Article 4.

Income Tax.

Part 1. Corporation Income Tax.

§ 105-130. Short title.

This Part of the income tax Article shall be known and may be cited as the Corporation Income Tax Act. (1939, c. 158, s. 300; 1967, c. 1110, s. 3; 1998-98, ss. 42, 61, 68.)

§ 105-130.1. Purpose.

(a) Purpose. – The general purpose of this Part is to impose a tax for the use of the State government upon the net income of every domestic corporation and of every foreign corporation doing business in this State.

The tax imposed upon the net income of corporations in this Part is in addition to all other taxes imposed under this Subchapter.

(b) Critical Infrastructure Disaster Relief. – A nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State for purposes of this Part. The definitions and provisions in G.S. 166A-19.70A apply in this subsection. (1939, c. 158, s. 301; 1967, c. 1110, s. 3; 1998-98, s. 69; 2019-187, s. 1(f).)

§ 105-130.2. Definitions.

The following definitions apply in this Part:

(1) Affiliate. – A corporation is an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

(2) Code. – Defined in G.S. 105-228.90.

(3) Corporation. – A joint-stock company or association, an insurance company, a domestic corporation, a foreign corporation, or a limited liability company.

(4) C Corporation. – A corporation that is not an S Corporation.

(5) Department. – The Department of Revenue.

(6) Domestic corporation. – A corporation organized under the laws of this State.

(7) Fiscal year. – An income year, ending on the last day of any month other than December. A corporation that pursuant to the provisions of the Code has elected to compute its federal income tax liability on the basis of an annual period varying from 52 to 53 weeks shall compute its taxable income under this Part on the basis of the same period used by the corporation in computing its federal income tax liability for the income year.

(8) Foreign corporation. – Any corporation other than a domestic corporation.

(9) Gross income. – Defined in section 61 of the Code.

(10) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Part. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Part or under rules adopted by the Secretary, the income year is the period for which the return is made.

(11) Limited liability company. – Either a domestic limited liability company organized under Chapter 57D of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a corporation. As applied to a limited liability company that is a corporation under this Part, the term "shareholder" means a member of the limited liability company and the term "corporate officer" means a member or manager of the limited liability company.

(12) Parent. – A corporation is a parent of another corporation when, directly or indirectly, it controls the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

(13) S Corporation. – Defined in G.S. 105-131(b).

(14) Secretary. – The Secretary of Revenue.

(15) State net income. – The taxpayer's federal taxable income as determined under the Code, adjusted as provided in G.S. 105-130.5 and, in the case of a corporation that has income from business activity that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. 105-130.4.

(16) Subsidiary. – A corporation is a subsidiary of another corporation when, directly or indirectly, it is subject to control by the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interest, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

(17) Taxable year. – Income year.

(18) Taxpayer. – A corporation subject to the tax imposed by this Part. (1939, c. 158, s. 302; 1941, c. 50, s. 5; 1955, c. 1331, s. 2; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1983, c. 713, ss. 68, 82; 1985, c. 656, s. 7; 1985 (Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 3; 1989, c. 36, s. 3; 1989 (Reg. Sess., 1990), c. 981, s. 3; 1991, c. 689, s. 257; 1991 (Reg. Sess., 1992), c. 922, s. 4; 1993, c. 12, s. 5; c. 354, s. 12; 1995, c. 17, s. 3; 1998-98, s. 69; 2006-162, s. 3(a); 2012-79, s. 1.14(b); 2013-157, s. 27.)

§ 105-130.3. Corporations.

A tax is imposed on the State net income of every C Corporation doing business in this State. An S Corporation is not subject to the tax levied in this section. The tax is a percentage of the taxpayer's State net income computed as follows:

Taxable Years Beginning	Tax
In 2025	2.25%
In 2026	2%
In 2028	1%
After 2029	0%. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 1287, s. 4;

1975, c. 275, s. 4; 1977, c. 657, s. 4; 1979, c. 179, s. 2; 1981, c. 15; 1983, c. 713, s. 69; 1987, c. 622, s. 8; 1987 (Reg. Sess., 1988), c. 1089, s. 5; 1989, c. 728, s. 1.33; 1991, c. 689, s. 258; 1996, 2nd Ex. Sess., c. 13, s. 2.1; 2013-316, ss. 2.1(a), 2.2(a); 2015-241, s. 32.13(a); 2017-57, s. 38.5(a), (b); 2021-180, s. 42.2(a).)

§ 105-130.3A: Expired.

§ 105-130.3B: Expired pursuant to its own terms, effective for taxable years beginning on or after January 1, 2011.

§ 105-130.3C: Repealed by Session Laws 2017-57, s. 38.5(c), effective June 28, 2017.

§ 105-130.4. Allocation and apportionment of income for corporations.

(a) Definitions. – The following definitions apply in this section:

(1) Apportionable income. – All income that is apportionable under the United States Constitution, including income that arises from either of the following:

a. Transactions and activities in the regular course of the taxpayer's trade or business.

b. Tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.

(2) Business activity. – Any activity by a corporation that would establish nexus, except as limited by 15 U.S.C. § 381.

(3) Casual sale of property. – The sale of any property that was not purchased, produced, or acquired primarily for sale in the corporation's regular trade or business.

(4) Commercial domicile. – The principal place from which the trade or business of the taxpayer is directed or managed.

(5) Compensation. – Wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Nonapportionable income. – All income other than apportionable income.

(7) Sales. – All gross receipts of the corporation except for the following receipts:

a. Receipts from a casual sale of property.

b. Receipts allocated under subsections (c) through (h) of this section.

c. Receipts exempt from taxation.

d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

e. The portion of receipts from financial swaps and other similar financial derivatives that represents the notional principal amount that generates the cash flow traded in the swap agreement.

f. Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a), (3b), and dividends excluded for federal tax purposes.

(8) State. – A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) Multistate Corporations. – A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this section. For purposes of allocation and apportionment, a corporation is taxable in another state if either of the following applies:

(1) The corporation's business activity in that state subjects it to a net income tax or a tax measured by net income.

(2) That state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction.

(c) Nonapportionable Income. – Rents and royalties from real or tangible personal property, gains and losses, interest, dividends, patent and copyright royalties and other kinds of income, to the extent that they constitute nonapportionable income, less related expenses shall be allocated as provided in subsections (d) through (h) of this section.

(d) Rents and Royalties. – Net rents and royalties are allocable to this State as follows:

(1) Net rents and royalties from real property located in this State are allocable to this State.

(2) Net rents and royalties from tangible personal property are allocable to this State:

a. If and to the extent that the property is utilized in this State, or

b. In their entirety if the corporation's commercial domicile is in this State and the corporation is not organized under the laws of, or is not taxable in, the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the income year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the income year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(e) Gains and Losses. – Gains and losses are allocable to this State as follows:

(1) Gains and losses from sales or other disposition of real property located in this State are allocable to this State.

(2) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if

a. The property had a situs in this State at the time of the sale, or

b. The corporation's commercial domicile is in this State and the corporation is not taxable in the state in which the property has a situs.

(3) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the corporation's commercial domicile is in this State.

(f) Interest and Net Dividends. – Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State. For purposes of this section, the term "net dividends" means gross dividend income received less related expenses.

(g) Intangible Property. – Intangible property is allocable to this State as follows:

(1) Royalties or similar income received from the use of patents, copyrights, secret processes and other similar intangible property are allocable to this State:
   a. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in this State, or
   b. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(2) A patent, secret process or other similar intangible property is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, processing, or other use in the state or to the extent that a patented product is produced in the state. If the basis of receipts from such intangible property does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the intangible property is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(h) Other Income. – The income less related expenses from any other activities producing nonapportionable income or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments is located in this State.

(i) Apportionable Income. – Except as otherwise provided in this section, all apportionable income of corporations shall be apportioned to this State by multiplying the income by the sales factor as determined under subsection (*l*) of this section.

(j) Repealed by Session Laws 2015-241, s. 32.14(d), as amended by Session Laws 2015-268, s. 10.1(c), effective for taxable years beginning on or after January 1, 2018.

(k) Repealed by Session Laws 2015-241, s. 32.14(d), as amended by Session Laws 2015-268, s. 10.1(c), effective for taxable years beginning on or after January 1, 2018.

(*l*) Sales Factor. – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all sales shall be treated as having been made in this State.

Receipts are in this State if the taxpayer's market for the receipts is in this State. If the market for a receipt cannot be determined, the state or states of assignment shall be reasonably approximated. In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale are to be assigned through the use of a method of reasonable approximation, the receipts must be excluded from the denominator of a taxpayer's sales factor. Except as otherwise provided by this section, a taxpayer's market for receipts is in this State as provided below:

(1) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this State.

(2) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this State.

(3) In the case of sale of tangible personal property, if and to the extent the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed is considered the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State constitutes delivery to the purchaser in this State.

(4) In the case of sale of a service, if and to the extent the service is delivered to a location in this State.

(5) In the case of intangible property that is rented, leased, or licensed, if and to the extent the property is used in this State. Intangible property utilized in marketing a good or service to a consumer is "used in this State" if that good or service is purchased by a consumer who is in this State.

(6) In the case of intangible property that is sold, if and to the extent the property is used in this State. A contract right, government license, or similar intangible property that authorized the holder to conduct a business activity in a specific geographic area is "used in this State" if the geographic area includes all or part of this State. Receipts from a sale of intangible property that is contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of the intangible property as provided under subdivision (5) of this subsection. All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

(*l*1) Wholesale Content Distributors. – A wholesale content distributor's market for receipts is in this State as provided in G.S. 105-130.4A. In no event may the amount of receipts sourced to this State be less than the amount determined under this subsection. The amount determined under this subsection is the total domestic gross receipts of the wholesale content distributor from advertising and licensing activities multiplied by two percent (2%). For purposes of this section, the term "wholesale content distributor" has the same meaning as defined in G.S. 105-130.4A.

(*l*2) Banks. – A bank's market for receipts is in this State as provided in G.S. 105-130.4B. For purposes of this section, the term "bank" has the same meaning as defined in G.S. 105-130.4B.

(m) Railroad Company. – All apportionable income of a railroad company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the "railway operating revenue" from business done within this State and the denominator of which is the "total railway operating revenue" from all business done by the company as shown by its records kept in accordance with generally accepted accounting principles.

If the Secretary of Revenue finds, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Secretary of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner's share of the net profits shall be considered as dividends paid by a

corporation for purposes of this Part and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income.

The following definitions apply in this subsection:

(1) Equal mileage proportion. – The proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue.

(2) Interstate business. – Railroad operating revenue from the interstate transportation of persons or property into, out of, or through this State.

(3) Railway operating revenue from business done within this State. – Railroad operating revenue from business wholly within this State, plus the equal mileage proportion within this State of each item of railway operating revenue received from the interstate business of the company.

(n) Repealed by Session Laws 2017-204, s. 1.5, effective for taxable years beginning on or after January 1, 2017.

(o) Motor Carrier. – All apportionable income of a motor carrier of property or a motor carrier of people shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words "vehicle miles" shall mean miles traveled by vehicles owned or operated by the company based upon one of the following:

(1) Miles on a scheduled route.

(2) Miles hauling property for a charge.

(3) Miles carrying passengers for a fare.

(p), (q) Repealed by Session Laws 2017-204, s. 1.5, effective for taxable years beginning on or after January 1, 2017.

(r) Repealed by Session Laws 2015-241, s. 32.14(d), as amended by Session Laws 2015-268, s. 10.1(c), effective for taxable years beginning on or after January 1, 2018.

(s) Transportation Corporation. – All apportionable income of an air transportation corporation or a water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. A qualified air freight forwarder shall use the revenue ton mile fraction of its affiliated air carrier. The following definitions apply in this subsection:

(1) Air carrier. – A corporation engaged in the business of transporting any combination of passengers or property of any kind in interstate commerce, and the majority of the corporation's revenue ton miles everywhere are attributed to transportation by aircraft.

(2) Air transportation corporation. – One or more of the following:

a. An air carrier that carries any combination of passengers or property of any kind.

b. A qualified air freight forwarder.

(3) Qualified air freight forwarder. – A corporation that is an affiliate of an air carrier and whose air freight forwarding business is primarily carried on with the affiliated air carrier.

(4) Revenue ton mile. – One ton of passengers, freight, mail, or other cargo carried one mile by the air transportation corporation or water transportation

corporation by aircraft, motor vehicle, or vessel. In making this computation, a passenger is considered to weigh two hundred pounds.

(s1) Repealed by Session Laws 2015-241, s. 32.14(d), as amended by Session Laws 2015-268, s. 10.1(c), effective for taxable years beginning on or after January 1, 2018.

(s2) Pipeline Company. – Receipts from the transportation or transmission of petroleum-based liquids or natural gas by a company subject to rate regulation by the Federal Energy Regulatory Commission shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of traffic units in this State during the tax year and the denominator of which is the total number of traffic units everywhere during the tax year. For purposes of this section, the term "traffic unit" means one or more of the following:

(1) Barrel mile. – One barrel of liquid property transported one mile.

(2) Cubic foot mile. – One cubic foot of gaseous property transported one mile.

(s3) Electric Power Company. – All apportionable income of an electric power company shall be apportioned by a fraction, the numerator of which is the average value of the real and tangible personal property owned or rented and used in this State by the electric power company during the income year and the denominator of which is the average value of all the real and tangible personal property owned or rented and used by the electric power company during the income year. For purposes of this subsection, the term "electric power company" is a company, including any of its wholly owned noncorporate limited liability companies, primarily engaged in the business of supplying electricity for light, heat, current, or power to persons in this State and that is subject to control of one or more of the following entities: the North Carolina Utilities Commission or the Federal Energy Regulatory Commission.

For purposes of this subsection, the average value of real and tangible personal property owned or rented by an electric power company is determined as follows:

(1) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.

(2) An electric power company that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the electric power company's property.

(3) Property owned by an electric power company is valued at its original cost.

(4) Property rented by an electric power company is valued at eight times the net annual rental rate.

(5) Net annual rental rate is the annual rental rate paid by an electric power company less any annual rental rate received by the electric power company from sub-rentals except that sub-rentals shall not be deducted when they constitute apportionable income.

(6) Any property under construction and any property the income from which constitutes nonapportionable income shall be excluded from the computation of the average value of an electric power company's real and tangible personal property.

(t) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008. For applicability, see Editor's note.

(t1) Alternative Apportionment Method. – A corporation that believes the statutory apportionment method that otherwise applies to it under this section subjects a greater portion of its income to tax than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method.

The statutory apportionment method that otherwise applies to a corporation under this section is presumed to be the best method of determining the portion of the corporation's income that is attributable to its business in this State. A corporation has the burden of establishing by clear, cogent, and convincing proof that the proposed alternative method is a better method of determining the amount of the corporation's income attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subsection. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its income in accordance with the alternative method or the statutory method. A corporation may not use an alternative apportionment method except upon written order of the Secretary, and any return in which any alternative apportionment method, other than the method prescribed by statute, is used without permission of the Secretary is not a lawful return.

(t2) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011.

(t3) State Net Loss Apportionment Election. – Notwithstanding subdivision (*l*)(4) of this section, a taxpayer with a State net loss balance as of the end of its 2019 taxable year may elect to apportion receipts from services based on the percentage of its income-producing activities performed in this State. The election must be made on the 2020 tax year return and must be in the form prescribed by the Secretary and contain any supporting documentation the Secretary may require. The election is binding and irrevocable until the earlier of the tax year in which (i) the existing State net loss balance is fully utilized or (ii) all of the existing State net loss balance has expired, as determined by applying the limitations set forth in G.S. 105-130.8A(b). A taxpayer must apportion receipts from services in accordance with subdivision (*l*)(4) of this section for tax years beginning on and after the tax year that the existing State net loss is fully utilized.

For purposes of this subsection, a taxpayer's State net loss balance is the total amount of State net losses computed under G.S. 105-130.8A for taxable years beginning before January 1, 2020, and available to carry forward to taxable years beginning on or after January 1, 2020. A State net loss balance does not include a State net loss created in a taxable year beginning on or after January 1, 2020. A State net loss created in a taxable year beginning on or after January 1, 2020, must be determined using the apportionment rules in G.S. 105-130.4(*l*). (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4;

1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981 (Reg. Sess., 1982), c. 1212; 1987, c. 804, s. 2; 1987 (Reg. Sess., 1988), c. 994, s. 1; 1993, c. 532, s. 12; 1995, c. 350, s. 3; 1996, 2nd Ex. Sess., c. 14, s. 5; 1998-98, s. 69; 1999-369, s. 5.4; 2000-126, s. 5; 2001-327, s. 1(c); 2002-126, s. 30G.1(a); 2003-349, ss. 1.2, 1.3; 2003-416, ss. 5(a)-5(h); 2004-170, s. 15; 2005-435, s. 53; 2007-491, ss. 2, 12; 2009-54, ss. 1, 2, 6; 2009-445, ss. 4, 5; 2010-89, s. 2(a), (b); 2011-330, s. 5; 2013-414, s. 2(b); 2015-241, s. 32.14(a)-(d); 2015-268, s. 10.1(c); 2016-5, ss. 1.3(a), 1.6(a), 5.5(b); 2016-92, s. 1.1; 2017-204, s. 1.5(a); 2018-5, s. 38.2(c); 2018-97, s. 11.2(a); 2019-246, s. 3(a); 2020-58, s. 5.2(a).)

§ 105-130.4A. Market-based sourcing for wholesale content distributors.

(a) Definitions. – The definitions in G.S. 105-130.4 and the following definitions apply to this section:

(1) Customer. – A person who has a direct contractual relationship with a wholesale content distributor from whom the wholesale content distributor derives gross receipts, including a business customer such as an advertiser or licensee and an individual customer that directly subscribes with the wholesale content distributor for access to film programming.

(2) Gross receipts. – The same meaning as the term "sales" in G.S. 105-130.4.

(3) Wholesale content distributor. – A broadcast television network, a cable program network, or any television distribution company owned by, affiliated with, or under common ownership with any such network. The term does not mean or include a multichannel video programming distributor or a distributor of subscription-based Internet programming services.

(b) Market for Receipts. – The receipts factor of a wholesale content distributor is a fraction, the numerator of which is the sum of the wholesale content distributor's gross receipts from transactions and activity in the regular course of its trade or business from sources within the State and the denominator of which is the sum of the wholesale content distributor's gross receipts from transactions and activity in the regular course of its trade or business everywhere. A wholesale content distributor's receipts from transactions and activities in the regular course of its business, including advertising, licensing, and distribution activities, but excluding receipts from the sale of real property or tangible personal property, are in this State if derived from a business customer whose commercial domicile is in this State. Receipts derived from an individual customer are in this State if the billing address of the individual customer as listed in the broadcaster's books and records is in this State. (2019-246, s. 3(b).)

§ 105-130.4B. Market-based sourcing for banks.

(a) Definitions. – The definitions in G.S. 105-130.4 apply to this section, and the following definitions apply to this section:

(1) Bank. – Defined in G.S. 105-130.7B.

(2) Billing address. – The location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the date in the taxable year when the customer relationship began, as the address where any notice, statement, or billing relating to the customer's account is mailed.

(3) Borrower, cardholder, or payor located in this State. – A borrower, credit cardholder, or payor whose billing address is in this State.

(4) Card issuer's reimbursement fee. – The fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.

(5) Credit card. – A card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.

(6) Debit card. – A card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

(7) Loan. – Any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such an extension of credit from another. The term includes participations, syndications, and leases treated as loans for federal income tax purposes.

(8) Loan secured by real property. – A loan or other obligation of which fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(9) Merchant discount. – The fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the cardholder, net of any cardholder chargeback and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its cardholder.

(10) Participation. – An extension of credit in which an undivided ownership interest is held on a prorated basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(11) Payor. – The person who is legally responsible for making payment to the taxpayer.

(12) Real property owned. – Real property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes or could claim depreciation if subject to federal income tax. Real property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(13) Syndication. – An extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(14) Tangible personal property owned. – Tangible personal property (i) on which the taxpayer may claim depreciation for federal income tax purposes or (ii) to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes could claim deprecation if subject to federal income tax. Tangible personal property does not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(15) Transportation property. – Vehicles and vessels capable of moving under their own power as well as any equipment or containers attached to such property. Examples of transportation property include aircraft, trains, water vessels, motor vehicles, rolling stock, barges, and trailers.

(b) General Rule. – The receipts factor of a bank is a fraction, the numerator of which is the total receipts of the taxpayer in this State during the income year, and the denominator of which is the total receipts of the taxpayer everywhere during the income year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor includes only those receipts described herein that are apportionable income for the taxable year. Notwithstanding any other provision under this Part, the receipts from the following are excluded from both the numerator and the denominator of the receipts factor:

(1) Receipts from a casual sale of property.
(2) Receipts exempt from taxation.
(3) The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.
(4) Receipts in the nature of dividends subtracted under G.S. 105-130.5(b)(3a) and (3b) and dividends excluded for federal tax purposes.
(5) The portion of receipts from financial swaps and other similar financial derivatives that represent the notional principal amount that generates the cash flow traded in the swap agreement.

(c) Receipts from the Sale, Lease, or Rental of Real Property. – The numerator of the receipts factor includes receipts from the sale, lease, or rental of real property owned by the taxpayer if the property is located within this State or receipts from the sublease of real property if the property is located within this State.

(d) Receipts from the Sale, Lease, or Rental of Tangible Personal Property. – The method for calculating receipts from the sale, lease, or rental of tangible personal property is as follows:

(1) Tangible personal property. – Except as provided in subdivision (2) of this subsection, the numerator of the receipts factor includes receipts from the sale, lease, or rental of tangible personal property owned by the taxpayer if the property is located within this State when it is first placed in service by the lessee.
(2) Transportation property. – Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this State. The extent an aircraft will be deemed to be used in this State and the amount of receipts that is to be included in the numerator of this State's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this State and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within this State cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(e) Interest, Fees, and Penalties from Loans Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans secured by real property if the

property is located within this State. If the property is located both within this State and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent (50%) of the fair market value of the real property is located within this State. If more than fifty percent (50%) of the fair market value of the real property is not located within any one state, then the receipts described in this subsection are included in the numerator of the receipts factor if the borrower is located in this State. The determination of whether the real property securing a loan is located within this State is made as of the time the original agreement was made and any and all subsequent substitutions of collateral are disregarded.

(f) Interest, Fees, and Penalties from Loans Not Secured by Real Property. – The numerator of the receipts factor includes interest, fees, and penalties from loans not secured by real property if the borrower is located in this State.

(g) Net Gains from the Sale of Loans. – The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of section 1286 of the Code. The amount of net gains from the sale of loans that is included in the numerator is determined as follows:

(1) Secured by real property. – The amount of net gains, but not less than zero, from the sale of loans secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (e) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans secured by real property.

(2) Not secured by real property. – The amount of net gains, but not less than zero, from the sale of loans not secured by real property is determined by multiplying the net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (f) of this section, and the denominator of which is the total amount of interest, fees, and penalties from loans not secured by real property.

(h) Receipts from Interest, Fees, and Penalties from Cardholders. – The numerator of the receipts factor includes interest, fees, and penalties charged to credit, debit, or similar cardholders, including annual fees and overdraft fees, if the cardholder is located in this State.

(i) Receipts from ATM Fees. – The numerator of the receipts factor includes receipts from fees from the use of an ATM owned or rented by the taxpayer, if the ATM is located in this State. The receipts factor includes all ATM fees that are not forwarded directly to another bank. Receipts from ATM fees that are not sourced under this subsection are sourced pursuant to subsection (*l*) of this section.

(j) Net Gains from the Sale of Credit Card Receivables. – The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (h) of this section, and the denominator of which is the taxpayer's total amount of interest, fees, and penalties charged to cardholders.

(k) Miscellaneous Receipts. – The numerator of the receipts factor includes all of the following:

(1) Card issuer's reimbursement fees. – Receipts from card issuer's reimbursement fees if the payor is located in this State.

(2) Receipts from merchant's discount. – Receipts from a merchant discount if the payor is located in this State.

(3) Loan servicing fees. – Receipts from loan servicing fees if the payor is located in this State.

(4) Receipts from services. – Receipts from services not otherwise apportioned under this section if the payor is located in this State.

(5) Receipts from investment assets and activity and trading assets and activity. – Receipts from one or more of the following:

a. Interest and dividends from investment assets and activities and trading assets and activities if the payor is located in this State.

b. Net gains and other income, but not less than zero, from investment assets and activities and trading assets and activities multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to sub-subdivision a. of this subdivision, and the denominator of which is the taxpayer's total amount of interest and dividends from investment assets and activities and trading assets and activities.

(*l*) All Other Receipts. – All other receipts not specifically enumerated in this section are included in the numerator of the receipts factor if the payor is located in this State. (2019-246, s. 3(c).)

§ 105-130.5. Adjustments to federal taxable income in determining State net income.

(a) The following additions to federal taxable income shall be made in determining State net income:

(1) Taxes based on or measured by net income by whatever name called and excess profits taxes.

(2) Interest paid in connection with income exempt from taxation under this Part.

(3) The contributions deduction allowed by the Code.

(4) Interest income earned on bonds and other obligations of other states or their political subdivisions, less allowable amortization on any bond acquired on or after January 1, 1963.

(5) The amount by which gains have been offset by the capital loss carryover allowed under the Code. All gains recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.

(6) Any amount allowed as a net operating loss deduction under the Code.

