

INSTRUCTIONS FOR COMPLETING

FORM 770

VIRGINIA FIDUCIARY INCOME TAX

RETURNS FOR 2008



COMMONWEALTH OF VIRGINIA

DEPARTMENT OF TAXATION

RICHMOND, VIRGINIA

I. WHAT'S NEW

Advancement of Virginia's Fixed Date Conformity with the Internal Revenue Code: The 2008 General Assembly enacted legislation that moved Virginia's fixed date of conformity with the Internal Revenue Code from December 31, 2006, to December 31, 2007. At the time these instructions went to print, the only required adjustments for "fixed date conformity" were: (i) the special 30% and 50% bonus depreciation allowance for certain assets under the IRC, and (ii) the 5-year net operating loss (NOL) carry back allowed for net operating losses generated in taxable year 2001 or 2002. If federal legislation is enacted that results in changes to the Internal Revenue Code for the 2008 taxable year, taxpayers may be required to make adjustments to their Virginia returns that are not described in the instruction booklet. Supplemental instructions will be posted on our website: www.tax.virginia.gov.

II. GENERAL INFORMATION

WHO MUST FILE A RETURN

RESIDENT ESTATE OR TRUST: The fiduciary of a resident estate or trust must file a Virginia Fiduciary Income Tax Return (Form 770) if the estate or trust is required to file a federal Fiduciary Income Tax Return (Form 1041). "Resident estate or trust" means:

- The estate of a decedent who at death was domiciled in Virginia;
- A trust created by the will of a decedent who at death was domiciled in Virginia;
- A trust created by, or consisting of property of, a person domiciled in Virginia; or
- An estate or trust that is being administered by a resident of Virginia or that is under the supervision of a Virginia court.

NONRESIDENT ESTATE OR TRUST: The fiduciary of a nonresident estate or trust must file a Virginia Fiduciary Income Tax Return (Form 770) if the estate or trust had income or gain derived from Virginia sources and was required to file a federal Fiduciary Income Tax Return (Form 1041). "Income or gain from Virginia sources" means income or gain derived from:

- Real or tangible personal property located in this state;
- A business, trade, profession or occupation carried on in this state; or
- Intangible personal property, including annuities, dividends, interest, royalties and gains to the extent that the income is attributable to a business, trade or occupation carried on in Virginia.

WHO SHOULD FILE A RETURN

An estate or trust that is not otherwise required to file, but which made payments of estimated tax or had income tax withheld during the taxable year, must file a Virginia Fiduciary Income Tax Return to claim a refund of those amounts.

PERIOD OF RETURN AND ACCOUNTING METHOD

The accounting period and method of accounting for Virginia purposes must be the same as those used for federal purposes. If the taxable year or method of accounting is changed for federal purposes, the change will apply similarly to the Virginia return.

ATTACH A COMPLETE COPY OF THE FEDERAL RETURN

A copy of the federal Fiduciary Income Tax Return, as filed with the Internal Revenue Service, must be attached to the Virginia return.

SIGNATURE AND VERIFICATION

The return must be signed by the fiduciary or an authorized officer of the organization receiving or having custody or control of the management of the estate or trust. If two or more individuals act jointly as fiduciaries, the return may be signed by any one of those individuals.

PENALTIES AND INTEREST

PENALTIES: A fiduciary who fails to file or files a fraudulent return may be subject to civil and/or criminal penalties and interest charges.

The civil penalty for failing to file a return by the due date is 6% of the tax due for each month or part of a month from the due date through the date the return is filed, up to a maximum of 30%.

The civil penalty for failure to pay the tax due by the required due date is also 6% of the tax due for each month or part of a month from the due date through the date the tax is paid, up to a maximum of 30%. The late payment penalty is not imposed for any month in which the late filing penalty has already been applied. The total combined penalties for late filing and late payment may not exceed 30% of the tax due with the return.

The civil penalty for filing a false or fraudulent return, or failing or refusing to file any return with intent to evade the tax, is an additional penalty of 100% of the correct amount of tax due.

INTEREST: Interest due on any tax and/or penalty will accrue at the daily rate established according to Section 58.1-15 of the *Code of Virginia*,

from the date the tax or unpaid balance became due through the date that payment is made. The daily interest rate is the federal "underpayment rate," plus 2%. The current interest factor is available from the **Department of Taxation, 804-367-8031 or www.tax.virginia.gov**.

ALLOCATION OF INCOME TO BENEFICIARIES

Sections 58.1-361 and 58.1-363 of the *Code of Virginia* require the allocation of Virginia modifications and Virginia taxable income to beneficiaries, based on their respective share of the distributable net income of the estate or trust. A schedule or other statement of the income and modifications attributable to each beneficiary must be provided to each beneficiary by the fiduciary. A sample format is provided below. An optional format is to include a line for the beneficiary's net Virginia modifications on the copy of the federal Schedule K-1 provided to each beneficiary. If this option is chosen, use this description on the Schedule K-1: "Information for Virginia individual income tax return: Net Virginia modifications: \$ _____."

Col. 1	Col. 2	Col. 3	Col. 4
Name and Social Security Number of Each Beneficiary	Share of Federal Distributable Net Income	Percentage of Federal Distributable Net Income	Share of Virginia Modifications (Multiply the percentage in Col. 3 by the total modifications from Form 770, Schedule 3, Line 11)

It is not acceptable to require the beneficiary to compute his or her own modification from the federal information provided on the federal Schedule K-1.

If the beneficiaries will qualify for the credits available to Form 770 filers, the fiduciary must provide each beneficiary with the information from Schedule 5 necessary to compute and/or claim the credit(s).

RECORD KEEPING

Fiduciaries should retain the records pertaining to each income tax return of the estate or trust for three years from the due date of the return or the date the return was filed, whichever is later. If the Internal Revenue Service extends the time required for retention of federal records, the Virginia records should be kept for the same period of time.

SETOFF DEBT COLLECTION ACT

Before any refund can be issued, Virginia law requires the Department of Taxation to check for outstanding debts of the taxpayer with agencies of the Commonwealth of Virginia, Virginia local governments, the Virginia court system and the Internal Revenue Service. If any debts are found, regardless of the type of tax return filed, all or part of the refund may be withheld to satisfy the debt.

III. FILING INFORMATION

WHERE TO GET FORMS AND ASSISTANCE

Forms and assistance are available at the offices of the Commissioner of the Revenue, Director of Finance or Director of Tax Administration of every Virginia county and city. Addresses and telephone numbers for these offices are at the back of this booklet. **You may order forms from the Department of Taxation at 804-440-2541.** You can obtain most Virginia tax forms from our website: www.tax.virginia.gov. Since the Virginia return is based on federal information, you should have a complete copy of the federal Form 1041 on hand when you contact any of the above offices. **Address requests for information to Department of Taxation, P.O. Box 1115, Richmond, VA 23218-1115 or call 804-367-8031. Do NOT file the return at this address.** Tenemos servicios disponibles en Español.

WHERE TO FILE

Form 770 must be filed with the Commissioner of the Revenue, Director of Finance or Director of Tax Administration for the city or county in which the fiduciary qualified. If there has been no qualification in Virginia, the return should be filed with the Virginia city or county in which the fiduciary resides, does business, or has an office, or where one of the beneficiaries resides. The mailing addresses for the local offices are at the back of this booklet.

WHEN TO FILE AND PAY THE TAX

Calendar year filers must file Form 770 no later than May 1, 2009. Fiscal year returns are due to be filed by the fifteenth day of the fourth month following the close of the taxable year. If the due date falls on a Saturday, Sunday or legal holiday, the return must be filed by the next succeeding day that is not a Saturday, Sunday or legal holiday. The return must be accompanied by full payment of the tax due as reported on the return. **Make checks payable to Treasurer of the city or county where the return is filed.**

ESTIMATED TAX

TRUSTS: Trusts must make payments of estimated tax if the income tax liability on Form 770 for the taxable year will exceed \$150.

