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New Tax Rules Imposed by the South Carolina Illegal Immigration Reform Act

The South Carolina Illegal Immigration Reform Act affects South Carolina businesses that hire unauthorized aliens or undocumented workers. The Act 1) prohibits a business from claiming an income tax deduction for amounts paid to unauthorized aliens for services rendered if the unauthorized alien is paid \$600 or more in a year and 2) requires 7% income tax withholding for certain persons performing services if those persons do not present proper documentation to a withholding agent.



EXPLANATION

No Income Tax Deduction for Certain Payments to Unauthorized Aliens

As of January 1, 2009, a South Carolina business will not be allowed a South Carolina income tax deduction for amounts paid for services if the person being paid is an unauthorized alien and receives \$600 or more per year from the business for his services. An "unauthorized alien" is a person who is neither:

- 1) an alien lawfully admitted for permanent residence, nor
- 2) authorized to be employed by Chapter 12, Title 8, (the immigration and nationality provisions) of the United States Code or by the Attorney General of the United States.

This prohibition of an income tax deduction for services applies whether or not the business treats the person as an employee and applies whether or not the business issues a Form 1099 for the amounts paid.

However, the prohibition of an income tax deduction for services will not apply:

- 1) to a South Carolina business that is exempt from compliance with federal employment verification procedures under federal law; or
- 2) if the person being paid is not directly paid or employed by the business; or
- 3) if the employment status of the person is verified. (The new law provides methods for a business to verify a person's employment status); or
- 4) if the person is hired by the taxpayer before January 1, 2009.

A business will not be subject to this prohibition of an income tax deduction for services if it made

a reasonable investigation of the person and did not know or should not have known that the person was an unauthorized alien. A business will be considered to have conducted a reasonable investigation if it follows the verification procedures set forth in the law and the information provided by the person to the business appears to be correct.

7% Income Tax Withholding on Certain Persons

Effective immediately, for South Carolina withholding tax purposes, a withholding agent must withhold at a 7% rate on any funds paid to a person when such funds are reported, are to be reported, or should have been reported, on a Form 1099 if the person receiving the funds:

- 1) failed to provide the withholding agent with a Taxpayer Identification Number (TIN) or Social Security Number (SSN); or
- 2) supplied the withholding agent with an incorrect TIN or SSN; or
- 3) provided the withholding agent with a TIN issued by the IRS for nonresident aliens.

This duty to withhold does not apply if the person provides a false or incorrect SSN or TIN so long as the false or incorrect SSN or TIN appears to be correct and the withholding agent does not know or should not have known based on a reasonable investigation that the SSN or TIN was false or incorrect. A withholding agent who fails to properly withhold under this provision will be liable for the taxes that were not withheld unless:

- 1) the agent is exempt from federal withholding tax for the person receiving the compensation, and
- 2) the agent otherwise meets the exemption requirements of the law.

ADDITIONAL INFORMATION

South Carolina taxpayers are encouraged to review the instructions found in the Individual Income, Corporate, Sales and Withholding Tax Booklets. The Department of Revenue has determined that no new tax forms will be needed to implement this legislation; however, taxpayers must carefully review the instructions to the various tax forms so as to identify items to be adjusted pursuant to this legislation.

The new law, identified as HB 4400, can be found in its entirety on the Department of Revenue's website at www.sctax.org. Additionally, Sections 7 & 8, which contain the tax portions of the bill discussed above, and Code Section 41-8-20, which provides the verification of employment procedures discussed above, can also be found on the website.

Further, until September 1, 2008, this notice, along with the applicable laws, can be found under the "What's New" Section of the website. After September 1, 2008, this notice and the applicable laws can be found at the Taxes and Licenses section of the website.

If you do not have access to the website, this information may also be obtained by requesting it through fax on demand by calling (803) 898-5320 or toll free in South Carolina 1-800-768-3676. Information about federal verification procedures may be found at the Department of Justice website <http://www.usdoj.gov/crt/osc/htm/facts.htm>.

For questions about the tax law changes discussed above, please email TaxTech@sctax.org or call the South Carolina Department of Revenue at 803-898-5709. For all other questions about unauthorized aliens and the documentation needed to substantiate a person's status, please direct your inquiry to your attorney, the federal Department of Immigration and Naturalization, or

the South Carolina Department of Labor, Licensing and Regulation.