(7) Repealed by Session Laws 2001-327, s. 3(a), effective for taxable years beginning on or after January 1, 2001.

(8) Repealed by Session Laws 1987, c. 778, s. 2.

(9) Payments to or charges by a parent, subsidiary or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever pursuant to the Revenue Laws of this State.

(10) The total amounts allowed under this Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this

State and shall not apply to a credit taken under this Chapter the apportionment factor used by it in determining the amount of its apportioned income.

(11) The amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for mines, oil and gas wells, and other natural deposits exceeds the cost depletion allowance for these items under the Code, except as otherwise provided herein. This subdivision does not apply to depletion deductions for clay, gravel, phosphate rock, lime, shells, stone, sand, feldspar, gemstones, mica, talc, lithium compounds, tungsten, coal, peat, olivine, pyrophyllite, and other solid minerals or rare earths extracted from the soil or waters of this State. Corporations required to apportion income to North Carolina shall first add to federal taxable income the amount of all percentage depletion in excess of cost depletion that was subtracted from the corporation's gross income in computing its federal income taxes and shall then subtract from the taxable income apportioned to North Carolina the amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for solid minerals or rare earths extracted from the soil or waters of this State exceeds the cost depletion allowance for these items.

(12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for a utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158.

(13) Repealed by Session Laws 2001-427, s. 4(b), effective for taxable years beginning on or after January 1, 2002.

(14) Royalty payments required to be added by G.S. 105-130.7A, to the extent deducted in calculating federal taxable income.

(15) through (15b) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.

(16) The amount excluded from gross income under Subchapter R of Chapter 1 of the Code.

(17) Repealed by Session Laws 2018-5, s. 38.1(e), effective for taxable years beginning on or after January 1, 2018.

(18) Repealed by Session Laws 2006-220, s. 1, effective for taxable years beginning on and after January 1, 2007.

(19) The dividend paid deduction allowed under the Code to a captive REIT, as defined in G.S. 105-130.12.

(20) Repealed by Session Laws 2018-5, s. 38.2(d), effective June 12, 2018.

(21) Repealed by Session Laws 2020-58, s. 5.3, effective June 30, 2020.

(22) The amount allowed as a deduction under section 163(e)(5)(F) of the Code for an original issue discount on an applicable high yield discount obligation.

(23), (23a) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.

(24) The amount required to be added under G.S. 105-130.5B when the State decouples from federal accelerated depreciation and expensing.

(25) The amount of net interest expense to a related member as determined under G.S. 105-130.7B.

(26) The amount of gain that would be included for federal income tax purposes without regard to section 1400Z-2(a) of the Code. The adjustment made in this

subsection does not result in a difference in basis of the affected assets for State and federal income tax purposes. The purpose of this subdivision is to decouple from the deferral of gains reinvested into an Opportunity Fund available under federal law.

(27) The amount of gain that would be included in the taxpayer's federal taxable income but for the step-up in basis under section 1400Z-2(c) of the Code. The purpose of this subdivision is to decouple from the exclusion of gains from the sale or exchange of an investment in an Opportunity Fund available under federal law.

(28) The amount deducted under section 250 of the Code.

(29) The amount deducted under section 965(c) of the Code.

(30) Payments made to an affiliate or subsidiary that is not subject to tax under this Article pursuant to the exceptions for critical infrastructure disaster relief provided under G.S. 166A-19.70A, to the extent the payments are deducted in determining federal taxable income. The definitions and provisions of G.S. 166A-19.70A apply to this subdivision.

(31) For taxable years 2019 and 2020, a taxpayer must add an amount equal to the amount by which the taxpayer's interest expense deduction under section 163(j) of the Code exceeds the interest expense deduction that would have been allowed under the Internal Revenue Code as enacted as of January 1, 2020, as calculated on a separate entity basis. An add-back under this subdivision is not required to the extent the amount was required to be added back under another provision of this subsection. The purpose of this subdivision is to decouple from the modification of limitation on business interest allowed under section 2306 of the CARES Act.

(32) For taxable years beginning on or after January 1, 2023, the amount of any expense deducted under the Code to the extent the expense is allocable to income that is either wholly excluded from gross income or wholly exempt from the taxes imposed by this Part.

(b) The following deductions from federal taxable income shall be made in determining State net income:

(1) Interest upon the obligations of the United States or its possessions, to the extent included in federal taxable income: Provided, interest upon the obligations of the United States shall not be an allowable deduction unless interest upon obligations of the State of North Carolina or any of its political subdivisions is exempt from income taxes imposed by the United States.

(1a) Interest upon the obligations of any of the following, net of related expenses, to the extent included in federal taxable income:

a. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.

b. A nonprofit educational institution organized or chartered under the laws of this State.

c. A hospital authority created under G.S. 131E-17.

(2) Payments received from a parent, subsidiary or affiliated corporation in excess of fair compensation in intercompany transactions which in the determination

of the net income or net loss of such corporation were not allowed as a deduction under the Revenue Laws of this State.

(3) Repealed by Session Laws 2003-349, s. 1.1, effective January 1, 2003.

(3a) Dividends treated as received from sources outside the United States as determined under section 862 of the Code, net of related expenses, to the extent included in federal taxable income. Notwithstanding the proviso in subdivision (c)(3) of this section, the netting of related expenses shall be calculated in accordance with subdivision (c)(3) of this section.

(3b) Any amount included in federal taxable income under section 78, 951, 951A, or 965 of the Code, net of related expenses.

(4) Any unused portion of a net economic loss as allowed under G.S. 105-130.8A(e). This subdivision expires for taxable years beginning on or after January 1, 2030.

(4a) A State net loss as allowed under G.S. 105-130.8A. A corporation may deduct its allocable and apportionable State net loss only from total income allocable and apportionable to this State.

(5) Contributions or gifts made by any corporation within the income year to the extent provided under G.S. 105-130.9.

(6), (7) Repealed by Session Laws 2015-241, s. 32.13(c), (d), effective for taxable years beginning on or after January 1, 2016.

(8) The amount of losses realized on the sale or other disposition of assets not allowed under section 1211(a) of the Code. All losses recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.

(9) With respect to a shareholder of a regulated investment company, the portion of undistributed capital gains of such regulated investment company included in such shareholder's federal taxable income and on which the federal tax paid by the regulated investment company is allowed as a credit or refund to the shareholder under section 852 of the Code.

(10) Repealed by Session Laws 1987, c. 778, s. 2.

(11) If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed.

(11a) **(Effective retroactively for taxable years beginning on or after January 1, 2020)** The amount by which the deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the taxpayer claimed a federal employee retention tax credit against employment taxes in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this Chapter for the amount.

(12) Reasonable expenses, in excess of deductions allowed under the Code, paid for reforestation and cultivation of commercially grown trees; provided, that this deduction shall be allowed only to those corporations in which the real owners of all the shares of such corporation are natural persons actively engaged in the commercial growing of trees, or the spouse, siblings, or parents of such persons.

Provided, further, that in no case shall a corporation be allowed a deduction for the same reforestation or cultivation expenditure more than once.

(13) Repealed by Session Laws 2015-241, s. 32.13(c), (d), effective for taxable years beginning on or after January 1, 2016.

(14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax liability or because of a grant allowed under section 1603 of the American Recovery and Reinvestment Tax Act of 2009, P.L. 111-3. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

(15) Repealed by Session Laws 2015-241, s. 32.13(c), (d), effective for taxable years beginning on or after January 1, 2016.

(16) The amount of natural gas expansion surcharges collected by a natural gas local distribution company under G.S. 62-158.

(17) To the extent included in federal taxable income, 911 charges imposed under G.S. 143B-1403 and remitted to the 911 Fund under that section.

(18), (19) Repealed by Session Laws 2015-241, s. 32.13(c), (d), effective for taxable years beginning on or after January 1, 2016.

(20) Royalty payments received from a related member who added the payments to income under G.S. 105-130.7A for the same taxable year.

(21) through (21b) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.

(22) Repealed by Session Laws 2015-241, s. 32.13(c), (d), effective for taxable years beginning on or after January 1, 2016.

(23) A dividend received from a captive REIT, as defined in G.S. 105-130.12.

(24) Expired.

(25) Repealed by Session Laws 2020-58, s. 5.3, effective June 30, 2020.

(26), (26a) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.

(27) The amount allowed as a deduction under G.S. 105-130.5B as a result of an add-back for federal accelerated depreciation and expensing.

(28) The amount of qualified interest expense to a related member as determined under G.S. 105-130.7B.

(29) To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the State Emergency Response and Disaster Relief Reserve Fund for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.

(30) The amount of gain included in the taxpayer's federal taxable income under section 1400Z-2(a) of the Code to the extent the same income was included in the taxpayer's State net income in a prior taxable year under subdivision (a)(26) of this section. The purpose of this subdivision is to prevent double taxation of income the taxpayer was previously required to include in the calculation of State net income.

(31) To the extent included in federal taxable income, the amount received by a taxpayer as an economic incentive pursuant to G.S. 143B-437.012 or Part 2G or Part 2H of Article 10 of Chapter 143B of the General Statutes.

(31a) **(Effective for taxable years beginning on or after January 1, 2020, and applicable to amounts received by a taxpayer on or after that date)** To the extent included in federal taxable income, the amount received by a taxpayer for one or more of the following:

a. The Business Recovery Grant Program.
b. The ReTOOLNC grant program for recovery from the economic impacts of the COVID-19 pandemic.
c. Rent and utility assistance pursuant to Section 3.3 of S.L. 2020-4, as amended by Section 1.2 of S.L. 2020-97.

(31a) **(Effective for taxable years beginning on or after January 1, 2021, and applicable to amounts received by a taxpayer on or after that date)** To the extent included in federal taxable income, the amount received by a taxpayer for one or more of the following:

a. The Business Recovery Grant Program.
b. The ReTOOLNC grant program for recovery from the economic impacts of the COVID-19 pandemic.
c. Rent and utility assistance pursuant to Section 3.3 of S.L. 2020-4, as amended by Section 1.2 of S.L. 2020-97.

(32) A taxpayer who made an addition under subdivision (a)(31) of this section may deduct twenty percent (20%) of the addition that was not otherwise disallowed by G.S. 105-130.7B in each of the first five taxable years beginning tax year 2021.

(c) The following other adjustments to federal taxable income shall be made in determining State net income:

(1) In determining State net income, no deduction shall be allowed for annual amortization of bond premiums applicable to any bond acquired prior to January 1, 1963. The amount of premium paid on any such bond shall be deductible only in the year of sale or other disposition.

(2) Federal taxable income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property which has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes prior to the effective date of this Part.

(3) No deduction is allowed for any direct or indirect expenses related to income not taxed under this Part; provided, no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b). For dividends received that are not taxed under this Part, the adjustment for expenses may not exceed an amount equal to fifteen percent (15%) of the dividends.

(4) The taxpayer shall add to federal taxable income the amount of any recovery during the taxable year not included in federal taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Part but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from federal taxable income the amount of any recovery during the taxable year included in federal taxable income under

section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by this Part.

(5) Repealed by Session Laws 2015-241, s. 32.13(c), (d), effective for taxable years beginning on or after January 1, 2016.

(d) Repealed by Session Laws 1987, c. 778, s. 3.

(e) Notwithstanding any other provision of this section, any recapture of depreciation required under the Code must be included in a corporation's State net income to the extent required for federal income tax purposes.

(f) Expired. (1967, c. 1110, s. 3; 1969, cc. 1113, 1124; 1971, c. 820, s. 1; c. 1206, s. 1; 1973, c. 1287, s. 4; 1975, c. 764, s. 4; 1977, 2nd Sess., c. 1200, s. 1; 1979, c. 179, s. 2; c. 801, s. 32; 1981, c. 704, s. 20; c. 855, s. 1; 1983, c. 61; c. 713, ss. 70-73, 82, 83; 1985, c. 720, s. 1; c. 791, s. 43; 1985 (Reg. Sess., 1986), c. 825; 1987, c. 89; c. 637, s. 1; c. 778, ss. 2, 3; c. 804, s. 3; 1991, c. 598, ss. 3, 10; 1991 (Reg. Sess., 1992), c. 857, s. 1; 1993 (Reg. Sess., 1994), c. 745, ss. 4, 5; 1995, c. 509, s. 50; 1996, 2nd Ex. Sess., c. 14, ss. 4, 10; 1997-439, s. 1; 1998-98, ss. 1(c), 4, 69; 1998-158, s. 5; 1998-171, s. 7; 1999-333, s. 2; 1999-337, s. 1; 1999-463, Ex. Sess., s. 4.6(b); 2000-140, s. 93.1(a); 2000-173, s. 19(c); 2001-327, ss. 1(d), (e), 3(a), (b); 2001-424, s. 12.2(b); 2001-427, ss. 4(b), 10(a); 2002-72, s. 14; 2002-126, ss. 30C.2(a), 30C.2(c); 2002-136, ss. 1, 4; 2003-284, s. 37A.3; 2003-349, s. 1.1; 2005-1, s. 5.7(b); 2005-276, ss. 35.1(b), 39.1(e); 2006-220, s. 1; 2007-323, ss. 31.18(a), (b); 2007-383, s. 5; 2007-397, s. 13(b); 2008-107, ss. 28.1(c), (d), (g), 28.25(b), 28.27(a); 2008-134, s. 2(b); 2009-451, s. 27A.6(c), (d); 2010-89, s. 1; 2011-5, ss. 2(a), (b), 3(a), (b); 2011-330, s. 11; 2012-79, s. 1.1; 2013-10, ss. 2(a), (b), 3(a), (b); 2013-414, s. 34(a); 2014-3, ss. 1.1(a), 14.3; 2015-6, s. 2.7; 2015-241, ss. 7A.3, 32.13(c), (d); 2016-5, ss. 1.9(a), 5.3(b); 2018-5, ss. 5.6(k), 38.1(b), (e), 38.2(d); 2019-6, ss. 2.1, 2.2; 2019-187, s. 1(g); 2019-237, s. 2(a); 2020-58, ss. 1(c), 5.3; 2021-180, ss. 34.3B(a), 42.4(d), 42.13B(b), (c); 2022-6, ss. 20.7(a), 20.15(b); 2023-46, s. 18(a).)

§ 105-130.5A. Secretary's authority to adjust net income or require a combined return.

(a) Notice. – When the Secretary has reason to believe that any corporation so conducts its trade or business in such manner as to fail to accurately report its State net income properly attributable to its business carried on in the State through the use of transactions that lack economic substance or are not at fair market value between members of an affiliated group of entities, the Secretary may, upon written notice to the corporation, require any information reasonably necessary to determine whether the corporation's intercompany transactions have economic substance and are at fair market value and for the accurate computation of the corporation's State net income properly attributable to its business carried on in the State. The corporation must provide the information requested within 90 days of the date of the notice.

(b) Adjust Net Income. – If upon review of the information provided, the Secretary finds as a fact that the corporation's intercompany transactions lack economic substance or are not at fair market value, the Secretary may redetermine the State net income of the corporation properly attributable to its business carried on in the State under this section by (i) adding back, eliminating, or otherwise adjusting intercompany transactions to accurately compute the corporation's State net income properly attributable to its business carried on in the State, or, if such adjustments are not adequate under the circumstances to redetermine State net income, (ii) requiring the corporation to file a return that reflects the net income on a combined basis of all members of its affiliated group

that are conducting a unitary business. The Secretary shall consider and be authorized to use any reasonable method proposed by the corporation for redetermining its State net income attributable to its business carried on in the State. In determining whether the corporation's intercompany transactions lack economic substance or are not at fair market value, the Secretary shall consider each taxable year separately.

(c) Voluntary Redetermination. – In addition to the authority granted under subsection (b) of this section, if the Secretary has reason to believe that any corporation's State net income properly attributable to its business carried on in this State is not accurately reported on a separate return required by this Part because of intercompany transactions, without making a finding that those transactions lack economic substance or are not at fair market value, the Secretary and the corporation may jointly determine and agree to an alternative filing methodology that accurately reports State net income. The Secretary is authorized to allow any reasonable method for redetermining the corporation's State net income attributable to its business carried on in this State.

(d) Combined Return. – If the Secretary finds as a fact that a combined return is required, the Secretary may, upon written notice to the corporation, require the corporation to submit the combined return, and the corporation shall submit the combined return within 90 days of the date of the notice. The submission by the corporation of the combined return required by the Secretary shall not be deemed to be a return or construed as an agreement by the corporation that an assessment based on the combined return is correct or that additional tax is due by the Secretary's deadline for submitting the combined return. The Secretary or the corporation may propose a combination of fewer than all members of the unitary group, and the Secretary shall be authorized to consider whether such proposed combination is a reasonable means of redetermining State net income; provided, however, the Secretary shall not require a combination of fewer than all members of the unitary group without the consent of the corporation.

(e) Written Statement of Findings. – If the Secretary makes an adjustment or requires a combined return under this section, the Secretary shall provide the corporation with a written statement containing detail of the facts, circumstances, and reasons for which the Secretary has found as a fact that the corporation did not accurately report its State net income properly attributable to its business carried on in the State and the Secretary's proposed method for computation of the corporation's State net income no later than 90 days following the issuance of a proposed assessment as provided in this section.

(f) Members of Affiliated Group. – The Secretary may require a combined return under this section regardless of whether the members of the affiliated group are or are not doing business in this State.

(g) Economic Substance. – A transaction has economic substance if (i) the transaction, or the series of transactions of which the transaction is a part, has one or more reasonable business purposes other than the creation of State income tax benefits and (ii) the transaction, or the series of transactions of which the transaction is a part, has economic effects beyond the creation of State income tax benefits. In determining whether a transaction has economic substance, all of the following apply:

(1) Reasonable business purposes and economic effects include, but are not limited to, any material benefit from the transaction other than State income tax benefits not allowable under subdivision (3) of this subsection.

(2) In determining whether to require a combined return, whether the transaction has economic effects beyond the creation of State income tax benefits may be

satisfied by demonstrating material business activity of the entities involved in the transaction.

(3) If State income tax benefits resulting from a transaction, or a series of transactions of which the transaction is a part, are consistent with legislative intent, such State income tax benefits shall be considered in determining whether such transaction has business purpose and economic substance.

(4) Centralized cash management of an affiliated group as defined in subsection (j) of this section shall not constitute evidence of an absence of economic substance.

(5) Achieving a financial accounting benefit shall not be taken into account as a reasonable business purpose for entering into a transaction if the origin of such financial accounting benefit is a reduction of State income tax.

(h) Allocation of Income and Deductions. – In determining whether transactions between members of the affiliated group of entities are not at fair market value, the Secretary shall apply the standards contained in the regulations adopted under section 482 of the Code.

(i) Apportionment. – If the Secretary requires a combined return under this section, the combined State net income of the corporation and the members of the affiliated group of entities shall be apportioned to this State by use of an apportionment formula that accurately reports the State net income properly attributable to the corporation's business carried on in the State and which fairly reflects the apportionment formula in G.S. 105-130.4 applicable to the corporation and each member of the affiliated group included in the combined return.

(j) Affiliated Group Defined. – For purposes of this section, an affiliated group is a group of two or more corporations or noncorporate entities in which more than fifty percent (50%) of the voting stock of each member corporation or ownership interest of each member noncorporate entity is directly or indirectly owned or controlled by a common owner or owners, either corporate or noncorporate, or by one or more of the member corporations or noncorporate entities. Nothing in this subsection shall be construed to limit or negate the Secretary's authority to add back, eliminate, or otherwise adjust intercompany transactions involving the listed entities to accurately compute the corporation's State net income properly attributable to its business carried on in the State, as provided in subsection (b) of this section.

The following entities shall not be included in a combined return:

(1) A corporation not required to file a federal income tax return.

(2) An insurance company, other than a captive insurance company, (i) which is subject to tax under Article 8B of this Chapter, (ii) whose premiums are subject to tax under Article 21 of Chapter 58 or a similar tax in another state, (iii) which is licensed as a reinsurance company, (iv) which is a life insurance company as defined in Section 816 of the Code, or (v) which is an insurance company subject to tax imposed by Section 831 of the Code. A "captive insurance company" means an insurer that is part of an affiliated group where the insurer receives more than fifty percent (50%) of its net written premiums or other amounts received as compensation for insurance from members of the affiliated group.

(3) A corporation exempt from taxation under section 501 of the Code.

(4) An S corporation.

(5) A foreign corporation as defined in section 7701 of the Code, other than a domestic branch thereof.

(6) A partnership, limited liability company, or other entity not taxed as a corporation.

(7) A corporation with at least eighty percent (80%) of its gross income from all sources in the tax year being active foreign business income as defined in section 861(c)(1)(B) of the Code in effect as of July 1, 2009.

(k) Proposed Assessment or Refund. – If the Secretary redetermines the State net income of the corporation in accordance with this section by adjusting the State net income of the corporation or requiring a combined return, the Secretary shall issue a proposed assessment or refund upon making such redetermination. When a refund is determined in whole or part by a proposed assessment to an affiliated group member under this section, the refund shall not be issued until the proposed assessment to the affiliated group member has become collectable under G.S. 105-241.22. The amount of the refund shall reflect any changes made by the Department under this section. Otherwise, the procedures for a proposed assessment or a refund in Article 9 of Chapter 105 shall be applicable to proposed assessments and refunds made under this section.

(*l*) Penalties. – If a combined return required by this section is not timely submitted by a corporation, then the corporation is subject to the penalties provided in G.S. 105-236(a)(3). Penalties shall not be imposed on an assessment under this section except as expressly authorized in this section and in G.S. 105-236(a)(5)f.

(m) Advice. – A corporation may request in writing from the Secretary specific advice regarding whether a redetermination of the corporation's State net income or a combined return would be required under this section under certain facts and circumstances. The Secretary may request information from the taxpayer that is required to provide the specific advice. The Secretary shall provide the specific advice within 120 days of the receipt of the requested information from the taxpayer. G.S. 105-264 governs the effect of this advice.

(n) Extension. – The Secretary and the taxpayer may extend any time limit contained in this section by mutual agreement.

(o) Other Tax Adjustments. – Nothing in this section shall be construed to limit or negate the Secretary's authority to make tax adjustments as otherwise permitted by law, except that the Secretary shall not make adjustments pursuant to this section that limit a corporation's options for reporting royalty payments under G.S. 105-130.7A.

(p) Appeals. – If the corporation appeals a final determination by the Department under this section to the Office of Administrative Hearings in a contested tax case, the administrative law judge shall review de novo (i) whether the separate income tax returns submitted by the taxpayer fail to report State net income properly attributable to its business carried on in this State through the use of intercompany transactions that lack economic substance or are not at fair market value between members of an affiliated group of entities; (ii) whether the Department's means of determining the corporation's State net income under this section is an appropriate means of determining the corporation's State net income properly attributable to this State; and (iii) if a combined return is required by the Department, whether adjustments other than requiring the corporation to file a return on a combined basis are adequate under the circumstances to redetermine State net income. (2011-390, s. 2; 2011-411, s. 8(a), (b); 2020-58, s. 5.4.)

§ 105-130.5B. Adjustments when State decouples from federal accelerated depreciation and expensing.

(a) Special Accelerated Depreciation. – A taxpayer who takes a special accelerated depreciation deduction for property under section 168(k) or 168(n) of the Code must add to the

taxpayer's federal taxable income eighty-five percent (85%) of the amount taken for that year under those Code provisions. A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

(b) 2009 Depreciation Exception. – A taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction to its federal taxable income for the 2010 taxable year. A taxpayer is allowed to deduct this add-back under subsection (a) of this section as if it were for property placed in service in 2010.

(c) Section 179 Expense. – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code. A taxpayer who places section 179 property in service during a taxable year must add to the taxpayer's federal taxable income eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation for the taxable year. For taxable years 2010, 2011, and 2012, the dollar limitation is two hundred and fifty thousand dollars ($250,000) and the investment limitation is eight hundred thousand dollars ($800,000). For taxable years beginning on or after 2013, the dollar limitation is twenty-five thousand dollars ($25,000) and the investment limitation is two hundred thousand dollars ($200,000).

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

(d) Asset Basis. – The adjustments made in this section do not result in a difference in basis of the affected assets for State and federal income tax purposes, except as modified in subsection (e) of this section.

(e) Bonus Asset Basis. – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset.

(f) Prior Transactions. – For any transaction meeting both the requirements of subsection (e) of this section prior to January 1, 2013, and the conditions of this subsection, the transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax return. If the asset has been disposed of or has no remaining useful life on the books of the transferee, the remaining bonus depreciation deduction may be allowed on the transferee's 2013 tax return. For this subsection to apply, the following conditions must be met:

(1) The transferor has not taken the bonus depreciation deduction on a prior return.

(2) The transferor certifies in writing to the transferee that the transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years beginning on or after January 1, 2013, for depreciation associated with the transferred asset.

(g) Tax Basis. – For transactions described in subsections (e) or (f) of this section, federal taxable income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to the property that has been depreciated

or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes. (2013-414, s. 34(b); 2014-3, s. 2.1(a); 2015-2, s. 1.2(a); 2016-6, s. 2(a).)

§ 105-130.6: Repealed by Session Laws 2011-390, s. 1, effective for taxable years beginning on or after January 1, 2012.

§ 105-130.6A: Repealed by Session Laws 2015-241, s. 32.13(e), effective for taxable years beginning on or after January 1, 2016.

§ 105-130.7: Repealed by Session Laws 2003-349, s. 1.1, effective January 1, 2003.

§ 105-130.7A. Royalty income reporting option.