ESTATES: Estates are not required to make estimated tax payments until the first taxable year that ends two or more years after the decedent's date of death. Estimated tax payments must be made for that year and subsequent taxable years if the income tax liability will exceed \$150.

Estimated tax payments are made on Form 770ES. If Form 770ES is needed, see "Where to Get Forms and Assistance" earlier in this section. If the estimated tax is underpaid, the fiduciary may be subject to an addition to tax.

ADDITION TO TAX FOR UNDERPAYMENT OF ESTIMATED TAX, FORM 760C OR FORM 760F

An addition to tax is assessed if the fiduciary did not pay enough estimated tax through timely payments or did not have enough income tax withheld throughout the year. The addition to tax does not apply if each payment is made on time and:

1. the total tax paid (including tax withheld and timely estimated tax paid) was at least 90% (66 ⅔% for farmers, fishermen or merchant seamen) of the total 2008 tax liability or 100% of the income tax liability for 2007. To determine if the requirement is met, reduce the tax by the amount of all nonrefundable credits;
2. the sum of installment underpayments for the year is \$150 or less; or
3. you qualify for one of the exceptions shown on Form 760C (Form 760F for farmers, fishermen or merchant seamen).

If the estate or trust is subject to the addition to tax for underpayment of estimated tax, complete Form 760C (760F) and pay the amount computed on Form 760C (760F). Computation of the Virginia underpayment of tax is similar to the federal computation. The addition to tax is reported on Form 770 by completing Line 11 of Schedule 1.

EXTENSION OF TIME FOR FILING

Beginning with taxable year 2005, you are allowed an automatic six-month extension of time to file your tax return. This provision does not extend the due date for payment of taxes; however, you must pay at least 90% of your tax by the original due date for filing the return (May 1, 2009 for calendar year filers). To make a payment of tentative tax by the due date, use **Form 770IP**.

If you file your return within six months from the due date, but you do not pay at least 90% of your tax by the original due date for filing your return, you will be subject to an extension penalty of 2% per month. The penalty is applied to the balance of tax due with the return from the original due date through the date of filing. The maximum extension penalty is 12% of the tax due. If you file more than six months after the original due date, the extension provisions will not apply, and you will be subject to the late filing penalty. In addition to these penalties, you will be subject to interest charges on any balance of tax due with your return, even if you meet the 90% payment requirement.

It is not necessary to file Form 770IP if you are CERTAIN that your tax return will result in a refund because penalty is not assessed on a refund return; however, the Department of Taxation by law may issue a refund only if the return is filed within three years of the original due date or extended due date on the return, whichever is later.

AMENDED RETURNS AND FEDERAL ADJUSTMENTS

If an amended federal income tax return is filed to change the federal taxable income of the fiduciary, or if the Internal Revenue Service adjusts the income, an amended Virginia return must be filed within one year. Any taxpayer filing an amended federal return must also file an amended Virginia return and pay any additional tax and interest. In addition, if you file an amended return with any other state that results in a change that would affect your Virginia income tax, you must file an amended Virginia tax return within one year.

If the changes or adjustments result in a decrease in the fiduciary's income tax liability, Virginia law allows the Department of Taxation to issue a refund only if the amended return is filed within:

1. three years from the due date for filing the original return, including filing extensions;
2. one year from the final determination date for the amended federal return or federal change, whichever is later, provided the refund requested is attributable only to such change or adjustment;
3. one year from the final determination of the amended return of any other state or change or correction in the income tax of the taxpayer for any other state, provided that the taxpayer previously claimed a credit for such tax on his Virginia tax return and that the refund does not exceed the amount of the decrease in Virginia tax attributable to such change or correction;
4. two years from the filing of an amended Virginia return resulting in payment of additional tax, provided the claim for refund raises issues pertaining solely to the prior amended return and the claim does not exceed the amount of additional tax paid as a result of such prior amended return; or
5. two years from the payment of an assessment, provided the amended return raises issues relating only to the prior assessment and the refund does not exceed the amount of tax paid on the prior assessment.

HOW AND WHERE TO FILE AN AMENDED RETURN

To amend Form 770, obtain a blank Form 770 for the same taxable year and write "AMENDED" at the top or check the Amended box. Then complete the form using the corrected figures as if it were the original return. Do not make any adjustments to the return to show refunds received or balances paid with the original return.

Attach a complete copy of the amended federal return or federal adjustments, as well as a statement explaining any other changes made to the Virginia return.

You will be contacted if additional information is needed. File the amended return with the Commissioner of the Revenue, Director of Finance or Director of Tax Administration for the city or county where the original return was filed (see "Where to File" for further information). Mailing addresses are at the back of this booklet.

IV. CREDITS

GENERAL INFORMATION: The following rules apply when computing tax credits:

- Where a credit is limited to a percentage of the tax, the "tax" for this purpose shall be gross tax, less the credit for taxes paid to other states.
- Other income tax credits should be claimed in the order in which they provide the maximum benefit, regardless of the order shown on the form.
- Claim only as much credit as can be used to offset tax liability and keep accurate records of the carryover available for each credit.

CREDIT FOR TAX PAID TO ANOTHER STATE

RESIDENT FIDUCIARY:

A resident fiduciary is required to report its entire federal taxable income on Form 770, regardless of whether the entire income was derived from sources in Virginia. If the fiduciary is liable for payment of income taxes to another state on earned or business income derived from that state, or any gain (if included in federal adjusted gross income) on the sale of a capital asset outside Virginia, provided the income is taxed by Virginia as well as the other state (see Virginia Code Section 58.1-332 for information on capital assets), a credit is generally allowed for taxes paid to the other state, provided the income is taxable both to Virginia and the other state. The credit is computed on Form 770, Schedule 4.

EXCEPTION: A Virginia fiduciary deriving business income as a nonresident in Arizona, California, District of Columbia or Oregon may **not** claim a credit on the Virginia return for taxes paid to

those states. The credit must be claimed on the other state's nonresident fiduciary income tax return.

This credit applies only to income taxes paid to other states. Taxes paid to cities, counties, the federal government and foreign governments do not qualify for the credit. The credit is not allowed for franchise tax, license tax, excise tax, unincorporated business tax, occupation tax or any other tax characterized as such, even though the tax is based on *business* income. In addition, the credit is not allowable for taxes paid to any state that is prohibited by its own legislation from imposing an income or commuter tax.

A complete copy of the income tax return filed with any state(s) for which a credit is claimed must be attached to Form 770. Copies of cancelled checks or other income statements are not sufficient for verification of the income tax liability to the other state.

NONRESIDENT FIDUCIARY: As a general rule, Virginia law does **not** provide a credit to a nonresident fiduciary on business income taxable by both Virginia and the fiduciary's state of residence. Therefore, such credits must usually be claimed on the income tax return filed with the state of residence.

EXCEPTION: If the nonresident fiduciary is liable for income taxes as a resident of Arizona, California, District of Columbia or Oregon on income derived from Virginia sources, credit for tax paid to that state will be allowed on the Virginia return.

A complete copy of the income tax return filed with any state(s) for which a credit is claimed must be attached to Form 770. Copies of cancelled checks or other income statements are not sufficient for verification of the income tax liability to the other state.

