

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE BILL 889

Short Title: State/Local Tax Parity. (Public)

Sponsors: Representatives Bradford, Johnson, Kidwell, and Winslow (Primary Sponsors).  
*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Finance, if favorable, Rules, Calendar, and Operations of the House

May 5, 2021

1 A BILL TO BE ENTITLED  
2 AN ACT TO REDUCE THE IMPACT OF THE FEDERAL SALT CAP BY ALLOWING  
3 CERTAIN PASS-THROUGH ENTITIES TO ELECT TO PAY TAX AT THE ENTITY  
4 LEVEL.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** G.S. 105-131(b) reads as rewritten:

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

8 ...

9 (11) "Taxed S Corporation" means an S Corporation for which a valid election  
10 under G.S. 105-131.1A(a) is in effect."

11 **SECTION 1.(b)** G.S. 105-131.1 reads as rewritten:

12 **"§ 105-131.1. Taxation of an S Corporation and its shareholders.**

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

15 (b) ~~Each~~ Except with respect to a taxed S Corporation, each shareholder's pro rata share  
16 of an S Corporation's income attributable to the State and each resident shareholder's pro rata  
17 share of income not attributable to the State, shall be taken into account by the shareholder in the  
18 manner and subject to the adjustments provided in Parts 2 and 3 of this Article and section 1366  
19 of the Code and shall be subject to the tax levied under Parts 2 and 3 of this Article."

20 **SECTION 1.(c)** Part 1A of Article 4 of Chapter 105 of the General Statutes is  
21 amended by adding a new section to read:

22 **"§ 105-131.1A. Taxation of S Corporation as a taxed pass-through entity.**

23 (a) Taxed S Corporation Election. – An S Corporation may elect, on its timely filed  
24 annual return required under G.S. 105-131.7, to have the tax under this Article imposed on the S  
25 Corporation for any taxable period covered by the return. An S Corporation may not revoke the  
26 election after the due date of the return, including extensions.

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

32 (1) The North Carolina taxable income of a taxed S Corporation with respect to  
33 such taxable period shall be equal to the sum of the following:



- 1           a.     Each shareholder's pro rata share of the taxed S Corporation's income  
2                 or loss, subject to the adjustments provided in G.S. 105-153.5 and  
3                 G.S. 105-153.6, attributable to the State.
- 4           b.     Each resident shareholder's pro rata share of the taxed S Corporation's  
5                 income or loss, subject to the adjustments provided in G.S. 105-153.5  
6                 and G.S. 105-153.6, not attributable to the State with respect to such  
7                 taxable period.
- 8           (2)    Separately stated items of deduction are not included when calculating each  
9                 shareholder's pro rata share of the taxed S Corporation's taxable income. For  
10                purposes of this subdivision, separately stated items are those items described  
11                in section 1366 of the Code and the regulations under it.
- 12           (3)    The adjustments required by G.S. 105-153.5(c3) are not included in the  
13                 calculation of the taxed S Corporation's taxable income.
- 14           (c)    Tax Credit. – A taxed S Corporation that qualifies for a credit may apply each  
15                 shareholder's pro rata share of the taxed S Corporation's credits against the shareholder's pro rata  
16                 share of the taxed S Corporation's income tax imposed by subsection (b) of this section. An S  
17                 Corporation must pass through to its shareholders any credit required to be taken in installments  
18                 by this Chapter if the first installment was taken in a taxable period that the election under  
19                 subsection (a) of this section was not in effect. An S Corporation shall not pass through to its  
20                 shareholders any of the following:
- 21                 (1)    Any credit allowed under this Chapter for any taxable period the S  
22                        Corporation makes the election under subsection (a) of this section and the  
23                        carryforward of the unused portion of such credit.
- 24                 (2)    Any subsequent installment of such credit required to be taken in installments  
25                        by this Chapter after the S Corporation makes an election under subsection (a)  
26                        of this section and the carryforward of any unused portion of such installment.
- 27           (d)    Tax Credit for Income Taxes Paid to Other States. – With respect to resident  
28                 shareholders, a taxed S Corporation is allowed a credit against the taxes imposed by this section  
29                 for income taxes imposed by and paid to another state or country on income taxed under this  
30                 section. The credit allowed by this subsection is administered in accordance with the provisions  
31                 of G.S. 105-153.9.
- 32           (e)    Deduction Allowed for Shareholders of a Taxed S Corporation. – The shareholders  
33                 of a taxed S Corporation are allowed a deduction as specified in G.S. 105-153.5(c3)(1). This  
34                 adjustment is only allowed if the taxed S Corporation complies with the provisions of subsection  
35                 (g) of this section.
- 36           (f)    Addition Required for Shareholders of a Taxed S Corporation. – The shareholders of  
37                 a taxed S Corporation must make an addition as provided in G.S. 105-153.5(c3)(2).
- 38           (g)    Payment of Tax. – Except as provided in Article 4C of this Chapter, the full amount  
39                 of the tax payable as shown on the return of the taxed S Corporation must be paid to the Secretary  
40                 within the time allowed for filing the return. In the case of any overpayment by a taxed S  
41                 Corporation of the tax imposed under this section, only the taxed S Corporation may request a  
42                 refund of the overpayment. If the taxed S Corporation files a return showing an amount due with  
43                 the return and does not pay the amount shown due, the Department may collect the tax from the  
44                 taxed S Corporation pursuant to G.S. 105-241.22(1). The Secretary must issue a notice of  
45                 collection for the amount of tax debt to the taxed S Corporation. If the tax debt is not paid to the  
46                 Secretary within 60 days of the date the notice of collection is mailed to the taxed S Corporation,  
47                 the shareholders of the S Corporation are not allowed the deduction provided in  
48                 G.S. 105-153.5(c3)(1). The Secretary must send the shareholders a notice of proposed  
49                 assessment in accordance with G.S. 105-241.9. For purposes of this subsection, the term "tax  
50                 debt" has the same meaning as defined in G.S. 105-243.1(a).