(a) Purpose. – Royalty payments received for the use of intangible property in this State are income derived from doing business in this State. This section provides taxpayers with an option concerning the method by which these royalties can be reported for taxation when the recipient and the payer are related members. As provided in this section, these royalty payments can be either (i) deducted by the payer and included in the income of the recipient, or (ii) added back to the income of the payer and excluded from the income of the recipient. Exercising the royalty reporting income option provided in this section does not prevent a taxpayer from having taxable nexus in this State as otherwise provided in this Article and does not permit the recipient of the income to exclude royalty payments from its calculation of sales as defined in G.S. 105-130.4.

(b) Definitions. – The following definitions apply in this section:

(1) Component member. – Defined in section 1563(b) of the Code.

(1a) Intangible property. – Copyrights, patents, and trademarks.

(2) North Carolina royalty. – An amount charged that is for, related to, or in connection with the use in this State of intangible property. The term includes royalty and technical fees, licensing fees, and other similar charges.

(3) Own. – To own directly, indirectly, beneficially, or constructively. The attribution rules of section 318 of the Code apply in determining ownership under this section.

(4) Related entity. – Any of the following:

a. A stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Code, if the stockholder and the members of the stockholder's family own in the aggregate at least eighty percent (80%) of the value of the taxpayer's outstanding stock.

b. A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own in the aggregate at least fifty percent (50%) of the value of the taxpayer's outstanding stock.

c. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of section 318 of the Code, if the taxpayer owns at least eighty percent (80%) of the value of the corporation's outstanding stock.

(5) Related member. – A person that, with respect to the taxpayer during any part of the taxable year, is one or more of the following:
   a. A related entity.
   b. A component member.
   c. A person to or from whom there would be attribution of stock ownership in accordance with section 1563(e) of the Code if the phrase "5 percent or more" were replaced by "twenty percent (20%) or more" each place it appears in that section.

(6) Royalty payment. – Either of the following:
   a. Expenses, losses, and costs paid, accrued, or incurred for North Carolina royalties, to the extent the amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the Code.
   b. Amounts directly or indirectly allowed as deductions under section 163 of the Code, to the extent the amounts are paid, accrued, or incurred for a time price differential charged for the late payment of any expenses, losses, or costs described in this subdivision.

(7) Trademark. – A trademark, trade name, service mark, or other similar type of intangible asset.

(8) Use. – Use of intangible property includes direct or indirect maintenance, management, ownership, sale, exchange, or disposition of the intangible property.

(c) Election. – For the purpose of computing its State net income, a taxpayer must add royalty payments made to, or in connection with transactions with, a related member during the taxable year. This addition is not required for an amount of royalty payments that meets any of the following conditions:

(1) The related member includes the amount as income on a return filed under this Part for the same taxable year that the amount is deducted by the taxpayer, and the related member does not elect to deduct the amount pursuant to G.S. 105-130.5(b)(20).

(2) The taxpayer can establish that the related member during the same taxable year directly or indirectly paid, accrued, or incurred the amount to a person who is not a related member.

(3) The taxpayer can establish that the related member to whom the amount was paid is organized under the laws of a country other than the United States, the country has a comprehensive income tax treaty with the United States, and the country imposes a tax on the royalty income of the related member at a rate that equals or exceeds the rate set in G.S. 105-130.3.

(d) Indirect Transactions. – For the purpose of this section, an indirect transaction or relationship has the same effect as if it were direct. (2001-327, s. 1(b); 2003-416, s. 15; 2006-66, s. 24A.3(a); 2006-196, s. 10; 2016-5, s. 1.5.)

§ 105-130.7B. Limitation on qualified interest for certain indebtedness.

(a) Limitation. – In determining State net income, a deduction is allowed only for qualified interest expense paid or accrued by the taxpayer to a related member during a taxable year. This section does not limit the Secretary's authority to adjust a taxpayer's net income as it relates to

payments to or charges by a parent, subsidiary, or affiliated corporation in excess of fair compensation in an intercompany transaction under G.S. 105-130.5(a)(9).

(b) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

(1) Repealed.

(2) Bank. – One or more of the following, or a subsidiary or affiliate of one or more of the following:

a. A bank holding company as defined in the federal Bank Holding Company Act of 1956, as amended.

b. One or more of the following entities incorporated or chartered under the laws of this State, another state, or the United States:

1. A bank. This term has the same meaning as defined in G.S. 53C-1-4.

2. A savings bank. This term has the same meaning as defined in G.S. 54C-4.

3. A savings and loan association. This term has the same meaning as defined in G.S. 54B-4.

4. A trust company. This term has the same meaning as defined in G.S. 53C-1-4.

(3) Net interest expense. – The excess of the interest paid or accrued by the taxpayer to each related member during the taxable year over the amount of interest from each related member includible in the gross income of the taxpayer for the taxable year.

(3a) Proportionate share of interest. – The amount of taxpayer's net interest expense paid or accrued directly to or through a related member to an ultimate payer divided by the total net interest expense of all related members that is paid or accrued directly to or through a related member to the same ultimate payer, multiplied by the interest paid or accrued to a person who is not a related member by the ultimate payer. Any amount that is distributed, paid, or accrued directly or through a related member that is not treated as interest under this Part does not qualify. In determining whether a nominal debt instrument creates deductible interest allowable under this section, the Secretary will not apply the covered debt instrument rules contained in the regulations promulgated under section 385 of the Code.

(4) The amount of net interest expense paid or accrued to a related member in a taxable year with the amount limited to the taxpayer's proportionate share of interest paid or accrued to a person who is not a related member during the same taxable year. This limitation does not apply to the proportionate share of interest paid or accrued to a related member that is the ultimate payee if one or more of the following applies:

a. The State imposes an income tax on the interest income of the related member under this Article.

b. Another state imposes an income tax or gross receipts tax on the interest income of the related member. Interest amounts eliminated by combined or consolidated return requirements do not qualify as interest that is subject to tax under this sub-subdivision.

c. The related member is organized under the laws of a foreign country that has a comprehensive income tax treaty with the United States, and that country taxes the interest income at a rate equal to or greater than G.S. 105-130.3.
d. The related member is a bank.
e. The proportionate amount of interest paid or accrued to a related member that has already been disallowed by the application of section 163(j) of the Code.

(5) Ultimate payer. – A related member that receives or accrues interest from related members directly or through a related member and pays or accrues interest to a person who is not a related member.

(6) Ultimate payee. – A related member that receives or accrues interest directly from a related member or indirectly through related members. (2015-241, s. 32.13(f); 2016-5, s. 1.8(a), (b); 2017-204, s. 1.6(a), (b); 2021-180, s. 42.13B(d); 2022-13, s. 1.3.)

§ 105-130.8. Repealed by Session Laws 2014-3, s. 1.1(b), effective for taxable years beginning on or after January 1, 2015.

§ 105-130.8A. Net loss provisions.

(a) State Net Loss. – A taxpayer's State net loss for a taxable year is the amount by which allowable deductions for the year, other than prior year losses, exceed gross income under the Code for the year adjusted as provided in G.S. 105-130.5. In the case of a corporation that has income from business activity within and without this State, the loss must be allocated and apportioned to this State in the year of the loss in accordance with G.S. 105-130.4.

(b) Deduction. – A taxpayer may carry forward a State net loss the taxpayer incurred in a prior taxable year and deduct it in the current taxable year, subject to the limitations in this subsection:

(1) The loss was incurred in one of the preceding 15 taxable years.

(2) Any loss carried forward is applied to the next succeeding taxable year before any portion of it is carried forward and applied to a subsequent taxable year.

(c) Mergers and Acquisitions. – The Secretary must apply the standards contained in regulations adopted under sections 381 and 382 of the Code on a separate entity basis in determining the extent to which a loss survives a merger or an acquisition. For mergers and acquisitions occurring prior to January 1, 2015, the Secretary must apply the standards under G.S. 105-130.8 for taxable years beginning before January 1, 2015, and the standards of this section for taxable years beginning on or after January 1, 2015.

(d) Administration. – A taxpayer claiming a deduction under this section must maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The Secretary or the taxpayer may redetermine a loss originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of loss that can be carried forward to a taxable year that remains open under the statute of limitations.

(e) **(Expires for taxable years beginning on or after January 1, 2030)** Net Economic Loss Carryforward. – For taxable years beginning before January 1, 2015, a taxpayer is allowed a net economic loss as calculated under G.S. 105-130.8. In determining and verifying the amount of

a net economic loss incurred or carried forward for taxable years beginning before January 1, 2015, the provisions of G.S. 105-130.8 apply. Except as provided for in subsection (c) of this section, any unused portion of a net economic loss carried forward to taxable years beginning on or after January 1, 2015, is administered in accordance with this section. This subsection expires for taxable years beginning on or after January 1, 2030. (2014-3, s. 1.1(c); 2021-180, s. 42.13B(e); 2022-13, s. 1.4.)

§ 105-130.9. Contributions.

Contributions shall be allowed as a deduction to the extent and in the manner provided as follows:

(1) Charitable contributions as defined in section 170(c) of the Code, exclusive of contributions allowed in subdivision (2) of this section, shall be allowed as a deduction to the extent provided herein. The amount allowed as a deduction hereunder shall be limited to an amount not in excess of five percent (5%) of the corporation's net income as computed without the benefit of this subdivision or subdivision (2) of this section. Provided, that a carryover of contributions shall not be allowed and that contributions made to North Carolina donees by corporations allocating a part of their total net income outside this State shall not be allowed under this subdivision, but shall be allowed under subdivision (3) of this section.

(2) Contributions by any corporation to the State of North Carolina, any of its institutions, instrumentalities, or agencies, any county of this State, its institutions, instrumentalities, or agencies, any municipality of this State, its institutions, instrumentalities, or agencies, and contributions or gifts by any corporation to educational institutions located within North Carolina, no part of the net earnings of which inures to the benefit of any private stockholders or dividend. For the purpose of this subdivision, the words "educational institution" shall mean only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where the educational activities are carried on. The words "educational institution" shall be deemed to include all of such institution's departments, schools and colleges, a group of "educational institutions" and an organization (corporation, trust, foundation, association or other entity) organized and operated exclusively to receive, hold, invest and administer property and to make expenditures to or for the sole benefit of an "educational institution" or group of "educational institutions."

(3) Corporations allocating a part of their total net income outside North Carolina under the provisions of G.S. 105-130.4 shall deduct from total income allocable to North Carolina contributions made to North Carolina donees qualified under subdivisions (1) and (2) of this section or made through North Carolina offices or branches of other donees qualified under the above-mentioned subdivisions of this section; provided, such deduction for contributions made to North Carolina donees qualified under subdivision (1) of this section shall be limited in amount to five percent (5%) of the total income allocated to North Carolina as computed without the benefit of this deduction for contributions.

(4) The amount of a contribution for which the taxpayer claimed a tax credit pursuant to G.S. 105-130.34 shall not be eligible for a deduction under this section. The amount of the credit claimed with respect to the contribution is not, however, required to be added to income under G.S. 105-130.5(a)(10). (1939, c. 158, s. 322; 1941, c. 50, s. 5; 1943, c. 400, s. 4; c. 668; 1945, c. 708, s. 4; c. 752, s. 3; 1947, c. 501, s. 4; c. 894; 1949, c. 392, s. 3; 1951, c. 643, s. 4; c. 937, s. 4; 1953, c. 1031, s. 1; c. 1302, s. 4; 1955, c. 1100, s. 1; c. 1331, s. 1; cc. 1332, 1342; c. 1343, s. 1; 1957, c. 1340, ss. 4, 8; 1959, c. 1259, s. 4; 1961, c. 201, s. 1; c. 1148; 1963, c. 1169, s. 2; 1965, c. 1048; 1967, c. 1110, s. 3; 1969, c. 1175, s. 1; 1973, c. 1287, s. 4; 1983, c. 713, s. 82; c. 793, s. 2; 1995, c. 370, s. 4; 2006-66, s. 24.18(b); 2011-330, s. 36.)

§ 105-130.10. Repealed by Session Laws 2015-241, s. 32.13(c), effective for taxable years beginning on or after January 1, 2016.

§ 105-130.10A. Amortization of equipment mandated by OSHA.

(a) In lieu of any depreciation allowance, at the option of the corporation, a deduction shall be allowed for the amortization, based on a period of 60 months, of the cost of any equipment mandated by the Occupational Safety and Health Act (OSHA), including the cost of planning, acquiring, constructing, modifying, and installing said equipment.

(b) For the purposes of this section and G.S. 105-147(13)d, the term "equipment mandated by the Occupational Safety and Health Act" is any tangible personal property and other buildings and structural components of buildings, which is acquired, constructed, reconstructed, modified, or erected after January 1, 1979; and which the taxpayer must acquire, construct, install, or make available in order to comply with the occupational safety and health standards adopted and promulgated by the United States Secretary of Labor or the Commissioner of Labor of North Carolina, and the term "occupational safety and health standards" includes but is not limited to interim federal standards, consensus standards, any proprietary standards or permanent standards, as well as temporary emergency standards which may be adopted by the United States Secretary of Labor, promulgated as provided by the Occupational Safety and Health Act of 1970, (Public Law 91-596, 91st Congress, Act of December 29, 1970, 84 Stat. 1950) and which standards or regulations are published in the Code of Federal Regulations or otherwise properly promulgated under the Occupational Safety and Health Act of 1970 or any alternative rule, regulation or standard promulgated by the Commissioner of Labor of North Carolina as provided in G.S. 95-131. (1979, c. 776, s. 1.)

§ 105-130.11. Conditional and other exemptions.

(a) Exempt Organizations. – Except as provided in subsections (b) and (c), the following organizations and any organization that is exempt from federal income tax under the Code are exempt from the tax imposed under this Part:

(1) Fraternal beneficiary societies, orders or associations

a. Operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

b. Providing for the payment of life, sick, accident, or other benefits to the members of such society, order or association, or their dependents.

(2) Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes.

(3) Cemetery corporations and corporations organized for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(4) Business leagues, chambers of commerce, merchants' associations, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(5) Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

(6) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

(7) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses.

(8) Farmers', fruit growers', or like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of product furnished by them.

(9) Mutual associations formed under G.S. 54-111 through 54-128 to conduct agricultural business on the mutual plan and marketing associations organized under G.S. 54-129 through 54-158.

Nothing in this subdivision shall be construed to exempt any cooperative, mutual association, or other organization from an income tax on net income that has not been refunded to patrons on a patronage basis and distributed either in cash, stock, or certificates, or in some other manner that discloses the amount of each patron's refund. Provided, in arriving at net income for purposes of this subdivision, no deduction shall be allowed for dividends paid on capital stock. Patronage refunds made after the close of the taxable year and on or before the fifteenth day of the ninth month following the close of the taxable year are considered as to be made on the last day of the taxable year to the extent the allocations are attributable to income derived before the close of the year; provided, that no stabilization or marketing organization that handles agricultural products for sale for producers on a pool basis is considered to have realized any net income or profit in the disposition of a pool or any part of a pool until all of the products in that pool have been sold and the pool has been closed; provided, further, that a pool is not considered closed until the expiration of at least 90 days after the sale of the last remaining product in that pool. These cooperatives and other organizations shall file an annual information return with the Secretary on forms to be furnished by the Secretary and shall include

the names and addresses of all persons, patrons, or shareholders whose patronage refunds amount to ten dollars ($10.00) or more.

(10) Insurance companies subject to the tax on gross premiums as specified in G.S. 105-228.5.

(11) Corporations or organizations, such as condominium associations, homeowner associations, or cooperative housing corporations not organized for profit, the membership of which is limited to the owners or occupants of residential units in the condominium, housing development, or cooperative housing corporation, and operated exclusively for the management, operation, preservation, maintenance, or landscaping of the common areas and facilities owned by the corporation or organization or its members situated contiguous to the houses, apartments, or other dwellings or for the management, operation, preservation, maintenance, and repair of the houses, apartments, or other dwellings owned by the corporation or organization or its members, but only if no part of the net earnings of the corporation or organization inures (other than through the performance of related services for the members of such corporation or organization) to the benefit of any member of such corporation or organization or other person.

(b) Unrelated Business Income. – Except as provided in this subsection, an organization described in subdivision (a)(1), (3), (4), (5), (6), (7), (8), or (9) of this section and any organization exempt from federal income tax under the Code is subject to the tax provided in G.S. 105-130.3 on its unrelated business taxable income, as defined in section 512 of the Code, adjusted as provided in G.S. 105-130.5. The tax does not apply, however, to net income derived from any of the following:

(1) Research performed by a college, university, or hospital.

(2) Research performed for the United States or its instrumentality or for a state or its political subdivision.

(3) Research performed by an organization operated primarily to carry on fundamental research, the results of which are freely available to the general public.

(4) Repealed by Session Laws 2020-58, s. 5.5, effective June 30, 2020.

(c) Homeowner Association Income. – An organization described in subdivision (a)(11) of this section is subject to the tax provided in G.S. 105-130.3 on its gross income other than membership income less the deductions allowed by this Article that are directly connected with the production of the gross income other than membership income. The term "membership income" means the gross income from assessments, fees, charges, or similar amounts received from members of the organization for expenditure in the preservation, maintenance, and management of the common areas and facilities of or the residential units in the condominium or housing development.

(d) Real Estate Mortgage Investment Conduits. – An entity that qualifies as a real estate mortgage investment conduit, as defined in section 860D of the Code, is exempt from the tax imposed under this Part, except that any net income derived from a prohibited transaction, as defined in section 860F of the Code, is taxable to the real estate mortgage investment conduit under G.S. 105-130.3 and G.S. 105-130.3A, subject to the adjustments provided in G.S. 105-130.5. This subsection does not exempt the holders of a regular or residual interest in a real estate mortgage investment conduit as defined in section 860G of the Code from any tax on the income from that

interest. (1939, c. 158, s. 314; 1945, c. 708, s. 4; c. 752, s. 3; 1949, c. 392, s. 3; 1951, c. 937, s. 1; 1955, c. 1313, s. 1; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1053, s. 4; 1975, c. 19, s. 28; c. 591, s. 2; 1981, c. 450, s. 2; 1983, c. 28, s. 1; c. 31; 1985 (Reg. Sess., 1986), c. 826, s. 5; 1991 (Reg. Sess., 1992), c. 921, s. 1; 1993, c. 494, s. 2; 1998-98, ss. 1(b), 69; 2018-5, s. 38.2(i); 2020-58, s. 5.5; 2022-13, s. 1.5.)

§ 105-130.12. Real estate investment trusts.

(a) Definitions. – The following definitions apply in this section:

(1) Captive REIT. – A REIT whose shares or certificates of beneficial interest are not regularly traded on an established securities market and are owned or controlled, at any time during the last half of the tax year, by a person that is subject to tax under this Part and is not a REIT or a listed Australian property trust.

(2) Own or control. – To own or control directly, indirectly, beneficially, or constructively more than fifty percent (50%) of the voting power or value of an entity. The attribution rules of section 318 of the Code, as modified by section 856(d)(5) of the Code, apply in determining ownership and control.

(3) REIT. – A trust or another entity that qualifies as a real estate investment trust under section 856 of the Code.

(b) Tax. – The income of a REIT is taxable under this Part in accordance with the Code, unless the REIT is a captive REIT. A captive REIT is required to add to its federal taxable income the amount of a dividend paid deduction allowed under the Code, as provided in G.S. 105-130.5. (1963, c. 1169, s. 2; 1967, c. 110, s. 3; 1971, c. 820, s. 2; 1973, c. 476, s. 193; 1983, c. 713, s. 74; 1998-98, s. 69; 2007-323, s. 31.18(c).)

§ 105-130.13: Repealed by Session Laws 1987 (Regular Session, 1988), c. 1089, s. 2; as amended by Session Laws 1989, c. 728, s. 1.33.

§ 105-130.14. Corporations filing consolidated returns for federal income tax purposes.

Any corporation electing or required to file a consolidated income tax return with the Internal Revenue Service must determine its State net income as if the corporation had filed a separate federal return and shall not file a consolidated or combined return with the Secretary unless one of the following applies:

(1) The corporation is specifically directed in writing by the Secretary under G.S. 105-130.5A to file a consolidated or combined return.

(2) Repealed by Session Laws 2012-79, s. 1.14(c), effective June 26, 2012.

(3) Pursuant to a written request from the corporation under G.S. 105-130.5A, the Secretary has provided written advice to the corporation stating that the Secretary will allow a consolidated or combined return under the facts and circumstances set out in the request and the corporation files a consolidated or combined return in accordance with that written advice. (1967, c. 1110, s. 3; 1973, c. 476, s. 193; 2010-31, s. 31.10(e); 2012-79, s. 1.14(c).)

§ 105-130.15. Basis of return of net income.

(a) The net income of a corporation shall be computed in accordance with the method of accounting it regularly employs in keeping its books. The method must be consistent with respect

to both income and deductions and shall follow as nearly as practicable the federal practice, unless contrary to the context and intent of this Part.

The Secretary may adopt the rules and regulations and any guidelines administered or established by the Internal Revenue Service unless contrary to any provisions of this Part.

(b) Change of Income Year. –

(1) A corporation may change the income year upon which it reports for income tax purposes without prior approval by the Secretary of Revenue if such change in income year has been approved by or is acceptable to the Federal Commissioner of Internal Revenue and is used for filing income tax returns under the provisions of the Code.

If a corporation desires to make a change in its income year other than as provided above, it may make such change in its income year with the approval of the Secretary of Revenue, provided such approval is requested at least 30 days prior to the end of its new income year.

A corporation which has changed its income year without requesting the approval of the Secretary of Revenue as provided in the first paragraph of this subdivision shall submit to the Secretary of Revenue notification of any change in the income year after the change has been approved by the Federal Commissioner of Internal Revenue or his agent where application for permission to change is required by the Federal Commissioner of Internal Revenue with such notification stating that such approval has been received. Where application for change of the income year is not required by the Federal Commissioner of Internal Revenue, notification of the change of income year shall be submitted to the Secretary of Revenue with the short period return.

(2) A return for a period of less than 12 months (referred to in this subsection as "short period") shall be made when the corporation changes its income year. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year, except that a corporation changing to, or from, a taxable year varying from 52 to 53 weeks shall not be required to file a short period return if such change results in a short period of 359 days or more, or less than seven days. Short period income tax returns shall be filed within the same period following the end of such short period as is required for full year returns under the provisions of G.S. 105-130.17.

(c) Any foreign corporation not domesticated in this State shall not use the installment method of reporting income to this State unless such corporation files a bond with the Secretary of Revenue in such amount and with such sureties as the Secretary shall deem necessary to secure the payment of any taxes which were deferred with respect to any installment transaction.

(d) Notwithstanding any other provision of this Part, any corporation which uses the installment method of reporting income to this State and which is planning to withdraw from this State, merge, or consolidate its business, or terminate its business in this State by any other means whatsoever, shall be required to make a report for income tax purposes, to the Secretary of Revenue, of any unrealized or unreported income from installment sales made while doing business in this State and to pay any tax which may be due on such income. The manner and form for making such report and paying the tax shall be as prescribed by the Secretary. (1939, c. 158, s.

318; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1949, c. 392, s. 3; 1955, c. 1313, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1983, c. 713, s. 82; 1998-98, s. 69; 2000-140, s. 64(a); 2011-390, s. 3; 2011-411, s. 8(b).)

§ 105-130.16. Returns.

(a) Every corporation doing business in this State must file with the Secretary an income tax return showing specifically the items of gross income and the deductions allowed by this Part and any other facts the Secretary requires to make any computation required by this Part. The return of a corporation must be signed by its president, vice-president, treasurer, or chief financial officer. The officer signing the return must furnish an affirmation verifying the return. The affirmation must be in the form required by the Secretary.

(b), (c) Repealed by Session Laws 2011-390, s. 4, as amended by Session Laws 2011-411, s. 8(b), effective for taxable years beginning on or after January 1, 2012. (1939, c. 158, s. 326; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1951, c. 643, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1998-98, s. 69; 1999-337, s. 22; 2008-134, s. 4(a); 2009-445, s. 6; 2011-390, s. 4; 2011-411, s. 8(b).)

§ 105-130.17. Time and place of filing returns.

(a) Returns must be filed as prescribed by the Secretary at the place prescribed by the Secretary. Returns must be in the form prescribed by the Secretary. The Secretary must furnish forms in accordance with G.S. 105-254.

(b) Except as otherwise provided in this section, the return of a corporation shall be filed on or before the fifteenth day of the fourth month following the close of its income year. An income year ending on any day other than the last day of the month shall be deemed to end on the last day of the calendar month ending nearest to the last day of a taxpayer's actual income year.

(c) In the case of mutual associations formed under G.S. 54-111 through 54-128 to conduct agricultural business on the mutual plan and marketing associations organized under G.S. 54-129 through 54-158, which are required to file under subsection (a)(9) of G.S. 105-130.11, a return made on the basis of a calendar year shall be filed on or before the fifteenth day of the September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the fifteenth day of the ninth month following the close of the fiscal year.

(d) A taxpayer may receive an extension of time to file a return under G.S. 105-263.

(d1) Organizations described in G.S. 105-130.11(a)(1), (3), (4), (5), (6), (7) and (8) that are required to file a return under G.S. 105-130.11(b) shall file a return made on the basis of a calendar year on or before the fifteenth day of May following the close of the calendar year and a return made on the basis of a fiscal year on or before the fifteenth day of the fifth month following the close of the fiscal year.

