

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 14, 2013
Date

Committee on Finance.

After consideration on the merits, the Committee recommends the following:

HB13-1143 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 39-22-109, **add**
4 (2.5) as follows:

5 **39-22-109. Income of a nonresident individual for purposes of**
6 **Colorado income tax.** (2.5) (a) COMPENSATION THAT, BUT FOR THE
7 EXCEPTION FROM THE WITHHOLDING REQUIREMENT SET FORTH IN SECTION
8 39-22-604.1, WOULD BE SUBJECT TO WITHHOLDING UNDER SECTION
9 39-22-604 AND THAT IS RECEIVED BY A NONRESIDENT INDIVIDUAL FOR
10 EMPLOYMENT DUTIES PERFORMED IN THIS STATE IS NOT INCOME DERIVED
11 FROM SOURCES WITHIN COLORADO IF THE NONRESIDENT INDIVIDUAL IS
12 PRESENT IN THIS STATE TO PERFORM EMPLOYMENT DUTIES FOR NOT MORE
13 THAN THIRTY DAYS DURING THE TAX YEAR IN WHICH THE COMPENSATION
14 IS RECEIVED, WHERE PRESENCE IN THIS STATE FOR ANY PART OF A DAY
15 CONSTITUTES PRESENCE FOR THAT DAY UNLESS SUCH PRESENCE IS PURELY
16 FOR PURPOSES OF TRANSIT THROUGH THE STATE.

17 (b) THIS SUBSECTION (2.5) DOES NOT APPLY TO COMPENSATION
18 RECEIVED BY:

19 (I) AN INDIVIDUAL WHO IS A PROFESSIONAL ATHLETE OR A
20 MEMBER OF A PROFESSIONAL ATHLETIC TEAM IF THE COMPENSATION IS
21 PAID FOR SERVICES RENDERED IN HIS OR HER CAPACITY AS A
22 PROFESSIONAL ATHLETE;

23 (II) A PROFESSIONAL ENTERTAINER WHO PERFORMS SERVICES IN
24 THE PROFESSIONAL PERFORMING ARTS IF THE COMPENSATION IS PAID FOR

1 SERVICES RENDERED IN HIS OR HER CAPACITY AS A PROFESSIONAL
2 ENTERTAINER; OR

3 (III) AN INDIVIDUAL OF PROMINENCE WHO PERFORMS SERVICES
4 FOR COMPENSATION ON A PER-EVENT BASIS IF THE COMPENSATION IS PAID
5 FOR SERVICES PROVIDED AT A DISCRETE EVENT IN THE NATURE OF A
6 SPEECH, PUBLIC APPEARANCE, OR SIMILAR EVENT.

7 (c) THIS SUBSECTION (2.5) CREATES AN EXCLUSION FROM
8 COLORADO NONRESIDENT FEDERAL ADJUSTED GROSS INCOME FOR
9 NONRESIDENT COMPENSATION UNDER CERTAIN DE MINIMUS
10 CIRCUMSTANCES AND DOES NOT AFFECT THIS STATE'S JURISDICTION TO
11 IMPOSE INCOME TAX OR ANY OTHER TAX ON ANY TAXPAYER.

12 **SECTION 2.** In Colorado Revised Statutes, 39-22-601, **amend**
13 (1) (a) as follows:

14 **39-22-601. Returns.** (1) (a) (I) Whenever a resident individual
15 or a nonresident individual with income from Colorado sources is
16 required to file a federal income tax return under the provisions of section
17 6012 of the internal revenue code or whenever a resident individual or a
18 nonresident individual has incurred any tax liability under any provision
19 of this article, the individual shall make a return that shall contain a
20 written declaration that it is made under the penalty of perjury in the
21 second degree. The return shall set forth, in such detail as the executive
22 director shall prescribe by regulations, the said individual's federal taxable
23 income, the deductions, modifications, exemptions, and credits required
24 or allowed under this article, and any other information necessary to carry
25 out the purposes of this article. For the purpose of this section, the
26 residence of the individual taxpayer shall be the address supplied by the
27 taxpayer to the department of revenue on the return.

28 (II) (A) FOR PURPOSES OF THIS PARAGRAPH (a), A NONRESIDENT
29 INDIVIDUAL WHOSE ONLY SOURCE OF INCOME FROM THIS STATE IS
30 COMPENSATION THAT IS EXCLUDED FROM COLORADO NONRESIDENT
31 FEDERAL ADJUSTED GROSS INCOME UNDER SECTION 39-22-109 (2.5) HAS
32 NO TAX LIABILITY UNDER THIS ARTICLE AND NEED NOT FILE A RETURN.

33 (B) THIS SUBPARAGRAPH (II) APPLIES ONLY TO THE
34 DETERMINATION OF AN INDIVIDUAL INCOME TAXPAYER'S FILING
35 REQUIREMENT AND DOES NOT AFFECT THE IMPOSITION OF, OR THIS STATE'S
36 JURISDICTION TO IMPOSE, INCOME TAX OR ANY OTHER TAX ON ANY
37 TAXPAYER.

