

First Extraordinary Session  
Sixty-fifth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 06B-2058.01 Jason Gelender

HOUSE BILL 06S-1020

---

HOUSE SPONSORSHIP

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

SENATE SPONSORSHIP

(None),

---

House Committees

Business Affairs and Labor

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 UNLESS SPECIFIED EXCEPTIONS APPLY  
108 AND, TO THE EXTENT SUCH A PAYMENT WAS CLAIMED AS A  
109 DEDUCTION IN DETERMINING THE BUSINESS' FEDERAL INCOME  
110 TAX LIABILITY, REQUIRING AN AMOUNT EQUAL TO THE  
111 PROHIBITED DEDUCTION TO BE ADDED TO THE BUSINESS'  
112 FEDERAL TAXABLE INCOME FOR THE PURPOSE OF DETERMINING

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.*

---

### 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.

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

1           **39-22-304. Net income of corporation.** (2) There shall be added  
2 to federal taxable income:

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

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

11           **39-22-529. Business expense deduction - labor services -**  
12 **unauthorized alien - definitions.** (1) AS USED IN THIS SECTION, UNLESS  
13 THE CONTEXT OTHERWISE REQUIRES:

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

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

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

25           (3) THIS SECTION SHALL NOT APPLY TO:

26           (a) ANY BUSINESS DOMICILED IN THE STATE THAT IS EXEMPT FROM  
27 COMPLIANCE WITH FEDERAL EMPLOYMENT VERIFICATION PROCEDURES

1 UNDER FEDERAL LAW THAT MAKES THE EMPLOYMENT OF UNAUTHORIZED  
2 ALIENS UNLAWFUL;

3 (b) ANY INDIVIDUAL HIRED BY THE TAXPAYER PRIOR TO JANUARY  
4 1, 2008;

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

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

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

14 **SECTION 4. Refer to people under referendum.** This act shall  
15 be submitted to a vote of the registered electors of the state of Colorado  
16 at the next election for which it may be submitted, for their approval or  
17 rejection, under the provisions of the referendum as provided for in  
18 section 1 of article V and section 20 of article X of the state constitution,  
19 and in article 40 of title 1, Colorado Revised Statutes. Each elector  
20 voting at said election and desirous of voting for or against said act shall  
21 cast a vote as provided by law either "Yes" or "No" on the proposition:  
22 "SHALL TAXES BE INCREASED \_\_\_\_\_ ANNUALLY BY AN AMENDMENT TO  
23 THE COLORADO REVISED STATUTES THAT ELIMINATES A STATE INCOME  
24 TAX BENEFIT FOR A BUSINESS THAT PAYS AN UNAUTHORIZED ALIEN TO  
25 PERFORM LABOR SERVICES, AND, IN CONNECTION THEREWITH,  
26 PROHIBITING CERTAIN WAGES OR REMUNERATION PAID TO AN  
27 UNAUTHORIZED ALIEN FOR LABOR SERVICES FROM BEING CLAIMED AS A

1 DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES UNLESS  
2 SPECIFIED EXCEPTIONS APPLY AND, TO THE EXTENT SUCH A PAYMENT WAS  
3 CLAIMED AS A DEDUCTION IN DETERMINING THE BUSINESS' FEDERAL  
4 INCOME TAX LIABILITY, REQUIRING AN AMOUNT EQUAL TO THE  
5 PROHIBITED DEDUCTION TO BE ADDED TO THE BUSINESS' FEDERAL  
6 TAXABLE INCOME FOR THE PURPOSE OF DETERMINING STATE INCOME TAX  
7 LIABILITY?" The votes cast for the adoption or rejection of said act shall  
8 be canvassed and the result determined in the manner provided by law for  
9 the canvassing of votes for representatives in Congress.