

**First Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0451.01 Jason Gelender x4330

**HOUSE BILL 13-1143**

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**HOUSE SPONSORSHIP**

**DelGrosso,**

**SENATE SPONSORSHIP**

**(None),**

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**House Committees**

Finance  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING TAXATION OF THE INCOME OF INDIVIDUALS WHO ARE**  
102 **NOT COLORADO RESIDENTS BUT WHO RECEIVE COMPENSATION**  
103 **FOR EMPLOYMENT DUTIES PERFORMED IN COLORADO, AND, IN**  
104 **CONNECTION THEREWITH, ESTABLISHING CRITERIA FOR**  
105 **EXEMPTING FROM STATE INCOME TAX AND RELATED INCOME**  
106 **TAX WITHHOLDING REQUIREMENTS CERTAIN WAGE OR SALARY**  
107 **INCOME EARNED WITHIN THE STATE BY SUCH INDIVIDUALS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at*

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.

[http://www.leg.state.co.us/bills/summaries.](http://www.leg.state.co.us/bills/summaries/))

The bill adopts the model mobile workforce statute (model statute) that the multistate tax commission approved in 2011. The model statute establishes criteria for exempting from state income tax and related income tax withholding requirements certain wage or salary income earned within the state by nonresident individuals. Specifically:

- ! Wage or salary income earned by a nonresident employee who works no more than 20 days in Colorado is subtracted from the employee's federal taxable income for the purpose of determining the employee's state taxable income if:
  - ! The employee receives no other income from Colorado sources;
  - ! The employee's state of residence either does not impose income tax or offers a similar income tax break; or
  - ! The employee is not a professional athlete, entertainer, prominent individual who performs services for compensation on a per-event basis, construction worker, or, as defined under the federal internal revenue code, a key employee or officer.
- ! The bill exempts the employer of a nonresident employee from income tax withholding requirements for a nonresident employee who works no more than 20 days in Colorado if the employee's Colorado income is subtracted from the employee's federal taxable income for the purpose of determining the employee's state taxable income or if such income would be subtracted but for the fact that the employee has income from other Colorado sources.
- ! Subject to specified requirements, the bill exempts an employer who erroneously fails to withhold taxes for a nonresident employee due to a miscalculation of the number of days that the employee worked in Colorado.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-22-109, **add** (2.5)

3 as follows:

4 **39-22-109. Income of a nonresident individual for purposes of**

5 **Colorado income tax.** (2.5) (a) **COMPENSATION THAT, BUT FOR THE**

6 **EXCEPTION FROM THE WITHHOLDING REQUIREMENT SET FORTH IN SECTION**

1 39-22-604.1, WOULD BE SUBJECT TO WITHHOLDING UNDER SECTION  
2 39-22-604 AND THAT IS RECEIVED BY A NONRESIDENT INDIVIDUAL FOR  
3 EMPLOYMENT DUTIES PERFORMED IN THIS STATE IS NOT INCOME DERIVED  
4 FROM SOURCES WITHIN COLORADO IF THE NONRESIDENT INDIVIDUAL IS  
5 PRESENT IN THIS STATE TO PERFORM EMPLOYMENT DUTIES FOR NOT MORE  
6 THAN THIRTY DAYS DURING THE TAX YEAR IN WHICH THE COMPENSATION  
7 IS RECEIVED, WHERE PRESENCE IN THIS STATE FOR ANY PART OF A DAY  
8 CONSTITUTES PRESENCE FOR THAT DAY UNLESS SUCH PRESENCE IS PURELY  
9 FOR PURPOSES OF TRANSIT THROUGH THE STATE.

10 (b) THIS SUBSECTION (2.5) DOES NOT APPLY TO COMPENSATION  
11 RECEIVED BY:

12 (I) AN INDIVIDUAL WHO IS A PROFESSIONAL ATHLETE OR A  
13 MEMBER OF A PROFESSIONAL ATHLETIC TEAM IF THE COMPENSATION IS  
14 PAID FOR SERVICES RENDERED IN HIS OR HER CAPACITY AS A  
15 PROFESSIONAL ATHLETE;

16 (II) A PROFESSIONAL ENTERTAINER WHO PERFORMS SERVICES IN  
17 THE PROFESSIONAL PERFORMING ARTS IF THE COMPENSATION IS PAID FOR  
18 SERVICES RENDERED IN HIS OR HER CAPACITY AS A PROFESSIONAL  
19 ENTERTAINER; OR

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

24 (c) THIS SUBSECTION (2.5) CREATES AN EXCLUSION FROM  
25 COLORADO NONRESIDENT FEDERAL ADJUSTED GROSS INCOME FOR  
26 NONRESIDENT COMPENSATION UNDER CERTAIN DE MINIMUS  
27 CIRCUMSTANCES AND DOES NOT AFFECT THIS STATE'S JURISDICTION TO

1 IMPOSE INCOME TAX OR ANY OTHER TAX ON ANY TAXPAYER.

2 SECTION 2. In Colorado Revised Statutes, 39-22-601, amend

3 (1) (a) as follows:

4 39-22-601. Returns. (1) (a) (I) Whenever a resident individual  
5 or a nonresident individual with income from Colorado sources is  
6 required to file a federal income tax return under the provisions of section  
7 6012 of the internal revenue code or whenever a resident individual or a  
8 nonresident individual has incurred any tax liability under any provision  
9 of this article, the individual shall make a return that shall contain a  
10 written declaration that it is made under the penalty of perjury in the  
11 second degree. The return shall set forth, in such detail as the executive  
12 director shall prescribe by regulations, the said individual's federal taxable  
13 income, the deductions, modifications, exemptions, and credits required  
14 or allowed under this article, and any other information necessary to carry  
15 out the purposes of this article. For the purpose of this section, the  
16 residence of the individual taxpayer shall be the address supplied by the  
17 taxpayer to the department of revenue on the return.