NEIGHBORHOOD ASSISTANCE ACT CREDIT

The Virginia Neighborhood Assistance Act provides tax credits to businesses that donate money, property, limited professional services and contracting services directly to pre-approved Neighborhood Assistance Program (NAP) organizations whose primary function is to benefit impoverished individuals. Individuals may receive a credit for monetary donations to an eligible organization. Licensed physicians, dentists, nurses, nurse practitioners, physician assistants, chiropractors, optometrists, dental hygienists, pharmacists, professional counselors, clinical social workers, clinical psychologists, marriage and family therapists and physical therapists who donate their services for an approved clinic may also be eligible for credits. Excess donor credit, if applicable, may be carried forward for the next five taxable years. The amount of credit attributable to a partnership or S corporation shall be allocated to the partners and shareholders in proportion to their ownership or interest in the partnership or S corporation. To claim the tax credit, a certificate from the Department of Social Services must be attached to your return. For a list of approved organizations or additional information, contact: **Virginia Department of Taxation, Tax Credit Unit, P. O. Box 715, Richmond, VA 23218-0715, or call 804-786-2992.**

Schools for Students with Disabilities Fund Individuals and businesses may also receive tax credits for donations to the Schools for Students with Disabilities Fund, administered by the Virginia Department of Education. Donations to the fund must be used by private schools for students with disabilities for the purpose of reducing the tuition costs to attend such schools. Only schools licensed by the Commonwealth of Virginia as schools for students with disabilities are eligible to participate in this program. To claim a credit, a certificate from the Department of Education must be attached to your return. For further information contact: **Virginia Department of Education, Division of Special Education and Student Services, Schools for Students with Disabilities Fund, 101 North 14th Street, Richmond, VA 23219.**

ENTERPRISE ZONE ACT CREDIT

Businesses located within an Enterprise Zone that have initiated use of the enterprise zone general income tax credit or have a signed agreement with the Commonwealth regarding the use of such credits in place by July 1, 2005, may be eligible based on job creation to take a credit against the tax due on zone taxable income in an amount of 80% of the tax due for the first year and 60% of the tax due for the second through the tenth years. Excess general tax credit, if any, may not be carried forward. Such credits are authorized through fiscal year 2019.

In addition, businesses located within an Enterprise Zone that have initiated use of the Zone Investment Tax Credit or have a signed agreement with the Commonwealth regarding the use of such credits in place by July 1, 2005, may be eligible for a credit against zone taxable income. The investment credit can be carried forward until the full amount is used. Such credits are authorized through fiscal year 2019.

If the annual tax credit requested exceeds the annual appropriation, the Virginia Department of Housing and Community Development (**DHCD**) will issue a proportionate amount to each qualified business firm requesting the credits.

For qualification forms and additional information, contact: **Virginia Department of Housing and Community Development, 501 N. Second Street, Richmond, VA 23219-1321, 804-371-7030 or visit www.dhcd.virginia.gov.**

MAJOR BUSINESS FACILITY JOB TAX CREDIT

Individuals, estates, trusts, corporations, banks, insurance companies and telecommunications companies may claim a Virginia tax credit if the taxpayer creates at least 100 new full-time jobs in connection with the establishment or expansion of a major business facility, and the company is engaged in a qualifying industry in Virginia. If a taxpayer is located in an enterprise zone or in an economically distressed area (as defined by the Virginia Department of Economic Development), the threshold is reduced from 100 to 50. Credits will be recaptured proportionately if employment decreases during the five years following the initial credit year.

This nonrefundable credit is equal to \$1,000 per each qualifying new job in excess of the 100/50 job threshold and is spread over three years. The credit only applies to facilities where an announcement to expand or establish such a facility was made on or after January 1, 1994. The credit must be claimed ratably over three taxable years, beginning with the taxable year following the year in which the facility is established or expanded, or the new qualifying jobs are added. Unused credits may be carried forward for the next ten taxable years.

To apply for this credit, complete Form 304. All applications must be submitted to the **Department of Taxation, Tax Credit Unit, P.O. Box 715, Richmond, VA 23218-0715** 90 days prior to the due date of your return. A letter will be sent to certify the credit. This letter must be attached to the return.

HISTORIC REHABILITATION TAX CREDIT

Individuals, estates, partnerships, trusts or corporations incurring eligible expenses in the rehabilitation of a certified historic structure are entitled to claim a credit against the tax imposed by Sections 58.1-320, 58.1-360, 58.1-400, 58.1-1200, 58.1-2500 or 58.1-2620 of the Code of Virginia. The credit is equal to 25% of eligible rehabilitation expenses for projects completed in 2000 and thereafter. To qualify, the cost of the rehabilitation must equal at least 50% (25% if the building is an owner occupied residence) of the assessed value of the building for local real estate tax purposes in the year preceding the start of the rehabilitation. Unused credit may be carried forward for ten years. The rehabilitation work must be certified by the Virginia Department of Historic Resources as consistent with the Secretary of the Interior's Standards for Rehabilitation. Certification of buildings and rehabilitations are issued by the Department of Historic Resources and must be attached to the tax return when claiming the credit. Applications for certification may be obtained from the **Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, 804-367-2323, or visit www.dhr.virginia.gov.**

LOW - INCOME HOUSING CREDIT

If you are a Virginia taxpayer and you claimed a low-income housing tax credit on your federal income tax return for housing units placed in service in Virginia on or after January 1, 1998, you may qualify to claim the state low-income housing tax credit. The state credit is a percentage of the federal credit. For additional information, contact the **Department of Housing and Community Development** at 804-371-7117.

WORKER RETRAINING TAX CREDIT

This credit allows an employer to claim a tax credit for the training costs of providing eligible worker retraining to qualified employees. "Eligible worker retraining" includes approved noncredit courses that are approved by the Department of Business Assistance and that are provided by any of the Commonwealth's community colleges or a private school. Eligible worker retraining programs also include courses (credit, noncredit) undertaken through an apprenticeship agreement approved by the Virginia Apprenticeship Council. The credit is 30% of all training costs through a community college, or up to \$100 annual credit for each employee if incurred at a private school. Employers must apply for certification of the amount of allowable credit using **Form WRC**, Worker Retraining Tax Credit, by April 1, 2009, before claiming the credit on their income tax return. All approved businesses filing a timely **Form WRC** will be notified of their allowable credit by June 30, 2009. The maximum worker retraining credits granted to all employers is limited to \$2,500,000 annually. If total credits approved exceed this amount, each will be prorated. The credit is allowable against individual income tax, fiduciary income tax, corporation income tax and the bank franchise tax. The credit is also allowable against taxes imposed upon insurance companies and utility companies (under Sections 58.1-2500 et. seq. and Section 58.1-2620 et. seq., Code of Virginia). This credit is nonrefundable, but excess credit may be carried forward for the next three taxable years. For information on pre-approved apprenticeship programs, contact the **Virginia Department of Labor and Industry at 804-786-2382**. For information on noncredit course approval, contact the **Virginia Department of Business Assistance, P. O. Box 446, Richmond, VA 23218-0446, telephone 804-371-8200.**

QUALIFIED EQUITY AND SUBORDINATED DEBT INVESTMENTS TAX CREDIT

Taxpayers making a "qualified investment" in the form of equity or subordinated debt in a "qualified business" may be eligible for this credit. This credit may be claimed by taxpayers making a qualified investment in the form of equity or subordinated debt in a qualifying business. Businesses may apply for designation as a qualified business using **Form QBA**. The qualification is **valid** only for the calendar year of the application. Therefore, the business needs to reapply each year for qualification. To qualify, the business must (1) have annual gross revenues of no more than \$3 million in its most recent fiscal year, (2) have its principal office or facility in the Commonwealth, (3) be engaged in business primarily in or having substantially all of its production in the Commonwealth and (4) have not obtained during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments (not including commercial loans from chartered banking or savings and loan institutions).

The credit equals 50% of the qualified business investments made during the taxable year. The total amount of credit that may be used per taxpayer per taxable year may not exceed \$50,000. The credit is nonrefundable. Unused credits may be carried forward up to 15 years. If total credits approved exceed \$3 million, the Department of Taxation will prorate the allowable credit for each taxpayer. Equity and debt investments held in connection with a qualified business investment must be held by the investor for at least three full calendar years following the calendar year for which the credit is allocated except in certain instances. If the holding period is not met, the unused credit amount will be forfeited, and an assessment will be issued for the amount used to which shall be added interest, computed at the rate of one percent per month, compounded monthly from the date the tax credits were claimed. See the form and Virginia Tax Bulletin 00-5 (7-31-2000) for additional details.

This credit requires **pre-approval** by the **Department of Taxation**. Investors must apply to the Department by April 1, 2009 using **Form EDC**. **Taxpayers filing Form EDC after April 1 will be denied this credit.** All approved investors filing a timely **Form EDC** will be notified of the allowable credit by June 30, 2009. Since the tax return of most individuals is due May 1, 2009, most investors will need to file an extension of time to file or amend their original return to claim the credit.