38 **SECTION 3.** In Colorado Revised Statutes, **add** 39-22-604.1 as
39 follows:

40 **39-22-604.1. Withholding tax - nonresident income subtracted**
41 **from federal taxable income - exception to requirement to withhold.**

42 (1) (a) NO AMOUNT IS REQUIRED TO BE DEDUCTED OR WITHHELD FROM

1 COMPENSATION PAID TO A NONRESIDENT INDIVIDUAL FOR EMPLOYMENT
2 DUTIES PERFORMED IN THIS STATE IF THE COMPENSATION IS EXCLUDED
3 FROM COLORADO NONRESIDENT FEDERAL ADJUSTED GROSS INCOME
4 UNDER SECTION 39-22-109 (2.5) OR IF THE COMPENSATION WOULD BE
5 EXCLUDED FROM COLORADO NONRESIDENT FEDERAL ADJUSTED GROSS
6 INCOME PURSUANT TO SAID SECTION BUT FOR THE FACT THAT THE
7 NONRESIDENT INDIVIDUAL HAS OTHER INCOME RECEIVED FOR
8 EMPLOYMENT DUTIES PERFORMED IN THIS STATE. THE NUMBER OF DAYS
9 THAT A NONRESIDENT EMPLOYEE IS PRESENT IN THIS STATE FOR PURPOSES
10 OF SECTION 39-22-109 (2.5) (a) (II) INCLUDES ALL DAYS THAT THE
11 NONRESIDENT EMPLOYEE IS PRESENT AND PERFORMING MORE
12 EMPLOYMENT DUTIES IN THE STATE THAN IN ANY OTHER STATE ON BEHALF
13 OF ANY EMPLOYER.

14 (2) AN EMPLOYER THAT HAS ERRONEOUSLY APPLIED THE
15 EXCEPTION SET FORTH IN SUBSECTION (1) OF THIS SECTION SOLELY AS A
16 RESULT OF MISCALCULATING THE NUMBER OF DAYS THAT A NONRESIDENT
17 EMPLOYEE IS PRESENT IN THIS STATE TO PERFORM EMPLOYMENT DUTIES
18 IS NOT SUBJECT TO ANY PENALTY FOR FAILURE TO WITHHOLD INCOME
19 TAXES THAT COULD OTHERWISE BE IMPOSED UNDER ANY PROVISION OF
20 THIS ARTICLE OR ARTICLE 21 OF THIS TITLE IF THE EMPLOYER RELIED ON
21 THE EMPLOYEE'S ANNUAL DETERMINATION OF HIS OR HER TIME SPENT IN
22 THE STATE PERFORMING EMPLOYMENT DUTIES AND DID NOT HAVE ACTUAL
23 KNOWLEDGE OF FRAUD BY THE EMPLOYEE IN MAKING THE DETERMINATION
24 OR COLLUDE WITH THE EMPLOYEE TO EVADE TAX; EXCEPT THAT, IF THE
25 EMPLOYER, AT ITS SOLE DISCRETION, MAINTAINS A TIME AND ATTENDANCE
26 SYSTEM THAT TRACKS WHERE THE EMPLOYEE PERFORMS DUTIES ON A
27 DAILY BASIS, THE EMPLOYER MUST RELY ON THAT SYSTEM RATHER THAN
28 ON THE EMPLOYEE'S DETERMINATION. FOR PURPOSES OF THIS SUBSECTION
29 (2), "TIME AND ATTENDANCE SYSTEM" MEANS A SYSTEM THAT:

30 (a) REQUIRES AN EMPLOYEE TO CONTEMPORANEOUSLY RECORD
31 HIS OR HER LOCATION FOR EVERY DAY WORKED OUTSIDE OF THE STATE IN
32 WHICH HE OR SHE PRIMARILY PERFORMS HIS OR HER EMPLOYMENT DUTIES;
33 AND

34 (b) ALLOWS AN EMPLOYER TO ALLOCATE AN EMPLOYEE'S WAGES
35 FOR INCOME TAX PURPOSES AMONG ALL STATES IN WHICH THE EMPLOYEE
36 PERFORMS EMPLOYMENT DUTIES FOR THE EMPLOYER.

37 (3) THIS SECTION ESTABLISHES AN EXCEPTION TO WITHHOLDING
38 AND DEDUCTION REQUIREMENTS AND DOES NOT AFFECT THE IMPOSITION
39 OF, OR THIS STATE'S JURISDICTION TO IMPOSE, INCOME TAX OR ANY OTHER
40 TAX ON ANY TAXPAYER.

41 **SECTION 4. Act subject to petition - effective date -**
42 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following

1 the expiration of the ninety-day period after final adjournment of the
2 general assembly (August 7, 2013, if adjournment sine die is on May 8,
3 2013); except that, if a referendum petition is filed pursuant to section 1
4 (3) of article V of the state constitution against this act or an item, section,
5 or part of this act within such period, then the act, item, section, or part
6 will not take effect unless approved by the people at the general election
7 to be held in November 2014 and, in such case, will take effect on the
8 date of the official declaration of the vote thereon by the governor.

9 (2) This act applies to income received by a nonresident of this
10 state for employment duties performed in this state during income tax
11 years that commence on or after January 1, 2014."

12 Page 1, strike lines 101 and 102 and substitute:

13 **"CONCERNING TAXATION OF THE INCOME OF INDIVIDUALS WHO ARE**
14 **NOT COLORADO RESIDENTS BUT WHO RECEIVE COMPENSATION FOR**
15 **EMPLOYMENT DUTIES PERFORMED IN COLORADO,".**

16 Page 1, line 106, strike "NONRESIDENT" and substitute "SUCH".

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