

First Extraordinary Session
Sixty-fifth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 06B-2058.01 Jason Gelender

HOUSE BILL 06S-1020

HOUSE SPONSORSHIP

Benfield and Berens, Harvey, Kerr J., Penry, and Schultheis

SENATE SPONSORSHIP

Windels

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ELIMINATION OF A STATE INCOME TAX BENEFIT FOR**
102 **A BUSINESS THAT PAYS AN UNAUTHORIZED ALIEN TO PERFORM**
103 **LABOR SERVICES, AND, IN CONNECTION THEREWITH,**
104 **PROHIBITING CERTAIN WAGES OR REMUNERATION PAID TO AN**
105 **UNAUTHORIZED ALIEN FOR LABOR SERVICES FROM BEING**
106 **CLAIMED AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE**
107 **INCOME TAX PURPOSES IF, AT THE TIME THE BUSINESS HIRED**
108 **THE UNAUTHORIZED ALIEN, THE BUSINESS KNEW OR**
109 **REASONABLY SHOULD HAVE KNOWN OF THE UNAUTHORIZED**
110 **STATUS OF THE ALIEN UNLESS SPECIFIED EXCEPTIONS APPLY**
111 **AND, TO THE EXTENT SUCH A PAYMENT WAS CLAIMED AS A**
112 **DEDUCTION IN DETERMINING THE BUSINESS' FEDERAL INCOME**

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
July 6, 2006

101 TAX LIABILITY, REQUIRING AN AMOUNT EQUAL TO THE
102 PROHIBITED DEDUCTION TO BE ADDED TO THE BUSINESS'
103 FEDERAL TAXABLE INCOME FOR THE PURPOSE OF DETERMINING
104 STATE INCOME TAX LIABILITY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Refers to the voters of the state a measure with the following provisions:

On or after a specified date, prohibits a business from claiming wages or remuneration for labor services paid to an unauthorized alien in excess of a specified amount as a deductible business expense for state income tax purposes by a taxpayer unless specified exceptions apply.

Requires the disallowed business expense that was claimed as a deduction in determining the business' federal income tax liability to be added to its federal taxable income for purposes of determining the state income tax liability.

Defines "labor services" and "unauthorized alien".

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

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

4 **39-22-104. Income tax imposed on individuals, estates, and**
5 **trusts - single rate - definitions.** (3) There shall be added to the federal
6 taxable income:

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

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

3 **39-22-304. Net income of corporation.** (2) There shall be added
4 to federal taxable income:

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

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

13 **39-22-529. Business expense deduction - labor services -**
14 **unauthorized alien - definitions.** (1) AS USED IN THIS SECTION, UNLESS
15 THE CONTEXT OTHERWISE REQUIRES:

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

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

20 (2) ON OR AFTER JANUARY 1, 2008, NO WAGES OR REMUNERATION
21 FOR LABOR SERVICES PAID TO AN UNAUTHORIZED ALIEN OF SIX HUNDRED
22 DOLLARS OR MORE IN A YEAR SHALL BE CLAIMED AS A DEDUCTIBLE
23 BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES BY A TAXPAYER
24 WHO, AT THE TIME THE TAXPAYER HIRED THE UNAUTHORIZED ALIEN,
25 KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE UNAUTHORIZED
26 STATUS OF THE ALIEN. THE PROVISIONS OF THIS SUBSECTION (2) SHALL
27 APPLY REGARDLESS OF WHETHER AN INTERNAL REVENUE SERVICE FORM

1 1099-MISC IS ISSUED IN CONJUNCTION WITH THE WAGES OR
2 REMUNERATION.

3 (3) THIS SECTION SHALL NOT APPLY TO:

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

8 (b) ANY INDIVIDUAL HIRED BY THE TAXPAYER PRIOR TO JANUARY
9 1, 2008;

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

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

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

19 **SECTION 4. Refer to people under referendum.** This act shall
20 be submitted to a vote of the registered electors of the state of Colorado
21 at the next election for which it may be submitted, for their approval or
22 rejection, under the provisions of the referendum as provided for in
23 section 1 of article V and section 20 of article X of the state constitution,
24 and in article 40 of title 1, Colorado Revised Statutes. Each elector
25 voting at said election and desirous of voting for or against said act shall
26 cast a vote as provided by law either "Yes" or "No" on the proposition:
27 "SHALL STATE TAXES BE INCREASED _____ ANNUALLY BY AN

1 AMENDMENT TO THE COLORADO REVISED STATUTES THAT ELIMINATES A
2 STATE INCOME TAX BENEFIT FOR A BUSINESS THAT PAYS AN
3 UNAUTHORIZED ALIEN TO PERFORM LABOR SERVICES, AND, IN CONNECTION
4 THEREWITH, PROHIBITS CERTAIN WAGES OR REMUNERATION PAID TO AN
5 UNAUTHORIZED ALIEN FOR LABOR SERVICES FROM BEING CLAIMED AS A
6 DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES IF, AT
7 THE TIME THE BUSINESS HIRED THE UNAUTHORIZED ALIEN, THE BUSINESS
8 KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE UNAUTHORIZED
9 STATUS OF THE ALIEN UNLESS SPECIFIED EXCEPTIONS APPLY AND, TO THE
10 EXTENT SUCH A PAYMENT WAS CLAIMED AS A DEDUCTION IN DETERMINING
11 THE BUSINESS' FEDERAL INCOME TAX LIABILITY, REQUIRES AN AMOUNT
12 EQUAL TO THE PROHIBITED DEDUCTION TO BE ADDED TO THE BUSINESS'
13 FEDERAL TAXABLE INCOME FOR THE PURPOSE OF DETERMINING STATE
14 INCOME TAX LIABILITY?" The votes cast for the adoption or rejection of
15 said act shall be canvassed and the result determined in the manner
16 provided by law for the canvassing of votes for representatives in
17 Congress.