(e) Any corporation that ceases its operations in this State before the end of its income year because of its intention to dissolve or to withdraw from this State, or because of a merger, conversion, or consolidation or for any other reason whatsoever shall file its return for the then current income year within 105 days after the date it terminates its business in this State.

(f) Repealed by Session Laws 1998-217, s. 42, effective October 31, 1998.

(g) A corporation that files a federal return pursuant to section 6072(c) of the Code shall file its return on or before the fifteenth day of the seventh month following the close of its income year. (1939, c. 158, s. 329; 1943, c. 400, s. 4; 1951, c. 643, s. 4; 1953, c. 1302, s. 4; 1955, c. 17, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981, c.

56; 1989 (Reg. Sess., 1990), c. 984, s. 8; 1997-300, s. 3; 1998-217, s. 42; 1999-369, s. 5.5; 2000-140, s. 64(b); 2006-18, s. 7; 2007-491, s. 14; 2024-28, s. 1.4(c).)

§ 105-130.18: Repealed by Session Laws 2009-445, s. 7, effective August 7, 2009.

§ 105-130.19. When tax must be paid.

(a) Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the return must be paid to the Secretary within the time allowed for filing the return.

(b), (c) Repealed by Session Laws 1989, c. 37, s. 1.

(d) Repealed by Session Laws 1993, c. 450, s. 3.

(1939, c. 158, s. 332; 1943, c. 400, s. 4; 1947, c. 501, s. 4; 1951, c. 643, s. 4; 1955, c. 17, s. 2; 1959, c. 1259, s. 2; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1977, c. 1114, s. 7; 1989, c. 37, s. 1; 1989 (Reg. Sess., 1990), c. 984, s. 9; 1991 (Reg. Sess., 1992), c. 930, s. 14; 1993, c. 450, s. 3.)

§ 105-130.20. Federal determinations and amended returns.

(a) Federal Determination. – If a taxpayer's federal taxable income or a federal tax credit is changed or corrected by the Commissioner of Internal Revenue or an agreement of the U.S. competent authority, and the change or correction affects the amount of State tax payable, the taxpayer must file an income tax return reflecting each change or correction from a federal determination within six months after being notified of each change or correction. The Secretary must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary must refund any overpayment of tax as provided in Article 9 of this Chapter. A federal determination has the same meaning as defined in G.S. 105-228.90.

(b) Amended Return. – The following applies to an amended return filed by a taxpayer with the Commissioner of Internal Revenue:

(1) If the amended return contains an adjustment that would increase the amount of State tax payable under this Part, then notwithstanding the provisions of G.S. 105-241.8(a), the taxpayer must file within six months thereafter an amended return with the Secretary.

(2) If the amended return contains an adjustment that would decrease the amount of State tax payable under this Part, the taxpayer may file an amended return with the Secretary within the provisions of G.S. 105-241.6.

(c) Penalties. – A taxpayer that fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination. (1939, c. 158, s. 334; 1947, c. 501, s. 4; 1949, c. 392, s. 3; 1957, c. 1340, s. 14; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1993 (Reg. Sess., 1994), c. 582, s. 2; 2006-18, s. 4; 2007-491, s. 15; 2017-39, s. 4(a); 2018-5, s. 38.3(a); 2019-169, s. 6.3(b).)

§ 105-130.21. Information at the source.

(a) Every corporation having a place of business or having one or more employees, agents or other representatives in this State, in whatever capacity acting, including lessors or mortgagors of real or personal property, or having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to the bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains or profits paid or payable during any year to any taxpayer, shall make complete return thereof

to the Secretary of Revenue under such regulations and in such form and manner and to such extent as may be prescribed by him. The filing of any report in compliance with the provisions of this section by a foreign corporation shall not constitute an act in evidence of and shall not be deemed to be evidence that such corporation is doing business in this State.

(b) Every corporation doing business or having a place of business in this State shall file with the Secretary of Revenue, on such form and in such manner as he may prescribe, the names and addresses of all taxpayers, residents of North Carolina, to whom dividends have been paid and the amount of such dividends during the income year. (1939, c. 158, s. 328; 1945, c. 708, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193.)

§ 105-130.22: Repealed by Session Laws 2013-316, s. 2.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-130.23. Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-130.24. Repealed by Session Laws 1983 (Regular Session, 1984), c. 1004, s. 2.

§ 105-130.25. Credit against corporate income tax for construction of cogenerating power plants.

(a) Credit. – A corporation or a partnership, other than a public utility as defined in G.S. 62-3(23), that constructs a cogenerating power plant in North Carolina is allowed as a credit against the tax imposed by this Part an amount equal to ten percent (10%) of the costs paid during the taxable year to purchase and install the electrical or mechanical power generation equipment of that plant. The credit may not be taken for the year in which the costs are paid but shall be taken for the taxable year beginning during the calendar year following the calendar year in which the costs were paid. To be eligible for the credit allowed by this section, the corporation or partnership must own or control the power plant at the time of construction. The credit allowed by this section may not exceed the amount of tax imposed by this Part for the year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(b) Cogenerating Power Plant Defined. – For purposes of this section, a cogenerating power plant is a power plant that sequentially produces electrical or mechanical power and useful thermal energy using natural gas as its primary energy source.

(c) Alternative Method. – A taxpayer eligible for the credit allowed by this section may elect to treat the costs paid during an earlier year as if they were paid during the year the plant becomes operational. This election must be made on or before April 15 following the calendar year in which the plant becomes operational. The election must be in the form prescribed by the Secretary and must contain any supporting documentation the Secretary may require. An election with respect to costs paid by a partnership must be made by the partnership and is binding on any partners to whom the credit is passed through.

The costs with respect to which this election is made will be treated, for the purposes of this section, as if they had actually been paid in the year the plant becomes operational. If a taxpayer makes this election, however, the credit may not exceed one-fourth the amount of tax imposed by this Part for the year reduced by the sum of all credits allowed, except payments of tax by or on behalf of the taxpayer, but any unused portion of the credit may be carried forward for the next 10 taxable years. An election made under this subsection is irrevocable.

(d) Application. – To be eligible for the credit allowed in this section, a taxpayer must file an application for the credit with the Secretary on or before April 15 following the calendar year in which the costs were paid. The application shall be in the form prescribed by the Secretary and shall include any supporting documentation the Secretary may require. An application with respect to costs paid by a partnership must be made by the partnership on behalf of its partners.

(e) Ceiling. – The total amount of all tax credits allowed to taxpayers under this section for payments for construction and installation made in a calendar year may not exceed five million dollars ($5,000,000). The Secretary shall calculate the total amount of tax credits claimed from the applications filed pursuant to subsection (d). If the total amount of tax credits claimed for payments made in a calendar year exceeds five million dollars ($5,000,000), the Secretary shall allow a portion of the credits claimed by allocating the total allowable amount among all taxpayers claiming the credits in proportion to the size of the credit claimed by each taxpayer. In no case may the total amount of all tax credits allowed under this section for costs paid in a calendar year exceed five million dollars ($5,000,000).

If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the taxpayer applied for the credit. The amount of the reduction of the credit may be carried forward and claimed for the next 10 taxable years if the taxpayer reapplies for a credit for the amount of the reduction, as provided in subsection (d). In such a reapplication, the costs for which a credit is claimed shall be considered as if they had been paid in the year preceding the reapplication. The Secretary's allocations based on applications filed pursuant to subsection (d) are final and shall not be adjusted to account for credits applied for but not claimed. (1979, c. 801, s. 34; 1993 (Reg. Sess., 1994), c. 674, ss. 1, 2, 4; 1995, c. 17, s. 2; 1998-98, s. 69.)

§ 105-130.26. Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-130.27 Expired.

§ 105-130.27A. Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-130.28: Repealed by Session Laws 2000-128, s. 3, effective for costs incurred during taxable years beginning on or after January 1, 2006.

§§ 105-130.29 through 105-130.33. Repealed by Session Laws 1999-342, s. 1.

§ 105-130.34. (For effective date and expiration, see note) Credit for certain real property donations.

(a) Credit. – Subject to the limitations in this section, a C Corporation that makes a qualified donation of real property located in North Carolina during the taxable year that is useful (i) for forestland or farmland preservation, (ii) for fish and wildlife conservation, (iii) as a buffer to limit land use activities that would restrict, impede, or interfere with military training, testing, or operations on a military installation or training area or otherwise be incompatible with the mission of the installation, (iv) for floodplain protection in a county that, in the five years preceding the donation, was the subject of a Type II or Type III gubernatorial disaster declaration, as provided in

G.S. 166A-19.21, as a result of a natural disaster, (v) for historic landscape conservation, or (vi) for public trails or access to public trails is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property. The aggregate amount of credit allowed to a corporation in a taxable year under this section for one or more qualified donations made during the taxable year, whether made directly or indirectly as an owner of a pass-through entity, may not exceed five hundred thousand dollars ($500,000). The credit may not be taken for the year in which the donation is made but may be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (a2) of this section.

(a1) Qualified Donation. – A qualified donation of real property is a donation that meets all of the following conditions:

(1) The real property is donated in perpetuity for one of the qualifying uses listed in subsection (a) of this section and is accepted in perpetuity for the qualifying use for which the property is donated.

(2) The person to whom the property is donated must be the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit.

(a2) Application. – To claim the credit provided in this section, a corporation must file an application with the Secretary for the credit. The application must be filed on or before April 15 of the year following the calendar year in which the donation was made. An application is effective for the year in which it is timely filed. The Secretary may not accept late applications under this subsection. The application must be on a form prescribed by the Secretary and include any information required by the Secretary demonstrating that the donation has met the conditions for qualifying for the credit, including the following items:

(1) A copy of the certification by the Department of Natural and Cultural Resources that identifies which of the valid public benefits listed in subsection (a) of this section for which the donated property is suitable.

(2) A self-contained appraisal report or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the donated property. For fee simple absolute donations of real property, a corporation may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.

(a3) Substantiation. – A corporation claiming a credit under this section must maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the credit to which the corporation is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the corporation, and no credit may be allowed to a corporation that fails to maintain adequate records or to make them available for inspection.

(b) Limitation. – The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the corporation.

(c) Carryforward. – Any unused portion of this credit may be carried forward for the next succeeding five years.

(d) No Double Benefit. – That portion of a qualifying donation that is the basis for a credit allowed under this section is not eligible for deduction as a charitable contribution under G.S. 105-130.9.

(e) Ceiling; Use Allocation. – The total aggregate amount of all credits allowed to taxpayers under this section and G.S. 105-153.11 for donations made in a taxable year may not exceed five million dollars ($5,000,000), of which three million two hundred fifty thousand dollars ($3,250,000) is reserved for credits to taxpayers that have made a qualified donation of real property for forestland or farmland conservation. If funds reserved for credits for qualified donations of real property for forestland or farmland conservation remain after disposition of all timely filed applications for that type of credit, the Secretary shall allocate any funds remaining to credits for other types of qualified donations under this section. The Secretary shall, first, fully fund any prorated credits in accordance with subsection (f) of this section and, second, if funds remain after fully funding prorated credits, reopen the application period for credits under this section for which funds have become available. If the Secretary reopens the application period and notwithstanding the application deadline in subsection (a2) of this section, the additional applications must be filed with the Secretary on or before October 15 of the year following the calendar year in which the donation was made. The Secretary may not accept late additional applications permitted under this subsection. The Secretary's determinations based on additional applications timely filed in accordance with this subsection are final.

(f) Reduction. – The Secretary shall calculate the total amount of credits claimed from applications timely filed under subsection (a2) of this section. If the total amount of credits claimed for donations made in a calendar year exceeds this maximum amount, the Secretary shall allow a portion of the credits claimed by allocating the maximum amount in credits in proportion to the size of the credit claimed by each taxpayer. If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the corporation of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the donation was made. The Secretary's allocations based on applications filed under subsection (a2) of this section are final and shall not be adjusted to account for credits applied for but not claimed.

(g) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information:

(1) The number of C Corporations that took the credit allowed under this section.
(2) The total amount of credits claimed by conservation purpose.
(3) The total amount of credits carried forward.
(4) The total cost to the General Fund of the credits taken. (1983, c. 793, s. 1; 1989, c. 716, s. 1; c. 727, s. 218 (41); 1997-226, s. 1; 1997-443, s. 11A.119(a); 1998-98, s. 69; 1998-212, s. 29A.13(c); 2002-72, s. 15(a); 2007-309, s. 1; 2009-445, s. 9(c); 2010-167, s. 5(a); repealed by 2013-316, s. 2.1(b), effective for taxable years beginning on or after January 1, 2014; reenacted by 2024-32, s. 15(a).)

§ 105-130.35: Recodified as § 105-269.5 by Session Laws 1991, c. 45, s. 20.

§§ 105-130.36, 105-130.37: Repealed by Session Laws 2013-316, s. 2.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-130.38: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 1.

§ 105-130.39: Repealed by Session Laws 2013-316, s. 2.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-130.40: Recodified as § 105-129.8 by Session Laws 1996, 2nd Extra Session, c. 13, s. 3.2.

§ 105-130.41: Repealed pursuant to the terms of former subsection (d) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-130.42: Recodified as §§ 105-129.35 through 105-129.37 by Session Laws 1999-389, ss. 2-4, effective for taxable years beginning on or after January 1, 1999.

§§ 105-130.43, 105-130.44: Repealed by Session Laws 2013-316, s. 2.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-130.45. Repealed by Session Laws 1999-333, s. 10, effective for cigarettes exported on or after January 1, 2018.

§ 105-130.46. (See notes for expiration date) Credit for manufacturing cigarettes for exportation while increasing employment and utilizing State Ports.

(a) Purpose. – The credit authorized by this section is intended to enhance the economy of this State by encouraging qualifying cigarette manufacturers to increase employment in this State with the purpose of expanding this State's economy, the use of the North Carolina State Ports, and the use of other State goods and services, including tobacco.

(b) Definitions. – The following definitions apply in this section:

(1) Employment level. – The total number of full-time jobs and part-time jobs converted into full-time equivalences. A job is included in the employment level for a year only if that job is located within the State for more than six months of the year. A job is located in this State if more than fifty percent (50%) of the employee's duties are performed in this State.

(2) Exportation. – The shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.

(3) Full-time job. – A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year.

(4) Successor in business. – A corporation that through amalgamation, merger, acquisition, consolidation, or other legal succession becomes invested with the rights and assumes the burdens of the predecessor corporation and continues the cigarette exportation business.

(c) Employment Level. – In order to be eligible for a full credit allowed under this section, the corporation must maintain an employment level in this State for the taxable year that exceeds the corporation's employment level in this State at the end of the 2004 calendar year by at least 800 full-time jobs. In the case of a successor in business, the corporation must maintain an employment level in this State for the taxable year that exceeds all its predecessor corporations' combined employment levels in this State at the end of the 2004 calendar year by at least 800 full-time jobs.

(d) Credit. – A corporation that satisfies the employment level requirement under subsection (c) of this section, is engaged in the business of manufacturing cigarettes for exportation, and exports cigarettes and other tobacco products through the North Carolina State Ports during the taxable year is allowed a credit as provided in this section. The amount of credit allowed under this section is equal to forty cents (40¢) per one thousand cigarettes exported. The amount of credit earned during the taxable year may not exceed ten million dollars ($10,000,000).

(e) Reduction of Credit. – A corporation that has previously satisfied the qualification requirements of this section but that fails to satisfy the employment level requirement in a succeeding year may still claim a partial credit for the year in which the employment level requirement is not satisfied. The partial credit allowed is equal to the credit that would otherwise be allowed under subsection (d) of this section multiplied by a fraction. The numerator of the fraction is the number of full-time jobs by which the corporation's employment level in this State for the taxable year exceeds the corporation's employment level in this State at the end of the 2004 calendar year. The denominator of the fraction is 800. In the case of a successor in business, the numerator of the fraction is the number of full-time jobs by which the corporation's employment level in this State for the taxable year exceeds all its predecessor corporations' combined employment levels in this State at the end of the 2004 calendar year.

(f) Allocation. – The credit allowed by this section may be taken against the income taxes levied under this Part or the franchise taxes levied under Article 3 of this Chapter. When the taxpayer claims a credit under this section, the taxpayer must elect the percentage of the credit to be applied against the taxes levied under this Part with any remaining percentage to be applied against the taxes levied under Article 3 of this Chapter. This election is binding for the year in which it is made and for any carryforwards. A taxpayer may elect a different allocation for each year in which the taxpayer qualifies for a credit.

(g) Ceiling. – The total amount of credit that may be taken in a taxable year under this section may not exceed the lesser of the amount of credit which may be earned for that year under subsection (d) of this section or fifty percent (50%) of the amount of tax against which the credit is taken for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer under this section or G.S. 105-130.45 for previous tax years.

(h) Carryforward. – Any unused portion of a credit allowed in this section may be carried forward for the next succeeding 10 years. All carryforwards of a credit must be taken against the tax against which the credit was originally claimed. A successor in business may take the carryforwards of a predecessor corporation as if they were carryforwards of a credit allowed to the successor in business.

(i) Documentation of Credit. – A corporation that claims the credit under this section must include the following with its tax return:

(1) A statement of the exportation volume on which the credit is based.

(2) A list of the corporation's export volumes shown on its monthly reports to the Alcohol and Tobacco Tax and Trade Bureau of the United States Treasury for the months in the tax year for which the credit is claimed.

(3) Any other information required by the Department of Revenue.

(j) No Double Credit. – A taxpayer may not claim this credit and the credit allowed under G.S. 105-130.45 for the same activity.

(k) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

(1) The number of taxpayers that took the credit allowed in this section.

(2) The amount of cigarettes and other tobacco products exported through the North Carolina State Ports with respect to which credits were taken.

(3) The percentage of domestic leaf content in cigarettes produced during the previous year, as reported by the taxpayer.

(4) The total cost to the General Fund of the credits taken. (2003-435, 2nd Ex. Sess., s. 6.1; 2004-170, s. 16(a); 2010-166, s. 1.13.)

§ 105-130.47: Repealed pursuant to former subsection (k) of this section, effective for qualifying expenses occurring on or after January 1, 2015.

§ 105-130.48: Repealed pursuant to former subsection (f) of this section, effective for taxable years beginning on or after January 1, 2014.

Part 1A. S Corporation Income Tax.

§ 105-131. Title; definitions; interpretation.

(a) This Part of the income tax Article shall be known and may be cited as the S Corporation Income Tax Act.

(b) For the purpose of this Part, unless otherwise required by the context:

(1) "Code" has the same meaning as in G.S. 105-228.90.

(2) "C Corporation" means a corporation that is not an S Corporation and is subject to the tax levied under Part 1 of this Article.

(3) "Department" means the Department of Revenue.

(4) "Income attributable to the State" means items of income, loss, deduction, or credit of the S Corporation apportioned and allocated to this State pursuant to G.S. 105-130.4.

(5) "Income not attributable to the State" means all items of income, loss, deduction, or credit of the S Corporation other than income attributable to the State.

(6) "Post-termination transition period" means that period defined in section 1377(b)(1) of the Code.

(7) "Pro rata share" means the share determined with respect to an S Corporation shareholder for a taxable period in the manner provided in section 1377(a) of the Code.

(8) "S Corporation" means a corporation for which a valid election under section 1362(a) of the Code is in effect.

(9) "Secretary" means the Secretary of Revenue.

(10) "Taxable period" means any taxable year or portion of a taxable year during which a corporation is an S Corporation.

(11) **(Effective for taxable years beginning on or after January 1, 2022)** "Taxed S Corporation" means an S Corporation for which a valid election under G.S. 105-131.1A(a) is in effect.

(c) Except as otherwise expressly provided or clearly appearing from the context, any term used in this Part shall have the same meaning as when used in a comparable context in the Code, or in any statute relating to federal income taxes, in effect during the taxable period. Due consideration shall be given in the interpretation of this Part to applicable sections of the Code in effect and to federal rulings and regulations interpreting those sections, except where the Code, ruling, or regulation conflicts with the provisions of this Part. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1989 (Reg. Sess., 1990), c. 981, s. 4; 1991, c. 689, s. 251; 1991 (Reg. Sess., 1992), c. 922, s. 5; 1993, c. 12, s. 6; 1998-98, ss. 43, 68-70; 2021-180, s. 42.5(a).)

§ 105-131.1. Taxation of an S Corporation and its shareholders. [Effective for taxable years beginning before January 1, 2022]

(a) An S Corporation shall not be subject to the tax levied under G.S. 105-130.3.

(b) Each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, shall be taken into account by the shareholder in the manner and subject to the adjustments provided in Parts 2 and 3 of this Article and section 1366 of the Code and shall be subject to the tax levied under Parts 2 and 3 of this Article. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1998-98, ss. 5, 68.)

§ 105-131.1. Taxation of an S Corporation and its shareholders. [Effective for taxable years beginning on or after January 1, 2022]

(a) An S Corporation shall not be subject to the tax levied under G.S. 105-130.3. A taxed S Corporation shall be subject to tax under G.S. 105-131.1A.

(b) Except with respect to a taxed S Corporation, each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, shall be taken into account by the shareholder in the manner and subject to the adjustments provided in Parts 2 and 3 of this Article and section 1366 of the Code and shall be subject to the tax levied under Parts 2 and 3 of this Article. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1998-98, ss. 5, 68; 2021-180, s. 42.5(b).)

§ 105-131.1A. Taxation of S Corporation as a taxed pass-through entity.

(a) **(Effective for taxable years beginning before January 1, 2023)** Taxed S Corporation Election. – An S Corporation may elect, on its timely filed annual return required under G.S. 105-131.7, to have the tax under this Article imposed on the S Corporation for any taxable period covered by the return. An S Corporation may not revoke the election after the due date of the return including extensions.

(a) **(Effective for taxable years beginning on or after January 1, 2023)** Taxed S Corporation Election. – An S Corporation may elect, on its timely filed return required under G.S. 105-131.7, to have the tax under this Article imposed on the S Corporation for any taxable period covered by the return. An S Corporation may not make or revoke the election after the return is filed.

(b) Taxable Income of Taxed S Corporation. – A tax is imposed for the taxable period on the North Carolina taxable income of a taxed S Corporation. The tax shall be levied, collected, and paid annually. The tax is imposed on the North Carolina taxable income at the rate levied in G.S. 105-153.7. The North Carolina taxable income of a taxed S Corporation is determined as follows:

(1) The North Carolina taxable income of a taxed S Corporation with respect to such taxable period shall be equal to the sum of the following:
   a. Each shareholder's pro rata share of the taxed S Corporation's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to the State.
   b. (Repealed effective for taxable years beginning on or after January 1, 2023) Each resident shareholder's pro rata share of the taxed S Corporation's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, not attributable to the State with respect to such taxable period.

(2) Separately stated items of deduction are not included when calculating each shareholder's pro rata share of the taxed S Corporation's taxable income. For purposes of this subdivision, separately stated items are those items described in section 1366 of the Code and the regulations under it.

(3) The adjustments required by G.S. 105-153.5(c3) are not included in the calculation of the taxed S Corporation's taxable income.

(c) Tax Credit. – A taxed S Corporation that qualifies for a credit may apply each shareholder's pro rata share of the taxed S Corporation's credits against the shareholder's pro rata share of the taxed S Corporation's income tax imposed by subsection (b) of this section. An S Corporation must pass through to its shareholders any credit required to be taken in installments by this Chapter if the first installment was taken in a taxable period that the election under subsection (a) of this section was not in effect. An S Corporation shall not pass through to its shareholders any of the following:

(1) Any credit allowed under this Chapter for any taxable period the S Corporation makes the election under subsection (a) of this section and the carryforward of the unused portion of such credit.

(2) Any subsequent installment of such credit required to be taken in installments by this Chapter after the S Corporation makes an election under subsection (a) of this section and the carryforward of any unused portion of such installment.

(d) **(Repealed effective for taxable years beginning on or after January 1, 2023)** Tax Credit for Income Taxes Paid to Other States. – With respect to resident shareholders, a taxed S Corporation is allowed a credit against the taxes imposed by this section for income taxes imposed by and paid to another state or country on income taxed under this section. The credit allowed by this subsection is administered in accordance with the provisions of G.S. 105-153.9.

(e) Deduction Allowed for Shareholders of a Taxed S Corporation. – The shareholders of a taxed S Corporation are allowed a deduction as specified in G.S. 105-153.5(c3)(1). This adjustment is only allowed if the taxed S Corporation complies with the provisions of subsection (g) of this section.

(f) Addition Required for Shareholders of a Taxed S Corporation. – The shareholders of a taxed S Corporation must make an addition as provided in G.S. 105-153.5(c3)(2).

(g) Payment of Tax. – Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the return of the taxed S Corporation must be paid to the Secretary within the time allowed for filing the return. In the case of any overpayment by a taxed S Corporation of the tax imposed under this section, only the taxed S Corporation may request a refund of the overpayment. If the taxed S Corporation files a return showing an amount due with the return and does not pay the amount shown due, the Department may collect the tax from the taxed S Corporation pursuant to G.S. 105-241.22(1). The Secretary must issue a notice of collection for the amount of tax debt to the taxed S Corporation. If the tax debt is not paid to the Secretary within 60 days of the date the notice of collection is mailed to the taxed S Corporation, the shareholders of the S Corporation are not allowed the deduction provided in G.S. 105-153.5(c3)(1). The Secretary must send the shareholders a notice of proposed assessment in accordance with G.S. 105-241.9. For purposes of this subsection, the term "tax debt" has the same meaning as defined in G.S. 105-243.1(a).

