

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH80451-LY-143 (3/17)

Short Title: Tax Personal Business Income at Corp. Rate. (Public)

Sponsors: Representative Baker.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR AN ALTERNATIVE METHOD OF TAXATION FOR
CERTAIN INCOME EARNED BY AN INDIVIDUAL TAXPAYER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-134.1 is amended by adding the following new
subdivision to read:

"§ 105-134.1. Definitions.

The following definitions apply in this Part:

...

(3a) Entrepreneurial income. – Income derived from an ownership interest
in a sole proprietorship, partnership, S corporation, or other business
entity that is not subject to the tax imposed by Part 1 of this Article.
The term does not include wages or other compensation paid by a
business entity to an owner of the entity for goods or services rendered
by the owner.

...

(8a) Net entrepreneurial income. – Entrepreneurial income less any
expenses and carryforwards or carrybacks of net operating losses
associated with that income and less any federal deductions that are
directly attributable to the activity of the business entity.

...

(15a) Taxable entrepreneurial income. – Net entrepreneurial income adjusted
as provided in G.S. 105-134.6 and G.S. 105-134.7 by substituting the
phrase 'net entrepreneurial income' for the phrase 'taxable income' and
'taxable entrepreneurial income' for the phrase 'North Carolina taxable
income' in that section."

SECTION 2. G.S. 105-134.5 reads as rewritten:

1 **"§ 105-134.5. North Carolina taxable income defined.**

2 (a) Residents. – For residents of this State, the term 'North Carolina taxable
3 income' means the taxpayer's taxable income as determined under the Code, adjusted as
4 provided in G.S. 105-134.6 and G.S. 105-134.7.

5 (b) Nonresidents. – For nonresident individuals, the term 'North Carolina taxable
6 income' means the taxpayer's taxable income as determined under the Code, adjusted as
7 provided in G.S. 105-134.6 and G.S. 105-134.7, multiplied by a fraction the
8 denominator of which is the taxpayer's gross income as determined under the Code,
9 adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of which
10 is the amount of that gross income, as adjusted, that is derived from North Carolina
11 sources and is attributable to the ownership of any interest in real or tangible personal
12 property in this State or is derived from a business, trade, profession, or occupation
13 carried on in this State. If a nonresident elects to have tax liability computed under
14 G.S. 105-134.9, the taxpayer must multiply the taxpayer's taxable income as determined
15 under the Code other than entrepreneurial income, as adjusted as provided in
16 G.S. 105-134.6 and G.S. 105-134.7, by a fraction. The denominator of that fraction is
17 the taxpayer's gross income as determined under the Code, less entrepreneurial income
18 and as adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, and the numerator of
19 which is the amount of that gross income, less entrepreneurial income and as adjusted,
20 that is derived from North Carolina sources and is attributable to the ownership of any
21 interest in real or tangible personal property in this State or is derived from a business,
22 trade, profession, or occupation carried on in this State. The nonresident taxpayer must
23 use this amount in determining tax liability under G.S. 105-134.9(d)(2).

24 (c) Part-year Residents. – If an individual was a resident of this State for only
25 part of the taxable year, having moved into or removed from the State during the year,
26 the term 'North Carolina taxable income' has the same meaning as in subsection (b)
27 except that the numerator shall include gross income, adjusted as provided in
28 G.S. 105-134.6 and G.S. 105-134.7, derived from all sources during the period the
29 individual was a resident. If a part-year resident elects to have tax liability computed
30 under G.S. 105-134.9, the taxpayer must multiply the taxpayer's taxable income as
31 determined under the Code other than entrepreneurial income and as adjusted as
32 provided in G.S. 105-134.6 and G.S. 105-134.7, by a fraction. That fraction is the same
33 as the fraction listed in subsection (b) for taxpayers who compute tax liability under
34 G.S. 105-134.9, except that the numerator includes gross income, less entrepreneurial
35 income and as adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, derived from
36 all sources during the period the individual was a resident. The part-year resident
37 taxpayer must use this amount in determining tax liability under G.S. 105-134.9(d)(2).

38 (d) S Corporations and Partnerships. – In order to calculate the numerator of the
39 fraction provided in subsection (b), the amount of a shareholder's pro rata share of S
40 Corporation income that is includable in the numerator shall be the shareholder's pro
41 rata share of the S Corporation's income attributable to the State, as defined in
42 G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in
43 subsection (b) for a member of a partnership or other unincorporated business with one
44 or more nonresident members that operates in one or more other states, the amount of

1 the member's distributive share of income of the business that is includable in the
2 numerator shall be determined by multiplying the total net income of the business by the
3 ratio ascertained under the provisions of G.S. 105-130.4. As used in this subsection,
4 total net income means the entire gross income of the business less all expenses, taxes,
5 interest, and other deductions allowable under the Code which were incurred in the
6 operation of the business."

7 **SECTION 3.** Part 2 of Article 4 of Chapter 105 of the General Statutes is
8 amended by adding a new section to read:

9 **"§ 105-134.9. Alternative taxation of entrepreneurial income.**

10 (a) Election of Alternative. – An individual who has entrepreneurial income in a
11 taxable year may elect to compute the taxpayer's tax liability under this section instead
12 of as generally required by this Part. Once an election is made for a taxable year, that
13 election is binding for that year. An individual may make a different election each year.

14 (b) Separation of Income. – When electing to compute tax liability under this
15 section, a taxpayer must deduct from taxable income all entrepreneurial income
16 included in that amount.

17 (c) North Carolina Entrepreneurial Income. – For residents of this State, the term
18 'North Carolina entrepreneurial income' means the taxpayer's taxable entrepreneurial
19 income. For nonresident individuals, the term 'North Carolina entrepreneurial income'
20 means the taxpayer's taxable entrepreneurial income multiplied by a fraction. The
21 denominator of that fraction is the taxpayer's entrepreneurial income and the numerator
22 of the fraction is the taxpayer's entrepreneurial income that is derived from North
23 Carolina sources and is attributable to the ownership of any interest in real or tangible
24 personal property in this State or is derived from a business, trade, profession, or
25 occupation carried on in this State. For part-year residents, the term 'North Carolina
26 entrepreneurial income' means the taxpayer's taxable entrepreneurial income multiplied
27 by a fraction. The denominator of that fraction is the taxpayer's entrepreneurial income
28 and the numerator of the fraction is the same as the numerator for nonresident
29 individuals plus entrepreneurial income derived from all sources while the individual
30 was a resident.

31 (d) Computation of Tax Liability. – A taxpayer that elects to compute tax
32 liability under this section has a tax liability equal to the sum of the following:

33 (1) The amount of tax that would be due if the taxpayer's North Carolina
34 entrepreneurial income were subject to the tax imposed by
35 G.S. 105-130.3.

36 (2) The amount of tax that would be due under this Part on the taxpayer's
37 North Carolina taxable income other than entrepreneurial income
38 computed as if that amount were the taxpayer's total North Carolina
39 taxable income."

40 **SECTION 4.** This act is effective for taxable years beginning on or after
41 January 1, 2004.