1       (h) Basis. – The basis of both resident and nonresident shareholders of a taxed S  
2 Corporation in their stock and indebtedness of the taxed S Corporation shall be determined as if  
3 the election under subsection (a) of this section had not been made and each of the shareholders  
4 of the taxed S Corporation had properly taken into account each shareholder's pro rata share of  
5 the taxed S Corporation's items of income, loss, and deduction in the manner required with  
6 respect to an S Corporation for which no such election is in effect."

7               **SECTION 1.(d)** G.S. 105-131.7 is amended by adding a new subsection to read:

8       "(g) Taxed S Corporation. – Subsections (b) through (f) of this section do not apply to an  
9 S Corporation with respect to any taxable period for which it is a taxed S Corporation under  
10 G.S. 105-131.1A."

11               **SECTION 1.(e)** G.S. 105-131.8(a) reads as rewritten:

12       "(a) ~~For~~ Except as otherwise provided in G.S. 105-153.9(a)(4) with respect to a taxed S  
13 Corporation, for purposes of G.S. 105-153.9 and G.S. 105-160.4, each resident shareholder is  
14 considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's  
15 pro rata share of any net income tax paid by the S Corporation to a state that does not measure  
16 the income of S Corporation shareholders by the income of the S Corporation. For purposes of  
17 the preceding sentence, the term "net income tax" means any tax imposed on or measured by a  
18 corporation's net income."

19               **SECTION 2.(a)** G.S. 105-153.3 reads as rewritten:

20       "**§ 105-153.3. Definitions.**

21       The following definitions apply in this Part:

22       ...

23       (18a) Taxed partnership. – A partnership for which a valid election under  
24 G.S. 105-154.1 is in effect.

25       (18b) Taxed pass-through entity. – A taxed S Corporation or a taxed partnership.

26       (18c) Taxed S Corporation. – Defined in G.S. 105-131(b).

27       ...."

28               **SECTION 2.(b)** G.S. 105-154(d) reads as rewritten:

29       "(d) Payment of Tax on Behalf of Nonresident Owner or Partner. – If a business conducted  
30 in this State is owned by a nonresident individual or by a partnership having one or more  
31 nonresident members, the manager of the business shall report information concerning the  
32 earnings of the business in this State, the distributive share of the income of each nonresident  
33 owner or partner, and any other information required by the Secretary. The distributive share of  
34 the income of each nonresident partner includes any guaranteed payments made to the partner.  
35 The manager of the business shall pay with the return the tax on each nonresident owner or  
36 partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7.  
37 The business may deduct the payment for each nonresident owner or partner from the owner or  
38 partner's distributive share of the income of the business in this State. If the nonresident partner  
39 is not an individual and the partner has executed an affirmation that the partner will pay the tax  
40 with its corporate, partnership, trust, or estate income tax return, the manager of the business is  
41 not required to pay the tax on the partner's share. In this case, the manager shall include a copy  
42 of the affirmation with the report required by this subsection. The affirmation must be annually  
43 filed by the nonresident partner and submitted by the manager by the due date of the report  
44 required in this subsection. Otherwise, the manager of the business is required to pay the tax on  
45 the nonresident partner's share. Notwithstanding the provisions of G.S. 105-241.7(b), the  
46 manager of the business may not request a refund of an overpayment made on behalf of a  
47 nonresident owner or partner if the manager of the business has previously filed the return and  
48 paid the tax due. The nonresident owner or partner may, on its own income tax return, request a  
49 refund of an overpayment made on its behalf by the manager of the business within the provisions  
50 of G.S. 105-241.6. This subsection does not apply to a partnership with respect to any taxable  
51 period for which it is a taxed partnership."

