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**State of South Carolina**  
**Department of Revenue**  
301 Gervais Street, P.O. Box 125, Columbia, South Carolina, 29214

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## IMPORTANT NOTICE

Effective July 1, 2008

TO: All South Carolina Employers

FROM: Ray N. Stevens, Director  
South Carolina Department of Revenue

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

### SUMMARY

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 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.

Copies of Sections 7 & 8 of the South Carolina Illegal Immigration Reform Act are attached to this notice. In addition, the new law, identified as HB 4400, can be found in its entirety on the Department of Revenue's website at [www.sctax.org](http://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](mailto: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.

**NOTE: THIS NOTICE IS INTENDED FOR ALL SOUTH CAROLINA EMPLOYERS. PLEASE FORWARD TO THE APPROPRIATE PERSON IN YOUR BUSINESS OR OFFICE.**

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## **South Carolina Illegal Immigration Reform Act**

**SECTION 1. This act may be cited as the "South Carolina Illegal Immigration Reform Act".**

### **Business expense deduction disallowed**

**SECTION 7. Chapter 6, Title 12 of the 1976 Code is amended by adding: "Section 12-6-1175.**

- (A) As used in this section:
  - (1) 'Unauthorized alien' means an unauthorized alien as defined by 8 U.S.C. Section 1324A(h)(3).
  - (2) 'Labor services' means the physical performance of services in this State.
- (B) On or after January 1, 2009, no wages or remuneration for labor services to an individual of six hundred dollars or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer if the individual is an unauthorized alien. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.
- (C) This section shall not apply to a business domiciled in this State that is exempt from compliance with federal employment verification procedures under federal law.
- (D) This section shall not apply to an individual hired by the taxpayer prior to January 1, 2009.
- (E) This section shall not apply to a taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.
- (F) This section shall not apply to wages or remuneration paid for labor services to any individual whose employment authorization status was verified in accordance with the provisions of Section 41-8-20.
- (G) A taxpayer must not be held liable for failing to comply with the provisions of this section, if, based on a reasonable investigation of the individual, the taxpayer did not know or should not have known that the individual was an unauthorized alien. For purposes of this subsection, a taxpayer shall be deemed to have conducted a reasonable investigation if the individual met the requirements of subsection (F), and the information provided by the individual to the taxpayer was facially correct.
- (H) The director of the South Carolina Department of Revenue is authorized to prescribe forms and promulgate regulations deemed necessary in order to administer and effectuate this section in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.
- (I) The director of the Department of Revenue shall send written notice of this section to all South Carolina employers no later than July 1, 2008."

### **Withholding of income tax required**

**SECTION 8. Chapter 8, Title 12 of the 1976 Code is amended by adding: "Section 12-8-595**

- (A) A withholding agent, as defined in Section 12-8-10, shall withhold state income tax at the rate of seven percent of the amount of compensation paid to an individual, which compensation is reported on Form 1099 and with respect to which the individual has:
    - (1) failed to provide a taxpayer identification number or social security number;
    - (2) failed to provide a correct taxpayer identification number or social security number; or
    - (3) provided an Internal Revenue Service issued taxpayer identification number issued for nonresident aliens.
  - (B) A withholding agent who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless the withholding agent is exempt from federal withholding with respect to the individual pursuant to a properly filed Internal Revenue Service Form 8233 and has provided a copy of the form to the commissioner.
  - (C) A withholding agent does not violate this section if the individual provides a false or incorrect social security number or taxpayer identification number that is facially correct and the withholding agent does not know or should not have known based on a reasonable investigation that the number provided is false or incorrect.
  - (D) The director of the South Carolina Department of Revenue shall send written notice of this section to all South Carolina employers no later than July 1, 2008."
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