Pass-Through Entities must file **Form PTE** with the Department of Taxation at least 60 days before filing their income tax return. A copy of the certification letter from the Department of Taxation is a required attachment to **Form PTE**.

Visit our website at www.tax.virginia.gov to obtain **Form QBA**, **Form EDC** and **Form PTE**. Additional information can also be found under the Tax Policy Library in Virginia Tax Bulletin 00-5 and Regulation 23 VAC10-110-225. Information on the application process is also available from the **Virginia Department of Taxation, Tax Credit Unit, P. O. Box 715, Richmond, Virginia 23218-0715, or call 804-786-2992.**

COALFIELD EMPLOYMENT ENHANCEMENT TAX CREDIT

For taxable years beginning on or after January 1, 1996, but before January 1, 2015, a tax credit may be earned by individuals, estates, trusts and corporations who have an economic ownership interest in coal mined in Virginia. Credits may be claimed for taxable years beginning on or after January 1, 2000. Compute the allowable credit on **Form 306** and report it on Schedule CR for the tax year in which the credit is claimed and/or earned. *If you are reporting an earned amount for the 2008 tax year, you must also complete Line 10 of Schedule 1.*

VIRGINIA COAL EMPLOYMENT AND PRODUCTION INCENTIVE TAX CREDIT

This credit may be allocated between a qualifying electricity generator and qualifying person with an economic interest in coal. The allocation of this credit may not exceed \$3 per ton. All credits earned on or after January 1, 2006, or prior to July 1, 2011, which are allocated to persons with an economic interest in coal may be redeemed by the Tax Commissioner if the credits exceed the taxpayer's state tax liability for the applicable taxable year. You must complete Form 306, Form 306T and its attachments to claim this credit.

LAND PRESERVATION TAX CREDIT

This tax credit is for taxpayers that convey land or interest in land located in Virginia to a public or private agency eligible to hold such land or interests therein for conservation or preservation purposes. The conveyance must be in perpetuity.

The credit for 2006 is 50% and the credit for 2007 and beyond is 40% of the fair market value, as substantiated by a "qualified appraisal" prepared by a "qualified appraiser", as those terms are defined under applicable federal law and regulations governing charitable contributions. The total amount of credit that may be used per taxpayer per taxable year may not exceed

\$100,000 or the tax liability, whichever is less. Any unused credit prior to 2007 may be carried forward for the next 5 taxable years. Any unused credit for 2007 and beyond may be carried forward for the next 10 years.

Any taxpayer holding a Land Preservation tax credit that originated on or after January 1, 2002, may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. Transfers and pass-through allocations derived from donations recorded on or after January 1, 2007, are subject to a fee. See Schedule A of Form LPC-1 or Form LPC-2 for further information.

If this credit is taken, for the next three years taxpayers cannot take a subtraction for the gain on the sale of land or easements dedicated to open-space use. A subtraction is allowed for any gain or income recognized by a taxpayer on the application of a Land Preservation tax credit against a Virginia income tax liability; to the extent the gain is included in and not otherwise subtracted from federal adjusted gross income. The transfer of the credit and its application against a tax liability shall not create gain or loss for the transferor or the transferee.

Before claiming the credit, complete and file Form LPC-1 with the Department within 90 days of the credit origination, but at least 90 days before filing an annual return. Applicants for tax credits of \$1 million or more should apply at least 120 days before filing an annual return. After we review the form and, if the value of the credit exceeds \$1 million, after Department of Conservation and Recreation (DCR) verifies the conservation value, we will issue a letter acknowledging the amount of the credit. For assistance contact the **Virginia Dept. of Taxation, Tax Credit Unit, P. O. Box 715, Richmond, VA 23218-0715, or call 804-786-2992.**

V. OTHER CONSIDERATIONS FOR FIDUCIARIES

In addition to the filing of income tax returns, fiduciaries are generally responsible for ensuring that all Virginia tax obligations of an estate or trust have been fulfilled. The information in this section provides details on the settlement of accounts and outlines other Virginia taxes for which an estate or trust may be held liable.

SETTLEMENT OF ACCOUNTS

In connection with the settlement of fiduciary accounts, special attention should be given to the provisions of Section 58.1-22 and Section 58.1-23 of the *Code of Virginia*, dealing with the collection of taxes and levies upon property under the control of the fiduciaries and the courts. The sections are set out below.

Section 58.1-22. Accounts Not Settled Until Taxes Paid or Provided For

– No commissioner of accounts shall, under Section 26-32, file any report of an account of the transactions of any fiduciary not governed by Section 58.1-911 until the commissioner finds that all taxes, whether state, or county or city, assessed and chargeable upon the property in the hands of the person for whom such account is settled have been paid or unless such account shall show that there remains in the hands of such person a sufficient sum, over and above the charges of administration, to pay all taxes charged against such person in his capacity as fiduciary.

Section 58.1-23. Inquiries Required of Fiduciaries – Every personal representative, before settling the estate in his hands, shall make inquiry of the treasurer of the county or city wherein the decedent last resided and of the Department with respect to any unpaid taxes and levies assessed against his decedent.

Inquiries made to the Department of Taxation with respect to the provisions of Code Section 58.1-23 should be addressed to Customer Service, P.O. Box 1115, Richmond, VA 23218-1115.

UNIFIED FILING

Fiduciaries may request to file, on behalf of nonresident beneficiaries or participants, a unified return thereby relieving these persons or entities of the responsibility of filing a Virginia nonresident income tax return. There are certain conditions that must be met in order to be granted approval for filing the unified return. For further information call Customer Service at 804-367-8031.

PROBATE TAX (TAX ON WILLS AND ADMINISTRATIONS)

A state tax is imposed on the probate of wills and grants of administration not exempt by law. A probate tax return must be filed with the clerk of the court at the time the will is offered for probate, or grant of administration is sought, if the estate exceeds \$15,000 in value at the date of death of the decedent. There is no probate tax on estates valued at \$15,000 or less. For estates exceeding \$15,000 in value, the tax is 10 cents per \$100, or fraction of \$100, including the first \$15,000. In addition, the county or city

in which the will is offered for probate, or grant of administration is sought, may also impose a local probate tax equal to one-third of the state tax. **For further information on probate tax, contact the Clerk of the Circuit Court in the appropriate jurisdiction, or the Department of Taxation at 804-367-8031.**

ESTATE TAX

The Virginia estate tax is a transfer tax imposed on an estate of decedents whose date of death is prior to July 1, 2007. The tax is imposed on the estates of resident decedents and the estates of nonresident decedents who owned real or tangible personal property in Virginia. Estates of alien decedents who owned real or tangible personal property in Virginia or intangible personal property physically present in Virginia are also subject to the tax. The tax is based on the federal credit for state death taxes allowed by section 2011 of the *Internal Revenue Code* as it existed on January 1, 1978. The Virginia return, if required, must be filed on Virginia Form EST-80 within nine months from the decedent's date of death. If the estate is not required to file a federal estate tax return, no Virginia tax return is required.

For further information on the Virginia estate tax, call the **Department of Taxation at 804-367-8031** or write to **Department of Taxation, P.O. Box 1115, Richmond, VA 23218-1115.**

CONSUMER'S USE TAX

If an estate or trust that is not engaged in a trade or business is not charged sales tax on purchases of tangible personal property (other than for resale), it must file a Virginia Consumer's Use Tax Return For Individuals, **Form CU-7.**

Form CU-7 and the tax are due the same day as the income tax return. If filing a tax due 770 return, do not send a single payment to cover both the fiduciary return liability and the consumer's use tax liability. The **CU-7** return must be filed separately.

If engaged in a trade or business, file a Virginia Consumer's Use Tax Return, **Form ST-7.** **Form ST-7** and the tax are due by the 20th day of the month following the month in which the purchase was made.

