

§ 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) 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 October 15, 2023. 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 G.S. 105-154.1

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).)