

CHAPTER 11

TAXATION

HOUSE BILL 06S-1015

BY REPRESENTATIVE(S) Kerr A. and Kerr J. and McGihon, Benefield, Berens, Carroll M., Coleman, Green, Hefley, Larson, Merrifield, Paccione, Romanoff, Stafford, Todd, Welker, Borodkin, Carroll T., Decker, and Hodge; also SENATOR(S) Keller, Boyd, Fitz-Gerald, Gordon, Shaffer, Tochtrop, Williams, and Windels.

AN ACT

CONCERNING A REQUIREMENT THAT A PERSON WITHHOLD COLORADO INCOME TAX FROM A PAYMENT TO A PERSON OTHER THAN AN EMPLOYEE FOR SERVICES PERFORMED, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Part 1 of article 37.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-37.5-107. Work eligibility verification portal. THE OFFICE SHALL, WITHIN EXISTING RESOURCES AND NO LATER THAN DECEMBER 1, 2006, SUBMIT A REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THAT SETS FORTH AN IMPLEMENTATION PLAN FOR THE ESTABLISHMENT OF A WORK ELIGIBILITY VERIFICATION PORTAL THAT, ON AND AFTER JANUARY 1, 2008, WILL ENABLE A PERSON TO ACCESS A DATABASE TO VERIFY WHETHER A TAXPAYER IDENTIFICATION NUMBER IS VALID. THE REPORT SHALL INCLUDE AN ANALYSIS OF THE ANTICIPATED COSTS OF ESTABLISHING AND OPERATING THE PORTAL AND DESCRIPTIONS AND ANALYSES OF DATABASES AND PROGRAMS AVAILABLE FOR USE IN VERIFYING TAXPAYER IDENTIFICATION NUMBERS INCLUDING, AT A MINIMUM, THE TAXPAYER IDENTIFICATION NUMBER MATCHING PROGRAM ADMINISTERED BY THE INTERNAL REVENUE SERVICE AND AT LEAST TWO DATABASES OR PROGRAMS ADMINISTERED BY NONGOVERNMENTAL ENTITIES.

SECTION 2. 39-22-604, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-22-604. Withholding tax - requirement to withhold - tax lien - exemption from lien. (18) (a) ANY PERSON WHO MAKES A PAYMENT FOR SERVICES TO ANY

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

NATURAL PERSON THAT IS NOT OTHERWISE SUBJECT TO STATE INCOME TAX WITHHOLDING BUT THAT REQUIRES AN INFORMATION RETURN, INCLUDING BUT NOT LIMITED TO ANY PAYMENT FOR WHICH INTERNAL REVENUE SERVICE FORM 1099-B, 1099-DIV, 1099-INT, 1099-MISC, 1099-OID, OR 1099-PATR, THE ISSUANCE OF ANY OF WHICH ALLOWS TAXPAYER IDENTIFICATION NUMBER VERIFICATION THROUGH THE TAXPAYER IDENTIFICATION NUMBER MATCHING PROGRAM ADMINISTERED BY THE INTERNAL REVENUE SERVICE, OR ANY OTHER VERSION OF FORM 1099 IS REQUIRED, SHALL DEDUCT AND WITHHOLD STATE INCOME TAX AT THE RATE OF FOUR AND SIXTY-THREE ONE-HUNDREDTHS PERCENT IF THE PERSON WHO PERFORMED THE SERVICES:

(I) FAILS TO PROVIDE A VALIDATED TAXPAYER IDENTIFICATION NUMBER; OR

(II) PROVIDES AN INTERNAL REVENUE SERVICE-ISSUED TAXPAYER IDENTIFICATION NUMBER ISSUED FOR NONRESIDENT ALIENS.

(b) ANY PERSON OTHER THAN A NATURAL PERSON AND ANY NATURAL PERSON WHO IN THE COURSE OF CONDUCTING A TRADE OR BUSINESS AS A SOLE PROPRIETOR MAKES ANY PAYMENT FOR SERVICES TO A NATURAL PERSON THAT IS NOT REPORTED ON ANY INFORMATION RETURN SHALL DEDUCT AND WITHHOLD STATE INCOME TAX AT THE RATE OF FOUR AND SIXTY-THREE ONE-HUNDREDTHS PERCENT, UNLESS THE EMPLOYER MAKING PAYMENT HAS A VALIDATED TAXPAYER IDENTIFICATION NUMBER FROM THE PERSON TO WHOM PAYMENT IS MADE.