The consumer's use tax is based on what you paid for the item ("cost price"). "Cost price" does not include separately stated shipping or delivery charges, but it does include a "shipping and handling" charge if listed as a combined item on the sales invoice. If the purchases were from out-of-state mail order catalog(s) and exceed \$100 or any amount from other sources, then you must report this and pay consumer's use tax on the **TOTAL** amount of *untaxed* purchases from **all** sources *during the calendar year*. Nonprescription drugs and proprietary medicines purchased for the cure, mitigation, treatment or prevention of diseases in human beings are exempt from consumer use tax.

The tax is 5% of the total cost price except for food purchased for home consumption. Effective July 1, 2005, the sales tax rate on food purchased for home consumption was reduced to 2.5%.

For further information on the consumer's use tax, contact the **Department of Taxation, P.O. Box 1115, Richmond, VA 23218-1115** or **804-367-8037.**

LITTER TAX

Litter tax is reported on a separate return, **Form 200.** This tax is imposed on every "person," who on January 1, was engaged in business as a manufacturer, wholesaler, distributor or retailer of the following products: food for human or pet consumption; groceries; cigarettes and tobacco products; soft drinks and carbonated waters; beer and malt beverages; wine; newspapers and magazines; paper products and household paper; glass and metal containers; plastic or fiber containers made of synthetic materials; cleaning agents and toiletries; nondrug drugstore sundry products; distilled spirits; and motor vehicle parts. "Person" means any natural person, corporation, partnership, administrator, fiduciary representative or group of individuals or entities of any kind operating such a business.

Litter tax is computed and filed on a calendar year basis for all filers, regardless of the taxable year used for income tax purposes. The return, Form 200, and payment of the tax are due on May 1 of each year for the preceding year. Once an initial return is filed, preprinted forms will be mailed automatically for subsequent years. **For further information on litter tax, contact the Department of Taxation at 804-367-8046.**

VI. LINE BY LINE INSTRUCTIONS

FORM 770 - PAGE 1

Complete the information required in the spaces at the top of Form 770. If this return is for a period other than January 1 to December 31 of the taxable year shown on your return, indicate the fiscal beginning and ending

dates in the space provided. The taxable period of your Virginia return must be the same as that of your federal return. It is important that the names, address and Federal Employer Identification number (FEIN) are entered correctly. **Do NOT use the decedent's social security number or the preparer's FEIN as the estate's or trust's FEIN.**

If the estate or trust has not received its FEIN, write "Applied For" in the appropriate box and notify the **Department of Taxation** in writing at **P. O. Box 1115, Richmond, VA 23218-1115** as soon as the FEIN is received.

Locality Code. Look up the three-digit code on the back cover for the locality in which the fiduciary qualified. Enter the corresponding number in the boxes provided on the form. If not qualified, enter 300 as the "unassigned" locality.

Fixed Date Conformity. Check the box under the FEIN area if the return has an addition or subtraction due to Fixed Date Conformity.

Credit Claimed for Tax Withheld by a Pass-Through Entity. Effective January 1, 2008, pass-through entities such as partnerships and limited liability companies (but NOT estates and trusts) were required to withhold Virginia income tax from distributions to nonresident owners. If this trust or estate owned an interest in a pass-through entity, and had Virginia income tax withheld, include the withheld tax in the payments and credits on Line 5a and check this box.

SCHEDULE 1 - COMPUTATION OF TAXABLE INCOME AND TAX OF FIDUCIARY

Before completing Schedule 1, complete all applicable schedules on the back of Form 770.

Line 1: Federal taxable income of the estate or trust.

Resident fiduciaries:

Enter the federal taxable income reported on Form 1041.

Nonresident fiduciaries:

Enter the taxable income from Schedule 2, Line 8.

Line 2: Fiduciary's share of Virginia modifications.

Enter on Line 2(a) or Line 2(b), the net modifications amount from Schedule 3, Line 12 on the back of the return.

The instructions for Schedule 3, Line 12, explain whether the amount will be entered on Line 2(a) or Line 2(b).

See Schedule 3, Lines 3 and 8, for Lines 2FA and 2FS amounts.

Line 3: Virginia taxable income of fiduciary.

Add the amounts reported on Lines 1 and 2(a), or subtract the amount on Line 2(b) from the amount on Line 1, and enter the result on Line 3.

Line 4: Virginia income tax.

Compute the tax on the income reported on Line 3, according to the rate schedule on the form.

Line 5: Payments and Credits.

Enter the appropriate amounts on Lines 5(a) through 5(q). Enter the total payments and credits claimed on Line 5.

(a) **Virginia Income Tax Withheld.** Enter the amount of any Virginia withholding on the wages, salaries or other income of the decedent that was received by the estate. Attach a copy of Forms W-2, W-2G, 1099-R and/or VK-1 to support the amount claimed. If claiming credit for any tax withheld by a pass-through entity, also check the box labeled "Credit claimed for tax withheld by a Pass-Through Entity" in the top right corner of the form.

(b) **2008 Estimated Tax Payments.** Enter the amount of any 2008 Virginia estimated tax payments made by the estate or trust, including any overpayment credit applied from the fiduciary's 2007 return. Do not include payments made on behalf of a decedent for individual income tax purposes.

(c) **Extension Payments Made with Form 770IP.** Enter the amount of tentative tax paid with the fiduciary's Form 770IP.

(d) **Credit for Tax Paid to Another State.** Enter the credit computed from Form 770, Schedule 4, Line 7. See "Credit For Tax Paid To Another State" in Section IV of these instructions to see if you qualify for this credit.

A complete copy of the state fiduciary return of any state for which the credit is claimed must be attached.

(e)-(q) Complete Schedule 5 on Page 3 of Form 770 to determine the allocations between the fiduciary and beneficiaries.

(e) **Neighborhood Assistance Act Credit (NAA).** Complete the work sheet below and enter the allowable credit from Line 7

on Form 770, Line 5(e). Attach a copy of the neighborhood assistance tax certificate.

1. Fiduciary's share of credit from Schedule 5, Column 3, Line (e) 1. _____
2. Carryover credit from prior year 2. _____
3. Subtotal: Add Lines 1 and 2 3. _____
4. Tax from Schedule 1, Line 4 4. _____
5. Credit for tax paid to another state 5. _____
6. Subtract Line 5 from Line 4 6. _____
7. **Allowable 2008 Credit.** Enter the lesser of Line 3 or Line 6 here and on Schedule 1, Line 5(e) 7. _____
8. **Carryover to 2009 Form 770.** If Line 3 is larger than Line 7, enter the difference 8. _____

(f) **Enterprise Zone Act Credit.** Enter the fiduciary's credit as computed on Form 301 using only the fiduciary's share of qualifying income, Virginia unemployment tax credit and the investment tax credit. Attach Form 301 and a certificate of qualification from the Virginia Department of Housing and Community Development.

When qualifying in more than one Enterprise Zone, complete a separate Form 301 for each zone. Add the totals from each Form 301 and enter the grand total on this Line.

(g) **Major Business Facility Job Tax Credit.** Enter the fiduciary's credit as computed on Form 304. Attach Form 304.

(h) **Historic Rehabilitation Tax Credit.** Complete the work sheet below and enter the allowable credit. Attach a copy of the certificate.

1. Fiduciary's credit share from Schedule 5, Line (e) of column used to claim credit. Attach certification 1. _____
2. Carryover credit from prior year 2. _____
3. Subtotal: Add Lines 1 and 2 3. _____
4. Tax from Schedule 1, Line 4 4. _____
5. Total of other credits claimed 5. _____
6. Subtract Line 5 from Line 4 6. _____
7. **Allowable 2008 Credit.** Enter the lesser of Line 3 or Line 6 here and on Schedule 1, Line 5(h) 7. _____
8. **Carryover to 2009 Form 770.** If Line 3 is larger than Line 7, enter the difference 8. _____

(i) **Low Income Housing Credit.** Complete the work sheet below and enter the allowable credit. Attach a copy of the certificate.

