



Georgia Department of Revenue
Policy Statement IT-2009-6-8
Procedures for Verifying Whether Compensation Payments
May Be Deducted for Georgia Income Tax Purposes

- 1) **Purpose/Subject:** This policy statement establishes procedures for verifying whether a person is an authorized employee for purposes of deducting payments for labor services.
- 2) **Effective Date:** January 1, 2008
- 3) **Supersedes:** All previous documents and any oral directives in conflict herewith.
- 4) **Authority:**

O.C.G.A. § 48-7-21.1

(a) As used in this Code section, the term:

(1) “Authorized employee” means any individual whose hiring for employment or continuing employment in the United States does not violate the provisions of 8 U.S.C. Section 1324a.

(2) “Basic pilot program” shall mean the electronic verification of a work authorization program of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, P. L. 104-208, Division C, Section 1324a note, and operated by the United States Department of Homeland Security.

(3) “Labor services” means the physical performance of services in this state.

(b) On or after January 1, 2008, no payment or compensation or other remuneration, including but not limited to wages, salaries, bonuses, benefits, in-kind exchanges, expenses, or any other economic benefit, paid for labor services to an individual totaling \$600.00 or more in a taxable year, may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer unless such individual is an authorized employee. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 or Form W-2 is issued in conjunction with such payments, compensation, or other remuneration.

(c) This Code section shall not apply to any business which:

(1) Has enrolled and participates in the basic pilot program; or

(2) Is exempt from compliance with federal employment verification procedures under federal law which makes the employment of unauthorized aliens unlawful.

(d) This Code section shall not apply to any individual hired by the taxpayer prior to January 1, 2008.

(e) This Code section shall not apply to any taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(f) This Code section shall not apply to payments, compensation, or other remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services.

(g) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section.

5) Issues:

Issue 1: Can the Department of Homeland Security Form I-9 “Employment Eligibility Verification” be used to verify that the person is an “authorized employee” for purposes of O.C.G.A. § 48-7-21.1?

Issue 2: Does O.C.G.A. § 48-7-21.1 apply to payments or compensation or other remuneration for labor services regardless of whether the person is an employee, independent contractor, day laborer, etc?

6) Discussion of Issues:

Discussion of Issue 1: Yes, the Department of Homeland Security Form I-9 “Employment Eligibility Verification” can be used to verify that the person is an “authorized employee” for purposes of O.C.G.A. § 48-7-21.1.

Discussion of Issue 2: Yes, it applies to all payments or compensation or other remuneration, including but not limited to wages, salaries, bonuses, benefits, in-kind exchanges, expenses, or any other economic benefit, paid for labor services to an individual totaling \$600.00 or more in a taxable year.

7) Scope: A policy statement is intended to provide procedural guidance to the general public and Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing procedural guidance that may be followed in order to comply with the law. A policy statement does not have the force or effect of law, and is not binding on the public. It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

(Last updated: June 8, 2009)

FOR MORE INFORMATION

**For more information on this subject, contact the Taxpayer Services Division at 404-417-2409, from 8:00 am to 4:30 pm EST, Monday through Friday, excluding holidays.
Persons with hearing or speech impairments may call our TDD number at 404-417-4302.
For forms and other information, visit our website (www.dor.ga.gov).**