(h) Basis. – The basis of both resident and nonresident shareholders of a taxed S Corporation in their stock and indebtedness of the taxed S Corporation shall be determined as if the election under subsection (a) of this section had not been made and each of the shareholders of the taxed S Corporation had properly taken into account each shareholder's pro rata share of the taxed S Corporation's items of income, loss, and deduction in the manner required with respect to an S Corporation for which no such election is in effect. (2021-180, s. 42.5(c); 2023-12, s. 1.6(a), (b).)

§ 105-131.2. Adjustment and characterization of income.

(a) Adjustment. – Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6.

(b) Repealed by Session Laws 1989, c. 728, s. 1.35.

(c) Characterization of Income. – S Corporation items of income, loss, deduction, and credit taken into account by a shareholder pursuant to G.S. 105-131.1(b) are characterized as though received or incurred by the S Corporation and not its shareholder. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1993, c. 485, s. 8; 2006-17, s. 1; 2013-316, s. 1.3(a).)

§ 105-131.3. Basis and adjustments.

(a) The initial basis of a resident shareholder in the stock of an S Corporation and in any indebtedness of the corporation owed to that shareholder shall be determined, as of the later of the date the stock is acquired, the effective date of the S Corporation election, or the date the shareholder became a resident of this State, as provided under the Code.

(b) The basis of a resident shareholder in the stock and indebtedness of an S Corporation shall be adjusted in the manner and to the extent required by section 1011 of the Code except that:

(1) Any adjustments made (other than for income exempt from federal or State income taxes) pursuant to G.S. 105-131.2 shall be taken into account; and

(2) Any adjustments made pursuant to section 1367 of the Code for a taxable period during which this State did not measure S Corporation shareholder income by reference to the corporation's income shall be disregarded.

(c) The initial basis of a nonresident shareholder in the stock of an S Corporation and in any indebtedness of the corporation to that shareholder shall be zero.

(d) The basis of a nonresident shareholder in the stock and indebtedness of an S Corporation shall be adjusted as provided in section 1367 of the Code, except that adjustments to

basis shall be limited to the income taken into account by the shareholder pursuant to G.S. 105-131.1(b).

(e) The basis of a shareholder in the stock of an S Corporation shall be reduced by the amount allowed as a loss or deduction pursuant to G.S. 105-131.4(c).

(f) The basis of a resident shareholder in the stock of an S Corporation shall be reduced by the amount of any cash distribution that is not taxable to the shareholder as a result of the application of G.S. 105-131.6(b).

(g) For purposes of this section, a shareholder shall be considered to have acquired stock or indebtedness received by gift at the time the donor acquired the stock or indebtedness, if the donor was a resident of this State at the time of the gift. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35.)

§ 105-131.4. Carryforwards; carrybacks; loss limitation.

(a) Carryforwards and carrybacks to and from an S Corporation shall be restricted in the manner provided in section 1371(b) of the Code.

(b) The aggregate amount of losses or deductions of an S Corporation taken into account by a shareholder pursuant to G.S. 105-131.1(b) may not exceed the combined adjusted bases, determined in accordance with G.S. 105-131.3, of the shareholder in the stock and indebtedness of the S Corporation.

(c) Any loss or deduction that is disallowed for a taxable period pursuant to subsection (b) of this section shall be treated as incurred by the corporation in the succeeding taxable period with respect to that shareholder.

(d) (1) Any loss or deduction that is disallowed pursuant to subsection (b) of this section for the corporation's last taxable period as an S Corporation shall be treated as incurred by the shareholder on the last day of any post-termination transition period.

(2) The aggregate amount of losses and deductions taken into account by a shareholder pursuant to subdivision (1) of this subsection may not exceed the adjusted basis of the shareholder in the stock of the corporation (determined in accordance with G.S. 105-131.3 at the close of the last day of any post-termination transition period and without regard to this subsection).

(e) Expired. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1989 (Reg. Sess., 1990), c. 984, s. 1; 1991, c. 752.)

§ 105-131.5. Part-year resident shareholder.

If a shareholder of an S Corporation is both a resident and nonresident of this State during any taxable period, the shareholder's pro rata share of the S Corporation's income attributable to the State and income not attributable to the State for the taxable period shall be further prorated between the shareholder's periods of residence and nonresidence, in accordance with the number of days in each period, as provided in G.S. 105-153.4. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 2017-204, s. 1.7(a).)

§ 105-131.6. Distributions.

(a) Subject to the provisions of subsection (c) of this section, a distribution made by an S Corporation with respect to its stock to a resident shareholder is taxable to the shareholder as

provided in Parts 2 and 3 of this Article to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Code.

(b) Subject to the provisions of subsection (c) of this section, any distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period is not taxable to the shareholder as provided in Parts 2 and 3 of this Article to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with section 1371(e) of the Code.

(c) In applying sections 1368 and 1371(e) of the Code to any distribution referred to in this section:

(1) The term "adjusted basis of the stock" means the adjusted basis of the shareholder's stock as determined under G.S. 105-131.3.

(2) The accumulated adjustments account maintained for each resident shareholder must be equal to, and adjusted in the same manner as, the corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the Code, except that:

a. The accumulated adjustments account shall be modified in the manner provided in G.S. 105-131.3(b)(1).

b. The amount of the corporation's federal accumulated adjustments account that existed on the day this State began to measure the S Corporation shareholders' income by reference to the income of the S Corporation is ignored and is treated for purposes of this Article as additional accumulated earnings and profits of the corporation. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1998-98, s. 6.)

§ 105-131.7. Returns; shareholder agreements; mandatory withholding.

(a) An S Corporation incorporated or doing business in the State shall file with the Department an annual return, on a form prescribed by the Secretary, on or before the due date prescribed for the filing of C Corporation returns in G.S. 105-130.17. The return shall show the name, address, and social security or federal identification number of each shareholder, income attributable to the State and the income not attributable to the State with respect to each shareholder as defined in G.S. 105-131(b)(4) and (5), and such other information as the Secretary may require.

(b) The Department shall permit S Corporations to file composite returns and to make composite payments of tax on behalf of some or all nonresident shareholders. The Department may permit S Corporations to file composite returns and make composite payments of tax on behalf of some or all resident shareholders.

(c) An S Corporation shall file with the Department, on a form prescribed by the Secretary, the agreement of each nonresident shareholder of the corporation (i) to file a return and make timely payment of all taxes imposed by this State on the shareholder with respect to the income of the S Corporation, and (ii) to be subject to personal jurisdiction in this State for purposes of the collection of any unpaid income tax, together with related interest and penalties, owed by the nonresident shareholder. If the corporation fails to timely file an agreement required by this subsection on behalf of any of its nonresident shareholders, then the corporation shall at the time specified in subsection (d) of this section pay to the Department on behalf of each nonresident shareholder with respect to whom an agreement has not been timely filed an estimated amount of the tax due the State. The estimated amount of tax due the State shall be computed at the rate levied

in G.S. 105-153.7 on the shareholder's pro rata share of the S Corporation's income attributable to the State reflected on the corporation's return for the taxable period. An S Corporation may recover a payment made pursuant to the preceding sentence from the shareholder on whose behalf the payment was made.

(d) The agreements required to be filed pursuant to subsection (c) of this section shall be filed at the following times:

(1) At the time the annual return is required to be filed for the first taxable period for which the S Corporation becomes subject to the provisions of this Part.

(2) At the time the annual return is required to be filed for any taxable period in which the corporation has a nonresident shareholder on whose behalf such an agreement has not been previously filed.

(e) Amounts paid to the Department on account of the corporation's shareholders under subsections (b) and (c) constitute payments on their behalf of the income tax imposed on them under Parts 2 and 3 of this Article for the taxable period.

(f) Critical Infrastructure Disaster Relief. —An S Corporation that is not doing business in this State because it is a nonresident business performing disaster-related work during a disaster response period at the request of a critical infrastructure company is not required to file a return with the Department. However, the corporation must furnish to each shareholder who would be entitled to share in the corporation income any information necessary for that person to properly file a State income tax return. The definitions and provisions in G.S. 166A-19.70A concerning disaster-related work apply to this subsection.

(g) **(Effective for taxable years beginning on or after January 1, 2022)** Taxed S Corporation. – Subsections (b) through (f) of this section do not apply to an S Corporation with respect to any taxable period for which it is a taxed S Corporation under G.S. 105-131.1A. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1991, c. 689, s. 301; 1998-98, s. 7; 1999-337, s. 24; 2013-316, s. 1.3(b); 2017-204, s. 1.8; 2019-187, s. 1(h); 2021-180, s. 42.5(d).)

§ 105-131.8. (Effective for taxable years beginning before January 1, 2022) Tax credits.

(a) For purposes of G.S. 105-153.9 and G.S. 105-160.4, each resident shareholder is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state that does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) Except as otherwise provided in G.S. 105-160.3, each shareholder of an S Corporation is allowed as a credit against the tax imposed by Parts 2 and 3 of this Article an amount equal to the shareholder's pro rata share of the tax credits for which the S Corporation is eligible. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1991, c. 45, s. 7; 1998-98, s. 8; 2020-58, s. 4.1.)

§ 105-131.8. (Effective for taxable years beginning on or after January 1, 2022) Tax credits.

(a) Except as otherwise provided in G.S. 105-153.9(a)(4) with respect to a taxed S Corporation, for purposes of G.S. 105-153.9 and G.S. 105-160.4, each resident shareholder is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state that does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the

preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) Except as otherwise provided in G.S. 105-160.3, each shareholder of an S Corporation is allowed as a credit against the tax imposed by Parts 2 and 3 of this Article an amount equal to the shareholder's pro rata share of the tax credits for which the S Corporation is eligible. (1987 (Reg. Sess., 1988), c. 1089, s. 1; 1989, c. 728, ss. 1.33, 1.35; 1991, c. 45, s. 7; 1998-98, s. 8; 2020-58, s. 4.1; 2021-180, s. 42.5(e).)

§ 105-132: Recodified as § 105-135 by Session Laws 1967, c. 1110, s. 3.

Part 2. Individual Income Tax.

§ 105-133. (Recodified for taxable years beginning on or after January 1, 2014 – see editor's note) Short title.

This Part of the income tax Article shall be known as the Individual Income Tax Act. (1967, c. 1110, s. 3; 1989, c. 728, s. 1.1; 1998-98, ss. 44, 68.)

§ 105-134. (Recodified for taxable years beginning on or after January 1, 2014 – see editor's note) Purpose.

The general purpose of this Part is to impose a tax for the use of the State government upon the taxable income collectible annually:

(1) Of every resident of this State.

(2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property in this State, deriving income from a business, trade, profession, or occupation carried on in this State, or deriving income from gambling activities in this State. (1939, c. 158, s. 301; 1967, c. 1110, s. 3; 1989, c. 728, s. 1.2; 1998-98, s. 69; 2005-276, s. 31.1(dd), (jj); 2005-344, s. 10.3; 2006-259, s. 8(j); 2006-264, s. 91(a).)

§ 105-134.1: Recodified as G.S. 105-153.3 by Session Laws 2013-316, s. 1.1(a), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.2: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.2A: Expired pursuant to its own terms, effective for taxable years beginning on or after January 1, 2011.

§ 105-134.3: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.4: Repealed by Session Laws 2011-145, s. 31A.1(d), effective for taxable years beginning on or after January 1, 2012.

§ 105-134.5: Recodified as G.S. 105-153.4 by Session Laws 2013-316, s. 1.1(a), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.6: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.6A: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.7: Repealed by Session Laws 2013-414, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-134.8: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§§ 105-135 through 105-149: Repealed by Session Laws 1989, c. 728, s. 1.3.

§ 105-150. Repealed by Session Laws 1973, c. 1287, s. 5.

§ 105-151. (Recodified effective for taxable years beginning on or after January 1, 2014) Tax credits for income taxes paid to other states by individuals.

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this Part for income taxes imposed by and paid to another state or country on income taxed under this Part, subject to the following conditions:

(1) The credit is allowed only for taxes paid to another state or country on income derived from sources within that state or country that is taxed under its laws irrespective of the residence or domicile of the recipient, except that whenever a taxpayer who is deemed to be a resident of this State under the provisions of this Part is deemed also to be a resident of another state or country under the laws of that state or country, the Secretary may allow a credit against the taxes imposed by this Part for taxes imposed by and paid to the other state or country on income taxed under this Part.

(2) The fraction of the gross income, as calculated under the Code and adjusted as provided in G.S. 105-134.6 and G.S. 105-134.6A, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed shall be filed with the Secretary when the credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded is due and payable from the

taxpayer and is subject to the penalties and interest provided in Subchapter I of this Chapter. (1939, c. 158, s. 325; 1941, c. 50, s. 5; c. 204, s. 1; 1943, c. 400, s. 4; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1989, c. 728, s. 1.5; 1989 (Reg. Sess., 1990), c. 814, s. 17; 1998-98, s. 92; 2013-316, s. 1.1(a); 2013-414, s. 5(b).)

§ 105-151.1: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.2. Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-151.3. Repealed by Session Laws 1983 (Regular Session 1984), c. 1004, s. 2.

§ 105-151.4: Repealed by Session Laws 1989, c. 728, s. 1.8.

§ 105-151.5. Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105-151.6: Expired.

§ 105-151.6A: Repealed by Session Laws 1989, c. 728, s. 1.11.

§§ 105-151.7 through 105-151.10: Repealed by Session Laws 1999-342, s. 1, effective for taxable years beginning on or after January 1, 2000.

§ 105 151.11. Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.12. (Recodified.)

Reenacted and recodified as G.S. 105-153.11, effective for taxable years beginning on or after January 1, 2025, for donations made on or after January 1, 2025, and expires for taxable years beginning on or after January 1, 2027, for donations made on or after January 1, 2027.

§§ 105-151.13, 105-151.14. Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.14: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.15: Repealed by Session Laws 1996, 2nd Extra Session, c. 14, s. 1.

§ 105-151.16: Repealed by Session Laws 1989, c. 728, s. 1.21.

§ 105-151.17: Recodified as § 105-129.8 by Session Laws 1996, 2nd Extra Session, c. 13, s. 3.4.

§ 105-151.18: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.19: Repealed by Session Laws 1996, 2nd Extra Session, c. 14, s. 2.

§ 105-151.20: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.21: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.22: Repealed pursuant to former subsection (d) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-151.23: Recodified as §§ 105-129.35 through 105-129.37 by Session Laws 1999-389, s. 6, effective for taxable years beginning on or after January 1, 1999.

§ 105-151.24: Recodified as G.S. 105-153.10 by Session Laws 2013-316, s. 1.1(a), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.25: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.26: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-151.27: Repealed by Session Laws 2001-424, s. 34.21(a), effective for taxable years beginning on or after January 1, 2001.

§ 105-151.28: Repealed pursuant to former subsection (d) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-151.29: Repealed pursuant to former subsection (k) of this section, effective for qualifying expenses occurring on or after January 1, 2015.

§ 105-151.30: Repealed pursuant to former subsection (d) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-151.31: Repealed pursuant to former subsection (c) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-151.32: Repealed pursuant to former subsection (c) of this section, effective for taxable years beginning on or after January 1, 2014.

§ 105-151.33: Repealed by Session Laws 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014.

§ 105-152: Recodifed as G.S. 105-153.8 by Session Laws 2013-316, s. 1.1.(a) effective for taxable years beginning on or after January 1, 2014.

§ 105-152.1: Repealed by Session Laws 1991 (Regular Session, 1992), c. 930, s. 12.

§ 105-153. Repealed by Session Laws 1967, c. 1110, s. 3.

§ 105-153.1. Short title.

This Part of the income tax Article shall be known as the Individual Income Tax Act. (1967, c. 1110, s. 3; 1989, c. 728, s. 1.1; 1998-98, ss. 44, 68; 2013-316, s. 1.1(a).)

§ 105-153.2. Purpose.

The general purpose of this Part is to impose a tax for the use of the State government upon the taxable income collectible annually:

(1) Of every resident of this State.

(2) Of every nonresident individual deriving income from North Carolina sources attributable to the ownership of any interest in real or tangible personal property in this State, deriving income from a business, trade, profession, or occupation carried on in this State, or deriving income from gambling activities in this State. This subdivision does not apply to a nonresident business or a nonresident employee who solely derives income from North Carolina sources attributable to a business, trade, profession, or occupation carried on in this State to perform disaster-related work during a disaster response period at the request of a critical infrastructure company. The definitions and provisions in G.S. 166A-19.70A apply to this subdivision. (1939, c. 158, s. 301; 1967, c. 1110, s. 3; 1989, c. 728, s. 1.2; 1998-98, s. 69; 2005-276, s. 31.1(dd), (jj); 2005-344, s. 10.3; 2006-259, s. 8(j); 2006-264, s. 91(a); 2013-316, s. 1.1(a); 2019-187, s. 1(j).)

§ 105-153.3. Definitions.

The following definitions apply in this Part:

(1) Adjusted gross income. – Defined in section 62 of the Code.

(2) Code. – Defined in G.S. 105-228.90.

(3) Department. – The Department of Revenue.

(4) Educational institution. – An educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(5) Fiscal year. – Defined in section 441(e) of the Code.

(6) Gross income. – Defined in section 61 of the Code.

(6a) Guaranteed payments. – Defined in section 707(c) of the Code.

(7) Head of household. – Defined in section 2(b) of the Code.

(7a) **(Effective for taxable years beginning on or after January 1, 2023.)** Income attributable to the State. – Either of the following:

a. With respect to a partnership, all items of income, loss, deduction, or credit of the partnership apportioned and allocated to this State pursuant to G.S. 105-130.4.
b. With respect to an S Corporation, as defined in G.S. 105-131(b)(4).

(7b) **(Effective for taxable years beginning on or after January 1, 2023.)** Income not attributable to the State. – Either of the following:
a. With respect to a partnership, all items of income, loss, deduction, or credit of the partnership other than income attributable to the State.
b. With respect to an S Corporation, as defined in G.S. 105-131(b)(5).

(8) Individual. – A human being.

(9) Limited liability company. – Either a domestic limited liability company organized under Chapter 57D of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a partnership. As applied to a limited liability company that is a partnership under this Part, the term "partner" means a member of the limited liability company.

(10) Married individual. – An individual who is married and is considered married as provided in section 7703 of the Code.

(11) Nonresident individual. – An individual who is not a resident of this State.

(12) North Carolina taxable income. – Defined in G.S. 105-153.4.

(13) Partnership. – A domestic partnership, a foreign partnership, or a limited liability company.

(14) Person. – Defined in G.S. 105-228.90.

(15) Resident. – An individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the State for more than 183 days raises no presumption that the individual is not a resident. A resident who removes from the State during a taxable year is considered a resident until he has both established a definite domicile elsewhere and abandoned any domicile in this State. The fact of marriage does not raise any presumption as to domicile or residence.

(16) S Corporation. – Defined in G.S. 105-131(b).

(17) Secretary. – The Secretary of Revenue.

(17a) Surviving spouse. – Defined in section 2(a) of the Code.

(18) Taxable year. – Defined in section 441(b) of the Code.

(18a) **(Effective for taxable years beginning on or after January 1, 2022)** Taxed partnership. – A partnership for which a valid election under G.S. 105-154.1 is in effect.

(18b) **(Effective for taxable years beginning on or after January 1, 2022)** Taxed pass-through entity. – A taxed S Corporation or a taxed partnership.

(18c) **(Effective for taxable years beginning on or after January 1, 2022)** Taxed S Corporation. – Defined in G.S. 105-131(b).

(19) Taxpayer. – An individual subject to the tax imposed by this Part.

(20) This State. – The State of North Carolina. (1989, c. 728, s. 1.4; c. 792, s. 1.2; 1989 (Reg. Sess., 1990), c. 814, s. 15; c. 981, s. 5; 1991, c. 689, s. 252; 1991 (Reg. Sess., 1992), c. 922, s. 6; 1993, c. 12, s. 7; c. 354, s. 13; 1996, 2nd Ex. Sess., c. 13, s. 8.2; 1998-98, ss. 9, 69; 2011-145, s. 31A.1(a); 2011-330, s. 12(a); 2013-157, s. 28; 2013-316, s. 1.1(a), (c); 2013-414, s. 58(c); 2015-6, s. 2.20(a); 2017-204, s. 1.9(a), (b); 2021-180, s. 42.5(f); 2024-28, s. 1.2(a).)

§ 105-153.4. North Carolina taxable income defined.

(a) Residents. – For an individual who is a resident of this State, the term "North Carolina taxable income" means the taxpayer's adjusted gross income as modified in G.S. 105-153.5 and G.S. 105-153.6.

(b) Nonresidents. – For a nonresident individual, the term "North Carolina taxable income" means the taxpayer's adjusted gross income as modified in G.S. 105-153.5 and G.S. 105-153.6, multiplied by a fraction the denominator of which is the taxpayer's gross income as modified in G.S. 105-153.5 and G.S. 105-153.6, and the numerator of which is the amount of that gross income, as modified, that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from gambling activities in this State.

(c) Part-year Residents. – If an individual was a resident of this State for only part of the taxable year, having moved into or removed from the State during the year, the term "North Carolina taxable income" has the same meaning as in subsection (b) of this section except that the numerator includes gross income, as modified under G.S. 105-153.5 and G.S. 105-153.6, derived from all sources during the period the individual was a resident.

(d) S Corporations and Partnerships. – In order to calculate the numerator of the fraction provided in subsection (b) of this section, the amount of a shareholder's pro rata share of S Corporation income, as modified in G.S. 105-153.5 and G.S. 105-153.6, that is includable in the numerator is the shareholder's pro rata share of the S Corporation's income attributable to the State, as defined in G.S. 105-131(b)(4). In order to calculate the numerator of the fraction provided in subsection (b) of this section for a partner in a partnership or a member of another unincorporated business that has one or more nonresident partners or members and operates in one or more other states, the amount of the partner's or member's distributive share of the total net income of the business, as modified in G.S. 105-153.5 and G.S. 105-153.6, plus any guaranteed payments made to a partner from the partnership that is includable in the numerator is determined in accordance with the provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Code that were incurred in the operation of the business.

(d1) Sole Proprietorships. – In order to calculate the numerator of the fraction provided in subsection (b) of this section for an individual that operates a business in one or more other states, the amount of an individual's total net income of the business, as modified in G.S. 105-153.5 and G.S. 105-153.6, that is includable in the numerator is determined in accordance with the provisions of G.S. 105-130.4. As used in this subsection, total net income means the entire gross income of the business less all expenses, taxes, interest, and other deductions allowable under the Code that were incurred in the operation of the business.

(e) Tax Year. – A taxpayer must compute North Carolina taxable income on the basis of the taxable year used in computing the taxpayer's income tax liability under the Code. (1989, c. 728, s.

1.4; 1995, c. 17, s. 4; 2005-276, s. 31.1(aa); 2005-344, s. 10.4; 2011-145, s. 31A.1(b); 2012-79, s. 1.2; 2013-414, s. 55; 2013-316, ss. 1.1(a), 1.3(c); 2015-6, s. 2.22(a); 2017-204, s. 1.9(c), (d); 2023-12, s. 1.3.)

§ 105-153.5. Modifications to adjusted gross income.

(a) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct from adjusted gross income either the standard deduction amount provided in subdivision (1) of this subsection or the itemized deduction amount provided in subdivision (2) of this subsection. The deduction amounts are as follows:

(1) **(Effective for taxable years beginning on or after January 1, 2020, and before January 1, 2022)** Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

Filing Status	**Standard Deduction**
Married, filing jointly/surviving spouse	$21,500
Head of Household	16,125
Single	10,750
Married, filing separately	10,750.

(1) **(Effective for taxable years beginning on or after January 1, 2022)** Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under section 63 of the Code. For all other taxpayers, the standard deduction amount is equal to the amount listed in the table below based on the taxpayer's filing status:

Filing Status	**Standard Deduction**
Married, filing jointly/surviving spouse	$25,500
Head of Household	19,125
Single	12,750
Married, filing separately	12,750.

(2) Itemized deduction amount. – An amount equal to the sum of the items listed in this subdivision. The amounts allowed under this subdivision are not subject to the overall limitation on itemized deductions under section 68 of the Code:

a. Charitable Contribution. – The amount allowed as a deduction for charitable contributions under section 170 of the Code for that taxable year, subject to the following provisions:

1. Distributions from IRAs. – For taxable years 2014 through 2018, a taxpayer who elected to take the income exclusion under section 408(d)(8) of the Code for a qualified charitable distribution from an individual retirement plan by a person who has attained the age of 70 ½ may deduct the amount that would have been allowed as a charitable deduction under section 170 of the Code had the taxpayer not elected to take the income exclusion.