1. Fiduciary's credit share from Schedule 5, Line (e) of column used to claim credit. Attach certification 1. _____
2. Carryover credit from prior year 2. _____
3. Subtotal: Add Lines 1 and 2 3. _____
4. Tax from Schedule 1, Line 4 4. _____
5. Total of other credits claimed 5. _____
6. Subtract Line 5 from Line 4 6. _____
7. **Allowable 2008 Credit.** Enter the lesser of Line 3 or Line 6 here and on Schedule 1, Line 5(i) 7. _____
8. **Carryover to 2009 Form 770.** If Line 3 is larger than Line 7, enter the difference 8. _____

(j) Line Reserved For Future Use

(k) Line Reserved For Future Use

(l) **Worker Retraining Credit.** Complete the work sheet below and enter the allowable credit.

1. Fiduciary's credit share from Schedule 5, Line (e) of column used to claim credit 1. _____
2. Carryover credit from prior year 2. _____
3. Subtotal: Add Lines 1 and 2 3. _____

4. Tax from Schedule 1, Line 4 4. _____
5. Total of other credits claimed 5. _____
6. Subtract Line 5 from Line 4 6. _____
7. **Allowable 2008 Credit.** Enter the lesser of Line 3 or Line 6 here and on Schedule 1, Line 5(l) 7. _____
8. **Carryover to 2009 Form 770.** If Line 3 is larger than Line 7, enter the difference 8. _____

(m) **Qualified Equity and Subordinated Debt Investments Tax Credit.** Complete the work sheet below and enter the allowable credit.

1. Fiduciary's credit share from Schedule 5, Line (e) of column used to claim credit 1. _____
2. Carryover credit from prior year 2. _____
3. Subtotal: Add Lines 1 and 2 3. _____
4. Tax from Schedule 1, Line 4 4. _____
5. Total of other credits claimed 5. _____
6. Subtract Line 5 from Line 4 6. _____
7. **Allowable 2008 Credit.** Enter the lesser of Line 3 or Line 6 here and on Schedule 1, Line 5(m) 7. _____
8. **Carryover to 2009 Form 770.** If Line 3 is larger than Line 7, enter the difference 8. _____

(n)-(o) **Coalfield Employment Enhancement Tax Credit and Virginia Coal Employment and Production Incentive Tax Credit** Enter on Line 5(n) the fiduciary's credit as computed on Form 306. Enter on Line 5(o) the fiduciary's credit as computed on Form 306, Line 13. Attach Form 306.

(p) Line Reserved for future use.

(q) **Land Preservation Tax Credit.** Complete the work sheet below and enter the allowable credit. Attach Land Preservation Credit (LPC) Acknowledgment Letter from the Department of Taxation.

1. Fiduciary's credit share from Schedule 5, Line(e) of column used to claim credit 1. _____
2. Carryover credit from prior year 2. _____
3. Subtotal: Add Lines 1 and 2 3. _____
4. Tax from Schedule 1, Line 4 4. _____
5. Total of other credits claimed 5. _____
6. Subtract Line 5 from Line 4 6. _____
7. **Allowable 2008 Credit.** Enter the lesser of Line 3 or Line 6 here and on Schedule 1, Line 5(q) 7. _____
8. **Carryover to 2009 Form 770.** If Line 3 is larger than Line 7, enter the difference 8. _____

Line 5: Total payments and credits. Enter the total of Lines 5(a) through 5(q).

Line 6: Balance due. If the total credits claimed on Line 5 are less than the tax reported on Line 4, subtract Line 5 from Line 4, and enter the result. See Section II of this instruction book for information on when and where to file your return. *A check for the balance due, made payable to the Treasurer of the city or county where the return will be filed, must be attached to the return. A list of the filing addresses and phone numbers is at the back of this booklet.*

Line 7: Overpayment. If the total payments and credits claimed on Line 5 exceed the tax reported on Line 4, subtract Line 4 from Line 5 and enter the result on Line 7.

Line 8: Amount of overpayment to be credited to 2009. Enter the amount of the overpayment to be credited to the fiduciary's 2009 estimated income tax.

Line 9: Amount to be refunded. Subtract Line 8 from Line 7 and enter the refund amount here.

Line 10: Coalfield Employment Enhancement Tax Credit Earned. Enter amount from Form 306, Line 11. This is the credit to be reported on your 2010 return. Attach Form 306.

Line 11: Amount from Form 760C or Form 760F. Enter the addition to tax amount from Form 760C or Form 760F if applicable.

FORM 760C OR FORM 760F

See "Estimated Tax" in Part III of this instruction booklet to determine if you owe an addition to tax. If exception 1 or 2 was met for all quarters, it is not necessary to complete or attach Form 760C or Form 760F. **If exception 3 or 4 was used to calculate the addition to tax or to determine that you did not owe the addition to tax for any quarter, you must attach Form 760C and the associated work sheet(s) to the return.**

If Form 760C or Form 760F is attached, complete Line 11 of Schedule 1. Attach one check for the TOTAL amount of income tax due and the addition to tax computed on Form 760C or Form 760F. If your return shows a refund on Line 9, the addition to tax will be deducted from your refund.

COMPLETING THE RETURN

SIGNATURE: The return must be signed by the fiduciary or an authorized officer of the organization receiving or having custody or control of the management of the estate or trust. If two or more individuals act jointly as fiduciaries, the return may be signed by any one of those individuals. You have not filed a complete or legal return unless it has been signed.

TELEPHONE NUMBERS: Telephone numbers where you can be contacted between the hours of 8:30 a.m. and 5:00 p.m. are requested so we can call you if we have a question about the return.

WHEN AND WHERE TO FILE AND PAY THE TAX: See Section III, Filing Information, on Page 2 of these instructions for information on when and where to file and pay the tax.

FORM 770 - PAGE 2

SCHEDULE 2 - COMPUTATION OF VIRGINIA TAXABLE INCOME OF A NONRESIDENT ESTATE OR TRUST

On lines 1 through 3, enter the distributable amount in Column A and the nondistributable amount in Column B.

Line 1: Income from sources within Virginia. Enter the income from property or businesses located or administered in Virginia to the extent that the item of income is includable in the computation of federal taxable income.

Line 2: Federal deductions attributable to income from sources within Virginia. Enter the federal deductions attributable to the income reported on Line 1 above.

Line 3: Net Virginia source income. Subtract the amount reported on Line 2 from the income reported on Line 1 and enter the result here.

Line 4: Allocation of Virginia source income. Line 4 is used to report the allocation of income among the fiduciary and the beneficiaries. Income will be allocated to the fiduciary only if income is accumulated during the taxable year and, as in the case of a complex trust, not all income is distributed currently.

Virginia source income must be allocated to each beneficiary based on his or her proportionate share of the federal distributable net income. For example, if 50% of the estate's or trust's federal distributable net income is allocated to a beneficiary from Form 1041 or Schedule K-1, then 50% of the net Virginia source income should be allocated to that beneficiary.

Complete the allocation schedule provided on Lines 4(a) through 4(c) or attach a schedule of computation if more space is needed.

Line 5: Deduction for distributions to beneficiaries. Enter the amount from Line 4a, Column 4 or Line 4a, Column 2, whichever is less.

Line 6: Fiduciary's share of Virginia source income. Sum of Line 4b, Column 4 and Column 5 or Line 4b Column 2, whichever is less.

Line 7: Exemption from federal Form 1041. Enter the amount of the federal exemption allowed on federal Form 1041.

Line 8: Income taxable to fiduciary. Subtract Line 7 from Line 6. Enter the result here and on Schedule 1, Line 1 of Form 770.

SCHEDULE 3 - MODIFICATIONS

Fixed Date Conformity Update

Virginia's date of conformity with the Internal Revenue Code was advanced from December 31, 2006, to December 31, 2007. The special 30% and 50% bonus depreciation allowance for certain assets under the IRC and the 5-year net operating loss (NOL) carry back allowed for net operating losses generated in taxable year 2001 or 2002 are still not allowed.