1           SECTION 2.(c) Part 2 of Article 4 of Chapter 105 of the General Statutes is amended  
2 by adding a new section to read:

3 **"§ 105-154.1. Taxation of partnership as a taxed pass-through entity.**

4       (a) Taxed Partnership Election. – A partnership may elect, on its timely filed annual  
5 return required under G.S. 105-154(c), to have the tax under this Article imposed on the  
6 partnership for any taxable period covered by the return. A partnership may not revoke the  
7 election after the due date of the return, including extensions. This election cannot be made by a  
8 publicly traded partnership that is described in section 7704(c) of the Code or by a partnership  
9 that has at any time during the taxable year a partner who is not one of the following:

10           (1) An individual.

11           (2) An estate.

12           (3) A trust described in section 1361(c)(2) of the Code.

13           (4) An organization described in section 1361(c)(6) of the Code.

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

19           (1) The North Carolina taxable income of a taxed partnership with respect to such  
20 taxable period shall be equal to the sum of the following:

21           a. Each partner's distributive share of the taxed partnership's income or  
22 loss, subject to the adjustments provided in G.S. 105-153.5 and  
23 G.S. 105-153.6, attributable to the State.

24           b. Each resident partner's distributive share of the taxed partnership's  
25 income or loss, subject to the adjustments provided in G.S. 105-153.5  
26 and G.S. 105-153.6, not attributable to the State with respect to such  
27 taxable period.

28           (2) Separately stated items of deduction are not included when calculating each  
29 partner's distributive share of the taxed partnership's taxable income. For  
30 purposes of this subdivision, separately stated items are those items described  
31 in section 702 of the Code and the regulations adopted under it.

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

34       (c) Tax Credit. – A taxed partnership that qualifies for a credit may apply each partner's  
35 distributive share of the taxed partnership's credits against the partner's distributive share of the  
36 taxed partnership's income tax imposed by subsection (b) of this section. A partnership must pass  
37 through to its partners any credit required to be taken in installments by this Chapter if the first  
38 installment was taken in a taxable period that the election under subsection (a) of this section was  
39 not in effect. A partnership shall not pass through to its partners any of the following:

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

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

46       (d) Deduction Allowed for Partners of a Taxed Partnership. – The partners of a taxed  
47 partnership are allowed a deduction as specified in G.S. 105-153.5(c3)(3). This adjustment is  
48 only allowed if the taxed partnership complies with the provisions of subsection (f) of this  
49 section.

50       (e) Addition Required for Partners of a Taxed Partnership. – The partners of a taxed  
51 partnership must make an addition as provided in G.S. 105-153.5(c3)(4).

1       (f) Payment of Tax. – Except as provided in Article 4C of this Chapter, the full amount  
2 of the tax payable as shown on the return of the taxed partnership must be paid to the Secretary  
3 within the time allowed for filing the return. In the case of any overpayment by a taxed  
4 partnership of the tax imposed under this section, only the taxed partnership may request a refund  
5 of the overpayment. If the taxed partnership files a return showing an amount due with the return  
6 and does not pay the amount shown due, the Department may collect the tax from the taxed  
7 partnership pursuant to G.S. 105-241.22(1). The Secretary must issue a notice of collection for  
8 the amount of the tax debt to the taxed partnership. If the tax debt is not paid to the Secretary  
9 within 60 days of the date the notice of collection is mailed to the taxed partnership, the partners  
10 of the partnership are not allowed the deduction provided in G.S. 105-153.5(c3)(3). The  
11 Secretary must send the partners a notice of proposed assessment in accordance with  
12 G.S. 105-241.9. For purposes of this subsection, the term "tax debt" has the same meaning as  
13 defined in G.S. 105-243.1(a).

14       (g) Basis. – The basis of both resident and nonresident partners of a taxed partnership  
15 shall be determined as if the election under subsection (a) of this section had not been made and  
16 each of the partners of the taxed partnership had properly taken into account each partner's  
17 distributive share of the taxed partnership's items of income, loss, and deduction in the manner  
18 required with respect to a partnership for which no such election is in effect."

