

CHAPTER 1

TAXATION

HOUSE BILL 06S-1020

BY REPRESENTATIVE(S) Benefield and Berens, Harvey, Kerr J., Penry, Schultheis, Balmer, Borodkin, Buescher, Carroll M., Cloer, Curry, Green, Hefley, Jahn, Kerr A., Liston, Lundberg, Massey, McCluskey, Merrifield, Paccione, Romanoff, Rose, Solano, Soper, Stafford, Todd, Witwer, and Marshall;
also SENATOR(S) Windels.

AN ACT

CONCERNING THE ELIMINATION OF A STATE INCOME TAX BENEFIT FOR A BUSINESS THAT PAYS AN UNAUTHORIZED ALIEN TO PERFORM LABOR SERVICES, AND, IN CONNECTION THEREWITH, PROHIBITING CERTAIN WAGES OR REMUNERATION PAID TO AN UNAUTHORIZED ALIEN FOR LABOR SERVICES FROM BEING CLAIMED AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES IF, AT THE TIME THE BUSINESS HIRED THE UNAUTHORIZED ALIEN, THE BUSINESS KNEW OF THE UNAUTHORIZED STATUS OF THE ALIEN UNLESS SPECIFIED EXCEPTIONS APPLY AND, TO THE EXTENT SUCH A PAYMENT WAS CLAIMED AS A DEDUCTION IN DETERMINING THE BUSINESS' FEDERAL INCOME TAX LIABILITY, REQUIRING AN AMOUNT EQUAL TO THE PROHIBITED DEDUCTION TO BE ADDED TO THE BUSINESS' FEDERAL TAXABLE INCOME FOR THE PURPOSE OF DETERMINING STATE INCOME TAX LIABILITY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-22-104 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions. (3) There shall be added to the federal taxable income:

(i) AN AMOUNT EQUAL TO A BUSINESS EXPENSE FOR LABOR SERVICES THAT IS DEDUCTED PURSUANT TO SECTION 162 (a) (1) OF THE INTERNAL REVENUE CODE BUT THAT IS PROHIBITED FROM BEING CLAIMED AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES PURSUANT TO SECTION 39-22-529.

SECTION 2. 39-22-304 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

39-22-304. Net income of corporation. (2) There shall be added to federal

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

taxable income:

(h) AN AMOUNT EQUAL TO A BUSINESS EXPENSE FOR LABOR SERVICES THAT IS DEDUCTED PURSUANT TO SECTION 162 (a) (1) OF THE INTERNAL REVENUE CODE BUT THAT IS PROHIBITED FROM BEING CLAIMED AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES PURSUANT TO SECTION 39-22-529.

SECTION 3. Part 5 of article 22 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-22-529. Business expense deduction - labor services - unauthorized alien - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "LABOR SERVICES" MEANS THE PHYSICAL PERFORMANCE OF SERVICES IN THIS STATE.

(b) "UNAUTHORIZED ALIEN" SHALL HAVE THE SAME MEANING AS SET FORTH IN 8 U.S.C. SEC. 1324a (h) (3), AS AMENDED.

(2) ON OR AFTER JANUARY 1, 2008, NO WAGES OR REMUNERATION FOR LABOR SERVICES PAID TO AN UNAUTHORIZED ALIEN OF SIX HUNDRED DOLLARS OR MORE IN A YEAR SHALL BE CLAIMED AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES BY A TAXPAYER WHO, AT THE TIME THE TAXPAYER HIRED THE UNAUTHORIZED ALIEN, KNEW OF THE UNAUTHORIZED STATUS OF THE ALIEN. THE PROVISIONS OF THIS SUBSECTION (2) SHALL APPLY REGARDLESS OF WHETHER AN INTERNAL REVENUE SERVICE FORM 1099-MISC IS ISSUED IN CONJUNCTION WITH THE WAGES OR REMUNERATION.

(3) THIS SECTION SHALL NOT APPLY TO:

(a) ANY BUSINESS DOMICILED IN THE STATE THAT IS EXEMPT FROM COMPLIANCE WITH FEDERAL EMPLOYMENT VERIFICATION PROCEDURES UNDER FEDERAL LAW THAT MAKES THE EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL;

(b) ANY INDIVIDUAL HIRED BY THE TAXPAYER BEFORE THE EFFECTIVE DATE OF THIS PARAGRAPH (b);

(c) ANY TAXPAYER WHERE THE INDIVIDUAL BEING PAID IS NOT DIRECTLY COMPENSATED OR EMPLOYED BY THE TAXPAYER; OR

(d) WAGES OR REMUNERATION PAID FOR LABOR SERVICES TO ANY INDIVIDUAL WHO HOLDS AND PRESENTS TO THE TAXPAYER A VALID LICENSE OR IDENTIFICATION CARD ISSUED BY THE DEPARTMENT OF REVENUE.

(4) THE EXECUTIVE DIRECTOR IS AUTHORIZED TO PRESCRIBE FORMS AND PROMULGATE RULES THAT ARE NECESSARY TO ADMINISTER THIS SECTION.

SECTION 4. Refer to people under referendum. (1) This act shall be submitted to a vote of the registered electors of the state of Colorado at the next election for which it may be submitted, for their approval or rejection, under the

provisions of the referendum as provided for in section 1 of article V and section 20 of article X of the state constitution, and in article 40 of title 1, Colorado Revised Statutes. Each elector voting at said election and desirous of voting for or against said act shall cast a vote as provided by law either "Yes" or "No" on the proposition: "SHALL STATE TAXES BE INCREASED ONE HUNDRED FIFTY THOUSAND DOLLARS ANNUALLY BY AN AMENDMENT TO THE COLORADO REVISED STATUTES THAT ELIMINATES A STATE INCOME TAX BENEFIT FOR A BUSINESS THAT PAYS AN UNAUTHORIZED ALIEN TO PERFORM LABOR SERVICES, AND, IN CONNECTION THEREWITH, PROHIBITS CERTAIN WAGES OR REMUNERATION PAID TO AN UNAUTHORIZED ALIEN FOR LABOR SERVICES FROM BEING CLAIMED AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES IF, AT THE TIME THE BUSINESS HIRED THE UNAUTHORIZED ALIEN, THE BUSINESS KNEW OF THE UNAUTHORIZED STATUS OF THE ALIEN UNLESS SPECIFIED EXCEPTIONS APPLY AND, TO THE EXTENT SUCH A PAYMENT WAS CLAIMED AS A DEDUCTION IN DETERMINING THE BUSINESS' FEDERAL INCOME TAX LIABILITY, REQUIRES AN AMOUNT EQUAL TO THE PROHIBITED DEDUCTION TO BE ADDED TO THE BUSINESS' FEDERAL TAXABLE INCOME FOR THE PURPOSE OF DETERMINING STATE INCOME TAX LIABILITY?" The votes cast for the adoption or rejection of said act shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress.

(2) In accordance with section 1-5-407 (5), Colorado Revised Statutes, it is the intent of the general assembly that this act, as a measure to increase taxes, be printed on the ballot immediately following all constitutional referred measures and before any other statutory referred measures and lettered accordingly.

Approved: Referendum