

W. S Corporations (G.S. 105-131)

1. Corporations Required to File

Every corporation required to file a franchise and income tax return in North Carolina which has a valid "S election" in effect under the Internal Revenue Code Section 1362, must file a North Carolina S corporation return. The filing status is mandatory.

2. Forms to be Used for Filing

S corporations doing business in North Carolina use Form CD-401S to report activities.

3. Return and Payment Due

The due date of the S return is the 15th day of the third month (effective for taxable years beginning on or after January 1, 2008, the fourth month) following the close of the income year. The liability for franchise tax is payable on the statutory due date of the return, without regard to extension. Any income tax payment made on behalf of nonresident shareholders included in a composite return is also due at that time.

4. Extensions

An extension of time to file the S corporation's franchise and income tax return will be granted for seven (7) months (effective for taxable years beginning on or after January 1, 2008, six (6) months) provided the application is timely filed.

5. Election

There is no separate election to be made for a corporation that is or wishes to be an S corporation for North Carolina purposes. The federal election authorizing S corporation status is recognized for state purposes. There is no provision to elect a different filing status for State purposes; each S corporation must file as an S corporation for State income tax purposes. The S corporation status will terminate for North Carolina purposes at the same time and for the same taxable period(s) such termination is effective for federal filing purposes.

6. Nonresident Shareholder Agreement (Form NC-NA)

An S corporation with nonresident shareholders is required to submit with the first North Carolina S return an agreement for each nonresident shareholder. The agreement, Form NC-NA, is to be signed by the shareholder who agrees to be subject to the income tax laws of this State and to be liable for the tax on the pro rata share of S corporation income attributable to such individual in this State. The individual is liable at the individual rate(s) on the portion of North Carolina income attributed to those nonresident shareholders who have filed Form NC-NA.

Note: If the S corporation fails to timely file the shareholder agreement(s) for nonresidents, the corporation becomes liable for income tax at the individual single rate on the portion of the North Carolina income attributed to those shareholders not complying with this requirement.

7. Franchise Tax, Schedules A, C, D and E of Form CD-401S (G.S. 105-122)

S corporations determine their franchise tax liability in the same manner as all other general business corporations. Franchise tax schedules A, C, D and E pertain to the corporation franchise tax base and the amount of tax liability. There is no difference between an S corporation and a C corporation with respect to the franchise tax requirement, liability, etc. Although some of the “net worth” accounts are different due to the labels placed on certain accounts, the fundamental concept of determining the taxable values from the corporation’s assets less definite legal liabilities will prevail for all corporations subject to the “general business” franchise tax.

Additional information concerning the computation of the franchise tax schedules can be found under the subject, “General Business Corporations,” of the franchise tax section of this publication and in the Corporation Franchise and Income Tax Instructions, CD-415, used by all other corporations.

8. Corporate Income of S Corporations Taxed to Shareholders (G.S. 105-131)

The S corporation’s income and expenses are divided among and passed through to its shareholders, who then must report the income and expenses on their State individual or trust tax returns. The pro rata share of resident and nonresident shareholders in the income and expenses of an S Corporation is subject to the adjustments under individual income tax law (G.S. 105-134.6).

9. Composite Return for Nonresident Shareholders (G.S. 105-131.7(b))

If the S corporation has shareholders who are nonresidents of North Carolina, the corporation may file a composite return that reflects the state taxable income of each nonresident and the amount of tax due. The composite return is available for nonresident shareholders only. A remittance of the total tax due on behalf of nonresident shareholders is made with the return, CD-401S, when filed.

A nonresident individual shareholder is not required to file a North Carolina individual income tax return if the only income in North Carolina is reported by the S corporation. A nonresident trust shareholder, other than a grantor trust, is required to file a North Carolina fiduciary income tax return even if its only income in North Carolina is reported by the S Corporation.

10. Computation of Net Income on Composite Returns

The computation of net income on a composite return is basically the same as for C corporations; i.e., all income subject to tax and all allowable deductions permitted under the Code will be considered.