2. Charitable Giving During COVID-19. – For taxable years 2020 and 2021, notwithstanding G.S. 105-228.90(b)(7) and for

purposes of this sub-sub-subdivision, the term "Code" means the Internal Revenue Code as enacted as of January 1, 2020. For taxable years beginning on or after January 1, 2021, a taxpayer may only carry forward the charitable contributions from taxable years 2020 and 2021 that exceed the applicable percentage limitation for the 2020 and 2021 taxable years allowed under this sub-sub-subdivision. The purpose for defining the Internal Revenue Code differently for the 2020 and 2021 taxable years is to decouple from the modification of limitations on charitable contributions allowed under section 2205 of the CARES Act and section 213 of the Consolidated Appropriations Act, 2021.

b. Mortgage Expense and Property Tax. – The amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence plus the amount allowed as a deduction for property taxes paid or accrued on real estate under section 164 of the Code for that taxable year. For taxable years 2014 through 2021, the amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence shall not include the amount for mortgage insurance premiums treated as qualified residence interest. The amount allowed under this sub-subdivision may not exceed twenty thousand dollars ($20,000). For spouses filing as married filing separately or married filing jointly, the total mortgage interest and real estate taxes claimed by both spouses combined may not exceed twenty thousand dollars ($20,000). For spouses filing as married filing separately with a joint obligation for mortgage interest and real estate taxes, the deduction for these items is allowable to the spouse who actually paid them. If the amount of the mortgage interest and real estate taxes paid by both spouses exceeds twenty thousand dollars ($20,000), these deductions must be prorated based on the percentage paid by each spouse. For joint obligations paid from joint accounts, the proration is based on the income reported by each spouse for that taxable year.

c. Medical and Dental Expense. – The amount allowed as a deduction for medical and dental expenses under section 213 of the Code for that taxable year.

d. Repayment in the current taxable year of an amount included in adjusted gross income in an earlier taxable year because it appeared that the taxpayer had an unrestricted right to such item, to the extent the repayment is not deducted in arriving at adjusted gross income in the current taxable year. If the repayment is three thousand dollars ($3,000) or less, the deduction is the amount of repayment less (i) the limitation provided under section 67(a) of the Code minus (ii) all other items deductible under section 67(b) of the Code, not to exceed the limitation provided under section 67(a) of the Code. If the repayment is more than three thousand dollars ($3,000), the deduction is the amount of

repayment. No deduction is allowed if the taxpayer calculates the federal income tax for the year of repayment under section 1341(a)(5) of the Code.

(a1) **(Effective for taxable years beginning before January 1, 2022)** Child Deduction Amount. – A taxpayer who is allowed a federal child tax credit under section 24 of the Code for the taxable year is allowed a deduction under this subsection for each qualifying child for whom the taxpayer is allowed the federal tax credit. The amount of the deduction is equal to the amount listed in the table below based on the taxpayer's adjusted gross income, as calculated under the Code:

Filing Status	**Agi**	**Deduction Amount**
Married, filing jointly/ surviving spouse	Up to $40,000	$2,500.00
	Over $40,000	
	Up to $60,000	2,000.00
	Over $60,000	
	Up to $80,000	1,500.00
	Over $80,000	
	Up to $100,000	1,000.00
	Over $100,000	
	Up to $120,000	500.00
	Over $120,000	0
Head of Household	Up to $30,000	$2,500.00
	Over $30,000	
	Up to $45,000	2,000.00
	Over $45,000	
	Up to $60,000	1,500.00
	Over $60,000	
	Up to $75,000	1,000.00
	Over $75,000	
	Up to $90,000	500.00
	Over $90,000	0
Single	Up to $20,000	$2,500.00
	Over $20,000	
	Up to $30,000	2,000.00
	Over $30,000	
	Up to $40,000	1,500.00
	Over $40,000	
	Up to $50,000	1,000.00
	Over $50,000	
	Up to $60,000	500.00
	Over $60,000	0
Married, filing separately	Up to $20,000	$2,500.00
	Over $20,000	
	Up to $30,000	2,000.00
	Over $30,000	
	Up to $40,000	1,500.00
	Over $40,000	

	Up to $50,000	1,000.00
	Over $50,000	
	Up to $60,000	500.00
	Over $60,000	0.

(a1) **(Effective for taxable years beginning on or after January 1, 2022)** Child Deduction Amount. – A taxpayer who is allowed a federal child tax credit under section 24 of the Code for the taxable year is allowed a deduction under this subsection for each qualifying child for whom the taxpayer is allowed the federal tax credit. The amount of the deduction is equal to the amount listed in the table below based on the taxpayer's adjusted gross income, as calculated under the Code:

Filing Status	**Agi**	**Deduction Amount**
Married, filing jointly/	Up to $40,000	$3,000
surviving spouse	Over $40,000	
	Up to $60,000	2,500
	Over $60,000	
	Up to $80,000	2,000
	Over $80,000	
	Up to $100,000	1,500
	Over $100,000	
	Up to $120,000	1,000
	Over $120,000	
	Up to $140,000	500.00
	Over $140,000	0
Head of Household	Up to $30,000	$3,000
	Over $30,000	
	Up to $45,000	2,500
	Over $45,000	
	Up to $60,000	2,000
	Over $60,000	
	Up to $75,000	1,500
	Over $75,000	
	Up to $90,000	1,000
	Over $90,000	
	Up to $105,000	500.00
	Over $105,000	0
Single	Up to $20,000	$3,000
	Over $20,000	
	Up to $30,000	2,500
	Over $30,000	
	Up to $40,000	2,000
	Over $40,000	
	Up to $50,000	1,500
	Over $50,000	
	Up to $60,000	1,000
	Over $60,000	
	Up to $70,000	500.00
	Over $70,000	0

Married, filing separately	Up to $20,000	$3,000
	Over $20,000	
	Up to $30,000	2,500
	Over $30,000	
	Up to $40,000	2,000
	Over $40,000	
	Up to $50,000	1,500
	Over $50,000	
	Up to $60,000	1,000
Over $60,000		
	Up to $70,000	500.00
	Over $70,000	0.

(b) Other Deductions. – In calculating North Carolina taxable income, a taxpayer may deduct from the taxpayer's adjusted gross income any of the following items that are included in the taxpayer's adjusted gross income:

(1) Interest upon the obligations of any of the following:
   a. The United States or its possessions.
   b. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.
   c. A nonprofit educational institution organized or chartered under the laws of this State.
   d. A hospital authority created under G.S. 131E-17.

(2) Gain from the disposition of obligations issued before July 1, 1995, to the extent the gain is exempt from tax under the laws of this State.

(3) Benefits received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.

(4) Refunds of State, local, and foreign income taxes included in the taxpayer's gross income.

(5) The amount received during the taxable year from one or more State, local, or federal government retirement plans to the extent the amount is exempt from tax under this Part pursuant to a court order in settlement of any of the following cases:
   a. Bailey v. State, 92 cvs 10221, 94 cvs 6904, 95 cvs 6625, 95 cvs 8230.
   b. Emory v. State, 98 CVS 0738.
   c. Patton v. State, 95 CVS 04346.

(5a) **(Effective for taxable years beginning on or after January 1, 2021 and before January 1, 2022)** The amount received during the taxable year from the United States government for the payments listed in this subdivision. Amounts deducted under this subdivision may not also be deducted under subdivision (5) of this subsection. The payments are:
   a. Retirement pay for service in the Armed Forces of the United States to a retired member that meets either of the following:
      1. Served at least 20 years.

2. Medically retired under 10 U.S.C. Chapter 61. This deduction does not apply to severance pay received by a member due to separation from the member's armed forces.

b. Payments of a Plan defined in 10 U.S.C. § 1447 to a beneficiary of a retired member eligible to deduct retirement pay under sub-subdivision a. of this subdivision.

(5a) **(Effective for taxable years beginning on or after January 1, 2022)** The amount received during the taxable year from the United States government for the payments listed in this subdivision. Amounts deducted under this subdivision may not also be deducted under subdivision (5) of this subsection. The payments are:

a. Retirement pay for service in the uniformed services of the United States to a retired member that meets either of the criteria listed in this sub-subdivision. For purposes of this sub-subdivision, the term "uniformed services" has the same meaning as in 10 U.S.C. § 101(a)(5). The criteria are:

1. Served at least 20 years in the uniformed services.
2. Medically retired under 10 U.S.C. Chapter 61. This deduction does not apply to severance pay received by a person due to separation under 10 U.S.C. Chapter 61.

b. Payments of a Plan defined in 10 U.S.C. § 1447 to a beneficiary of a retired member eligible to deduct retirement pay under sub-subdivision a. of this subdivision.

(6) Income that meets both of the following requirements:

a. Is earned or received by an enrolled member of a federally recognized Indian tribe.

b. Is derived from activities on a federally recognized Indian reservation while the member resides on the reservation. Income from intangibles having a situs on the reservation and retirement income associated with activities on the reservation are considered income derived from activities on the reservation.

(7) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property.

(8) The amount allowed as a deduction under G.S. 105-153.6 as a result of an add-back for federal accelerated depreciation and expensing.

(9) Expired.

(10) Repealed by Session Laws 2020-58, s. 4.2, effective June 30, 2020.

(11) The amount by which the deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the taxpayer claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this Chapter for the amount.

(11a) **(Effective retroactively for taxable years beginning on or after January 1, 2020.)** The amount by which the deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the taxpayer claimed a federal employee retention tax credit against

employment taxes in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this Chapter for the amount.

(12) **(Applicable to taxable years beginning before January 1, 2022)** The amount deposited during the taxable year to a personal education savings account under Article 41 of Chapter 115C of the General Statutes.

(12) **(Applicable to taxable years beginning on or after January 1, 2022)** The amount deposited during the taxable year to a personal education student account under Article 41 of Chapter 115C of the General Statutes.

(13) The amount paid to the taxpayer during the taxable year from the State Emergency Response and Disaster Relief Reserve Fund for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.

(14) The amount received by a taxpayer as an economic incentive pursuant to G.S. 143B-437.012 or Part 2G or Part 2H of Article 10 of Chapter 143B of the General Statutes.

(14a) **(Effective for taxable years beginning on or after January 1, 2020, and applicable to amounts received by a taxpayer on or after that date)** The amount received by a taxpayer for one or more of the following:

a. The Business Recovery Grant Program.

b. The ReTOOLNC grant program for recovery from the economic impacts of the COVID-19 pandemic.

c. Rent and utility assistance pursuant to Section 3.3 of S.L. 2020-4, as amended by Section 1.2 of S.L. 2020-97.

(15) **(Effective for taxable years beginning on or after January 1, 2021 and expiring for taxable years beginning on or after January 1, 2022)** The amount granted to the taxpayer during the taxable year under the Extra Credit grant program. This subdivision expires for taxable years beginning on or after January 1, 2022.

(16) **(Effective for taxable years beginning on or after January 1, 2022)** A State net operating loss as allowed under G.S. 105-153.5A.

(c) Additions. – In calculating North Carolina taxable income, a taxpayer must add to the taxpayer's adjusted gross income any of the following items that are not included in the taxpayer's adjusted gross income:

(1) Interest upon the obligations of states other than this State, political subdivisions of those states, and agencies of those states and their political subdivisions.

(2) The amount by which a shareholder's share of S Corporation income is reduced under section 1366(f)(2) of the Code for the taxable year by the amount of built-in gains tax imposed on the S Corporation under section 1374 of the Code.

(3) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.

(4) Repealed by Session Laws 2018-5, s. 38.1(f), effective for taxable years beginning on or after January 1, 2018.

(5) The amount required to be added under G.S. 105-153.6 when the State decouples from federal accelerated depreciation and expensing.

(6) **(Effective for taxable years beginning before January 1, 2022)** The amount of net operating loss carried to and deducted on the federal return but not absorbed in that year and carried forward to a subsequent year.

(6) **(Effective for taxable years beginning on or after January 1, 2022)** Any amount allowed as a net operating loss deduction under the Code.

(7) The amount deducted in a prior taxable year to the extent this amount was withdrawn from the Parental Savings Trust Fund of the State Education Assistance Authority established pursuant to G.S. 116-209.25 and not used to pay for education expenses of the designated beneficiary as permitted under section 529 of the Code, unless the withdrawal meets at least one of the following conditions:

a. The withdrawal was not subject to the additional tax imposed by section 529(c)(6) of the Code.

b. The withdrawal was rolled over to an ABLE account as defined in G.S. 147-86.70(b).

(c1) Other Additions. – S Corporations subject to the provisions of Part 1A of this Article, partnerships subject to the provisions of this Part, and estates and trusts subject to the provisions of Part 3 of this Article must add any amount deducted under section 164 of the Code as state, local, or foreign income tax.

(c2) Decoupling Adjustments. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

(1) For taxable years 2014 through 2025, the taxpayer must add the amount excluded from the taxpayer's gross income for the discharge of qualified principal residence indebtedness under section 108 of the Code. The purpose of this subdivision is to decouple from the income exclusion available under federal tax law. If the taxpayer is insolvent, as defined in section 108(d)(3) of the Code, then the addition required under this subdivision is limited to the amount of discharge of qualified principal residence indebtedness excluded from adjusted gross income under section 108(a)(1)(E) of the Code that exceeds the amount of discharge of indebtedness that would have been excluded under section 108(a)(1)(B) of the Code.

(2) For taxable years 2014 through 2020, the taxpayer must add the amount of the taxpayer's deduction for qualified tuition and related expenses under section 222 of the Code. The purpose of this subdivision is to decouple from the above-the-line deduction available under federal tax law.

(3) For taxable years 2014 through 2018, the taxpayer must add the amount excluded from the taxpayer's gross income for a qualified charitable distribution from an individual retirement plan by a person who has attained age 70 ½ under section 408(d)(8) of the Code. The purpose of this subdivision is to decouple from the income exclusion available under federal tax law.

(4) For taxable years prior to 2014, the taxpayer must add the amount excluded from the taxpayer's gross income for amounts received by a wrongfully incarcerated individual under section 139F of the Code for which the taxpayer took a deduction under former G.S. 105-134.6(b)(14). The purpose of this subdivision is to prevent a double benefit where federal tax law provides an

income exclusion for income for which the State previously provided a deduction.

(5) The taxpayer must add the amount of gain that would be included for federal income tax purposes without regard to section 1400Z-2(a) of the Code. The adjustment made in this subsection does not result in a difference in basis of the affected assets for State and federal income tax purposes. The purpose of this subdivision is to decouple from the deferral of gains reinvested into an Opportunity Fund available under federal law.

(6) The taxpayer may deduct the amount of gain included in the taxpayer's adjusted gross income under section 1400Z-2(a) of the Code to the extent the same income was included in the taxpayer's North Carolina taxable income in a prior taxable year under subdivision (5) of this subsection. The purpose of this subdivision is to prevent double taxation of income the taxpayer was previously required to include in the calculation of North Carolina taxable income.

(7) The taxpayer must add the amount of gain that would be included in the taxpayer's adjusted gross income but for the step-up in basis under section 1400Z-2(c) of the Code. The purpose of this subdivision is to decouple from the exclusion of gains from the sale or exchange of an investment in an Opportunity Fund available under federal law.

(8) For taxable years 2013, 2014, 2015, 2016, or 2017, the taxpayer must add the amount of any 2018 net operating loss deducted and absorbed on a federal return under section 172 of the Code. The purpose of the adjustments made under this subdivision is to decouple from the net operating loss carryback provisions of section 2303 of the CARES Act. The addition under this subdivision is not required to the extent the 2018 net operating loss is carried back under the provisions of section 172(b)(1)(B) of the Code.

(9) For taxable years 2014, 2015, 2016, 2017, or 2018, the taxpayer must add the amount of any 2019 net operating loss deducted and absorbed on a federal return under section 172 of the Code. The purpose of the adjustments made under this subdivision is to decouple from the net operating loss carryback provisions of section 2303 of the CARES Act. The addition under this subdivision is not required to the extent the 2019 net operating loss is carried back under the provisions of section 172(b)(1)(B) of the Code.

(10) For taxable years 2015, 2016, 2017, 2018, or 2019, the taxpayer must add the amount of any 2020 net operating loss deducted and absorbed on a federal return under section 172 of the Code. The purpose of the adjustments made under this subdivision is to decouple from the net operating loss carryback provisions of section 2303 of the CARES Act. The addition under this subdivision is not required to the extent the 2020 net operating loss is carried back under the provisions of section 172(b)(1)(B) of the Code.

(11) For taxable years 2013, 2014, 2015, 2016, 2017, 2018, or 2019, the taxpayer must add the amount of any 2018, 2019, or 2020 net operating loss carried back and deducted on a federal return pursuant to section 2303(b) of the CARES Act but not absorbed in that year and carried forward to a subsequent year. The addition under this subdivision is not required to the extent an addition is required under G.S. 105-153.5(c)(6). The purpose of the adjustments made

under this subdivision is to decouple from the net operating loss carryback provision of section 2303 of the CARES Act.

(12) For taxable years 2018, 2019, and 2020, the taxpayer must add an amount equal to the taxpayer's excess business loss, as defined under the provisions of section 461(*l*) of the Internal Revenue Code as enacted as of January 1, 2019. The addition under this subdivision is not required to the extent the loss is added under subdivision (8), (9), or (10) of this subsection.

(13) The taxpayer must add the amount by which the taxpayer's net operating loss carryforward deduction exceeds the amount allowed under the provisions of section 172(a)(2)(B) of the Internal Revenue Code as enacted as of January 1, 2019. This add-back only applies to net operating losses arising during taxable years 2018, 2019, and 2020.

(14) For taxable years 2021 through 2025, a taxpayer who made an addition under subdivision (8), (9), or (10) of this subsection may deduct twenty percent (20%) per tax year of the sum of the amount added under subdivisions (8), (9), and (10) of this subsection.

(15) A taxpayer who made an addition under subdivision (12) of this subsection may deduct twenty percent (20%) of the addition in each of the taxable years 2021 through 2025.

(16) A taxpayer who made an addition under subdivision (13) of this subsection may deduct twenty percent (20%) of the add-back in each of the taxable years 2021 through 2025.

(17) For taxable years 2019 and 2020, a taxpayer must add an amount equal to the amount by which the taxpayer's interest expense deduction under section 163(j) of the Code exceeds the interest expense deduction that would have been allowed under the Internal Revenue Code as enacted as of January 1, 2020. An add-back under this subdivision is not required to the extent the amount was required to be added back under another provision of this subsection. The purpose of this subdivision is to decouple from the modification of limitation on business interest allowed under section 2306 of the CARES Act.

(17a) A taxpayer who made an addition under subdivision (17) of this subsection may deduct twenty percent (20%) of the addition in each of the first five taxable years beginning with tax year 2021.

(18) For taxable years 2020 through 2025, a taxpayer must add the amount excluded from the taxpayer's gross income for payment by an employer, whether paid to the taxpayer or to a lender, of principal or interest on any qualified education loan, as defined in section 221(d)(1) of the Code, incurred by the taxpayer for education of the taxpayer. The purpose of this subdivision is to decouple from the exclusion for certain employer payments of student loans under section 2206 of the CARES Act or under the Consolidated Appropriations Act, 2021.

(19) For taxable year 2020, a taxpayer must add the amount excluded from the taxpayer's gross income under section 62(a)(22) of the Code. The purpose of this subdivision is to decouple from the allowance of a partial above-the-line deduction of qualified charitable contributions under section 2204 of the CARES Act.

(20) For taxable years beginning on or after January 1, 2023, a taxpayer must add the amount of any expense deducted under the Code to the extent the expense is allocable to income that is either wholly excluded from gross income or wholly exempt from the taxes imposed by this Part.

(21) For taxable years 2021 and 2022, a taxpayer must add an amount equal to the amount by which the taxpayer's deduction under section 274(n) of the Code exceeds the deduction that would have been allowed under the Internal Revenue Code as enacted as of May 1, 2020. The purpose of this subdivision is to decouple from the increased deduction under the Consolidated Appropriations Act, 2021, for business-related expenses for food and beverages provided by a restaurant.

(22) **(Effective for taxable years beginning before January 1, 2021)** For taxable years 2021 through 2025, a taxpayer must add the amount excluded from the taxpayer's gross income for the discharge of a student loan under section 108(f)(5) of the Code. The purpose of this subdivision is to decouple from the exclusion from income for the discharge of a student loan under section 9675 of the American Rescue Plan Act of 2021.

(22) **(Effective for taxable years beginning on or after January 1, 2021)** For taxable years 2021 through 2025, a taxpayer must add an amount equal to the amount by which the taxpayer's exclusion from the taxpayer's gross income for the discharge of a student loan under section 108(f)(5) of the Code exceeds the exclusion that would have been allowed under the Internal Revenue Code as enacted as of May 1, 2020. The purpose of this subdivision is to decouple from the exclusion from income for the discharge of a student loan under section 9675 of the American Rescue Plan Act of 2021. If the taxpayer is insolvent, as defined in section 108(d)(3) of the Code, then the addition required under this subdivision is limited to the amount of discharge of student loan indebtedness excluded from adjusted gross income under section 108(f)(5) of the Code that exceeds the amount of discharge of indebtedness that would have been excluded under section 108(a)(1)(B) of the Code.

(23) For taxable year 2020, a taxpayer must add the amount excluded from the taxpayer's gross income for unemployment compensation received by the taxpayer under section 85(c) of the Code. The purpose of this subdivision is to decouple from the exclusion from income for unemployment compensation under section 9042 of the American Rescue Plan Act of 2021.

(c3) **(Effective for taxable years beginning before January 1, 2023)** Taxed Pass-Through Entities. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

(1) A taxpayer that is a shareholder of a taxed S Corporation may deduct the amount of the taxpayer's pro rata share of income from the taxed S Corporation to the extent it was included in the taxed S Corporation's North Carolina taxable income and the taxpayer's adjusted gross income.

(2) A taxpayer that is a shareholder of a taxed S Corporation must add the amount of the taxpayer's pro rata share of loss from the taxed S Corporation to the extent it was included in the taxed S Corporation's North Carolina taxable income and the taxpayer's adjusted gross income.

(3) A taxpayer that is a partner of a taxed partnership may deduct the amount of the taxpayer's distributive share of income from the taxed partnership to the extent it was included in the taxed partnership's North Carolina taxable income and the taxpayer's adjusted gross income.

(4) A taxpayer that is a partner of a taxed partnership must add the amount of the taxpayer's distributive share of loss from the taxed partnership to the extent it was included in the taxed partnership's North Carolina taxable income and the taxpayer's adjusted gross income.

(c3) **(Effective for taxable years beginning on or after January 1, 2023)** Taxed Pass-Through Entities. – In calculating North Carolina taxable income, a taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

(1) A taxpayer that is a shareholder of a taxed S Corporation may deduct the amount of the taxpayer's pro rata share of income attributable to the State from the taxed S Corporation to the extent the income attributable to the State was included in the taxed S Corporation's North Carolina taxable income and was included in the taxpayer's adjusted gross income, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to the State.

(1a) A resident taxpayer that is a shareholder of an S Corporation may deduct the amount of the taxpayer's pro rata share of income not attributable to the State from the S Corporation to the extent the income not attributable to the State was included in the S Corporation's taxable income in another state or the District of Columbia, was subject to an entity-level tax levied on the aggregate pro rata share of the S Corporation's income allocable to one or more of its shareholders, and was included in the taxpayer's adjusted gross income subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6. An S Corporation is taxable in another state or the District of Columbia if the S Corporation's business activity in that state or the District of Columbia subjects the S Corporation to a net income tax or a tax measured by net income.

(2) A taxpayer that is a shareholder of a taxed S Corporation must add the amount of the taxpayer's pro rata share of net taxable loss attributed to the State from the taxed S Corporation to the extent the net taxable loss was included in the taxed S Corporation's North Carolina taxable income and was included in the taxpayer's adjusted gross income, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to the State.

(3) A taxpayer that is a partner of a taxed partnership may deduct the amount of the taxpayer's share of distributive income attributable to the State from the taxed partnership to the extent the share of distributive income attributable to the State was included in the taxed partnership's North Carolina taxable income and was included in the taxpayer's adjusted gross income, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to the State.

(3a) A resident taxpayer that is a partner of a partnership may deduct the amount of the taxpayer's share of distributive income not attributable to the State from the partnership to the extent the share of distributive income not attributable to the State was included in the partnership's taxable income in another state or the District of Columbia, was subject to an entity-level tax levied on the aggregate distributive share of the partnership's income allocable to one or more of its

partners, and was included in the taxpayer's adjusted gross income subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6. A partnership is taxable in another state or the District of Columbia if the partnership's business activity in that state or the District of Columbia subjects the partnership to a net income tax or a tax measured by net income.

(4) A taxpayer that is a partner of a taxed partnership must add the amount of the taxpayer's share of distributive taxable loss attributable to the State from the taxed partnership to the extent the share of distributive taxable loss attributable to the State was included in the taxed partnership's North Carolina taxable income and was included in the taxpayer's adjusted gross income, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to the State.

(d) S Corporations. – Each shareholder's pro rata share of an S Corporation's income is subject to the adjustments provided in this section and in G.S. 105-153.6. (2013-316, s. 1.1(d); 2013-360, s. 6.18(b); 2014-3, s. 2.2(a); 2015-2, s. 1.3; 2015-6, ss. 2.20(b), 2.22(b); 2015-241, s. 32.16(a), (b); 2016-5, ss. 2.1(a)-(c), 2.2(a), 5.3(c); 2016-6, ss. 3, 4; 2016-92, s. 1.2; 2016-94, s. 38.1(a), (b); 2017-57, ss. 10A.4(b), 38.2(a), 38.4(a); 2018-5, ss. 5.6(j), 38.1(c), (f), (h), 35.25(g); 2018-97, s. 8.1(b); 2019-6, ss. 3.1, 3.2, 3.3; 2019-237, ss. 1(a), (b), 2(b); 2019-246, s. 1(a); 2020-58, ss. 1(d)-(f), 4.2; 2020-97, s. 1.4(a); 2021-180, ss. 8A.3(s), 34.3B(b), 42.1(b), (c), 42.1A(a), 42.4(b), (c), 42.5(i), 42.6(a), 42.13A(a), (b); 2022-6, ss. 20.7(b), 20.15(a); 2022-13, s. 2.1(a); 2022-74, s. 42.1(a); 2023-12, s. 1.6(c); 2023-46, s. 18(a).)