At the time these instructions went to print, the only required adjustments for "fixed date conformity" were the two mentioned above. However, if federal legislation has been enacted that results in changes to the Internal Revenue Code for the 2008 taxable year, taxpayers will be required to make adjustments to their Virginia returns that are not described in the instruction booklet. Information about any such adjustments will be posted on the Department's website at www.tax.virginia.gov.

PART I - ADDITIONS TO FEDERAL TAXABLE INCOME

Line 1: Interest on obligations of other states. Enter the amount of interest, less related expenses to the extent not deducted in determining federal taxable income, on obligations of any state other than Virginia, or of a political subdivision of any such state unless created by compact or agreement to which this state is a party.

If the estate or trust received federally exempt *dividend* income from a regulated investment company (mutual fund) that invested in obligations both taxable and exempt for Virginia purposes, the entire income must be reported unless a statement from the fund is attached that:

- details the dividends earned from the fund; and
- summarizes the prorations between exempt and taxable dividends (monthly breakdown preferred).

EXAMPLE: A trust receives dividends from a mutual fund that invests in obligations of Virginia and New York. The interest received from all of the obligations is exempt from federal taxation. The fund provides the following statement:

Dividend payments for 2008	\$4,000
% of income from NY obligations	60%
% of income from VA obligations	40%

Based on this information, the trust may exclude 40% or \$1600 of the income from Virginia taxable income. Therefore, the trust would make an addition for only part of its mutual fund income, \$2,400, and attach the above statement to support the partial addition.

Line 2: Income taxes of this state or any other taxing jurisdiction. Enter the amount of income tax imposed by this state or any other taxing jurisdiction to the extent such taxes were deducted in computing federal taxable income.

Line 3: Fixed Date Conformity Additions.

a: Bonus Depreciation. For an explanation, please see the section entitled, *Fixed Date Conformity Update*. Enter the amount that should be added to Federal Adjusted Gross Income based upon the recomputation of allowable depreciation. a _____

b: Other Fixed Date Conformity Additions From Supplemental Instructions. If federal tax legislation passed after the printing deadline for these instructions, please refer to the Supplemental Fixed Date Conformity Instructions to determine if you are required to make any additional additions due to federal tax legislation. The Supplemental Fixed Date Conformity Instructions are available on the Department's website: www.tax.virginia.gov. If you are required to make any Supplemental Fixed Date Conformity additions, please enter the total amount of such additions on this line. b _____

Enter the total of Lines a and b here and on Form 770, Schedule 1, Line 2FA and Schedule 3, Line 3. TOTAL _____

Line 4: Other additions to federal taxable income. Enter the following amounts, if applicable, and attach a schedule of computation to the return:

- a. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance, and any amount excluded from federal taxable income solely by virtue of a fiduciary's election to use the averaging provisions under Section 402 of the Internal Revenue Code.
- b. The amount necessary to prevent the deduction of any item properly deductible by the taxpayer in determining a tax under Virginia law prior to 1972.

- c. Other income not included in federal taxable income, but subject to Virginia income tax.

Line 5: Total Additions. Add Lines 1 through 4 and enter the result.

PART II - SUBTRACTIONS FROM FEDERAL TAXABLE INCOME

Line 6: Income (interest, dividends or gains) from obligations or securities of the U.S. exempt from state income taxes, but not from federal income taxes. Enter the income derived from obligations or the sale or exchange of obligations of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent such income is exempt from state income taxes. The amount entered here should include, but is not limited to, qualifying stocks, bonds, treasury bills and treasury notes.

Do not include interest on federal tax refunds, equipment purchase contracts and other normal business transactions.

Only income received from direct obligations of the United States is eligible for the subtraction. A partial list of federal organizations and the Virginia tax status of income received from investments in securities issued by those entities is shown below. The list is based on the Department's analysis of federal and state law as applicable to selected organizations. For organizations not listed below, additional information must be attached showing that the interest is exempt from Virginia income tax.

ISSUING ORGANIZATION	TAX STATUS
Export-Import Bank of the United States.....	Exempt
Federal Home Loan Bank (FHLB).....	Exempt
Federal Home Loan Mortgage Corporation (FHLMC).....	Taxable
Federal Intermediate Credit Bank	Exempt
Federal Land Bank	Exempt
Federal National Mortgage Association (FNMA)	Taxable
Government National Mortgage Association (GNMA).....	Taxable
Inter-American Development Bank	Taxable
International Bank for Reconstruction & Development.....	Taxable
Student Loan Market Association (SLMA).....	Exempt
United States Savings Bonds.....	Exempt
United States Treasury Bills, Notes, and Bonds.....	Exempt

If the estate or trust received income from a regulated investment company (mutual fund) that invested in obligations both taxable and exempt for Virginia purposes, the entire income must be reported as taxable unless a statement from the fund is attached that:

- details the amount of income earned from the fund; and
- summarizes the prorations between exempt and taxable income (monthly breakdown preferred).

If the estate or trust is provided the information specified above, enter the exempt portion of income. A copy of the statement from the fund must be attached to the return to support the subtraction.

Line 7: Any state income tax refund or credit reported as "other income" on federal Form 1041. Enter any state income tax refund or credit included in the estate's or trust's income on Form 1041.

Line 8: Fixed Date Conformity Subtractions.

a: Bonus Depreciation. For an explanation, see the section entitled, *Fixed Date Conformity Update*. Enter the amount that should be subtracted from Federal Adjusted Gross Income based upon the recomputation of allowable depreciation. a _____

b: Other Fixed Date Conformity Subtractions From Supplemental Instructions. If federal tax legislation passed after the printing deadline for these instructions, please refer to the Supplemental Fixed Date Conformity Instructions to determine if you are required to make any additional subtractions due to federal tax legislation. The Supplemental Fixed Date Conformity Instructions are available on the Department's website: www.tax.virginia.gov. Enter the total Supplemental Fixed Date Conformity subtractions here. b _____

Enter the total of Lines a and b here and on Form 770 Schedule 1, Line 2FS and Schedule 3, Line 8. TOTAL _____

Line 9: Other subtractions from federal taxable income. Enter the following amounts, if applicable, and attach a schedule of computation to the return.

- The amount of income on obligations or sales and exchanges of obligations of this state or of any political subdivision or instrumentality of this state included in federal taxable income.
- The amount of wages or salaries eligible for the federal work opportunity tax credit which was not deducted for federal purposes on account of the provisions of Section 280C(b) of the Internal Revenue Code of 1986, as amended.
- The amount of Tier 2 vested dual benefits and other Railroad Retirement Act benefits and Railroad Unemployment Insurance Act benefits included in federal taxable income.
- Transitional modifications provided in Section 58.1-315, *Code of Virginia*.
- A deduction, not to exceed \$2000 per account per year, for the amount paid or contributed to a prepaid tuition contract or a savings trust account entered into with the Virginia College Savings Plan. Do not include any amount that was deducted on the federal return.
- Other income included in federal taxable income, but exempt from Virginia income tax.

Line 10: Total subtractions. Add Lines 6 through 9 and enter the total here.

Line 11: Net Virginia modifications. Subtract Line 10 from Line 5 and enter the difference.

Line 12: Net Virginia modifications allocated to the fiduciary. Multiply Line 11 by the fiduciary's percentage of federal distributable net income. *Enter the result here and:*

If Line 5 is larger than Line 10,
Enter the amount from Line 10 above on Line 2(a) on front of Form 770. This is a net ADDITION.

If Line 5 is not larger than Line 10,
Enter the amount from Line 10 above on Line 2(b) on front of Form 770. This is a net SUBTRACTION.

Net Virginia Modifications Allocated to the Beneficiaries

Each beneficiary must be provided a statement of income and modifications for use in completing the individual income tax return. See "Allocation Of Income To Beneficiaries" in Section II of this instruction booklet for more information.

