions and ACRS subtractions of another taxpayer in its outstanding balance of excess cost recovery shall not be eligible to apply for a refund under 23 VAC 10-110-166 due to the final federal and Virginia return of such other taxpayer.~~

~~B. Multiple recovery prohibited. A taxpayer may not claim a subtraction under 23 VAC 10-110-163 or 23 VAC 10-110-164 or a refund under 23 VAC 10-110-166 with respect to any portion of the outstanding balance of excess cost recovery which such taxpayer or any other taxpayer has previously recovered.~~

~~C. Net operating losses.~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~1. In the case of net operating losses occurring in a taxable year beginning before January 1, 1988:~~

~~a. A federal net operating loss deduction with respect to such loss which is claimed in a taxable year beginning before January 1, 1988, shall carry with it the ACRS additions and ACRS subtractions as provided in 23 VAC 10-120-100 B 5 (iii) and 23 VAC 10-110-83.~~

~~b. A federal net operating loss deduction with respect to such loss which is claimed in a taxable year beginning on and after January 1, 1988, shall not carry with it any ACRS additions or ACRS subtractions.~~

~~c. In computing the outstanding balance of excess cost recovery, the ACRS additions and ACRS subtractions for the loss year shall be included only once, for the year of the loss. Amounts carried to other years with the federal net operating loss deduction shall be ignored.~~

~~2. For net operating losses occurring in a taxable year beginning on and after January 1, 1988, a federal net operating loss deduction with respect to such loss shall not carry with it any portion of the subtraction allowable under 23 VAC 10-110-163 and 23 VAC 10-110-164.~~

~~23 VAC 10-110-200. Retirement income tax credit.~~

~~A. Generally. Every individual taxpayer age 62 or over is allowed a credit against his Virginia taxable income subject to the limitations set forth below. Any individual who~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~attains age 62 on or before December 31 of the taxable year is eligible for the credit.~~

~~(NOTE: An individual is deemed to be 62 on the day preceding his/her birthday.~~

~~Therefore, an individual who turns 62 on January 1 is deemed to have been 62 on the preceding December 31.)~~

~~B. Amount of the credit. The credit is equal to 5% of the maximum social security benefit based upon the taxpayer's age less benefits actually received during the taxable year from social security or the Railroad Retirement Act and two times the amount by which the taxpayer's FAGI exceeds \$12,000. The credit may not exceed the individual's tax liability. In computing the credit, a husband and wife must allocate FAGI to the spouse who earned the income or to the owner of the property from which the income was derived. This must be done even though the husband and wife may file a joint return. If such recomputation results in one spouse having no Virginia taxable income, the joint tax liability must be attributable to the spouse with Virginia taxable income. Social security benefits mean gross benefits before any deduction, including the deduction for medicare insurance. Examples of the computation of this credit follow.~~

~~Example 1: Taxpayer A, a single individual, age 64, has FAGI of \$15,000 and received social security benefits of \$4,000 during taxable year 1983. A's credit is computed as follows:~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~*Credit Base (maximum social security benefit~~ _____

\$7,591.00

~~Less amount received from social security~~ _____ (

4,000.00)

Balance 1 _____

3,591.00

FAGI _____

23 VAC 10-110. INDIVIDUAL INCOME TAX

15,000.00

Income limitation _____

(12,000.00)

Balance 2 _____

3,000.00

Balance (2) x 2 _____

6,000.00

Balance (1) less 2 x balance (2) _____

(2,409.00)

FN* ~~Applicable only to 1983 taxable year and subject to annual federal~~ _____

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~revision. The taxpayer does not receive any credit since the credit base~~

~~less~~

~~the sum of social security benefits received plus two times the amount by~~

~~which FAGI exceeded \$12,000 results in a negative balance.~~

~~Example 2: Taxpayer B, a single individual age 64, has FAGI of \$15,000 and received no social security benefits during taxable year 1983. B's credit is computed as follows:~~

~~*Credit Base~~ _____

~~\$7,591.00~~

~~Amount received from social security/railroad~~ _____

~~0.00~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~retirement~~ _____

Balance 1 _____

7,591.00

FAGI _____

15,000.00

Income limitation _____

(12,000.00)

Balance 2 _____

3,000.00

Balance (2) x 2 _____

23 VAC 10-110. INDIVIDUAL INCOME TAX

6,000.00

~~Balance (1) less 2 x balance (2)~~ _____

1,591.00

~~5% of preceding line~~ _____

79.55

~~**Tax Liability (computed without respect to~~ _____

493.00

~~credit)~~ _____

~~Tax Credit~~ _____

~~\$79.55~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~FN* Applicable only to 1983 taxable year and subject to annual federal~~

~~revision.~~

~~FN** Assumes standard deduction, no dependents, and no Virginia adjustments.~~

~~Example 3: Taxpayers C, age 63 and D, age 62, are husband and wife filing a joint return. C's share of joint FAGI is \$5,000.00; and D's share of FAGI is \$3,500.00 in taxable year 1982. Each received \$1,500.00 in social security benefits. The credit(s) is (are) computed as follows:~~

	Taxpayer C	Taxpayer
		D

~~*Credit Base \$6,617.00~~

~~\$6,312.00~~

~~Amount received from social~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~security/railroad retirement 1,500.00~~

1,500.00

~~Balance 1 5,117.00~~

4,812.00

~~FAGI 5,000.00~~

3,500.00

~~Income limitation 12,000.00~~

12,000.00

~~Balance 2 0.00~~

0.00

23 VAC 10-110. INDIVIDUAL INCOME TAX

~~Balance (2) x 2~~ ~~0.00~~

0.00

~~Balance (1) less 2 times~~

~~balance~~ ~~5,117.00~~

4,812.00

~~5% of preceding line~~ ~~255.85~~

240.60

~~**Tax liability (computed without~~

~~respect to credit)~~ ~~97.88~~

23 VAC 10-110. INDIVIDUAL INCOME TAX

47.25

~~Tax Credit _____ \$97.88 _____~~~~\$47.25~~~~FN* Applicable only to 1983 taxable year and subject to annual federal
—revision. _____~~~~FN** Assumes standard deduction, no dependents, and no Virginia adjustments.~~~~C. Limitations on credit.~~~~1. The retirement income tax credit is a nonrefundable credit, i.e., the amount of the credit may not exceed the tax liability, computed after application of the credit for tax paid to another state, of the individual claiming the credit.~~~~2. Any individual who claims a deduction from FAGI in computing Virginia taxable income for pension or retirement income received as an officer or employee of the Commonwealth or as a surviving spouse thereof pursuant to the provisions of subdivision 3 of 23 VAC 10-110-142 or who claims a disability income deduction pursuant to subdivision 4 of 23 VA C10-110-142 may not also claim a retirement income tax credit.~~