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SENATE BILL DRS45295-RBf-6

Short Title: Standard Deduction; Late Penalties; SALT Cap. (Public)

Sponsors: Senators Burgin and Edwards (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE STANDARD DEDUCTION TO THE FEDERAL STANDARD
3 DEDUCTION AMOUNT, TO GRADUATE LATE PAYMENT PENALTIES, AND TO
4 ALLOW CERTAIN PASS-THROUGH ENTITIES TO ELECT TO PAY TAX AT THE
5 ENTITY LEVEL.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.(a)** G.S. 105-153.5(a)(1) reads as rewritten:

8 "(1) Standard deduction amount. – The standard deduction amount is zero for a
9 person who is not eligible for a standard deduction under section 63 of the
10 Code. For all other taxpayers, the standard deduction amount is equal to the
11 amount listed in the table below based on the taxpayer's filing status:

Filing Status	Standard Deduction
Married, filing jointly/surviving spouse	\$21,500 \$25,500
Head of Household	16,125 19,125
Single	10,750 12,750
Married, filing separately	10,750 12,750."

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17 **SECTION 1.(b)** This section is effective for taxable years beginning on or after
18 January 1, 2022.

19 **SECTION 2.(a)** G.S. 105-153.5(a)(1), as amended by Section 1 of this act, reads as
20 rewritten:

21 "(1) Standard deduction amount. – The standard deduction amount is ~~zero for a~~
22 ~~person who is not eligible for a standard deduction under section 63 of the~~
23 ~~Code. For all other taxpayers, the standard deduction amount is equal to the~~
24 ~~amount listed in the table below based on the taxpayer's filing status:~~
25 the amount allowed as the basic standard deduction under section 63 of the Code
26 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."

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32 **SECTION 2.(b)** This section is effective for taxable years beginning on or after
33 January 1, 2023.

34 **SECTION 3.(a)** G.S. 105-236(a)(4) reads as rewritten:

35 "(4) Failure to Pay Tax When Due. – In the case of failure to pay any tax when
36 due, without intent to evade the tax, the Secretary shall assess a penalty equal



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1 to ~~ten two percent (10%)-(2%)~~ of the ~~tax~~-amount of the tax if the failure is for
2 not more than one month, with an additional two percent (2%) for each
3 additional month, or fraction thereof, during which the failure continues, not
4 exceeding ten percent (10%) in aggregate. This penalty does not apply in any
5 of the following circumstances:

- 6 a. When the amount of tax shown as due on an amended return is paid
7 when the return is filed.
- 8 b. When the Secretary proposes an assessment for tax due but not shown
9 on a return and the tax due is paid within 45 days after the later of the
10 following:
- 11 1. The date of the notice of proposed assessment of the tax, if the
12 taxpayer does not file a timely request for a Departmental
13 review of the proposed assessment.
 - 14 2. The date the proposed assessment becomes collectible under
15 one of the circumstances listed in G.S. 105-241.22(3) through
16 (6), if the taxpayer files a timely request for a Departmental
17 review of the proposed assessment."

18 **SECTION 3.(b)** This section becomes effective January 1, 2022, and applies to
19 penalties assessed on or after that date.

20 **SECTION 4.(a)** G.S. 105-131(b) reads as rewritten:

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

22 ...

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

25 **SECTION 4.(b)** G.S. 105-131.1 reads as rewritten:

26 **"§ 105-131.1. Taxation of an S Corporation and its shareholders.**

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

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

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

36 **"§ 105-131.1A. Taxation of S Corporation as a taxed pass-through entity.**

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

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

- 46 (1) The North Carolina taxable income of a taxed S Corporation with respect to
47 such taxable period shall be equal to the sum of the following:
- 48 a. Each shareholder's pro rata share of the taxed S Corporation's income
49 or loss, subject to the adjustments provided in G.S. 105-153.5 and
50 G.S. 105-153.6, attributable to the State.

1 b. Each resident shareholder's pro rata share of the taxed S Corporation's
2 income or loss, subject to the adjustments provided in G.S. 105-153.5
3 and G.S. 105-153.6, not attributable to the State with respect to such
4 taxable period.

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

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

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

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

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

24 (d) Tax Credit for Income Taxes Paid to Other States. – With respect to resident
25 shareholders, a taxed S Corporation is allowed a credit against the taxes imposed by this section
26 for income taxes imposed by and paid to another state or country on income taxed under this
27 section. The credit allowed by this subsection is administered in accordance with the provisions
28 of G.S. 105-153.9.

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

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

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

48 (h) Basis. – The basis of both resident and nonresident shareholders of a taxed S
49 Corporation in their stock and indebtedness of the taxed S Corporation shall be determined as if
50 the election under subsection (a) of this section had not been made and each of the shareholders
51 of the taxed S Corporation had properly taken into account each shareholder's pro rata share of

1 the taxed S Corporation's items of income, loss, and deduction in the manner required with
2 respect to an S Corporation for which no such election is in effect."

3 **SECTION 4.(d)** G.S. 105-131.7 is amended by adding a new subsection to read:

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

7 **SECTION 4.(e)** G.S. 105-131.8(a) reads as rewritten:

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

15 **SECTION 4.(f)** G.S. 105-153.3 reads as rewritten:

16 **"§ 105-153.3. Definitions.**

17 The following definitions apply in this Part:

18 ...

19 (18a) Taxed partnership. – A partnership for which a valid election under
20 G.S. 105-154.1 is in effect.

21 (18b) Taxed pass-through entity. – A taxed S Corporation or a taxed partnership.

