

## Referendum H Elimination of a State Business Income Tax Deduction

1      **Referendum H is a proposed amendment to the Colorado statutes that:**

- 2            ◆ increases state income taxes owed for some businesses that pay wages to  
3            unauthorized aliens; and
- 4            ◆ defines an unauthorized alien as a person who is not eligible under federal  
5            immigration law to work in the United States, including an illegal immigrant  
6            and a person who is in the country legally, but not to work.

7      **Summary and Analysis**

8            ***How do business income taxes work?*** Similar to individual income taxes,  
9            businesses pay taxes based on the amount of income they receive. In determining the  
10          amount of income on which taxes are owed, federal tax law allows businesses to deduct  
11          all expenses that are considered ordinary and necessary in conducting business, including  
12          wages. Federal law does not specifically exclude wages paid to unauthorized aliens from  
13          a business' income tax deductions. These deductions lower the amount of taxes owed.  
14          State income taxes are based on federal taxable income. Therefore, any deductions  
15          claimed on the federal form are included in the state income tax calculation.

16            ***How does Referendum H affect state income taxes?*** For state income tax  
17          purposes, beginning January 1, 2008, Referendum H requires businesses to report and pay  
18          state income taxes on the wages paid to unauthorized aliens that were deducted on their  
19          federal income tax forms. This requirement applies only to annual wages paid of \$600 or  
20          more per employee. Many unauthorized aliens obtain employment in the United States by  
21          using fraudulent documents. Referendum H does not impact a business that claims a  
22          deduction for wages paid to workers who gain employment using fraudulent documents.

23      **Arguments For**

24            1) Referendum H is part of a broad strategy for addressing the illegal immigration  
25          problem at the state level. It targets jobs, which are the root of the illegal immigration  
26          problem. As long as job opportunities for unauthorized aliens exist, the incentive to enter  
27          Colorado illegally or overstay visas will persist. By reducing the number of illegal  
28          immigrants in Colorado, taxpayer spending on state and local government services illegal  
29          immigrants receive will also be reduced.

1           2) By reducing a tax benefit businesses receive from hiring unauthorized aliens,  
2 Referendum H limits the unfair advantage that a business gains by breaking federal law.  
3 As a result, it provides a more competitive environment for businesses that do not hire  
4 illegal aliens. Referendum H addresses a feature of federal law that allows businesses to  
5 benefit from hiring unauthorized aliens.

6       **Arguments Against**

7           1) Referendum H is not likely to curb the hiring of unauthorized aliens because  
8 it does not contain any enforcement requirements. In fact, businesses could decide it is  
9 more profitable to hire unauthorized aliens than to pay any taxes to Colorado that result  
10 from this measure. As long as an employer has some form of employee identification, a  
11 business can get a federal tax break worth at least five times as much as the additional  
12 taxes owed to Colorado under this measure.

13          2) Illegal immigration is a national issue, and therefore it is the responsibility of  
14 the federal government to enforce and protect the country's borders. Hiring unauthorized  
15 aliens is already against the law, which means that the issue Referendum H tries to address  
16 would not exist if current laws were enforced.

17       **Estimate of Fiscal Impact**

18          Referendum H may increase state income tax collections. If the state collects more  
19 than \$150,000 in any budget year as a result of Referendum H, the state is required to  
20 refund the excess amount back to taxpayers. A small expenditure for the Department of  
21 Revenue will be necessary for computer programming in order to add a line on the state  
22 income tax form.