

**§ 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.)