SCHEDULE 4 - COMPUTATION OF THE CREDIT FOR TAX PAID TO ANOTHER STATE

If a credit is being claimed for taxes paid by the fiduciary to another state, complete Lines 1 through 7 of Schedule 4 on Form 770 to compute the allowable credit. See "CREDIT FOR TAX PAID TO ANOTHER STATE" in Section IV of these instructions for more information. A complete copy of the return filed with any state for which a credit is claimed must be attached. If a credit is being claimed for taxes paid to more than one other state, a separate computation must be attached for each state (following the format of Form 770, Schedule 4).

Line 1: Taxable income reported on another state's return. Enter the taxable income on which the tax in the other state is based. Attach a copy of the return filed in the other state to support the amount claimed.

Line 2: Virginia taxable income. Enter the taxable income from Schedule 1, Line 3 of Form 770.

Line 3: Total income tax paid to another state. Enter the income tax paid to another state. Also enter the name of the other state.

Line 4: Virginia income tax. Enter the tax from Schedule 1, Line 4, of Form 770.

Line 5: Allowable percentage for credit.
Resident Estate or Trust:
Divide Line 1 by Line 2, and enter the result to one decimal place (example: 10.5%). Do not enter more than 100%.

Nonresident Estate or Trust:
Divide Line 2 by Line 1, and enter the result to one decimal place (example: 10.5%). Do not enter more than 100%.

Line 6: *Resident estate or trust:*
Multiply Line 5 by Line 4.
Nonresident estate or trust:
Multiply Line 5 by Line 3.

Line 7: Allowable credit.

Resident Estate or Trust:

Enter the smaller amount from Line 3 or Line 6.

Nonresident Estate or Trust:

Enter the smaller amount from Line 4 or Line 6. Also enter this amount on Schedule 1, Line 5(d) on front of Form 770.

SCHEDULE 5 - COMPUTATION OF CREDIT TO TAX AND QUALIFYING INCOME

Schedule 5 is used to allocate the approved tax credits among the beneficiaries and the fiduciary. Lines (a) through (d) should be used for the beneficiaries, and Line (e) should be used for the fiduciary. If you need additional Lines, you may attach a supplementary schedule to the return following the format shown on Form 770. The credits and the qualifying income must be allocated according to each person's share of the federal distributable net income, using the percentages from Form 1041 or Schedule K-1.

Columns 1 and 2: Name and social security number and percentage.

Enter the name and social security number of each beneficiary and the appropriate distribution percentage.

Column 3: Allocation of Neighborhood Assistance Act Credit. Enter the total authorized Neighborhood Assistance Act credit on Line (f) in the appropriate column.

Multiply the amount on Line (f) by the percentages in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)], and enter the results on the appropriate Lines in Column 3 used to claim the credit.

Enter the fiduciary's share of the Neighborhood Assistance Act Credit [Col. 3, Line (e)] on Line 5(e) on front of Form 770.

A copy of the Neighborhood Assistance Tax Certificate(s) must be attached to support the credit claimed.

Columns 4 - 7: Allocation of the Enterprise Zone Tax Credits. Form 301 and a copy of the certificate of qualification from the Virginia Department of Housing and Community Development must be attached to support any Enterprise Zone Tax Credit claimed. Compute the fiduciary's Enterprise Zone Credit on Form 301 and enter the result on Form 770, Schedule 1, Line 5(f).

Column 4: Allocation of Enterprise Zone Qualifying Income. Enter the total Enterprise Zone qualifying income on Line (f). This is the amount of income derived from a qualified business operating within an enterprise zone.

Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results on the appropriate Lines in Column 4.

The amount of qualifying income attributable to the fiduciary is used to compute the fiduciary's general tax credit portion of the Enterprise Zone Credit on Form 301.

Column 5: Allocation of Enterprise Zone State Unemployment Tax Credit. Compute the total Unemployment Tax Credit using the instructions on Form 301 and enter the result on Line (f).

Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results on the appropriate Lines in Column 5.

The beneficiary will use this credit when computing the State Unemployment Tax Credit portion of the Enterprise Zone Act Credit on Form 301 for their return.

Attach a copy of the Certificate of Unemployment Tax Credit from the Virginia Employment Commission to support any credit claimed.

Column 6: Space reserved for future use.

Column 7: Allocation of Enterprise Zone Investment Tax Credit. Compute the total Enterprise Zone Investment Tax Credit using the instructions on Form 301 and enter the result on Line (f). Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results on the appropriate Lines in Column 7.

The beneficiaries will use this credit when computing the Investment Tax Credit portion of the Enterprise Zone Act Credit on Form 301 for their return.

Columns 8 - 11: Other credits. Enter the name of the credit being claimed in appropriate block in column 8. If more than one credit is being claimed, enter the additional credit information in columns 9-11, as needed.

Allocation of Major Business Facility Job Tax Credit. Enter the amount of Major Business Facility Job Tax Credit authorized by the Department of Taxation on Line (f). Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results on the appropriate Lines. Enter the fiduciary's share of the Major Business Facility Job Tax Credit [Line (e)] on Line 5(g) on front of Form 770.

Allocation of Historic Rehabilitation Tax Credit. Enter the total Historic Rehabilitation Tax Credit allowed on Line (f). Multiply the amount on Line (f) by the percentages in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results on the appropriate Lines. Enter the fiduciary's share of Historic Rehabilitation Tax Credit [Line (e)] on Line 5(h) on front of Form 770. A copy of the credit certificate issued by the Virginia Department of Historic Resources must be attached to the return in order to claim this credit.

Allocation of Low-Income Housing Credit. Enter the total Low-Income Housing credit allowed on Line (f). Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results in the appropriate Lines. Enter the fiduciary's share [Line (e)] on Line 5(i) on front of Form 770. Attach a certificate of qualification authorizing this credit.

Allocation of Worker Retraining Tax Credit. Enter the total Worker Retraining Credit allowed on Line (f). Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results in the appropriate Lines. Enter the fiduciary's share [Line (e)] on Line 5(l) on front of Form 770.

Allocation of Qualified Equity and Subordinated Debt Investments Tax Credit. Enter the total Qualified Equity and Subordinated Debt Investments credit allowed on Line (f). Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results in the appropriate Lines. Enter the fiduciary's share [Line (e)] on Line 5(m) on front of Form 770.

Allocation of Coalfield Employment Enhancement Tax Credit and Virginia Coal Employment and Production Incentive Tax Credit-Full Tax Credit. Enter the total Coalfield Employment Enhancement Tax Credit and Virginia Coal Employment and Production Incentive Tax Credit - Full Tax Credit allowed on Line (f). Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results in the appropriate Lines. Enter the fiduciary's share [Line (e)] on Line 5(n) on front of Form 770.

Allocation of Coalfield Employment Enhancement Tax Credit and Virginia Coal Employment and Production Incentive Tax Credit-Excess Tax Credit. Enter the total Coalfield Employment Enhancement Tax Credit and Virginia Coal Employment and Production Incentive Tax Credit - Excess Tax Credit allowed on Line (f). Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results in the appropriate Lines. Enter the fiduciary's share [Line (e)] on Line 5(o) on front of Form 770.

Allocation of Land Preservation Tax Credit. Enter the total Land Preservation Tax Credit allowed on Line (f). Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary [Lines (a) through (d)] and the fiduciary [Line (e)]. Enter the results on the appropriate Lines. Enter the fiduciary's share [Line (e)] on Line 5(q) on front of Form 770. If this credit is being claimed as a result of a transfer of the credit, a copy of Land Preservation Credit (LPC) Acknowledgment Letter from the Department of Taxation must be attached to the return.

Allocation of Coalfield Employment Enhancement Tax Credit and Virginia Coal Employment and Production Incentive Tax Credit Earned. Compute the total Coalfield Employment Enhancement Tax Credit and Virginia Coal Employment and Production Incentive Tax Credit on Form 306 and enter the earned amount on Line (f). Multiply the amount on Line (f) by the percentages shown in Column 2 for each beneficiary and the fiduciary. Enter the results on the appropriate Lines . Enter the fiduciary's share on Line 10 on front of Form 770.