19       **SECTION 3.** G.S. 105-153.5 is amended by adding a new subsection to read:

20       "(c3) Taxed Pass-Through Entities. – In calculating North Carolina taxable income, a  
21 taxpayer must make the following adjustments to the taxpayer's adjusted gross income:

- 22       (1) A taxpayer that is a shareholder of a taxed S Corporation may deduct the  
23 amount of the taxpayer's pro rata share of income from the taxed S  
24 Corporation to the extent it was included in the taxed S Corporation's North  
25 Carolina taxable income and the taxpayer's adjusted gross income.
- 26       (2) A taxpayer that is a shareholder of a taxed S Corporation must add the amount  
27 of the taxpayer's pro rata share of loss from the taxed S Corporation to the  
28 extent it was included in the taxed S Corporation's North Carolina taxable  
29 income and the taxpayer's adjusted gross income.
- 30       (3) A taxpayer that is a partner of a taxed partnership may deduct the amount of  
31 the taxpayer's distributive share of income from the taxed partnership to the  
32 extent it was included in the taxed partnership's North Carolina taxable income  
33 and the taxpayer's adjusted gross income.
- 34       (4) A taxpayer that is a partner of a taxed partnership must add the amount of the  
35 taxpayer's distributive share of loss from the taxed partnership to the extent it  
36 was included in the taxed partnership's North Carolina taxable income and the  
37 taxpayer's adjusted gross income."

38       **SECTION 4.(a)** G.S. 105-153.9(a) reads as rewritten:

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

- 42       ...
- 43       (4) Shareholders of a taxed S Corporation shall not be allowed a credit under this  
44 section for taxes paid by the taxed S Corporation to another state or country  
45 on income that is taxed to the taxed S Corporation. For purposes of allowing  
46 the credit under this section for taxes paid to another state or country by a  
47 taxed S Corporation's shareholders, a shareholder's pro rata share of the  
48 income of the taxed S Corporation shall be treated as income taxed to the  
49 shareholder under this Part and a shareholder's pro rata share of the tax  
50 imposed on the taxed S Corporation under G.S. 105-131.1A shall be treated  
51 as tax imposed on the shareholder under this Part.

1           (5) Partners of a taxed partnership shall not be allowed a credit under this section  
2           for taxes paid by the taxed partnership to another state or country on income  
3           that is taxed to the taxed partnership. The taxed partnership as defined in  
4           G.S. 105-153.3(18a) is entitled to a credit under this section for all such taxes  
5           paid. For purposes of allowing the credit under this section for taxes paid to  
6           another state or country by a taxed partnership's partners, a partner's pro rata  
7           share of the income of the taxed partnership shall be treated as income taxed  
8           to the partner under this Part and a partner's pro rata share of the tax imposed  
9           on the taxed partnership under G.S. 105-154.1 shall be treated as tax imposed  
10           on the partner under this Part."

11           **SECTION 4.(b)** G.S. 105-160.4 reads as rewritten:

12       **"§ 105-160.4. Tax credits for income taxes paid to other states by estates and trusts.**

13           ...

14           (f) Fiduciaries and beneficiaries of estates and trusts who are shareholders of a taxed S  
15           Corporation are not allowed a credit under this section for taxes paid by the estates and trusts or  
16           by the taxed S Corporation to another state or country on income that is taxed to the taxed S  
17           Corporation. The taxed S Corporation is entitled to a credit under G.S. 105-153.9(a)(4) for all  
18           such taxes paid. For purposes of this subsection, the term "taxed S Corporation" is the same as  
19           defined in G.S. 105-131(b).

20           (g) Fiduciaries and beneficiaries of estates and trusts who are partners of a taxed  
21           partnership are not allowed a credit under this section for taxes paid by the estates and trusts or  
22           by the taxed partnership to another state or country on income that is taxed to the taxed  
23           partnership. The taxed partnership is entitled to a credit under G.S. 105-153.9(a)(5) for all such  
24           taxes paid. For purposes of this subsection, the term "taxed partnership" is the same as defined  
25           in G.S. 105-153.3."

26           **SECTION 5.(a)** G.S. 105-163.38 is amended by adding a new subdivision to read:

27           "(6) Taxed pass-through entity. – Defined in G.S. 105-153.3."

28           **SECTION 5.(b)** G.S. 105-163.39 is amended by adding a new subsection to read:

29           "(d) Taxed Pass-Through Entity. – This Article applies to every taxed pass-through entity  
30           in the same manner as a corporation subject to tax under Article 4 of this Chapter, except that  
31           G.S. 105-163.41(d)(5) shall not apply with respect to a taxable year of a taxed pass-through entity  
32           if it was not a taxed pass-through entity during its preceding taxable year."

33           **SECTION 6.** This act is effective for taxable years beginning on or after January 1,  
34       2021.