§ 105-153.5A. (Effective for taxable years beginning on or after January 1, 2022) Net operating loss provisions.

(a) State Net Operating Loss. – A taxpayer's State net operating loss for a taxable year is the amount by which business deductions for the year exceed gross income for the year as determined under the Code adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6. The amount of a taxpayer's State net operating loss must also be determined in accordance with the following modifications:

(1) No State net operating loss deduction shall be allowed.

(2) The amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets.

(3) The exclusion provided by Code section 1202 shall not be allowed.

(4) No deduction shall be allowed under G.S. 105-153.5(a1) for the child deduction.

(5) The deductions which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business.

(6) Any deduction under Code section 199A shall not be allowed.

(b) Deduction. – A taxpayer may carry forward a State net operating loss the taxpayer incurred in a prior taxable year and deduct it in the current taxable year, subject to the limitations in this subsection:

(1) The loss was incurred in one of the preceding 15 taxable years.

(2) Any loss carried forward is applied to the next succeeding taxable year before any portion of it is carried forward and applied to a subsequent taxable year.

(3) The taxpayer's State net operating loss deduction may not exceed the amount of the taxpayer's North Carolina taxable income determined without deducting the taxpayer's State net operating loss.

(4) The portion of the State net operating loss attributable to the carryforward allowed under subsection (f) of this section is only allowed to the extent described in subsection (f) of this section.

(c) Nonresidents. – In the case of a taxpayer that is a nonresident in the year of the loss, the State net operating loss only includes income and deductions derived from a business carried on in this State in the year of the loss. In the case of a taxpayer that is a nonresident in the year of the deduction, the State net operating loss must be included in the numerator of the fraction used to calculate taxable income as defined in G.S. 105-153.4(b).

(d) Part-Year Residents. – In the case of a taxpayer that is a part-year resident in the year of the loss, the State net operating loss includes income and deductions derived from a business carried on in this State while the taxpayer was a nonresident and includes business income and deductions derived from all sources during the period the taxpayer was a resident. In the case of a taxpayer that is a part-year resident in the year of the deduction, the State net operating loss must be included in the numerator of the fraction used to calculate taxable income as defined in G.S. 105-153.4(c).

(e) Administration. – A taxpayer claiming a deduction under this section must maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The Secretary or the taxpayer may redetermine a loss originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of loss that can be carried forward to a taxable year that remains open under the statute of limitations.

(f) Federal Net Operating Loss Carryforwards. – The portion of a taxpayer's federal net operating loss carryforward that was not absorbed in tax years beginning prior to January 1, 2022, may be included in the amount of a taxpayer's State net operating loss in taxable years beginning on or after January 1, 2022. The federal net operating loss carryforward is only allowed as a State net operating loss in tax years beginning after January 1, 2022, to the extent that it meets all of the following conditions:

(1) The loss would have been allowed in that taxable year under section 172 of the Code as enacted on April 1, 2021.

(2) The provisions of G.S. 105-153.5(c2)(8), (9), (10), (13), and (14) do not apply to the federal net operating loss carryforward.

(3) The loss was incurred in one of the preceding 15 taxable years. (2021-180, s. 42.6(b); 2022-13, s. 2.2(a).)

§ 105-153.6. Adjustments when State decouples from federal accelerated depreciation and expensing.

(a) Special Accelerated Depreciation. – A taxpayer who takes a special accelerated depreciation deduction for that property under section 168(k) or 168(n) of the Code must add to the taxpayer's federal taxable income or adjusted gross income, as appropriate, eighty-five percent (85%) of the amount taken for that year under those Code provisions. For taxable years before 2012, the taxpayer must add the amount to the taxpayer's federal taxable income. For taxable year 2012 and after, the taxpayer must add the amount to the taxpayer's adjusted gross income. A

taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

(b) 2009 Depreciation Exception. – A taxpayer who placed property in service during the 2009 taxable year and whose North Carolina taxable income for the 2009 taxable year reflected a special accelerated depreciation deduction allowed for the property under section 168(k) of the Code must add eighty-five percent (85%) of the amount of the special accelerated depreciation deduction to its federal taxable income for the 2010 taxable year. A taxpayer is allowed to deduct this add-back under subsection (a) of this section as if it were for property placed in service in 2010.

(c) Section 179 Expense. – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code. A taxpayer who places section 179 property in service during a taxable year must add to the taxpayer's federal taxable income or adjusted gross income, as appropriate, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation for that taxable year. For taxable years before 2012, the taxpayer must add the amount to the taxpayer's federal taxable income. For taxable year 2012 and after, the taxpayer must add the amount to the taxpayer's adjusted gross income. For taxable years 2010, 2011, and 2012, the dollar limitation is two hundred and fifty thousand dollars ($250,000) and the investment limitation is eight hundred thousand dollars ($800,000). For taxable years beginning on or after 2013, the dollar limitation is twenty-five thousand dollars ($25,000) and the investment limitation is two hundred thousand dollars ($200,000).

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

(d) Asset Basis. – The adjustments made in this section do not result in a difference in basis of the affected assets for State and federal income tax purposes, except as modified in subsection (e) of this section.

(e) Bonus Asset Basis. – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor and any owner in a transferor are not allowed any remaining future bonus depreciation deductions associated with the transferred asset. This subsection applies only to the extent that each transferor or owner in a transferor that added bonus depreciation to its federal taxable income or adjusted gross income associated with the transferred asset certifies in writing to the transferee, that the transferor or owner in a transferor will not take any remaining future bonus depreciation deduction associated with the transferred asset.

(f) Prior Transactions. – For any transaction meeting both the requirements of subsection (e) of this section prior to January 1, 2013, and the conditions of this subsection, the transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax return. If the asset has been disposed of or has no remaining useful life on the books of the transferee, the remaining bonus depreciation deduction may be allowed on the transferee's 2013 tax return. For this subsection to apply, the following conditions must be met:

(1) The transferor or any owner in a transferor has not taken the bonus depreciation deduction on a prior return.

(2) The transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset and each transferor or owner in

a transferor certifies in writing to the transferee that the transferor or owner in a transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years beginning on or after January 1, 2013, for depreciation associated with the transferred asset.

(3) The amount of the basis adjustment under this subsection is limited to the total remaining future bonus depreciation deductions forfeited by the transferor and any owner in the transferor at the time of the transfer.

(g) Tax Basis. – For transactions described in subsection (e) or (f) of this section, adjusted gross income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property that has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes.

(h) Definitions. – The following definitions apply in this section:

(1) Owner in a transferor. – One or more of the following of a transferor:

a. A partner, shareholder, or member.

b. A beneficiary subject to tax under Part 2 or 3 of Article 4 of this Chapter of a transferor.

(2) Transferor. – An individual, partnership, corporation, S Corporation, limited liability company, or an estate or trust that does not fully distribute income to its beneficiaries. (2013-316, s. 1.1(d); 2013-414, s. 58(a); 2014-3, s. 2.1(c); 2015-2, s. 1.2(b); 2015-6, s. 2.8(b); 2016-6, s. 2(b).)

§ 105-153.7. Individual income tax imposed.

(a) **(Effective for taxable years beginning before January 1, 2022)** Tax. – A tax is imposed for each taxable year on the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually. The tax is five and one-quarter percent (5.25%) of the taxpayer's North Carolina taxable income.

(a) **(Effective for taxable years beginning on or after January 1, 2022)** Tax. – A tax is imposed for each taxable year on the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually. Except as otherwise provided in subsection (a1) of this section, the tax is a percentage of the taxpayer's North Carolina taxable income computed as follows:

Taxable Years Beginning	Tax
In 2022	4.99%
In 2023	4.75%
In 2024	4.5%
In 2025	4.25%
After 2025	3.99%.

(a1) Rate Reduction Trigger. – Notwithstanding the tax rates set out in subsection (a) of this section, if total General Fund revenue in a fiscal year set out below exceeds the trigger amount indicated for that fiscal year, then the applicable tax rate for the indicated and subsequent tax years shall be equal to the greater of (i) the prior taxable year's rate decreased by one-half percentage point (0.50%) or (ii) two and forty-nine hundredths percent (2.49%). For purposes of this subsection, total General Fund revenue is the amount stated in the final accounting of total General Fund Reverting Net Tax and Non-Tax Revenues for the fiscal year, as reported by the Office of State Controller in August following the end of the fiscal year.

Fiscal Year	Trigger Amount	Taxable Year Beginning
FY 2025-2026	$33,042,000,000	In 2027
FY 2026-2027	$34,100,000,000	In 2028
FY 2027-2028	$34,760,000,000	In 2029
FY 2028-2029	$35,750,000,000	In 2030
FY 2029-2030	$36,510,000,000	In 2031
FY 2030-2031	$38,000,000,000	In 2032
FY 2031-2032	$38,500,000,000	In 2033
FY 2032-2033	$39,000,000,000	In 2034

(b) Withholding Tables. – The Secretary may provide tables that compute the amount of tax due for a taxable year under this Part. The tables do not apply to an individual who files a return under section 443(a)(1) of the Code for a period of less than 12 months due to a change in the individual's annual accounting period or to an estate or trust. (2013-316, s. 1.1(d); 2013-316, s. 1.2(a); 2015-241, s. 32.16(c); 2017-57, s. 38.1(a); 2021-180, s. 42.1(a); 2023-134, s. 42.1(a).)

§ 105-153.8. Income tax returns.

(a) Who Must File. – The following individuals must file with the Secretary an income tax return under affirmation:

(1) Every resident who for the taxable year has gross income under the Code that exceeds the standard deduction amount provided in G.S. 105-153.5(a)(1).

(2) Every nonresident individual who meets all of the following requirements:

a. Receives during the taxable year gross income that is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State, is derived from a business, trade, profession, or occupation carried on in this State, or is derived from gambling activities in this State. This sub-subdivision does not apply to a nonresident business or a nonresident employee who solely derives income from North Carolina sources attributable to a business, trade, profession, or occupation carried on in this State to perform disaster-related work during a disaster response period at the request of a critical infrastructure company. The definitions and provisions in G.S. 166A-19.70A apply to this sub-subdivision.

b. Has gross income under the Code that exceeds the applicable standard deduction amount provided in G.S. 105-153.5(a)(1).

(3) Any individual whom the Secretary believes to be liable for a tax under this Part, when so notified by the Secretary and requested to file a return.

(b) Taxpayer Deceased or Unable to Make Return. – If a taxpayer is unable to file an income tax return, a duly authorized agent of the taxpayer or a guardian or other person charged with the care of the person or property of the taxpayer must file the return. If an individual who was required to file an income tax return for the taxable year while living has died before making the return, the administrator or executor of the estate must file the return in the decedent's name and behalf, and the tax is payable by the estate.

(c) Information Required With Return. – The income tax return must show the adjusted gross income and modifications required by this Part, and any other information the Secretary requires. The Secretary may require some or all individuals required to file an income tax return to attach to the return a copy of their federal income tax return for the taxable year. The Secretary may

require a taxpayer to provide the Department with copies of any other return the taxpayer has filed with the Internal Revenue Service and to verify any information in the return.

(d) Secretary May Require Additional Information. – When the Secretary has reason to believe that any taxpayer conducts a trade or business in a way that directly or indirectly distorts the taxpayer's adjusted gross income or North Carolina taxable income, the Secretary may require any additional information for the proper computation of the taxpayer's adjusted gross income and North Carolina taxable income. In computing the taxpayer's adjusted gross income and North Carolina taxable income, the Secretary must consider the fair profit that would normally arise from the conduct of the trade or business.

(e) Joint Returns. – Two lawfully married individuals who are required to file an income tax return pursuant to subsection (a) of this section and whose adjusted gross income is determined on a joint federal return must file with the Secretary a joint income tax return. If two lawfully married individuals file a joint federal return but only one individual is required to file an income tax return pursuant to subsection (a) of this section, that individual must file the income tax return pursuant to subsection (f) of this section. Except as otherwise provided in this Part, the following provisions apply to the individuals filing a joint income tax return:

(1) The individuals are treated as one taxpayer for the purpose of determining the tax imposed by this Part.

(2) Each individual is jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of each individual. However, if one of the individuals qualifies for relief of liability for federal tax pursuant to section 6015 of the Code, that individual is not liable for the corresponding tax imposed by this Part.

(3) Each individual has expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both individuals jointly or, if either is deceased, to the survivor alone.

(f) Exception. – If two lawfully married individuals file a joint federal return but only one individual is required to file an income tax return pursuant to subsection (a) of this section, that individual must file the income tax return as either of the following:

(1) Jointly under the provisions of subsection (e) of this section based on the filing status of married, filing jointly/surviving spouse.

(2) Separately based on the filing status of married, filing separately. (1939, c. 158, s. 326; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 708, s. 4; 1951, c. 643, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 903, s. 1; c. 1287, s. 5; 1977, c. 315; 1989, c. 728, s. 1.23; 1991 (Reg. Sess., 1992), c. 930, s. 1; 1998-98, ss. 69, 104; 1999-337, s. 25; 2006-66, s. 24.11(a); 2012-79, s. 2.5; 2013-316, ss. 1.1(a), 1.3(d); 2018-5, s. 38.1(g); 2019-169, s. 2.1(a); 2019-187, s. 1(k); 2024-28, s. 1.3.)

§ 105-153.9. (Effective for taxable years beginning before January 1, 2023) Tax credits for income taxes paid to other states by individuals.

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this Part for income taxes imposed by and paid to another state or country on income taxed under this Part, subject to the following conditions:

(1) The credit is allowed only for taxes paid to another state or country on income that is derived from sources within that state or country and is taxed under its laws irrespective of the residence or domicile of the recipient, except that whenever a taxpayer who is considered a resident of this State under this Part is considered a resident of another state or country under the laws of that state or country, the Secretary may allow a credit against the taxes imposed by this Part for taxes imposed by and paid to the other state or country on income taxed under this Part.

(2) The fraction of the gross income, as modified as provided in G.S. 105-153.5 and G.S. 105-153.6, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed shall be filed with the Secretary when the credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(4) **(Effective for taxable years beginning on or after January 1, 2022 and before January 1, 2023)** Shareholders of a taxed S Corporation shall not be allowed a credit under this section for taxes paid by the taxed S Corporation to another state or country on income that is taxed to the taxed S Corporation. For purposes of allowing the credit under this section for taxes paid to another state or country by a taxed S Corporation's shareholders, a shareholder's pro rata share of the income of the taxed S Corporation shall be treated as income taxed to the shareholder under this Part and a shareholder's pro rata share of the tax imposed on the taxed S Corporation under G.S. 105-131.1A shall be treated as tax imposed on the shareholder under this Part.

(5) **(Effective for taxable years beginning on or after January 1, 2022 and before January 1, 2023)** Partners of a taxed partnership shall not be allowed a credit under this section for taxes paid by the taxed partnership to another state or country on income that is taxed to the taxed partnership. The taxed partnership as defined in G.S. 105-153.3(18a) is entitled to a credit under this section for all such taxes paid. For purposes of allowing the credit under this section for taxes paid to another state or country by a taxed partnership's partners, a partner's pro rata share of the income of the taxed partnership shall be treated as income taxed to the partner under this Part and a partner's pro rata share of the tax imposed on the taxed partnership under G.S. 105-154.1 shall be treated as tax imposed on the partner under this Part.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded is due and payable from the taxpayer and is subject to the penalties and interest provided in Subchapter I of this Chapter.

(d) **(Effective for taxable years beginning on or after January 1, 2022)** Except as otherwise provided in subdivision (a)(5) of this section with respect to a taxed partnership, for purposes of this section and G.S. 105-160.4, each resident partner is considered to have paid a tax imposed on the partner in an amount equal to the partner's distributive share of any income tax paid by the partnership to a state or the District of Columbia where the partnership was subject to an entity-level tax levied on the aggregate distributive share of the partnership's income allocable to one or more of its partners. A partnership is taxable in another state or the District of Columbia if the partnership's business activity in that state or the District of Columbia subjects the partnership to a net income tax or a tax measured by net income.

(e) **(Effective for taxable years beginning on or after January 1, 2022)** Except as otherwise provided in subdivision (a)(4) of this section with respect to a taxed S Corporation, for purposes of this section and G.S. 105-160.4, each resident shareholder is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any income tax paid by the S Corporation to a state or the District of Columbia where the S Corporation was subject to an entity-level tax levied on the aggregate pro rata share of the S Corporation's income allocable to one or more of its shareholders. An S Corporation is taxable in another state or the District of Columbia if the S Corporation's business activity in that state or the District of Columbia subjects the S Corporation to a net income tax or a tax measured by net income. A taxpayer that claims a credit under this subsection may not also claim a credit under G.S. 105-131.8 with respect to the same income tax paid by the S Corporation. (1939, c. 158, s. 325; 1941, c. 50, s. 5; c. 204, s. 1; 1943, c. 400, s. 4; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1989, c. 728, s. 1.5; 1989 (Reg. Sess., 1990), c. 814, s. 17; 1998-98, s. 92; 2013-316, ss. 1.1(a), 1.3(d); 2013-414, s. 5(b); 2021-180, ss. 42.5(j), 42.13A(c); 2023-12, s. 1.5(d).)

§ 105-153.9. (Effective for taxable years beginning on or after January 1, 2023) Tax credits for income taxes paid to other states by individuals.

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this Part for income taxes imposed by and paid to another state or country on income taxed under this Part, subject to the following conditions:

(1) The credit is allowed only for taxes paid to another state or country on income that is derived from sources within that state or country and is taxed under its laws irrespective of the residence or domicile of the recipient, except that whenever a taxpayer who is considered a resident of this State under this Part is considered a resident of another state or country under the laws of that state or country, the Secretary may allow a credit against the taxes imposed by this Part for taxes imposed by and paid to the other state or country on income taxed under this Part.

(2) The fraction of the gross income, as modified as provided in G.S. 105-153.5 and G.S. 105-153.6, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed

shall be filed with the Secretary when the credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(4) Repealed by Session Laws 2023-12, s. 1.6(a), effective for taxable years beginning on or after January 1, 2023.

(5) Repealed by Session Laws 2023-12, s. 1.6(a), effective for taxable years beginning on or after January 1, 2023.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded is due and payable from the taxpayer and is subject to the penalties and interest provided in Subchapter I of this Chapter.

(c) The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(d) For purposes of this section and G.S. 105-160.4, each resident partner is considered to have paid a tax imposed on the partner in an amount equal to the partner's distributive share of any income tax paid by the partnership to a state or the District of Columbia where the partnership was subject to an entity-level tax levied on the aggregate distributive share of the partnership's income allocable to one or more of its partners. A partnership is taxable in another state or the District of Columbia if the partnership's business activity in that state or the District of Columbia subjects the partnership to a net income tax or a tax measured by net income.

(e) For purposes of this section and G.S. 105-160.4, each resident shareholder is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any income tax paid by the S Corporation to a state or the District of Columbia where the S Corporation was subject to an entity-level tax levied on the aggregate pro rata share of the S Corporation's income allocable to one or more of its shareholders. An S Corporation is taxable in another state or the District of Columbia if the S Corporation's business activity in that state or the District of Columbia subjects the S Corporation to a net income tax or a tax measured by net income. A taxpayer that claims a credit under this subsection may not also claim a credit under G.S. 105-131.8 with respect to the same income tax paid by the S Corporation.

(f) No credit is allowed under this section for taxes paid to another state or the District of Columbia on income eligible for the deduction provided in G.S. 105-153.5(c3). (1939, c. 158, s. 325; 1941, c. 50, s. 5; c. 204, s. 1; 1943, c. 400, s. 4; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1989, c. 728, s. 1.5; 1989 (Reg. Sess., 1990), c. 814, s. 17; 1998-98, s. 92; 2013-316, ss. 1.1(a), 1.3(d); 2013-414, s. 5(b); 2021-180, ss. 42.5(j), 42.13A(c); 2023-12, ss. 1.4, 1.5(d); 1.6(a), (d).)

§ 105-153.10: Repealed by Session Laws 2015-241, s. 32.13(c), effective for taxable years beginning on or after January 1, 2018.

§ 105-153.11. (For effective date and expiration, see note) Credit for certain real property donations.

(a) Credit. – Subject to the limitations in this section, an individual or pass-through entity that makes a qualified donation of real property located in North Carolina during the taxable year that is useful (i) for forestland or farmland preservation, (ii) for fish and wildlife conservation, (iii)

as a buffer to limit land use activities that would restrict, impede, or interfere with military training, testing, or operations on a military installation or training area or otherwise be incompatible with the mission of the installation, (iv) for floodplain protection in a county that, in the five years preceding the donation, was the subject of a Type II or Type III gubernatorial disaster declaration, as provided in G.S. 166A-19.21, as a result of a natural disaster, (v) for historic landscape conservation, or (vi) for public trails or access to public trails is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property. The credit may not be taken for the year in which the donation is made but may be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b) Qualified Donation. – A qualified donation of real property is a donation that meets all of the following conditions:

(1) The property is donated in perpetuity for one of the qualifying uses listed in subsection (a) of this section and is accepted in perpetuity for the qualifying use for which the property is donated.

(2) The person to whom the property is donated must be the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit.

(c) Application. – To claim a credit allowed under this section, an individual or a pass-through entity must file an application with the Secretary for the credit. The application must be filed on or before April 15 of the year following the calendar year in which the donation was made. An application is effective for the year in which it is timely filed. The Secretary may not accept late applications under this subsection. The application must be on a form prescribed by the Secretary and include any information required by the Secretary demonstrating that the donation has met the conditions for qualifying for the credit, including the following items:

(1) A copy of the certification by the Department of Natural and Cultural Resources that identifies which of the valid public benefits listed in subsection (a) of this section for which the donated property is suitable. The certification for a qualified donation made by a pass-through entity must be filed by the pass-through entity.

(2) A self-contained or summary appraisal report as defined in Standards Rule 2-2 in the latest edition of the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation for the donated property. For fee simple absolute donations of real property, an individual or pass-through entity may submit documentation of the county's appraised value of the donated property, as adjusted by the sales assessment ratio, in lieu of an appraisal report.

(d) Substantiation. – An individual or pass-through entity claiming a credit under this section must maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the individual or pass-through entity, and no credit may be allowed to an individual or pass-through entity that fails to maintain adequate records or to make them available for inspection.

(e) Individuals. – The aggregate amount of credit allowed to an individual in a taxable year under this section for one or more qualified donations made during the taxable year, whether made directly or indirectly as owner of a pass-through entity, may not exceed two hundred fifty thousand dollars ($250,000). In the case of property owned by a married couple, if both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return. The aggregate amount of credit allowed to a married couple filing a joint tax return may not exceed five hundred thousand dollars ($500,000). If only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section on a separate return.

(f) Pass-Through Entity. – The aggregate amount of credit allowed to a pass-through entity in a taxable year under this section for one or more qualified donations made during the taxable year, whether made directly or indirectly as owner of another pass-through entity, may not exceed five hundred thousand dollars ($500,000). Each individual who is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed two hundred fifty thousand dollars ($250,000). Each corporation that is an owner of a pass-through entity is allowed as a credit an amount equal to the owner's allocated share of the credit to which the pass-through entity is eligible under this subsection, not to exceed five hundred thousand dollars ($500,000). If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(g) Taxed Pass-Through Entity. – A taxed pass-through entity that engages in an activity that makes it eligible for a credit under this section as an entity may not take the credit at the entity level but must pass through to each of its owners the owner's distributive share of the credit for which the taxed pass-through entity qualifies. Maximum dollar limits and other limitations that apply in determining the amount of credit available to an owner of a pass-through entity apply to the same extent in determining the amount of a credit for which the taxed pass-through entity qualifies. For purposes of this subsection, the term "taxed pass-through entity" is as defined in G.S. 105-153.3.

(h) Limitation. – The credit allowed by this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(i) Carryforward. – Any unused portion of this credit may be carried forward for the next succeeding five years.

(j) No Double Benefit. – That portion of a qualifying donation that is the basis for a credit allowed under this section is not eligible for deduction as a charitable contribution under G.S. 105-153.5(a)(2)a.

(k) Ceiling; Use Allocation. – The total aggregate amount of all tax credits allowed to taxpayers under this section and G.S. 105-130.4 for donations made in a taxable year may not exceed five million dollars ($5,000,000), of which three million two hundred fifty thousand dollars ($3,250,000) is reserved for credits to taxpayers that have made a qualified donation of real property for forestland or farmland conservation. If funds reserved for credits for qualified donations of real property for forestland or farmland conservation remain after disposition of all timely filed applications for that type of credit, the Secretary shall allocate any funds remaining to credits for other types of qualified donations under this section. The Secretary shall, first, fully fund any prorated credits in accordance with subsection (f) [subsection *l*] of this section and, second, if

funds remain after fully funding prorated credits, reopen the application period for credits under this section for which funds have become available. If the Secretary reopens the application period and notwithstanding the application deadline in subsection (c) of this section, the additional applications must be filed with the Secretary on or before October 15 of the year following the calendar year in which the donation was made. The Secretary may not accept late additional applications permitted under this subsection. The Secretary's determinations based on additional applications timely filed in accordance with this subsection are final.

