

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

H

1

HOUSE BILL 1755

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

---

Sponsors: Representative Baker.

---

Referred to: Finance.

---

May 31, 2004

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW FOR AN ALTERNATIVE METHOD OF TAXATION FOR  
3 CERTAIN INCOME EARNED BY AN INDIVIDUAL TAXPAYER.

4 The General Assembly of North Carolina enacts:

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

7 "§ 105-134.1. Definitions.

8 The following definitions apply in this Part:

9 ...

10 (3a) Entrepreneurial income. – Income derived from an ownership interest  
11 in a sole proprietorship, partnership, S corporation, or other business  
12 entity that is not subject to the tax imposed by Part 1 of this Article.  
13 The term does not include wages or other compensation paid by a  
14 business entity to an owner of the entity for goods or services rendered  
15 by the owner.

16 ...

17 (8a) Net entrepreneurial income. – Entrepreneurial income less any  
18 expenses and carryforwards or carrybacks of net operating losses  
19 associated with that income and less any federal deductions that are  
20 directly attributable to the activity of the business entity.

21 ...

22 (15a) Taxable entrepreneurial income. – Net entrepreneurial income adjusted  
23 as provided in G.S. 105-134.6 and G.S. 105-134.7 by substituting the  
24 phrase 'net entrepreneurial income' for the phrase 'taxable income' and  
25 'taxable entrepreneurial income' for the phrase 'North Carolina taxable  
26 income' in that section."

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

28 "§ 105-134.5. North Carolina taxable income defined.

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

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

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

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

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

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

8 **"§ 105-134.9. Alternative taxation of entrepreneurial income.**

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

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

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

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

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

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

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