

5323--A

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sens. MAZIARZ, MARTINS, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to thresholds for establishing presence, residency or doing business in the state for out-of-state companies including affiliates of in-state companies that temporarily provide resources and personnel in the state during a state of emergency declared by the governor or the President of the United States

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The tax law is amended by adding a new article 42 to read
2 as follows:

3 ARTICLE 42

4 FACILITATING BUSINESS RAPID RESPONSE TO STATE DECLARED DISASTER

5 SECTION 3100. SHORT TITLE.

6 3101. DEFINITIONS.

7 3102. BUSINESS AND EMPLOYEE STATUS DURING DISASTER PERIOD.

8 3103. TRANSACTION TAXES AND FEES.

9 3104. BUSINESS OR EMPLOYEE ACTIVITY AFTER DISASTER PERIOD.

10 3105. NOTIFICATION OF OUT-OF-STATE BUSINESS DURING DISASTER
11 PERIOD.

12 3106. NOTIFICATION OF INTENT TO REMAIN IN STATE.

13 3107. SEVERABILITY.

14 S 3100. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
15 THE "FACILITATING BUSINESS RAPID RESPONSE TO STATE DECLARED DISASTERS
16 ACT OF 2013".

17 S 3101. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS
18 SHALL HAVE THE FOLLOWING MEANINGS:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD10903-02-3

1 1. "REGISTERED BUSINESS IN THE STATE" (OR "REGISTERED BUSINESS") MEANS
2 A BUSINESS ENTITY THAT IS CURRENTLY REGISTERED TO DO BUSINESS IN THE
3 STATE PRIOR TO THE DECLARED STATE DISASTER OR EMERGENCY.

4 2. "OUT-OF-STATE BUSINESS" MEANS A BUSINESS ENTITY THAT HAS NO PRES-
5 ENCE IN THE STATE AND CONDUCTS NO BUSINESS IN THE STATE WHOSE SERVICES
6 ARE REQUESTED BY A REGISTERED BUSINESS OR BY A STATE OR LOCAL GOVERNMENT
7 FOR PURPOSES OF PERFORMING DISASTER OR EMERGENCY RELATED WORK IN THE
8 STATE. OUT-OF-STATE BUSINESS SHALL ALSO INCLUDE A BUSINESS ENTITY THAT
9 IS AFFILIATED WITH THE REGISTERED BUSINESS IN THE STATE SOLELY THROUGH
10 COMMON OWNERSHIP. THE OUT-OF-STATE BUSINESS HAS NO REGISTRATIONS OR TAX
11 FILINGS OR NEXUS IN THE STATE PRIOR TO THE DECLARED STATE DISASTER OR
12 EMERGENCY.

13 3. "OUT-OF-STATE EMPLOYEE" MEANS AN EMPLOYEE WHO DOES NOT WORK IN THE
14 STATE, EXCEPT FOR DISASTER OR EMERGENCY RELATED WORK, DURING THE DISAS-
15 TER PERIOD.

16 4. "INFRASTRUCTURE" MEANS PROPERTY AND EQUIPMENT OWNED OR USED BY
17 COMMUNICATIONS NETWORKS, ELECTRIC GENERATION, TRANSMISSION AND DISTRIB-
18 UTION SYSTEMS, GAS DISTRIBUTION SYSTEMS, WATER PIPELINES, AND PUBLIC
19 ROADS AND BRIDGES AND RELATED SUPPORT FACILITIES THAT SERVICE MULTIPLE
20 CUSTOMERS OR CITIZENS INCLUDING, BUT NOT LIMITED TO, REAL AND PERSONAL
21 PROPERTY SUCH AS BUILDINGS, OFFICES, LINES, POLES, PIPES, STRUCTURES AND
22 EQUIPMENT.

23 5. "DECLARED STATE DISASTER OR EMERGENCY" MEANS A DISASTER OR EMERGEN-
24 CY EVENT (A) FOR WHICH THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY,
25 (B) FOR WHICH A PRESIDENTIAL DECLARATION OF A FEDERAL MAJOR DISASTER OR
26 EMERGENCY HAS BEEN ISSUED, OR (C) OTHER DISASTER OR EMERGENCY EVENT
27 WITHIN THE STATE FOR WHICH A GOOD FAITH RESPONSE EFFORT IS REQUIRED, AND
28 FOR WHICH THE DIRECTOR OF THE STATE OFFICE OF EMERGENCY MANAGEMENT IS
29 GIVEN NOTIFICATION FROM THE REGISTERED BUSINESS AND SUCH DIRECTOR DESIG-
30 NATES SUCH EVENT AS A DISASTER OR EMERGENCY THEREBY INVOKING THE
31 PROVISIONS OF THIS ARTICLE.