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

23 (B) THIS SUBPARAGRAPH (II) APPLIES ONLY TO THE  
24 DETERMINATION OF AN INDIVIDUAL INCOME TAXPAYER'S FILING  
25 REQUIREMENT AND DOES NOT AFFECT THE IMPOSITION OF, OR THIS STATE'S  
26 JURISDICTION TO IMPOSE, INCOME TAX OR ANY OTHER TAX ON ANY  
27 TAXPAYER.

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

3           **39-22-604.1. Withholding tax - nonresident income subtracted**  
4 **from federal taxable income - exception to requirement to withhold.**

5 (1) (a) NO AMOUNT IS REQUIRED TO BE DEDUCTED OR WITHHELD FROM  
6 COMPENSATION PAID TO A NONRESIDENT INDIVIDUAL FOR EMPLOYMENT  
7 DUTIES PERFORMED IN THIS STATE IF THE COMPENSATION IS EXCLUDED  
8 FROM COLORADO NONRESIDENT FEDERAL ADJUSTED GROSS INCOME  
9 UNDER SECTION 39-22-109 (2.5) OR IF THE COMPENSATION WOULD BE  
10 EXCLUDED FROM COLORADO NONRESIDENT FEDERAL ADJUSTED GROSS  
11 INCOME PURSUANT TO SAID SECTION BUT FOR THE FACT THAT THE  
12 NONRESIDENT INDIVIDUAL HAS OTHER INCOME RECEIVED FOR  
13 EMPLOYMENT DUTIES PERFORMED IN THIS STATE. THE NUMBER OF DAYS  
14 THAT A NONRESIDENT EMPLOYEE IS PRESENT IN THIS STATE FOR PURPOSES  
15 OF SECTION 39-22-109 (2.5) (a) (II) INCLUDES ALL DAYS THAT THE  
16 NONRESIDENT EMPLOYEE IS PRESENT AND PERFORMING MORE  
17 EMPLOYMENT DUTIES IN THE STATE THAN IN ANY OTHER STATE ON BEHALF  
18 OF ANY EMPLOYER.

19 (2) AN EMPLOYER THAT HAS ERRONEOUSLY APPLIED THE  
20 EXCEPTION SET FORTH IN SUBSECTION (1) OF THIS SECTION SOLELY AS A  
21 RESULT OF MISCALCULATING THE NUMBER OF DAYS THAT A NONRESIDENT  
22 EMPLOYEE IS PRESENT IN THIS STATE TO PERFORM EMPLOYMENT DUTIES  
23 IS NOT SUBJECT TO ANY PENALTY FOR FAILURE TO WITHHOLD INCOME  
24 TAXES THAT COULD OTHERWISE BE IMPOSED UNDER ANY PROVISION OF  
25 THIS ARTICLE OR ARTICLE 21 OF THIS TITLE IF THE EMPLOYER RELIED ON  
26 THE EMPLOYEE'S ANNUAL DETERMINATION OF HIS OR HER TIME SPENT IN  
27 THE STATE PERFORMING EMPLOYMENT DUTIES AND DID NOT HAVE ACTUAL

1 KNOWLEDGE OF FRAUD BY THE EMPLOYEE IN MAKING THE DETERMINATION  
2 OR COLLUDE WITH THE EMPLOYEE TO EVADE TAX; EXCEPT THAT, IF THE  
3 EMPLOYER, AT ITS SOLE DISCRETION, MAINTAINS A TIME AND ATTENDANCE  
4 SYSTEM THAT TRACKS WHERE THE EMPLOYEE PERFORMS DUTIES ON A  
5 DAILY BASIS, THE EMPLOYER MUST RELY ON THAT SYSTEM RATHER THAN  
6 ON THE EMPLOYEE'S DETERMINATION. FOR PURPOSES OF THIS SUBSECTION  
7 (2), "TIME AND ATTENDANCE SYSTEM" MEANS A SYSTEM THAT:

8 (a) REQUIRES AN EMPLOYEE TO CONTEMPORANEOUSLY RECORD  
9 HIS OR HER LOCATION FOR EVERY DAY WORKED OUTSIDE OF THE STATE IN  
10 WHICH HE OR SHE PRIMARILY PERFORMS HIS OR HER EMPLOYMENT DUTIES;  
11 AND

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

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

19 **SECTION 4. Act subject to petition - effective date -**  
20 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
21 the expiration of the ninety-day period after final adjournment of the  
22 general assembly (August 7, 2013, if adjournment sine die is on May 8,  
23 2013); except that, if a referendum petition is filed pursuant to section 1  
24 (3) of article V of the state constitution against this act or an item, section,  
25 or part of this act within such period, then the act, item, section, or part  
26 will not take effect unless approved by the people at the general election  
27 to be held in November 2014 and, in such case, will take effect on the

1 date of the official declaration of the vote thereon by the governor.

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