

SECTION 203.

UNVERIFIED INDEPENDENT CONTRACTORS; MANDATORY WITHHOLDING.¹

IRLI Comment: Limited to individual independent contractor who are performing personal services within the state. Does not apply to contractors who provide intermittent services (less than \$600 charged annually). Most casual laborers are not considered temporary employees, not independent contractors, so Section 203 would not apply to them.

(A) If an individual independent contractor, contracting for the personal performance of services in this state, fails to provide to the contracting entity documentation to verify the independent contractor's employment authorization, pursuant to the prohibition against the use of unauthorized alien labor through contract set forth in United States Code Title 8 Section 1324a(a)(4)², the contracting entity shall withhold state income tax at the top marginal individual or corporation income tax rate as provided in [#State# Code Title X], as applied to compensation paid to such independent contractor for the performance of services within this state in an amount which exceeds the minimum amount of compensation the contracting entity is required to report as income on United States Internal Revenue Service Report of Miscellaneous Income (IRS Form 1099) or its equivalent.

(B) Any contracting entity who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless such contracting entity is exempt from federal withholding with respect to such individual pursuant to a properly filed Internal Revenue Service Form 8233 or its equivalent.

(C) Nothing in this section is intended to create, or should be construed as creating, an employer-employee relationship between a contracting entity and an individual independent contractor.

(D) The [#Department of Taxation#] shall adopt rules pursuant to the [#State#] Administrative Procedure Act [code §§ xx] to implement the provisions of this section.

¹ Source: OK HB 1804 § 9, GA SB 529 § 8.

² "Use of labor through contract. For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien in the United States in violation of paragraph (1)(A)."