32 6. "DISASTER PERIOD" MEANS A PERIOD THAT BEGINS WITHIN TEN DAYS OF THE
33 FIRST DAY OF THE GOVERNOR'S DECLARATION OR THE PRESIDENT'S DECLARATION
34 (WHICHEVER OCCURS FIRST) AND THAT EXTENDS FOR A PERIOD OF SIXTY CALENDAR
35 DAYS AFTER THE END OF THE DECLARED DISASTER OR EMERGENCY PERIOD, OR FOR
36 ANY LONGER PERIOD AUTHORIZED BY THE COMMISSIONER.

37 7. "DISASTER OR EMERGENCY RELATED WORK" MEANS REPAIRING, RENOVATING,
38 INSTALLING, BUILDING, RENDERING SERVICES OR OTHER BUSINESS ACTIVITIES
39 THAT RELATE TO INFRASTRUCTURE THAT HAS BEEN DAMAGED, IMPAIRED OR
40 DESTROYED BY THE DECLARED STATE DISASTER OR EMERGENCY.

41 S 3102. BUSINESS AND EMPLOYEE STATUS DURING DISASTER PERIOD. 1. AN
42 OUT-OF-STATE BUSINESS THAT CONDUCTS OPERATIONS WITHIN THE STATE FOR
43 PURPOSES OF PERFORMING WORK OR SERVICES RELATED TO A DECLARED STATE
44 DISASTER OR EMERGENCY DURING THE DISASTER PERIOD SHALL NOT BE CONSIDERED
45 TO HAVE ESTABLISHED A LEVEL OF PRESENCE THAT WOULD REQUIRE THAT BUSINESS
46 TO REGISTER, FILE AND/OR REMIT STATE OR LOCAL TAXES OR THAT WOULD
47 REQUIRE THAT BUSINESS OR ITS OUT-OF-STATE EMPLOYEES TO BE SUBJECT TO ANY
48 STATE LICENSING OR REGISTRATION REQUIREMENTS. THIS INCLUDES ANY AND ALL
49 STATE OR LOCAL BUSINESS LICENSING OR REGISTRATION REQUIREMENTS OR STATE
50 AND LOCAL TAXES OR FEES INCLUDING, BUT NOT LIMITED TO, UNEMPLOYMENT
51 INSURANCE, SALES AND USE TAX OR AD VALOREM TAX ON EQUIPMENT USED OR
52 CONSUMED DURING THE DISASTER PERIOD. FOR PURPOSES OF ANY STATE OR LOCAL
53 TAX ON OR MEASURED BY, IN WHOLE OR IN PART, NET OR GROSS INCOME OR
54 RECEIPTS, ALL ACTIVITY OF THE OUT-OF-STATE BUSINESS THAT IS CONDUCTED IN
55 THIS STATE PURSUANT TO THIS ARTICLE SHALL BE DISREGARDED WITH RESPECT TO
56 ANY FILING REQUIREMENTS FOR SUCH TAX INCLUDING THE FILING REQUIRED FOR A

1 UNITARY OR COMBINED GROUP OF WHICH THE OUT-OF-STATE BUSINESS MAY BE A
2 PART.

3 2. ANY OUT-OF-STATE EMPLOYEE AS DEFINED IN SUBDIVISION THREE OF
4 SECTION THIRTY-ONE HUNDRED ONE OF THIS ARTICLE SHALL NOT BE CONSIDERED
5 TO HAVE ESTABLISHED RESIDENCY OR A PRESENCE IN THE STATE THAT WOULD
6 REQUIRE THAT PERSON OR THAT PERSON'S EMPLOYER TO FILE AND PAY INCOME
7 TAXES OR TO BE SUBJECTED TO TAX WITHHOLDINGS OR TO FILE AND PAY ANY
8 OTHER STATE OR LOCAL TAX OR FEE DURING THE DISASTER PERIOD. THIS
9 INCLUDES ANY RELATED STATE OR LOCAL EMPLOYER WITHHOLDING AND REMITTANCE
10 OBLIGATIONS.