(c) THE REQUIREMENT TO WITHHOLD AND DEDUCT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (18) SHALL NOT APPLY TO AN INDIVIDUAL WHO IS EXEMPT FROM FEDERAL WITHHOLDING PURSUANT TO A PROPERLY FILED INTERNAL REVENUE SERVICE FORM 8233 IF A COPY OF SUCH FORM HAS BEEN FILED WITH THE DEPARTMENT OF REVENUE.

(d) FOR PURPOSES OF ALL OTHER PROVISIONS OF THIS SECTION, EXCLUDING PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, A PERSON WHO DEDUCTS AND WITHHOLDS STATE INCOME TAX FROM A PERSON WHO PERFORMS SERVICES PURSUANT TO THE PROVISIONS OF THIS SUBSECTION (18) SHALL BE TREATED AS AN EMPLOYER WITHHOLDING AND DEDUCTING WAGES FROM AN EMPLOYEE, AND SUCH OTHER PROVISIONS OF THIS SECTION SHALL APPLY ACCORDINGLY. THIS PARAGRAPH (d) SHALL NOT BE CONSTRUED AS MAKING THE PERSON WHO PERFORMED THE SERVICES AN EMPLOYEE OF THE PERSON WHO DEDUCTS AND WITHHOLDS STATE INCOME TAX FOR ANY OTHER PURPOSE IN LAW.

(e) THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES TO AUTHORIZE ANY AMOUNTS DEDUCTED AND WITHHELD PURSUANT TO THIS SUBSECTION (18) TO BE PAID TO THE DEPARTMENT OF REVENUE AS PART OF THE STATE INCOME TAX RETURN.

(f) FOR PURPOSES OF THIS SUBSECTION (18), "VALIDATED TAXPAYER IDENTIFICATION NUMBER" MEANS A SOCIAL SECURITY NUMBER OR AN INTERNAL REVENUE SERVICE INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER THAT HAS BEEN CONFIRMED BY THE PERSON OR EMPLOYER MAKING A PAYMENT TO A PERSON THROUGH THE PORTAL DESCRIBED IN SECTION 24-37.5-107, C.R.S., OR THROUGH ANY OTHER EQUALLY EFFECTIVE FORM OF THIRD-PARTY VERIFICATION APPROVED BY THE DEPARTMENT OF REVENUE AS HAVING BEEN ASSIGNED BY THE SOCIAL

SECURITY ADMINISTRATION OR THE INTERNAL REVENUE SERVICE TO THE PERSON TO WHOM PAYMENT IS MADE AND, IN THE CASE OF AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER, AS NOT HAVING BEEN ASSIGNED AS A TAXPAYER IDENTIFICATION NUMBER ISSUED FOR NONRESIDENT ALIENS.

(g) THIS SUBSECTION (18) SHALL BE ENFORCED WITHOUT REGARD TO RACE, RELIGION, GENDER, ETHNICITY, OR NATIONAL ORIGIN.

SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund, not otherwise appropriated, to the department of personnel and administration, for the fiscal year beginning July 1, 2006, the sum of ninety-three thousand seven hundred fifty dollars (\$93,750), or so much thereof as may be necessary, for the implementation of this act.

SECTION 4. Effective date - applicability. This act shall take effect upon passage; except that section 2 of this act shall take effect January 1, 2008, and shall apply to services performed and payment obligations accrued on or after said date unless the portal described in section 24-37.5-107, Colorado Revised Statutes, is not accessible to a person seeking to verify whether a taxpayer identification number is valid on or before said date, in which case section 2 of this act shall take effect on the January 1 that immediately follows the date on which the portal becomes accessible and shall apply to services performed and payment obligations accrued on or after said January 1.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: July 31, 2006