(*l*) Reduction. – The Secretary of Revenue shall calculate the total amount of credits claimed from applications timely filed under subsection (c) of this section. If the total amount of credits claimed for donations made in a calendar year exceeds this maximum amount, the Secretary shall allow a portion of the credits claimed by allocating the maximum amount in tax credits in proportion to the size of the credit claimed by each individual or pass-through entity. If a credit claimed under this section is reduced as provided in this subsection, the Secretary shall notify the individuals or pass-through entities of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the donation was made. The Secretary's allocations based on applications filed under subsection (c) of this section are final and shall not be adjusted to account for credits applied for but not claimed.

(m) Report. – The Department must include in the economic incentives report required by G.S. 105-256 the following information:

(1) The number of individuals and pass-through entities that took the credit allowed under this section.
(2) The total amount of credits claimed by conservation purpose.
(3) The total amount of credits carried forward.
(4) The total cost to the General Fund of the credits taken. (1983, c. 793, s. 3; 1985, c. 278, s. 2; 1989, c. 716, s. 2; c. 727, s. 218(43); c. 728, s. 1.17; 1989 (Reg. Sess., 1990), c. 869, s. 3; 1991, c. 45, s. 10; c. 453, ss. 2, 4; 1991 (Reg. Sess., 1992), c. 930, s. 21; 1993 (Reg. Sess., 1994), c. 717, s. 4; 1997- 226, s. 2; 1997-443, s. 11A.119(a); 1998-98, s. 69; 1998-179, s. 2; 1998-212, s. 29A.13(b), (d); 2001-335, s. 2; 2002-72, s. 15(b); 2004-134, s. 1; 2006-66, s. 24.15(a); 2007-309, s. 2; 2009-445, s. 9(d); 2010-167, s. 5(b); repealed by 2013-316, s. 1.1(b), effective for taxable years beginning on or after January 1, 2014; 2024-32, s. 15(b).)

§ 105-154. Information at the source returns.

(a) Repealed by Session Laws 1993, c. 354, s. 14.

(b) Information Returns of Payers. – A person who is a resident of this State, has a place of business in this State, or has an employee, an agent, or another representative in any capacity in this State shall file an information return as required by the Secretary if the person directly or indirectly pays or controls the payment of any income to any taxpayer. The return shall contain all information required by the Secretary. The filing of any return in compliance with this section by a foreign corporation is not evidence that the corporation is doing business in this State.

(c) Information Returns of Partnerships. – A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically

the items of the partnership's gross income, the deductions allowed under the Code, each partner's distributive share of the partnership's income, and the adjustments required by this Part. A partner's distributive share of partnership net income includes any guaranteed payments made to the partner. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall be signed by one of the partners under affirmation in the form required by the Secretary.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return.

A partnership that is not doing business in this State because it is a nonresident business performing disaster-related work during a disaster response period at the request of a critical infrastructure company is not required to file an information return with the Secretary. However, the partnership must furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The definitions and provisions in G.S. 166A-19.70A apply to this paragraph.

(d) **(Effective for taxable years beginning before January 1, 2022)** Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the manager of the business shall report information concerning the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The distributive share of the income of each nonresident partner includes any guaranteed payments made to the partner. The manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the income of the business in this State. If the nonresident partner is not an individual and the partner has executed an affirmation that the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, the manager of the business is not required to pay the tax on the partner's share. In this case, the manager shall include a copy of the affirmation with the report required by this subsection. The affirmation must be annually filed by the nonresident partner and submitted by the manager by the due date of the report required in this subsection. Otherwise, the manager of the business is required to pay the tax on the nonresident partner's share. Notwithstanding the provisions of G.S. 105-241.7(b), the manager of the business may not request a refund of an overpayment made on behalf of a nonresident owner or partner if the manager of the business has previously filed the return and paid the tax due. The nonresident owner or partner may, on its own income tax return, request a refund of an overpayment made on its behalf by the manager of the business within the provisions of G.S. 105-241.6.

(d) **(Effective for taxable years beginning on or after January 1, 2022)** Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted in this State is owned by a nonresident individual or by a partnership having one or more nonresident members, the business shall report information concerning the earnings of the business in this State, the distributive share of the income of each nonresident owner or partner, and any other information required by the Secretary. The distributive share of the income of each nonresident partner includes any

guaranteed payments made to the partner. The business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7. The business may deduct the payment for each nonresident owner or partner from the owner or partner's distributive share of the income of the business in this State. The Secretary may enforce the business's liability for the tax on each nonresident owner or partner's share of the income by sending the business a notice of proposed assessment in accordance with G.S. 105-241.9. If the nonresident partner is not an individual and the partner has executed an affirmation that (i) the partner will pay the tax with its corporate, partnership, trust, or estate income tax return, or (ii) the partner is not subject to State income tax under this Article, the business is not required to pay the tax on the partner's share. In this case, the business shall include a copy of the affirmation with the report required by this subsection. The affirmation must be annually filed by the nonresident partner and submitted by the due date of the report required in this subsection. Otherwise, the business is required to pay the tax on the nonresident partner's share. Notwithstanding the provisions of G.S. 105-241.7(b), the business may not request a refund of an overpayment made on behalf of a nonresident owner or partner if the business has previously filed the return and paid the tax due. The nonresident owner or partner may, on its own income tax return, request a refund of an overpayment made on its behalf by the business within the provisions of G.S. 105-241.6. This subsection does not apply to a partnership with respect to any taxable period for which it is a taxed partnership unless the taxed partnership has a partner described in G.S. 105-154.1(a)(5). If a taxed partnership has a partner described in G.S. 105-154.1(a)(5), this subsection applies to the taxed partnership with respect to the partner described in G.S. 105-154.1(a)(5).

(e) Publicly Traded Partnership. – The information return and payment requirements under this section are modified as follows for a publicly traded partnership that is described in section 7704(c) of the Code:

(1) The information return required under subsection (c) of this section is limited to partners whose distributive share of the partnership's net income during the tax year was more than five hundred dollars ($500.00).

(2) The payment requirements under subsection (d) of this section do not apply. (1939, c. 158, s. 328; 1945, c. 708, s. 4; 1957, c. 1340, s. 4; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 5; 1989, c. 728, s. 1.25; 1989 (Reg. Sess., 1990), c. 814, s. 19; 1991 (Reg. Sess., 1992), c. 930, s. 2; 1993, c. 314, s. 1; c. 354, s. 14; 1998-98, s. 69; 1999-337, s. 26; 2008-107, s. 28.8(a); 2013-316, s. 1.3(e); 2017-204, s. 1.9(f); 2019-169, s. 1.1(a); 2019-187, s. 1(i); 2020-58, s. 4.3; 2021-180, s. 42.5(g); 2022-13, s. 2.3; 2023-12, s. 1.5(a).)

§ 105-154.1. (Effective for taxable years beginning on or after January 1, 2022) Taxation of partnership as a taxed pass-through entity.

(a) **(Effective for taxable years beginning before January 1, 2023)** Taxed Partnership Election. – A partnership may elect, on its timely filed annual return required under G.S. 105-154(c), to have the tax under this Article imposed on the partnership for any taxable period covered by the return. A partnership may not revoke the election after the due date of the return, including extensions. This election cannot be made by a publicly traded partnership that is described in section 7704(c) of the Code or by a partnership that has at any time during the taxable year a partner who is not one of the following:

(1) An individual.

(2) An estate.
(3) Any of the following:
a. A trust described in section 1361(c)(2) of the Code.
b. A trust if such trust does not have as a beneficiary any person other than an individual, an estate, a trust, or an organization described in section 1361(c)(6) of the Code.
(4) An organization described in section 1361(c)(6) of the Code.
(5) **(Effective for taxable years beginning on or after January 1, 2022)** A partnership, including an entity that is classified as a partnership for federal income tax purposes, or an entity that is classified as a corporation for federal income tax purposes.

(a) **(Effective for taxable years beginning on or after January 1, 2023)** Taxed Partnership Election. – A partnership may elect, on its timely filed return required under G.S. 105-154(c), to have the tax under this Article imposed on the partnership for any taxable period covered by the return. A partnership may not make or revoke the election after the return is filed. This election cannot be made by a publicly traded partnership that is described in section 7704(c) of the Code or by a partnership that has at any time during the taxable year a partner who is not one of the following:
(1) An individual.
(2) An estate.
(3) Any of the following:
a. A trust described in section 1361(c)(2) of the Code.
b. A trust if such trust does not have as a beneficiary any person other than an individual, an estate, a trust, or an organization described in section 1361(c)(6) of the Code.
(4) An organization described in section 1361(c)(6) of the Code.
(5) A partnership, including an entity that is classified as a partnership for federal income tax purposes, or an entity that is classified as a corporation for federal income tax purposes.

(a1) Extension of Time to Make Election for 2022. – For the 2022 taxable year, a partnership that could not make the election under subsection (a) of this section on its timely filed tax return may make the election by filing an amended return on or before July 1, 2024. For the purposes of this subsection, the 2022 taxable year means the taxable year beginning on or after January 1, 2022.

(b) Taxable Income of Taxed Partnership. – A tax is imposed for the taxable period on the North Carolina taxable income of a taxed partnership. The tax shall be levied, collected, and paid annually. The tax is imposed on the North Carolina taxable income at the rate levied in G.S. 105-153.7. The North Carolina taxable income of a taxed partnership is determined as follows:
(1) The North Carolina taxable income of a taxed partnership with respect to such taxable period shall be equal to the sum of the following for partners defined under G.S. 105-154.1(a)(1) through G.S. 105-154.1(a)(4):
a. Each partner's distributive share of the taxed partnership's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, attributable to the State.
b. **(Repealed effective for taxable years beginning on or after January 1, 2023)** Each resident partner's distributive share of the taxed

partnership's income or loss, subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6, not attributable to the State with respect to such taxable period.

(2) Separately stated items of deduction are not included when calculating each partner's distributive share of the taxed partnership's taxable income. For purposes of this subdivision, separately stated items are those items described in section 702 of the Code and the regulations adopted under it.

(3) The adjustments required by G.S. 105-153.5(c3) are not included in the calculation of the taxed partnership's taxable income.

(c) Tax Credit. – A taxed partnership that qualifies for a credit may apply each partner's distributive share of the taxed partnership's credits against the partner's distributive share of the taxed partnership's income tax imposed by subsection (b) of this section. A partnership must pass through to its partners any credit required to be taken in installments by this Chapter if the first installment was taken in a taxable period that the election under subsection (a) of this section was not in effect. A partnership shall not pass through to its partners any of the following:

(1) Any credit allowed under this Chapter for any taxable period the partnership makes the election under subsection (a) of this section and the carryforward of the unused portion of such credit.

(2) Any subsequent installment of such credit required to be taken in installments by this Chapter after the partnership makes an election under subsection (a) of this section and the carryforward of any unused portion of such installment.

(d) Deduction Allowed for Partners of a Taxed Partnership. – The partners of a taxed partnership are allowed a deduction as specified in G.S. 105-153.5(c3)(3). This adjustment is only allowed if the taxed partnership complies with the provisions of subsection (f) of this section.

(e) Addition Required for Partners of a Taxed Partnership. – The partners of a taxed partnership must make an addition as provided in G.S. 105-153.5(c3)(4).

(f) Payment of Tax. – Except as provided in Article 4C of this Chapter, the full amount of the tax payable as shown on the return of the taxed partnership must be paid to the Secretary within the time allowed for filing the return. In the case of any overpayment by a taxed partnership of the tax imposed under this section, only the taxed partnership may request a refund of the overpayment. If the taxed partnership files a return showing an amount due with the return and does not pay the amount shown due, the Department may collect the tax from the taxed partnership pursuant to G.S. 105-241.22(1). The Secretary must issue a notice of collection for the amount of the tax debt to the taxed partnership. If the tax debt is not paid to the Secretary within 60 days of the date the notice of collection is mailed to the taxed partnership, the partners of the partnership are not allowed the deduction provided in G.S. 105-153.5(c3)(3). The Secretary must send the partners a notice of proposed assessment in accordance with G.S. 105-241.9. For purposes of this subsection, the term "tax debt" has the same meaning as defined in G.S. 105-243.1(a).

(g) Basis. – The basis of both resident and nonresident partners of a taxed partnership shall be determined as if the election under subsection (a) of this section had not been made and each of the partners of the taxed partnership had properly taken into account each partner's distributive share of the taxed partnership's items of income, loss, and deduction in the manner required with respect to a partnership for which no such election is in effect. (2021-180, s. 42.5(h); 2023-12, ss. 1.5(b), (c), 1.6(a), (e); 2023-134, s. 42.21(a), (b); 2024-1, s. 11.3(a).)

§ 105-155. Time and place of filing returns; extensions; affirmation.

(a) Return. – An income tax return shall be filed at the place and in the form prescribed by the Secretary. The income tax return of every taxpayer reporting on a calendar year basis is due on or before the fifteenth day of April in each year. The income tax return of every taxpayer reporting on a fiscal year basis is due on or before the fifteenth day of the fourth month following the close of the fiscal year. These dates do not apply to a nonresident alien whose federal income tax return is due at a later date under section 6072(c) of the Code. The return of a nonresident alien affected by that Code section is due on or before the fifteenth day of the sixth month following the close of the taxable year. An information return shall be filed at the times prescribed by the Secretary. A taxpayer may receive an extension of time to file a return under G.S. 105-263.

(b) Repealed by 1991 (Regular Session, 1992), c. 930, s. 3.

(c) Repealed by Session Laws 1998-217, s. 44, effective October 31, 1998.

(d) Forms. – Returns and affirmations shall be in the form prescribed by the Secretary. (1939, c. 158, s. 329; 1943, c. 400, s. 4; 1951, c. 643, s. 4; 1953, c. 1302, s. 4; 1955, c. 17, s. 1; 1957, c. 1340, s. 4; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1989, c. 728, s. 1.26; 1989 (Reg. Sess., 1990), c. 984, s. 10; 1991, c. 45, s. 12; 1991 (Reg. Sess., 1992), c. 930, s. 3; 1998-217, s. 44; 2006-18, s. 8; 2024-28, s. 1.4(a).)

§ 105-156: Repealed by Session Laws 2009-445, s. 7, effective August 7, 2009.

§ 105-156.1: Repealed by Session Laws 1989, c. 728, s. 1.28.

§ 105-157. When tax must be paid.

(a) Except as otherwise provided in this section and in Article 4A of this Chapter, the full amount of the tax payable as shown on the return must be paid to the Secretary within the time allowed for filing the return. If the amount shown to be due is less than one dollar ($1.00), no payment need be made.

(b) Repealed by Session Laws 1993, c. 450, s. 4. (1939, c. 158, s. 332; 1943, c. 400, s. 4; 1947, c. 501, s. 4; 1951, c. 643, s. 4; 1955, c. 17, s. 2; 1959, c. 1259, s. 2; 1963, c. 1169, s. 2; 1967, c. 702, s. 1; c. 1110, s. 3; 1973, c. 476, s. 193; c. 903, s. 2; c. 1287, s. 5; 1989, c. 728, s. 1.29; 1989 (Reg. Sess., 1990), c. 984, s. 11; 1991 (Reg. Sess., 1992), c. 930, s. 4; 1993, c. 450, s. 4.)

§ 105-158. Taxation of certain Armed Forces personnel and other individuals upon death.

An individual is not subject to the tax imposed by this Part for a taxable year if, under section 692 of the Code, the individual is not subject to federal income tax for that same taxable year. (1969, c. 1116; 1979, c. 179, s. 2; 1989, c. 728, s. 1.30; 1991, c. 439, s. 2; 1998-98, s. 69; 2011-183, s. 72.)

§ 105-159. Federal determinations and amended returns.

(a) Federal Determination. – If a taxpayer's adjusted gross income, filing status, personal exemptions, standard deduction, itemized deductions, or federal tax credit are changed or corrected by the Commissioner of Internal Revenue or an agreement of the U.S. competent authority, and the change or correction affects the amount of State tax payable, the taxpayer must file an income tax return reflecting each change or correction from a federal determination within six months after being notified of each change or correction. The Secretary must propose an assessment for any additional tax due from the taxpayer as provided in Article 9 of this Chapter. The Secretary must

refund any overpayment of tax as provided in Article 9 of this Chapter. A federal determination has the same meaning as defined in G.S. 105-228.90.

(b) Amended Return. – The following applies to an amended return filed by a taxpayer with the Commissioner of Internal Revenue:

(1) If the amended return contains an adjustment that would increase the amount of State tax payable under this Part, then notwithstanding the provisions of G.S. 105-241.8(a), the taxpayer must file within six months thereafter an amended return with the Secretary.

(2) If the amended return contains an adjustment that would decrease the amount of State tax payable under this Part, the taxpayer may file an amended return with the Secretary within the provisions of G.S. 105-241.6.

(c) Penalties. – A taxpayer that fails to comply with this section is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination. (1939, c. 158, s. 334; 1947, c. 501, s. 4; 1949, c. 392, s. 3; 1957, c. 1340, s. 14; 1963, c. 1169, s. 2; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; 1989, c. 728, s. 1.31; 1993 (Reg. Sess., 1994), c. 582, s. 1; 2006-18, s. 5; 2007-491, s. 16; 2013-414, s. 38; 2017-39, s. 4(b); 2018-5, s. 38.3(b); 2019-169, s. 6.3(c).)

§ 105-159.1: Repealed by Session Law 2013-38.1(e), effective July 1, 2013.

§ 105-159.2: Repealed by Session Laws 2013-360, s. 21.1(c), as amended by Session Laws 2014-3, s. 14.15, and Session Laws 2013-381, s. 38.1(f), effective July 1, 2013.

Part 3. Income Tax – Estates, Trusts, and Beneficiaries.

§ 105-160. Short title.

This Part shall be known as the Income Tax Act for Estates, Trusts, and Beneficiaries. (1967, c. 1110, s. 3; 1989, c. 728, s. 1.36; 1998-98, ss. 45, 68.)

§ 105-160.1. Definitions.

The definitions provided in Part 2 of this Article shall apply in this Part except where the context clearly indicates a different meaning. In addition, as used in this Part, "taxable income" is defined in sections 641 through 692 of the Code. (1989, c. 728, s. 1.38; 1998-98, ss. 69, 71; 2013-414, s. 5(f).)

§ 105-160.2. Imposition of tax.

The tax imposed by this Part applies to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Part. The taxable income of an estate or trust is the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6, except that the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6 are apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax is computed on the amount of the taxable income of the estate or trust that is for the benefit of a resident of this State, or for the benefit of a nonresident to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income is computed subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6. The tax on the amount computed

above is at the rate levied in G.S. 105-153.7. The fiduciary responsible for administering the estate or trust shall pay the tax computed under the provisions of this Part. (1989, c. 728, s. 1.38; 1989 (Reg. Sess., 1990), c. 814, s. 21; 1991, c. 689, s. 302; 1998-98, s. 69; 2013-414, s. 5(g); 2014-3, s. 2.3(a); 2017-204, s. 1.12.)

§ 105-160.3. Tax credits.

(a) Except as otherwise provided in this section, the credits allowed to an individual against the tax imposed by Part 2 of this Article shall be allowed to the same extent to an estate or a trust against the tax imposed by this Part. Any credit computed as a percentage of income received shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. No credit may exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except for payments of tax made by or on behalf of the estate or trust.

(b) The tax credits allowed under G.S. 105-153.9 may not be claimed by an estate or trust. (1989, c. 728, s. 1.38; 1998-1, s. 5(b); 1998-98, ss. 10, 105; 1998-212, s. 29A.6(b); 2004-170, s. 17; 2006-66, s. 24.18(f); 2007-323, ss. 31.4(b), 31.5(b), 31.6(b); 2011-330, s. 36; 2012-79, s. 2.6; 2013-316, s. 1.3(f); 2013-364, s. 3; 2018-5, s. 38.10(*l*).)

§ 105-160.4. Tax credits for income taxes paid to other states by estates and trusts.

(a) If a fiduciary is required to pay income tax to this State for an estate or a trust, the fiduciary shall be allowed a credit against the tax imposed by this Part for income taxes imposed by and paid to another state or country on income derived from sources within that other state or country in accordance with the formula contained in subsection (b) and the requirements of subsection (c).

(b) The fraction of the gross income for North Carolina income tax purposes that is derived from sources within and subject to income tax in another state or country shall be ascertained and the North Carolina income tax before credit under this section shall be multiplied by that fraction. The credit allowed shall be either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.

(c) Receipts showing the payment of income taxes to another state or country and a true copy of the return upon the basis of which the taxes are assessed shall be filed with the Secretary at or before the time credit is claimed. If credit is claimed on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed with the Secretary.

(d) If any taxes paid to another state or country for which a fiduciary has been allowed a credit under this section are at any time credited or refunded to the fiduciary, a tax equal to that portion of the credit allowed for the taxes so credited or refunded shall be due and payable from the fiduciary and shall be subject to the penalties and interest on delinquent payments provided in G.S. 105-236 and G.S. 105-241.21.

(e) A resident beneficiary of an estate or trust who is taxed under the provisions of Part 2 of this Article on income from an estate or trust determined to be includable in the resident's gross income is allowed a credit against the tax imposed for income taxes paid by the fiduciary to another state or country on the income in accordance with the formula contained in subsection (b) of this section and the requirements of subsection (c) of this section; provided, that if any taxes paid to another state or country for which a beneficiary has been allowed credit under this section are at any time credited or refunded to the beneficiary, a tax equal to that portion of the credit allowed for

the taxes so credited or refunded shall be due and payable from the beneficiary and shall be subject to the penalties and interest on delinquent payments provided in G.S. 105-236 and G.S. 105-241.21.

(f) **(Repealed effective for taxable years beginning on or after January 1, 2023)** Fiduciaries and beneficiaries of estates and trusts who are shareholders of a taxed S Corporation are not allowed a credit under this section for taxes paid by the estates and trusts or by the taxed S Corporation to another state or country on income that is taxed to the taxed S Corporation. The taxed S Corporation is entitled to a credit under G.S. 105-153.9(a)(4) for all such taxes paid. For purposes of this subsection, the term "taxed S Corporation" is the same as defined in G.S. 105-131(b).

(g) **(Repealed effective for taxable years beginning on or after January 1, 2023)** Fiduciaries and beneficiaries of estates and trusts who are partners of a taxed partnership are not allowed a credit under this section for taxes paid by the estates and trusts or by the taxed partnership to another state or country on income that is taxed to the taxed partnership. The taxed partnership is entitled to a credit under G.S. 105-153.9(a)(5) for all such taxes paid. For purposes of this subsection, the term "taxed partnership" is the same as defined in G.S. 105-153.3. (1989, c. 728, s. 1.38; 1998-98, ss. 69, 71; 2007-491, s. 44(1)b; 2021-180, s. 42.5(k); 2024-28, s. 1.1(a).)

§ 105-160.5. Returns.

The fiduciary of an estate or trust described below shall file an income tax return under affirmation, showing specifically the taxable income and the adjustments required by this Part and such other facts as the Secretary may require for the purpose of making any computation required by this Part:

(1) Every estate or trust which has taxable income under this Part during the taxable year and is required to file an income tax return for the taxable year under the Code.

(2) Every estate or trust which the Secretary believes to be liable for a tax under this Part, when so notified by the Secretary and requested to file a return. (1989, c. 728, s. 1.38; 1998-98, s. 69.)

§ 105-160.6. Time and place of filing returns.

An income tax return of an estate or a trust shall be filed as prescribed by the Secretary at the place prescribed by the Secretary. The return of every fiduciary reporting on a calendar year basis shall be filed on or before the 15th day of April in each year, and the return of every fiduciary reporting on a fiscal year basis shall be filed on or before the 15th day of the fourth month following the close of the fiscal year. A fiduciary may receive an extension of time to file a return under G.S. 105-263. (1989, c. 728, s. 1.38; 1989 (Reg. Sess., 1990), c. 984, s. 12; 1991 (Reg. Sess., 1992), c. 930, s. 7; 2024-28, s. 1.4(b).)

§ 105-160.7. When tax must be paid.

(a) The full amount of the tax payable as shown on the return must be paid to the Secretary within the time allowed for filing the return. However, if the amount shown to be due after all credits is less than one dollar ($1.00), no payment need be made.

(b) Repealed by Session Laws 1993, c. 450, s. 5. (1989, c. 728, s. 1.38; 1989 (Reg. Sess., 1990), c. 984, s. 13; 1991 (Reg. Sess., 1992), c. 930, s. 8; 1993, c. 450, s. 5.)

§ 105-160.8. Federal determinations.

For purposes of this Part, the provisions of G.S. 105-159 apply to fiduciaries required to file returns for estates and trusts. (1989, c. 728, s. 1.38; 1993 (Reg. Sess., 1994), c. 582, s. 3; 1998-98, s. 69; 2018-5, s. 38.3(c).)

§§ 105-161 through 105-163: Repealed by Session Laws 1989, c. 728, s. 1.37.

Part 4. Income Tax Credits for Property Taxes.

§§ 105-163.01 through 105-163.06: Repealed by Session Laws 1991, c. 45, s. 14(b).

§ 105-163.07: Recodified as § 105-151.21 by Session Laws 1991, c. 45, s. 14.

§§ 105-163.08 through 105-163.09: Repealed by Session Laws 1991, c. 45, s. 14(b).

Part 5. Tax Credits for Qualified Business Investments.

§ 105-163.010: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.011: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.012: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.013: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.014: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.

§ 105-163.015: Repealed pursuant to former G.S. 105-163.015(d), effective for investments made on or after January 1, 2014.