11 S 3103. TRANSACTION TAXES AND FEES. OUT-OF-STATE BUSINESSES AND
12 OUT-OF-STATE EMPLOYEES SHALL BE REQUIRED TO PAY TRANSACTION TAXES AND
13 FEES INCLUDING BUT NOT LIMITED TO FUEL TAXES OR SALES/USE TAXES ON MATE-
14 RIALS OR SERVICES SUBJECT TO SALES/USE TAX, HOTEL TAXES, CAR RENTAL
15 TAXES OR FEES THAT THE OUT-OF-STATE AFFILIATED BUSINESS OR OUT-OF-STATE
16 EMPLOYEE PURCHASES FOR USE OR CONSUMPTION IN THE STATE DURING THE DISAS-
17 TER PERIOD, UNLESS SUCH TAXES ARE OTHERWISE EXEMPTED DURING A DISASTER
18 PERIOD.

19 S 3104. BUSINESS OR EMPLOYEE ACTIVITY AFTER DISASTER PERIOD. ANY OUT-
20 OF-STATE BUSINESS OR OUT-OF-STATE EMPLOYEE THAT REMAINS IN THE STATE
21 AFTER THE DISASTER PERIOD WILL BECOME SUBJECT TO THE STATE'S NORMAL
22 STANDARDS FOR ESTABLISHING PRESENCE, RESIDENCY OR DOING BUSINESS IN THE
23 STATE AND WILL THEREFORE BECOME RESPONSIBLE FOR ANY BUSINESS OR EMPLOYEE
24 TAX REQUIREMENTS THAT ENSUE.

25 S 3105. NOTIFICATION OF OUT-OF-STATE BUSINESS DURING DISASTER PERIOD.
26 1. THE OUT-OF-STATE BUSINESS THAT ENTERS THE STATE SHALL, UPON REQUEST,
27 PROVIDE THE DEPARTMENT A STATEMENT THAT IT IS IN THE STATE FOR PURPOSES
28 OF RESPONDING TO THE DISASTER OR EMERGENCY, WHICH STATEMENT SHALL
29 INCLUDE THE BUSINESS' NAME, STATE OF DOMICILE, PRINCIPAL BUSINESS
30 ADDRESS, FEDERAL TAX IDENTIFICATION NUMBER, DATE OF ENTRY, AND CONTACT
31 INFORMATION.

32 2. A REGISTERED BUSINESS IN THE STATE SHALL, UPON REQUEST, PROVIDE THE
33 INFORMATION REQUIRED IN SUBDIVISION ONE OF THIS SECTION FOR ANY AFFIL-
34 IATE THAT ENTERS THE STATE THAT IS AN OUT-OF-STATE BUSINESS. THE NOTIFI-
35 CATION SHALL ALSO INCLUDE CONTACT INFORMATION FOR THE REGISTERED BUSI-
36 NESS IN THE STATE.

37 S 3106. NOTIFICATION OF INTENT TO REMAIN IN STATE. AN OUT-OF-STATE
38 BUSINESS OR AN OUT-OF-STATE EMPLOYEE THAT REMAINS IN THE STATE AFTER THE
39 DISASTER PERIOD SHALL COMPLETE STATE AND LOCAL REGISTRATION, LICENSING
40 AND FILING REQUIREMENTS THAT ENSUE AS A RESULT OF ESTABLISHING THE
41 REQUISITE BUSINESS PRESENCE OR RESIDENCY IN THE STATE APPLICABLE UNDER
42 THE EXISTING RULES.

43 S 3107. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR
44 PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURIS-
45 DICTION TO BE INVALID, THE JUDGMENT SHALL NOT AFFECT, IMPAIR, OR INVALI-
46 DATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO
47 THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART THEREOF DIRECTLY
48 INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN
49 RENDERED.

50 S 2. This act shall take effect immediately. Provided, however, the
51 commissioner of the department of taxation and finance is authorized to
52 promulgate any rules or regulations, and develop and issue forms or
53 online processes necessary for the timely implementation of this act.