22 (18c) Taxed S Corporation. – Defined in G.S. 105-131(b).

23"

24 **SECTION 4.(g)** G.S. 105-153.5 is amended by adding a new subsection to read:

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

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

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

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

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

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

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

47 ...

48 (4) Shareholders of a taxed S Corporation shall not be allowed a credit under this
49 section for taxes paid by the taxed S Corporation to another state or country
50 on income that is taxed to the taxed S Corporation. For purposes of allowing
51 the credit under this section for taxes paid to another state or country by a

1 taxed S Corporation's shareholders, a shareholder's pro rata share of the
2 income of the taxed S Corporation shall be treated as income taxed to the
3 shareholder under this Part and a shareholder's pro rata share of the tax
4 imposed on the taxed S Corporation under G.S. 105-131.1A shall be treated
5 as tax imposed on the shareholder under this Part.

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

16 **SECTION 4.(i)** G.S. 105-154(d) reads as rewritten:

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

40 **SECTION 4.(j)** Part 2 of Article 4 of this Chapter is amended by adding a new
41 section to read:

42 "**§ 105-154.1. Taxation of partnership as a taxed pass-through entity.**

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

- 49 (1) An individual.
- 50 (2) An estate.
- 51 (3) A trust described in section 1361(c)(2) of the Code.

- 1 (4) An organization described in section 1361(c)(6) of the Code.
- 2 (b) Taxable Income of Taxed Partnership. – A tax is imposed for the taxable period on
3 the North Carolina taxable income of a taxed partnership. The tax shall be levied, collected, and
4 paid annually. The tax is imposed on the North Carolina taxable income at the rate levied in
5 G.S. 105-153.7. The North Carolina taxable income of a taxed partnership is determined as
6 follows:
- 7 (1) The North Carolina taxable income of a taxed partnership with respect to such
8 taxable period shall be equal to the sum of the following:
- 9 a. Each partner's distributive share of the taxed partnership's income or
10 loss, subject to the adjustments provided in G.S. 105-153.5 and
11 G.S. 105-153.6, attributable to the State.
- 12 b. Each resident partner's distributive share of the taxed partnership's
13 income or loss, subject to the adjustments provided in G.S. 105-153.5
14 and G.S. 105-153.6, not attributable to the State with respect to such
15 taxable period.
- 16 (2) Separately stated items of deduction are not included when calculating each
17 partner's distributive share of the taxed partnership's taxable income. For
18 purposes of this subdivision, separately stated items are those items described
19 in section 702 of the Code and the regulations adopted under it.
- 20 (3) The adjustments required by G.S. 105-153.5(c3) are not included in the
21 calculation of the taxed partnership's taxable income.
- 22 (c) Tax Credit. – A taxed partnership that qualifies for a credit may apply each partner's
23 distributive share of the taxed partnership's credits against the partner's distributive share of the
24 taxed partnership's income tax imposed by subsection (b) of this section. A partnership must pass
25 through to its partners any credit required to be taken in installments by this Chapter if the first
26 installment was taken in a taxable period that the election under subsection (a) of this section was
27 not in effect. A partnership shall not pass through to its partners any of the following:
- 28 (1) Any credit allowed under this Chapter for any taxable period the partnership
29 makes the election under subsection (a) of this section and the carryforward
30 of the unused portion of such credit.
- 31 (2) Any subsequent installment of such credit required to be taken in installments
32 by this Chapter after the partnership makes an election under subsection (a) of
33 this section and the carryforward of any unused portion of such installment.
- 34 (d) Deduction Allowed for Partners of a Taxed Partnership. – The partners of a taxed
35 partnership are allowed a deduction as specified in G.S. 105-153.5(c3)(3). This adjustment is
36 only allowed if the taxed partnership complies with the provisions of subsection (f) of this
37 section.
- 38 (e) Addition Required for Partners of a Taxed Partnership. – The partners of a taxed
39 partnership must make an addition as provided in G.S. 105-153.5(c3)(4).
- 40 (f) Payment of Tax. – Except as provided in Article 4C of this Chapter, the full amount
41 of the tax payable as shown on the return of the taxed partnership must be paid to the Secretary
42 within the time allowed for filing the return. In the case of any overpayment by a taxed
43 partnership of the tax imposed under this section, only the taxed partnership may request a refund
44 of the overpayment. If the taxed partnership files a return showing an amount due with the return
45 and does not pay the amount shown due, the Department may collect the tax from the taxed
46 partnership pursuant to G.S. 105-241.22(1). The Secretary must issue a notice of collection for
47 the amount of the tax debt to the taxed partnership. If the tax debt is not paid to the Secretary
48 within 60 days of the date the notice of collection is mailed to the taxed partnership, the partners
49 of the partnership are not allowed the deduction provided in G.S. 105-153.5(c3)(3). The
50 Secretary must send the partners a notice of proposed assessment in accordance with

1 G.S. 105-241.9. For purposes of this subsection, the term "tax debt" has the same meaning as
2 defined in G.S. 105-243.1(a)."

3 **SECTION 4.(k)** G.S. 105-160.4 reads as rewritten:

4 "**§ 105-160.4. Tax credits for income taxes paid to other states by estates and trusts.**

5 ...

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

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

18 **SECTION 4.(l)** G.S. 105-163.38 is amended by adding a new subdivision to read:

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

20 **SECTION 4.(m)** G.S. 105-163.39 is amended by adding a new subsection to read:

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

25 **SECTION 4.(n)** This section is effective for taxable years beginning on or after
26 January 1, 2021.

27 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
28 law.